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III/ex XI/C-3

Brussels, April 1977

PRE-DRAFT OF THE REGULATION

RELATING TO THE

COMMUNITY TRADE MARK

- First Part -

Working Document No 1

Working Group "Community Trade Mark"

INTRODUCTORY REMARKS

1. The working group "Community trade mark" will begin consideration of the pre-draft of the Regulation concerning the Community trade mark at the meeting 23 to 27 May 1977. The first articles are annexed.

Apart from general provisions, these articles deal with trade mark law, application for the Community trade mark and registration procedure; and correspond to articles 1 to 25 and 63 to 90 of the pre-draft of the Convention of 1964 concerning a European trade mark law. It has been felt advisable to follow, for the time being, the order and numbering of the articles in the 1964 pre-draft, with the exception however, of the institutional provisions which will be considered last.

2. The amendments made to the provisions of the 1964 pre-draft are of two kinds. The first take account of the proposals made in the Memorandum on the creation of an EEC trade mark (Bull. of the EC, Suppl. 8/76).

Following comments made during the meetings in November 1976 and January 1977 of the working group "Community trade mark", some of these proposals have however been wholly or partly withdrawn.

Thus in the case of article 14 ter, paragraph (2), defining the concept of similarity of signs, it does not seem necessary to provide for mistake over an enterprise belonging to a group (Memorandum, point 113).

Cancellation of Community trade marks now appears more appropriate and effective than nullity of assignments or licences, in situations where use by the assignee or licensee of the trade mark is likely to deceive the public as to the nature, quality or other essential qualities of the goods or services indicated by the trade mark (Memorandum, points 144 to 150). This presumes an addition to article 112 of the 1964 pre-draft.

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Regarding use of a Community trade mark by a person economically related with its proprietor, this is provided for, in Article 14 bis, paragraph (3), governing also the effects of a validly granted licence, and not in article 24 (Memorandum points 149 and 152). Since use of the trade mark by a person economically related to the proprietor, may mislead the public, it is appropriate to cover this in Article 112 as well.

Applicants need not state in their applications, the activity of their business which will use the Community trade mark, even though such information could be useful to proprietors of earlier trade marks (Article 65; Memorandum, point 82).

Article 83 bis, paragraph (2), does not provide that at the end of an interim period, the Examining Division may impose user conditions on earlier trade marks existing at the entry into force of the Regulation (Memorandum, point 100). As the preamble to the Regulation will state, proposals will be made in due course on the point if experience shows this necessary to resolve conflicts arising on registration of Community trade marks.

The pre-draft regulation no longer gives the Office power to refuse registration of a Community trade mark which is similar to an earlier trade mark, when there is no opposition by the proprietor of such a trade mark (Memorandum, end of point 79), nor for the Office to initiate cancellation of an unused Community trade mark (Memorandum, point 121).

In the end the "double" ^{on which} Community and national protection did not seem justified after the date/protection under the Community trade mark began, bearing in mind that rights acquired under national trade marks are reserved (Article 90 bis; Memorandum, point 67).

In any event, the conversion of an application for a Community trade mark or of a Community trade mark into an application for a national trade mark will lose much of its attraction once harmonisation of national laws has been achieved which reflects the rules applied to the Community trade mark (Articles 100 to 102 and 127 of the pre-draft of 1964). It may however prove useful, to permit this during an interim period.

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3. The second type of amendment made to the provisions of the 1964 pre-draft, aims as far as possible and taking account of the legal nature of the instrument, to bring the text of the pre-draft into line with the Conventions for the European and Community patents. This involves for the main part, articles 18 and 22 bis to 23 ter on the one hand, and articles 65 to 71 bis and 82, on the other, which reflect articles 36 and 39 to 42 of the Community patent convention and articles 78, 80, 87 to 91 and 101 of the European patent convention respectively. On the other hand provisions have been replaced in the implementing regulations, following the pattern of these two Conventions.

4. The unitary character of the Community trade mark, the international exhaustion of rights conferred by the registration of the Community trade mark and the territorial restriction of licences, will all be the subject of separate working documents.

Article 1

Community trade marks

Trade marks registered pursuant to this Regulation shall be called "Community trade marks".

Article 2

Unitary character of
Community trade marks

Community trade marks shall have effect throughout the territory of the common market and may only be registered, transferred, revoked or allowed to lapse in respect of the whole of this territory.

