

## **EXAMINATION OF ABSOLUTE NOVELTY BY WITNESS EXPERTS IN INVALIDATION ACTIONS REGARDING INDUSTRIAL PROPERTY- 2011**

While examining a case which requires a *specific or technical knowledge*, the judge should be assisted by an expert panel. According to the precedents of the Turkish Supreme Court, a technical examination should be made in order to detect whether an invention/industrial design is novel, or not and the expert panel should take into consideration their own knowledge and findings with regard to the related invention/ design as well as the evidences submitted to the file by the parties while they are examining a patent's, design's and/or utility model's novelty during an invalidation action. This is why; making a search on absolute novelty is derived from the public order according to the Supreme Court.

This work critic the cited precedents and the point of view of the Supreme Court as in accordance with the principle of preparation of case by parties; neither the courts, nor the expert panels cannot collect and submit any evidences to the file with regard to the case instead of the parties. In any case that the cited principle is valid, the court may only decide to gather the evidences which were already indicated by the parties since the court is not liable for finding and gathering evidences that parties are not presented and relied on.