

Joint Conference: 14th ISMC and 8th ICLTIBM-2018

TOC-THINKING PROCESS APPROACH FOR PROBLEM SOLVING IN TRADEMARK REGISTRATION PROCESS

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Abstract

Industry 4.0 has caused many changes in commerce as well as in industry. Institutions should therefore revise their strategies and make strategic decisions that will adapt to today's digital world. In the current physical or digital business competition environment, firms want to make their products more attractive by branding and delivering them to large masses. A brand is a feature that separates the product or company from the others and is an advantage both the produces and the consumer. Firms have a wider market share by ensuring the transportation and awareness of its products, and while ensuring its sustainability, consumers can gain prestige, protect their rights, and so on. The trademark must be registered in order to be valid. However, when the application was made in Turkey rejection rate of the brand has increased steadily. This situation causes great waste for the applicant and the applicant institution. In this paper, a study has been conducted with the aim of revealing how problems should be resolved by investigating the causes of rejection of applications and thus increasing the acceptance rate. In this study, Thinking Processes application was made within the framework of the Theory of Constraints approach, which aims to achieve continuous improvement by removing constraints. Thus, it is foreseen that there will be a guide on the possible mistakes of the firm managers who will make a trademark application and how these problems can be resolved.

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Keywords: Brand, theory of constraints, trademark registration, thinking processes.



1. Introduction

In economic terms, a brand is an imperative that separates an enterprise's goods and services from the goods and services of another enterprise. Words, numbers, letters, shapes, product shape or packaging and their presentation together are considered as trademarks. In an increasingly competitive environment, companies need to establish a strong brand in order to increase their power in the market (Alkibay, 2005). In other words, a strong brand is a consistent and holistic identity. It is important for the institutions that create the brand to reveal the details of these identities and to distinguish their strengths and communicate them to the target group. While the consumers make purchasing decision among the competitors in the market, the brand is serving as a compass. Nowadays, while the price of a product or service only expresses its monetary value for most consumers, the brand also defines the functional, satisfaction and symbolic dimensions of a product or service from others (Altuntaş, 2018).

Creating a brand is more difficult than breaking down brand reputation. For this reason, the protection of the reputation of brands is very important. Whether you are a brand, newborn, or born again, your strategic and verbal and visual identity must be well defined, connected and absolutely differentiated (Altındal, 2013). It is necessary for the mark to be registered in order to gain competitiveness and to formalize the mark, the mark has to be registered first. This process in Turkey is made by the Turkish Patent and Trademark Office affiliated to the Ministry of Science Industry and Technology. However, not every application can be concluded with the registration. The application files which are delivered to the real or legal persons authorized by the Turkish Patent and Trademark Office personally or sometimes are rejected in some cases due to the incomplete / inadequate, sometimes faulty and sometimes delayed applications. This not only takes the labor, money and time of the applicants but also causes vacancies for the Turkish Patent and Trademark Office. Beyond that, companies are deprived of the brand. In order to reduce this two-way waste and opportunity loss, the reasons for rejection of applications in this study were examined and a model was introduced to guide the applicants. In order to find root causes that cause rejection of the application and to remove these causes, the Approach of Theory of Constraints (TOC) was resorted to and the TOC Thinking Processes method was implemented step by step. As a result of this application, it has been ensured that an application can be made with the lowest possible probability of rejection by determining the ways to eliminate root causes.

In the following sections of the study, firstly the brands and types are defined, the trademark registration is summarized briefly and the application steps are explained. In the following section, the Theory of Constraints and Thinking Processes are introduced, and a resolution method through the Thinking Processes is explained step by step which are applied to solve the problems experienced in the brand application process and to guide the interested parties.

2. Brand and Application Process

2.1. Brand

Brand is a distinctive symbol, sign, logo, name, word, sentence, or combination of items that distinguishes companies from their products in the market. A brand is seen as one of the company's most valuable assets. The brand of a company has a monetary value in the stock market (if the company is offered to the public) and affects the value of the stock. For these reasons, it is very important to protect

the integrity of the brand. The brand represents the face of the company, the well-known logotype, the slogan, or the sign that the public is associated with the company. The American Marketing Association (Kotler, 2000) expresses the brand as: "A brand is a combination of name, term, sign, symbol or design that is used to uncover the goods or services of a company or group of companies and to separate them from goods and services of competing companies". In legal terms, trademark types can be expressed as Trademark, Service Brand, Common Brand, Guarantee Brand. Also brand; may be categorized as manufacturer brand, distributor brand, corporate brand, generic brand, binding brand, family brand, aggressive brand, challenging brand, main brand / sub brand (Low & Fullerton, 1994).

