

INFLUENCE OF INVALIDATION ACTION AGAINST UTILITY MODELS ON THIRD PARTIES-2012

The utility model applications are only subject to a formal examination as a substantial examination is not performed during the registration phase in Turkish System. Upon the formal examination, the application is published for the third party oppositions; however, even if any third party opposes to the application, the Turkish Patent Institute (TPI) must disregard the opposition and complete the registration phase if the applicant requests the issuance of the registration certificate without taking notice of the opposition. However, such a system causes that both the opposition procedure becomes ineffective and there are many registered utility models which do not bear the requirements of the protection.

The legislator is intended to balance this system by enacting the article of 158/II of Patent Decree Law (No: 551). According to this article if an invalidation action is filed against a utility model, the rights arising from the registration cannot be claimed against any third party. In our opinion, with such a legal arrangement, the legislator tried to correct this mistake with another one since filing an invalidation action automatically makes the rights arising from the certificate of registration ineffective and unprotected.

The cited regulation should be revised by authorizing the TPI with the power of making a substantial examination in order to detect whether the application bears the requirements of the protection or not upon an opposition action as it does in the design applications.