



Wubbo de Boer
The President of the Office

editorial

A decade ago the single market of the European Union came into force, marking the territorial freedom for the movement of goods, services, capital and persons among the fifteen Member States of the European Union.

Over the past ten years, the political objectives shared by the Member States have continued to deepen and have been further consolidated with the adoption of many important directives and legislative instruments, ensuring that the necessary mechanisms for a fully functioning internal market are realised. Indeed, the ambitious goal set at the Lisbon Council in March 2000 is for the "EU to become the most competitive economy in the world by 2010".

In this context, effective regional legal protection for industrial property rights at the scale of the European Union is undoubtedly recognised as an inherent instrument for industry, enabling companies across the world to optimally invest within the EU's internal market.

On 12 December 2001, the Council Regulation (EC) No 6/2002 on the Community design was adopted, which alongside the Community trade mark, provides right holders with exclusive unitary protection throughout the territory of the European Union.

On 6 March 2002, the unregistered Community design (UCD) became operational meaning that upon 'disclosure' within the European Community, creators will have their designs automatically protected in the EU. Based on successful negotiations during the course of this year, the Implementing Regulation was also adopted, conferring that as of the 1st January 2003, applications for registered Community Designs (RCD) may be filed at OHIM.

Whilst the realisation of these legislative measures were being negotiated, the Office has at the same time been intensifying its preparations to enable the smooth administration and implementation of the RCD by 2003.

Focusing on the CTM system, OHIM has this year further developed a number of services to facilitate the ease with which our clients can gather information and effectuate applications. In this sense a major step forward has been the accomplishment of the e-filing project. Since 12 November clients are able to file their trade mark applications directly via the Internet, thus entailing a more expeditious processing of their trade mark portfolios.

As the internal market celebrates its tenth anniversary, historic passages are being achieved within the EU, notably through the fifth and largest enlargement that Europe has so far undergone. On 1 May 2004, we look forward to expanding our union to that of up to 10 new countries from Central and Eastern Europe. With EU negotiations on Chapter 5 (Company Law) being provisionally closed with all Candidate Countries, an open and active dialogue of co-operation with the offices of the present and future Member States has continued to strengthen. While enlargement has brought many challenges, I am proud to say that our preparations are well on track allowing for the CTM and CD systems to be automatically extended to the new Member States upon their accession to the EU.

In this ultimate edition of OAMI News for 2002, I would especially like to thank the staff of OHIM, who through their dedication and commitment have enabled our Office to accomplish these and many other important achievements.

I wish you all a happy and prosperous New Year.

OAMI

OFICINA DE
ARMONIZACIÓN DEL
MERCADO INTERIOR
(MARCAS, DIBUJOS
Y MODELOS)

HABM

HARMONISIERUNGSAMT
FÜR DEN BINNENMARKT
(MARKEN, MÜNSTER,
UND MODELLE)

OHIM

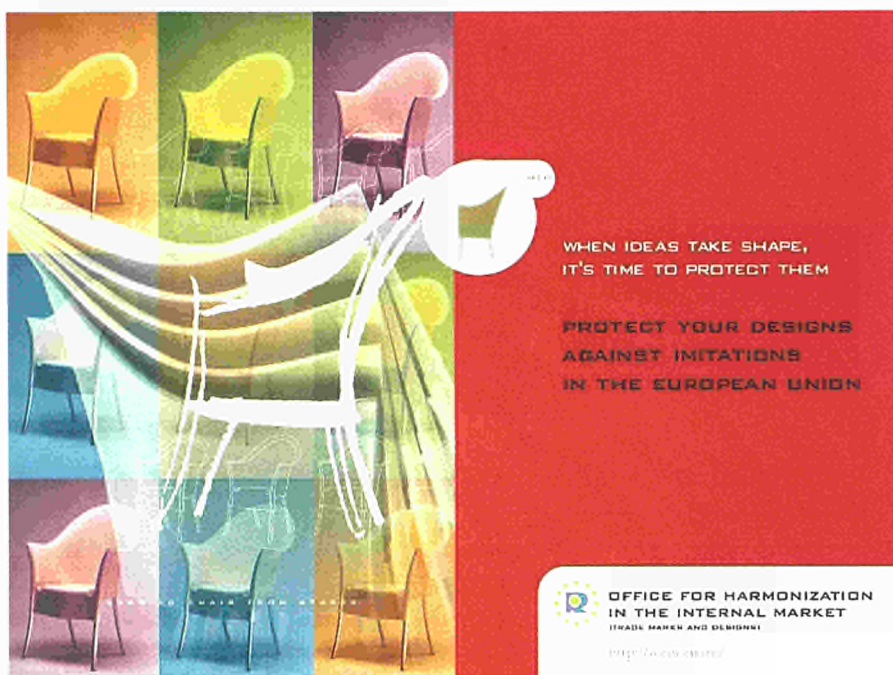
OFFICE FOR
HARMONIZATION
IN THE INTERNAL
MARKET
(TRADE MARKS
AND DESIGNS)

