

EUROPEAN UNION
COMMISSION IMPLEMENTING REGULATION (EU) 2018/626
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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, and in particular Article 20(6), Article 31(4), Article 35(2), Article 38(4), Article 39(6), Article 44(5), Article 50(9), Article 51(3), the second subparagraph of Article 54(3), the second subparagraph of Article 55(1), Article 56(8), Article 57(5), Article 75(3), Article 84(3), the first subparagraph of Article 109(2), Article 116(4), Article 117(3), Article 140(6), Article 146(11), the second subparagraph of Article 161(2), Article 184(9), Article 186(2), Article 187(2), Article 192(6), Article 193(8), Article 198(4), Article 202(10) and Article 204(6) thereof,

Whereas:

(1) Council Regulation (EC) No 40/94, which was codified as Regulation (EC) No 207/2009, created a system specific to the Union for the protection of trade marks to be obtained at the level of the Union on the basis of an application to the European Union Intellectual Property Office ('the Office').

(2) Regulation (EU) 2015/2424 of the European Parliament and the Council aligned the powers conferred upon the Commission under Regulation (EC) No 207/2009 with Articles 290 and 291 of the Treaty on the Functioning of the European Union. In order to conform with the new legal framework resulting from that alignment, Commission Delegated Regulation (EU) 2017/1430 and Commission Implementing Regulation (EU) 2017/1431 were adopted.

(3) Council Regulation (EC) No 207/2009 was codified as Regulation (EU) 2017/1001. For reasons of clarity and simplification, the references contained in an Implementing Regulation should reflect the renumbering of Articles resulting from such a codification of the relevant basic act. Implementing Regulation (EU) 2017/1431 should therefore be repealed and the provisions of that Implementing Regulation should be laid down, with updated references to Regulation (EU) 2017/1001, in this Regulation.

(4) In the interest of clarity, legal certainty and efficiency, and with a view to facilitating the filing of EU trade mark applications, it is of essential importance to specify, in a clear and exhaustive manner while avoiding unnecessary administrative burdens, the mandatory and optional particulars to be contained in an application for an EU trade mark.

(5) Regulation (EU) 2017/1001 no longer requires the representation of a mark to be graphic, as long as it enables the competent authorities and the public to determine with clarity and precision the subject matter of protection. It is therefore necessary, in order to ensure legal certainty, to clearly affirm that the precise subject matter of the exclusive right conferred by the registration is defined by the representation. The representation should, where appropriate, be complemented by an indication of the type of the mark concerned. It may be complemented by a description of the sign in appropriate cases. Such an indication or description should accord with the representation.

(6) Moreover, in order to ensure consistency in the process of filing an EU trade mark application and in order to enhance the effectiveness of clearance searches, it is appropriate to establish general principles to which the representation of every mark must conform, as well as lay down specific rules and requirements for the representation of certain types of trade mark, in accordance with the trade mark's specific nature and attributes.

(7) The introduction of technical alternatives to graphic representation, in line with new technologies, derives from the necessity of modernisation, bringing the registration process closer to technical developments. At the same time, the technical specifications for filing a representation of the trade mark, including representations filed electronically, should be laid down with a view to ensuring that the EU trade mark system remains interoperable with the system established by the Protocol relating to the Madrid Agreement concerning the international registration of marks, adopted at Madrid on 27 June 1989 (Madrid Protocol). In accordance with Regulation (EU) 2017/1001, and for the sake of increased flexibility and quicker adaptation to technological advances, it should be left to the Executive Director of the Office to lay down the technical specifications for marks filed electronically.

(8) It is appropriate to streamline proceedings so as to reduce administrative burdens in the filing and process of priority and seniority claims. It should therefore not be necessary any more to submit certified copies of the previous application or registration. Furthermore, the Office should no longer be required to include a copy of the prior trade mark application in the file in the case of a priority claim.

(9) Following the abolition of the requirement of a graphic

representation of a trade mark, certain types of trade marks can be represented in electronic format and accordingly, their publication using conventional means is no longer suitable. In order to guarantee the publication of all the information concerning an application, which is required for reasons of transparency and legal certainty, access to the representation of the trade mark by way of a link to the Office's electronic Register should be recognised as a valid form of representation of the sign for publication purposes.

(10) For the same reasons, it should also be permissible for the Office to issue certificates of registration in which the reproduction of the trade mark is substituted by an electronic link. Furthermore, for certificates issued after the registration, and to cater for requests made at a time when registration particulars may have changed, it is appropriate to provide for the possibility of issuing updated versions of the certificate, where relevant subsequent entries in the Register are indicated.

(11) Practical experience in applying the former regime revealed the need to clarify certain provisions, in particular in relation to partial transfers and partial surrenders, in order to ensure clarity and legal certainty.

(12) In order to ensure legal certainty, while keeping a certain level of flexibility, it is necessary to establish a minimum content of the regulations governing the use of EU collective marks and of EU certification marks submitted pursuant to Regulation (EU) 2017/1001, with the purpose of enabling market operators to avail themselves of this new type of trade mark protection.

(13) Maximum rates for representation costs incurred by the successful party to proceedings before the Office should be specified, taking into account the need to ensure that the obligation to bear the costs may not be misused, inter alia, for tactical reasons by the other party.

(14) For reasons of efficiency, electronic publications by the Office should be allowed.

(15) It is necessary to ensure an effective and efficient exchange of information between the Office and the authorities of the Member States in the context of administrative cooperation, taking appropriate account of the restrictions to which the inspection of files is subject.

(16) The requirements concerning requests for conversion should ensure a smooth and effective interface between the EU trade mark system and the national trade mark systems.

(17) In order to streamline proceedings before the Office, it should be possible to limit the submission of translations to those parts of documents that are relevant to the proceedings. For the same purpose, the Office should be authorised to require proof that a translation corresponds to the original only in the event of doubt.

(18) For reasons of efficiency, certain decisions of the Office in relation to oppositions or applications for the revocation or a declaration of invalidity of an EU trade mark should be taken by a single member.