Brands come from the spiritual or rational elements. These elements are; trademarks, brand names, signs and symbols, logo, and many other similar items come together. The item to be displayed by formatting can constitute an element for the registration of the mark. Signs registered in the form of a brand are, in general, words and two-dimensional marks. On the other hand; sound, music, smell and three-dimensional marks can also be provided as a brand. In these and similar cases; it can be registered in the form of brand imitation by expressing the voice and expressing the smell by transferring the music to the notes. This imitation used in the form of a brand; it separates a firm's goods or services from other goods and services. When such details are approved by law, all rights of the mark formed are guaranteed (Kotler, 2000). The fact that the mark is protected from the legal point of view, in other words, both the manufacturing company and the consumer offers some advantages. A registered brand maintains its image based on the laws of the country.

2.2. Brand registration

The trademark registration certificate is important because it will prevent imitations on the market and increase competition power on the market. The first and most important step in the process of obtaining a trademark registration certificate is brand applications. Businesses seeking to be branded will be positively affect in terms of cost, time, quality, efficiency etc as a result of the completion of this process.

The first step of the trademark registration process is to make a trademark application. On the other hand, prior to the application of the trademark, it is possible to conduct a preliminary search for the trademark for which the registration is required, Trademark applications can be made primarily by entering the e-government and later using e-signature or mobile signature. After examining the application process of the mark, the application is examined by the experts in terms of absolute and relative reasons for rejection, the appeal of the appeal, the appeal of dissemination or the examination of the opinions and objections of the third parties and registration of the application. In this context, it is the first time that a formal examination takes place after a trademark application. In order for the trademark application to comply with the provisions of the trademark law, it must first be examined in the form. In this step, if there are any deficiencies, a two-month period is provided in terms of lack of applicant and / or mistakes (Türk Patent, 2018). Applications that are still incomplete within this time period will be deducted from the provision.

If the trademark application has been examined in the form, it becomes a definite trademark application. Considering the goods or services requested by the registrant, the reed is subject to examination by the experts within the reasons of absolute rejection. In the event of one of the absolute

reasons for rejection, the application is accepted or rejected for all or part of the goods or services requested (Türk Patent, 2018). The process of applying for a trademark is given in detail in Figure 1 (Türk Patent, 2018).

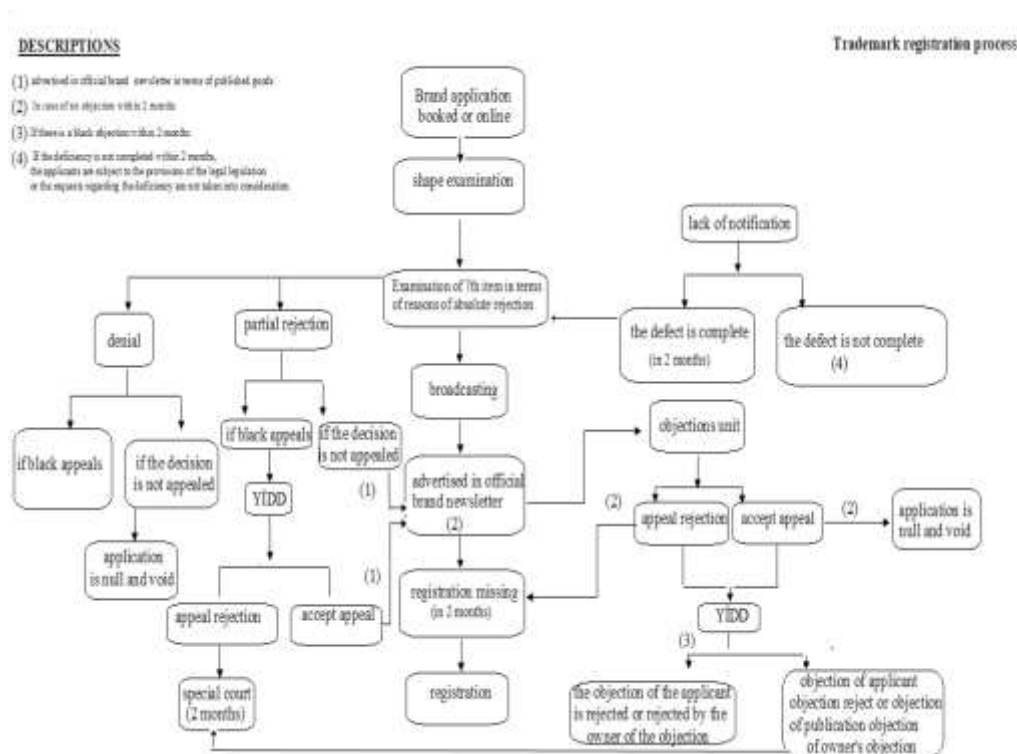


Figure 01. Trademark Registration Process (www.turkpatent.gov.tr/)