Article 3

Trade Mark Office of the
European Communities

Community trade marks shall be registered by the Trade Mark Office of the European Communities, hereinafter referred to as "the Office".

Article 4

European Trade Mark Court

Deleted.

Article 5

Entitlement to apply for registration
of Community trade marks

Application for registration of Community trade marks may be filed by :

- (a) nationals of the signatory States to the Paris Convention for the Protection of Industrial Property and persons considered equivalent thereto pursuant to Article 3 of that Convention;
- (b) nationals of other States which, according to a notification published by the Administrative Council of the Office, grant to the nationals of all Member States reciprocity with regard to the protection of their trade marks.

Article 6

National laws relating to
trade marks

This Regulation shall be without prejudice to the right of Member States to maintain their national laws relating to trade marks.

Article 7

Other international agreements

Deleted.

Article 8

Signs which may be registered
as Community trade marks

- (1) Any sign whose purpose is to distinguish the goods or services of an undertaking from those of other undertakings may be registered as a Community trade mark.
- (2) The distinctive character of the sign with regard to the goods or services which it designates shall derive from its nature or the use made of it.
- (3) The following in particular may be registered as Community trade marks: names, designs, letters, numerals, colour combinations, the shape of a good or its packing as well as surnames.

Article 9

Surnames

Deleted. See Article 8, paragraph 3.

Article 10

Establishment of rights in European
trade marks by registration

Deleted.

Article 11

Absolute grounds of refusal

(1) The following shall be excluded from registration :

- a) shapes which are dictated by the nature of the goods or services or which affect their essential value or result in a technical effect;
- b) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, the time of production of the goods or the rendering of the services, or other characteristics thereof;
- c) trade marks which consist exclusively of signs or indications which have become customary for the goods or services in the current language or in the bona fide and established practices of the trade;
- d) trade marks which, for other reasons, are devoid of distinctive character;
- e) trade marks which consist of signs or particulars liable to deceive the public, particularly as to the nature, quality or place of origin of the goods or services;
- f) trade marks which are contrary to public order or morality or whose refusal or invalidity is provided for under Article 6 ter of the Paris Convention for the Protection of Industrial Property.

(2) The provisions of paragraph 1 shall also apply even if circumstances precluding registration exist only in part of the territory of the common market.

(3) In applying paragraph 1 a), b), c) and d) :

- a) account shall be taken of all relevant circumstances, and in particular the duration and extent of use of the trade mark;
- b) it shall be ascertained whether third parties have a genuine need to use freely the signs or identifying marks of which it is composed.

Article 12

Relative grounds of refusal

- (1) A trade mark which is identical or similar to a trade mark in respect of which a third party has acquired rights for identical or similar goods or services, hereinafter called an "earlier trade mark", shall be excluded from registration if the proprietor of the earlier trade mark has opposed the registration of the Community trade mark pursuant to Article 80, and without prejudice to the terms of Articles 82 bis and 83 bis.
- (2) The following shall be regarded as earlier trade marks within the meaning of paragraph 1 :
- a) Community trade marks;
 - b) national trade marks which have been the subject of registration in a Member State or of an international registration effective in one Member State;
 - c) national trade marks which are well known in one Member State ;
 - d) applications for national and Community trade marks which have not been withdrawn or finally rejected.
- (3) A trade mark which is identical or similar to a trade mark in respect of which a third party has acquired rights for identical or similar goods or services shall also be excluded from registration as a Community trade mark where registration of the Community trade mark has been applied for by an agent or representative in his own name and without the consent of the proprietor, where such agent or representative does not justify his action and where the third party opposes registration of the Community trade mark pursuant to the provisions set out in Article 80.

Article 13

Territorial scope of a
European trade mark.

Deleted.

Article 14

Rights conferred by registration
of a Community trade mark

- (1) Registration of a Community trade mark shall confer upon its proprietor, subject to any prior rights, the exclusive right to use the trade mark in the course of the trade for which the goods or services have been registered, and in particular to affix the trade mark on such goods or their packaging, to put on the market goods bearing the trade mark and to use the trade mark in advertising.

- (2) Where a Community trade mark is composed of a number of signs the effects of registration shall not extend to those signs which, when considered separately, are devoid of distinctive character.

