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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2868/95
of 13 December 1995
implementing Council Regulation (EC) No 40/94 on the Community trade mark

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ⁽¹⁾ as amended by Regulation (EC) No 3288/94 ⁽²⁾, and in particular Article 140 thereof,

Whereas Regulation (EC) No 40/94 (hereinafter 'the Regulation') creates a new trade mark system allowing a trade mark having effect throughout the Community to be obtained on the basis of an application to the Office for Harmonization in the Internal Market (trade marks and designs) ('the Office');

Whereas for this purpose, the Regulation contains the necessary provisions for a procedure leading to the registration of a Community trade mark, as well as for the administration of Community trade marks, for appeals against decisions of the Office and for proceedings for the revocation or invalidation of a Community trade mark;

Whereas Article 140 of the Regulation provides that the rules implementing the Regulation shall be adopted in an implementing regulation;

Whereas the implementing regulation is to be adopted in accordance with the procedure laid down in Article 141 of the Regulation;

Whereas this implementing regulation therefore lays down the rules necessary for implementing the provisions of the Regulation on the Community trade mark;

Whereas these rules should ensure the smooth and efficient operating of trade mark proceedings before the Office;

Whereas in accordance with Article 116 (1) of the Regulation, all the elements of the application for a Community trade mark specified in its Article 26 (1) as well as any other information the publication of which is prescribed by this implementing regulation should be published in all the official languages of the Community;

Whereas, however, it is not appropriate for the trade mark itself, names, addresses, dates and any other similar data to be translated and published in all the official languages of the Community;

Whereas the Office should make available standard forms for proceedings before the Office in all official languages of the Community;

Whereas the measures envisaged in this Regulation are in accordance with the opinion of the Committee established under Article 141 of the Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The rules implementing the Regulation shall be as follows:

TITLE I

APPLICATION PROCEDURE

Rule 1

Content of the application

⁽¹⁾ OJ No L 11, 14. 1. 1994, p. 1.

⁽²⁾ OJ No L 349, 31. 12. 1994, p. 83

(1) The application for a Community trade mark shall contain:

- (a) a request for registration of the mark as a Community trade mark;
- (b) the name, address and nationality of the applicant and the State in which he is domiciled or has his seat or an establishment. Names of natural persons shall be indicated by the person's family name and given name(s). Names of legal entities, as well as bodies falling under Article 3 of the Regulation, shall be indicated by their official designation, which may be abbreviated in a customary manner; furthermore, the law of the State governing them shall be indicated. The telegraphic and teletype address, telephone as well as fax numbers and details of other data communications links may be given. Only one address shall, in principle, be indicated for each applicant; where several addresses are indicated, only the address mentioned first shall be taken into account, except where the applicant designates one of the addresses as an address for service;
- (c) a list of the goods and services for which the trade mark is to be registered, in accordance with Rule 2;
- (d) a representation of the mark in accordance with Rule 3;
- (e) if the applicant has appointed a representative, his name and the address of his place of business in accordance with point (b); if the representative has more than one business address or if there are two or more representatives with different business addresses, the application shall indicate which address shall be used as an address for service; where such an indication is not made, only the first-mentioned address shall be taken into account as an address for service;
- (f) where the priority of a previous application is claimed pursuant to Article 30 of the Regulation, a declaration to that effect, stating the date on which and the country in or for which the previous application was filed;
- (g) where exhibition priority is claimed pursuant to Article 33 of the Regulation, a declaration to that effect, stating the name of the exhibition and the date of the first display of the goods or services;
- (h) where the seniority of one or more earlier trade marks, registered in a Member State, including a trade mark registered in the Benelux countries or registered under international arrangements having effect in a Member State (hereinafter referred to as 'earlier registered trade marks, as referred to in Article 34 of the Regulation') is claimed pursuant to Article 34 of the Regulation, a declaration to that effect, stating the Member State or Member States in or for which the earlier mark is registered, the date from which the relevant registration was effective, the number of the relevant registration, and the goods and services for which the mark is registered;
- (i) where applicable, a statement that the application is for registration of a Community collective mark pursuant to Article 64 of the Regulation;
- (j) specification of the language in which the application has been filed, and of the second language pursuant to Article 115 (3) of the Regulation;
- (k) the signature of the applicant or his representative.
- (2) The application for a Community collective mark may include the regulations governing its use.
- (3) The application may include a statement by the applicant that he disclaims any exclusive right to an element of the trade mark which is not distinctive, to be specified by the applicant.
- (4) If there is more than one applicant, the application may contain the appointment of one applicant or representative as common representative.

Rule 2

List of goods and services

- (1) The common classification referred to in Article 1 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, shall be applied to the classification of the goods and services.
- (2) The list of goods and services shall be worded in such a way as to indicate clearly the nature of the goods and services and to allow each item to be classified in only one class of the Nice Classification.
- (3) The goods and services shall, in principle, be grouped according to the classes of the Nice classification, each group being preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes under that Classification.
- (4) The classification of goods and services shall serve exclusively administrative purposes. Therefore, goods and services may not be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification, and goods and services may not be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

*Rule 3***Representation of the mark**

(1) If the applicant does not wish to claim any special graphic feature or colour, the mark shall be reproduced in normal script, as for example, by typing the letters, numerals and signs in the application. The use of small letters and capital letters shall be permitted and shall be followed accordingly in publications of the mark and in the registration by the Office.

(2) In cases other than those referred to in paragraph 1, the mark shall be reproduced on a sheet of paper separate from the sheet on which the text of the application appears. The sheet on which the mark is reproduced shall not exceed DIN A4 size (29,7 cm high, 21 cm wide) and the space used for the reproduction (type-area) shall not be larger than 26,2 cm × 17 cm. A margin of at least 2,5 cm shall be left on the left-hand side. Where it is not obvious, the correct position of the mark shall be indicated by adding the word 'top' to each reproduction. The reproduction of the mark shall be of such quality as to enable it to be reduced or enlarged to a size not more than 8 cm wide by 16 cm high for publication in the Community Trade Mark Bulletin. The separate sheet shall also indicate the name and address of the applicant. Four copies of the separate sheet carrying the reproduction shall be filed.

(3) In cases to which paragraph 2 applies, the application shall contain an indication to that effect. The application may contain a description of the mark.

(4) Where registration of a three-dimensional mark is applied for, the application shall contain an indication to that effect. The representation shall consist of a photographic reproduction or a graphic representation of the mark. The representation may contain up to six different perspectives of the mark.

(5) Where registration in colour is applied for, the application shall contain an indication to that effect. The colours making up the mark shall also be indicated. The reproduction under paragraph 2 shall consist of the colour reproduction of the mark.

(6) The President of the Office may determine that, as far as the requirements of paragraph 2 are concerned, the mark may be reproduced in the text of the application itself and not on a separate sheet of paper and that the number of copies of the reproduction of the mark may be less than four.

*Rule 4***Fees for the application**

The fees payable for the application shall be:

- (a) the basic fee;
- and

- (b) a class fee for each class exceeding three to which the goods or services belong according to Rule 2.

*Rule 5***Filing of the application**

(1) The Office shall mark the documents making up the application with the date of its receipt and the file number of the application. The Office shall issue to the applicant without delay a receipt which shall include at least the file number, a representation, description or other identification of the mark, the nature and the number of the documents and the date of their receipt.

(2) If the application is filed with the central industrial property office of a Member State or at the Benelux Trade Mark Office in accordance with Article 25 of the Regulation, the office of filing shall number all the pages of the application with arabic numerals. Before forwarding, the office of filing shall mark the documents making up the application with the date of receipt and the number of pages. The office of filing shall issue to the applicant without delay a receipt which shall include at least the nature and the number of the documents and the date of their receipt.

(3) If the Office receives an application forwarded by the central industrial property office of a Member State or the Benelux Trade Mark Office, it shall mark the application with the date of receipt and the file number and shall issue to the applicant without delay a receipt in accordance with the second sentence of paragraph 1, indicating the date of receipt at the Office.

*Rule 6***Claiming priority**

(1) Where the priority of one or more previous applications pursuant to Article 30 of the Regulation is claimed in the application, the applicant shall indicate the file number of the previous application and file a copy of it within three months from the filing date. The copy shall be certified to be an exact copy of the previous application by the authority which received the previous application, and shall be accompanied by a certificate issued by that authority stating the date of filing of the previous application.

(2) Where the applicant wishes to claim the priority of one or more previous applications pursuant to Article 30 of the Regulation subsequent to the filing of the application, the declaration of priority, stating the date on which and the country in or for which the previous application was made, shall be submitted within a period of two months from the filing date. The indications and evidence required under paragraph 1 shall be submitted to the Office within a period of three months from receipt of the declaration of priority.

(3) If the language of the previous application is not one of the languages of the Office, the Office shall require the applicant to file, within a period specified by the Office, which shall be not less than three months, a translation of the previous application into one of these languages.

(4) The President of the Office may determine that the evidence to be provided by the applicant may consist of less than is required under paragraph 1, provided that the information required is available to the Office from other sources.

Rule 7

Exhibition priority

(1) Where the exhibition priority pursuant to Article 33 of the Regulation has been claimed in the application, the applicant shall, within three months from the filing date, file a certificate issued at the exhibition by the authority responsible for the protection of industrial property at the exhibition. This certificate shall declare that the mark was in fact used for the goods or services, and shall state the opening date of the exhibition and, where the first public use did not coincide with the opening date of the exhibition, the date of such first public use. The certificate must be accompanied by an identification of the actual use of the mark, duly certified by the abovementioned authority.

(2) Where the applicant wishes to claim an exhibition priority subsequently to the filing of the application, the declaration of priority, indicating the name of the exhibition and the date of the first display of the goods or services, shall be submitted within a period of two months from the filing date. The indications and evidence required under paragraph 1 shall be submitted to the Office within a period of three months from receipt of the declaration of priority.

Rule 8

Claiming the seniority of a national trade mark

(1) Where the seniority of one or more earlier registered trade marks, as referred to in Article 34 of the Regulation, has been claimed in the application, the applicant shall, within three months from the filing date, submit a copy of the relevant registration. The copy must be certified by the competent authority to be an exact copy of the relevant registration.

(2) Where the applicant wishes to claim the seniority of one or more earlier registered trade marks as referred to in Article 34 of the Regulation, subsequent to the filing of the application, the declaration of seniority, indicating the Member State or Member States in or for which the

mark is registered, the date from which the relevant registration was effective, the number of the relevant registration, and the goods and services for which the mark is registered, shall be submitted within a period of two months from the filing date. The evidence required under paragraph 1 shall be submitted to the Office within a period of three months from receipt of the declaration of seniority.

(3) The Office shall inform the Benelux Trade Mark Office or the central industrial property office of the Member State concerned of the effective claiming of seniority.

(4) The President of the Office may determine that the evidence to be provided by the applicant may consist of less than is required under paragraph 1, provided that the information required is available to the Office from other sources.

Rule 9

Examination of requirements for a filing date and of formal requirements

(1) If the application fails to meet the requirements for according a filing date because:

(a) the application does not contain:

- (i) a request for registration of the mark as a Community trade mark;
- (ii) information identifying the applicant;
- (iii) a list of the goods and services for which the mark is to be registered;
- iv) a representation of the trade mark; or

(b) the basic fee for the application has not been paid within one month of the filing of the application with the Office or, if the application has been filed with the central industrial property office of a Member State or with the Benelux Trade Mark Office, with that office,

the Office shall notify the applicant that a date of filing cannot be accorded in view of those deficiencies.

(2) If the deficiencies referred to under paragraph 1 are remedied within two months of receipt of the notification, the date on which all the deficiencies are remedied shall determine the date of filing. If the deficiencies are not remedied before the time limit expires, the application shall not be dealt with as a Community trade mark application. Any fees paid shall be refunded.

(3) Where, although a date of filing has been accorded, the examination reveals that

- (a) the requirements of Rules 1, 2 and 3 or the other formal requirements governing applications laid down in the Regulation or in these Rules are not complied with;
- (b) the full amount of the class fees payable under Rule 4 (b), read in conjunction with Commission Regulation (EC) No 2869/95 ⁽¹⁾ (hereinafter 'the Fees Regulation') has not been received by the Office;
- (c) where priority has been claimed pursuant to Rules 6 and 7, either in the application itself or within two months after the date of filing, the other requirements of the said Rules are not complied with; or
- (d) where seniority has been claimed pursuant to Rule 8, either in the application itself or within two months after the date of filing, the other requirements of Rule 8 are not complied with,

the Office shall invite the applicant to remedy the deficiencies noted within such period as it may specify.

(4) If the deficiencies referred to in paragraph 3 (a) are not remedied before the time limit expires, the Office shall reject the application.

(5) If the outstanding class fees are not paid before the time limit expires, the application shall be deemed to have been withdrawn, unless it is clear which class or classes the amount paid is intended to cover. In the absence of other criteria to determine which classes are intended to be covered, the Office shall take the classes in the order of the classification. The application shall be deemed to have been withdrawn with regard to those classes for which the class fees have not been paid or have not been paid in full.

(6) If the deficiencies referred to in paragraph 3 concern the claim to priority, the right of priority for the application shall be lost.

(7) If the deficiencies referred to in paragraph 3 concern the claim to seniority, the right of seniority in respect of that application shall be lost.

(8) If the deficiencies referred to in paragraph 3 concern only some of the goods and services, the Office shall refuse the application, or the right of priority or the right of seniority shall be lost, only in so far as those goods and services are concerned.

Rule 10

Examination of the conditions relating to the entitlement to be proprietor

Where, pursuant to Article 5 of the Regulation, the applicant is not entitled to be the proprietor of a

Community trade mark, the Office shall notify the applicant thereof. The Office shall specify a period within which the applicant may withdraw the application or submit his observations. Where the applicant fails to overcome the objections to registration, the Office shall refuse the application.

Rule 11

Examination as to absolute grounds for refusal

(1) Where, pursuant to Article 7 of the Regulation, the trade mark may not be registered for all or any part of the goods or services applied for, the office shall notify the applicant of the grounds for refusing registration. The Office shall specify a period within which the applicant may withdraw or amend the application or submit his observations.