Problems in the process of trademark application cause losses such as not registering the mark, and time, labor, rights and material losses of the companies. According to Law no. 6769, the cases of absolute refusal in the trademark registration process can be summarized as follows;

- Content that does not have a distinctive feature,
- Content similar to previously accepted and accepted content,
- Any occupation or sector-specific signs ,
- Signs that contain technical features that should be in the property,
- Misleading signs,
- Religious signs,
- Signs contrary to public characteristics or ethics.
- Signs containing proprietary geographical information.

According to Article 6 of Law No. 6769, relative refusal periods in trademark registration can be summarized as follows:

- If there are applications similar to the previously registered trademark,
- If a similar trademark is registered during the process,

- If the registration is not original.

Too many trademark applications in trademark processes, problematic applications and prolonged processes constitute the business intensity for Turkish Patent and Trademark Office. Failure, problems or problems in the trademark application process are time, labor, rights, material and spiritual losses for the companies; in other words, it has the possibility that other companies have that brand. Rejection of the mark increases time and cost for brand applicants. In this study, the rate of acceptance of the brand applications are aimed to be increase and TOC-Thinking Processes have been applied for the identification and resolution of factors that adversely affect the application process. In the following sections, the Theory of Constraints and Thinking Processes are briefly summarized and the application of the brand application period is explained.

3. Theory of Constraints and Thinking Processes

3.1.Theory of Constraints

The Theory of Constraints (TOC), introduced by Goldratt, is a philosophy that focuses on the concept of repeated constraints for this system and adopts continuous improvement by taking the operation as an entire system for effective management of an operator (Gupta & Boyd, 2008). If the business is viewed as a chain, the power of the whole chain depends on the power of the weakest ring in the chains that form the chain. For this reason, the weakest link in the chain should be found and strengthened (Kaygusuz, 2005). According to TOC concept "every system has at least one constraint and the constraint is defined as anything that keeps a system from getting higher performance in the direction of purpose (Kirche & Srivastava, 2005) There are some constraints on the profitability of the enterprise, both within the enterprise and outside the enterprise It must be determined that which of these constraints in the system are temporary (bottleneck) effects or which of these are long-term (constraint) effects. In production-related activities, in other words the constraints within the company are often capacity constraints and these constraints are easily identified and controlled (Kaygusuz, 2005) .The ability of the operator to respond to customer requests and expectations in the best and fastest way is a good indicator of how the chain works in a healthy way.

TOC is composed of two main components (Goldratt & Cox, 2012). This is a five-stage continuous development model that includes the basic working principles of the theory of the province, drum-buffer-rope (DBR) method (Costas et al, 2015) and buffer management. This model states that more administrative or political constraints are more important than physical constraints for businesses. Goldratt focuses on the modeling of these constraints and the model of Thinking Processes (TP), the second fundamental component of TOC in order to process the continuous development model. According to Goldratt, the management of constraints consists of five steps. The province from these stages; the second is that it is decided how effectively the constraints are to be managed, the second stage is the focus of the third system, the fourth is the abolition of the constraints, and the fifth stage, the last stage, is the definition of the previous one and the return to the first stage when the step-in constraint is overtaken. The most important point to note here is the return from the last stage to the first stage. This includes continuous improvement that is the basis of Goldratt's TOC (Büyükyılmaz & Gürkan, 2009).

The continuous improvement process allows the constraints that adversely affect businesses to be managed in the best way and be transformed into useful intermediates. In short, it is possible to manage the constraints with the help of TOC's five-step continuous improvement process, and cost reductions that are effective in increasing operational profitability and timely response items to customer requests can be realized.

