

PARTIAL INVALIDATION OF DESIGNS-2009

The partial invalidation of designs is contrary to the nature of EU and Turkish design regulations since the partial invalidation of a design is being determined regarding to a part/portion instead of the overall impression whereas; the overall impression of a design is taken into consideration while determining whether it covers the provisions of protection, or not.

On the other hand, the regulations for the partial invalidation were arranged as a result of necessity of the practice. A design of a product may bear both individual and common elements. Even some designs constituted of individual parts which were put together with the common elements are registered due to lack of information and experiences. Hence if the partial invalidation of designs would not be applicable, a lot of design registrations may be invalidated completely although they bear partial individual character but filed improperly due to the lack of information of the applicant.

The invalidation of designs was regulated individually in EU Law (Articles 25/6 and 51 of Community Design Regulation) which is also a basis of Turkish Design Law. According to the Regulation, a registered Community Design may be partially invalidated with two conditions, *i)* The remainder of the design complies with the requirements for protection. *ii)* The identity of the design should be retained.

The cited regulation in EU was intended to be adapted to the Turkish Regulations; however, the adaptation could not be accomplished due to the failure on the translating phase. Hence the courts did not apply the revisions on the Regulation to the disputes on the ground that the revisions made on the Regulations are contrary to the Decree Law which is above the Regulation on the hierarchical classification of laws. This work probes the matter in the points of EU and Turkish Law Systems.