

THE EFFECTS OF INVALIDITY DECISIONS ON INDUSTRIAL PROPERTY RIGHTS – 2006

The effect of invalidity is accepted throughout our industrial property legislation despite of some term differences. Accordingly, the right based on document, in principle, retroactively ends with invalidity decision (*ex-tunc*). With the invalidity decision it is accepted that such a protection has never materialized. Thus, by application or registration transaction it is understood that in principle no relationship between the transaction and its owner is established.

The law maker designates the retroactivity of the invalidity decision as a main rule. However, it is accepted as an exception that the exercised court decisions and exercised agreements are not affected from this rule as well. Having said this, it is also regulated that the malicious applicant/owner of the document shall compensate the damages which they cause. It is very important here to determine the scope and limits of the term of *bad faith*.

Pursuant to the settled decisions of the Court of Appeals, to exercise the registered rights by their owner who has registered trademark, patent, design, title or company name is legal and it does not constitute unfair competition. In other words, using the registered right is a legal reason while the registration continues. The Court of Appeals, in these decisions, does not discuss whether the owner of the registration is malicious or not. Unless the Court of Appeals changes its precedent, a well-functioning industrial property system could not be established in Turkey. In this study, circumstances where the retroactivity of invalidity are applied and its exception are examined. Besides, the case law practice is reviewed with a critical eye.