In the five-stage continuous development model, the physical constraints in the production process are usually considered and the profitability is increased by shortening the inventory and operating expenses. However, when this model is applied, non-physical constraints related to management and demand within the enterprise arise. Abolishing the constraints stemming from the management is a more difficult process than removing the physical constraints (Büyükyılmaz & Gürkan, 2009). For this reason, a variety of tools are being used to eliminate the constraints, focusing on the causes of problems in the system and offering various solutions. All of these various tools are collected under the Thinking Processes (TP). The main purpose of the TP is to identify the current situation of a system, to define the necessary activities, to find the causes that cause constraints and to suggest solutions for these reasons, to prepare the preconditions of the proposals and to remove the difficulties during implementation (Akman & Karakoç, 2005).

3.2. Thinking Processes

TP consists of a set of tools starting from the definition of the main problem in the system and containing administrative analysis applications to solve this problem. What is also important in TP is to solve the main problem causing the adverse effects in the system by logically taking the cause-effect relationship (Schrageheim, 2005). In this context, the process consists of, Current Reality Tree (CRT), Future Reality Tree (FRT), Evaporating Clouds (EC), Prerequisites Trees (PT) and Transition Tree (TT) (Dettmer, 1997; Birgün, & Kolbaşı Onursal, 2012). The aim of the TP is to develop the current situation in the system to provide continuous improvement and to develop plans to solve these problems by identifying the uncertain situations in the system. There are 3 questions on the basis of TP.

What will change? The existence of the answer to this question is based on the CRT. CRT is a logical tool to use the outcome-cause-effect relationships with purpose to determine root causes (Aytekin, Yörükoğlu, & Akman, 2012). The purpose of this question is to find the wrong methods and constraints that prevent the organization from improving its performance (Akman & Karakoç, 2005).

What will it turn to? With this question, consistent, understandable, practical solutions for root causes are searched. The aim here is to determine what should be the wrong ways of preventing development. For this, EC and FRT methods are used (Akman & Karakoç, 2005).

How will the transformation be realized? The starting and ending points of the system are determined by the questions "What will change?" And "What will it change?" The phases created between the start and end points answer the question of how the transformation is performed. For this question, PTs and TTs are used (Dettmer, 1997).

TP is a minimalist approach. Over time, the problem presents itself with resources at the least cost and cost effectively. This theory has been successfully applied in many field problems such as production, logistics, distribution, project management, research and development, to identify and solve

problems. Analytical thinking is adopted instead of systematic thinking in the identification, solution and management of problems.

The first step in the application of TP is to list the undesirable effects and, accordingly, to bring the CRT into the field. The CRT is designed to examine the current state of a system and to better understand the problems and identify the main problems with undesirable effects that adversely affect the performance of the system. The application of TP tools usually begins with the establishment of the CRT, with the identification of root problems or problems in the system (Watson et al., 2007). A CRT begins with the identification of several surface problems or undesirable effects (Walker & Cox, 2006). The symptoms are under systematic problems.

EC is a method in which the basic requirements are defined with the proposed ideas to remove the root problem, the clash between the solutions is made, and the injections are made to destroy this clash (Aytekin et al., 2012). EC method acts as an effective bridge, contributing to the removal of problems from the current state of the problem to the desired future state (Akman & Karakoç, 2005; Yeşil et al, 2016). The EC is helping the decision-maker investigate a solution by challenging the assumptions underlying this conflict.

FRT is a tool used to imagine, enliven and predict the future. It is a competence-based structure that shows how changes that are decided to be made in the current situation actually contribute to the desired outcomes. The FRT shows the cause-and-effect relationship between the changes to be made in the existing system and the results that may occur. FRT is a "what-if" application. The FRT ensures that a strategy, vision or plan for an organization is visible. It tries to determine the benefits of the proposed change, the negative effects it will have, and how to remove these effects. The FRT ensures that the solution is analyzed and developed before the application starts, and that what is missing in the solution is distinguished. These functions are important from two perspectives. The efficiency of activities that are to be rationally proven can be tested. The second is; to prevent the worsening of the situation. This tool responds to the question of "what will change" and evaluates the second part by evaluating the new form of work. The CRT is a FRT using if-then logic, which shows how the undesirable effects of injections can be transformed into desired effects (Mabin & Balderstone, 2003; Dalci & Kosan, 2012).

The PRT sets out the conditions necessary to achieve the objectives set out in the FRT (Husby and Swartwood, 2012). The same logic used in the EC is used with the aim of determining and evaluating the critical factors or obstacles encountered in achieving the goal (Mabin et al., 200).

