



European Commission Delegation
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EDITORIAL



Le démarrage d'un Office comme l'OHMI est une opération délicate pleine de surprises bonnes ou mauvaises. Je me réjouis du nombre de demandes de marques nettement supérieur à celui qui était prévu à l'origine. L'adaptation des moyens humains

et techniques à cette situation a posé des problèmes difficiles mais surmontables grâce à un personnel extrêmement motivé.

De proche en proche l'Office s'organise et nous avons pensé qu'il serait souhaitable d'associer les usagers de la marque communautaire à la vie de l'Office. C'est la raison d'être de cette "Newsletter". Je souhaite vivement que la lecture de cette lettre apporte à ceux qui sont nos correspondants et nos clients, les informations les plus variées sur la marque communautaire, les procédures et l'Office en général.

La convivialité de nos relations avec vous tous est une condition de notre réussite.

Jean-Claude COMBALDIEU

PAYMENT OF FEES

1. Introduction

The Community Trade Mark Regulation (CTMR) provides for the various Office actions for which fees must be paid, such as for an application, for the registration, for the renewal, for an opposition, for an appeal etc. The amounts of these fees and the manner of their payment are provided for in Commission Regulation (EC) No. 2869/95 of 13 December 1996 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (Fees Regulation), published in the Office's 1995 Official Journal (OJ OHIM 1995, p. 414). In this article we will explain the manner in which fees may be paid as well as some of the problem areas regarding such payments. We may return to some of these points or to other problems in subsequent issues of the Newsletter.

2. Methods of Payment

According to Article 5 of the Fees Regulation, payment may be made

- by bank transfer to a bank account held by the Office,
- by delivery or remittance of cheques payable to the Office,
- by cash payment at the Office.

- by any other means established by the President of the Office, such as by means of current accounts. By Decision No EX-96-1 of 11 January 1996 concerning current accounts (OJ OHIM 1996, p. 48), the President of the Office established the conditions for such current accounts and the manner of their operation. In order to take account of subsequent developments, this Decision has been amended by Decision No. EX-96-7 of 30 July 1996. The Office has also prepared an extensive Communication on the operation of current accounts (Communication No 5/96 of the President of the Office of 8 August 1996 concerning current accounts). The amending Decision and the Communication have been communicated to all holders of current accounts. They are published in the October 1996 issue of the Official Journal.

3. Currency

All payments must be made in ECU (European Currency Unit), the unit in which the fees are established. There is an exception as regards payments in cash, which may be made only directly at the Office and which must be in Pesetas, at the exchange rate ECU/Pesetas established by the President pursuant to Article 6 (2) of the Fees Regulation.

Remitting money to the Office by bank transfer or writing cheques in ECU is similar to bank transactions in foreign currency. No particular problems arise in

COB: XIV/3

Ufficio per l'Armonizzazione nel Mercato Interno (Marchi, Disegni e Modelli)

UAMI

Office de l'harmonisation dans le marché intérieur (marques, dessins et modèles)

OHMI

Office for Harmonization in the Internal Market (Trade Marks and Designs)

OHIM

Harmonisierungsamt für den Binnenmarkt (Marken, Muster und Modelle)

HABM

Oficina de Armonización del Mercado Interior (Marcas, Dibujos y Modelos)

OAMI

this regard for holders of current accounts which are established in ECU anyway.

4. Indications when Making Payments

According to Article 7 (1) of the Fees Regulation, when making payments, the name of the payer and the purpose of the payment must be indicated.

When paying by means of bank transfer or cheque, the money transaction is not part of the underlying request, application, etc. In order to link the money transfer to the proceedings to which it belongs, it is essential that all the necessary indications are made on the money transfer document or on the cheque sent to the Office. When paying by cheque, the accompanying letter should as well contain these indications.

"Necessary indications" means as many particulars as the payer can make and as are required to make the link. The payer, the purpose of the payment and the proceedings to which it relates are essential. As concerns the payer, in addition to the name any other identifying indication should be given, such as an ID number attributed by the Office. The payer should also indicate his own reference number. As concerns the purpose of the payment, the respective indication should be as specific as possible, such as "basic application fee", "opposition fee", "registration fee", etc. As concerns the proceedings, the file number will be sufficient. If the file number is not (yet) available, such as when paying the basic application fee before attribution of a filing number, the payment should be accompanied by additional information, such as the mark to which it relates, the date when the application was filed, or any other relevant information. Again, no problems arise in this regard for holders of current accounts. Because of the "automatic" debit system the Office will simply debit the fee from the current account and attribute it to the respective proceedings, without the party to the proceedings having to undertake any additional effort.