Article 14 bis

Obligation to use a
Community trade mark

- (1) In the absence of legitimate grounds, exercise of the exclusive right conferred by the registration of a Community trade mark shall be subject to genuine use of the trade mark within the common market in accordance with the conditions laid down in this Regulation.
- (2) Only circumstances beyond the control of the proprietor of the Community trade mark shall be regarded as legitimate grounds.
- (3) Where a Community trade mark is used by a licensee in accordance with Article 24 or by a person who has economic connections with the proprietor of the Community trade mark, it shall be regarded as being used by the proprietor.

Article 14 ter

Infringement of rights conferred
by the registration of a
Community trade mark

- (1) The exclusive rights conferred by registration of a Community trade mark may be invoked against any third party who, in the course of trade, and without the consent of the proprietor uses the trade mark or a similar sign in respect of the goods or services for which the trade mark is registered or in respect of similar goods or services.
- (2) Signs shall be regarded as similar where their use may give the impression that the products or services which they designate originate from the same undertaking.
- (3) Goods, services or goods and services shall be regarded as being similar where the public might presume that they originate from the same undertaking by virtue in particular of their nature, type or intended purpose.

Article 15

Limitations of the rights conferred by
the Community trade mark

Registration of a Community trade mark shall not confer on its proprietor the right to prohibit third parties from using, in the course of trade,

- a) their surnames, trade names or addresses;
- b) particulars relating to the kind, quality, quantity, intended purpose, value, place of origin, the time of production of the goods, or the rendering of the services, or other characteristics thereof,

provided that the use is genuinely for the purpose of identification only.

Article 16

Exhaustion of the rights conferred by registration
of a Community trade mark

- (1) Registration of a Community trade mark shall not confer on its proprietor the right to prohibit third parties from using the trade mark in respect of goods which have been put on the market under that trade mark in the common market by such proprietor or with his consent.
- (2) Paragraph 1 shall not apply where the condition of the goods is modified or impaired after they have been put on the market.

Article 17

Limitation of rights attached
to a national mark

Deleted.

Article 18

Complementary application of
national law regarding infringements

- (1) Infringements of the exclusive right of the proprietor of a Community trade mark, as defined in Articles 14 to 16, shall be governed by the national law relating to infringement of a national trade mark in the Member State where the court hearing the action is located, insofar as the private international law of that State does not require application of the national law of another Member State.
- (2) The rules of procedure applicable are those specified in Article (157).

Article 19

Other actions under national law

Notwithstanding the provisions of Articles 14 to 16, other actions may be brought by the proprietor of a Community trade mark on the basis of national law relating in particular to tortious liability and unfair competition.

Article 20

Infringement actions in respect of
co-existing trade marks

Deleted. See Article 90 bis.

Article 21

Term of registration

The registration of a Community trade mark shall cease to be valid ten years from the date of filing of the application. It may on request be extended by further periods of ten years provided that the conditions laid down in Articles 103 to 105 are fulfilled.

Article 22

Modification of a Community trade mark

No modification of the Community trade mark shall be allowed during the period of registration or upon extension of such period.

N.B.: This provision does not prejudice the right of a proprietor of a Community trade mark to renounce the right to exclusive use of signs comprised in the trade mark which lack a distinctive character and so restrict the list of a products or services for which the trade mark is registered. This situation needs be covered by an article dealing with rectification of the register.

Article 22 bis

Treatment of Community trade marks
as national trade marks

- (1) Unless otherwise specified in this Regulation, a Community trade mark as an object of property shall be dealt with in its entirety, and for the whole of the territories in which it is effective, as a national trade mark of the Member State in which, according to the register of Community trade marks,
- a) the applicant for the trade mark had his residence or principal place of business on the date on which the application for a Community trade mark was filed, or
 - b) where subparagraph a) does not apply, the applicant had a place of business on that date, or
 - c) where neither subparagraph a) nor subparagraph b) applies, the applicant's representative whose name is entered first in the register of Community trade marks had his place of business on the date of that entry.
- (2) Where subparagraphs a), b) and c) of paragraph 1 do not apply, the Member State referred to in that paragraph 1 shall be the State in which the Office is located.
- (3) If in a Member State as determined by virtue of the preceding paragraphs a right in respect of a national trade mark is effective only after registration of that right in the national register of trade marks, a right in respect of a Community trade mark shall be effective only after entry in the register of Community trade marks.

