

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(85) 844 final

Brussels, 23 January 1986

PROPOSAL FOR A COUNCIL REGULATION IMPLEMENTING
REGULATION (EEC) N° OF
ON THE COMMUNITY TRADE MARK

(submitted to the Council by the Commission)

COM(85) 844 final

EXPLANATORY MEMORANDUM

I. Introduction

The purpose of this proposal for a Regulation is, pursuant to Article 125 of the proposal for a Regulation on the Community trade mark, to adopt the rules implementing that Regulation. The rules in question are in particular the formalities for applying for a Community trade mark, the calculation and laying down of the time-limits to be observed in dealings with the Community Trade Marks Office, the items to be published in the Community Trade Marks Bulletin and the rules governing the opposition, appeals, revocation and invalidity procedure.

II. Main contents

1. Nice classification

So as to simplify applications for and processing of registered Community trade marks, provision has been made in Article 3(4) for the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks to apply. The Agreement is at present applied in nine of the ten Member States.

2. Streamlining procedures

The aim of the implementing Regulation is to ensure that the procedure is as rapid as possible. Decisions on applications, oppositions and other references to the Office are to be taken as rapidly as possible. Accordingly, Article 42 provides that the Office may transmit its communications to persons concerned using any type of modern information transmission equipment (third and fourth sentences of Article 42). Notifications may also be made by such means (Article 49(2) (c)). However, applicants may also make use of modern information transmission equipment (Article 64 (2) to (4)). This applies at present to the use of telex and telecopiers in particular. Flexible arrangements for extending the rule to future equipment for information transmission will be covered by administrative instructions to be adopted by the President.

3. Filing of pictorial trade marks

When an applicant applies for protection of pictorial trade marks, his advertising department or agency does not as a rule provide him with pictorial reproductions of a size that can be entered in the Register and published in the Community Trade Marks Bulletin. In such cases, Article 4(2) allows the applicant to file the image in a different size. The Office will arrange for any appropriate reduction or enlargement of the image. In the case of other application formalities too, care has been taken to ensure that applicants are not required to provide any information that is not strictly necessary.

4. Blanket authorizations

The filing of the application (and of any further references to the Office) has also been simplified in Article 62(2) by allowing blanket authorizations in the case of representatives. However, the Office is required at each stage of the proceedings to check that the blanket authorization is still valid.

5. System of fees

The fees system has been simplified. The publication fee both for publication of the application (Article 5) and for publication of the registration (Article 17) has been dropped, and a class fee is charged only for each class exceeding three. This means that, in the case of about 95% of all applications, the amount can be calculated in advance without difficulty and will virtually obviate the need for demands for payment or other correspondence. The only type of fees which still involve a somewhat greater degree of complication is renewal fees (Article 20). However, renewal does not involve the same need to ensure that proceedings are as rapid as possible. Moreover, if the Office has the data on a registered mark in machine readable form, the computer print-out can give an exact indication of the amount payable when information is provided to the proprietor pursuant to Article 37(1a) of the proposal for a Regulation on the Community trade mark.

6. Opportunity of presenting observations

Particular attention has been paid to the principle that parties should have the opportunity of presenting their observations (Article 56 of the Proposal for a Regulation on the Community trade mark). In cases where a decision against the applicant is being considered, the prior notification on the irregularities and the time-limits involved has been standardized with respect to the following individual stages of proceedings : formal irregularities in the application (Article 6), substantive grounds for refusal (Article 9), formal irregularities in an opposition (Article 13), effective opposition (Article 14(1)), incomplete application for renewal (Article 20(4)), incomplete application for transfer (Article 21(5)), failure to fulfil all the conditions for registration of a licence (Article 22(2)), failure to fulfil all the conditions for cancellation (Article 23(3)), failure to fulfil all the conditions for registration of a change of name (Article 25(3)), failure to fulfil all the conditions for alteration of a trade mark (Article 26(4)), application for revocation or for a declaration of invalidity (Article 29), contention by the Office of its own motion (Article 30(1)), irregularities in opposition to Community guarantee marks on absolute grounds for refusal (Article 35(4)), before rejection of an appeal as inadmissible (Article 37) and finding of loss of rights (Article 43).

7. Particulars to be published

Article 67 together with Article 19 and Article 17(3) provide for a comprehensive system under which all the application and registration particulars that are legally relevant are to be published. Publication of subsequent amendments is governed in particular by Article 67(1)(c) in conjunction with Article 66 (2).

8. Alteration of a registered trade mark

Since alteration of a registered trade mark pursuant to Article 15(2) of the proposal for a Regulation on the Community trade mark may injure the earlier rights of third parties, Article 26(5) provides that the provisions governing opposition procedure shall apply.

9. Administrative instructions adopted by the President

So as to ensure that proceedings can be handled as flexibly as possible, it was necessary to allow the President to lay down rules on detailed aspects by adopting administrative instructions pursuant to Article 104(2)(a) of the proposal for a Regulation on the Community trade mark, in the following cases in particular :

- drawing up of the list of banks authorized for depositing the security (second sentence of Article 16(1));
- contents of the notification of expiry of a registration (second sentence of Article 19);
- details relating to the costs of taking evidence (Article 47(4));
- notification by modern information transmission equipment (Article 52);
- determination of the manner of public notification (Article 54(2));
- derogations from the signature requirement where modern information transmission equipment is used (Article 64(4));
- making other forms available (Article 65(2));
- additional entries in the Register (Article 66(3));
- publication of additional particulars in the Community Trade Marks Bulletin (Article 67(2));
- decisions on responsibility for the inspection of files (Article 68).

10. Languages

Articles 77 to 83 provide for derogations from the principle of a single language for procedural purposes, in accordance with the second sentence of Article 103 of the amended proposal for a Regulation on the Community trade mark. In drafting these articles, the Commission's intention was to ensure that the opportunity afforded to parties to conduct proceedings before the Office in their own language should not result in abandoning the principle that proceedings before the Office should be conducted in a single language, the aim of such a principle being to keep down the costs and ensure the rapidity of the Community trade mark system.

It was therefore necessary to avoid giving the Office the task of carrying out the translations itself. Although persons participating in proceedings before the Office may use their own language (which must be an official Community language) in written and oral proceedings, they must themselves arrange for translation into the language for procedural purposes.

In practice, this rule will not impose any unreasonable requirements. In the first place, forms issued by the Office in all the Community's official languages may to a large extent be used in the procedure for registering a trade mark. In addition, applicants will in most cases be represented by patent and trade mark lawyers with a knowledge of the Office's language for procedural purposes.

The proposed solution thus represents a reasonable compromise between the principle of a single language for procedural purposes and the need for parties in some instances to be able to use their own language.

CONTENTS

TITLE I - APPLICATION PROCEDURE

Article 1	Filing of the application
Article 2	Applicant and priority
Article 3	List of goods or services
Article 4	Reproduction of the mark
Article 5	Fees for the application
Article 6	Examination of whether the application is in proper form
Article 7	Claiming priority
Article 8	Reliance on the date of acquisition of the same national trade mark
Article 9	Examination as to absolute grounds for refusal
Article 10	Publication of the application

TITLE II - OBSERVATIONS BY THIRD PARTIES, OPPOSITION AND PROOF OF USE

Article 11	Observations by third parties
Article 12	Opposition
Article 13	Refusal to accept an opposition
Article 14	Examination of opposition
Article 15	Proof of use
Article 16	Security for the costs of opposition proceedings

TITLE III - REGISTRATION PROCEDURE

Article 17	Registration of the trade mark
Article 18	Certificate of registration

TITLE IV - RENEWAL

Article 19	Notification of expiry
Article 20	Renewal of registration

TITLE V - TRANSFER, LICENCES AND OTHER RIGHTS, CHANGES

- Article 21 Transfer
Article 22 Registration of licences and other rights
Article 23 Cancellation of the registration of licences and
 other rights
Article 24 Insolvency proceedings
Article 25 Change of name or address of the proprietor of
 the Community trade mark or of his registered
 representative
Article 26 Alteration of the trade mark