Date of Payment

The CTMR and the Implementing Regulation establish when a particular fee must be paid. Thus, in order to obtain the receipt date as the filing date, Art. 27 CTMR requires that the basic application fee (975 ECU) is paid within one month of the receipt date. Similarly,

the opposition fee (350 ECU) must be paid within the opposition period of three months; if it is paid thereafter, the opposition shall be deemed not to have been filed. Similar rules exist for other proceedings.

These basic rules, which establish the date when a fee must be paid in order to have a particular procedural effect, are supplemented by Art. 8 of the Fees Regulation which determines the actual payment date for the various methods of payment.

When payment is made by money transfer to a bank account of the Office, the date of payment is the date when the Office's account is credited with payment (Art. 8 (1) (a) of the Fees Regulation).

When payment is made by cheque, the date of payment is the date when the Office receives the cheque, provided the cheque is met, i.e. the fee is subsequently actually credited to the Office upon presentation of the cheque for payment (Art. 8 (1) (b) of the Fees Regulation).

When payment is made by cash, the date of payment is the date when the money is paid to the Office (Art. 8 (1) (c) of the Fees Regulation).

When payment is made by debiting a current account, the actual date of debiting will not necessarily coincide with the date established in the CTMR or the Implementing Regulation as the "due" date. However, according to Art. 8 (1) of the Decision on current accounts as amended, the Office will look only at the actual debit date. When the account has a sufficient balance to debit the fee at that date, the payment will be deemed to have been made on the respective "due" date. The relevant rules on "due" dates are contained in Art. 7 of the Decision on current accounts as amended. For the basic application fee, the "deemed" date will be one month after receipt of the application, unless the applicant has specifically requested an earlier debit. For the opposition fee, and similar application-related fees (appeals etc.), the "deemed" date will be the date on which the notice of opposition was received by the Office. Holders of current accounts will never "lose" a date for non-payment if their accounts have a sufficient balance or if they are completed as mentioned hereafter.

Late Payment

When a payment is made "late"; i.e. after

the date required pursuant to the CTMR or the Implementing Regulation, the consequences provided there arise. E.g., if the basic application fee is received later than one month after the receipt date, the filing date will be the date of receipt of the fee (Rule 9 (2) of the Implementing Regulation). If the opposition fee is paid late, the opposition is deemed not to have been made.

While the holders of current accounts (and those who pay in cash) will not have problems in this regard, problems do arise when payment is made by bank transfer or cheque. Thus, because of the necessary delay between giving instructions to transfer money to a bank account of the Office and the date when the money is actually credited to that account, the money may arrive only after the "due" date. Also, the inevitable delay between sending a cheque and its arrival at the Office may result in the cheque arriving after the "due" date.

Article 8 (3) of the Fees Regulation protects the payer in these situations, provided he can prove that he has given the instruction for the money transfer or mailed the cheque within the applicable time period (e.g., for the basic application fee, within the period of one month from the receipt date). When the instructions or the mailing took place - from within a Member State - earlier than ten days before the end of the period, the payment will be deemed to have been made in time. When the instructions or the mailing took place within the last ten days, the payment will still be deemed to have been made in time if the surcharge provided for in Article 8 (2) and (3) of the Fees Regulation is paid as well. The surcharge amounts to 10% of the missing fee, subject to a maximum of 200 ECU. The payment of the surcharge is not necessary until the Office requests the additional payment and must then be made within the period specified by the Office.

Insufficient Payments

The Office is entitled to receive any fee to its full amount (Art. 9 (1) of the Fees Regulation). When cash payment is involved, this presents no problems. When current accounts are involved, again no problems arise unless the account does not have a sufficient balance, a problem dealt with hereafter. However, the Office has experienced particular problems when payment is made by cheques. In a significant number of cases, when the cheques were

presented for payment, either the bank of origin on which the cheque was drawn or in the process of handling the collection, fees are charged or withheld which result in the Office receiving less than the face amount of the cheque. It should be evident that this is unacceptable. Therefore, in Communication No 6/96 of the President of the Office of 8 August 1996 concerning payment of fees by cheque, those paying by cheque are requested to instruct their banks to ensure that payments are to be made "net" and that any banking or handling charges are to be debited to the payer and not to the Office. This Communication is published in the September 1996 issue of the Office's Official Journal (OJ OHIM 1996, p. 1274).

Article 9 of the Fees Regulation contains specific provisions on incomplete payment and also on the legal consequences of insufficient payment. According to Article 9 (1) of the Fees Regulation, when payment is not received by the Office for the full amount of the fee, this will mean, "in principle", that the time limit for the payment is considered not to have been observed. However, according to Article 9 (2) of the Fees Regulation, the Office may, if this is possible, invite the payer to pay the amount lacking. Also, the Office may disregard any small amount lacking.

With regard to the cheque payments mentioned before, the President of the Office has given instructions that in all these cases Article 9 (2) of the Fees Regulation shall be applied by the examiners of the Office so that no filing dates will be lost as a result of lacking amounts. However, the Communication also makes clear that for the future - that is for any payment made after the date of the publication of the Communication in the Office's Official Journal - this generous approach will no longer apply.