(2) Where, pursuant to Article 38 (2) of the Regulation, registration of the Community trade mark is subject to the applicant's stating that he disclaims any exclusive right in the non-distinctive elements in the mark, the Office shall notify the applicant thereof, stating the reasons, and shall invite him to submit the relevant statement within such period as it may specify.

(3) Where the applicant fails to overcome the ground for refusing registration or to comply with the condition laid down in paragraph 2 within the time limit, the Office shall refuse the application in whole or in part.

Rule 12

Publication of the application

The publication of the application shall contain:

- (a) the applicant's name and address;
- (b) where applicable, the name and business address of the representative appointed by the applicant other than a representative falling within the first sentence of Article 88 (3) of the Regulation; if there is more than one representative with the same business address, only the name and business address of the first-named representative shall be published and it shall be followed by the words 'and others'; if there are two or more representatives with different business addresses, only the address for service determined pursuant to Rule 1 (1) (e) shall be published; where an association of representatives is appointed under Rule 76 (9), only the name and business address of the association shall be published;
- (c) the reproduction of the mark, together with the indications and descriptions pursuant to Rule 3; where registration in colour is applied for, the publication shall contain the indication 'in colour' and indicate the colour or colours making up the mark;

⁽¹⁾ See p. 33 of this Official Journal.

- (d) the list of goods and services, grouped according to the classes of the Nice classification, each group being preceded by the number of the class of that classification to which that group of goods or services belongs, and presented in the order of the classes of that classification;
- (e) the date of filing and the file number;
- (f) where applicable, particulars of the claim of priority pursuant to Article 30 of the Regulation;
- (g) where applicable, particulars of the claim of exhibition priority pursuant to Article 33 of the Regulation;
- (h) where applicable, particulars of the claim of seniority pursuant to Article 34 of the Regulation;
- (i) where applicable, a statement that the mark has become distinctive in consequence of the use which has been made of it, pursuant to Article 7 (3) of the Regulation;
- (j) where applicable, a statement that the application is for a Community collective mark;
- (k) where applicable, a statement by the applicant disclaiming any exclusive right to an element of the mark pursuant to Rule 1 (3) or Rule 11 (2);
- (l) the language in which the application was filed and the second language which the applicant has indicated pursuant to Article 115 (3) of the Regulation.

Rule 13

Amendment of the application

- (1) An application for amendment of the application under Article 44 of the Regulation shall contain:
 - (a) the file number of the application;
 - (b) the name and the address of the applicant in accordance with Rule 1 (1) (b);
 - (c) where the applicant has appointed a representative, the name and the business¹ address of the representative in accordance with Rule 1 (1) (e);
 - (d) the indication of the element of the application to be corrected or amended, and that element in its corrected or amended version;
 - (e) where the amendment relates to the representation of the mark, a representation of the mark as amended, in accordance with Rule 3.

(2) Where the application for amendment is subject to the payment of a fee, the application shall not be deemed to have been filed until the required fee has been paid. If the fee has not been paid or has not been paid in full, the Office shall inform the applicant accordingly.

(3) If the requirements governing the amendment of the application are not fulfilled, the Office shall communicate the deficiency to the applicant. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the application for amendment.

(4) Where the amendment is published pursuant to Article 44 (2) of the Regulation, Rules 15 to 22 shall apply *mutatis mutandis*.

(5) A single application for amendment may be made for the amendment of the same element in two or more applications of the same applicant. Where the application for amendment is subject to the payment of a fee, the required fee shall be paid in respect of each application to be amended.

(6) Paragraphs 1 to 5 shall apply *mutatis mutandis* for applications to correct the name or the business address of a representative appointed by the applicant. Such applications shall not be subject to the payment of a fee.

Rule 14

Correction of mistakes and errors in publications

(1) Where the publication of the application contains a mistake or error attributable to the Office, the Office shall correct the mistake or error acting of its own motion or at the request of the applicant.

(2) Where a request as referred to in paragraph 1 is made by the applicant, Rule 13 shall apply *mutatis mutandis*. The request shall not be subject to the payment of a fee.

(3) The corrections effected under this Rule shall be published.

(4) Article 42 (2) of the Regulation and Rules 15 to 22 shall apply *mutatis mutandis* where the correction concerns the list of goods or services or the representation of the mark.

TITLE II

PROCEDURE FOR OPPOSITION AND PROOF OF USE

Rule 15

Contents of the notice of opposition

(1) Opposition may be entered on the basis of one or more earlier marks within the meaning of Article 8 (2) of the Regulation ('earlier marks') or of one or more other earlier rights within the meaning of Article 8 (4) of the Regulation ('earlier rights').

(2) The notice of opposition shall contain:

(a) as concerns the application against which opposition is entered:

- (i) the file number of the application against which opposition is entered;
- (ii) an indication of the goods and services listed in the Community trade mark application against which opposition is entered;
- (iii) the name of the applicant for the Community trade mark;

(b) as concerns the earlier mark or the earlier right on which the opposition is based:

- (i) where the opposition is based on an earlier mark, a statement to that effect and an indication that the earlier mark is a Community mark or an indication of the Member State or Member States including, where applicable, the Benelux, where the earlier mark has been registered or applied for, or, where the earlier mark is an internationally registered mark, an indication of the Member State or Member States including, where applicable, the Benelux, to which protection of that earlier mark has been extended;
- (ii) where available, the file number or the registration number and the filing date, including the priority date of the earlier mark;
- (iii) where the opposition is based on an earlier mark which is a well-known mark within the meaning of Article 8 (2) (c) of the Regulation, an indication to that effect and an indication of the Member State or Member States in which the earlier mark is well-known;
- (iv) where the opposition is based on an earlier mark having a reputation within the meaning of Article 8 (5) of the Regulation, an indication to that effect, and an indication of where that earlier mark is registered or applied for in accordance with subparagraph (i);
- (v) where the opposition is based on an earlier right, an indication to that effect, and an indication of the Member State or Member States where that earlier right exists;
- (vi) a representation and, where appropriate, a description of the earlier mark or earlier right;
- (vii) the goods and services in respect of which the earlier mark has been registered or applied for or in respect of which the earlier mark is well-known within the meaning of Article 8 (2) (c) of the Regulation or has a reputation within the meaning of Article 8 (5) of the Regulation; the opposing party shall, when indicating all the goods and services for which the earlier mark is protected, also indicate those goods and services on which the opposition is based;

(c) as concerns the opposing party:

- (i) where the opposition is entered by the proprietor of the earlier mark or of the earlier right, his name and address in accordance with Rule 1 (1) (b) and an indication that he is the proprietor of such mark or right;
 - (ii) where opposition is entered by a licensee, the name of the licensee and his address in accordance with Rule 1 (1) (b) and an indication that he has been authorized to enter the opposition;
 - (iii) where the opposition is entered by the successor in title to the registered proprietor of a Community trade mark who has not yet been registered as new proprietor, an indication to that effect, the name and address of the opposing party in accordance with Rule 1 (1) (b), and an indication of the date on which the application for registration of the new proprietor was received by the Office or, where this information is not available, was sent to the Office;
 - (iv) where opposition is entered on the basis of an earlier right by a person who is not the proprietor of that right, the name of the person and his address in accordance with Rule 1 (1) (b) and an indication that he is entitled under the relevant national law to exercise that right;
 - (v) where the opposing party has appointed a representative, the name of the representative and his business in accordance with Rule 1 (1) (e);
- (d) a specification of the grounds on which the opposition is based.

(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* to an opposition entered pursuant to Article 8 (3) of the Regulation.

Rule 16

Facts, evidence and arguments presented in support of the opposition

(1) Every notice of opposition may contain particulars of the facts, evidence and arguments presented in support of the opposition, accompanied by the relevant supporting documents.

(2) If the opposition is based on an earlier mark which is not a Community trade mark, the notice of opposition shall preferably be accompanied by evidence of the registration or filing of that earlier mark, such as a certificate of registration. If the opposition is based on a well-known mark as referred to in Article 8 (2) (c) of the Regulation or on a mark having a reputation as referred to in Article 8 (5) of the Regulation, the notice of opposition shall in principle be accompanied by evidence

attesting that it is well-known or that it has a reputation. If the opposition is entered on the basis of any other earlier right, the notice of opposition shall in principle be accompanied by appropriate evidence on the acquisition and scope of protection of that right.

(3) The particulars of the facts, evidence and arguments and other supporting documents as referred to in paragraphs 1, and the evidence referred to in paragraph 2 may, if they are not submitted together with the notice of opposition or subsequent thereto, be submitted within such period after commencement of the opposition proceedings as the Office may specify pursuant to Rule 20 (2).

Rule 17

Use of languages in opposition proceedings

(1) Where the notice of opposition is not filed in the language of the application for registration of the Community trade mark, if that language is one of the languages of the Office, or in the second language indicated when the application was filed, the opposing party shall file a translation of the notice of opposition in one of those languages within a period of one month from the expiry of the opposition period.

(2) Where the evidence in support of the opposition as provided for in Rule 16 (1) and (2) is not filed in the language of the opposition proceedings, the opposing party shall file a translation of that evidence into that language within a period of one month from the expiry of the opposition period or, where applicable, within the period specified by the Office pursuant to Rule 16 (3).

(3) Where the opposing party or the applicant informs the Office, before the date on which the opposition proceedings shall be deemed to commence pursuant to Rule 19 (1), that the applicant and the opposing party have agreed on a different language for the opposition proceeding pursuant to Article 115 (7) of the Regulation, the opposing party shall, where the notice of opposition has not been filed in that language, file a translation of the notice of opposition in that language within a period of one month from the said date.

Rule 18

Rejection of notice of opposition as inadmissible

(1) If the Office finds that the notice of opposition does not comply with the provisions of Article 42 of the Regulation, or where the notice of opposition does not clearly identify the application against which opposition is entered or the earlier mark or the earlier right on the basis of which the opposition is being entered, the Office shall reject the notice of opposition as inadmissible unless those deficiencies have been remedied before expiry of the opposition period. If the opposition fee has not been paid within the opposition period, the notice of opposition shall be deemed not to have been entered. If the opposition fee has been paid after the expiry of the opposition period, it shall be refunded to the opposing party.

(2) If the Office finds that the notice of opposition does not comply with other provisions of the Regulation or of these Rules, it shall inform the opposing party accordingly and shall call upon him to remedy the deficiencies noted within a period of two months. If the deficiencies are not remedied before the time limit expires, the Office shall reject the notice of opposition as inadmissible.

(3) Any decision to reject a notice of opposition as inadmissible under paragraphs 1 or 2 shall be communicated to the applicant.

Rule 19

Commencement of opposition proceedings

(1) If the Office does not reject the notice of opposition in accordance with Rule 18, it shall communicate the opposition to the applicant and shall invite him to file his observations within such period as it may specify. The Office shall draw the applicant's attention to the fact that the opposition proceedings shall be deemed to commence two months after receipt of the communication, unless the applicant informs the Office, before the expiry of this period, that he withdraws his application or restricts the application to goods and services against which the opposition is not directed.

(2) The Office may, pursuant to Rule 71, grant an extension of the period referred to in the second sentence of paragraph 1 where such request is presented jointly by the applicant and the opposing party.

(3) Where the application is withdrawn or restricted within the period specified in the second sentence of paragraph 1 or within any extension of that period granted under paragraph 2, the Office shall inform the opposing party accordingly and shall refund the opposition fee.

Rule 20

Examination of opposition

(1) If the application is not withdrawn or restricted pursuant to Rule 19, the applicant shall file his observations within the period specified by the Office in its communication referred to in the first sentence of Rule 19 (1).

(2) Where the notice of opposition does not contain particulars of the facts, evidence and arguments as referred to in Rule 16 (1) and (2), the Office shall call upon the opposing party to submit such particulars within a period specified by the Office. Any submission by the opposing party shall be communicated to the applicant who shall be given an opportunity to reply within a period specified by the Office.

(3) If the applicant files no observations, the Office may give a ruling on the opposition on the basis of the evidence before it.

(4) The observations filed by the applicant shall be communicated to the opposing party who shall be called upon by the Office, if it considers it necessary to do so, to reply within a period specified by the Office.

(5) If, pursuant to Article 44 (1) of the Regulation, the applicant restricts the list of goods and services, the Office shall communicate this to the opposing party and call upon him, within such period as it may specify, to submit observations stating whether he maintains the opposition and, if so, against which of the remaining goods and services.

(6) The Office may suspend any opposition proceeding where the opposition is based on an application for registration pursuant to Article 8 (2) (b) of the Regulation until a final decision is taken in that proceeding, or where other circumstances are such that such suspension is appropriate.

Rule 21

Multiple oppositions

(1) Where a number of oppositions have been entered in respect of the same application for a Community trade mark, the Office may deal with them in one set of proceedings. The Office may subsequently decide to no longer deal with them in this way.

(2) If a preliminary examination of one or more oppositions reveals that the Community trade mark for which an application for registration has been filed is possibly not eligible for registration in respect of some or all of the goods or services for which registration is sought, the Office may suspend the other opposition proceedings. The Office shall inform the remaining opposing parties of any relevant decisions taken during those proceedings which are continued.

(3) Once a decision rejecting the application has become final, the oppositions on which a decision was deferred in accordance with paragraph 2 shall be deemed to have been disposed of and the opposing parties concerned shall be informed accordingly. Such disposition shall be considered to constitute a case which has not proceeded to judgment within the meaning of Article 81 (4) of the Regulation.

(4) The Office shall refund 50 % of the opposition fee paid by each opposing party whose opposition is deemed to have been disposed of in accordance with paragraphs 1, 2 and 3.

Rule 22

Proof of use

(1) Where, pursuant to Article 43 (2) or (3) of the Regulation, the opposing party has to furnish proof of use or show that there are proper reasons for non-use, the Office shall invite him to provide the proof required

within such period as it shall specify. If the opposing party does not provide such proof before the time limit expires, the Office shall reject the opposition.

