

THE REFORM OF THE EU TRADEMARK SYSTEM

0.- GENERAL ASPECTS OF THE REFORM

0.A.- THE EU TRADE MARK REFORM LEGISLATIVE PACKAGE

The EU trade mark reform legislative package comprises two legislative instruments: Directive (EU) 2015/2436, which replaces the existing EU Trade Mark Directive (harmonising the trade mark laws of the EU Member States), and Regulation (EU) 2015/2424, which amends the existing EU Trade Mark Regulation (setting out the rules applicable to EU trade marks and to the Office). It culminates the work that has been carried out during the last seven years on the reform of the EU trade mark system.

0.A.i.- The EU trade mark reform legislative package - Background

The starting point of the reform can be traced to the Commission's Communication of 16 July 2008 on an Industrial Property Rights Strategy for Europe, which announced that the Commission would carry out a comprehensive evaluation of the overall functioning of the trade mark system in Europe as a whole, covering Union and national levels and the interrelation between each other. Within this evaluation exercise, a "Study on the overall functioning of the European Trade Mark System", carried out by the Max Planck Institute at the request of the Commission was published in March 2011. This was followed by a process of public consultation and impact assessment, which concluded in the Commission issuing two legislative proposals (for the reform of the Directive and the Regulation) in March 2013. Next, the proposals went through the ordinary legislative procedure (including trilogue negotiations between the institutions) and a political compromise was reached in April 2015, with final approval by the Council and by the European Parliament plenary at the end of 2015.

0.B.- AIMS OF THE REFORM

The reform acknowledges the success of the existing EU trade mark system, confirming that its main principles have stood the test of time and continue meeting business needs and expectations, but seeks to build on this success by making it more effective, efficient and consistent as a whole and adapting it to the Internet era. The amending Regulation, in particular, seeks to streamline proceedings and increase legal certainty, as well as to clearly define all the tasks of the Office including the framework for cooperation and convergence of practices between the Office and the industrial property offices of the Member States. It also entails a revision of the fees payable to the Office, including an overall reduction in their amounts, particularly significant in the case of renewals, and the adoption of a one-class-per-fee system.

0.C.- ENTRY INTO FORCE (Article 4 Regulation 2015/2424, Article 56 Directive 2015/2436)

The amendments of the Regulation will enter on **23 March 2016**. However, certain Articles, basically those that need to be developed by secondary legislation, will enter into force on **1 October 2017**. The new Directive has entered into force on **12 January 2016**, and Member States are required to transpose it into their national laws by **14 January 2019 (14 January 2023, in the case of the provision of an administrative procedure for the cancellation of national marks)**.

0.D.- SECONDARY LEGISLATION (Articles 163 and 163a EUTMR, Article 2 Regulation 2015/2424)

The amending Regulation foresees that the Commission will issue secondary legislation to complement and develop some of the provisions of the basic Regulation. In some cases this will be done through a delegated act, in others through an implementing act (delegated and implementing acts differ mainly in the different procedural roles that the Council and the European Parliament play in their adoption). It is therefore expected that at least two legal instruments, a delegated act and an implementing act, will be adopted and will enter into force on **1 October 2017** (at the same time as those articles of the basic Regulation which require legislative development). The delegated and implementing acts will thus replace the current CTM Implementing Regulation, which for the moment is still in force (with the exception of some rules that are expressly deleted – see Article 2 of the amending Regulation).

1.- INSTITUTIONAL CHANGES

1.A.- NAME CHANGES (Article 1(1) to (5) Regulation 2015/2424, Article 2 EUTMR)

The most important terminology changes affect the name of the Office (previously "Office for Harmonisation in the Internal Market (trade marks and designs)") and that of the "Community trade mark", which will now become the "European Union Intellectual Property Office" and the "European Union trade mark", respectively. The name of the basic regulation also changes from "Community Trade Mark Regulation (CTMR)" to "European Union Trade Mark Regulation (EUTMR)". The new name of the Office will further accommodate any possible future expansion of the Office tasks in relation to other IP rights.

1.A.i.- Name changes - change in the name of the CTM

The terminology of the Trade Mark Regulation is adapted to the entry into force of the Lisbon Treaty, with all references to the Community being substituted by references to the European Union or, in some instances, the Union. This means, in particular, that the term "Community trade mark" will now be replaced by "European Union trade mark". Existing Community trade marks and Community trade mark applications will therefore automatically become European Union trade marks and European Union trade mark applications upon the entry into force of the amending Regulation, and the Community Trade Mark Regulation will now become the European Union Trade Mark Regulation.