(19) Due to the accession of the Union to the Madrid Protocol, it is necessary that the detailed requirements governing the procedures concerning the international registration of marks be entirely consistent with the rules of that Protocol.

(20) Implementing Regulation (EU) 2017/1431 replaced the rules previously laid down in Commission Regulation (EC) No 2868/95 which was therefore repealed. Notwithstanding that repeal, certain proceedings initiated before the date of applicability of Implementing Regulation (EU) 2017/1431 should continue to be governed until their conclusion by specific provisions of Regulation (EC) No 2868/95.

(21) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Implementation Rules,

HAS ADOPTED THIS REGULATION:

TITLE I GENERAL PROVISIONS

Article 1 Subject matter

This Regulation lays down rules specifying:

- (a) the details to be contained in an application for an EU trade mark to be filed at the European Union Intellectual Property Office ('the Office');
- (b) the documentation required to claim the priority of a previous application and to claim seniority, and the evidence to be filed to claim an exhibition priority;
- (c) the details to be contained in the publication of an application for an EU trade mark;
- (d) the content of a declaration of division of an application, how the Office has to process such a declaration, and the details to be contained in the publication of the divisional application;
- (e) the content and form of the certificate of registration;
- (f) the content of a declaration of division of a registration and how the Office has to process such a declaration;
- (g) the details to be contained in requests for alteration and for the change of name or address;
- (h) the content of an application for registration of a transfer, the documentation required to establish a transfer, and how to process applications for partial transfers;
- (i) the details to be contained in a declaration of surrender and the required documentation to establish a third party's agreement;
- (j) the details to be contained in the regulations governing use of an EU collective mark and those governing use of an EU certification mark;
- (k) the maximum rates for costs essential to proceedings and actually incurred;
- (l) certain details concerning publications in the European Union Trade Marks Bulletin and the Official Journal of the Office;
- (m) the detailed arrangements as to how the Office and the authorities of the Member States are to exchange information between each other and open files for inspection;
- (n) the details to be contained in requests for conversion and in the publication of a request for conversion;
- (o) the extent to which supporting documents to be used in written proceedings before the Office may be filed in any official language of the Union, the need to supply a translation and the requisite standards of translations;

(p) the decisions to be taken by single members of the Opposition and Cancellation Divisions;

(q) concerning the international registration of marks:

(i) the form to be used for the filing of an international application;

(ii) the facts and decisions of invalidity to be notified to the International Bureau of the World Intellectual Property Organisation ('the International Bureau') and the relevant time of such notification;

(iii) the detailed requirements regarding requests for territorial extension subsequent to international registration;

(iv) the details to be contained in a seniority claim for an international registration and the details of the information to be notified to the International Bureau;

(v) the details to be contained in the notification of ex officio provisional refusal of protection to be sent to the International Bureau;

(vi) the details to be contained in the final grant or refusal of protection;

(vii) the details to be contained in the notification of invalidation;

(viii) the details to be contained in the requests for conversion of an international registration and in the publication of such requests;

(ix) the details to be contained in an application for transformation.

TITLE II APPLICATION PROCEDURE

Article 2 Content of the application

1. The application for an EU trade mark shall contain:

(a) a request for registration of the trade mark as an EU trade mark;

(b) the name and address of the applicant and the State in which that applicant is domiciled or has a seat or an establishment. Names of natural persons shall be indicated by the person's family name(s) and given name(s). Names of legal entities, as well as bodies falling under Article 3 of Regulation (EU) 2017/1001, shall be indicated by their official designation and include the legal form of the entity, which may be abbreviated in a customary manner. The company's national identification number may also be specified if available. The Office may require the applicant to provide telephone numbers or other contact details for communication by electronic means as defined by the Executive Director. Only one address shall, in principle, be indicated for each applicant. Where several addresses are indicated, only the address mentioned first shall be taken into account, except where the applicant designates one of the addresses as an address for service. Where an identification number has already been given by the Office, it shall be sufficient for the applicant to indicate that number and the name of the applicant;

(c) a list of the goods or services for which the trade mark is to be registered, in accordance with Article 33(2) of Regulation (EU) 2017/1001. That list may be selected, in whole or in part, from a database of acceptable terms made available by the Office;

(d) a representation of the trade mark in accordance with Article 3 of this Regulation;

(e) where the applicant has appointed a representative, the name and business address of that representative or the identification number in accordance with point (b); where the representative has more than one business address or where there are two or more representatives with different business addresses, only the first-mentioned address shall be taken into account as an address for service unless the application indicates which address is to be used as an address for service;

(f) where the priority of a previous application is claimed pursuant to Article 35 of Regulation (EU) 2017/1001, a declaration to that effect, stating the date on which and the country in or for which

the previous application was filed;

(g) where exhibition priority is claimed pursuant to Article 38 of Regulation (EU) 2017/1001, a declaration to that effect, stating the name of the exhibition and the date of the first display of the goods or services;

(h) where the seniority of one or more earlier trade marks, registered in a Member State, including a trade mark registered in the Benelux countries or registered under international arrangements having effect in a Member State, as referred to in Article 39(1) of Regulation (EU) 2017/1001, is claimed together with the application, a declaration to that effect, stating the Member State or Member States in or for which the earlier trade mark is registered, the date from which the relevant registration was effective, the number of the relevant registration, and the goods or services for which the trade mark is registered. Such declaration may also be made within the period referred to in Article 39(2) of Regulation (EU) 2017/1001;

(i) where applicable, a statement that the application is for registration of an EU collective mark pursuant to Article 74 of Regulation (EU) 2017/1001 or for registration of an EU certification mark pursuant to Article 83 of Regulation (EU) 2017/1001;

(j) specification of the language in which the application has been filed, and of the second language pursuant to Article 146(3) of Regulation (EU) 2017/1001;

(k) the signature of the applicant or the applicant's representative in accordance with Article 63(1) of Commission Delegated Regulation (EU) 2018/625 (1);

(l) where applicable, the request of a search report referred to in Article 43(1) or (2) of Regulation (EU) 2017/1001.