Insufficient Amounts in Current Accounts

When a current account does not have sufficient funds to allow the debit of a particular fee, Article 8 of the Decision on current accounts provides a safeguard to holders of current accounts as well. The Office will inform the holder of the insufficiency of funds and invite him to fill up the account accordingly. If this happens within one month after the receipt of the communication and the account then contains sufficient amounts to debit the missing fee and an administrative charge of 20% of the

missing fee subject to a maximum of 500 ECU and a minimum of 100 ECU, the payment will still be considered to have been made in time. Thus, provided holders of current accounts either have sufficient funds available or fill up the account sufficiently (sufficient also for the surcharge), they will not lose a payment date.

ÊTES-VOUS ABONNÉ AU JOURNAL OFFICIEL DE L'OHMI?

Depuis le mois de septembre 1995, l'OHMI édite un Journal officiel mensuel dans lequel sont notamment publiées les communications et décisions du président de l'Office, des informations sur les activités du Conseil d'administration et du Comité budgétaire, des informations sur les activités des organisations gouvernementales et non gouvernementales liées au domaine de la propriété intellectuelle, etc. Le prix de l'abonnement annuel au JO est de

200 écus. Les personnes qui désirent s'abonner ou renouveler leur abonnement en 1997 doivent remplir un formulaire de commande qui peut être obtenu sur simple demande auprès de la section publication de l'OHMI par courrier ou par télécopie au numéro suivant: int. + 34-6-513-91-73.

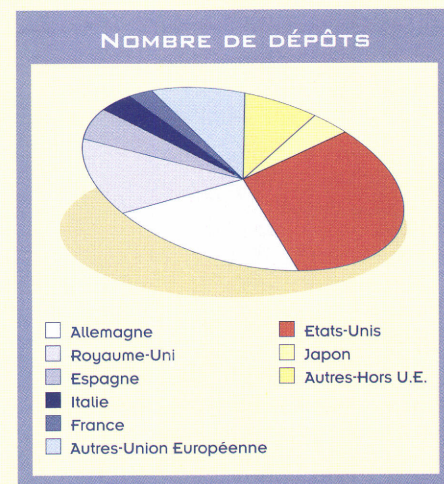
COMMENT S'ABONNER AU BULLETIN DES MARQUES COMMUNAUTAIRES?

Le premier Bulletin des marques communautaires est prévu pour la fin du mois de novembre 1996. Ce numéro fera partie de l'abonnement de 1997. Le prix est de 1.500 écus pour l'édition papier. Une édition CD-Rom mensuelle sera proposée ultérieurement au même prix. Les personnes intéressées sont invitées à adresser leur commande à la section des publications de l'Office à Alicante. Le paiement se fera à la réception de la facture.

QUELQUES CHIFFRES SUR L'OHMI au 15 octobre 1996:

1) dépôts de marques communautaires		
- nombre de dépôts reçus:	34 317	
- répartition géographique des déposants:		
Union européenne:	19 328	56,3 %
Allemagne	6 169	17,9 %
Royaume-Uni	4 584	13,3 %
Espagne	2 250	6,5 %
Italie	1 494	4,3 %
France	1 125	3,2 %
Pays Bas	833	2,4 %
Suède	600	1,7 %
Belgique	535	1,5 %
Autriche	509	1,4 %
Danemark	465	1,3 %
Finlande	275	0,8 %
Irlande	202	0,5 %
Portugal	105	0,3 %
Luxembourg	105	0,3 %
Grèce	77	0,2 %
Hors Union européenne	14 989	43,6 %
dont :		
E.U.A	11 268	32,8 %
Japon	1 198	3,4 %
Suisse	778	2,2 %
Canada	367	0,1 %
Australie	210	0,6 %
- nombre de marques saisies dans EUROMARC:	environ 20 000	

- nombre d'accusés de réception envoyés: environ 33 500
- nombre de dates de dépôt accordées: environ 2 000



- 2) nombre de mandataires agréés auprès de l'OHMI : 4 510
- 3) nombre de comptes courants ouverts auprès de l'OHMI : 355
- 4) effectif de l'OHMI: 159

LA INFORMÁTICA EN LA OAMI

Euromarc

El sistema informático para la administración de todas las etapas de la vida de las marcas comunitarias, EUROMARC, viene funcionando desde el 1 de mayo de 1996.

A través del mismo, el personal de la OAMI realiza las diversas tareas que constituyen la administración de las solicitudes y registros de las marcas comunitarias.

EUROMARC almacena la información relativa a las solicitudes de marcas y a las marcas comunitarias registradas en dos formatos diferentes. Por un lado, en forma facsímil, los documentos presentados por los solicitantes y titulares, o sus representantes, así como toda la correspondencia con ellos relacionada; y, por otro lado, en forma codificada, todos los datos relativos a las solicitudes y marcas comunitarias.