1.B.- GOVERNANCE (Recital 31 Regulation 2015/2424, Articles 124 to 129, 136 and 138 EUTMR)

The amending Regulation seeks to adapt certain principles of the governance of the Office to the Common Approach on EU decentralised agencies adopted by the European Parliament, the Council and the Commission in July 2012, while at the same time taking into account its peculiarities where appropriate. The main changes affect the name, composition and functioning of the governing bodies, some aspects of the election and renewal of senior officers and the distribution of tasks and competencies between the Executive Director and the governing bodies.

1.B.i.- Governance - Name changes

In line with the Common Approach, the President of the Office will now become its Executive Director and the Administrative Board will now be called the Management Board. The Budget Committee, which is specific to the Office (as a consequence of its financial autonomy), retains the same name.

1.B.ii.- Governance - Changes in the composition and functioning of the governing bodies

The Management Board and the Budget Committee will be composed of one representative of each Member State, two representatives of the Commission and one representative of the European Parliament, with each member having one vote. Decisions will in principle be taken by absolute majority (instead of simple majority), with a two-thirds majority required for certain issues (for example, the election of new senior officers). The terms of office of the chairpersons and deputy chairpersons will now be of four years (instead of three years), renewable once.

1.B.iii.- Governance - Election of senior officers

The election mechanism for senior officers is essentially unaltered, with the Executive Director, Deputy Executive Director, President of the Boards of Appeal and chairpersons of the Boards being appointed for five years by the Council of Ministers from a list of candidates proposed by the Management Board. The list of candidates will be drawn up following an open and transparent selection procedure. Before being appointed, the candidate selected by the Management Board may be invited to make a statement before any competent European Parliament committee and to answer questions put by its members. The mandates of the Executive Director, Deputy Executive Director and President of the Boards of Appeal can only be extended once and for no more than five years.

1.B.iv.- Governance - Functions of the governing bodies

The basic governance schema remains as it is: the Executive Director manages the Office and is accountable to the Management Board, with the Budget Committee as the budgetary authority. However, the lists of tasks of the Executive Director and the Management Board are developed in much more detail, and a number of important documents that were previously discussed at the Administrative Board as an information or consultation point and were subsequently adopted by the President (such as the strategic plan, the annual work programme or the annual report) will now be adopted by the Management Board on the basis of a draft submitted by the Executive Director (i.e. will become decision points).

1.C.- COOPERATION (Recital 30 Regulation 2015/2424, Article 123c EUTMR)

A solid legal framework for the existing cooperation between the Office and the offices of the Member States is established, enabling the Management Board to define and coordinate common projects of interest to the Union and the Member States, within a financial envelope of up to a maximum of 15% of the yearly revenue of the Office. Another important aspect of the new framework is that it provides for the consultation of user representatives in relation to cooperation projects, in particular in the phases of the definition of the projects and the evaluation of their results.

1.C.i.- Cooperation – Areas

The amending Regulation includes a non-exhaustive list of areas of activity to be covered by the cooperation between the Office and the offices of the Member States, which include the establishment of common standards and practices, the creation of common databases and portals, the sharing of data and information and the exchange of technical expertise and assistance, as well as the raising of awareness concerning the trade mark system and the fight against counterfeiting.

1.C.ii.- Cooperation –Projects

Cooperation projects shall be defined and coordinated by the Management Board upon a proposal from the Executive Director. The project definition will contain the specific obligations and responsibilities of each participating office. Should a national office decide not to participate in a cooperation project, it shall provide the Office with a statement explaining the reasons for its decision.

1.D.- BUDGET (Recitals 34 and 35 Regulation 2015/2424, Article 139 EUTMR)

The Office will continue to enjoy financial autonomy, financing all its activities with the revenue obtained from the fees paid by its users. The amending Regulation introduces the possibility of applying a percentage of the revenue of the Office (subject to certain conditions) to offset the costs incurred by the industrial property offices of the Member States as a result of the specific tasks which they carry out as functional parts of the EU trade mark system. It also foresees the possibility of a transfer of a surplus to the budget of the Union in certain exceptional circumstances.