(2) The indications and evidence for the furnishing of proof of use shall consist of indications concerning the place, time, extent and nature of use of the opposing trade mark for the goods and services in respect of which it is registered and on which the opposition is based, and evidence in support of these indications in accordance with paragraph 3.

(3) The evidence shall, in principle, be confined to the submission of supporting documents and items such as packages, labels, price lists, catalogues, invoices, photographs, newspaper advertisements, and statements in writing as referred to in Article 76 (1) (f) of the Regulation.

(4) Where the evidence supplied pursuant to paragraphs 1, 2 and 3 is not in the language of the opposition proceedings, the Office may require the opposing party to submit a translation of that evidence in that language, within a period specified by the Office.

TITLE III

REGISTRATION PROCEDURE

Rule 23

Registration of the trade mark

(1) The registration fee provided for in Article 45 of the Regulation shall consist of

(a) a basic fee;

and

(b) a class fee for each class exceeding three in respect of which the mark is to be registered.

(2) Where no opposition has been entered or where any opposition entered has been finally disposed of by withdrawal, rejection or other disposition, the Office shall request the applicant to pay the registration fee within two months of receipt of the request.

(3) If the registration fee is not paid within due time, it may still be validly paid within two months of notification of a communication pointing out the failure to observe the time limit, provided that within this period the additional fee specified in the Fees Regulations is paid.

(4) On receipt of the registration fee the mark applied for and the particulars referred to in Rule 84 (2) shall be recorded in the Register of Community trade marks.

(5) The registration shall be published in the *Community Trade Marks Bulletin*.

(6) The registration fee shall be refunded if the trade mark applied for is not registered.

Rule 24

Certificate of registration

(1) The Office shall issue to the proprietor of the trade mark a certificate of registration which shall contain the entries in the Register provided for in Rule 84 (2) and a statement to the effect that those entries have been recorded in the Register.

(2) The proprietor of the trade mark may request that certified or uncertified copies of the certificate of registration be supplied to him upon payment of a fee.

Rule 25

Alteration of the registration

(1) An application for alteration of the registration pursuant to Article 48 (2) of the Regulation shall contain:

- (a) the registration number,
- (b) the name and the address of the proprietor of the mark in accordance with Rule 1 (1) (b);
- (c) where the proprietor has appointed a representative, the name and the business address of the representative in accordance with Rule 1 (1) (e);
- (d) the indication of the element in the representation of the mark to be altered and that element in its altered version;
- (e) a representation of the mark as altered, in accordance with Rule 3.

(2) The application shall be deemed not to have been filed until the required fee has been paid. If the fee has not been paid or has not been paid in full, the Office shall inform the applicant accordingly.

(3) If the requirements governing the alteration of the registration are not fulfilled, the Office shall communicate the deficiency to the applicant. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the application.

(4) Where the registration of the alteration is challenged pursuant to Article 48 (3) of the Regulation, the provisions on opposition contained in the Regulation and in these Rules shall apply *mutatis mutandis*.

(5) A single application may be made for the alteration of the same element in two or more registrations of the same proprietor. The required fee shall be paid in respect of each registration to be altered.

Rule 26

Change of the name or address of the proprietor of the Community trade mark or of his registered representative

(1) A change of the name or address of the proprietor of the Community trade mark which is not an alteration of the Community trade mark pursuant to Article 48 (2) of the Regulation and which is not the consequence of a whole or partial transfer of the registered mark shall, at the request of the proprietor, be recorded in the register.

(2) An application for the change of the name or address of the proprietor of the registered mark shall contain:

- (a) the registration number of the mark;
- (b) the name and the address of the proprietor of the mark as recorded in the register;
- (c) the indication of the name and address of the proprietor of the mark, as amended, in accordance with Rule 1 (1) (e).
- (d) where the proprietor has appointed a representative, the name and the business address of the representative, in accordance with Rule 1 (1) (e).

(3) The application shall not be subject to payment of a fee.

(4) A single application may be made for the change of the name or address in respect of two or more registrations of the same proprietor.

(5) If the requirements governing the recording of a change are not fulfilled, the Office shall communicate the deficiency to the applicant. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the application.

(6) Paragraphs 1 to 5 shall apply *mutatis mutandis* to a change of the name or address of the registered representative.

(7) Paragraphs 1 to 6 shall apply *mutatis mutandis* to applications for Community trade marks. The change shall be recorded in the files kept by the Office on the Community trade mark application.

Rule 27

Correction of mistakes and errors in the register and in the publication of the registration

(1) Where the registration of the mark or the publication of the registration contains a mistake or error attributable to the Office, the Office shall correct the error or mistake of its own motion or at the request of the proprietor.

(2) Where such a request is made by the proprietor, Rule 26 shall apply *mutatis mutandis*. The request shall not be subject to payment of a fee.

(3) The Office shall publish the corrections made under this Rule.

Rule 28

Claiming seniority after registration of the Community trade mark

(1) An application pursuant to Article 35 of the Regulation to obtain the seniority of one or more earlier registered trade marks as referred to in Article 34 of the Regulation, shall contain:

- (a) the registration number of the Community trade mark;
- (b) the name and address of the proprietor of the Community trade mark in accordance with Rule 1 (1) (b);
- (c) where the proprietor has appointed a representative, the name and the business address of the representative in accordance with Rule 1 (1) (e);
- (d) an indication of the Member State or Member States in or for which the earlier mark is registered, the date from which the relevant registration was effective, the number of the relevant registration, and the goods and services for which the earlier mark is registered;
- (e) an indication of the goods and services in respect of which seniority is claimed;
- (f) a copy of the relevant registration; the copy must be certified as an exact copy of the relevant registration by the competent authority.

(2) If the requirements governing the claiming of seniority are not fulfilled, the Office shall communicate the deficiency to the applicant. If the deficiency is not remedied within a period specified by the Office, the Office shall reject the application.

(3) The Office shall inform the Benelux Trade Mark Office or the central industrial property office of the Member State concerned of the effective claiming of seniority.

(4) The President of the Office may determine that the material to be provided by the applicant may consist of less than is required under paragraph 1 (f), provided that the information required is available to the Office from other sources.

TITLE IV

RENEWAL

Rule 29

Notification of expiry

At least six months before expiry of the registration the Office shall inform the proprietor of the Community trade mark, and any person having a registered right, including a licence, in respect of the Community trade

mark, that the registration is approaching expiry. Failure to give such notification shall not affect the expiry of the registration.

Rule 30

Renewal of registration

(1) An application for renewal shall contain:

- (a) where the application is filed by the proprietor of the trade mark, his name and address in accordance with Rule 1 (1) (b);
- (b) where the application is filed by a person expressly authorized to do so by the proprietor of the mark, the name and address of that person and evidence that he is authorized to file the application;
- (c) where the applicant has appointed a representative, the name and business address of the representative in accordance with Rule 1 (1) (e);
- (d) the registration number;
- (e) an indication that renewal is requested for all the goods and services covered by the registration or, if the renewal is not requested for all the goods and services for which the mark is registered, an indication of those classes or those goods and services for which renewal is requested or those classes or those goods and services for which renewal is not requested, grouped according to the classes of the Nice classification, each group being preceded by the number of the class of that classification to which that group of goods or services belongs and presented in the order of the classes of that classification.

(2) The fees payable under Article 47 of the Regulation for the renewal of a Community trade mark shall consist of:

- (a) a basic fee;
- (b) a class fee for each class exceeding three in the list of classes in respect of which renewal is applied for as shown in paragraph 1 (e); and
- (c) where applicable, the additional fee for late payment of the renewal fee or late submission of the request for renewal, pursuant to Article 47 (3) of the Regulation, as specified in the Fees Regulation.

(3) Where the application for renewal is filed within the time periods provided for in Article 47 (3) of the Regulation, but the other conditions governing renewal provided for in Article 47 of the Regulation and these Rules are not satisfied, the Office shall inform the applicant of the deficiencies found. If the application is filed by a person whom the proprietor of the trade mark has expressly authorized to do so, the proprietor of the trade mark shall receive a copy of the notification.

(4) Where an application for renewal is not submitted or is submitted after expiry of the period provided for in the third sentence of Article 47 (3) of the Regulation, or if the fees are not paid or are paid only after the period in question has expired, or if the deficiencies are not remedied within that period, the Office shall determine that the registration has expired and shall so notify the proprietor of the Community trade mark and, where appropriate, the applicant and the person recorded in the Register as having rights in the mark. Where the fees paid are insufficient to cover all the classes of goods and services for which renewal is requested, such a determination shall not be made if it is clear which class or classes are to be covered. In the absence of other criteria, the Office shall take the classes into account in the order of classification.

(5) Where the determination made pursuant to paragraph 4 has become final, the Office shall cancel the mark from the register. The cancellation shall take effect from the day following the day on which the existing registration expired.

(6) Where the renewal fees provided for in paragraph 2 have been paid but the registration is not renewed, those fees shall be refunded.

TITLE V

TRANSFER, LICENCES AND OTHER RIGHTS, CHANGES

Rule 31

Transfer

(1) An application for registration of a transfer under Article 17 of the Regulation shall contain:

- (a) the registration number of the Community trade mark;
- (b) particulars of the new proprietor in accordance with Rule 1 (1) (b);
- (c) where not all the registered goods or services are included in the transfer, particulars of the registered goods or services to which the transfer relates;
- (d) documents duly establishing the transfer in accordance with Article 17 (2) and (3) of the Regulation;

(2) The application may contain, where applicable, the name and business address of the representative of the new proprietor, to be set out in accordance with Rule 1 (1) (e).

(3) Transfers to any natural or legal persons who cannot be proprietors of Community trade marks pursuant to Article 5 of the Regulation shall not be registered.

(4) The application shall not be deemed to have been filed until the required fee has been paid. If the fee is not paid or is not paid in full, the Office shall so notify the applicant.

(5) It shall constitute sufficient proof of transfer under paragraph 1 (d):

- (a) that the application for registration of the transfer is signed by the registered proprietor or his representative and by the successor in title or his representative; or,
- (b) that the application, if submitted by the successor in title, is accompanied by a declaration, signed by the registered proprietor or his representative, that he agrees to the registration of the successor in title; or
- (c) that the application is accompanied by a completed transfer form or document, as specified in Rule 83 (1) (d), signed by the registered proprietor or his representative and by the successor in title or his representative.

(6) Where the conditions applicable to the registration of a transfer, as laid down in Article 17 (1) to (4) of the Regulation, in paragraphs 1 to 4 above, and in other applicable Rules are not fulfilled, the Office shall notify the applicant of the deficiencies. If the deficiencies are not remedied within a period specified by the Office, it shall reject the application for registration of the transfer.

(7) A single application for registration of a transfer may be submitted for two or more marks, provided that the registered proprietor and the successor in title are the same in each case.

(8) Paragraphs 1 to 7 shall apply *mutatis mutandis* to applications for Community trade marks. The transfer shall be recorded in the files kept by the Office concerning the Community trade mark application.

Rule 32

Partial Transfers

(1) Where the application for registration of a transfer relates only to some of the goods and services for which the mark is registered, the application shall contain an indication of the goods and services to which the partial transfer relates.

(2) The goods and services in the original registration shall be distributed between the remaining registration and the new registration so that the goods and services in the remaining registration and the new registration shall not overlap.

(3) Rule 31 shall apply *mutatis mutandis* to applications for registrations of a partial transfer.

(4) The Office shall establish a separate file for the new registration, which shall consist of a complete copy of the file of the original registration and the application for registration of the partial transfer; a copy of that application shall be included in the file of the remaining registration. The Office shall also assign a new registration number to the new registration.

(5) Any application made by the original proprietor pending with regard to the original registration shall be deemed to be pending with regard to the remaining registration and the new registration. Where such application is subject to the payment of fees and these fees have been paid by the original proprietor, the new proprietor shall not be liable to pay any additional fees with regard to such application.

Rule 33

Registration of licences and other rights

(1) Rule 31 (1) (a) (b) and (c), (2), (4) and (7) shall apply *mutatis mutandis* to the registration of the grant or transfer of a licence, to registration of the creation or transfer of a right *in rem* in respect of a Community trade mark, and to registration of enforcement measures. However, where a Community trade mark is involved in bankruptcy or like proceedings, the request of the competent national authority for an entry in the register to this effect shall not be subject to payment of a fee.

(2) Where the Community trade mark is licensed for only part of the goods and services for which the mark is registered, or for only a part of the Community, or for a limited period of time, the application for registration shall indicate the goods and services or the part of the Community or the time period for which the licence is granted.

(3) Where the conditions applicable to registration, as laid down in Articles 19, 20 or 22 of the Regulation, in paragraphs 1 and 2 above, and the other applicable Rules are not fulfilled, the Office shall notify the applicant of the irregularity. If the irregularity is not corrected within a period specified by the Office, it shall reject the application for registration.

(4) Paragraphs 1, 2 and 3 shall apply *mutatis mutandis* to applications for Community trade marks. Licences, rights *in rem* and enforcement measures shall be recorded in the files kept by the Office concerning the Community trade mark application.

Rule 34

Special provisions for the registration of a licence

(1) A licence in respect of a Community trade mark shall be recorded in the Register as an exclusive licence if the proprietor of the trade mark or the licensee so request.

(2) A licence in respect of a Community trade mark shall be recorded in the Register as a sub-licence where it is granted by a licensee whose licence is recorded in the Register.

(3) A licence in respect of a Community trade mark shall be recorded in the Register as a licence limited as to the goods and services or as a territorially limited licence if it is granted for only a part of the goods or services for which the mark is registered or if it is granted only for a part of the Community.

(4) A licence in respect of a Community trade mark shall be recorded in the Register as a temporary licence if it is granted for a limited period of time.

Rule 35

Cancellation or modification of the registration of licences and other rights

(1) A registration effected under Rule 33 (1) shall be cancelled at the request of one of the persons concerned.