TT provides a detailed plan for the implementation of the activities required to achieve the goal (Aytekin et al., 2012). Your intention is to apply the change of purpose (Mabin & Balderstone, 2003). It is a cause-and-effect chain designed to reveal step-by-step processes from the identification of undesirable effects to the completion of the change (Akman and Karakoç, 2005). The TT structure allows the FRT diagram to be understood by everyone. While FRT is a strategic tool; TT is a transactional or tactical tool, and by the creation of TT the implementation of injections developed in EC and FRT are realized and tactical action plans are prepared for strategic plans (Yüksel, 2011).

4. Resolving Problems in Brand Application Process with TP

In the last 5 years, about 110,000 trademark applications are filed on average annually in Turkish Patent and Trademark Office (www.turkpatent.gov.tr/). The vast majority of these applications receive partial rejection and extensive labor and time are spent to reorganize them. Looking at the Turkish Patent and Trademark Office aspect, a large number of trademark applications, problematic applications and prolonged processes are creating work intensity. Failure, problems or problems in the process of trademark application may lead to the possibility that other companies have the mark in addition to time, labor, rights, material and spiritual losses for the companies. Rejection of the mark increases time and cost for brand applicants. Contribution to brand, competition and country economy provides many benefits such as sustainable competitive advantage, increased productivity, global market formation, brand value, quality formation and advertising.

In order to increase the success rate in trademark registration and to open the road of success, the factors that cause failure should be examined and solutions should be provided. A study and solution proposal for root causes using TOC-TP has been introduced, but here only the Current Reality Tree-CRT step has been explained, an example for the Evaporating Cloud-EC have been given and Future Reality Tree-FRT have been presented.

4.1. CRT for Causes of Failure of Trademarked Application

The current reality tree can be described as a rational tool for establishing cause-effect relationships with the aim of addressing root problems that lead to undesirable consequences in the branding system (Walker & Cox, 2006). The root causes of frequent rejection of applicants made to the Turkish Patent and Trademark Office are presented at the conclusion of the brainstorming with interviews with various companies, past experiences, application conditions and rejection reasons, and the CRT is arranged as in Fig.2.

When the CRT is examined, it appears that the lack of information, carelessness and incomplete / inaccurate application of the applicant have affected the required qualification of trademark registration criteria. Incomplete and inexperienced research may lead to incomplete information, and carelessness may lead to errors in class selection in brand applications. Class selection is an important factor. The classification has been changed and the number of classes from 42 to 45 has been increased. This affects the probability of making mistakes. For example, if a new trademark application was made for the same trademark that was registered in 42nd class, it is rejected because of the similarity or the same brand if the 43rd class is selected. In addition, when a sub-group which is not included in commodity is added, for example, when industrial knives are added, the trademark application is rejected if there is a registered trademark in that sub-group because the class code will be generated later in some sectors.

Because the law language in Turkish is different from the daily speaking language, it is difficult for a person who is not a lawyer to understand this language correctly. This, on the other hand, affects the correct understanding of resources in the applicant. The lack of understanding of resources has an impact as inadequate information.

The processes have some duration in the trademark application period. If the time passes after the notification date, the transactions will not continue. If the trademark is rejected and the trademark is not

objectionable, the trademark remains rejected and the proceedings can not be resumed. Incorrect procedure management problems cause jobs to not be trained on time. Failure to provide the necessary conditions for the application will cause the documents to be missing. In this context, inadequacy of information, inability to train jobs, lack of delivery of documents affects the attention to time of trademark applications.

Failure to pay the tuition fee leads to the incomplete payment of the trademark application fee. In case the brand application fee is incomplete, the application process will not continue unless the deficiency is completed. However, if multiple classes are selected and incomplete payment is made, the application is examined by class as much as the fee. If the trademark is similar to that of the class, the application is rejected.

Lack of brand research may lead to risky brand applications. To give an example for a risky brand, while "Blue" brand is registered, brand application is risky as "Blue Jeans", and brand applications that associate existing brands are highly likely to be rejected. When a risky brand application is made, it is rejected by examination after the application of the law after the application.

Thus, as seen from the figure, it has been revealed as the reasons for rejection of trademark applications as "failure to pay attention to main trademark registration criteria", "mistakes made in class selection", "not paying attention to application period", "incomplete deposit" and "risky brand claim". Turkish Patent and Trademark Office is the elimination of undesirable effects with EC.

