

Turkish Patent Institute revises its practice in Class 35

The Turkish Patent Institute in its eagerly awaited decision issued on October 20, 2011 declared that it changed its practice in class 35. The change came after the developments in the world, critics, court decisions, and the practice of WIPO Nice Classification Experts Community on how to interpret the services commonly known as “sales services”. In its decision, the Turkish Patent Institute referred to “Praktiker” case before the Court of Justice in 2005 (Case C-418/02), in which the Court of Justice stated that the sales itself is not related to “the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods” but is related to the bringing together variety of goods for the purpose of presenting the same to consumers”.

The Institute states that the examinations from now on will be carried out based on the following rules in defining the whether there is any ground for refusal:

- i. The wordings that do not refer to products, product groups or sectors and the wordings that refer to products, product groups or sectors will not be deemed *in principle* as the same or same-kind services.
- ii. In identical or indistinctively similar trademark applications, the services that are expressed in same-kind or similar products, product groups or sector will be deemed as the same-kind services.
- iii. In identical or indistinctively similar trademark applications, the services

that are expressed in completely different products, product groups or sector will not be deemed as the same or same-kind services.

- iv. The services which refer to “general” terms as if they cover the bringing together the goods of several sectors will be deemed as same-kind services with the bringing together the goods of several sectors, despite it expresses products, product groups and sector.

Trademark application or registration owners in Turkey is strongly advised to file new application in Turkey by specifying each product or product groups they are interested even if they hold an application or registration in class 35 with general terms.

Under the new practice, the trademark application or registration owners in Turkey is strongly advised to file new application in Turkey by specifying each product or product groups they are interested even if they hold an application or registration in class 35 with general terms. In addition, if the earlier applications are refused due to a prior application or registration in class 35 with general terms, a new application referring to products or

product groups will be allowed. An example of new application related to sales services in class 35 may be “the bringing together, for the benefit of others, of personal care products, enabling customers to conveniently view and purchase those goods”. The application using general terms such as “retail sale services in class 25” will not be accepted.

In the new practice, the requests for changes in previous applications or registrations will not be accepted. The experts suggest that the change will bring around 500.000 new trademark applications in class 35.