Article 23

Transfer

- (1) A Community trade mark may, independently of any transfer of all or part of the undertaking, be transferred in respect of all or some of the goods or services in respect of which it is registered, but only for the whole of the territory of the common market.
- (2) A Community trade mark shall be presumed to pass with the undertaking whose goods or services it distinguishes.
- (3) An assignment of a Community trade mark shall be made in writing and shall require the signature of the parties to the contract, except when it is a result of a judgment.
- (4) The Office may refuse to register the assignment of a Community trade mark in the register of Community trade marks if it is clear from the papers referred to in the implementing regulations that the effect of the assignment will be to mislead the public with regard to the nature, quality or other essential characteristics of the goods or services in respect of which the trade mark is registered.
- (5) A transfer shall not affect rights acquired by third parties prior to the date of transfer.
- (6) A transfer shall only have effect vis-à-vis the Office and shall be enforceable against third parties only after entry in the register of Community trade marks and to the extent to which it is verified by the papers referred to in the implementing regulations. Nevertheless, a transfer, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights after the date of the transfer but who knew of the transfer at the date on which such rights were acquired.
- (7) Paragraphs (1) to (6) shall apply to applications for Community trade marks.

Article 23 bis

Enforcement proceedings

The courts and authorities of the Member State determined in accordance with Article 22 bis shall have exclusive jurisdiction in respect of proceedings relating to judgments or other official acts in so far as they are being enforced against Community trade marks.

Article 23 ter

Bankruptcy or like proceedings

Until such time as common rules for the Member States in this field enter into force, the only Member State in which a Community trade mark may be involved in bankruptcy or like proceedings shall be that in which such proceedings are opened first.

Article 24

Licensing

- (1) A Community trade mark may be licensed in respect of all or some of the goods or services for which it is registered.
- (2) Any limitation of a licence other than a limitation on its duration or on a part of the goods or services in respect of which a Community trade mark is registered shall be void for the purposes of application of this Regulation.
- (3) The licensee shall indicate that the goods or services for which the Community trade mark is used are manufactured or supplied under licence.
- (4) The provisions of Article 23, paragraphs (3) to (6) shall apply.

Article 25

Relevant law

Deleted.

Article 63

Filing of applications

An application for a Community trade mark may be filed:

- a) at the Office, or
- b) at the central industrial property office or other competent authority of a Member State. An application filed in this way shall have the same effect as if it had been filed on the same date at the Office.

Article 64

Forwarding of applications

The central industrial property office of a Member State shall be obliged to forward to the Office, in accordance with the conditions laid down in the implementing regulations and within six weeks after filing, any applications for Community trade marks which have been filed with that office or with other competent authorities in that State.

Article 65

Requirements of the Community trade mark application

- (1) An application for a Community trade mark shall contain :
- a) a request for the registration of a Community trade mark;
 - b) a list of the goods or services covered by the Community trade mark;
 - c) an illustration and, if necessary, a description of the Community trade mark.

Applications shall be made in one of the official languages of the Community.

- (2) An application for a Community trade mark shall be subject to the payment of the filing fee, the search fee and the class fee in respect of each class of goods or services for which protection is sought. Such fees shall be paid within one month after the filing of the application.

- (3) Applications for a Community trade marks must satisfy the conditions laid down in the implementing regulations.

Article 65 bis

Date of filing

The date of filing of an application for a Community trade mark shall be the date on which the applicant produces the documents referred to in Article 65, paragraph (1).

Article 66

Requirements of the
Implementing Regulations

Deleted. See Article 65, paragraph (3).

Article 67

Details of earlier trade marks and other
earlier rights shown in the application

Deleted.

Article 68

Right of priority

- (1) A person who has duly filed an application for a trade mark, or his successors in title, shall enjoy, for the purpose of filing an application for a Community trade mark in respect of the same trade mark, a right of priority for a period of six months from the date of filing the first application.
- (2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements shall be recognised as giving rise to a right of priority.
- (3) By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.
- (4) A subsequent application for the same subject matter as a previous first application and filed in or in respect of the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.
- (5) If the first filing is made in a non-member State, paragraphs (1) to (4) shall apply only insofar as that State, according to a notification published by the Administrative Council, grants, on the basis of a first filing made at the Office, and subject to conditions equivalent to those provided for under this Regulation, a right of priority having equivalent effects.