TITLE VI - SURRENDER

- Article 27 Surrender

TITLE VII - REVOCATION AND INVALIDITY

- Article 28 Application for revocation or for a declaration
 of invalidity
Article 29 Examination of the application for revocation or
 for a declaration of invalidity
Article 30 Contention by the Office of its own motion that
 a Community trade mark is invalid
Article 31 Joint processing of applications for revocation
 or for a declaration of invalidity

TITLE VIII - COMMUNITY GUARANTEE MARKS AND COMMUNITY COLLECTIVE MARKS

- Article 32 Application of provisions
Article 33 Regulations governing Community guarantee marks
 and Community collective marks
Article 34 Date of filing for Community guarantee marks and
 Community collective marks
Article 35 Opposition to Community guarantee marks on
 absolute grounds for refusal

TITLE IX - APPEALS

- Article 36 Content of the notice of appeal
Article 37 Rejection of the appeal as inadmissible
Article 38 Examination of appeals
Article 39 Reimbursement of appeal fees

TITLE X - GENERAL PROVISIONS

Part A Decisions and communications of the Office

Article 40	Form of decisions
Article 41	Correction of errors in decisions
Article 42	Form of communications from the Office
Article 43	Finding of loss of rights

Part B Oral proceedings and taking of evidence

Article 44	Summons to oral proceedings
Article 45	Taking of evidence by the Office
Article 46	Commissioning of experts
Article 47	Costs of taking evidence
Article 48	Minutes of oral proceedings and of taking of evidence

Part C Notifications

Article 49	General provisions on notification
Article 50	Notification by post
Article 51	Notification by hand
Article 52	Notification by modern information transmission equipment
Article 53	Notification by deposit in a post-office box
Article 54	Public notification
Article 55	Notification to representatives
Article 56	Notification in the case of several applicants
Article 57	Irregularities in the notification

Part D Time-limits

Article 58	Calculation of time-limits
Article 59	Duration of time-limits
Article 60	Expiry of time-limit in special cases

Part E Waiving of enforced recovery procedures

Article 61	Waiving of enforced recovery procedures
------------	---

Part F Representation

- Article 62 Authorizations
- Article 63 Amendment of the list of professional representatives

Part G Written communications

- Article 64 Written communications
- Article 65 Forms

Part H Information for the public

- Article 66 Register of Community Trade Marks
- Article 67 Community Trade Marks Bulletin
- Article 68 Responsibility for carrying out procedures for the inspection of files
- Article 69 Parts of the file not for inspection
- Article 70 Procedures for the inspection of files
- Article 71 Communication of information contained in files
- Article 72 Preservation of files

Part I Administrative and legal cooperation

- Article 73 Exchange of information and communications between the Office and the authorities of the Member States
- Article 74 Inspection of files by or via courts or authorities of the Member States
- Article 75 Procedure for letters rogatory

Part J Costs

- Article 76 Apportionment and fixing of costs

Part K Languages

- Article 77 Publications, registrations and communications from the Office
- Article 78 Forms
- Article 79 Derogations in written proceedings
- Article 80 Derogations in oral proceedings
- Article 81 Inspection of files
- Article 82 Certification of translations
- Article 83 Legal authenticity of translations
- Article 84 Language of the Advisory Committee

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Article 125 of Council Regulation (EEC) No. of on
the Community trade mark,

Having regard to the proposal from the Commission,

Whereas :

The Regulation on the Community trade mark 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 Community Trade Marks Office. For this purpose, the above mentioned Regulation contains in particular the necessary provisions for a procedure leading to the registration of a Community trade mark, for appeals against decisions of the Trade Marks Office and for proceedings in relation to revocation or invalidity of a Community trade mark.

It is provided in Article 125 of the Regulation on the Community trade mark that the rules implementing the Regulation shall be adopted in an implementing Regulation to be adopted by the Council.

This Regulation therefore lays down the provisions necessary for implementing the provisions of the Regulation on the Community trade mark.

HAS ADOPTED THIS REGULATION :

TITLE I - APPLICATION PROCEDURE

Article 1

Filing of the application

- (1) Applications for a Community trade mark shall be made in writing.
- (2) The Office shall mark on the documents comprised in the application the date of receipt and the file number of the application. It shall forthwith issue to the applicant a receipt indicating inter alia the file number, the number of documents and the date of receipt thereof.

Article 2

Applicant and priority

- (1) The application shall contain:
- (a) a request for registration of the trade mark;
 - (b) the applicant's name and address, and the address at which he habitually resides or at which his industrial or commercial place of business is located, if different from the address stated.

Names of natural persons shall be indicated by the person's family name and forename(s).

Names of legal persons, including those of companies and associations which under the law that governs them are regarded as legal persons, shall be indicated by their full official designations.

Addresses shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address. They shall comprise all the relevant administrative information, including the name of the country. It is recommended that the telegraphic and telex address and the telephone number be indicated. Only one address shall 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) where the applicant has appointed a representative, the name of the representative and the address of his place of business or place of work; the detailed rules in subparagraph (b) shall apply;

- (d) where applicable, a declaration claiming the priority of any earlier application(s) and indicating the date on which, and the country in or for which, the earlier application(s) was (were) filed.

 - (e) where it is claimed pursuant to Article 81(2) of the Regulation that the rights in the Community trade mark are effective from the date of acquisition of an identical or similar earlier national trade mark, a declaration to that effect, indicating the date on which such trade mark was acquired and the country in or for which it exists or continues to be registered. The same shall apply mutatis mutandis where the rights are claimed to be effective from the dates of acquisition of several earlier national trade marks;

 - (f) where appropriate, an indication that the application is for registration of a Community guarantee mark pursuant to Article 86 of the Regulation or of a Community collective mark pursuant to Article 87 of the Regulation;

 - (g) the signature of the applicant or of his representative.
- (2) Where two or more persons who do not have the same representatives apply, or where two or more representatives with different business addresses are appointed, the person or the representative to whom documents are to be sent shall be indicated.

Article 3

List of goods or services

- (1) The application shall specify the goods and/or services for which the trade mark is to be registered.
- (2) The particulars concerning the goods and/or services shall be worded in such a way as to indicate clearly the nature of the goods and/or services and to allow them to be classified in only one class of the classification.
- (3) The particulars concerning the goods and/or services shall be listed in the order, and in accordance with the model stipulated, in the system of classification.
- (4) The Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks shall apply.

Article 4

Reproduction of the mark

- (1) If the applicant does not wish to claim any special graphic feature, the mark may 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 A 4 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 x 17 cm. A margin of at least 2.5 cm shall be left on the lefthand 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 Marks Bulletin. The separate sheet shall also indicate the name and address of the applicant. Ten copies of the special sheet carrying the reproduction shall be filed.

- (3) In cases to which paragraph 2 applies, the application shall contain an indication to that effect.

- (4) Where registration in colour is applied for, the application shall contain an indication to that effect; the reproduction under paragraph 2 shall be in colour and shall be submitted in 20 copies.
- (5) Where the shape of the mark (Article 3 of the Regulation) is not two-dimensional, the application shall contain an indication to that effect.

Article 5

Fees for the application

- (1) The fees payable for the application shall be:
 - (a) an application fee and
 - (b) a class fee for each class exceeding three to which the goods or services belong according to Article 3.

- (2) The minimum amount of fees pursuant to Article 24(2) of the Regulation shall consist of the application fee.

Article 6

Examination of whether the application is in proper form

(1) Where

- (a) particulars allowing the identity of the applicant to be established;
- (b) a list of the goods or services; or
- (c) a reproduction of the mark

have not been supplied, the Office shall notify the applicant that a date of filing cannot be accorded in view of these irregularities. If the irregularities are corrected within two months after service of the notification, the date on which all the irregularities are corrected shall determine the date of filing. If the irregularities are not corrected before the time-limit expires, the Office shall reject the application as unacceptable.

- (2) Where one or more of the documents referred to in paragraph 1 are incomplete or the additional requirements of Articles 2 to 4 or the other requirements governing applications and laid down in the Regulation or in this Regulation not complied with, or where the amounts of fees specified in Article 5 in conjunction with the fees regulations have not been received by the Office, the Office shall accord a date of filing and shall invite the applicant to correct the irregularities noted within such period as it may specify. If, before the time-limit expires, the irregularities are not corrected or the fee requested is not paid, the Office shall reject the application as unacceptable.