1.D.i.-Budget - Compensation to NOs

Every year the Office will offset the costs incurred by the industrial property offices of the Member States when carrying out tasks related to EU trade marks, such as opposition and invalidity procedures before them involving EU trade marks, provision of information on the functioning of the EU trade mark system and enforcement of EU trade marks. This obligation will only apply provided that no budgetary deficit occurs in that year. The overall amount for offsetting these costs shall correspond to 5% of the yearly revenue of the Office, to be distributed between the Member States in accordance with a distribution key approved by the Management Board, with each Member State receiving at least 2% of the total offsetting. In case of a budgetary surplus after provision of the reserve fund, the Office may propose to the Management Board, after consulting the Budget Committee, an increase in this amount up to a maximum of 10% of the yearly revenue of the Office.

1.D.ii.-Budget - Transfer of surplus

In case a substantive surplus is generated during five consecutive years after the entry into force of the amending Regulation, and after taking into account (i) the compensation to the national offices, (ii) the provisions to the reserve fund and (iii) the annual and multi-annual strategic plans, the Office may propose to the Budget Committee a transfer of surplus to the budget of the Union.

1.E.- MEDIATION CENTRE (Recital 33 Regulation 2015/2424, Article 137a EUTMR)

The amending Regulation gives the Office the option of establishing, at some stage in the future, a Mediation Centre for the friendly settlement, on a voluntary basis, of inter partes disputes based on the EU trade mark Regulation and the Regulation on Community designs, both at first instance and appeal level.

2.- TECHNICAL CHANGES (COMING INTO FORCE ON 23 MARCH 2016)

2.A.- EXAMINATION PROCEEDINGS

In the area of examination proceedings, the main changes are the following: (i) elimination of the possibility of filing EU trade mark applications through national offices; (ii) establishment of an opt-in mechanism for receiving EU search reports and an opt-out mechanism for receiving surveillance letters, and (iii) certain clarifications and codification of existing practice as regards seniority and third party observations.

2.A.i.- Changes in examination proceedings - Filing of applications (Recital 24 Regulation 2015/2424, Articles 25 and 27 EUTMR)

In view of the gradual decline and insignificant number of EU trade mark applications filed through the national offices, the amending Regulation has eliminated this possibility. All applications shall now be filed directly at the Office.

2.A.ii.- Changes in examination proceedings - Searches and surveillance letters (Recital 26 Regulation 2015/2424, Article 38 EUTMR)

In relation to EU search reports, the amending Regulation introduces an opt-in: the Office will draw up an EU search report for each application as it does now, but it will only send the report to the applicant when he has requested to receive it when filing the application.

National search reports remain in principle as before: optional both for the applicant and for the national offices, which can choose whether they wish to provide these reports. The fees to be paid by the applicant for national search reports are fixed in the basic regulation and remain unchanged and the fees to be paid by the Office to the national offices for the national search reports will continue to be fixed by the Budget Committee. As to the contents and modalities of the search reports, the amending Regulation now empowers the Office to establish them itself, after consulting the Management Board.

The Office also retains the obligation of sending surveillance letters to the proprietors of any earlier EU trade marks or EU trade mark applications cited in an EU search report, and this regardless of whether the applicant has requested to receive the EU search report or not. However, proprietors are now given the possibility of opting out, in which case they will no longer receive these letters.

2.A.iii.- Changes in examination proceedings (Articles 34 and 40 EUTMR)

The new wording of Article 34(3) clarifies that, in case of revocation of the earlier national mark on which a seniority claim is based, the seniority shall only lapse provided that the revocation takes effect prior to the filing or priority date of the EU trade mark. The new Article 40 codifies the current Office's practice regarding the time period for submitting third party observations (before the end of the opposition period or, where an opposition against the trade mark has been filed, before the final decision on the opposition is taken). It also expressly formulates the right of the Office to re-open the examination of absolute grounds on its own initiative at any time before registration, where appropriate.

2.B.- ABSOLUTE GROUNDS FOR REFUSAL

In the area of absolute grounds of refusal the main changes are the following: (i) extension of the scope of the absolute ground examination as regards functional signs; (ii) clarification of the prohibitions related to PDOs, PGIs and other IP titles; (iii) elimination of disclaimers, and (iv) codification of current practice as regards invalidity proceedings based on absolute grounds.