Además de la administración del procedimiento de registro, y de las etapas posteriores al mismo, EUROMARC realiza las siguientes tareas:

- cálculo de tasas y gestión de pagos correspondientes;
- preparación, confección automática, así como archivo electrónico, de correspondencia relacionada con el registro de marcas comunitarias (recibos, notificaciones, comunicaciones, etc.).
- estadística: generación de estadísticas, según diferentes criterios: p.ej.: por marcas de productos o servicios; por año; por titular; por país, etc.
- extracción de datos para el Boletín de Marcas Comunitarias, y para el sistema de contabilidad.
- extracción de datos para la publicación del CD-ROM informativo sobre las solicitudes de marcas comunitarias.
- extracción de datos para RESMA, sistema de intercambio de datos entre la OAMI, las Oficinas Nacionales, y los restantes órganos e instituciones implicados en el sistema de marca comunitaria.

Resma

El procedimiento de registro de las marcas comunitarias implica el intercambio regular de grandes cantidades de información entre la OAMI (Alicante), las Oficinas Nacionales (13 ciudades), el Centro de Traducción de los Órganos de la Unión Europea y la Oficina de las Publicaciones Oficiales de las Comunidades Europeas (Luxemburgo).

Para facilitar este intercambio, la OAMI, en colaboración con la Comisión Europea, está elaborando una red de comunicaciones que permita este intercambio de datos por vía electrónica de una manera eficaz.

El proyecto RESMA (RESeau MARques) inició su andadura el pasado mes de septiembre.

Infraestructura informática

Desde el principio, se decidió que la OAMI estuviera dotada de sistemas informáticos del más alto nivel. A estos efectos, se ha optado por la más moderna y probada tecnología del mercado.

Todos los funcionarios y agentes de la OAMI disponen de un PC, así como de una impresora instalada en la red. En cuanto al software, se dispone de las herramientas de automatización más usuales (Word 6, Excel, Access, MS Office, en un entorno WINDOWS).

Asimismo, la Oficina utiliza 6 "escanners", para tratar los documentos y la correspondencia relativos a las marcas comunitarias. Desde el pasado 1 de mayo, se han capturado y almacenado en EUROMARC más de 600.000 páginas mediante esta vía.

Internet

La OAMI dispone de un acceso al servidor EUROPA de la Comisión Europea. La dirección que permite acceder directamente a las páginas de la OAMI es:

<http://europa.eu.int/agencias/ohim/ohim.htm>

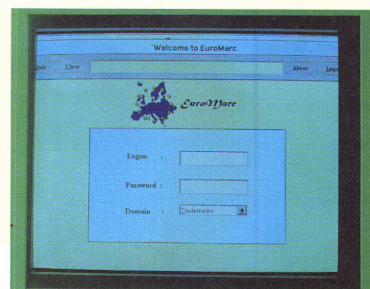
Estas páginas ofrecen, en español, alemán, inglés, francés e italiano:

- una presentación de la OAMI;
- información general;
- distintos formularios de la OAMI: el formulario de solicitud de marca

comunitaria, el de apertura de una cuenta corriente y el de inscripción en la lista de representantes autorizados, junto con sus respectivas notas explicativas.

Además es posible, mediante una caja de diálogo, solicitar información específica, que será facilitada por la OAMI, por fax o por teléfono, en un máximo de 72 horas.

En 1997, la OAMI dispondrá de una dirección propia en la red Internet.



USEFUL NUMBERS

- Standard telephone number:
+ 34-6-513 91 00
- General information telephone number:
+ 34-6-513 92 43; + 34-6-513 92 72
- General information fax number:
+ 34-6-513 91 73
Explanations concerning the application form, questions concerning the registration procedure (priority, seniority, fees, etc.), CD-ROM giving details of the CTM applications, request of documents/literature (leaflets, application forms including electronic filings, authorisations, opening of current accounts, reference guide to official texts, places where to buy the Official Journal of the Community, etc.).
- Fax for filing CTM applications:
+ 34-6-513 13 44
the documents sent to this number are directly sent to the EUROMARC system without having to be scanned. Only documents relating to CTM applications should be sent to the above number.
- Telephone information concerning means of payment:
+ 34-6-513 93 40
Opening of current accounts, bank transfers, payments by cheques, etc.
- Telephone information about representation:
+ 34-6-513 91 17
List of professional representatives, new entries, allocation of ID numbers, authorisations, etc.
- Telephone information concerning certified copies:
+ 34-6-513 92 20
Fax request of certified copies:
+ 34-6-513 91 14
- Telephone information concerning publications:
+ 34-6-513 91 02
Information on OHIM's Official Journal, the Bulletin of CTM, etc.