Article 7

Claiming priority

Where the priority of an earlier application is claimed, the Office may require the applicant to indicate within three months the file number of the earlier application and to file a copy thereof. The copy shall be certified by the authority which received the earlier application to be an exact copy of that earlier application and shall be accompanied by a certificate issued by that authority stating the date of filing of the earlier application.

Article 8

Reliance on the date of acquisition of the same national trade mark

Where reliance is placed on the date of acquisition of an identical or similar earlier national trade mark pursuant to Article 81(2) of the Regulation, the applicant shall within three months after filing of the application indicate the registration number of the national mark and file a certificate of national registration if this has not already been done.

Article 9

Examination as to absolute grounds for refusal

- (1) Where, pursuant to Article 6 of the Regulation, the trade mark may not be registered for all or part of the goods or services, the Office shall notify the applicant of the grounds for refusing registration. The Office shall prescribe a period within which the applicant must submit his comments on the matter.

- (2) Where, pursuant to Article 31(2) of the Regulation, registration of the Community trade mark is subject to the applicant's renouncing his claim to have an 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 declaration within such period as it may specify.

- (3) Where the applicant fails to comply with the notifications or conditions within the time-limit, the Office shall reject the application in whole or in part.

Article 10

Publication of the application

The publication of the application shall contain:

- (a) the applicant's name and address, and the address at which he habitually resides or at which his industrial or commercial place of business is located, if different from the address stated;
- (b) the name and business address of the representative appointed pursuant to Article 72(2) of the Regulation;
if there is more than one representative, only the name and business address of the first-named representative shall be published and it shall be followed by the words "and others"; where, as contemplated in Article 62(6), an association of representatives is appointed, the name and address of the association shall alone be published;
- (c) the reproduction of the mark whose registration is applied for and any particulars required under Article 4(5); where registration in colour is applied for, an impression in black and white with the remark "coloured" shall be sufficient;
- (d) the list of goods and/or services including an indication of the relevant classes according to Article 69 of the Regulation;
- (e) the date of filing and the file number;
- (f) details regarding priority (date, country and file number of the earlier application);

- (g) particulars concerning the reliance, pursuant to Article 81(2) of the Regulation, on the date of acquisition of the earlier national trade mark;
- (h) a statement to the effect that, as contemplated in Article 6(4) of the Regulation, the mark has become distinctive in consequence of the use which has been made of it;
- (i) a statement to the effect that the application is for a Community guarantee mark or a Community collective mark;
- (j) a declaration by the applicant that he agrees, pursuant to Article 31(2) of the Regulation, that his rights in some element of the mark are not exclusive.

TITLE II - OBSERVATIONS BY THIRD PARTIES,
OPPOSITION AND PROOF OF USE

Article 11

Observations by third parties

Observations by third parties under Article 33 of the Regulation are not subject to any further conditions. They shall, however, contain the file number of the application. If the Office considers an observation to be well-founded, the proceedings shall be governed by Article 9. The Office shall inform the third party of the outcome of the examination.

Article 12

Opposition

- (1) Opposition shall be entered in respect of every trade mark registered or applied for, and every well-known mark, ("the opposing mark"), relied on as a basis for opposition to the registration of a Community trade mark newly applied for. The same shall apply mutatis mutandis to every earlier right specified in Article 7(2) (d) and (e) of the Regulation and serving as the basis for opposition. An opposing party who enters a number of oppositions against registration of the same Community trade mark applied for may do so by means of a single document.

- (2) Opposition shall be entered within three months after publication of the application for a Community trade mark. The date on which the Community Trade Marks Bulletin is issued shall be taken as the date of publication.

- (3) Every notice of opposition shall be submitted in duplicate and shall contain:
 - (a) the file number of the application against which opposition is entered;
 - (b) the name of the applicant for the Community trade mark;
 - (c) the file number or registration number of the opposing mark where available;
 - (d) a reproduction of the mark or of the sign referred to in Article 7(2)(d) and (e) of the Regulation;

- (e) the name and address of the proprietor of the opposing mark or of the right referred to in Article 7(2)(d) and (e) of the Regulation;
- (f) where a licensee is expressly authorized to enter the opposition, the name of the licensee and the address of his place of business as for Article 2(1)(b);
- (g) where, in the case of an opposition based on an earlier right referred to in Article 7(2)(e) of the Regulation, that right is asserted by a person entitled to do so under the law of the Member State, the name of the person and the address of his place of business as for Article 2(1)(b);
- (h) where the opposing party has appointed a representative, the name of the representative and the address of his place of business as for Article 2(1)(b);
- (i) the goods and/or services in respect of which the opposing mark has been registered or applied for or in respect of which the well-known opposing mark or the sign referred to in Article 7(2)(d) and (e) was used.

It is necessary to list only those goods and/or services which, in the opinion of the opposing party, are identical with or similar to the goods and/or services for which the Community trade mark applied for is intended to be used;

- (j) the goods and/or services listed in the Community trade mark application against which opposition is entered;
 - (k) particulars of the facts, evidence and arguments presented in support of the opposition. If the opposing mark is not a Community trade mark, each notice of opposition shall be accompanied by evidence of the registration or filing of the opposing mark, such as a certificate of registration in the trade marks register. If the opposing mark is a well-known mark, the notice of opposition shall be accompanied by evidence attesting to the fact that it is well-known. If the opposition is entered on the basis of any other earlier right under Article 7(2)(d) and (e) of the Regulation, the notice of opposition shall be accompanied by appropriate evidence.
- (4) The particulars and evidence referred to in subparagraph (3)(l) may be submitted within a period of one month from the expiry of the opposition period. The evidence referred to in Article 59(1) of the Regulation shall be restricted to production of documents and to sworn statements in writing.
- (5) Paragraphs 2 and 3 shall apply mutatis mutandis to an opposition entered pursuant to Article 7(3) of the Regulation.
- (6) On payment of the fee (second sentence of Article 34(2) of the Regulation), the following information shall be provided, namely the file number, the name of the applicant for the Community trade mark newly applied for and against which opposition is entered, and the purpose of the fee, viz "opposition fee".

Article 13

Refusal to accept an opposition

- (1) Where, on expiry of the opposition period and, where appropriate, the period of one month provided for in Article 12(4), the Office finds that the notice of opposition does not comply with Article 34 of the Regulation and Article 12(3) and (4), it shall inform the opposing party thereof and shall invite him to reply within the period which it prescribes. If, on expiry of that period, the grounds for rejection still subsist, the Office shall refuse to accept the opposition.
- (2) Where, on expiry of the opposition period, the Office finds that the notice of opposition does not comply with Article 12(1) and (6) or other provisions of the Regulation or of the regulation implementing it, the Office shall inform the opposing party thereof and shall invite him to correct the irregularities noted within such period as it shall specify. The applicant shall be notified of the entry of opposition and of the Office's request. If the irregularities are not corrected before the time-limit expires, the Office shall refuse to accept the opposition.
- (3) Any decision under paragraph 1 or 2 not to accept an opposition shall be communicated to the applicant.

Article 14

Examination of opposition

- (1) Where the opposition is acceptable, the Office shall inform the applicant that the opposition has been entered, and of the content thereof, and shall invite him to submit his observations and to restrict the list of goods and/or services under Article 32(1) of the Regulation, where appropriate, or to withdraw the application, within such period of time, in each case, as the Office shall specify.
- (2) Where the applicant submits no observations, the Office shall take a decision on the opposition.
- (3) Where, pursuant to Article 35(2) of the Regulation, the applicant requests that the opposing party be required to furnish proof that the earlier trade mark has been used, the request shall be made in his observations pursuant to paragraph 1.
- (4) The observations submitted by the applicant may be communicated to the opposing party who may be invited by the Office, if it considers it desirable, to reply within such period as the Office shall specify.
- (5) Where, pursuant to Article 32(1) of the Regulation, the applicant restricts the list of goods and/or services, the opposing party shall be so informed and shall be invited by the Office, within such period as it shall specify, to submit observations on whether the opposition is maintained and, if so, to state to which of the remaining goods and/or services it applies.