Article 69

Claiming priority

An applicant for a Community trade mark desiring to take advantage of the priority of a previous application shall file a declaration of priority, a copy of the previous application and, if the language of the latter is not one of the official languages of the Community, a translation of it in one of such official languages. The procedure to be followed in carrying out these provisions is laid down in the implementing regulations.

Article 69 bis

Effect of priority right

The right of priority shall have the effect that the date of priority shall count as the date of filing of the application for a Community trade mark.

Article 70

Equivalence of an application for a
Community trade mark with a national filing

An application for a Community trade mark which has been accorded a date of filing shall, in Member States, be equivalent to a regular national filing, where appropriate with the priority claimed for the application of a Community trade mark.

Article 71

Examination of filing

- (1) The Examining Section shall examine whether:
 - a) an application for a Community trade mark satisfies the requirements for according a date of filing;
 - b) the filing fee, the search fee and the class fee have been paid in due time.

- (2) If a date of filing cannot be accorded, the Examining Section shall give the applicant an opportunity to correct the deficiencies in accordance with the implementing regulations. If the deficiencies are not remedied in due time the application shall not be dealt with as an application for a Community trade mark.

- (3) If the fees are not paid in due time the application for a Community trade mark shall be deemed to be withdrawn.

Article 71 bis

Examination as to formal requirements

- (1) If an application for a Community trade mark has been accorded a date of filing, and is not deemed to be withdrawn by virtue of Article 71, paragraph (3), the Examining Section shall verify whether:
 - a) the requirements of Article 154, paragraph (2) have been satisfied;
 - b) the application meets the physical requirements laid down in the implementing regulations for the implementation of this provision;
 - c) the request for the registration of a Community trade mark satisfies the mandatory provisions of the implementing regulations concerning its content and, where appropriate, whether the requirements of this Regulation concerning the claim to priority have been satisfied.
- (2) Where the Examining Section notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them in accordance with the implementing regulations.
- (3) If any deficiencies noted in the examination noted under paragraph 1 a) to c) are not corrected in accordance with the implementing regulations, the application for a Community trade mark shall be refused; where the provisions referred to in paragraph (1) c) concern the right of priority, the right shall be lost for the application.

Article 72

Examination relating to absolute
grounds of refusal

- (1) If a date of filing has been accorded in respect of an application for a Community trade mark, and if the application is not deemed to be withdrawn pursuant to Article 71, paragraph (3), the Examining Section shall ascertain that the trade mark filed is not excluded from registration pursuant to Articles 8 and 11.
- (2) The Examining Section may ask the central industrial property offices of the Member States for their views on whether the trade mark filed is excluded from registration pursuant to Articles 8 and 11.
- (3) The Examining Section shall carry out any other consultations it considers necessary.

Article 72 bis

Disclaimer

If the trade mark applied for comprises several parts, a trade mark may be registered as a Community trade mark provided that the applicant disclaims any right to the exclusive use of those parts which when considered separately are devoid of any distinctive character.

Article 73

Consultation with national industrial
property offices of the Contracting States

Deleted. See Article 72, paragraph (2).

Article 74

Refusal

- (1) If the examination reveals that the application is excluded from registration pursuant to Articles 8 or 11, the Examining Section shall invite the applicant, in accordance with the terms set out in the implementing regulations, to withdraw his application for a Community trade mark or to file his observations within a period to be fixed by the Examining Section.
- (2) If the applicant does not withdraw his application for a Community trade mark within the period fixed or if the Examining Section is of the opinion, despite the fact that the applicant has submitted observations in which a contrary opinion is expressed, that the trade mark applied for is excluded from registration pursuant to Articles 8 or 11, it shall refuse the application.
- (3) If the conditions required for exclusion of a trade mark from registration pursuant to Article 11 are satisfied in respect of only some of the goods or services for which an application for a Community trade mark has been filed, the application shall be refused in respect of those goods or services.

Article 75

Search for earlier trade marks

- (1) If the examination reveals that the application is not excluded from registration pursuant to articles 8 and 11, the Search division shall draw up, in the form laid down by the implementing regulations, a list of the earlier trade marks for the purpose of article 12, paragraph (2) a), b) and d), which are identical or similar to the trade mark which has been filed.
- (2) The Search division shall transmit to the applicant the list of earlier trade marks drawn up under paragraph (1).