2. The application may include a claim that the sign has acquired distinctive character through use within the meaning of Article 7(3) of Regulation (EU) 2017/1001, as well as an indication of whether this claim is meant as a principal or subsidiary one. Such claim may also be made within the period referred to in Article 42(2), second sentence, of Regulation (EU) 2017/1001.

3. The application for an EU collective mark or an EU certification mark may include the regulations governing its use. Where such regulations are not included with the application, they shall be submitted within the period referred to in Article 75(1) and Article

84(1) of Regulation (EU) 2017/1001.

4. If there is more than one applicant, the application may contain the appointment of one applicant or representative as common representative.

Article 3 Representation of the trade mark

1. The trade mark shall be represented in any appropriate form using generally available technology, as long as it can be reproduced on the Register in a clear, precise, self-contained, easily accessible, intelligible, durable and objective manner so as to enable the competent authorities and the public to determine with clarity and precision the subject matter of the protection afforded to its proprietor.

2. The representation of the trade mark shall define the subject matter of the registration. Where the representation is accompanied by a description pursuant to paragraph 3(d), (e), (f)(ii), (h) or paragraph 4, such description shall accord with the representation and shall not extend its scope.

3. Where the application concerns any of the trade mark types listed in points (a) to (j), it shall contain an indication to that effect. Without prejudice to paragraphs 1 or 2, the type of the trade mark and its representation shall accord with each other as follows:

(a) in the case of a trade mark consisting exclusively of words or letters, numerals, other standard typographic characters or a combination thereof (word mark), the mark shall be represented by submitting a reproduction of the sign in standard script and layout, without any graphic feature or colour;

(b) in the case of a trade mark where non-standard characters, stylisation or layout, or a graphic feature or a colour are used (figurative mark), including marks that consist exclusively of figurative elements or of a combination of verbal and figurative elements, the mark shall be represented by submitting a reproduction of the sign showing all its elements and, where applicable, its colours;

(c) in the case of a trade mark consisting of, or extending to, a three-dimensional shape, including containers, packaging, the product itself or their appearance (shape mark), the mark shall be represented by submitting either a graphic reproduction of the shape,

including computer-generated imaging, or a photographic reproduction. The graphic or photographic reproduction may contain different views. Where the representation is not provided electronically, it may contain up to six different views;

(d) in the case of a trade mark consisting of the specific way in which the mark is placed or affixed on the goods (position mark), the mark shall be represented by submitting a reproduction which appropriately identifies the position of the mark and its size or proportion with respect to the relevant goods. The elements which do not form part of the subject matter of the registration shall be visually disclaimed preferably by broken or dotted lines. The representation may be accompanied by a description detailing how the sign is affixed on the goods;

(e) in the case of a trade mark consisting exclusively of a set of elements which are repeated regularly (pattern mark), the mark shall be represented by submitting a reproduction showing the pattern of repetition. The representation may be accompanied by a description detailing how its elements are repeated regularly;

(f) in the case of a colour mark,

(i) where the trade mark consists exclusively of a single colour without contours, the mark shall be represented by submitting a reproduction of the colour and an indication of that colour by reference to a generally recognised colour code;

(ii) where the trade mark consists exclusively of a combination of colours without contours, the mark shall be represented by submitting a reproduction that shows the systematic arrangement of the colour combination in a uniform and predetermined manner and an indication of those colours by reference to a generally recognised colour code. A description detailing the systematic arrangement of the colours may also be added;

(g) in the case of a trade mark consisting exclusively of a sound or combination of sounds (sound mark), the mark shall be represented by submitting an audio file reproducing the sound or by an accurate representation of the sound in musical notation;

(h) in the case of a trade mark consisting of, or extending to, a movement or a change in the position of the elements of the mark (motion mark), the mark shall be represented by submitting a video file or by a series of sequential still images showing the movement or change of position. Where still images are used, they may be numbered or accompanied by a description explaining the sequence;

(i) in the case of a trade mark consisting of, or extending to, the

combination of image and sound (multimedia mark), the mark shall be represented by submitting an audiovisual file containing the combination of the image and the sound;

(j) in the case of a trade mark consisting of elements with holographic characteristics (hologram mark), the mark shall be represented by submitting a video file or a graphic or photographic reproduction containing the views which are necessary to sufficiently identify the holographic effect in its entirety.

4. Where the trade mark is not covered by any of the types listed in paragraph 3, its representation shall comply with the standards set out in paragraph 1 and may be accompanied by a description.

5. Where the representation is provided electronically, the Executive Director of the Office shall determine the formats and size of the electronic file as well as any other relevant technical specifications.

6. Where the representation is not provided electronically, the trade mark shall be reproduced on a single sheet of paper separate from the sheet on which the text of the application appears. The single sheet on which the mark is reproduced shall contain all the relevant views or images and shall not exceed DIN A4 size (29,7 cm high, 21 cm wide). A margin of at least 2,5 cm shall be left all around.

7. Where the correct orientation of the mark is not obvious, it shall be indicated by adding the word 'top' to each reproduction.

8. The reproduction of the mark shall be of such quality as to enable it to be:

- (a) reduced to a size of not less than 8 cm wide by 8 cm high; or
- (b) enlarged to a size of not more than 8 cm wide by 8 cm high.

9. The filing of a sample or a specimen shall not constitute a proper representation of a trade mark.

Article 4 Claiming priority

1. Where the priority of one or more previous applications is claimed together with the application pursuant to Article 35 of Regulation (EU) 2017/1001, the applicant shall indicate the file

number of the previous application and file a copy of it within three months of the filing date. That copy shall state the date of filing of the previous application.

2. Where the language of the previous application for which priority is claimed is not one of the languages of the Office, the applicant shall, if required by the Office, provide the Office with a translation of the previous application into the language of the Office used as the first or second language of the application, within a period specified by the Office.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* where the priority claim relates to one or more previous registrations.