- (6) The Office may determine that any extension of the periods referred to in paragraphs 4 and 5 shall be subject to the agreement of the applicant.
- (7) Where a number of oppositions have been filed in respect of the same application for a Community trade mark, they shall be dealt with by the Office in the course of one set of proceedings.
- (8) Where the examination reveals that on the grounds set out in an opposition or oppositions the Community trade mark for which an application for registration has been filed is not eligible for registration in respect of some or all of the goods or services for which registration is sought, the Office may defer the decision on further oppositions pending a final decision on rejection of the application for a Community trade mark. When the decision on rejection of that application has become final, the oppositions on which a decision has been deferred shall be deemed to have been dealt with.

Article 15

Proof of use

- (1) Where, pursuant to Article 35(2) of the Regulation, the opposing party has to furnish proof of use within the meaning of Article 13 of the Regulation, he must supply particulars concerning the place, time, extent and type of use. The second sentence of Article 12(4) shall apply. As a rule, proof shall be furnished in the course of the written procedure by submitting packages, labels, price lists, catalogues, invoices, photographs, newspaper advertisements, etc., with an affidavit concerning the place, time, extent and type of use.

- (2) The particulars concerning place shall indicate the geographical area of the Community in which the opposing mark was used.
The particulars concerning time shall indicate the period during which the opposing mark was used.
The particulars concerning extent shall, by means of sales figures, items of advertising expenditure, etc., relating to the goods or services bearing the opposing mark, enable an assessment to be made of the seriousness of the use.
The particulars concerning type of use shall be such as to show the actual use of the registered opposing mark.

- (3) Where, pursuant to Article 35(2) of the Regulation, the opposing party has to furnish proof of use, the Office shall invite him to reply within such period as it shall specify, and at the same time to produce in duplicate the evidence required under paragraphs 1 and 2. If the opposing party does not reply before the time-limit expires,

or if he fails to furnish adequate particulars concerning use, or if he produces insufficient evidence, the Office shall reject the opposition.

- (4) Oral evidence shall be taken, pursuant to Article 59(3) of the Regulation, by way of exception only.

Article 16

Security for the costs of opposition proceedings

- (1) The security for the costs of the opposition proceedings shall be deposited in a currency in which fees may be paid. It must be deposited with a financial or banking establishment named on the list drawn up by the President of the Office. The national law of the Member State in which the establishment has its place of business shall apply to such security.

- (2) Where the applicant makes a request for the provision of security, a decision shall be taken thereon at the same time as a date is fixed for oral proceedings or examination of evidence.

TITLE III

REGISTRATION PROCEDURE

Article 17

Registration of the trade mark

- (1) The fee provided for in Article 36 of the Regulation shall consist of:
 - (a) a registration fee and
 - (b) a class fee for each class exceeding three to which the goods or services belong according to Article 3.

- (2) On expiry of the opposition period the Office shall request the applicant to pay the fee provided for in Article 36 of the Regulation within two months after receipt of the request, provided that no opposition has been entered or that any opposition has been disposed of by withdrawal or final rejection.

- (3) On receipt of the fee the application and the particulars referred to in Article 10, and also the date and registration number, shall be recorded in the Register of Community Trade Marks.

- (4) The registration shall be published in the Community Trade Marks Bulletin.

- (5) The fee provided for in Article 36 of the Regulation shall be refunded if the application is not registered.

Article 18

Certificate of registration

The Office shall issue to the proprietor of the trade mark a certificate of registration of the Community trade mark in the Register. The certificate shall consist of a facsimile of the registration and of a statement to the effect that the particulars reproduced in the certificate have been recorded in the Register of Community Trade Marks.

TITLE IV - RENEWAL

Article 19

Notification of expiry

The Office shall notify the proprietor of the Community trade mark, and any proprietors recorded in the Register who have rights in respect of the Community trade mark, when the registration is approaching expiry. The President shall lay down internal administrative rules governing the contents of the notification. The notification shall be sent at least six months before the expiry of the registration. If the notification is not sent or is sent late or is not received, this shall not affect the date when the registration expires.

Article 20

Renewal of registration

- (1) An application for renewal shall contain:
 - (a) the name and address of the applicant;
 - (b) where appropriate, the name and address of the licensee authorized to file the application;
 - (c) the registration number;
 - (d) particulars of those goods and services recorded in the Register for which registration is to be renewed;
 - (e) where appropriate, evidence that the licensee has been expressly authorized by the proprietor of the Community trade mark to file the application.

- (2) The fees payable under Article 37 of the Regulation for the renewal of a Community trade mark shall be as follows:
 - (a) a renewal fee;
 - (b) a class fee for each class under the system of classification of goods and services in respect of which renewal is applied for as indicated in paragraph 1(c);
and
 - (c) an additional fee, if appropriate, under Article 37(3) of the Regulation.

- (3) When the fees are paid, the name and address of the proprietor of the Community trade mark, the registration number and the purpose for which the sum of money is intended shall be indicated.

- (4) Where an application for renewal is filed before the expiry of the time limit provided for in the second sentence of Article 37(3) of the Regulation and if the conditions for renewal of registration provided for in Article 37 of the Regulation and paragraphs 1 and 2 above are not satisfied, the Office shall communicate the irregularities noted to the proprietor of the Community trade mark or to the applicant and shall invite him to correct them within a period of time extending at least until the end of the period provided for in the second sentence of Article 37(3) of the Regulation.
- (5) Where an application for renewal is not submitted or is submitted after expiry of the period provided for in the second sentence of Article 37(3) of the Regulation, or if the irregularities noted are not corrected in proper time, the Office shall declare that the registration has expired and shall so notify the proprietor of the Community trade mark and, where appropriate, the applicant and the proprietors recorded in the Register who have rights in respect thereof.
- (6) The fees referred to in paragraph 2 shall be refunded if the renewal is not registered.

TITLE V - TRANSFER, LICENCES
AND OTHER RIGHTS, CHANGES

Article 21

Transfer

- (1) The transfer of a Community trade mark shall, if it is notified to the Office, be recorded in the Register of Community Trade Marks in response to a written application from an interested party.
- (2) The application shall contain:
 - (a) the registration number of the Community trade mark;
 - (b) particulars of the new proprietor in accordance with Article 2(1)(b);
 - (c) where not all the registered goods or services are comprised in the transfer, particulars concerning the registered goods or services to which the transfer relates.
- (3) Only persons who can be proprietors of Community trade marks pursuant to Article 4 of the Regulation may be registered as new proprietors.
- (4) The application shall not be deemed to have been filed until a fee has been paid. If the fee is not paid or is not paid in full, the Office shall so notify the applicant.
- (5) Where the conditions applicable to the registration of a transfer, as laid down in Article 17(1), (3) and (4) of the

Regulation and in paragraphs 1 to 4 above, are not fulfilled, the Office shall notify the applicant of the irregularities. If the irregularities are not corrected within a period prescribed by the Office, it shall reject the application for registration of the transfer.

- (6) Paragraphs 1 to 5 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 applied for.

Article 22

Registration of licences and other rights

- (1) Article 21(1), (2) and (4) shall apply mutatis mutandis to 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 or licence, and to registration of enforcement measures.
- (2) Where the conditions applicable to registration, as laid down in Articles 18, 19 and 21 of the Regulation and paragraph 1 above, are not fulfilled, the Office shall notify the applicant of the irregularity. If the irregularity is not corrected within a period prescribed by the Office, it shall reject the application for registration.
- (3) Paragraphs 1 and 2 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 applied for.

Article 23

Cancellation of the registration of
licences and other rights

- (1) A registration effected under Article 22(1) shall, upon application, be cancelled.
- (2) The application shall not be deemed to have been filed until a fee has been paid. If the fee is not paid or is not paid in full, the Office shall so notify the applicant.
- (3) 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.
- (4) The application shall be accompanied by documents showing that the registered right no longer exists or by a statement by the proprietor of the right to the effect that he consents to cancellation of the registration.
- (5) Where the requirements for cancellation are not satisfied, the Office shall notify the applicant of the irregularity. If the irregularity is not corrected within a period prescribed by the Office, it shall reject the application for cancellation of the registration.

