

## **Long Awaited Administrative Trademark Cancellation is in Force in Turkey since January 2024: TPTO Finally Announced Some Key Points of Practice in Administrative Non-Use Cancellations**

### **Background:**

On January 10, 2024, the Turkish Trademark and Patent Office (TPTO) took over authority for trademark cancellation actions from the courts. Previously, non-use cancellations were handled as adversarial litigation actions in the IP Courts.

Before the administrative trademark cancellation procedure became effective on January 10, 2024; there was a seven-year delay from when the IP Law was enacted in 2017. This delay allowed TPTO to clarify and finalize the non-use cancellation process and make necessary preparations. However, no guidelines or secondary regulations were announced outlining the process or associated fees before the new procedure took effect. As a result, the practical application of the new procedure has been unclear since it began. As of January 10, 2024, TPTO has been accepting administrative trademark cancellation requests as 'preliminary applications' and is awaiting further clarification.

Whilst awaiting the additional details on the new system, TPTO took part in a symposium on the administrative trademark cancellation procedure hosted by Ankara Bar Association on April 17, 2024. Concurrently, the TPTO also released its updated fee schedule for the year 2024, specifying the fee structure for the new administrative trademark cancellation process. An anticipated secondary regulation is expected soon and will likely include further details on the new procedure.

After attending the symposium on April 17, 2024, where we listened to the TPTO representative discuss the administrative trademark cancellation procedure, we are now sharing the key outcomes of the event in this article for our stakeholders.

### **What will be the key rules that govern the administrative cancellation procedure?**

The symposium held on April 17, 2024, shed light on the key rules that will govern the administrative trademark cancellation procedure. TPTO representative provided a broad overview of what to expect from the new system and offered an overview of the upcoming secondary regulation and the TPTO's official guideline.

One significant change is the way cancellation requests are handled. Unlike the previous court system, which allowed multiple trademarks to be challenged in one action, the new procedure requires each request to be specific to a single trademark.

Although TPTO currently lacks a specialized department for administrative cancellation requests, the establishment of such a department is anticipated. For the time being, it is expected that the administrative cancellation requests to be examined by the Trademarks

Department Directorate ("Directorate") of TPTO. If appeals are necessary, the Re-Examination and Evaluation Board ("Board") will conduct further examination.

TPTO will first conduct a preliminary examination on procedural grounds and cancellation action will be rejected due to lack of procedural requirements such as whether the challenged trademark being in grace period or not, without notifying the registrant. As long as the procedural prerequisites are met, TPTO will initiate examination on the merits and notify the registrant regarding the cancellation attack.

The TPTO will handle cancellation requests against international trademarks by notifying the registrant through WIPO.

The registrant will be granted a 1-month period to provide their response and evidence, which will be subject to extension up to 1 month upon request.

In the examination before the TPTO, the process will differ from the previous trademark cancellation procedure in the courts. Unlike the court proceedings, there will be no hearings, expert examinations, or examination of books and accounts. Instead, the TPTO will proceed in a similar structure as it is currently performing in opposition cases.

Directorate will decide for total or partial cancellation of the subject trademark in question. Such decision will be subject to appeal before the Board as of two months as of notification of the Directorate's decision.

If the parties wish to continue pursuing the matter, they can file a cancellation action in the Ankara Civil IP Courts. In court, the focus will be on the legitimacy of the Board's decision, meaning parties cannot present new evidence that was not previously submitted to the TPTO. However, it is likely that the court will order an official expert examination during the cancellation action.

### **What about Pre-filings that are filed as of January 10, 2024 until the enactment date of the Secondary Regulations?**

As of January 10, 2024, the TPTO has been accepting non-use cancellations as "pre-filings for trademark cancellation" due to the absence of local regulations.

Once the awaited regulation is published, the claimants who have submitted the pre-filings will be given a definitive period to pay the recently determined official fee (16,300.00 Turkish Lira- around 470 Euro) and provide the required documents, if any.

### **What is the status of the Cancellation Actions Filed Before January 10, 2024?**

The cancellation actions filed prior to January 10, 2024 will continue before the Court and remain unaffected by the implementation of the administrative trademark cancellation procedure.

It is now possible to file an administrative trademark cancellation action before the TPTO even for the trademarks involved in ongoing cancellation actions before the courts. In these cases, TPTO will review the situation and decide if the existing cancellation action justifies rejecting the administrative trademark cancellation request or not.

**Conclusion:**

The recent shift in authority for trademark cancellations to the Turkish Patent and Trademark Office (TPTO) introduces significant changes in the process, including how filings and notifications are handled, as well as the examination stages, methods, timeframes, and costs. The TPTO is expected to resolve administrative cancellation actions more quickly than court cases, potentially leading to a more efficient process overall. However, appealing the TPTO's decision in an administrative cancellation action can result in a new trial in the courts, which may take approximately 3-5 years to conclude, including two potential appeal phases.

Despite these concerns, the new administrative cancellation process could improve the consistency of trademark cancellation decisions by centralizing them under the TPTO's jurisdiction and eliminating the involvement of multiple courts across Turkey.

That said, there are still some concerns about the new system. The TPTO may take a strict approach to proving trademark use, similar to their handling of non-use objections during opposition cases. Without supportive mechanisms such as hearings, official expert examinations, or the examination of commercial records in the administrative cancellation process, right holders should present evidence of use as meticulously as possible to effectively respond to administrative non-use cancellation actions.



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