

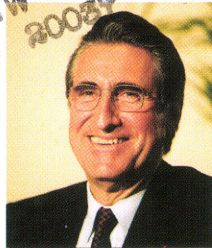


OAMI

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Ernest Antoine Seilliere
Président du Medef (Mouvement des entreprises de France)

editorial

2001
FEB 21 2002

La promotion et la défense de la propriété intellectuelle font partie depuis longtemps, des actions du Mouvement des Entreprises de France. Obtenir, aux meilleures conditions, des titres forts et unifiés sur tout le territoire communautaire voire européen, figure également au nombre de nos objectifs prioritaires.

C'est pourquoi, avec l'ensemble des entreprises françaises, je ne peux qu'approuver la création d'une marque communautaire et encourager les plus hautes instances de l'Union Européenne et les Etats membres, à poursuivre dans cette voie. Le remarquable succès de l'Office d'Harmonisation est un exemple à suivre et doit inciter à la création d'autres titres unitaires, que se soit en matière de brevets ou de dessins et modèles.

La France n'occupe peut-être pas encore la place qui devrait être la sienne, parmi les déposants de marques communautaires. Cependant les derniers chiffres publiés, font apparaître une augmentation de près d'un point de la part française parmi les déposants ressortissants des Etats membres de l'Union Européenne (10,18% en 2001, contre 9,51% pour la période 1996-2000). Ce sursaut me laisse espérer que notre pays retrouvera bientôt, parmi ces déposants, la troisième place plus conforme au potentiel d'utilisation des marques par les entreprises françaises.

Mon optimisme ne m'empêche cependant pas de rester un observateur attentif de la construction européenne et de regretter certaines revendications na-

tionales qui pourraient venir entraver sérieusement l'achèvement du marché intérieur. Parmi ces avatars, les querelles linguistiques me semblent particulièrement inquiétantes. Elles sont facteur de renchérissement du fonctionnement de toutes les instances et organismes communautaires, dont les principales victimes seront les entreprises, les citoyens et le développement régional lui-même.

Sur le problème épineux des traductions, le Mouvement des Entreprises de France s'est beaucoup impliqué pour que l'intérêt collectif des déposants de brevets soit pleinement pris en considération à l'occasion de la révision de la Convention de Munich. Les entreprises sont très attachées aux bénéfices de l'accord de Londres sur le brevet européen concernant la simplification des traductions. Il permet une baisse sensible des coûts de délivrance du brevet, condition déterminante pour faciliter son accès aux PME. Le MEDEF apprécie que cet accord ait déjà été signé par dix Etats européens dont la France. Il reste mobilisé pour que le même souci de performance économique s'applique à la marque et aux autres titres communautaires en matière de propriété industrielle.

En ce qui concerne la récente mission d'Evaluation de l'Office, je regrette que l'avis des utilisateurs de la marque communautaire, en majorité les entreprises, n'ait pas été mieux sollicité car elles ont des remarques à faire et des souhaits à exprimer, parmi lesquels l'abandon du système des recherches d'antériorités nationales serait tout à fait souhaitable. Cette solution permettrait de réduire sensiblement la du-

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)

rée de la procédure d'enregistrement et probablement de diminuer les coûts d'obtention des marques communautaires.

Le MEDEF suit également avec beaucoup d'intérêt, l'évolution du Protocole de Madrid. Il se réjouit de constater que les Etats-Unis pourraient devenir, assez rapidement, le 53^{ème} Etat membre de cette convention. C'est pourquoi nous appelons l'Office d'Harmonisation à

jouer de toute son influence afin que l'Union Européenne adhère, elle aussi, à cet important accord et que cette adhésion tienne compte des attentes de simplification de procédure exprimées par les entreprises titulaires de marques communautaires et comprenne par conséquent la clause dite de l'*opting back*.

En dépit de ces quelques réserves, je demeure convaincu que l'Office d'Harmonisation est un remarquable exemple à

suivre, d'autant plus qu'il ne coûte rien au contribuable européen. C'est pourquoi je tiens à féliciter tous ceux qui, autour de ses deux Présidents successifs, Jean-Claude COMBALDIEU et Wubbo de BOER, ont contribué à sa réussite. Il reste à souhaiter que les excédants financiers résultant de son succès, soient réservés exclusivement aux utilisateurs du système et à la promotion de la marque communautaire particulièrement auprès des petites et moyennes entreprises.