Article 24

Insolvency proceedings

- (1) Where a Community trade mark is affected by insolvency or similar proceedings in a Member State as mentioned in Article 20 of the Regulation, an entry to this effect shall be made in the Register upon application by the competent authority or by the court. No fee shall be payable for this.

- (2) An entry effected pursuant to paragraph 1 may be deleted upon application by the competent authority or by the court. No fee shall be payable for this.

Article 25

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

- (1) A change of name or address of the proprietor of the Community trade mark, or of the address of his habitual residence or of his industrial or commercial place of business, where these differ from his address, shall on application be recorded in the Register free of charge if notified to the Office. The change must not derive from a transfer.
- (2) The first sentence of paragraph 1 shall apply mutatis mutandis to a change in the name, identity or address of the registered representative appointed pursuant to Article 72(2) of the Regulation.
- (3) Where the conditions for registration of the change, as set out in this Article are not fulfilled, the Office shall notify the applicant of the irregularity. If the irregularity is not corrected within a period prescribed by the Office, it shall reject the application for registration of the change.
- (4) Paragraphs 1 to 3 shall apply mutatis mutandis to applications for Community trade marks. The change shall be recorded in the files kept by the Office concerning the Community trade mark applied for.

Article 26

Alteration of the trade mark

- (1) Alteration of a trade mark pursuant to Article 15(2) of the Regulation shall be applied for in writing.
- (2) In the case of registered Community trade marks, the application shall be accompanied by three copies of a reproduction of the mark as altered, except where registration has been effected in colour, in which case ten copies shall be supplied. In the case of Community trade marks for which an application for registration has been filed, the number of reproductions of the mark which are to accompany the application shall be governed by Article 4(2) and (3).
- (3) The application shall not be deemed to have been filed until a fee has been paid. If the fee is not paid, or is not paid in full, the Office shall so notify the applicant.
- (4) Where the conditions for alteration of the trade mark are not fulfilled, the Office shall notify the applicant of the irregularity. If the irregularity is not corrected within a period prescribed by the office, it shall reject the application for alteration of the trade mark.
- (5) After publication of the alteration of the trade mark in the Community Trade Marks Bulletin, the provisions of Article 34 and 35 of the Regulation and of Articles 12 to 16 shall apply mutatis mutandis.

TITLE VI - SURRENDER

Article 27

Surrender

In the circumstances provided for in the second sentence of Article 38(3) of the Regulation, surrender shall be a 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.

TITLE VII - REVOCATION AND INVALIDITY

Article 28

Application for revocation or for a declaration of invalidity

- (1) An application for the revocation or for a declaration of invalidity shall be filed in duplicate and shall contain:
 - (a) the applicant's name and address, and the address of his habitual residence or of his industrial or commercial place of business, where these differ from his address, in accordance with Article 2(1)(b);
 - (b) if the applicant has appointed a representative, the representative's name and the address of his place of business, in accordance with Article 2(1)(b);
 - (c) the registration number of the Community trade mark in respect of which revocation or a declaration of invalidity is applied for, and the name and address of the proprietor of the Community trade mark;
 - (d) a statement of the registered goods and/or services in respect of which revocation or a declaration of invalidity is applied for and of the grounds on which the application is based, and an indication of the facts, evidence and arguments presented in support of these grounds.
- (2) Article 16 shall apply mutatis mutandis to security.

Article 29

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

- (1) the Office shall communicate the application for revocation or for a declaration of invalidity to the proprietor of the Community trade mark and shall invite him to file his observations within a period prescribed by the Office.
- (2) Where the proprietor of the Community trade mark requests, pursuant to Article 47(4) of the Regulation that the applicant be required to furnish proof that the earlier trade mark has been used, he must do so in his observations pursuant to paragraph 1. Article 15, except the second sentence of paragraph (1), shall apply mutatis mutandis to proof of use.
- (3) Where the proprietor of the Community trade mark files no observations pursuant to paragraph 1, the Office may decide on the application for revocation or for a declaration of invalidity without inviting further observations pursuant to Article 47(2) of the Regulation.

Article 30

Contention by the Office of its own
motion that a Community trade mark is invalid

- (1) Where the conditions contained in Article 47(3) of the Regulation are fulfilled, the Office shall notify the proprietor of the Community trade mark of the grounds on which it considers the Community trade mark to be invalid. The Office shall specify a period within which the proprietor of the Community trade mark must file his observations.

- (2) Where the Office finds that the Community trade mark is invalid it shall adopt a decision to that effect. Otherwise the proceedings shall be discontinued and the proprietor of the Community trade mark informed of their discontinuance.

Article 31

Joint processing of applications for
revocation or for a declaration of invalidity

- (1) The Office may order that two or more applications for revocation or for a declaration of invalidity pending before it and relating to the same Community trade mark be dealt with jointly so that they can be investigated together and a decision taken in respect of both.
- (2) The Office may rescind an order made under paragraph 1.
- (3) Article 14(8) shall apply mutatis mutandis.

TITLE VIII - COMMUNITY GUARANTEE MARKS AND
COMMUNITY COLLECTIVE MARKS

Article 32

Application of provisions

The provisions of this Regulation shall apply to Community guarantee marks and to Community collective marks, unless Articles 33 and 34 provide otherwise.

Article 33

Regulations governing Community guarantee marks and
Community collective marks

- (1) In addition to the requirements relating to Community guarantee marks laid down in Article 89(2) of the Regulation, the regulations governing Community guarantee marks and Community collective marks shall specify:
 - (a) the name of the association and the address of its (registered) office;
 - (b) the object of the association;
 - (c) who is to represent the association;
 - (d) the conditions of membership;
 - (e) the number of persons authorized to use the mark;
 - (f) the rights and obligations of members of the association in the event of infringement of the mark.
- (2) The regulations must be dated and signed. They shall be filed in duplicate.
- (3) The regulations shall be open to inspection by the public. Articles 68 to 71 shall not apply.

Article 34

Date of filing for Community guarantee marks
and Community collective marks

The date of filing of a Community guarantee mark or Community collective mark shall be the date on which, in addition to the documents specified in Article 24(1) of the Regulation, the regulations are received.

Article 35

Opposition to Community guarantee marks
on absolute grounds for refusal.

- (1) Opposition to registration of a Community guarantee mark for which an application has been filed shall, where the opposition is based on absolute grounds for refusal, be filed in duplicate and shall contain:
 - (a) the name and address of the opposing party and the address of his habitual residence or of his industrial or commercial place of business, where these differ from his address, in accordance with Article 2(1)(b);
 - (b) if the opposing party has appointed a representative, the representative's name and the address of his place of business, in accordance with Article 2(1)(b);
 - (c) the file number of the application for a Community guarantee mark against which opposition has been entered, and the name and address of the proprietor of the guarantee mark;
 - (d) a statement of the grounds for refusal on which the opposition is based pursuant to Article 91(1) of the Regulation, and particulars of the facts, evidence and arguments presented in support of them.

- (2) When the fee is paid (Article 91(2) of the Regulation), the file number, the name of the person applying for the Community guarantee mark against which opposition has been entered and the intended purpose, namely "opposition fee", shall be specified.

- (3) Article 34 (3) of the Regulation and Article 16 shall apply mutatis mutandis to security.
- (4) Where the Office finds that the opposition does not comply with Article 91 of the Regulation or paragraph 1, it shall communicate this to the opposing party and to the person applying for the Community guarantee mark and shall invite the opposing party to correct the irregularities noted within a period which the Office shall prescribe. If the irregularities are not corrected in proper time, the Office shall reject the opposition as unacceptable.
- (5) Articles 29 (1) and (3) and 31 shall apply mutatis mutandis to the other parts of the procedure.
- (6) Where the application is rejected, the decision regarding rejection shall be published as soon as it has become effective.

TITLE IX - APPEALS

Article 36

Content of the notice of appeal

The notice of appeal shall contain:

- (a) the name and address of the appellant, in accordance with Article 2(1)(b);
- (b) if the appellant has appointed a representative, the representative's name and the address of his place of business, in accordance with Article 2(1)(b);
- (c) a statement identifying the decision appealed against and the extent to which amendment or cancellation of the decision is requested.