4.2. Example for EC

The most important role of the Evaporating Cloud is to ensure that new ideas are produced for the planning process. Current root causes are used to reveal solutions to emerging problems. In this technique, injections are used to remove the cracks after the conflict is revealed. Here, for example, the EC has been prepared for the purpose of realizing the application within the period. In Figure 3, there is a conflict based on the resources in the EC. In case the resources are not understood correctly due to the legal language, it can be considered as an appropriate solution to use the consultant / proxy firms. In this way, it will be possible to reach the right and sufficient information with the experts. The resource search can be done adequately by referring to all resources provided in the website of the Turkish Patent and Trademark Office. As a result of obtaining sufficient and correct information, the application will be able to be realized within the required time.

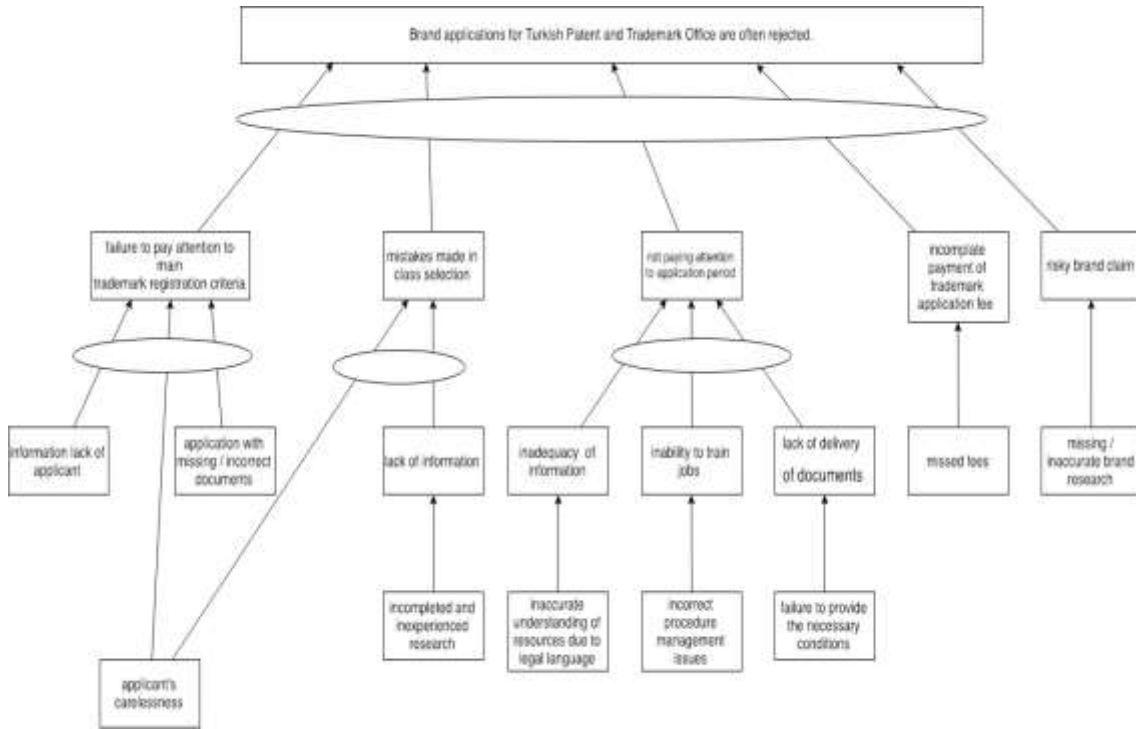


Figure 02. Current Reality Tree (CRT)