■ LEGALISATION OF CERTIFIED COPIES FROM THE REGISTER OF COMMUNITY TRADE MARKS

Pursuant to Rules 84 (6) and 89 (5) of the Implementing Regulation, the Office issues certified copies of Community trade mark applications or of documents contained in the files kept by the Office, as well as certified extracts from the Register of Community Trade Marks. These tasks are carried out by the Register Service which is part of the Legal Department.

Certain third countries require the authentication or legalisation of such certified copies in order to accept them as a basis for a priority claim before their respective national Offices or as a basis for any other claim before their authorities.

For this purpose - and as previously explained in OAMI News nr. 2/2001 - the European Commission adopted, on 19 September 2000, a procedure according to which the Head of the Permanent Representation of the European Commission in Spain has been authorized to

authenticate documents issued by the Office. The procedure is the following: Where a country requires the legalisation of a priority certificate or of any other document, the CTM applicant must first forward the priority document to the Permanent Representation of the European Commission in Spain and request that the Head of the Permanent Representation certifies the authenticity of the signature appearing on the document. The document must thereafter be presented to the competent embassy or consulate in Spain of the respective third country for the purposes of its legalisation.

Requests for the authentication of documents issued by the Office should be directed directly to the Permanent Representation of the European Commission in Spain, at the following address:

Comisión Europea
Representación en España

Paseo de la Castellana, 46
E - 28046 Madrid

The signature of the Head of the Permanent Representation has now been deposited with the embassies of 99 countries in Spain. The full list of these embassies can be accessed on the Office's internet site (WWW.oami.eu.int).

The problems that have arisen in respect of a small number of countries should therefore have ceased to exist.

The national offices of the great majority of countries do not require legalisation of priority documents anyhow.

Finally, the Office wishes to underline that neither the Office nor the Commission is responsible for the practice applied, or the decisions taken, by authorities of third countries in respect of the legalisation of documents emanating from the Office.

②

PROTECTION OF DESIGNS THROUGHOUT THE EUROPEAN UNION BECOMES A REALITY

On 12 December 2001, the Regulation on the Community design was adopted by the Council of the European Union.

This adoption constitutes a major leap forward in the putting into place of a legal regime which will protect in a uniform manner industrial creations

in the European Union. The design is defined to be the appearance of a product or of some of its parts. The features that constitute the design are the lines, contour, colour, shape, texture, material or ornamentation.

This Regulation is a long awaited legal instrument which is necessary for the

protection of the creations and investments of many industrial sectors of the Union. Industrial designs have become increasingly important recently and their protection is vital for many sectors of the economy such as clothing, textiles, shoes, cars, jewellery, furnishing, tableware, ceramics and many others.

STATISTICS (SITUATION AT THE BEGINNING OF OCTOBER 2001)

COMMUNITY TRADE MARK APPLICATIONS

BREAKDOWN BY COUNTRY

	1996 - 2000	%	2001 (30.11.01)	%	Total	%
TOTAL WORLD	200.598	100	45.609	100	246.207	100
	1996 - 2000	%	2001 (30.11.01)	%	Total	%
TOTAL EUROPEAN UNION	123.589	61,61	28.385	62,24	151.974	61,73
BELGIQUE/BELGIË [BE]	2.940	1,47	633	1,39	3.573	1,45
DANMARK [DK]	3.143	1,57	694	1,52	3.837	1,56
DEUTSCHLAND [DE]	33.408	16,65	7.672	16,82	41.080	16,69
ELLAS/GREECE [GR]	498	0,25	143	0,31	641	0,26
ESPAÑA [ES]	12.274	6,12	3.204	7,02	15.478	6,29
FRANCE [FR]	11.748	5,86	2.930	6,42	14.678	5,96
IRELAND [IE]	1.853	0,92	456	1,00	2.309	0,94
ITALIA [IT]	14.135	7,05	3.312	7,26	17.447	7,09
LUXEMBOURG [LU]	929	0,46	272	0,60	1.201	0,49
NEDERLAND [NL]	5.422	2,70	1.033	2,26	6.455	2,62
ÖSTERREICH [AT]	2.971	1,48	667	1,46	3.638	1,48
PORTUGAL [PT]	1.225	0,61	282	0,62	1.507	0,61
SUOMI/FINLAND [FI]	1.871	0,93	453	0,99	2.324	0,94
SVERIGE [SE]	4.590	2,29	882	1,93	5.472	2,22
UNITED KINGDOM [GB]	26.582	13,25	5.752	12,61	32.334	13,13
	1996 - 2000	%	2001 (30.11.01)	%	Total	%
TOTAL OUTSIDE EUROPEAN UNION	77.009	38,39	17.224	37,76	94.233	38,27
Amongst which						
UNITED STATES OF AMERICA [US]	53.796	26,82	10.475	22,97	64.271	26,10
JAPAN [JP]	5.058	2,52	2.242	4,92	7.300	2,96
SWITZERLAND [CH]	3.843	1,92	956	2,10	4.799	1,95
CANADA [CA]	2.558	1,28	645	1,41	3.203	1,30
AUSTRALIA [AU]	1.866	0,93	378	0,83	2.244	0,91
TAIWAN [TW]	1.263	0,63	321	0,70	1.584	0,64