Article 5 Exhibition priority

Where an exhibition priority is claimed together with the application pursuant to Article 38(1) of Regulation (EU) 2017/1001, the applicant shall, within three months of the filing date, file a certificate issued at the exhibition by the authority responsible for the protection of industrial property at the exhibition. That certificate shall attest that the mark was used for the goods or services covered by the application. It shall also state the opening date of the exhibition and the date of first public use, if different from the opening date of the exhibition. The certificate shall be accompanied by an identification of the actual use of the mark, duly certified by the authority.

Article 6 Claiming seniority of a national trade mark before registration of the EU trade mark

Where the seniority of an earlier registered trade mark, as referred to in Article 39(1) of Regulation (EU) 2017/1001, is claimed pursuant to Article 39(2) of Regulation (EU) 2017/1001, the applicant shall submit a copy of the relevant registration within three months of the receipt of the seniority claim by the Office.

Article 7 Content of the publication of an application

The publication of the application shall contain:

- (a) the applicant's name and address;
- (b) where applicable, the name and business address of the representative appointed by the applicant other than a representative falling within the first sentence of Article 119(3)

of Regulation (EU) 2017/1001. Where there is more than one representative with the same business address, only the name and business address of the first-named representative shall be published and it shall be followed by the words 'and others'. Where there are two or more representatives with different business addresses, only the address for service determined pursuant to Article 2(1)(e) of this Regulation shall be published. Where an association of representatives is appointed in accordance with Article 74(8) of Delegated Regulation (EU) 2018/625, only the name and business address of the association shall be published;

(c) the representation of the mark, together with the elements and descriptions referred to in Article 3 where applicable. Where the representation has been provided in the form of an electronic file, it shall be made accessible by means of a link to that file;

(d) the list of goods or services, grouped according to the classes of the Nice Classification, each group being preceded by the number of the class of that classification to which that group of goods or services belongs, and presented in the order of the classes of that classification;

(e) the date of filing and the file number;

(f) where applicable, particulars of the claim of priority filed by the applicant pursuant to Article 35 of Regulation (EU) 2017/1001;

(g) where applicable, particulars of the claim of exhibition priority filed by the applicant pursuant to Article 38 of Regulation (EU) 2017/1001;

(h) where applicable, particulars of the claim of seniority filed by the applicant pursuant to Article 39 of Regulation (EU) 2017/1001;

(i) where applicable, a statement pursuant to Article 7(3) of Regulation (EU) 2017/1001 that the mark has become distinctive in relation to the goods or services for which registration is requested in consequence of the use which has been made of it;

(j) where applicable, a statement that the application is for an EU collective mark or an EU certification mark;

(k) an indication of the language in which the application was filed and of the second language which the applicant has indicated pursuant to Article 146(3) of Regulation (EU) 2017/1001;

(l) where applicable, a statement that the application results from a transformation of an international registration designating the Union pursuant to Article 204(2) of Regulation (EU) 2017/1001, together with the date of the international registration pursuant

to Article 3(4) of the Madrid Protocol or the date on which the territorial extension to the Union made subsequently to the international registration pursuant to Article 3ter(2) of the Madrid Protocol was recorded in the international register and, where applicable, the priority date of the international registration.

Article 8 Division of the application

1. A declaration of the division of the application pursuant to Article 50 of Regulation (EU) 2017/1001 shall contain:

- (a) the file number of the application;
- (b) the name and address of the applicant in accordance with Article 2(1)(b) of this Regulation;
- (c) the list of goods or services subject to the divisional application, or, where the division into more than one divisional application is sought, the list of goods or services for each divisional application;
- (d) the list of goods or services which are to remain in the original application.

2. The Office shall establish a separate file for each divisional application, which shall consist of a complete copy of the file of the original application, including the declaration of division and the correspondence relating thereto. The Office shall assign a new application number to each divisional application.

3. The publication of each divisional application shall contain the indications and elements laid down in Article 7.

TITLE III REGISTRATION PROCEDURE

Article 9 Certificate of registration

The certificate of registration issued in accordance with Article 51(2) of Regulation (EU) 2017/1001 shall contain the entries in the Register listed in Article 111(2) of Regulation (EU) 2017/1001 and a statement to the effect that those entries have been recorded in the Register. Where the representation of the mark is provided in the form of an electronic file, the relevant entry shall be made accessible by means of a link to that file. The certificate shall be complemented, where applicable, by an extract showing all entries to be recorded in the Register in accordance with Article 111(3) of Regulation (EU) 2017/1001 and a statement to the effect that those entries have been recorded in the Register.

Article 10 Content of the request for alteration of a registration

A request for alteration of a registration pursuant to Article 54(2) of Regulation (EU) 2017/1001 shall contain:

- (a) the registration number of the EU trade mark;
- (b) the name and the address of the proprietor of the EU trade mark in accordance with Article 2(1)(b) of this Regulation;
- (c) an indication of the element in the representation of the EU trade mark to be altered and that element in its altered version in accordance with Article 54(3) of Regulation (EU) 2017/1001;
- (d) a representation of the EU trade mark as altered, in accordance with Article 3 of this Regulation.

Article 11 Declaration of the division of a registration

1. A declaration of the division of a registration pursuant to Article 56(1) of Regulation (EU) 2017/1001 shall contain:

- (a) the registration number of the EU trade mark;
- (b) the name and address of the proprietor of the EU trade mark in accordance with Article 2(1)(b) of this Regulation;
- (c) the list of goods or services which are to form the divisional registration, or, where the division into more than one divisional registration is sought, the list of goods or services for each divisional registration;
- (d) the list of goods or services which are to remain in the original registration.

2. The Office shall establish a separate file for the divisional

registration, which shall consist of a complete copy of the file of the original registration, including the declaration of division and the correspondence relating thereto. The Office shall assign a new registration number to the divisional registration.

Article 12 Content of a request for the change of the name or address of the proprietor of an EU trade mark

or of the applicant for an EU trade mark A request for the change of the name or address of the proprietor of a registered EU trade mark pursuant to Article 55(1) of Regulation (EU) 2017/1001 shall contain:

- (a) the registration number of the EU trade mark;
- (b) the name and the address of the proprietor of the EU trade mark as recorded in the Register, unless an identification number has already been given by the Office to the proprietor, in which case it shall be sufficient for the applicant to indicate that number and the proprietor's name;
- (c) the indication of the new name or address of the proprietor of the EU trade mark, in accordance with Article 2(1)(b) of this Regulation.