(2) The application shall contain:

(a) the registration number of the Community trade mark;

and

(b) particulars of the right whose registration is to be cancelled.

(3) Application for cancellation of the registration of a licence or another right shall not be deemed to have been filed until the required fee has been paid. If the fee is not paid or is not paid in full, the Office shall so notify the applicant. However, the request of the competent national authority for the cancellation of an entry where a Community trade mark is involved in bankruptcy or like proceedings shall not be subject to payment of a fee.

(4) The application shall be accompanied by documents showing that the registered right no longer exists or by a statement by the licensee or the holder of another right, to the effect that he consents to cancellation of the registration.

(5) Where the requirements for cancellation of the registration are not satisfied, the Office shall notify the applicant of the irregularity. If the irregularity is not corrected within a period specified by the Office, it shall reject the application for cancellation of the registration.

(6) Paragraphs 1, 2, 4 and 5 shall apply *mutatis mutandis* to a request for the modification of a registration effected under Rule 33 (1).

(7) Paragraphs 1 to 6 shall apply *mutatis mutandis* to entries made in the files pursuant to Rule 33 (4).

TITLE VI

SURRENDER

*Rule 36***Surrender**

(1) A declaration of surrender pursuant to Article 49 of the Regulation shall contain:

- (a) the registration number of the Community trade mark;
- (b) the name and address of the proprietor in accordance with Rule 1 (1) (b);
- (c) where a representative has been appointed, the name and business address of the representative in accordance with Rule 1 (1) (e);
- (d) where surrender is declared only for some of the goods and services for which the mark is registered, the goods and services for which the surrender is declared or the goods and services for which the mark is to remain registered.

(2) Where a right of a third party relating to the Community trade mark is entered in the register, it shall be sufficient proof of his agreement to the surrender that a declaration of consent to the surrender is signed by the proprietor of that right or his representative. Where a licence has been registered, surrender shall be registered three months after the date on which the proprietor of the Community trade mark satisfies the Office that he has informed the licensee of his intention to surrender it. If the proprietor proves to the Office before the expiry of that period that the licensee has given his consent, the surrender shall be registered forthwith.

(3) If the requirements governing surrender are not fulfilled, the Office shall communicate the deficiencies to the declarant. If the deficiencies are not remedied within a period to be specified by the Office, the Office shall reject the entry of the surrender in the Register.

TITLE VII

REVOCATION AND INVALIDITY

*Rule 37***Application for revocation or for a declaration of invalidity**

An application to the Office for revocation or for a declaration of invalidity pursuant to Article 55 of the Regulation shall contain:

- (a) as concerns the registration in respect of which revocation or a declaration of invalidity is sought;

- (i) the registration number of the Community trade mark in respect of which revocation or a declaration of invalidity is sought;
 - (ii) the name and address of the proprietor of the Community trade mark in respect of which revocation or a declaration of invalidity is sought;
 - (iii) a statement of the registered goods and services in respect of which revocation or a declaration of invalidity is sought;
- (b) as regards the grounds on which the application is based,
- (i) in the case of an application pursuant to Article 50 or Article 51 of the Regulation, a statement of the grounds on which the application for revocation or a declaration of invalidity is based;
 - (ii) in the case of an application pursuant to Article 52 (1) of the Regulation, particulars of the right on which the application for a declaration of invalidity is based and if necessary particulars showing that the applicant is entitled to adduce the earlier right as grounds for invalidity;
 - (iii) in the case of an application pursuant to Article 52 (2) of the Regulation, particulars of the right on which the application for a declaration of invalidity is based and particulars showing that the applicant is the proprietor of an earlier right as referred to in Article 52 (2) of the Regulation or that he is entitled under the national law applicable to lay claim to that right;
 - (iv) an indication of the facts, evidence and arguments presented in support of those grounds;
- (c) as concerns the applicant,
- (i) his name and address in accordance with Rule 1 (1) (b);
 - (ii) if the applicant has appointed a representative, the name and the business address of the representative, in accordance with Rule 1 (1) (e).

*Rule 38***Languages used in revocation or invalidity proceedings**

(1) Where the application for revocation or for a declaration of invalidity is not filed in the language of the application for the registration of the Community trade mark, if that language is one of the languages of the Office, or in the second language indicated when the application was filed, the applicant for revocation or for a declaration of invalidity shall file a translation of his application in one of those two languages within a period of one month from the filing of his application.

(2) Where the evidence in support of the application is not filed in the language of the revocation or invalidity proceedings, the applicant shall file a translation of that

evidence into that language within a period of two months after the filing of such evidence.

(3) Where the applicant for revocation or for a declaration of invalidity or the proprietor of the Community trade mark inform the Office before the expiry of a period of two months from receipt by the Community trade mark proprietor of the communication referred to in Rule 40 (1), that they have agreed on a different language of proceedings pursuant to Article 115 (7) of the Regulation, the applicant shall, where the application was not filed in that language, file a translation of the application in that language within a period of one month from the said date.

Rule 39

Rejection of the application for revocation or for declaration of invalidity as inadmissible

(1) If the Office finds that the application does not comply with Article 55 of the Regulation, Rule 37 or any other provision of the Regulation or these Rules, it shall inform the applicant accordingly and shall call upon him to remedy the deficiencies found within such period as it may specify. If the deficiencies are not remedied before expiry of the time limit, the Office shall reject the application as inadmissible.

(2) Where the Office finds that the required fees have not been paid, it shall inform the applicant accordingly and shall inform him that the application will be deemed not to have been filed if the required fees are not paid within a period specified by the Office. If the required fees are paid after expiry of the period specified by the Office, they shall be refunded to the applicant.

(3) Any decision to reject an application for revocation or for a declaration of invalidity under paragraph 1 shall be communicated to the applicant. Where the application is considered not to have been filed pursuant to paragraph 2, the applicant shall be informed accordingly.

Rule 40

Examination of the application for revocation or for a declaration of invalidity

(1) If the Office does not reject the application in accordance with Rule 39, it shall communicate such application to the proprietor of the Community trade mark and shall request him to file his observations within such period as it may specify.

(2) If the proprietor of the Community trade mark files no observations, the Office may decide on the revocation or invalidity on the basis of the evidence before it.

(3) Any observations filed by the proprietor of the Community trade mark shall be communicated to the applicant, who shall be requested by the Office, if it sees fit, to reply within a period specified by the Office.

(4) All communications under Article 56 (1) of the Regulation and all observations filed in this respect shall be sent to the parties concerned.

(5) If the applicant, under Article 56 (2) or (3) of the Regulation, has to furnish proof of use or proof that there are proper reasons for non-use, Rule 22 shall apply *mutatis mutandis*.

Rule 41

Multiple applications for revocation or for a declaration of invalidity

(1) Where a number of applications for revocation or for a declaration of invalidity have been filed relating to the same Community trade mark, the Office may deal with them in one set of proceedings. The Office may subsequently decide no longer to deal with them in this way.

(2) Rule 21 (2) (3) and (4) shall apply *mutatis mutandis*.

TITLE VIII

COMMUNITY COLLECTIVE MARKS

Rule 42

Application of provisions

The provisions of these Rules shall apply to Community collective marks, subject to Rule 43.

Rule 43

Regulation governing Community collective marks

(1) Where the application for a Community collective trade mark does not contain the regulations governing its use pursuant to Article 65 of the Regulation, those regulations shall be submitted to the Office within a period of two months after the date of filing.

(2) The regulations governing Community collective marks shall specify:

(a) the name of the applicant and his office address;

(b) the object of the association or the object for which the legal person governed by public law is constituted;

- (c) the bodies authorized to represent the association or the said legal person;
- (d) the conditions for membership;
- (e) the persons authorized to use the mark;
- (f) where appropriate, the conditions governing use of the mark, including sanctions;
- (g) where appropriate, the authorization referred to in the second sentence of Article 65 (2) of the Regulation.
- (h) where conversion is requested pursuant to Article 108 (4) of the Regulation, an indication to that effect;
- (i) where conversion is requested pursuant to Article 108 (5) of the Regulation following a withdrawal of an application for registration, an indication to that effect, and the date on which the application for registration was withdrawn;
- (j) where conversion is requested pursuant to Article 108 (5) of the Regulation following a failure to renew the registration, an indication to that effect, and the date on which the period of protection has expired, the period of three months provided for in Article 108 (5) of the Regulation shall begin to run on the day following the last day on which the request for renewal can be presented pursuant to Article 47 (3) of the Regulation;
- (k) where conversion is requested pursuant to article 108 (6) of the Regulation, an indication to that effect, the date on which the decision of the national court has become final, and a copy of that decision.

TITLE IX

CONVERSION

Rule 44

Application for conversion

(1) An application for conversion of a Community trade mark application or a registered Community trade mark into a national trademark application pursuant to Article 108 of the Regulation shall contain:

- (a) the name and the address of the applicant for conversion in accordance with Rule 1 (1) (b);
- (b) where the applicant for conversion has appointed a representative, the name and the business address of the representative in accordance with Rule 1 (1) (e);
- (c) the filing number of the Community trade mark application or the registration number of the Community trade mark;
- (d) the date of filing of the Community trade mark application or the Community trade mark and, where applicable, particulars of the claim to priority for the Community trade mark application or the Community trade mark pursuant to Articles 30 and 33 of the Regulation and particulars of the claim to seniority pursuant to Articles 34 and 35 of the Regulation;
- (e) a representation of the mark as contained in the application or as registered;
- (f) the specification of the Member State or the Member States in respect of which conversion is requested;
- (g) where the request does not relate to all of the goods and services for which the application has been filed or for which the trade mark has been registered, an indication of the goods and services for which conversion is requested, and, where conversion is requested in respect of more than one Member State and the list of goods and services is not the same for all Member States, an indication of the respective goods and services for each Member State;

- (2) Where a copy of a court decision pursuant to paragraph 1 (k) is required, that copy may be submitted in the language in which the decision was given.

Rule 45

Examination of application for conversion

- (1) Where the application for conversion does not comply with the requirements of Article 108 (1) of the Regulation or was not filed within the relevant period of three months, the Office shall reject it.
- (2) Where the conversion fee has not been paid within the relevant period of three months, the Office shall inform the applicant that the application for conversion shall be deemed not to have been filed.
- (3) Where the other requirements governing conversion as provided for in Rule 44 and in other Rules governing such applications are not fulfilled, the Office shall inform the applicant accordingly and invite him to remedy the deficiency within a period specified by the Office. If the deficiencies are not remedied within that period, the Office shall reject the application for conversion.

Rule 46

Publication of application for conversion

- (1) Where the application for conversion relates to a Community trade mark application which has already been published in the Community Trade Mark Bulletin pursuant to Article 40 of the Regulation or where the application for conversion relates to a Community trade mark, the application for conversion shall be published in the Community Trade Marks Bulletin.

(2) The publication of the application for conversion shall contain:

- (a) the filing number or the registration number of the trade mark in respect of which conversion is requested;
- (b) a reference to the previous publication of the application or the registration in the Community Trade marks Bulletin;
- (c) an indication of the Member State or Member States in respect of which conversion has been requested;
- (d) where the request does not relate to all of the goods and services for which the application has been filed or for which the trade mark has been registered, an indication of the goods and services for which conversion is requested;
- (e) where conversion is requested in respect of more than one Member State and the list of goods and services is not the same for all Member States, an indication of the respective goods and services for each Member State;
- (f) the date of the application for conversion.

Rule 47

Transmission to central industrial property offices of the Member States

Where the application for conversion complies with the requirements of the Regulation and these Rules, the Office shall transmit without delay the application for conversion to the central industrial property offices of the Member States specified therein, including the Benelux Trade Mark Office. The Office shall inform the applicant of the date of transmission.

TITLE X

APPEALS

Rule 48

Content of the notice of appeal

- (1) The notice of appeal shall contain:
 - (a) the name and address of the appellant in accordance with rule 1 (1) (b);
 - (b) where the appellant has appointed a representative, the name and the business address of the representative in accordance with Rule 1 (1) (e);
 - (c) a statement identifying the decision which is contested and the extent to which amendment or cancellation of the decision is requested.
- (2) The notice of appeal shall be filed in the language of the proceedings in which the decision subject to the appeal was taken.

Rule 49

Rejection of the appeal as inadmissible

- (1) If the appeal does not comply with Articles 57, 58 and 59 of the Regulation and Rule 48 (1) (c) and (2), the Board of Appeal shall reject it as inadmissible, unless each deficiency has been remedied before the relevant time limit laid down in Article 59 of the Regulation has expired.
- (2) If the Board of Appeal finds that the appeal does not comply with other provisions of the Regulation or other provisions of these Rules, in particular Rule 48 (1) (a) and (b), it shall inform the appellant accordingly and shall request him to remedy the deficiencies noted within such period as it may specify. If the appeal is not corrected in good time, the Board of Appeal shall reject it as inadmissible.
- (3) If the fee for appeal has been paid after expiry of the period for the filing of appeal pursuant to Article 59 of the Regulation, the appeal shall be deemed not to have been filed and the appeal fee shall be refunded to the appellant.

Rule 50

Examination of appeals

- (1) Unless otherwise provided, the provisions relating to proceedings before the department which has made the decision against which the appeal is brought shall be applicable to appeal proceedings *mutatis mutandis*.
- (2) The Board of Appeal's decision shall contain:
 - (a) a statement that it is delivered by the Board;
 - (b) the date when the decision was taken;
 - (c) the names of the Chairman and of the other members of the Board of Appeal taking part;
 - (d) the name of the competent employee of the registry;
 - (e) the names of the parties and of their representatives;
 - (f) a statement of the issues to be decided;
 - (g) a summary of the facts;
 - (h) the reasons;
 - (i) the order of the Board of Appeal, including, where necessary, a decision on costs.
- (3) The decision shall be signed by the Chairman and the other members of the Board of Appeal and by the employee of the registry of the Board of Appeal.

*Rule 51***Reimbursement of appeal fees**

The reimbursement of appeal fees shall be ordered in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation. In the event of interlocutory revision, reimbursement shall be ordered by the department whose decision has been impugned, and in other cases by the Board of Appeal.