Article 37

Rejection of the appeal as inadmissible

- (1) Where, on expiry of the time-limits laid down in Article 50 of the Regulation, the Board of Appeal finds that the appeal does not comply with Articles 48 to 50 of the Regulation and Article 34, it shall communicate this to the appellant and shall invite him to reply within such period as it shall specify. If, on expiry of that period, the grounds for rejection still exist, the Board of Appeal shall reject the appeal as inadmissible.

- (2) Where, on expiry of the time-limit for lodging an appeal, the Board of Appeal finds that the appeal does not comply with other provisions of the Regulation or of this Regulation, it shall so inform the appellant and invite him to correct the irregularities noted within such period as it shall specify. If the irregularities are not corrected in proper time, the Board of Appeal shall reject the appeal as inadmissible.

Article 38

Examination of appeals

- (1) Unless otherwise provided, the provisions relating to proceedings before the department which has made the decision from which the appeal is brought shall apply to appeal proceedings mutatis mutandis.

- (2) The written decision shall be signed by the Chairman of the Board of Appeal and by the competent employee of the registry of the Board of Appeal. The decision shall contain:
 - (a) a statement that it is delivered by the Board of Appeal;
 - (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 names of the parties and of their representatives;
 - (e) a statement of the issues in the appeal;
 - (f) a summary of the facts;
 - (g) the reasons;
 - (h) the order of the Board of Appeal, including, where appropriate, a decision on costs.

Article 39

Reimbursement of appeal fees

The reimbursement of appeal fees shall be ordered in the event of interlocutory revision or where the Board of Appeal upholds the appeal, 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 X - GENERAL PROVISIONS

Part A Decisions and communications of the Office

Article 40

Form of decisions

- (1) Decisions of the Office which are open to appeal shall be accompanied by grounds in writing and by a written communication of the possibility of appeal. The communication shall also draw the attention of the parties to the substance of Articles 48 to 50 of the Regulation. The parties may not invoke the omission of the communication.
- (2) Where oral proceedings are held before the Office, the decision may be given orally. Subsequently the decision shall be drawn up in accordance with paragraph 1 and notified to the parties.

Article 41

Correction of errors in decisions

In decisions of the Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected.

Article 42

Form of communications from the Office

Any communication from the Office shall be signed by and state the name of the competent employee. Instead of the signature and the statement of name a printed or stamped seal of the Office may be used. The President of the Office may authorize derogations from the requirement regarding signature where communications are transmitted by telegraph, telex, telecopier or other information transmission equipment. These derogations shall be published in the Community Trade Marks Bulletin and the Bulletin of the Community Trade Marks Office.

Article 43

Finding of loss of rights

- (1) Where the Office finds that the loss of any right results from the Regulation or this Regulation, without any decision having been taken pursuant to Article 48(1), it shall communicate this to the person concerned pursuant to Article 60 of the Regulation and shall draw his attention to the substance of paragraph 2.

- (2) Where 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 where the Office does not share the opinion of the person requesting it; otherwise the Office shall amend its finding and inform the person requesting the decision.

Part B Oral proceedings and taking of evidence

Article 44

Summons to oral proceedings

- (1) The parties shall be summoned to oral proceedings provided for in Article 58 of the Regulation and their attention shall be drawn to paragraph 2. At least one month's notice of the summons shall be given unless the parties agree to a shorter period.
- (2) Where a party who has been duly summoned to oral proceedings before the Office does not appear, the proceedings may continue without him.

Article 45

Taking of evidence by the Office

- (1) Where the Office considers it necessary to hear the oral evidence of parties, witnesses or experts, or to carry out an inspection, it shall take a decision to this end, setting out the evidence required, relevant facts to be proved and the date, time and place of the taking of evidence. Where oral evidence of witnesses and experts is required 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 that party wishes to be heard.

- (2) The period of notice given in a summons issued to 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 taking of evidence and stating the facts on which parties, witnesses and experts are to be heard;

 - (b) the names of the parties to the proceedings and particulars of the rights which the witnesses or experts may invoke under Article 47(2) to (4);

 - (c) an indication that the party, witness or expert may ask to be heard by the competent court of his place of residence and a request that he inform the Office, within a time limit to be fixed by the Office, whether he is prepared to appear before it.

- (3) Before a party, witness or expert may be heard, he shall be informed that the Office may request the competent court in the place of residence of the person concerned to re-examine his evidence on oath or in similar binding form.
- (4) The parties may attend the taking of evidence and may put relevant questions to the testifying parties, witnesses and experts.

Article 46

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's report;
 - (c) the names of the parties to the proceedings;
 - (d) particulars of the rights which he may invoke under Article 47(2) to (4).
- (3) A copy of any written report shall be submitted to the parties.
- (4) The parties may object to an expert. The department of the Office concerned shall decide on the objection.

Article 47

Costs of taking evidence

- (1) The taking of evidence by the Office may be made conditional upon deposit with it, by the party who 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. 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.
- (4) The President of the Office shall lay down the details governing the implementation of the provisions of paragraphs 2 and 3. Payment of amounts due pursuant to these paragraphs shall be made by the Office.

Article 48

Minutes of oral proceedings and of taking of evidence

- (1) Minutes of oral proceedings and of 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.

Part C Notifications

Article 49

General provisions on notification

- (1) In proceedings before the Office, any notification shall be of the original of the document to be notified or of a copy thereof, which may be certified by the Office. Certification shall not be required in respect of copies or documents emanating from the parties themselves.
- (2) Notification shall be made:
 - (a) by post;
 - (b) by delivery on the premises of the Office;
 - (c) by telegraph, telex, telecopier or other information transmission equipment;
 - (d) by deposit in a post-office box; or
 - (e) by public notification.
- (3) Where two or more persons are parties to proceedings before the Office, all documents emanating from parties shall be accompanied by copies for the other parties.

Documents emanating from parties which contain substantive proposals, or a declaration of withdrawal of a 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.

Article 50

Notification by post

- (1) Decisions which start time running for an appeal, summonses and other documents as decided on by the President of the Office shall be notified by registered letter with advice of delivery. All other notifications by post shall be by registered letter.
- (2) 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 tenth day following 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 incumbent on the Office to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.
- (3) Notification by registered letter, whether or not with advice of delivery, shall be deemed to have been effected even if acceptance of the letter has been refused.
- (4) Where notification by post is not governed by paragraphs (1) and (3), the law of the State in whose territory notification is effected shall apply.

Article 51

Notification by hand

Notification may be effected on the premises of the Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Article 52

Notification by modern information transmission equipment

The President of the Office shall lay down in a communication the details of notification by telegraph, telex, telecopier or other information transmission equipment. This communication shall be published in the Community Trade Marks Bulletin and the Bulletin of the Community Trade Marks Office.

Article 53

Notification by deposit in a post-office box

Notification may also be effected to addressees who have been provided with a post-office box at the Office by depositing the document therein. A written notification of deposit shall be inserted on the files. The time of deposit shall be recorded on the document. Notification shall be deemed to have taken place on the third day following deposit of the document in the post-office box.

Article 54

Public notification

- (1) Notification shall be effected by public notice if the address of the addressee cannot be established.

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

Article 55

Notification to representatives

- (1) Where a representative has been appointed, notification shall be addressed to him.
- (2) Where several interested parties have a common representative, notification of a single document to the common representative shall be sufficient.
- (3) Where several representatives have been appointed for a single interested party, notification to any one of them shall be sufficient. Where the representatives do not have a common business address and have not indicated to which representative documents are to be notified, notification shall be effected to the first named representative.

Article 56

Notification in the case of several applicants .

- (1) Several applicants for a Community trade mark who do not have a common representative shall designate one applicant for the purpose of notification. Where such applicant is not specified in the application, notification shall be effected to the first named applicant.

- (2) Paragraph 1 shall apply mutatis mutandis in the event of a transfer to several persons or where several persons appear jointly in proceedings and a common representative has not been appointed.

Article 57

Irregularities in the notification

Where a document has reached the addressee and the Office is unable to prove that it has been duly notified, or where provisions relating to 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.

Part D Time-limits

Article 58

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 the 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 subsequent 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 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.