2.B.i.- Changes in absolute grounds - functional marks (Article 7(1)(e) EUTMR)

The amending Regulation extends the prohibition that currently applies to "shape" marks also to signs consisting exclusively of other characteristics (e.g. colour, smell or sound) which result from the nature of the goods they designate, are necessary to obtain a technical result or add a substantial value.

2.B.ii.- Changes in absolute grounds - PDOs/PGIs (Article 7(1)(j), (k), (l) and (m) EUTMR)

The amending Regulation clarifies the degree of protection vis-à-vis trade marks of designations and origin, geographical indications, traditional terms for wine, traditional specialities guaranteed and plant variety rights, ensuring full consistency with relevant Union and national legislation providing for the protection of these intellectual property titles.

2.B.iii.- Changes in absolute grounds - Disclaimers (Article 37(2) of the former CTMR)

The amending Regulation has eliminated the possibility of using disclaimers in the future to overcome absolute grounds objections. However, existing disclaimers in EUTMs filed and/or registered before the entry into force of the amending Regulation are not affected and will remain in the Register.

2.B.iv.- Changes in absolute grounds - Invalidity based on AG (Article 76(1) EUTMR)

The amending Regulation codifies the existing practice of the Office, sanctioned by case law, which stipulates that in invalidity proceedings based on absolute grounds, the Office shall limit its examination to the grounds and arguments provided by the parties.

2.C.- GOODS & SERVICES

As regards the designation and classification of goods and services, the amending Regulation (i) codifies the existing practice for trade marks filed after the judgment in C-307/10 'IP Translator', and (ii) extends it to trade marks filed before the judgment, giving their owners a transitory six month period to adjust the specification if they deem it necessary.

2.C.i.- Changes as regards goods and services - clarity and precision of specifications (Recital 25 Regulation 2015/2424, Article 28(2) to (5) EUTMR)

The amending Regulation follows the line established by the ECJ in its judgment in case C-307/10 'IP Translator', by requiring the goods and services to be identified with sufficient clarity and precision to enable the competent authorities and economic operators, on the basis of the specification alone, to determine the extent of the protection of the trade mark. Consequently, the Office will only accept the use of general terms provided that they comply with the requisite standards of clarity and precision (see in this respect the ETMDN Common Communication on the Common Practice on the General Indications of the Nice Class Headings). The terms that are used, including the general indications of the class headings of the Nice Classification, will always be interpreted according to their literal meaning, i.e. not comprising a claim to goods or services which cannot be so understood.

2.C.ii - Changes as regards goods and services - trade marks with class headings applied for before the IPT judgment (Article 28(8) and (9) EUTMR)

In view of the fact that the literal interpretation of the scope of protection of class headings after the judgment in case C-307/10 'IP Translator' is now also extended to trade marks filed before the judgment, proprietors of EUTMs containing an entire class heading and filed before 22 June 2012 (when the Office had a different practice) are given the possibility to adapt the specification of their trade marks to their original intention. This possibility will be available only for a period of six months after the entry into force of the amending Regulation, during which proprietors will be able to request the register to be amended in order to include in the specification of their EUTMs additional goods and services which appear in the corresponding alphabetical list of the Nice edition in force at the time the EUTM was filed but are not clearly covered by the literal meaning of the general indications in the class heading. It should however be noted that the resulting amendment of the register will not have retroactive effects vis-à-vis third parties who were already using the trade mark or had applied for it for the goods or services which are added by the proprietor. Before the entry into force of the Regulation, the Office will issue a Communication of the President clearly explaining the procedure that proprietors will have to follow if they wish to avail themselves of this possibility.

2.D.- OPPOSITION AND CANCELLATION PROCEEDINGS

As regards opposition and cancellation proceedings, the amending Regulation (i) changes the starting date for the opposition period against international registrations designating the EU, and (ii) introduces some changes as regards counterclaims before EU trade mark courts.

2.D.i.- Changes in opposition and cancellation proceedings - opposition period in the case of IRs designating the EU (Article 156(2) EUTMR)

The period of opposition against international registrations designating the EU shall now begin one month (instead of six months) after the date of the publication by the Office of the international registration.

2.D.ii.- Changes in opposition and cancellation proceedings - counterclaims (Article 100 EUTMR)

The revocation or declaration of invalidity of an EU trade mark can be requested directly to the Office and/or to an EU trade mark court as a counterclaim in the context of infringement proceedings. In order to improve the coordination between both instances when there are parallel cases and to ensure that the Register of EU trade marks administered by the Office is kept updated, the amending Regulation now provides that EU trade mark courts shall not proceed with the examination of such counterclaims until either the interested party or the court have informed the Office of the date on which the counterclaim was filed. It also imposes on the Office the obligation of informing the EU trade mark court in question of any previous application for revocation or for a declaration of invalidity filed before the Office.