Article 76

Amendment of applications for a
Community trade mark

Applications for a Community trade mark may be amended only in order to limit the list of goods or services, or to correct clerical or linguistic errors, errors of transcription or obvious mistakes in the application.

Article 77

Publication of applications for a
Community trade mark

- (1) The Examining Section shall invite the applicant to pay the publication fee with two months.
- (2) If the publication fee is not paid in due time, the application shall be deemed to be withdrawn.
- (3) When the publication fee has been paid, the Examining Section shall decide to publish the application for a Community trade mark. The applicant shall be informed of the decision.
- (4) Publication of applications for a Community trade mark shall contain the trade mark applied for, the date of filing, and, where applicable, the date of priority, the family name and residence or principal establishment of the applicant and, where applicable, of any agent designated by him, the list of goods or services and the number of the application in the Community Trade Mark Bulletin.

Article 78

Advice to proprietors of
earlier trade marks

When the Examining Section has decided to publish the application for a Community trade mark, the proprietors of earlier trade marks, on the list drawn up pursuant to Article 75, shall be notified by the Office of the publication of the application.

Article 79

Opposition based on absolute grounds
of refusal

- (1) The following may oppose the registration of a Community trade mark:
- a) any natural or legal person concerned;
 - b) syndicates, groupings or organizations which represent any producers, manufacturers, traders or consumers and which have their principal establishment in the Community, where the registration of the Community trade mark would directly or indirectly affect the collective interest of their members.
- (2) Opposition shall be filed at the Office within a period of four months from the date of publication of the application for a Community trade mark. Notice of opposition shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid.
- (3) Opposition may only be filed on the grounds that the trade mark is excluded from registration pursuant to Articles 8 or 11.

Article 80

Opposition based on relative
grounds of refusal

- (1) Proprietors of earlier trade marks within the meaning of Article 12, paragraph (1) or of trade marks referred to in Article 12, paragraph (3) may oppose the registration of a Community trade mark.

- (2) Opposition shall be filed at the office within a period of four months from the date of publication of the application for a Community trade mark. Notice of opposition shall be filed on written and reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid.

Article 31

Transfer of proceedings to
the Examining Division

Deleted.

Article 82

Examination of opposition

- (1) If the opposition is admissible, the Examining Division shall ascertain whether the grounds for opposition referred to in Articles 79 and 80 prejudice the registration of the trade mark applied for.

- (2) In the examination of the opposition, which shall be conducted in accordance with the implementing regulations, the Examining Division shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Examining Division, on communications from another party or issued by itself.

M.B.: Notification of the applicant of opposition, provided for in Article 82 of the 1964 pre-draft, will be covered in the implementing regulations.

Article 82 bis

Proof of use of an
earlier trade mark

- (1) If challenged by an applicant or requested by the Examining Division, the proprietor of an earlier Community trade mark who has opposed registration of a trade mark applied for, shall provide evidence that the earlier trade mark had been used by him under the terms of article 14 bis during the five years preceding the date of publication of the application for the Community trade mark, provided that at that date the earlier trade mark has been registered for at least 5 years.
- (2) The opposition shall be rejected if the earlier trade mark has not been used for the goods or services for which it was registered.
- (3) If the earlier trade mark has only been used in respect of part of the goods or services for which it was registered, the examining division shall take into account only that part of the goods or services, in examining whether the trade mark applied for is excluded from registration pursuant to Article 12, paragraph (1).
- (4) Paragraphs (1) to (3) shall apply when the earlier trade mark is a national trade mark.

Article 82 ter

Engagement of Conciliation Procedure

- (1) If the examination of the opposition filed by the proprietor of an earlier trade mark reveals that the trade mark applied for is excluded from registration pursuant to Article 12, paragraph (1), reference may be made to the Conciliation Section at the request of the applicant, the proprietor of an earlier trade mark or, if it considers it useful, by the Examining Division.
- (2) The request shall be presented in writing within a period of one month after the date on which the Examining Division notifies the parties of the result of the examination of the opposition.
- (3) The Chairman of the Conciliation Section shall notify the parties as well as the Examining Division of the request. He shall ask the parties to make their observations within a period/which he shall determine.
- (4) If one of the parties refuses to submit the dispute to conciliation procedure, the Chairman of the Conciliation Section shall draw up a report recording the refusal and inform the parties of it, as well as the Examining Division.