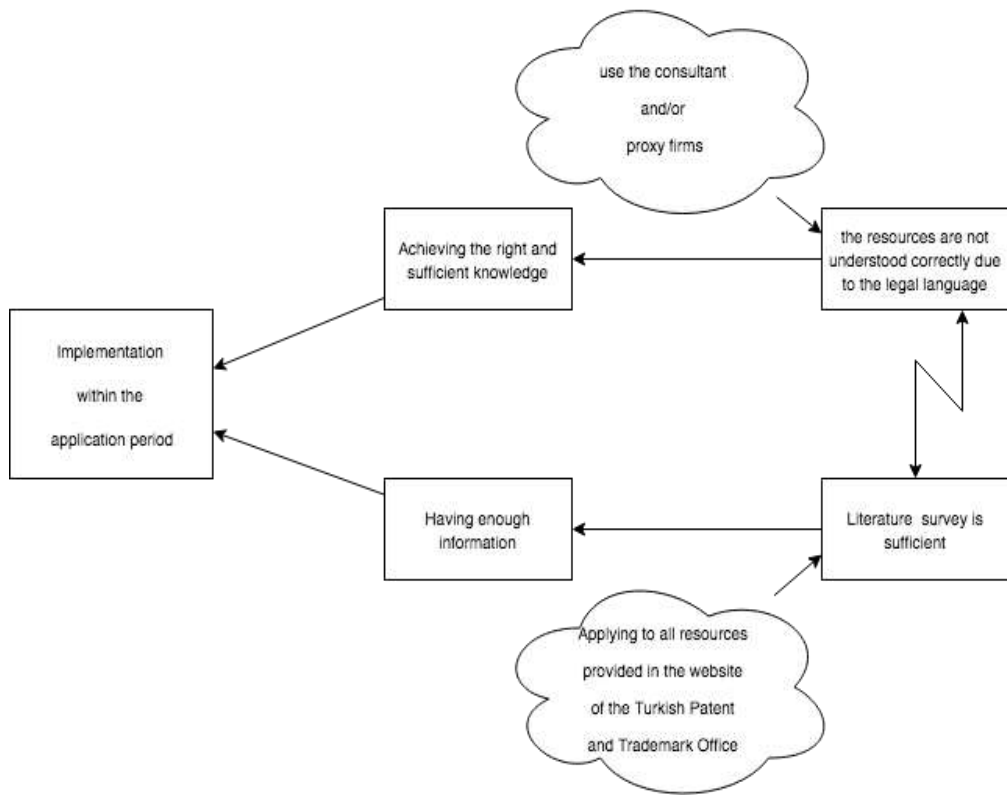


Figure 03. An Evaporating Cloud

In the study, the EC was created in preparation of the application, the application of the correct brand, the correct selection of the class to be applied, and FRT was created by using these conflict diagrams.

4.3. Regulation of FRT

The goal is to verify that the desired state will achieve the desired effect. As a result of prepared EC's the trademark research process will be investigated well and the right brand will be selected as the result of using the consultant / proxy company. Correct selection of sectors and proper writing of the class code at the same time will ensure that the final class selection is done correctly.

By consulting with the consultant / proxy firm and having more detailed information about the application procedures, Turkish Patent and Trademark Office will be able to complete the application file in accordance with the application rules with complete and complete preparation of missing / faulty documents within the given period. As a result of the complete and timely filing of the application fee, it is expected that the trademark application made to the Turkish Patent and Trademark Office will prevent the loss of time and cost during the application phase and afterwards and will prevent the rejection of the trademark applications with the right information.

PRTs and TT have been arranged in the work of TP, but they are not included in this presentation. The PRT identifies situations and omissions that prevent development from achieving the desired outcomes and sets new goals and objectives that will ensure that these obstacles come from the top of the resistance. TT is a way of defining the actions required to achieve the goal and achieving the result. FRT for correct code entry and timeliness; TT was arranged for compliance with trademark registration criteria, timely completion of documents, application of correct trademark and selection of correct sector / class.

5. Conclusion and Discussions

In this study, the application of TOC Thinking Processes was carried out with the aim of increasing acceptance rates of brand applications that were rejected or partially rejected. Investigation of mistakes made in case of rejection that root causes are determined as "factors that are not given to main trademark registration criteria", "mistakes made in class selection", "not paying attention to application period", "incomplete deposit" and "risky brand request" it is determined as follows. The applicant's ignorance and carelessness, the inadequacy of the prepared documents, and the lack of care. Besides, in the selection of the brand, sufficient research is not done and as a result of the accumulation of relevant information, there is a great possibility of making a mistake in class selection. On the other hand, if the class is correctly identified, the incorrect marking causes the class selection error. Missing or inaccurate brand research is also causing risky brand applications. If it has not been thoroughly investigated and investigated in detail, it is possible to apply with a trademark or the like registered