OTHER STATISTICS RELATING TO COMMUNITY TRADE MARKS

	1996 - 2000	2001 (30.11.01)	Total
Filing dates accorded	189.530	44.778	234.308
Number classifications checked	175.311	46.818	222.129
Applications published	140.107	46.132	186.239
Oppositions received	34.136	11.704	45.840
Contested applications	25.355	8.823	34.178
Appeals received	2.368	1.011	3.379
Registered Trade Marks	93.714	35.807	129.521
Published Registered Trade Marks	89.987	36.094	126.081
Requests for cancellation	193	150	343

OTHER OHIM FIGURES

	ON 15-10-01
Number of professional representatives	6249
Number of current accounts in use on the 31 st of March:	902
OHIM Personnel	688

LEGAL QUESTION

“Is the obligation to choose as a ‘second language’ one of the five languages of the Office in the application for registration, compatible with the principle of non-discrimination?”

(judgment of 12th July 2001 in Case T-120/99, *Christina Kik v OHIM*)¹.

According to Article 115, paragraph 1, CTMR, the application for a Community trade mark is filed in one of the official languages of the European Community. However, pursuant to Article 115, paragraph 2, CTMR, the applicant must also indicate a second language, the use of which he accepts as a possible language of proceedings for opposition, revocation or invalidity proceedings. This second language must be one of the languages of the Office (English, French, German, Italian or Spanish).

In its judgment of 12th July 2001 (*Case T-120/99, Christina Kik v OHIM*) the Court of First Instance (CFI) held that Article 115 CTMR did not infringe the principle of non-discrimination for the following reasons.

④

Firstly, Article 115 CTMR may derogate from Article 1 Council Regulation No 1 of 15th April 1958 determining the languages to be used by the European Union. According to this Article, lastly amended on the accession of Austria, Finland and Sweden to the European Union, the official languages and the working languages of the institutions of the Union shall be Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish. According to the CFI, Regulation No 1 is merely an act of secondary law, whose legal base is Article 217 of the Treaty. It does not set out a specific Community law principle of equality between languages, which may not be derogated even by a subsequent regulation of the Council. The Member States did not lay down rules governing languages in the Treaty for the institutions and bodies of the Community. Rather, Article 217 of the Treaty enables the Council, acting unanimously, to define and amend the rules governing the

languages of the institutions and to establish different language rules. That Article does not provide that once the Council has established such rules that they can subsequently be altered.

Secondly, the CTMR, in itself, cannot be taken in any sense as implying different treatment as regards language. Under Article 115(4) CTMR, as long as the applicant is the sole party to proceedings before the Office, the language used for filing the application for registration remains the language of proceedings. Consequently, the CTMR in fact guarantees use of the language of the application filed as the language of proceedings. According to the CFI, this is also the language in which procedural documents of a decisional character must be drafted. Furthermore, Article 115(3) CTMR accords the applicant for registration of a trade mark, an opportunity to choose, from amongst the most widely known languages in the European Community, the language that is to be used for opposition, revocation or invalidity proceedings in the event that the first language chosen by the applicant is not that requested by another party to the proceedings. By limiting that choice to the languages which are the most widely known in the European Community, this avoided the possibility of the language of proceedings being particularly remote in relation to the linguistic knowledge of the other party to the proceedings, the Council thus remained within the limits of what is necessary for achieving the aim in view.

The Court concluded that, in pursuing the objective of determining the language of the proceedings, where parties who do not share the same language preference fail to agree, the Council must be considered to have made, in Article 115 CTMR, an appropriate and proportionate choice, even if the official languages of the Community were treated differently.

¹ The judgment of the Court of First Instance has been appealed before the Court of Justice (Case C-361/01P).

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