Article 82 quater

Conciliation procedure

- (1) During conciliation procedure, conducted according to the implementing regulations, the Conciliation Section shall, together with the parties, examine all the legal and economic aspects in conflict with a view to finding an agreed solution. The Conciliation Section shall invite the parties, as often as necessary, to file observations within a period to be fixed by it, on communications from another party or issued by itself.
- (2) If the Conciliation Section considers that the use of either the trade mark applied for or of the earlier trade mark may be subjected to conditions which are likely to exclude the possibility of mistake as to the origin of goods or services indicated by such trade marks, it shall submit a proposed agreement on the use of the trade marks to the parties.
- (3) The proposed agreement shall be deemed to be accepted if the parties have not made written objection to the Conciliation Section within a period of three months after the date of notification of the proposal.
- (4) On conclusion of the conciliation procedure, the Chairman of the Conciliation Section shall draw up a report recording the agreement or disagreement between the parties and send it to both the parties and the Examining Division.

Article 83

Rejection of applications for
Community trade marks on
absolute grounds of refusal

- (1) The Examining Division shall reject an application for a Community trade mark if as a result of the examination the trade mark applied for is excluded from registration as a Community trade mark pursuant to articles 8 or 11.
- (2) If the conditions, under which the trade mark applied for is excluded from registration as a Community trade mark pursuant to articles 8 or 11, apply only to a part of the goods or services, the application for a Community trade mark shall be rejected only for that part of the goods or services.
- (3) When the rejection decision is final, the rejection shall be published in the Community trade mark Bulletin.

Article 83 bis

Rejection of applications for
Community trade marks on
relative grounds of refusal

- (1) The Examining Division shall reject an application for a Community trade mark if the result of the examination is that the trade mark applied for is ^{excluded} / from registration pursuant to Article 12 and if, following a reference to the Conciliation Section, the conciliation procedure has failed.
- (2) In any event where the earlier trade mark is a national trade mark acquired after this Regulation has entered into force, the Examining Division shall only reject the application for a Community trade mark if it considers that the use of the trade mark applied for or that of the earlier trade mark can be subjected to conditions likely to exclude the possibility of mistake as to the origin of the goods or services indicated by such trade marks.
- (3) Paragraphs (2) and (3) of Article 83 shall apply.

Article 84

Rejection of the opposition

If the examination reveals ^{that} / the trade mark applied for is not excluded from registration pursuant to articles 8, 11 or 12, the Examining Division shall reject the opposition.

Article 85

Hearings

See Chapter VII, Section 1, General provisions governing procedure.

Article 86

Rejection of the application
for a trade mark or
of the opposition

See the implementing regulations.

Article 87

Decision to register
the trade mark

- (1) The Examining Section, or in the case of the proceedings having been transferred to the Examining Division, the Examining Division, shall take the decision to register the Community trade mark
- a) if there has been no opposition to the application for a Community trade mark within the time limits or,
 - b) if the opposition has been finally rejected or,
 - c) if in the light of the conditions attaching to the use of the Community trade mark, the application for a Community trade mark satisfies the terms of this Regulation,
- and provided that the registration fee has been paid within the time limit prescribed by the implementing regulations.
- (2) In the event that the fee has not been paid within the time limit, the application shall be deemed to be withdrawn.

Article 88

Registration and publication
of the Community trade mark

- 1) The Community trade mark shall be entered in the register of Community trade marks. The entry shall be published in the Community trade mark Bulletin.
- 2) The details to be published shall be determined by the Implementing Regulations.

Article 89

Certificate of the registration
of the European trade mark

See implementing regulations.

Article 90

Commencement of protection

The protection afforded by the Community trade mark shall commence only on the date on which the registration of the Community trade mark has been published in the Community trade mark Bulletin.

Article 90 bis

Prohibition of simultaneous protection

- (1) If the proprietor of a Community trade mark is also the proprietor of a national trade mark which is identical or similar to the Community trade mark, the national trade mark shall be in effective from the date on which protection afforded by the Community trade mark commences, without prejudice to any acquired rights under the national trade mark.
- (2) The subsequent lapse, or revocation of the Community trade mark shall not affect the provisions of paragraph (1).