2.E.- RELATIVE GROUNDS FOR REFUSAL

In the area of relative grounds of refusal the main changes are the following: (i) introduction of a separate specific ground of opposition and cancellation on the basis of PDOs/PGIs; (ii) changes in one of the dates for determining the obligation to submit proof of use and determining the relevant period, and (iii) a series of clarifications in line with existing practice and case law.

2.E.i.- Changes in relative grounds - new ground of opposition/cancellation (Articles 8(4a) and 53(1)(d) EUTMR)

A specific ground is introduced, in both opposition and cancellation proceedings, which allows the opponent or invalidity applicant to rely on a protected designation of origin or geographical indication. Although this ground of opposition and cancellation was already included within the "other signs" mentioned in the existing Article 8(4), it is now made explicit. In addition, the opponent or invalidity applicant who relies on these specific earlier rights will no longer be required to prove that they have been subject to use in the course of trade of more than mere local significance.

2.E.ii.- Changes in relative grounds - relevant period for PoU (Articles 42(2) and 57(2) EUTMR)

For the purposes of determining if the opponent can be requested to furnish proof of genuine use of the earlier marks invoked as a basis of its opposition, the relevant date (at which the earlier marks need to have been registered for more than five years) will now be the date of filing or priority date of the contested EU trade mark application (instead of the date of its publication). This change is coherent with the general principle applicable to the rest of the substantive requirements of the relative grounds for refusal, which should in principle be fulfilled at the date of filing or priority date of the contested application. In invalidity proceedings based on relative grounds, the relevant date for establishing whether it is possible to request proof of use continues to be the date of filing of the application of a declaration of invalidity. However, the date of filing or priority date of the contested EU trade mark application (instead of the date of its publication) will also be relevant for determining whether the applicant has to submit proof of use for an additional time period.

2.E.iii.- Changes in relative grounds - clarifications in line with existing practice (Articles 8(5), 15(1), 53(1), 54, 56(3) EUTMR)

Re-drafting of a series of provisions to clarify and/or reflect the current practice: (i) as regards Article 8(5), it is clarified that the protection for reputed trade marks also applies to identical or similar goods (in line with C-292/00, 'Davidoff'); (ii) as regards Article 15(1) (a), it is stated that, in order to establish whether a trade mark has been used in a form differing in elements which do not alter its distinctive character, it is not relevant whether the trade mark as used is also registered or not (in line with the Office's practice and dispelling doubts over the interpretation of the judgment in C-234/06 P 'Bainbridge'); (iii) as regards Article 53(1), the current practice of the Cancellation Division, which requires the conditions for invalidity to be fulfilled at the filing date or priority date of the contested trade mark, is now reflected in the Regulation; (iv) as regards Article 54 and acquiescence, there is a simplification of the text (as a result of the new Article 13a) without any change in substance, and v) as regards Article 56(3), there is a re-wording of the provision to clarify that *res judicata* also applies when there is a previous final decision by the Office and that it only applies to final decisions adjudicating on the merits of the case (both points also in line with current practice).

2.F.- APPEALS

The main changes brought about by the amending Regulation as regards appeal proceedings are the following: (i) elimination of interlocutory revision in inter partes cases, and (ii) insertion of certain provisions to clarify and codify the existing practice regarding ancillary appeals and the date of effect of BoA decisions.

2.F.i.- Changes in appeals - Elimination of interlocutory revision in inter partes cases (Article 62 of the former CTMR)

In line with the aim of streamlining the proceedings before the Office, and taking into account that the interlocutory revision of first instance decisions in inter partes cases was possible only in very exceptional instances (since it required the agreement of both parties), the legislator has chosen to eliminate this procedural step, which should result in a shorter overall duration of appeal proceedings in inter partes cases.

2.F.ii.- Changes in appeals - Clarifications and codification of practice (Articles 60(2) and 64(3) EUTMR)

The amending Regulation strengthens the legal basis of ancillary appeals in inter partes proceedings, which were already contemplated in the Rules of Procedure of the Boards of Appeal. It also clarifies, in line with existing practice, that the decisions of the Boards take effect once the period to bring an action against them has expired or, if an action has been brought within that period, once it has been dismissed by the General Court or, in the case of further appeal, by the Court of Justice.