Points (b) and (c) of the first subparagraph shall apply mutatis mutandis for the purposes of a request for the change of the name or address of the applicant for an EU trade mark. Such a request shall also contain the application number.

TITLE IV TRANSFER

Article 13 Application for registration of a transfer

1. An application for registration of a transfer under Article 20(5) of Regulation (EU) 2017/1001 shall contain:

- (a) the registration number of the EU trade mark;
- (b) particulars of the new proprietor in accordance with Article 2(1)(b) of this Regulation;
- (c) where not all the registered goods or services are included in the transfer, particulars of the registered goods or services to which the transfer relates;
- (d) evidence duly establishing the transfer in accordance with Article 20(2) and (3) of Regulation (EU) 2017/1001;
- (e) where applicable, the name and business address of the representative of the new proprietor, to be set out in accordance with Article 2(1)(e) of this Regulation.

2. Points (b) to (e) of paragraph 1 shall apply mutatis mutandis for the purposes of an application for the recording of a transfer of an EU trade mark application.

3. For the purposes of paragraph 1(d), any of the following shall constitute sufficient evidence of transfer:

- (a) the signing of the application for registration of the transfer by the registered proprietor or a representative of that proprietor, and by the successor in title or a representative of that successor;
- (b) where the application is submitted by the registered proprietor or a representative of that proprietor, a declaration signed by the successor in title or a representative of that successor agreeing to the registration of the transfer;
- (c) where the application for registration is submitted by the successor in title, a declaration, signed by the registered proprietor or a representative of that proprietor, that the registered proprietor agrees to the registration of the successor in title;
- (d) the signing of a completed transfer form or document, as laid down in Article 65(1)(e) of Delegated Regulation (EU) 2018/625, by the registered proprietor or a representative of that proprietor and by the successor in title or a representative of that successor.

Article 14 Processing of applications for partial transfer

1. Where the application for registration of a transfer relates only to some of the goods or services for which the mark is registered, the applicant shall distribute the goods or services in the original registration between the remaining registration and the application for partial transfer so that the goods or services in the remaining registration and the new registration do not overlap.

2. The Office shall establish a separate file for the new registration, which shall consist of a complete copy of the file of the original registration, including the application for registration of the partial transfer and the correspondence relating thereto. The Office shall assign a new registration number to the new registration.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* for the purposes of an application to record a transfer of an EU trade mark application. The Office shall assign a new application number to the new EU trade mark application.

TITLE V SURRENDER

Article 15 Surrender

1. A declaration of surrender pursuant to Article 57(2) of Regulation (EU) 2017/1001 shall contain:

- (a) the registration number of the EU trade mark;
- (b) the name and address of the proprietor in accordance with Article 2(1)(b) of this Regulation;
- (c) where surrender is declared only for some of the goods or services for which the mark is registered, an indication of the goods or services for which the mark is to remain registered.

2. Where a right of a third party relating to the EU trade mark is entered in the Register, a declaration of consent to the surrender, signed by the proprietor of that right or a representative of that proprietor, shall be sufficient proof of the third party's agreement to the surrender.

TITLE VI EU COLLECTIVE MARKS AND CERTIFICATION MARKS

Article 16 Content of regulations governing the use of EU collective marks

The regulations governing EU collective marks referred to in Article 75(1) of Regulation (EU) 2017/1001 shall specify:

- (a) the name of the applicant;
- (b) the object of the association or the object for which the legal person governed by public law is constituted;
- (c) the bodies authorised to represent the association or the legal person governed by public law;
- (d) in the case of an association, the conditions for membership;
- (e) the representation of the EU collective mark;
- (f) the persons authorised to use the EU collective mark;
- (g) where appropriate, the conditions governing use of the EU collective mark, including sanctions;
- (h) the goods or services covered by the EU collective mark including, where appropriate, any limitation introduced as a consequence of the application of Article 7(1)(j), (k) or (l) of Regulation (EU) 2017/1001;
- (i) where appropriate, the authorisation referred to in the second sentence of Article 75(2) of Regulation (EU) 2017/1001.

Article 17 Content of regulations governing the use of EU certification marks

The regulations governing use of EU certification marks referred to in Article 84 of Regulation (EU) 2017/1001 shall specify:

- (a) the name of the applicant;
- (b) a declaration that the applicant complies with the requirements laid down in Article 83(2) of Regulation (EU) 2017/1001;
- (c) the representation of the EU certification mark;
- (d) the goods or services covered by the EU certification mark;
- (e) the characteristics of the goods or services to be certified by the EU certification mark, such as the material, mode of manufacture of goods or performance of services, quality or accuracy;
- (f) the conditions governing the use of the EU certification mark, including sanctions;
- (g) the persons authorised to use the EU certification mark;
- (h) how the certifying body is to test those characteristics and to supervise the use of the EU certification mark.

TITLE VII COSTS

Article 18 Maximum rates for costs

1. Costs referred to in the first subparagraph of Article 109(2) of Regulation (EU) 2017/1001 shall be borne by the losing party on the basis of the following maximum rates:

(a) where the successful party is not represented, the travel and subsistence costs of that party for one person for the outward and return journey between the place of residence or the place of business and the place where oral proceedings are held pursuant to Article 49 of Delegated Regulation (EU) 2018/625, as follows:

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

(ii) subsistence costs as laid down in Article 13 of Annex VII to the Staff Regulations of Officials of the Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (1);

(b) travel costs of representatives pursuant to Article 120(1) of Regulation (EU) 2017/1001, at the rates provided for in point (a)(i) of this paragraph;

(c) costs of representation, within the meaning of Article 120(1) of Regulation (EU) 2017/1001, incurred by the successful party, as follows:

(i) in opposition proceedings: EUR 300;

(ii) in proceedings relating to the revocation or invalidity of an EU trade mark: EUR 450;

(iii) in appeal proceedings: EUR 550;

(iv) where oral proceedings have taken place to which the parties have been summoned pursuant to Article 49 of Delegated Regulation (EU) 2018/625, the amount referred to in points (i), (ii) or (iii) increased by EUR 400.