TITLE XI

GENERAL PROVISIONS

Part A

*Decisions and communications of the Office**Rule 52***Form of decisions**

(1) Decisions of the Office shall be in writing and shall state the reasons on which they are based. Where oral proceedings are held before the Office, the decision may be given orally. Subsequently, the decision in writing shall be notified to the parties.

(2) Decisions of the Office which are open to appeal shall be accompanied by a written communication indicating that notice of appeal must be filed in writing at the Office within two months of the date of notification of the decision from which appeal is to be made. The communications shall also draw the attention of the parties to the provisions laid down in Articles 57, 58 and 59 of the Regulation. The parties may not plead any failure to communicate the availability proceedings.

*Rule 53***Correction of errors in decisions**

In decisions of the Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected. They shall be corrected by the department which took the decision, acting of its own motion or at the request of an interested party.

*Rule 54***Noting of loss of rights**

(1) If the Office finds that the loss of any rights results from the Regulation or these Rules without any decision having been taken, it shall communicate this to the

person concerned in accordance with Article 77 of the Regulation, and shall draw his attention to the substance of paragraph 2 of this Rule.

(2) If the person concerned considers that the finding of the Office is inaccurate, he may, within two months after notification of the communication referred to in paragraph 1, apply for a decision on the matter by the Office. Such decision shall be given only if the Office disagrees with the person requesting it; otherwise the Office shall amend its finding and inform the person requesting the decision.

*Rule 55***Signature, name, seal**

(1) Any decision, communication or notice from the Office shall indicate the department or division of the Office as well as the name or the names of the official or officials responsible. They shall be signed by the official or officials, or, instead of a signature, carry a printed or stamped seal of the Office.

(2) The President of the Office may determine that other means of identifying the department or division of the Office and the name of the official or officials responsible or an identification other than a seal may be used where decisions, communications or notices are transmitted by telecopier or any other technical means of communication.

Part B

*Oral proceedings and taking of evidence**Rule 56***Summons to oral proceedings**

(1) The parties shall be summoned to oral proceedings provided for in Article 75 of the Regulation and their attention shall be drawn to paragraph 3 of this Rule. At least one month's, notice of the summons shall be given unless the parties agree to a shorter period.

(2) When issuing the summons, the Office shall draw attention to the points which in its opinion need to be discussed in order for the decision to be taken.

(3) If a party who has been duly summoned to oral proceedings before the Office does not appear as summoned, the proceedings may continue without him.

*Rule 57***Taking of evidence by the Office**

(1) Where the Office considers it necessary to hear the oral evidence of parties, of witnesses or of experts or to carry out an inspection, it shall take a decision to that end, stating the means by which it intends to obtain evidence, the relevant facts to be proved and the date, time and place of hearing or inspection. If oral evidence of witnesses and experts is requested by a party, the decision of the Office shall determine the period of time within which the party filing the request must make known to the Office the names and addresses of the witnesses and experts whom the party wishes to be heard.

(2) The period of notice given in the summons of a party, witness or expert to give evidence shall be at least one month, unless they agree to a shorter period. The summons shall contain:

- (a) an extract from the decision mentioned in paragraph 1, indicating in particular the date, time and place of the hearing ordered and stating the facts regarding which the parties, witnesses and experts are to be heard;
- (b) the names of the parties to proceedings and particulars of the rights which the witnesses or experts may invoke under Rule 59 (2) to (5).

*Rule 58***Commissioning of experts**

(1) The Office shall decide in what form the report made by an expert whom it appoints shall be submitted.

(2) The terms of reference of the expert shall include:

- (a) a precise description of his task;
- (b) the time limit laid down for the submission of the expert report;
- (c) the names of the parties to the proceedings;
- (d) particulars of the claims which he may invoke under Rule 59 (2), (3) and (4).

(3) A copy of any written report shall be submitted to the parties.

(4) The parties may object to an expert on grounds of incompetence or on the same grounds as those on which objection may be made to an examiner or to a member of a Division or Board of Appeal pursuant to Article 132 (1) and (3) of the Regulation. The department of the Office concerned shall rule on the objection.

*Rule 59***Costs of taking of evidence**

(1) The taking of evidence by the Office may be made conditional upon deposit with it, by the party who has requested the evidence to be taken, of a sum which shall be fixed by reference to an estimate of the costs.

(2) Witnesses and experts who are summoned by and appear before the Office shall be entitled to reimbursement of reasonable expenses for travel and subsistence. An advance for these expenses may be granted to them by the Office. The first sentence shall apply also to witnesses and experts who appear before the Office without being summoned by it and are heard as witnesses or experts.

(3) Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. These payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks, where such witnesses and experts have been summoned by the Office of its own initiative.

(4) The amounts and the advances for expenses to be paid pursuant to paragraphs 1, 2 and 3 shall be determined by the President of the Office and shall be published in the Official Journal of the Office. The amounts shall be calculated on the same basis as the compensation and salaries received by officials in grades A4 to A8 as laid down in the Staff Regulations of Officials of the European Communities and Annex VII thereto.

(5) Final liability for the amounts due or paid pursuant to paragraphs 1 to 4 shall lie with:

- (a) the Office where the Office, at its own initiative, considered it necessary to hear the oral evidence of witnesses or experts;

or

- (b) the party concerned where that party requested the giving of oral evidence by witnesses or experts, subject to the decision on apportionment and fixing of costs pursuant to Articles 81 and 82 of the Regulation and Rule 94. Such party shall reimburse the Office for any advances duly paid.

*Rule 60***Minutes of oral proceedings and of evidence**

(1) Minutes of oral proceedings or the taking of evidence shall be drawn up, containing the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties, the testimony of

the parties, witnesses or experts and the result of any inspection.

(2) The minutes of the testimony of a witness, expert or party shall be read out or submitted to him so that he may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. Where his approval is not given, his objections shall be noted.

(3) The minutes shall be signed by the employee who drew them up and by the employee who conducted the oral proceedings or taking of evidence.

(4) The parties shall be provided with a copy of the minutes.

(5) Upon request, the Office shall make available to the parties transcripts of recordings of the oral proceedings, in typescript or in any other machine-readable form. The release under the first sentence of the oral proceedings shall be subject to the payment of the costs incurred by the Office in making such transcript. The amount to be charged shall be determined by the President of the Office.

Part C

Notifications

Rule 61

General provisions on notifications

(1) In proceedings before the Office, any notifications to be made by the Office shall take the form of the original document, of a copy thereof certified by, or bearing the seal of, the Office or of a computer print-out bearing such seal. Copies of documents emanating from the parties themselves shall not require such certification.

(2) Notifications shall be made

(a) by post in accordance with Rule 62;

(b) by hand delivery in accordance with Rule 63;

(c) by deposit in a post box at the Office in accordance with Rule 64;

(d) by telecopier and other technical means in accordance with Rule 65;

(e) by public notification in accordance with Rule 66.

Rule 62

Notification by post

(1) Decisions subject to a time limit for appeal, summonses and other documents as determined by the President of the Office shall be notified by registered letter with advice of delivery. Decisions and communications subject to some other time limit shall be notified by registered letter, unless the President of the Office determines otherwise. All other communications shall be ordinary mail.

(2) Notifications in respect of addresses having neither their domicile nor their principal place of business nor an establishment in the Community and who have not appointed a representative in accordance with Article 88 (2) of the Regulation shall be effected by posting the document requiring notification by ordinary mail to the last address of the addressee known to the Office. Notification shall be deemed to have been effected when the posting has taken place.

(3) Where notification is effected by registered letter, whether or not with advice of delivery, this shall be deemed to be delivered to the addressee on the 10th day following that of its posting, unless the letter has failed to reach the addressee or has reached him at a later date. In the event of any dispute, it shall be for the Office to establish that the letter has reached its destination or to establish the date on which it was delivered to the addressee, as the case may be.

(4) Notification by registered letter, with or without advice of delivery, shall be deemed to have been effected even if the addressee refuses to accept the letter.

(5) To the extent that notification by post is not covered by paragraphs 1 to 4, the law of the State on the territory of which notification is made shall apply.

Rule 63

Notification by hand delivery

Notification may be effected on the premises of the Office by hand delivery of the document to the addressee, who shall on delivery acknowledge its receipt.

Rule 64

Notification by deposit in a post box at the Office

Notification may also be effected to addressees who have been provided with a post box at the Office, by depositing the document therein. A written notification of deposit shall be inserted in the files. The date of

deposit shall be recorded on the document. Notification shall be deemed to have taken place on the fifth day following deposit of the document in the post box at the Office.

Rule 65

Notification by telecopier and other technical means

(1) Notification by telecopier shall be effected by transmitting either the original or a copy, as provided for in Rule 61 (1), of the document to be notified. The details of such transmission shall be determined by the President of the Office.

(2) Details of notification by other technical means of communication shall be determined by the President of the Office.

Rule 66

Public notification

(1) If the address of the addressee cannot be established, or if notification in accordance with Rule 62 (1) has proved to be impossible even after a second attempt by the Office, notification shall be effected by public notice. Such notice shall be published at least in the Community Trade Marks Bulletin.

(2) The President of the Office shall determine how the public notice is to be given and shall fix the beginning of the one-month period on the expiry of which the document shall be deemed to have been notified.

Rule 67

Notification to representatives

(1) If a representative has been appointed or where the applicant first named in a common application is considered to be the common representative pursuant to Rule 75 (1), notifications shall be addressed to that appointed or common representative.

(2) If several representatives have been appointed for a single interested party, notification to any one of them shall be sufficient, unless a specific address for service has been indicated in accordance with Rule 1 (1) (e).

(3) If several interested parties have appointed a common representative, notification of a single document to the common representative shall be sufficient.

Rule 68

Irregularities in notification

Where a document has reached the addressee, if the Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the Office as the date of receipt.

Rule 69

Notification of documents in the case of several parties

Documents emanating from parties which contain substantive proposals, or a declaration of withdrawal of a substantive proposal, shall be notified to the other parties as a matter of course. Notification may be dispensed with where the document contains no new pleadings and the matter is ready for decision.

Part D

Timelimits

Rule 70

Calculation of time limits

(1) Periods shall be laid down in terms of full years, months, weeks or days.

(2) Calculation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where that procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided.

(3) Where a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred. Where the relevant month has no day with the same number the period shall expire on the last day of that month.

(4) Where a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred. Where the day on which the said event occurred was the last day of a month or where the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(5) Where a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Rule 71**Duration of time limits**

(1) Where the Regulation or these Rules provide for a period to be specified by the Office, such period shall, when the party concerned has its domicile or its principal place of business or an establishment within the Community, be not less than one month, or, when those conditions are not fulfilled, not less than two months, and no more than six months. The Office may, when this is appropriate under the circumstances, grant an extension of a period specified if such extension is requested by the party concerned and the request is submitted before the original period expired.

(2) Where there are two or more parties, the Office may extend a period subject to the agreement of the other parties.

Rule 72**Expiry of time limits in special cases**

(1) If a time limit expires on a day on which the Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered in the locality in which the Office is located, the time limit shall extend until the first day thereafter on which the Office is open for receipt of documents and on which ordinary mail is delivered. The days referred to in the first sentence shall be as determined by the President of the Office before the commencement of each calendar year.

(2) If a time limit expires on a day on which there is a general interruption or subsequent dislocation in the delivery of mail in a Member State or between a Member State and the Office, the time limit shall extend until the first day following the end of the period of interruption or dislocation, for parties having their residence or registered office in the State concerned or who have appointed representatives with a place of business in that State. In the event of the Member State concerned being the State in which the Office is located, this provision shall apply to all parties. The duration of the abovementioned period shall be as determined by the President of the Office.

(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* to the time limits provided for in the Regulation or these Rules in the case of transactions to be carried out with the competent authority within the meaning of Article 25 (1) (b) of the Regulation.

(4) If an exceptional occurrence such as natural disaster or strike interrupts or dislocates the proper functioning of the Office so that any communication from the Office to parties concerning the expiry of a time limit is delayed, acts to be completed within such a time limit may still be validly completed within one month after the notification of the delayed communication. The date of commencement and the end of any such interruption or

dislocation shall be as determined by the President of the Office.

Part E**Interruption of proceedings****Rule 73****Interruption of proceedings**

(1) Proceedings before the Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for or proprietor of a Community trade mark or of the person authorized by national law to act on his behalf. To the extent that the above events do not affect the authorization of a representative appointed under Article 89 of the Regulation, proceedings shall be interrupted only on application by such representative;

(b) in the event of the applicant for or proprietor of a Community trade mark, as a result of some action taken against his property, being prevented for legal reasons from continuing the proceedings before the Office;

(c) in the event of the death or legal incapacity of the representative of an applicant for or proprietor of a Community trade mark or of his being prevented for legal reasons resulting from action taken against his property from continuing the proceedings before the Office.

(2) When, in the cases referred to in paragraph 1 (a) and (b), the Office has been informed of the identity of the person authorized to continue the proceedings before the Office, the Office shall communicate to such person and to any interested third parties that the proceedings shall be resumed as from a date to be fixed by the Office.

(3) In the case referred to in paragraph 1 (c), the proceedings shall be resumed when the Office has been informed of the appointment of a new representative of the applicant or when the Office has notified to the other parties the communication of the appointment of a new representative of the proprietor of the Community trade mark. If, three months after the beginning of the interruption of the proceedings, the Office has not been informed of the appointment of a new representative, it shall inform the applicant for or proprietor of the Community trade mark:

(a) where Article 88 (2) of the Regulation is applicable, that the Community trade mark application will be deemed to be withdrawn if the information is not submitted within two months after this communication is notified; or

(b) where Article 88 (2) of the Regulation is not applicable, that the proceedings will be resumed with the applicant for or proprietor of the Community

trade mark as from the date on which this communication is notified.

(4) The time limits, other than the time limit for paying the renewal fees, in force as regards the applicant for or proprietor of the Community trade mark at the date of interruption of the proceedings, shall begin again as from the day on which the proceedings are resumed.