OHMI

OFFICE DE
L'HARMONISATION
DANS LE MARCHÉ
INTÉRIEUR
(MARCQUES, DESSINS
ET MODÈLES)

UAMI

UFFICIO PER
L'ARMONIZZAZIONE
NEL MERCATO INTERNO
(MARCHI, DISEGNI
E MODELLI)



national legislation in general falls short of the needs of industry in at least two respects. First its legal effect is limited to the territory of a single member state (...),secondly it protects only insufficiently the salient features of contemporary industrial design, which is the enhanced functionality of a product by way of its design¹."

What was true ten years ago still remains so. High quality design is an essential instrument for European industries in their competition with others from other countries, especially with those with lower production costs. It is the design which is decisive for the commercial success of products thus allowing enterprises, investing heavily in them to prosper. Design protection had remained national for all practical purposes. The fragmentation of the Community into different national markets is, however, incompatible with the creation of internal market conditions. A community protection system with a single registration valid for the whole area of the Community was therefore needed. But reaching this goal has been a long and difficult process. It was not a simple matter as many essential matters had to be clarified, such as the conditions for protection, its scope and contents, coexistence with national protection systems and coexistence with copyrights.

ADVANTAGES OF THE SYSTEM

The Community design provides a very wide protection to the users since the definition of what can be protected through a "design" covers all the elements which are commonly understood as corresponding to the branding of products. The product itself can incorporate the new design but also parts of it only or the packaging, the get up and other elements. One of the major advantages is of course that the Community design provides uniform protection throughout the European Union. It will

OHIM will receive the first applications for registered Community designs from 1st January 2003 (with the first official registrations taking effect from 1st April 2003). This date was set on 18 November 2002 during the last meeting of the Administrative Board of the Office.

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To try to determine the number of designs that could be applied for, a market study was commissioned. More than 3000 companies and industrial property agents were asked whether they would file Community designs. The results were used all through the preparatory work to establish a Designs Department, to create the new IT tools and to set the fee structure. The survey clearly showed that the RCD demand is linked with the "price" it will cost the potential applicants.

OHIM is expected to receive some 20 000 design applications per year. The potential future demand is huge: 47% of the consulted companies responded that they would use the Community registration system because of the simplification that it allowed, nearly 33% because of the extension of protection offered and only 22,4% for financial reasons.

THE REGULATIONS

(DECEMBER 2001 - OCTOBER 2002)

The Regulation on Community designs was adopted in December 2001. Industrial designs have been protected as unregistered Community designs since this Regulation entered into force on 6 March 2002. To make the registration system a reality, the European Commission had to adopt implementing provisions which it did in October. This text is the legislative tool that will enable the Office for Harmonization in the Internal Market (OHIM) to administer all procedures relating to the registered Community design. The fees to be paid are also known even if formal adoption by the Commission is still pending.

