BUSINESSEUROPE

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BUSINESSEUROPE RESPONSE TO OHIM QUESTIONS REGARDING OHIM STRATEGIC PLAN

1. What are the issues/challenges facing the OHIM over the coming years? What are the trends in the Intellectual Property landscape in Europe and beyond?

The most important trends BUSINESSEUROPE sees over the coming years are: shift to the digital world, growing importance of social media and increasing significance of designs for IP strategies.

Furthermore, IP rightsholders will seek more certainty when applying for new trademarks/designs.

Since OHIM is one of the main IP offices in the world handling trademarks and designs applications/registrations the corresponding issues/challenges are:

- Moving to the digital world requires the office to be accessible through a streamlined internet portal which is user-friendly and as quick as corresponding offices such as USPTO. Speed and stability of its website should be improved.

- The growing importance of social media and the speed associated to this medium requires a reasonably short registration procedure with high quality standards. Often these social media operate on a first come/first serve principle and if one does not have a registered IP right – trademark, it is quite difficult to operate against use of trademarks on internet and social media. Streamlining of internal OHIM processes without unreasonably reducing the terms given to users (for example, opposition term) is key.

- Designs will continue to grow as part of IP strategies of rightsholders. Consequently a reasonably short but with high quality standards registration process as the one required will continue to be necessary. To be able to create new designs, rightsholders will have a growing need for anteriority searches and databases such as for e.g. Design View will increasingly become necessary. Flexibility in the formal requirements to grant designs to reflect a constantly evolving area should also be pursued. In addition, the legal certainty about the strength and width of protection will become increasingly important. Industry needs good quality decisions within the shortest time to avoid legal uncertainty.

- Further harmonisation in IT and processes / procedures (application of absolute grounds criteria, opposition terms etc.) between OHIM and national offices to improve user friendliness but mostly to create a level playing field and keep the Community Trademark relevant. National offices' practice, for instance in applying EU case law on absolute grounds, can result in 'forum shopping' for national rights.

Which should be OHIM most important goals and what objectives need to be set in order to achieve the OHIM goals?

- OHIM should play a key role in leading the harmonisation of the trademark and design systems in Europe with respect to classification of goods and services, determining similarity between goods and services, similarity between trademarks, interpretation for grounds of refusal and cancellation, etc. This should be done in close cooperation with national offices that can also provide positive performance benchmarks for the benefit of users.
- OHIM should strive towards increasing the quality of its decisions and lowering the time needed to take decisions by dedicating sufficient staff of high quality.
- OHIM should further pursue and even strengthen all activities related to e-business and e-tools to assist first and foremost all users in their actions and communication with OHIM.
- OHIM should optimize its IT processes to come to rapid decisions in oppositions/cancellations and increase transparency in decision-making.
- In order to establish an easy exchange of trademark- and design-related data among various IP databases in Europe, OHIM should take the lead in the acceptance of a single IT protocol.

What concrete initiatives would your organization recommend OHIM to take to meet these goals?

- OHIM should act as a motor of harmonisation by measuring how the different NPTOs and itself deal with the above-mentioned issues. It should engage in discussions with both the European legislator and local legislators and NPTOs. Before doing that it should be clear what kind of differences exist in the different countries and OHIM should encourage NPTOs to participate in using tools created to measure the progress of harmonisation.
- OHIM should implement a regular review of its fee structure, taking into account the raison d'être of the trade mark system.

- OHIM should proactively engage in an ongoing dialogue with the EU legislators to ensure that any regulatory initiatives affecting trademarks (for e.g. use of trademarks in the foodstuff or tobacco sector) are proportionate, balanced and take into account the key role of intellectual property rights including trademarks for Europe's innovation and growth.