Part F

Waiving of enforced recovery procedures

Rule 74

Waiving of enforced recovery procedures

The President of the Office may waive action for the enforced recovery of any sum due where the sum to be recovered is minimal or where such recovery is too uncertain.

Part G

Representation

Rule 75

Appointment of a common representative

(1) If there is more than one applicant and the application for a Community trade mark does not name a common representative, the applicant first named in the application shall be considered to be the common representative. However, if one of the applicants is obliged to appoint a professional representative, such representative shall be considered to be the common representative unless the applicant named first in the application has appointed a professional representative. The same shall apply *mutatis mutandis* to third parties acting in common in filing notice of opposition or applying for revocation or for a declaration of invalidity, and to joint proprietors of a Community trade mark.

(2) If, during the course of proceedings, transfer is made to more than one person, and such persons have not appointed a common representative, paragraph 1 shall apply. If such application is not possible, the Office shall require such persons to appoint a common representative within two months. If this request is not complied with, the Office shall appoint the common representative.

Rule 76

Authorizations

(1) Representatives acting before the Office must file with it a signed authorization for inclusion in the files.

The authorization may cover one or more applications or one or more registered trade marks.

(2) A general authorization enabling a representative to act in respect of all trade mark transactions of the party giving the authorization may be filed.

(3) The authorization may be filed in any language of the Office and in the language of the proceedings if that language is not one of the languages of the Office.

(4) Where the appointment of a representative is communicated to the Office, the necessary authorization shall be filed within a period specified by the Office. If the authorization is not filed in due time, proceedings shall be continued with the represented person. Any procedural steps other than the filing of the application taken by the representative shall be deemed not to have been taken if the represented person does not approve them. The application of Article 88 (2) of the Regulation shall remain unaffected.

(5) Paragraphs 1 to 3 shall apply *mutatis mutandis* to a document withdrawing an authorization.

(6) Any representative who has ceased to be authorized shall continue to be regarded as the representative until the termination of his authorization has been communicated to the Office.

(7) Subject to any provisions to the contrary contained therein, an authorization shall not terminate *vis-à-vis* the Office upon the death of the person who gave it.

(8) Where several representatives are appointed by the same party, they may, notwithstanding any provisions to the contrary in their authorizations, act either jointly or singly.

(9) The authorization of an association of representatives shall be deemed to be an authorization of any representative who can establish that he practises within that association.

Rule 77

Representation

Any notification or other communication addressed by the Office to the duly authorized representative shall have the same effect as if it had been addressed to the represented person. Any communication addressed to the Office by the duly authorized representative shall have the same effect as if it originated from the represented person.

*Rule 78***Amendment of the list of professional representatives**

- (1) The entry of a professional representative in the list of professional representatives, as referred to in Article 89 of the Regulation, shall be deleted at his request.
- (2) The entry of a professional representative shall be deleted automatically:
 - (a) in the event of the death or legal incapacity of the professional representative;
 - (b) where the professional representative is no longer a national of a Member State, unless the President of the Office has granted an exemption under Article 89 (4) (b) of the Regulation;
 - (c) where the professional representative no longer has his place of business or employment in the Community;
 - (d) where the professional representative no longer possesses the entitlement referred to in the first sentence of Article 89 (2) (c) of the Regulation.
- (3) The entry of a professional representative shall be suspended of the Office's own motion where his entitlement to represent natural or legal persons before the central industrial property office of the Member State as referred to in the first sentence of Article 89 (2) (c) has been suspended.
- (4) A person whose entry has been deleted shall, upon request pursuant to Article 89 (3) of the Regulation, be reinstated in the list of professional representatives if the conditions for deletion no longer exist.
- (5) The Benelux Trade Mark Office and the central industrial property offices of the Member States concerned shall, where they are aware thereof, promptly inform the Office of any relevant events under paragraphs 2 and 3.
- (6) The amendments of the list of professional representatives shall be published in the Official Journal of the Office.

Part H***Written communications and forms****Rule 79***Communication in writing or by other means**

Applications for the registration of a Community trade mark as well as any other application provided for in the Regulation and all other communications addressed to the Office shall be submitted as follows:

- (a) by submitting a signed original of the document in question at the Office, such as by post, personal delivery, or by any other means; annexes to documents submitted need not be signed;
- (b) by transmitting a signed original by telecopier in accordance with Rule 80;
- (c) by telex or telegram in accordance with Rule 81;
- (d) by transmitting the contents of the communication by electronic means in accordance with Rule 82.

*Rule 80***Communication by telecopier**

- (1) Where an application for registration of a trade mark is submitted to the Office by telecopier and the application contains a reproduction of the mark pursuant to Rule 3 (2) which does not satisfy the requirements of that Rule, the required number of original reproductions shall be submitted to the Office in accordance with Rule 79 (a). Where the reproductions are received by the Office within a period of one month from the date of the receipt of the telecopy by the Office, the application shall be deemed to have been received by the Office on the date on which the telecopy was received by the Office. Where the reproductions are received by the Office after the expiry of that period and the reproduction is necessary for the obtaining of a filing date, the application shall be deemed to have been received by the Office on the date on which the reproductions were received by the Office.
- (2) Where a communication received by telecopier is incomplete or illegible, or where the Office has reasonable doubts as to the accuracy of the transmission, the Office shall inform the sender accordingly and shall invite him, within a period to be specified by the Office, to retransmit the original by telecopy or to submit the original in accordance with Rule 79 (a). Where this request is complied with within the period specified, the date of the receipt of the retransmission or of the original shall be deemed to be the date of the receipt of the original communication, provided that where the deficiency concerns the granting of a filing date for an application to register a trade mark, the provisions on the filing date shall apply. Where the request is not complied with within the period specified, the communication shall be deemed not to have been received.

- (3) Any communication submitted to the Office by telecopier shall be considered to be duly signed if the reproduction of the signature appears on the printout produced by the telecopier.

- (4) The President of the Office may determine additional requirements of communication by telecopier, such as the equipment to be used, technical details of communication, and methods of identifying the sender.

Rule 81**Communication by telex or telegram**

(1) Where an application for registration of a trade mark is submitted to the Office by telex or by telegram and the application contains a reproduction of the mark pursuant to Rule 3 (2), Rule 80 (1) shall apply *mutatis mutandis*.

(2) Where a communication is submitted by telex or telegram, Rule 80 (2) shall apply *mutatis mutandis*.

(3) Where a communication is submitted by telex or telegram, the indication of the name of the sender shall be deemed equivalent to the signature.

Rule 82**Communication by electronic means**

(1) Where an application for registration of a trademark is submitted by electronic means and the application contains a reproduction of the mark pursuant to Rule 3 (2), Rule 80 (1) shall apply *mutatis mutandis*.

(2) Where a communication is sent by electronic means, Rule 80 (2) shall apply *mutatis mutandis*.

(3) Where a communication is sent to the Office by electronic means, the indication of the name of the sender shall be deemed to be equivalent to the signature.

(4) The President of the Office shall determine the requirements as to communication by electronic means, such as the equipment to be used, technical details of communication, and methods of identifying the sender.

Rule 83**Forms**

(1) The Office shall make available free of charge forms for the purpose of:

- (a) filing an application for a Community trade mark;
- (b) entering opposition to registration of a Community trade mark;
- (c) applying for an amendment of an application or a registration, for correction of names and addresses and of mistakes and errors;
- (d) applying for the registration of a transfer and the transfer form and transfer document provided for in Rule 31 (5);

- (e) applying for the registration of a licence;
- (f) applying for renewal of the registration of a Community trade mark;
- (g) applying for revocation or for a declaration of invalidity of a Community trade mark;
- (h) applying for *restitutio in integrum*;
- (i) making an appeal;
- (j) authorizing a representative, in the form of an individual authorization and in the form of a general authorization.

(2) The Office may make other forms available free of charge.

(3) The Office shall make available the forms referred to in paragraphs 1 and 2 in all the official languages of the Community.

(4) The Office shall place the forms at the disposal of the Benelux Trade Mark Office and the Member States' central industrial property offices free of charge.

(5) The Office may also make available the forms in machine-readable form.

(6) Parties to proceedings before the Office shall use the forms provided by the Office, or copies of these forms, or forms with the same content and format as these forms, such as forms generated by means of electronic data processing.

(7) Forms shall be completed in such a manner as to permit an automated input of the content into a computer, such as by character recognition or scanning.

Part I**Information of the public****Rule 84****Register of Community Trade Marks**

(1) The Register of Community Trade Marks may be maintained in the form of an electronic database.

(2) The Register of Community Trade Marks shall contain the following entries:

- (a) the date of filing the application;
- (b) the file number of the application;
- (c) the date of the publication of the application;
- (d) the name, the address and the nationality of the applicant and the State in which he is domiciled or has his seat or establishment;

- (e) the name and business address of the representative, other than a representative falling within the first sentence of Article 88 (3) of the Regulation; where there is more than one representative, only the name and business address of the first named representative, followed by the words and others, shall be recorded; where an association of representatives is appointed, only the name and address of the association shall be recorded;
 - (f) the reproduction of the mark, with indications as to its nature, unless it is a mark falling under Rule 3 (1); where the registration of the mark is in colour, the indication 'in colour' with an indication of the colour or colours making up the mark; where applicable, a description of the mark;
 - (g) an indication of the goods and services by their names, grouped according to the classes of the Nice Classification; each group shall be preceded by the number of the class of that classification to which that group of goods and services belongs and shall be presented in the order of the classes of that classification
 - (h) particulars of claims of priority pursuant to Article 30 of the Regulation;
 - (i) particulars of claims of exhibition priority pursuant to Article 33 of the Regulation;
 - (j) particulars of claims of seniority of an earlier registered trade mark as referred to in Article 34 of the Regulation;
 - (k) a statement that the mark has become distinctive in consequence of the use which has been made of it, pursuant to Article 7 (3) of the Regulation;
 - (l) a declaration by the applicant disclaiming any exclusive right to some element of the mark pursuant to Article 38 (2) of the Regulation;
 - (m) an indication that the mark is a collective mark;
 - (n) the language in which the application was filed and the second language which the applicant has indicated in his application, pursuant to Article 115 (3) of the Regulation;
 - (o) the date of registration of the mark in the Register and the registration number.
- (3) The Register of Community Trade Marks shall also contain the following entries, each accompanied by the date of recording of such entry:
- (a) changes in the name, the address or the nationality of the proprietor of a Community trade mark or in the State in which he is domiciled or has his seat or establishment;
 - (b) changes in the name or business address of the representative, other than a representative falling within Article 88 (3), first sentence, of the Regulation;
 - (c) when a new representative is appointed, the name and business address of that representative;
 - (d) alterations of the mark pursuant to Article 48 of the Regulation and corrections of mistakes and errors;
 - (e) notice of amendments to the regulations governing the use of the collective mark pursuant to Article 69 of the Regulation;
 - (f) particulars of claims of seniority of an earlier registered trade mark as referred to in Article 34 of the Regulation, pursuant to Article 35 of the Regulation;
 - (g) total or partial transfers pursuant to Article 17 of the Regulation;
 - (h) the creation or transfer of a right *in rem* pursuant to Article 19 of the Regulation and the nature of the right *in rem*;
 - (i) levy of execution pursuant to Article 20 of the Regulation and bankruptcy or like proceedings pursuant to Article 21 of the regulation;
 - (j) the grant or transfer of a licence pursuant to Article 22 of the Regulation and, where applicable, the type of licence pursuant to Rule 34;
 - (k) renewal of the registration pursuant to Article 47 of the Regulation, the date from which it takes effect and any restrictions pursuant to Article 47 (4) of the Regulation;
 - (l) a record of the determination of the expiry of the registration pursuant to Article 47 of the Regulation;
 - (m) a declaration of surrender by the proprietor of the mark pursuant to Article 49 of the Regulation;
 - (n) the date of submission of an application pursuant to Article 55 of the Regulation or of the filing of a counterclaim pursuant to Article 96 (4) of the Regulation for revocation or for a declaration of invalidity;
 - (o) the date and content of the decision on the application or counterclaim pursuant to Article 56 (6) or the third sentence of Article 96 (6) of the Regulation;
 - (p) a record of the receipt of a request for conversion pursuant to Article 109 (2) of the Regulation;
 - (q) the cancellation of the representative recorded pursuant to paragraph 2 (e);
 - (r) the cancellation of the seniority of a national mark;
 - (s) the modification or cancellation from the Register of the items referred to in subparagraphs (h), (i) and (j).

(4) The President of the Office may determine that items other than those referred to in paragraphs 2 and 3 shall be entered in the Register.

(5) The proprietor of the trade mark shall be notified of any change in the Register.

(6) The Office shall provide certified or uncertified extracts from the Register on request, on payment of a fee.

Part J

Community Trade Marks Bulletin and Official Journal of the Office

Rule 85

Community Trade Marks Bulletin

(1) The *Community Trade Marks Bulletin* shall be published in periodic editions. The Office may make available to the public editions of the Bulletin on CD-ROM or in any other machine-readable form.

(2) The *Community Trade Marks Bulletin* shall contain publications of applications and of entries made in the Register as well as other particulars relating to applications or registrations of trade marks whose publication is prescribed by the Regulation or by these Rules.

(3) Where particulars whose publication is prescribed in the Regulation or in these Rules are published in the *Community Trade Marks Bulletin*, the date of issue shown on the Bulletin shall be taken as the date of publication of the particulars.

(4) To the extent that the entries regarding the registration of a trade mark contain no changes as compared to the publication of the application, the publication of such entries shall be made by way of a reference to the particulars contained in the publication of the application.

(5) The elements of the application for a Community trade mark, as set out in Article 26 (1) of the Regulation as well as any other information the publication of which is prescribed in Rule 12 shall, where appropriate, be published in all the official languages of the Community.