History

The European Institutions have always stressed the importance of a European-wide protection for designs. When making its proposals, the Commission stated that *"in recent years the legal protection of industrial design has become an increasingly important issue. Design products now occupy an important place in the economy. At the national level design protection has existed since the start of industrialisation but*

¹ GREEN PAPER JUNE 1991 Commission of the European Communities

be defended by a unitary right obtained by a single registration through the payment of a single fee. The fees will also be at a reasonable level as protection for a design for five years will cost only 350 Euros. This brand new procedure will provide the efficient tool that the European industry needs: it will offer companies the convenience of EU-wide protection with a single application.

Through this new OHIM registration system, all designers and companies will secure the exclusive right to use their designs for up to 25 years and, hence, to combat imitations.

Furthermore, the filing system is a very flexible one. The applications may contain an unlimited number of different designs provided they fall in the same class of products, allowing the freedom

for users to file as many designs as they wish in one go. Such multiple applications will also allow significant savings as the fees will be reduced. Last but not least designs may be published immediately or kept confidential for a period of up to two and a half years at the discretion of the applicant. Enterprises or designers can thus protect their designs far before they are disclosed and keep an edge on competitors.

STATISTICS (SITUATION UNTIL THE END OF OCTOBER 2002)

COMMUNITY TRADE MARK APPLICATIONS

BREAKDOWN BY COUNTRY

	1996 - 2001	%	2002 (31.10)	%	Total	%
TOTAL WORLD	249.454	100	37.761	100	287.215	100
TOTAL EUROPEAN UNION	154.103	61,78	24.580	65,09	178.683	62,21
BELGIQUE/BELGIË [BE]	3.627	1,45	487	1,29	4.114	1,43
DANMARK [DK]	3.910	1,57	635	1,68	4.545	1,58
DEUTSCHLAND [DE]	41.693	16,71	5.917	15,67	47.610	16,58
ELLAS/GREECE [GR]	646	0,26	158	0,42	804	0,28
ESPAÑA [ES]	15.700	6,29	3.073	8,14	18.773	6,54
FRANCE [FR]	14.919	5,98	2.853	7,56	17.772	6,19
IRELAND [IE]	2.337	0,94	336	0,89	2.673	0,93
ITALIA [IT]	17.705	7,10	3.134	8,30	20.839	7,26
LUXEMBOURG [LU]	1.208	0,48	192	0,51	1.400	0,49
NEDERLAND [NL]	6.528	2,62	853	2,26	7.381	2,57
ÖSTERREICH [AT]	3.682	1,48	633	1,68	4.315	1,50
PORTUGAL [PT]	1.522	0,61	303	0,80	1.825	0,64
SUOMI/FINLAND [FI]	2.354	0,94	384	1,02	2.738	0,95
SVERIGE [SE]	5.549	2,22	638	1,69	6.184	2,15
UNITED KINGDOM [GB]	32.723	13,12	4.984	13,20	37.707	13,13
TOTAL OUTSIDE EUROPEAN UNION	95.351	38,22	13.181	34,91	108.532	37,79
Amongst which						
UNITED STATES OF AMERICA [US]	64.978	26,05	8.112	21,48	73.090	25,45
JAPAN [JP]	7.391	2,96	880	2,33	8.271	2,88
SWITZERLAND [CH]	4.862	1,95	850	2,25	5.712	1,99
CANADA [CA]	3.263	1,31	549	1,45	3.812	1,33
AUSTRALIA [AU]	2.270	0,91	327	0,87	2.597	0,90
TAIWAN [TW]	1.602	0,64	337	0,89	1.939	0,68

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OTHER STATISTICS RELATING TO COMMUNITY TRADE MARKS

	1996 - 2001	2002 (31.10)	Total
Filing dates accorded	237.937	37.127	275.064
Number classifications checked		34.768	34.768
Applications published	190.742	32.196	222.938
Oppositions received	47.025	8.699	55.724
Contested applications	35.096	6.210	41.306
Appeals received	3.414	908	4.322
Registered Trade Marks	132.218	31.157	163.375
Published Registered Trade Marks	129.502	30.737	160.239
Requests for cancellation	361	126	487

OTHER OHIM FIGURES

	ON 31-10-02
Number of professional representatives	6506
Number of current accounts	938
OHIM Personnel	634

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The OHIM have launched an online Community Trade Mark service, known E-FILING which is available from our website. This marks an important step forward for the OHIM towards providing our clients with a greater and more transparent service. OHIM currently maintains a list of clients that have used our new service on the web site also.