2. Where there are several applicants or proprietors of the EU trade mark application or registration or where there are several opposing parties or applicants for revocation or a declaration of invalidity that have filed the opposition or application for revocation or a declaration of invalidity jointly, the losing party shall bear the costs referred to in paragraph 1(a) for one such person only.

3. Where the successful party is represented by more than one representative within the meaning of Article 120(1) of Regulation (EU) 2017/1001, the losing party shall bear the costs referred to in paragraph 1(b) and (c) of this Article for one such person only.

4. The losing party shall not be obliged to reimburse the successful party for any costs, expenses and fees relating to proceedings before the Office other than those referred to in paragraphs 1, 2 and 3.

TITLE VIII PERIODICAL PUBLICATIONS

Article 19 Periodical publications

1. Where particulars are published in the European Union Trade Marks Bulletin in accordance with Regulation (EU) 2017/1001, Delegated Regulation (EU) 2018/625 or this Regulation, the date of issue shown in the European Union Trade Marks Bulletin shall be taken as the date of publication of the particulars.

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

3. The Office may make editions of the Official Journal of the Office publicly available by electronic means.

TITLE IX ADMINISTRATIVE COOPERATION

Article 20 Exchange of information between the Office and the authorities of the Member States

1. Without prejudice to Article 152 of Regulation (EU) 2017/1001, the Office and the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, shall, upon request, communicate to each other relevant information about the filing of applications for EU trade marks or national marks and about proceedings relating to such applications and the marks registered as a result thereof.

2. The Office and the courts or authorities of the Member States shall exchange information for the purposes of Regulation (EU) 2017/1001 directly or through the central industrial property offices of the Member States.

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

Article 21 Opening of files for inspection

1. Inspection of files relating to EU trade mark applications or registered EU trade marks by courts or authorities of the Member States shall be of the original documents or of copies thereof, or of technical means of storage if the files are stored in this way.

2. The Office shall, at the time of transmission of files relating to EU trade marks applied for or registered, or copies thereof, to the courts or public prosecutors' offices of the Member States, indicate the restrictions to which the inspection of those files is subject pursuant to Article 114 of Regulation (EU) 2017/1001.

3. Courts or public prosecutors' offices of the Member States may, in the course of proceedings before them, open files or copies thereof transmitted to them by the Office to inspection by third parties. Such inspection shall be subject to Article 114 of Regulation (EU) 2017/1001.

TITLE X CONVERSION

Article 22 Content of a request for conversion

A request for conversion of an EU trade mark application or a registered EU trade mark into a national trade mark application pursuant to Article 139 of Regulation (EU) 2017/1001 shall contain:

- (a) the name and the address of the applicant for conversion in accordance with Article 2(1)(b) of this Regulation;
- (b) the filing number of the EU trade mark application or the registration number of the EU trade mark;
- (c) an indication of the ground for conversion in accordance with Article 139(1)(a) or (b) of Regulation (EU) 2017/1001;
- (d) an indication of the Member State or the Member States in respect of which conversion is requested;
- (e) where the request does not relate to all of the goods or services for which the application has been filed or for which the EU trade mark has been registered, an indication of the goods or services for which conversion is requested, and, where conversion is requested in respect of more than one Member State and the list of goods or services is not the same for all Member States, an indication of the respective goods or services for each Member State;
- (f) where conversion is requested, pursuant to Article 139(6) of Regulation (EU) 2017/1001, on the grounds that an EU trade mark has ceased to have effect as a result of a decision of an EU trade mark court, an indication of the date on which that decision became final, and a copy of the decision, which may be submitted in the language in which the decision was given.

Article 23 Content of the publication of a request for conversion

The publication of a request for conversion in accordance with Article 140(2) of Regulation (EU) 2017/1001 shall contain:

- (a) the filing number or the registration number of the EU trade mark in respect of which conversion is requested;
- (b) a reference to the previous publication of the request or to the registration in the European Union Trade Marks Bulletin;
- (c) an indication of the Member State or Member States in respect of which conversion has been requested;
- (d) where the request does not relate to all of the goods or services for which the application has been filed or for which the EU trade mark has been registered, an indication of the goods or services

for which conversion is requested;

(e) where conversion is requested in respect of more than one Member State and the list of goods or services is not the same for all Member States, an indication of the respective goods or services for each Member State;

(f) the date of the request for conversion.

TITLE XI LANGUAGES

Article 24 Filing of supporting documents in written proceedings

Unless otherwise provided for in this Regulation or in Delegated Regulation (EU) 2018/625, supporting documents to be used in written proceedings before the Office may be filed in any official language of the Union. Where the language of such documents is not the language of the proceedings as determined in accordance with Article 146 of Regulation (EU) 2017/1001, the Office may, of its own motion or upon reasoned request by the other party, require that a translation be supplied, within a period specified by it, in that language.

Article 25 Standard of translations

1. Where a translation of a document is to be filed with the Office, the translation shall identify the document to which it refers and reproduce the structure and contents of the original document. Where a party has indicated that only parts of the document are relevant, the translation may be limited to those parts.

2. Unless otherwise provided for in Regulation (EU) 2017/1001, in Delegated Regulation (EU) 2018/625 or in this Regulation, a document for which a translation is to be filed shall be deemed not to have been received by the Office in the following cases:

(a) where the translation is received by the Office after the expiry of the relevant period for submitting the original document or the translation;

(b) where the certificate referred to in Article 26 of this Regulation is not filed within the period specified by the Office.

Article 26 Legal authenticity of translations

In the absence of evidence or indications to the contrary, the Office shall assume that a translation corresponds to the relevant original text. In the event of doubt, the Office may require the filing, within a specific period, of a certificate that the translation corresponds to the original text.