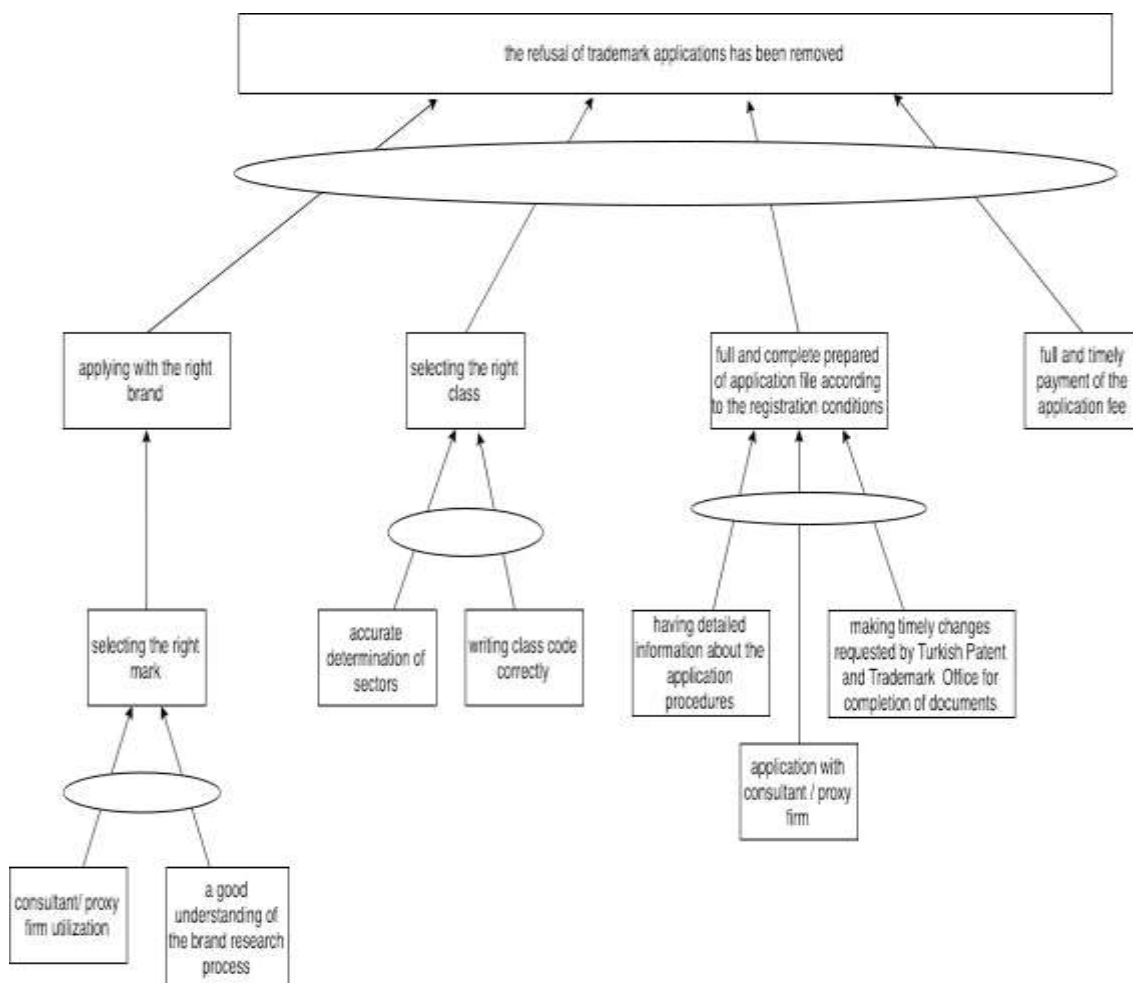


Figure 04. Future Reality Tree

in the market, or the trademark may be identified with marks that do not make a difference. Application fee is also an important factor. If it is incomplete, the application will not be reviewed.

The fact that the legal language is not known and understood by everyone is a factor that can eventually lead to rejection of the application. Because the provision of adequate information and the inability to understand the legal sanctions can not provide the required attention and cause the mistake in the application being made and followed. Failure by the management of the company in the procedure, method design and implementation also causes the work to be delayed in time. Failure to meet the requirements for the application results in incomplete delivery of the documents.

As you can see, these factors are due to ignorance, carelessness in information access and preparation processes, insufficient attention, carelessness. If the firm is to apply without assistance, it is absolutely necessary to establish a correct team to reach the right sources of information, to make this information very good and to fulfill the application steps stated by the Turkish Patent and Trademark Office in full and on time, to control every step taken and to follow the application. Apart from this, management procedures need to be reviewed and improved. If the company finds itself to be inadequate in this regard, it should definitely use a consultant firm or employ a proxy. In this way, the possibility of registration of the mark will be maximized.

When you trade in digital worlds where your competitors are not only physical but also borderless, you have no chance to compete without having a registered mark. The correct brand selection and effective management that reflects the firm's strategy is also a factor that will increase the brand value of your company. It is expected that in this commercial battle environment, where this study is forced to become a trademark owner, for managers who plan to apply for a trademark application in order not to be refused trademark applications are expected to show a guide showing possible errors and solutions. For more precise and detailed analysis, TOC-Thinking Processes application of each main factor detected here can be suggested as future studies.

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