(6) The Office shall take into account any translation submitted by the applicant. If the language of the application is not one of the languages of the Office, the translation into the second language indicated by the applicant shall be communicated to the applicant. The applicant may propose changes to the translation within a period to be specified by the Office. If the applicant does not respond within this period or if the Office

considers the proposed changes to be inappropriate, the translation proposed by the Office shall be published.

Rule 86

Official Journal of the Office

(1) The Official Journal of the Office shall be published in periodic editions. The Office may make available to the public editions of the Official Journal on CD-ROM or in any other machine-readable form.

(2) The Official Journal shall be published in the languages of the Office. The President of the Office may determine that certain items shall be published in all the official languages of the Community.

Rule 87

Data bank

(1) The Office shall maintain an electronic data bank with the particulars of applications for registration of trade marks and entries in the Register. The Office may also make available the contents of this data bank on CD-ROM or in any other machine-readable form.

(2) The President of the Office shall determine the conditions of access to the data bank and the manner in which the contents of this data bank may be made available in machine-readable form, including the charges for these acts.

Part K

Inspection of files and keeping of files

Rule 88

Parts of the file excluded from inspection

The parts of the file which shall be excluded from inspection pursuant to Article 84 (4) of the Regulation shall be:

- (a) documents relating to exclusion or objection pursuant to Article 132 of the Regulation;
- (b) draft decisions and opinions, and all other internal documents used for the preparation of decisions and opinions;
- (c) parts of the file which the party concerned showed a special interest in keeping confidential before the application for inspection of the files was made, unless inspection of such part of the file is justified by overriding legitimate interests of the party seeking inspection.

Rule 89**Procedures for the inspection of files**

(1) Inspection of the files of Community trade mark applications and of registered Community trade marks shall either be of the original document, or of copies thereof, or of technical means of storage if the files are stored in this way. The means of inspection shall be determined by the President of the Office. The request for inspection of the files shall not be deemed to have been made until the required fee has been paid.

(2) Where inspection of the files of a Community trade mark application is requested, the request shall contain an indication and evidence to the effect that the applicant

- (a) has consented to the inspection; or
- (b) has stated that after the trade mark has been registered he will invoke the rights under it against the party requesting the inspection.

(3) Inspection of the files shall take place on the premises of the Office.

(4) On request, inspection of the files shall be effected by means of issuing copies of file documents. Such copies shall incur fees.

(5) The office shall issue on request certified or uncertified copies of the application for a Community trade mark or of those file documents of which copies may be issued pursuant to paragraph 4 upon payment of a fee.

Rule 90**Communication of information contained in the files**

Subject to the restrictions provided for in Article 84 of the Regulation and Rule 88, the Office may, upon request, communicate information from any file of a Community trade mark applied for or of a registered Community trade mark, subject to payment of a fee. However, the Office may require the exercise of the option to obtain inspection of the file itself should it deem this to be appropriate in view of the quantity of information to be supplied.

Rule 91**Keeping of files**

(1) The Office shall keep the files relating to Community trade mark applications and registered Community trade marks for at least five years from the end of the year in which:

- (a) the application is rejected or withdrawn or is deemed to be withdrawn;
- (b) the registration of the Community trade mark expires completely pursuant to Article 47 of the Regulation;

(c) the complete surrender of the Community trade mark is registered pursuant to Article 49 of the Regulation;

(d) the Community trade mark is completely removed from the Register pursuant to Article 56 (6) or Article 96 (6) of the Regulation.

(2) The President of the Office shall determine the form in which the files shall be kept.

Part L**Administrative cooperation****Rule 92****Exchange of information and communications between the Office and the authorities of the Member States**

(1) The Office and the central industrial property offices of the Member States shall, upon request, communicate to each other relevant information about the filing of applications for Community trade marks or national marks and about proceedings relating to such applications and the marks registered as a result thereof. Such communications shall not be subject to the restrictions provided for in Article 84 of the Regulation.

(2) Communications between the Office and the courts or authorities of the Member States which arise out of the application of the Regulation or these Rules shall be effected directly between these authorities. Such communication may also be effected through the central industrial property offices of the Member States.

(3) Expenditure in respect of communications under paragraphs 1 and 2 shall be chargeable to the authority making the communications, which shall be exempt from fees.

Rule 93**Inspection of files by or via courts or authorities of the Member States**

(1) Inspection of files relating to Community trade marks applied for or registered Community trade marks by courts or authorities of the Member States be of the original documents or of copies thereof, otherwise Rule 89 shall not apply.

(2) Courts or Public Prosecutors' Offices of the Member States may, in the course of proceedings before them, open files or copies thereof transmitted by the Office to inspection by third parties. Such inspection shall be subject to Article 84 of the Regulation. The Office shall not charge any fee for such inspection.

(3) The Office shall, at the time of transmission of the files or copies thereof to the courts or Public Prosecutors'

Offices of the Member States, indicate the restrictions to which the inspection of files relating to Community trade marks applied for or registered Community trade marks is subject pursuant to Article 84 of the Regulation and Rule 88.

Part M

Costs

Rule 94

Apportionment and fixing of costs

(1) Apportionment of costs pursuant to Article 81 (1) and (2) of the Regulation shall be dealt with in the decision on the opposition, the decision on the application for revocation or for a declaration of invalidity of a Community trade mark, or the decision on the appeal.

(2) Apportionment of costs pursuant to Article 81 (3) and (4) of the Regulation shall be dealt with in a decision on costs by the Opposition Division, the Cancellation Division or the Board of Appeal.

(3) A bill of costs, with supporting evidence, shall be attached to the request for the fixing of costs provided for in the first sentence of Article 81 (6) of the Regulation. The request shall be admissible only if the decision in respect of which the fixing of costs is required has become final. Costs may be fixed once their credibility is established.

(4) The request provided for in the second sentence of Article 81 (6) of the Regulation for a review of the decision of the registry on the fixing of costs, stating the reasons on which it is based, must be filed at the Office within one month after the date of notification of the awarding of costs. It shall not be deemed to be filed until the fee for reviewing the amount of the costs has been paid.

(5) The Opposition Division, the Cancellation Division or the Board of Appeal, as the case may be, shall take a decision on the request referred to in paragraph 4 without oral proceedings.

(6) The fees to be borne by the losing party pursuant to Article 81 (1) of the Regulation shall be limited to the fees incurred by the other party for opposition, for an application for revocation or for a declaration of invalidity of the Community trade mark and for appeal.

(7) Cost essential to the proceedings and actually incurred by the successful party shall be borne by the losing party in accordance with Article 81 (1) of the Regulation on the basis of the following maximum rates:

(a) travel expenses of one party for the outward and return journey between the place of residence or the place of business and the place where oral proceedings are held or where evidence is taken, as follows:

- (i) the cost of the first-class rail-fare including usual transport supplements where the total distance by rail does not exceed 800 km;
- (ii) the cost of the tourist-class air-fare where the total distance by rail exceeds 800 km or the route includes a sea-crossing;

(b) subsistence expenses by one party equal to the daily subsistence allowance for officials in grades A4 to A8 as laid down in Article 13 of Annex VII to the Staff Regulations of Officials of the European Communities;

(c) travel expenses of representatives within the meaning of Article 89 (1) of the Regulation and of witnesses and of experts, at the rates provided for in subparagraph (a);

(d) subsistence expenses of representatives within the meaning of Article 89 (1) of the Regulation and of witnesses and experts, at the rates provided for in subparagraph (b);

(e) costs entailed in the taking of evidence in the form of examination of witnesses, opinions by experts or inspection

up to ECU 300 per proceedings;

f) cost of representation, within the meaning of Article 89 (1) of the Regulation,

(i) of the opposing party in opposition proceedings:

up to ECU 250;

(ii) of the applicant in opposition proceedings:

up to ECU 250;

(iii) of the applicant in proceedings relating to revocation or invalidity of a Community trade mark:

up to ECU 400;

(iv) of the proprietor of the trade mark in proceedings relating to revocation or invalidity of a Community trade mark:

up to ECU 400;

(v) of the appellant in appeal proceedings:

up to ECU 500;

(vi) of the defendant in appeal proceedings:

up to ECU 500;

Where the taking of evidence in any of the abovementioned proceedings involves the examination of witnesses, opinions by experts or inspection, an additional amount shall be granted for representation costs of up to ECU 600 per proceedings;

- (g) where the successful party is represented by more than one representative within the meaning of Article 89 (1) of the Regulation, the losing party shall bear the costs referred to in subparagraphs (c), (d) and (f) for one such person only;
- (h) the losing party shall not be obliged to reimburse the successful party for any costs, expenses and fees other than those referred to in subparagraphs (a) to (g).

Part N

Languages

Rule 95

Applications and declarations

Without prejudice to Article 115 (5) of the Regulation,

- (a) any application or declaration relating to a Community trade mark application may be filed in the language used for filing the application for a Community trade mark or in the second language indicated by the applicant in his application;
- (b) any application or declaration relating to a registered Community trade mark may be filed in one of the languages of the Office. However, when the application is filed by using any of the forms provided by the Office pursuant to Rule 83, such forms may be used in any of the official languages of the Community, provided that the form is completed in one of the languages of the Office, as far as textual elements are concerned.

Rule 96

Written proceedings

- (1) Without prejudice to Article 115 (4) and (7) of the Regulation, and unless otherwise provided for in these Rules, in written proceedings before the Office any party may use any language of the Office. If the language chosen is not the language of the proceedings, the party shall supply a translation into that language within one month from the date of the submission of the original document. Where the applicant for a Community trade mark is the sole party to proceedings before the Office and the language used for the filing of the application for the Community trade mark is not one of the languages of the Office, the translation may also be filed in the second language indicated by the applicant in his application.
- (2) Unless otherwise provided for in these Rules, documents to be used in proceedings before the Office may be filed in any official language of the Community. Where the language of such documents is not the language of the proceedings the Office may require that a translation be supplied, within a period specified by it, in

that language or, at the choice of the party to the proceeding, in any language of the Office.

Rule 97

Oral proceedings

(1) Any party to oral proceedings before the Office may, in place of the language of proceedings, use one of the other official languages of the Community, on condition that he makes provision for interpretation into the language of proceedings. Where the oral proceedings are held in a proceeding concerning the application for registration of a trade mark, the applicant may use either the language of the application or the second language indicated by him.

(2) In oral proceedings concerning the application for registration of a trade mark, the staff of the Office may use either the language of the application or the second language indicated by the applicant. In all other oral proceedings, the staff of the Office may use, in place of the language of the proceedings, one of the other languages of the Office, on condition that the party or parties to the proceedings agree to such use.

(3) In the case of taking of evidence, any party to be heard, witness or expert who is unable to express himself adequately in the language of proceedings, may use any of the official languages of the Community. Should the taking of evidence be decided upon following a request by a party to the proceedings, parties to be heard, witnesses or experts who express themselves in languages other than the language of proceedings may be heard only if the party who made the request makes provision for interpretation into that language. In proceedings concerning the application for registration of a trade mark, in place of the language of the application, the second language indicated by the applicant may be used. In any proceedings with only one party the Office may on request of the party concerned permit derogations from the provisions in this paragraph.

(4) If the parties and Office so agree, any official language of the Community may be used in oral proceedings.

(5) The Office shall, if necessary, make provision at its own expense for interpretation into the language of proceedings, or, where appropriate, into its other languages, unless this interpretation is the responsibility of one of the parties to the proceedings.

(6) Statements by staff of the Office, by parties to the proceedings and by witnesses and experts, made in one of the languages of the Office during oral proceedings shall be entered in the minutes in the language employed. Statements made in any other language shall be entered in the language of proceedings. Amendments to the text of the application for or the registration of a Community trade mark shall be entered in the minutes in the language of proceedings.

*Rule 98***Certification of translations**

(1) When a translation of any document is to be filed, the Office may require the filing, within a period to be specified by it, of a certificate that the translation corresponds to the original text. Where the certificate relates to the translation of a previous application pursuant to Article 30 of the Regulation, such period shall not be less than three months after the date of filing of the application. Where the certificate is not filed within that period, the document shall be deemed not to have been received.

(2) The President of the Office may determine the manner in which translations are certified.

*Rule 99***Legal authenticity of translations**

In the absence of evidence to the contrary, the Office may assume that a translation corresponds to the relevant original text.

*Part O****Organization of the Office****Rule 100***Allocation of duties**

(1) The President of the Office shall determine the examiners and their number, the members of the Opposition Divisions and Cancellation Divisions, and the members of the Administration of Trade Marks and Legal Division. He shall allocate duties to the examiners and the Divisions.

(2) The President of the Office may provide that examiners may also be members of the Opposition Divisions, Cancellation Divisions, and the Administration of Trade Marks and Legal Division, and that members of these Divisions may also be examiners.

(3) In addition to the responsibilities vested in them under the Regulation, the President of the Office may allocate further duties to the examiners and the members of the Opposition Divisions, Cancellation Divisions and the Administration of Trade Marks and Legal Division.

(4) The President of the Office may entrust to other members of the staff of the Office who are not examiners or members of any of the Divisions mentioned in paragraph 1 the execution of individual duties falling to the examiners, Opposition Divisions, Cancellation Divisions or the Administration of Trade Marks and Legal Division and involving no special difficulties.

TITLE XII**RECIPROCITY***Rule 101***Publication of reciprocity**

(1) If necessary, the President of the Office shall request the Commission to enquire whether a State which is not party to the Paris Convention or to the Agreement establishing the World Trade Organization accords reciprocal treatment within the meaning of Article 5 (1) (d), Article 5 (3) and Article 29 (5) of the Regulation.

(2) If the Commission determines that reciprocal treatment in accordance with paragraph 1 is accorded, it shall publish a communication to this effect in the *Official Journal of the European Communities*.

(3) Article 5 (1) (d), Article 5 (3) and Article 29 (5) of the Regulation shall take effect for the nationals of the States concerned from the date of publication in the *Official Journal of the European Communities* of the communication referred to in paragraph 2, unless the communications states an earlier date from which it is applicable. They shall cease to be effective from the date of publication in the *Official Journal of the European Communities* of a communication of the Commission to the effect that reciprocal treatment is no longer accorded, unless the communication states an earlier date from which it is applicable.