TITLE XII ORGANISATION OF THE OFFICE

Article 27 Decisions of an Opposition Division or a Cancellation Division taken by a single member

Pursuant to Article 161(2) or Article 163(2) of Regulation (EU) 2017/1001, a single member of an Opposition Division or of a Cancellation Division shall take the following types of decisions:

- (a) decisions on the apportionment of costs;
- (b) decisions to fix the amount of the costs to be paid pursuant to the first sentence of Article 109(7) of Regulation (EU) 2017/1001;
- (c) decisions to discontinue the proceedings or decisions confirming that there is no need to proceed to a decision on merits;
- (d) decisions to reject an opposition as inadmissible before expiry of the period referred to in Article 6(1) of Delegated Regulation (EU) 2018/625;
- (e) decisions to stay proceedings;
- (f) decisions to join or separate multiple oppositions pursuant to Article 9(1) of Delegated Regulation (EU) 2018/625.

TITLE XIII PROCEDURES CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

Article 28 Form to be used for the filing of an international application

The form made available by the Office for the filing of an international application, as referred to in Article 184(1) of Regulation (EU) 2017/1001 shall include all the elements of the official form provided by the International Bureau.

Applicants may also use the official form provided by the International Bureau.

Article 29 Facts and decisions on invalidity to be notified to the International Bureau

1. The Office shall notify the International Bureau within a period of five years of the date of the international registration in the following cases:

(a) where the EU trade mark application on which the international registration was based has been withdrawn, is deemed to be withdrawn or has been refused by a final decision, in respect of all or some of the goods or services listed in the international registration;

(b) where the EU trade mark on which the international registration was based has ceased to have effect because it has been surrendered, has not been renewed, has been revoked, or has been declared invalid by the Office by a final decision or, on the basis of a counterclaim in infringement proceedings, by an EU trade mark court, in respect of all or some of the goods or services listed in the international registration;

(c) where the EU trade mark application or the EU trade mark on which the international registration was based has been divided into two applications or registrations.

2. The notification referred to in paragraph 1 shall include:

(a) the number of the international registration;

(b) the name of the holder of the international registration;

(c) the facts and decisions affecting the basic application or registration, as well as the effective date of those facts and decisions;

(d) in the case referred to in paragraph 1(a) or (b), the request to cancel the international registration;

(e) where the act referred to in paragraph 1(a) or (b) affects the

basic application or basic registration only with respect to some of the goods or services, those goods or services, or the goods or services which are not affected;

(f) in the case referred to in paragraph 1(c), the number of each EU trade mark application or registration concerned.

3. The Office shall notify the International Bureau at the end of a period of five years of the date of the international registration in the following cases:

(a) where an appeal is pending against a decision of an examiner to refuse the EU trade mark application on which the international registration was based pursuant to Article 42 of Regulation (EU) 2017/1001;

(b) where an opposition is pending against the EU trade mark application on which the international registration was based;

(c) where an application for revocation or an application for a declaration of invalidity is pending against the EU trade mark on which the international registration was based;

(d) where mention has been made in the Register of EU trade marks that a counterclaim for revocation or for declaration of invalidity has been filed before an EU trade mark court against the EU trade mark on which the international registration was based, but no mention has yet been made in the Register of the decision of the EU trade mark court on the counterclaim.

4. Once the proceedings referred to in paragraph 3 have been concluded by means of a final decision or an entry in the Register, the Office shall notify the International Bureau in accordance with paragraph 2.

5. For the purposes of paragraphs 1 and 3, an EU trade mark on which the international registration was based shall include an EU trade mark registration resulting from an EU trade mark application on which the international application was based.

Article 30 Request for territorial extension subsequent to international registration

1. A request for territorial extension filed at the Office pursuant to Article 187(1) of Regulation (EU) 2017/1001 shall meet the following requirements:

(a) it is filed using one of the forms referred to in Article 31 of

this Regulation and contains all the indications and information required by the form used;

(b) it indicates the number of the international registration to which it relates;

(c) the list of goods or services is covered by the list of goods or services contained in the international registration;

(d) the applicant is entitled, based on the indications made in the international form, to make a designation subsequent to the international registration through the Office in accordance with Article 2(1)(ii), and Article 3ter(2) of the Madrid Protocol.

2. Where a request for territorial extension does not meet all of the requirements laid down in paragraph 1, the Office shall invite the applicant to remedy the deficiencies within such time limit as it may specify.

Article 31 Form to be used for a request for territorial extension

The form made available by the Office for a request for territorial extension subsequent to international registration, as referred to in Article 187(1) of Regulation (EU) 2017/1001, shall include all the elements of the official form provided by the International Bureau. Applicants may also use the official form provided by the International Bureau.

Article 32 Seniority claims before the Office

1. Without prejudice to Article 39(7) of Regulation (EU) 2017/1001, a seniority claim pursuant to Article 192(1) of Regulation (EU) 2017/1001 shall contain:

(a) the registration number of the international registration;

(b) the name and address of the holder of the international registration in accordance with Article 2(1)(b) of this Regulation;

(c) an indication of the Member State or Member States in or for which the earlier trade mark is registered;

(d) the number and the filing date of the relevant registration;

(e) an indication of the goods or services for which the earlier trade mark is registered and those in respect of which seniority is claimed;

(f) a copy of the relevant registration certificate.

2. Where the holder of the international registration is obliged to be represented in proceedings before the Office pursuant to Article 119(2) of Regulation (EU) 2017/1001, the seniority claim shall

contain the appointment of a representative within the meaning of Article 120(1) of Regulation (EU) 2017/1001.

3. Where the Office has accepted the seniority claim, it shall inform the International Bureau accordingly by communicating the following:

- (a) the number of the international registration concerned;
- (b) the name of the Member State or Member States in or for which the earlier trade mark is registered;
- (c) the number of the relevant registration;
- (d) the date from which the relevant registration was effective.