E-FILING will make it possible to file an applications via the Internet in two different ways: Either via our business-to-business solution by submitting a prepared electronic document (XML format) automatically generated from the clients internal system, or by filing an electronic application form available on the OHIM's website OAMI-ONLINE.

The business-to-business solution or batch transfer is prepared for our larger clients. They will be able to take advantage of electronic submission by preparing their own systems to automatically send applications and received the corresponding confirmations (i.e. CTM Application

number receipt and possibly Filing date) – saving both time and material costs.

The electronic form will be made freely available from a secure OAMI web site, to a client in order to easily submit their Trade Mark applications, including attachments such as Trade Mark representations and associated documentation.

- The presentation of the electronic form has been made as simple as possible – but resemble the paper form. The user will be required to fill in the defined mandatory fields (mandatory with respect to acquiring a filing date). The client will be given the ability to validate the form to be submitted before submission.

- The client will be provided with a context sensitive help, which will also include a clear indication of which fields are mandatory for complying with a filing date and registration date.

- The client will be given the opportunity to attach supplemental documentation with the electronic application such as General Authorization and/or representation of the mark. The document formats to be used are included PDF and JPEG.

- The client will have the ability to save a partially and/or fully completed application form to a local PC or network.

- On successful submission, the user will be notified (via the WWW) of the total fee charged for the application, along with a reference number to be used in all further communications concerning the application.

- The client will be notified of the application filing using the standard OAMI procedures

For those concerned about security, E-FILING will be provided on the Internet using a secure web site that we will provide privacy of communication, which in essence means that all communication between the client and the office is fully encrypted. With this approach we

will provide our clients with confidentiality of submission (i.e. non-authorized users cannot view application data) and data integrity (i.e. non-authorized users cannot change application data).

We can conclude that such a service will strengthen the OHIM's image as a modern, transparent and state-of-the-art institution, that reaches out to our dedicated clients.

USEFUL NUMBERS

Switchboard telephone number:

+ 34-965 139 100

General inquiries telephone number:

+ 34-965 139 243 and + 34-965 139 272

General inquiries fax number:

+ 34-965 139 173

The Office's Internet site: oami.eu.int

Requests for literature (leaflets, standard forms, official texts, places where to buy Office publications, etc.), questions concerning the filing of applications, questions concerning procedure (fees, priority, seniority, etc.).

Fax number for the filing of any correspondence relating to community trade marks, (applications, letters to examiners, oppositions, cancellations, appeals, Register matters, etc.):

+ 34 -965 131 344

CTM applicants and proprietors and their representatives are strongly urged to use exclusively the above fax number where faxes arrive at an automatic fax server which does not involve any printing and physical handling of documents, for all communications relating to proceedings before the Office. This will facilitate and accelerate the handling of incoming faxes, whereas the sending of such communications to other fax numbers in the Office will require additional operations and creates substantial administrative burdens.

Telephone number for obtaining information concerning means of payment:

+ 34-965 139 340

Opening of current accounts, bank transfers, payments by cheques, etc.

Telephone number for obtaining information about professional representatives:

+ 34-965 139 117

List of professional representatives, new entries, allocation of ID numbers, authorisations, etc.

Obtaining information in relation to copies from the file and extracts from the register:

+ 34-965 139 633

Obtaining information in relation to transfers, licences, conversions:

+ 34-965 139 175

Telephone number for obtaining information concerning subscriptions to our publications:

+ 34-965 139 102

OHIM's Official Journal, the Bulletin of CTMS (paper and CD-ROM), EUROM, etc