Article 59

Duration of time-limits

Where the Regulation or the Implementing Regulation specifies a period to be determined by the Office, such period shall be not less than one month nor more than four months; in certain special circumstances it may be up to six months. The period may be extended upon request.

Article 60

Expiry of time-limit in special cases

Where a time-limit expires on a day on which the Office is not open for receipt of documents or on which 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 President of the Office shall establish the days on which these circumstances obtain.

Part E Waiving of enforced recovery procedures

Article 61

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 F Representation

Article 62

Authorizations

- (1) Representatives acting before the Office must file with it a signed authorization for insertion on the files. The Office may specify a period within which the authorization must be filed. Where the representative does not comply therewith, the proceedings shall be continued with the represented party.
- (2) The parties may file blanket authorizations, appointing a representative to represent them on all their trade mark business. Only one document embodying the blanket authorization need be filed.
- (3) The President of the Office may determine and publish in the Community Trade Marks Bulletin and the Bulletin of the Community Trade Marks Office the form and content of a blanket authorization or an authorization relating to representation in the circumstances provided for in Article 72(2) of the Regulation.
- (4) 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.
- (5) 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. This shall apply mutatis mutandis in the event of the winding up of legal persons, including companies which under the law that governs them are regarded as legal persons.
- (6) 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.

- (7) The authorization of an association of representatives shall be deemed to be an authorization in respect of each representative who furnishes proof that he is a member of the association.

Article 63

Amendment of the list of professional representatives

- (1) The entry of the professional representative shall be deleted from the list of professional representatives at his request.
- (2) The entry in the list of professional representatives 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;
 - (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 73(2)(c) of the Regulation.
- (3) A person whose entry has been deleted shall, upon request pursuant to Article 73(3) of the Regulation, be re-entered in the list of professional representatives provided that the conditions for deletion no longer exist.

Part G Written communications and forms

Article 64

Written communications

- (1) All applications and communications to the Office must be submitted in writing.
- (2) The transmission of particulars to the Office by telegraph, telex, telecopier or other information transmission equipment shall be deemed equivalent to a written communication.
- (3) Where a form or written communication must be signed, the transmission of particulars by the equipment referred to in paragraph 2 shall be deemed not to have been effected unless the office receives, within twenty days of reception of this transmission, the duly signed form or written communication confirming the original communication. By virtue of this confirmation the original communication shall take effect from the date of its reception by the office.
- (4) The President of the Office may authorize derogations from the first sentence of paragraph 3. They shall be published in the Bulletin of the Community Trade Marks Office.

Article 65

Forms

- (1) The Office shall make available free of charge forms for the purposes of:
 - (a) filing an application for a Community trade mark (Articles 23 and 24 of the Regulation);
 - (b) entering opposition to registration of a Community trade mark (Article 34(1) and (2) of the Regulation);
 - (c) applying for renewal of the registration of a Community trade mark (Article 37 of the Regulation);
 - (d) applying for the registration of a transfer of a Community trade mark (Article 17 of the Regulation);
 - (e) applying for revocation or for a declaration of invalidity of a Community trade mark (Article 46 of the Regulation);
 - (f) applying for restitutio in intergrum (Article 61 of the Regulation);
 - (g) making an appeal (Article 50 of the Regulation);
 - (h) authorizing a representative (power of attorney).
- (2) The President of the Office may, if necessary, make other forms available free of charge.
- (3) The Office shall place the forms at the disposal of Member States' central industrial property offices.

Part H Information for the public

Article 66

Register of Community Trade Marks

- (1) The Register of Community Trade Marks shall contain the following entries:
- (a) date of filing of the application;
 - (b) file number of the application;
 - (c) the applicant's name and address, and the address at which he habitually resides or at which his industrial or commercial place of business is located, if different from his address stated;
 - (d) the name and business address of the representative in accordance with Article 72(2) 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, as contemplated in Article 62(7), an association of representatives is appointed, only the name and address of the association shall be recorded;
 - (e) reproduction of the mark and particulars required under Article 4(5); in the event of registration of the mark in colour, the word "coloured";
 - (f) list of goods and/or services including an indication of the relevant classes pursuant to Article 69 of the Regulation;
 - (g) priority data (date, State and file number of the previous application);
 - (h) particulars concerning reliance on the date of acquisition of the same or a similar earlier national trade mark pursuant to Article 81(2) of the Regulation;
 - (i) an indication that the mark has become distinctive in consequence of the use which has been made of it, pursuant to Article 6(4) of the Regulation;

- (j) a declaration by the applicant that he disclaims, pursuant to Article 31(2) of the Regulation any exclusive right to some element of the mark;
 - (k) an indication that it is a Community guarantee mark or a Community collective mark;
 - (l) date of recording of the application in the Register and registration number.
- (2) The Register of Community Trade Marks shall also contain:
- (a) changes in the name or address of the proprietor of the Community trade mark or in the address at which he habitually resides or at which his industrial or commercial place of business is located, if different from his address stated;
 - (b) changes in the name, identity or address of the representative appointed pursuant to Article 72(2) of the Regulation;
 - (c) changes in an element of the mark pursuant to Article 15(2) of the Regulation;
 - (d) a reference to the amendment of the regulations governing the mark pursuant to Article 94 of the Regulation and the date of recording of such reference in the Register;
 - (e) transfer pursuant to Article 17 of the Regulation and date of recording of such transfer in the Register;
 - (f) creation or transfer of a right in rem pursuant to Article 18 of the Regulation and date of recording of such creation or transfer in the Register;
 - (g) grant or transfer of a licence pursuant to Article 21 of the Regulation and date of recording of such grant or transfer in the Register;
 - (h) enforcement measures pursuant to Article 19 of the Regulation and insolvency and similar proceedings pursuant to Article 20 of the Regulation;

- (i) a declaration of surrender by the proprietor of the mark pursuant to Article 38 of the Regulation and the date of recording of such declaration in the Register;
 - (j) renewal of a registration pursuant to Article 37 of the Regulation, the date from which it takes effect and, where appropriate, particulars in accordance with Article 37(4) of the Regulation;
 - (k) a note as to the establishment of the expiry of the registration pursuant to Article 37 of the Regulation;
 - (l) removal from the register pursuant to Article 47(6) of the Regulation and Article 78(4) of the Regulation;
 - (m) a reference to the receipt of a request for conversion pursuant to the first sentence of Article 85(2) of the Regulation;
 - (n) removal of the representative recorded pursuant to paragraph 1(d);
 - (o) removal from the Register of the particulars recorded pursuant to subparagraphs (f), (g) and (h).
- (3) The President of the Office may decide that entries other than those referred to in paragraphs 1 and 2 shall be made.
- (4) The proprietor of the trade mark shall be notified of any change in the Register.
- (5) The Office shall provide extracts from the Register on request, on payment of a fee.

Article 67

Community Trade Marks Bulletin

- (1) The following particulars shall be published in the Community Trade Marks Bulletin:
- (a) the application together with the particulars provided for in Article 10;
 - (b) the registration pursuant to Article 17(3);
 - (c) after they have been recorded in the Register of Community Trade Marks, the particulars provided for in Article 66(2), with the exception of subparagraphs (f), (g), (h) and (p);
 - (d) references to decisions on the rejection of applications pursuant to Article 31(5) and Article 35(5) of the Regulation;
 - (e) where a published application has been withdrawn or is deemed to have been withdrawn, a statement to that effect.
- (2) The President of the Office may decide that additional particulars will be published in the Community Trade Marks Bulletin.

Article 68

Responsibility for carrying out procedures
for the inspection of files

Responsibility for carrying out procedures for the inspection of files shall be vested in the department of the Office which, at the time of filing of the application for inspection, is responsible for the main proceedings or, where the preparations have been concluded, in the Administration of Trade Marks Division, unless the President of the Office decides otherwise.

Article 69

Parts of the file not for inspection

- (1) The parts of the file which may be withheld from inspection pursuant to the second sentence of Article 67(3) of the Regulation are:
 - (a) documents relating to the exclusion of or objections to members of the Cancellation Division or of the Boards of Appeal;
 - (b) draft decisions and opinions, and all other internal documents, used for the preparation of decisions and opinions.