(4) Communications referred to in paragraphs 2 and 3 shall also be published in the *Official Journal of the Office*.

*Article 2***Transitional Provisions**

(1) Any application for registration of a Community trade mark filed within three months prior to the date determined pursuant to Article 143 (3) of the Regulation shall be marked by the Office with the filing date determined pursuant to that provision and with the actual date of receipt of the application.

(2) With regard to the application, the priority period of six months provided for in Articles 29 and 33 of the Regulation shall be calculated from the date determined pursuant to Article 143 (3) of the Regulation.

(3) The Office may issue a receipt to the applicant prior to the date determined pursuant to Article 143 (3) of the Regulation.

(4) The Office may examine the applications prior to the date determined pursuant to Article 143 (3) of the

Regulation and communicate with the applicant with a view to remedying any deficiencies prior to that date. Any decisions with regard to such applications may be taken only after that date.

(5) With regard to the application, the Office shall not carry out any search pursuant to Article 39 (1) of the Regulation, regardless of whether or not a priority was claimed for such application pursuant to Articles 29 or 33 of the Regulation.

(6) Where the date of receipt of an application for the registration of a Community trade mark by the Office, by

the central industrial property office of a Member State or by the Benelux Trade Mark Office is before the commencement of the three months period specified in Article 143 (4) of the Regulation the application shall be deemed not to have been filed. The application shall be informed accordingly and the application shall be sent back to him.

Article 3

Entry into force

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 December 1995.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION REGULATION (EC) No 2869/95

of 13 December 1995

on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ⁽¹⁾, as amended by Regulation (EC) No 3288/94 ⁽²⁾ and in particular Article 139 thereof,

Having regard to Commission Regulation (EC) No 2868/95 of 13 December 1995, implementing Council Regulation (EC) No 40/94 on the Community trade mark ⁽³⁾,

Whereas Article 139 (3) of Regulation (EC) No 40/94 (hereinafter 'the Regulation') provides that the fees regulations shall be adopted in accordance with the procedure laid down in Article 141 of the Regulation;

Whereas Article 139 (1) of the Regulation provides that the fees regulations shall determine in particular the amount of the fees and the ways in which they are to be paid;

Whereas Article 139 (2) of the Regulation provides that the amounts of the fees shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient for the budget of the Office for Harmonization in the Internal Market (trade marks and designs) ('the Office') to be balanced;

Whereas, however, in the Office's start-up phase, balance can be achieved only if there is a subsidy from the general budget of the European Communities, in accordance with Article 134 (3) of the Regulation;

Whereas the basic fee for the application for a Community trade mark shall include the amount which the Office must pay to each central industrial property office of the Member States for each search report provided by such offices in accordance with Article 39 (4) of the Regulation;

Whereas to ensure the necessary flexibility, the President of the Office ('the President') should be empowered,

subject to certain conditions, to lay down the charges which may be payable to the Office in respect of services it may render, the charges for access to the Office's data bank and the making available of the contents of this data bank in machine-readable form, and to set charges for the sale of its publications;

Whereas, in order to facilitate the payment of fees and charges, the President should be empowered to authorize methods of payment which are additional to those explicitly provided for in this Regulation;

Whereas it is appropriate that the fees and charges payable to the Office should be fixed in the same currency unit as is used for the budget of the Office;

Whereas the budget of the Office is fixed in ecus;

Whereas, moreover, the fixing of these amounts in ecus avoids discrepancies that may result from exchange rate variations;

Whereas payments in cash should be made in the currency of the Member State where the Office has its seat;

Whereas the measures envisaged in this Regulation are in accordance with the opinion of the Committee established under Article 141 of the Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1***General**

The following shall be levied in accordance with this Regulation:

(a) fees to be paid to the Office as provided for in the Regulation and in Regulation (EC) No 2868/95;

(b) charges laid down by the President pursuant to Article 3 (1) and (2)

⁽¹⁾ OJ No L 11, 14. 1. 1994, p. 1.

⁽²⁾ OJ No L 349, 31. 12. 1994, p. 83.

⁽³⁾ See p. 1 of this Official Journal.

Article 2

Fees provided for in the Regulation and Regulation (EC) No 2868/95

The fees to be paid to the Office under Article 1 (a) shall be as follows:

		(in ecus)
1.	Basic fee for the application for an individual mark (Article 26 (2); Rule 4 (a))	975
2.	Fee for each class of goods and services exceeding three for an individual mark (Article 26 (2); Rule 4 (b))	200
3.	Basic fee for the application for a collective mark (Articles 26 (2) and 64 (3); Rules 4 (a) and 42)	1 675
4.	Fee for each class of goods and services exceeding three for a collective mark (Article 26 (2) and 64 (3); Rules 4 (b) and 42)	400
5.	Opposition fee (Article 42 (3); Rule 18 (1))	350
6.	Fee for the alteration of the representation of a trade mark (point 1 of Article 140 (2) and Article 44 (2); Rule 13 (2))	200
7.	Basic fee for the registration of an individual mark (Article 45; Rule 23 (1) (a))	1 100
8.	Fee for each class of goods and services exceeding three for an individual mark (Article 45; Rule 23 (1) (b))	200
9.	Basic fee for the registration of a collective mark (Articles 45 and 64 (3); Rules 23 (1) (a) and 42)	2 200
10.	Fee for each class of goods and services exceeding three for a collective mark (Articles 45 and 64 (3), Rules 23 (1) (b) and 42)	400
11.	Additional fee for the late payment of the registration fee (point 2 of Article 140 (2), Rule 23 (3))	25 % of the belated registration fee, subject to a maximum of 750
12.	Basic fee for the renewal for an individual mark (Article 47 (1), Rule 30 (2) (a))	2 500
13.	Fee for each class of goods and services exceeding three for an individual mark (Article 47 (1), Rule 30 (2) (b))	500
14.	Basic fee for the renewal for a collective mark (Articles 47 (1) and 64 (3), Rules 30 (2) (a) and 42)	5 000
15.	Fee for each class of goods and services exceeding three for a collective mark (Articles 47 (1) and 64 (3), Rules 30 (2) (b) and 42)	1 000

		(in ecus)
16.	Additional fee for the late payment of the renewal fee or the late submission of the request for renewal (Article 47 (3), Rule 30 (2) (c))	25% of the belated renewal fee, subject to a maximum of 1 500
17.	Fee for the application for revocation or for a declaration of invalidity (Article 55 (2), Rule 39 (2))	700
18.	Appeal fee (Article 59, Rule 49 (1))	800
19.	Fee for <i>restitutio in integrum</i> (Article 78 (3))	200
20.	Fee for the conversion of a mark into a national trade mark application (Article 109 (1), Rule 45 (2))	200
21.	Fee for the recording of the whole or partial transfer of an application for a Community trade mark (Article 24 and point 4 of Article 140 (2); Rule 31 (4) and (8))	200 per entry, but, where multiple requests are submitted in the same application or at the same time, not to exceed a total of 1 000
22.	Fee for the registration of the whole or partial transfer of a registered Community trade mark (point 4 of Article 140 (2); Rule 31 (4))	200 per registration, but, where multiple requests are submitted in the same application or at the same time, not to exceed a total of 1 000
23.	Fee for the registration of a licence or another right in respect of a registered Community trade mark (point 5 of Article 140 (2), Rule 33 (1)) or an application for a Community trade mark (point 6 of Article 140 (2), Rule 33 (4)): a) grant of a licence b) transfer of a licence c) creation of a right <i>in rem</i> d) transfer of a right <i>in rem</i> e) levy of execution	200 per registration, but, where multiple requests are submitted in the same application or at the same time, not to exceed a total of 1 000
24.	Fee for the cancellation of the registration of a licence or other right (point 7 of Article 140 (2), Rule 35 (3))	200 per cancellation, but, where multiple requests are submitted in the same application or at the same time, not to exceed a total of 1 000

		(in ecus)
25.	Fee for the alteration of a registered Community trade mark (point 8 of Article 140 (2), Rule 25 (2))	200
26.	Fee for the issue of a copy of the application for a Community trade mark (point 12 of Article 140 (2), Rule 89 (5)), a copy of the certificate of registration (point 3 of Article 140 (2), Rule 24 (2), or an extract from the register (point 9 of Article 140 (2), Rule 84 (6))	
	a) uncertified copy or extract	10
	b) certified copy or extract	30
27.	Fee for the inspection of the files (point 10 of Article 140 (2) No 10, Rule 89 (1))	30
28.	Fee for the issue of copies of file documents (point 11 of Article 140 (2) n° 11, Rule 89 (5))	
	a) uncertified copy	10
	b) certified copy	30
	plus per page, exceeding 10	1
29.	Fee for the communication of information in a file (point 13 of Article 140 (2), Rule 90)	10
	plus per page, exceeding 10	1
30.	Fee for the review of the determination of the procedural costs to be refunded (point 14 of Article 140 (2), Rule 94 (4))	100

Article 3

Charges laid down by the President

1. The President shall lay down the amount to be charged for any services rendered by the Office other than those specified in Article 2.

2. The President shall lay down the amount to be charged for the Community Trade Marks Bulletin and the Official Journal of the Office as well as any other publications issued by the Office.

3. The amounts of the charges shall be laid down in ecus.

4. The amounts of the charges laid down by the President in accordance with paragraphs 1 and 2 shall be published in the Official Journal of the Office.

Article 4

Due date for fees and charges

1. Fees and charges in respect of which the due date is not specified in the Regulation or in Regulation No 2868/95 shall be due on the date of receipt of the request for the service for which the fee or the charge is incurred.

2. The President may decide not to make services mentioned in paragraph 1 dependent upon the advance payment of the corresponding fees or charges.

Article 5

Payment of fees and charges

1. Fees and charges due to the Office shall be paid

(a) by payment or transfer to a bank account held by the Office,

(b) by delivery or remittance of cheques made payable to the Office, or

(c) in cash.

2. The President may allow methods of payment other than those set out in paragraph 1, in particular by means of deposits in current accounts held with the Office.

3. Determinations made pursuant to paragraph 2 shall be published in the Official Journal of the Office.

Article 6

Currencies

1. Payments or transfers to a bank account referred to in Article 5 (1) (a), by delivery or remittance of cheques referred to in Article 5 (1) (b) or any other method of payment allowed by the President pursuant to Article 5 (2) shall be made in ecus.

2. The payments in cash referred to in Article 5 (1) (c) shall be made in the currency of the Member State where the Office has its seat. The President shall determine the ecus equivalents in that currency on the basis of the exchange rate in force, which are fixed daily by the Commission and published in the *Official Journal of the European Communities* in accordance with Council Regulation (EC) No 3320/94 ⁽¹⁾.

Article 7

Particulars concerning payment

1. Every payment must indicate the name of the person making the payment and must contain the necessary information to enable the Office to establish immediately the purpose of the payment. In particular, the following information shall be provided:

- (a) when the application fee is paid, the purpose of the payment, namely 'application fee';
- (b) when the registration fee is paid, the file number of the application which is the basis for the registration and the purpose of the payment, namely 'registration fee';
- (c) when the opposition fee is paid, the file number of the application and the name of the applicant for the Community trade mark against which opposition is entered, and the purpose of the payment, namely 'opposition fee';
- (d) when the revocation fee and the invalidity fee are paid, the registration number and the name of the proprietor of the Community trade mark against which the application is directed, and the purpose of the payment, namely 'revocation fee' or 'invalidity fee'.

2. If the purpose of the payment cannot immediately be established, the Office shall require the person making the payment to notify it in writing of this purpose within such period as it may specify. If the person does not comply with this request in due time, the payment shall be considered not to have been made. The amount which has been paid shall be refunded.

Article 8

Deemed date of payment

1. The date on which any payment shall be considered to have been made to the Office shall be as follows:

- (a) in the cases referred to in Article 5 (1) (a), the date on which the amount of the payment or of the transfer is actually entered in a bank account held by the Office;
- (b) in the case referred to in Article 5 (1) (b), the date of the receipt of the cheque at the Office, provided that the cheque is met;
- (c) in the cases referred to in Article 5 (1) (c), the date of receipt of the amount of the cash payment.

2. Where the President allows, in accordance with the provisions of Article 5 (2), other methods of paying fees than those set out in Article 5 (1), he shall also lay down the date on which such payments shall be considered to have been made.

3. Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it was due, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment —

- (a) in a Member State, within the period within which the payment should have been made:
 - (i) effected the payment through a banking establishment;
 - (ii) duly gave an order to a banking establishment to transfer the amount of the payment; or
 - (iii) dispatched at a post office or otherwise a letter bearing the address of the Office and containing a cheque within the meaning of Article 5 (1) (b), provided that the cheque is met;
 and —
- (b) paid a surcharge of 10 % on the relevant fee or fees, but not exceeding ECU 200; no surcharge is payable if a condition according to sub-paragraph (a) has been fulfilled not later than 10 days before the expiry of the period for payment.

4. The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3 (a) was fulfilled and, where required, to pay the surcharge referred to in paragraph 3 (b), within a period to be specified by it. If the person fails to comply with this request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.

⁽¹⁾ OJ No L 350, 31. 12. 1994, p. 27.

*Article 9***Insufficiency of the amount paid**

1. A time limit for payment shall, in principle, be considered to have been observed only if the full amount of the fee has been paid in due time. If the fee is not paid in full, the amount which has been paid shall be refunded after the period for payment has expired.

2. The Office may, however, in so far as this is possible within the time remaining before the end of the period, give the person making the payment the opportunity to pay the amount lacking or, where this is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment.

*Article 10***Refund of insignificant amounts**

1. Where an excessive sum is paid to cover a fee or a charge, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund. The President shall determine what constitutes an insignificant amount.

2. Determinations by the President pursuant to paragraph 1 shall be published in the Official Journal of the Office.

*Article 11***Entry into force**

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 December 1995.

For the Commission

MARIO MONTI

Member of the Commission