2.G.- EU TRADE MARK REGISTER (Articles 87, 87a and 87b EUTMR)

The rules applicable to the Register of European Union trade marks are redrafted in order to make them more clear and systematic, with no fundamental change of practice. As regards, in particular, data protection aspects, the amending Regulation takes into account the opinion of the European Data Protection Supervisor of 11/07/2013 on the initial Commission proposal by reinforcing the legal basis for the current practice and giving some additional rights to the data subjects, e.g. the right of applicants or proprietors to request the suppression of their personal data from the Office's data base in certain circumstances, or the right of a party to proceedings before the Office to request the suppression of its personal data in the publicly available version of a decision.

2.H.- FEES

In the area of fees, the amending Regulation introduces the following changes: (i) a new one-fee-per-class system for application and renewal fees; (ii) an overall decrease in fees payable to the Office, to the benefit of our users, and (iii) the incorporation of the provisions of the CTM Fees Regulation into the basic Regulation.

2.H.i.- Changes in fees – One-fee-per-class system (Article 26(2) EUTMR)

The amending Regulation provides for an additional application and renewal class fee to be payable for each class beyond the first (and not the third as previously). This one-fee-per-class system also means that applicants and proprietors will now be able to pay only for the number of classes they need.

2.H.ii.- Changes in fees - Amounts (Recital 36 and Annex I of Regulation 2015/2424)

The amounts of the fees are now set out in an annex to the basic act. This implies that any future changes in the amounts will have to follow the ordinary legislative procedure. As regards the actual amounts, the amending Regulation will result in an overall reduction of the fees payable to the Office. For application fees, the change to the one-fee-per-class system means in practice that applicants will pay a lower fee if they only apply for one class, the same fee if they apply for two, and a higher fee if they apply for three or more. Renewal fees are substantially reduced in all instances and set to the same level as application fees, and there are also reductions in opposition, cancellation and appeal fees.

The tables below summarize the changes as regards the amounts of application and renewal fees by electronic means (97% of applications are filed electronically):

Application fees (e-filing)

CTM (old system)	Fee	EUTM (new system)	Fee
First class	€900 covers up to three classes	First class	€850
Second class		Second class	€50
Third class		Third class	€150
Fourth and all subsequent classes	€150	Fourth and all subsequent classes	€150

Renewal fees (e-filing)

CTM (old system)	Fee	EUTM (new system)	Fee
First class	€1,350 covers up to three classes	First class	€850
Second class		Second class	€50
Third class		Third class	€150
Fourth and all subsequent classes	€400	Fourth and all subsequent classes	€150

In relation with renewals it should also be taken into account that, according to the new wording of Article 47(3) EUTMR, the basic renewal period will now be the six-month period ending on the date of expiry of the registration (and not on the last day of the month on which protection ends), and that the grace renewal period (where a surcharge is applicable) will start the day after the date of expiry and finish six months after said date.

2.H.iii.- Changes in fees - Rules on payment of fees (Articles 144, 144a, 144b and 144c EUTMR)

The rules applicable to the payment of fees are now incorporated (without any substantial changes) into the basic Regulation and, consequently, the CTM Fees Regulation is repealed.

2.I.- PROFESSIONAL REPRESENTATION (Articles 92 and 93 EUTMR)

In line with Section 8 of Protocol 1 of the Agreement on the European Economic Area (EEA), references to the territory of the Union are substituted by references to the territory of the EEA, thus extending the advantages in the area of professional representation currently enjoyed by users and representatives from EU countries to those coming from non-EU EEA countries. This means that a user having its domicile or principal place of business or a real and effective industrial or commercial establishment in one of these countries will no longer need to be represented in proceedings before the Office, and also that professional representatives from these countries will be able to act before the Office, subject to the same conditions as professional representatives from EU countries.