- (2) In addition, parts of the file may be withheld from inspection
 - (a) where the proprietor of the Community trade mark furnishes proof of a special interest in keeping them confidential;
 - (b) where the proprietor of an earlier right, in regard to the proof of use furnished pursuant to Article 15, applies for a derogation from inspection of the file and substantiates his special interest in the derogation. He shall submit this application simultaneously with the proof of use. This derogation may not be exercised against the person applying for or the proprietor of the mark challenged.

Article 70

Procedures for the inspection of files

- (1) Requests for inspection of the files of Community trade marks applied for and of registered Community trade marks shall be made in writing. Inspection shall be subject to the payment of a fee.

- (2) Inspection of the files shall be granted by issuing uncertified copies of file documents. The fee referred to in the second sentence of paragraph 1 shall include the cost of producing such copies.

- (3) The Office shall issue certified copies on request and subject to the payment of a fee.

Article 71

Communication of information

contained in the files

- (1) Subject to the restrictions provided for in Article 67 of the Regulation and Article 69, the Office may, upon written application, communicate information from any file of a Community trade mark applied for or a registered Community trade mark, subject to the payment of a fee. 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.

- (2) Responsibility shall be governed by Article 68.

Article 72

Preservation of files

- (1) The Office shall preserve the files of Community trade marks applied for and of registered Community trade marks for a period of at least five years from the end of the year in which
 - (a) the application was rejected or withdrawn or is deemed to have been withdrawn;
 - (b) the registration of the Community trade mark expired completely pursuant to Article 37 of the Regulation;
 - (c) the complete surrender of the Community trade mark was registered pursuant to Article 38 of the Regulation;
 - (d) the Community trade mark was completely removed from the Register pursuant to Article 47(6) or Article 78(4) of the Regulation.

- (2) The President of the Office may decide that the files of Community trade marks applied for and of registered Community trade marks will be preserved permanently where they are of importance owing to special circumstances.

Part I. Administrative and legal cooperation

Article 73

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 67 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 the Implementing Regulation shall be effected directly between these authorities. The Office may seek to communicate through the intermediary of Member States' central industrial property offices.
- (3) Communications pursuant to paragraphs 1 and 2 shall be exempt from fees and costs.

Article 74

Inspection of files by or via courts
or authorities of the Member States

- (1) Inspection of the files of Community trade marks applied for or of registered Community trade marks by courts or authorities of the Member States shall be of the original documents or of copies thereof; Article 70(1) and (2) shall not apply.

- (2) Courts or Public Prosecutors' Offices of the Member States may, in the course of their proceedings, communicate to third parties files or copies thereof transmitted to them by the Office. Such communications shall be effected in accordance with the conditions laid down in Article 67 of the Regulation; the Office shall not charge any fee for such communications.

- (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 such restrictions as may, under Article 67 of the Regulation and Article 65, be applicable to the communication of files relating to a Community trade mark applied for or a registered Community trade mark.

Article 75

Procedure for Letters rogatory

- (1) The Office shall draw up letters rogatory in the language of the competent authority or shall attach to such letters rogatory a translation into the language of that authority.
- (2) Subject to the provisions of paragraphs 4 and 5, the competent authority shall apply its own law as to the procedures to be followed in executing such requests. In particular, it shall apply appropriate measures of compulsion in accordance with its own law.
- (3) Where the authority to which the letters rogatory are transmitted is not competent to execute them, the letters rogatory shall be sent forthwith to the central authority referred to in Article 70(4) of the Regulation or to the Office. The central authority or the Office shall transmit the letters rogatory to the competent authority in that State.
- (4) The Office shall be informed of the time when, and the place where, the enquiry or other legal measure is to take place and shall inform the parties, witnesses and experts concerned.
- (5) Where so requested by the Office, the competent authority shall permit the attendance of members of the department concerned and allow them to question any person giving evidence either directly or through the competent authority.

- (6) No fees or costs of any kind shall be charged for the execution of letters rogatory. Nevertheless, the State in which letters rogatory are executed has the right to require the Office to reimburse any fees paid to experts and interpreters and the costs arising from the procedure of paragraph 5.

- (7) Where the law applied by the competent authority obliges the parties to secure evidence and the authority is not able itself to execute the letters rogatory, that authority may, with the consent of the Office, appoint a suitable person to do so. When seeking the consent of the Office, the competent authority shall indicate the approximate costs which would result from this procedure. Where the Office gives its consent, the Office shall reimburse any costs incurred; without such consent, the Office shall not be liable for such costs.

Part J Costs

Article 76

Apportionment and fixing of costs

(1) Where an apportionment of costs is necessary pursuant to the first sentence of Article 64(1), of the Regulation, it shall be dealt with in the decision on the opposition, in the decision on the application for revocation or for a declaration of invalidity of a Community trade mark, or in the decision on the appeal, as the case may be. Such apportionment shall take into consideration only the expenses necessary to ensure proper protection of the rights involved.

(2) The second sentence of paragraph 1 shall apply to the decision concerning apportionment of costs provided for in the second sentence of Article 64(1) of the Regulation.

(3) A bill of costs, with supporting evidence, shall be attached to the request for the fixing of costs. 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 64(3) of the Regulation for a decision on the fixing of costs by the registry, stating the reasons on which it is based, must be filed in writing 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 verifying the fixing of 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 5 without oral proceedings.

Part K Languages

Article 77

Publications, registrations, communications from the Office

(1) The Community Trade Marks Bulletin and the Bulletin of the Community Trade Marks Office shall be published in the language for procedural purposes. The communications of the President pursuant to Article 104(2)(a) of the Regulation may be published in other Community languages in addition to that language.

(2) The registration in the Register of Community Trade Marks shall be recorded in the language for procedural purposes.

(3) Standard communications from the Office to parties to proceedings, notably the communications concerning deficiencies in applications pursuant to Article 30(2) of the Regulation and the registration of opposition pursuant to Article 35(1) of the Regulation, shall be issued in the language for procedural purposes. The Office may, however, make use of translations into one or more Community languages, in addition to that language, on the printed part of the forms used for these purposes.

Article 78

Forms

Forms for applications by the parties and other correspondence with the Office pursuant to Article 65 of this Regulation shall be drawn up in the language for procedural purposes. The printed part thereof may also contain translations into one or more official Community languages.

Article 79

Derogations in written proceedings

(1) Natural or legal persons having their habitual residence or registered place of business in a Member State of the Community in which the official language is different from the language for procedural purposes may file documents in an official language of that Member State. They shall, however, supply a translation into the language for procedural purposes within one month. Where a document is not filed in the language for procedural purposes and a translation is not filed in time, the document shall be deemed not to have been received.

(2) Documents to be used for purposes of evidence before the Office, notably documents furnishing proof of priority, secondary meaning, existence of an earlier right not registered or used, may be filed in any Community language. The Office may, however, require that a translation be supplied, within a period which it prescribes, in the language for procedural purposes.

Article 80

Derogations in oral proceedings

- (1) Any party to oral proceedings before the Office may, in lieu of the language for procedural purposes, use one of the other official languages of the Community, on condition that he makes provision for interpretation into the language for procedural purposes. The Office may permit derogations from these requirements.
- (2) In oral proceedings the staff of the Office may use one of the other official languages of the Community in lieu of the language for procedural purposes.
- (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 for procedural purposes may use another Community language. 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 for procedural purposes may be heard only if the party who made the request makes provision for interpretation into that language. The Office may permit derogations from this provision.
- (4) If the parties and the Office agree, any Community language may be used in oral proceedings.
- (5) Statements made in oral proceedings by the staff of the Office, parties, witnesses or experts in a language other than the language for procedural purposes shall be recorded in the minutes in the language for procedural purposes.

Article 81

Inspection of files

The inspection of files is not a procedure within the meaning of the second sentence of Article 103 of the Regulation.

Article 82

Certification of translations

When a translation of any document must be filed, the Office may require the filing, within a period to be determined by it, of certification that the translation corresponds to the original text. Where the certificate is not filed within that period, the document shall be deemed not to have been received.

Article 83

Legal authenticity of translations

In the absence of proof to the contrary, the Office may assume that a translation corresponds to the relevant original text. In the case of applications, however, the translation of the list of goods and services shall be checked prior to publication for conformity with the text originally filed.