Article 33 Notification of ex officio provisional refusals to the International Bureau

1. The notification of an ex officio provisional refusal of protection of the international registration in whole or in part to be issued to the International Bureau pursuant to Article 193(2) and (5) of Regulation (EU) 2017/1001 shall, without prejudice to the requirements laid down in Article 193(3) and (4) of that Regulation, contain the following:

- (a) the number of the international registration;
- (b) a reference to the provisions of Regulation (EU) 2017/1001 which are relevant for the provisional refusal;
- (c) an indication that the provisional refusal of protection will be confirmed by a decision of the Office if the holder of the international registration does not overcome the grounds for refusal by submitting observations to the Office within a time limit of two months of the date on which the Office issues the provisional refusal;
- (d) where the provisional refusal relates to only part of the goods or services, an indication of those goods or services.

2. In respect of each notification of an ex officio provisional refusal to the International Bureau, and provided that the time limit for entering an opposition has expired and that no notification of provisional refusal based on an opposition has been issued pursuant to Article 78(1) of Delegated Regulation (EU) 2018/625, the Office shall inform the International Bureau of the following:

- (a) where as a result of the proceedings before the Office the provisional refusal has been withdrawn, the fact that the mark is

protected in the Union;

(b) where a decision to refuse protection of the mark has become final, if applicable, following an appeal under Article 66 of Regulation (EU) 2017/1001 or an action under Article 72 of Regulation (EU) 2017/1001, the fact that protection of the mark is refused in the Union;

(c) where the refusal pursuant to point (b) concerns only part of the goods or services, the goods or services for which the mark is protected in the Union.

Article 34 Notification of invalidation of the effects of an international registration to the International Bureau

The notification referred to in Article 198(3) of Regulation (EU) 2017/1001 shall bear a date and shall contain:

(a) the indication that the invalidation has been pronounced by the Office, or the indication of the EU trade mark court which has pronounced the invalidation;

(b) an indication of whether invalidation has been pronounced in the form of revocation of the rights of the holder of the international registration, of a declaration that the trade mark is invalid on absolute grounds, or of a declaration that the trade mark is invalid on relative grounds;

(c) a statement to the effect that the invalidation is no longer subject to appeal;

(d) the number of the international registration;

(e) the name of the holder of the international registration;

(f) where the invalidation does not concern all the goods or services, an indication of the goods or services in respect of which the invalidation has been pronounced or those in respect of which the invalidation has not been pronounced;

(g) the date on which the invalidation was pronounced, together with an indication of the date from when the invalidation became effective.

Article 35 Request for conversion of an international registration into a national trade mark application or into a designation of Member States

1. A request for conversion of an international registration designating the Union into a national trade mark application or into a designation of Member States pursuant to Articles 139 and 202 of Regulation (EU) 2017/1001 shall, without prejudice to the

requirements laid down in Article 202(4) to (7) of that Regulation, contain:

- (a) the registration number of the international registration;
- (b) the date of the international registration or the date of the designation of the Union made subsequently to the international registration pursuant to Article 3ter(2) of the Madrid Protocol and, where applicable, particulars of the claim to priority for the international registration pursuant to Article 202(2) of Regulation (EU) 2017/1001, and particulars of the claim to seniority pursuant to Articles 39, 40 or 191 of Regulation (EU) 2017/1001;
- (c) the indications and elements referred to in Article 140(1) of Regulation (EU) 2017/1001 and Article 22(a), (c) and (d) of this Regulation.

2. The publication of a request for conversion referred to in paragraph 1 shall contain the details laid down in Article 23.

Article 36 Transformation of an international registration designating the Union into an EU trade mark application

An application for transformation pursuant to Article 204(3) of Regulation (EU) 2017/1001 shall contain, in addition to the indications and elements referred to in Article 2 of this Regulation, the following:

- (a) the number of the international registration which has been cancelled;
- (b) the date on which the international registration was cancelled by the International Bureau;
- (c) as appropriate, the date of the international registration pursuant to Article 3(4) of the Madrid Protocol or the date of recordal of the territorial extension to the Union made subsequently to the international registration pursuant to Article 3ter(2) of the Madrid Protocol;
- (d) where applicable, the date of priority claimed in the international application as entered in the international register kept by the International Bureau.

TITLE XIV FINAL PROVISIONS

Article 37 Transitional measures

The provisions of Regulation (EC) No 2868/95 shall continue to apply to ongoing proceedings where this Regulation does not apply in accordance with its Article 39, until such proceedings are concluded.

Article 38 Repeal

Implementing Regulation (EU) 2017/1431 is repealed.

Article 39 Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from the date of entry into force referred to in paragraph 1, subject to the following exceptions:

(a) Title II shall not apply to applications for an EU trade mark entered before 1 October 2017, as well as to international registrations for which the designation of the Union was made before that date;

(b) Article 9 shall not apply to EU trade marks registered before 1 October 2017;

(c) Article 10 shall not apply to requests for alteration entered before 1 October 2017;

(d) Article 11 shall not apply to declarations of division entered before 1 October 2017;

(e) Article 12 shall not apply to requests for the change of name or address entered before 1 October 2017;

(f) Title IV shall not apply to applications for registration of a transfer entered before 1 October 2017;

(g) Title V shall not apply to declarations of surrender entered before 1 October 2017;

(h) Title VI shall not apply to applications for EU collective marks or EU certification marks entered before 1 October 2017, as well as to international registrations for which the designation of the Union was made before that date;

(i) Title VII shall not apply to costs incurred in proceedings initiated before 1 October 2017;

(j) Title VIII shall not apply to publications made before 1 October 2017;

- (k) Title IX shall not apply to requests for information or inspection entered before 1 October 2017;
- (l) Title X shall not apply to requests for conversion entered before 1 October 2017;
- (m) Title XI shall not apply to supporting documents or translations entered before 1 October 2017;
- (n) Title XII shall not apply to decisions taken before 1 October 2017;
- (o) Title XIII shall not apply to international applications, notifications of facts and decisions on invalidity of the EU trade mark application or registration on which the international registration was based, requests for territorial extension, seniority claims, notification of ex officio provisional refusals, notifications of invalidation of the effects of an international registration, requests for conversion for an international registration into a national trade mark application and applications for transformation of an international registration designating the Union into an EU trade mark application entered or made before 1 October 2017, as the case may be.

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

Done at Brussels, 5 March 2018.