2.J.- EFFECTS OF EU TRADE MARKS (Recitals 12 to 22 Regulation 2015/2424, Articles 9, 9a, 9b, 12, 13 and 13a EUTMR)

The most important changes introduced by the amending Regulation as regards enforcement of EU trade marks concern: (i) the right of the EU trade mark proprietor to prevent third parties from bringing into the Union goods in transit which infringe its trade mark, unless the declarant or holder of the goods in question can prove that there is no infringement in the country of final destination; (ii) the right of the EU trade mark proprietor to prohibit preparatory acts in relation to the use of packaging or other means; (iii) a reference to the territory of the European Economic Area (instead of that of the European Union) for the purpose of exhaustion of rights, and (iv) a redrafting of the provision regarding the limitations of the effects of an EU trade mark, clarifying certain aspects as regards what is considered to be fair and honest use.

3.- TECHNICAL CHANGES (COMING INTO FORCE ON 1 OCTOBER 2017)

The main changes that will come into force on 1 October 2017 are the following: (i) elimination of the requirement of graphical representation for EU trade marks; (ii) introduction of EU certification trade marks, and, (iii) some other procedural changes. In addition, the secondary legislation that will be drafted during this period is likely to bring further streamlining of the proceedings before the Office.

3.A.- ELIMINATION OF THE REQUIREMENT OF GRAPHICAL REPRESENTATION (Recital 9 Regulation 2015/2424, Article 4 EUTMR)

The requirement of graphical representation from the definition of an EU trade mark will no longer be necessary. This will allow signs to be represented in any appropriate form using generally available technology, and thus not necessarily by graphic means, as long as the representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective. By the time this provision enters into force, the Office will provide users with information on the alternative media and formats that are considered to comply with the new provision.

3.B.- EU CERTIFICATION TRADE MARKS (Recital 27 Reg. 2015/2424, Articles 74b to 74k EUTMR)

The amending Regulation introduces a new EU trade mark type, certification marks, which already exist in some national systems. Certification marks differ from collective marks in that a collective mark requires a holder whose members use the mark as a sign for goods or services coming from the collective, whereas a certification mark allows a certifying institution or organisation to permit adherents to the certification system to use the mark as a sign for goods or services complying with the certification requirements. Thus, certification marks are signs of supervised quality, whereas collective marks do not imply as such a quality claim.

3.C.- OTHER PROCEDURAL CHANGES (Articles 18, 30, 33, 50, 79c, 79d, 80 and 82 EUTMR)

There are a number of additional procedural changes, which will enter into force on 1 October 2017, affecting the following areas: (i) assignment of a trade mark registered in a name of an agent, which will be decided by the Cancellation Division or a European trade mark in the context of a counterclaim, instead of by ordinary national courts; (ii) priority claims, which will have to be always filed together with the application (and not subsequently); (iii) surrenders, where the existing practice in case there is a previous application for revocation is codified; (iv) time limits set by the Office, where the distinction in their minimum duration depending on whether the applicant is established within the EU or outside it is eliminated; (v) correction of errors and revocation of decisions, where there are a number of conceptual clarifications, as well as a new time limit for revocation: it shall have to be effected (and not just determined) within one year from the date of the decision of entry (instead of six months), and (vi) continuation of proceedings, where this procedural remedy will now be applicable to cases where it was previously excluded, in particular in the context of opposition proceedings.

3.D.- POSSIBLE IMPACT OF SECONDARY LEGISLATION IN PROCEEDINGS BEFORE THE OFFICE

The implementing and delegated acts that will be drafted by the Commission after the entry into force of the amending Regulation are likely to contain further measures to speed up proceedings before the Office and make them more transparent, thorough, fair and equitable. These measures will in principle enter into force on 1 October 2017, together with some of the articles of the basic Regulation.

<i>Previous term</i>	<i>Previous abbreviation</i>	<i>New Term</i>	<i>New abbreviation</i>
Office for Harmonization in the Internal Market	OHIM	European Union Intellectual Property Office	EUIPO
Community trade mark regulation	CTMR	European Union trade mark regulation	EUTMR
Community trade mark implementing regulation	CTMIR	European Union trade mark implementing regulation	EUTMIR
Community trade mark	CTM	European Union trade mark	EUTM
Community collective mark	CCM	European Union collective mark	EU collective mark
		European Union certification mark	EU certification mark
Community trade mark court	CTMC	European Union trade mark court	EUTM court
Register of Community trade marks		Register of European Union trade marks, (the Register).	EUTM Register
Community Trade Marks Bulletin		European Union Trade Marks Bulletin	EUTM Bulletin
Community trade mark application	CTMA	European Union trade mark application,	EUTM application
Administrative Board	AB	Management Board	MB