

ANNUAL
REPORT
2001



OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)



A N N U A L
R E P O R T
2 0 0 1



A great deal of additional information on the European Union
is available on the Internet.
It can be accessed through the Europa server (<http://europa.eu.int>).

Cataloguing data can be found at the end of this publication.

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EDITORIAL

BY THE PRESIDENT OF
THE OFFICE —
WUBBO DE BOER



2001 witnessed many significant changes for the Office.

The unfavourable international economic climate resulted in a marked decrease in the number of Community trade mark applications. Until now, the Office had to contend with a sharp and rapid increase in its workload. It is now, however, faced with a new situation in which its resources have decreased. Meeting this challenge requires particular efforts on the Office's part. Such efforts will enable it to carry out its activities successfully without abandoning the principle of financial autonomy pursued by the Office since its creation.

‘PROVIDING THE
HIGHEST STANDARD

The Regulation on Community designs was adopted on 12 December 2001. This Regulation confers new tasks on the Office in a field that no longer merely encompasses distinctive signs, but also production, innovation and, in a broad sense, the creation of enterprises. The Office will administer this new instrument designed to protect the visual appearance of goods, a field in which businesses increasingly invest, in an attempt to surpass their rivals. The Office is actively preparing for the first Community designs applications from 2003 onwards.

The past year was also subject to a process of reflection.

Five years after the first Community trade mark applications were received, the Office has undertaken a process of external and internal evaluation. The aim is not only to make improvements in the organisation and internal running of the Office, but also improvements regarding all the goods and services offered to our 'clients', the users of the Community trade mark system. This evaluation exercise should allow us to provide the highest standard of services.

The Office also strove to improve its computer tools and invested in new technologies. Since the professional development of the Office's staff and the satisfaction of the users are inextricably linked, training was developed further.

The pursuit of dialogue was also one of the objectives of 2001.

The representatives of the Member States and the Commission on the Administrative Board and the Budget Committee discussed with Office management the working of the Office itself and its Boards of Appeal.

The Office raised, with the relevant sectors, the question of a possible change of practice following the BABY-DRY judgment given by the Court of Justice and discussed the consequences of the enlargement of the European Union.

In addition, the Office had several opportunities to exchange experience with other offices around the world, in particular at the first tri-lateral meeting held with the Japanese and US offices.

Both the dialogue which the Office engaged in and the evaluation exercise undertaken showed, over the last year, the Office's desire to adapt to future challenges and to continue to be one of the major industrial property offices in the world.

EDITORIAL

BY THE CHAIRMAN OF
THE ADMINISTRATIVE BOARD
— MR C-A IFVARSSON



The Administrative Board is consulted about any important question concerning the running of the Office. The representatives of the Member States and the Commission, who make up the Administrative Board, consequently take part in the management of the Office.

In 2001, the Administrative Board examined the results of the external evaluation carried out by a major accountancy firm after the first five years of operation of the Office. This evaluation revealed that the users of the Community trade mark system are, as a rule, satisfied with the services provided by the Office, although some improvements could be made. The administrative structure of the Office has to be streamlined and internal and external communication as well as staff training must be improved. In addition to this evaluation, and with similar aims in mind, the Office management set up the Quality Management Unit in March.

The Administrative Board also analysed the operation of the Boards of Appeal, which play an essential role in the Community trade mark system. The initial structure of the Boards of Appeal, based on the coexistence of several Boards, displayed weaknesses in terms of management and did not lead to consistency in decision-making, which is essential for

users. The management of the Office proposed several measures as a solution to these problems, which were approved by the Administrative Board. These measures included the creation of the post of President of the Boards of Appeal and, in the future, setting up an enlarged Board of Appeal. From next year, the President of the Boards of Appeal will be responsible for managing the Boards and representing them before the management of the Office and the outside world. The President of the Boards of Appeal will, as a result of a delegation of authority by the President of the Office, carry out the duties of Appointing Authority. This will strengthen the independence of the Boards of Appeal. The Administrative Board also agreed to propose the legislative amendments required to create an enlarged Board, which should encourage harmonisation of the decision-making practice of the different Boards of Appeal. In addition, a forum has been set up between the Boards of Appeal and the management of the Office to discuss subjects of common interest. This is in addition to the possibility already available to the Boards of requesting the opinion of the President of the Office on questions of general interest. The Administrative Board, moreover, stated that it is in favour of reviewing the method of appointing the Chairpersons and members of the Boards of Appeal.

After five years of uninterrupted growth, the significant decrease in the number of Community trade

‘HARMONISATION
OF THE DECISION-MAKING PRACTICE
OF THE BOARDS OF APPEAL IS

mark applications filed in 2001 has brought about a new situation to which the Office must adapt by adjusting its human resources to the workload. It is important for the representatives of the staff to be involved in the Office's reflections on this matter and it is with this in mind that the Staff Committee now takes part in the meetings of the Administrative Board and the Budget Committee whenever there are items on the agenda concerning the staff of the Office.

EDITORIAL

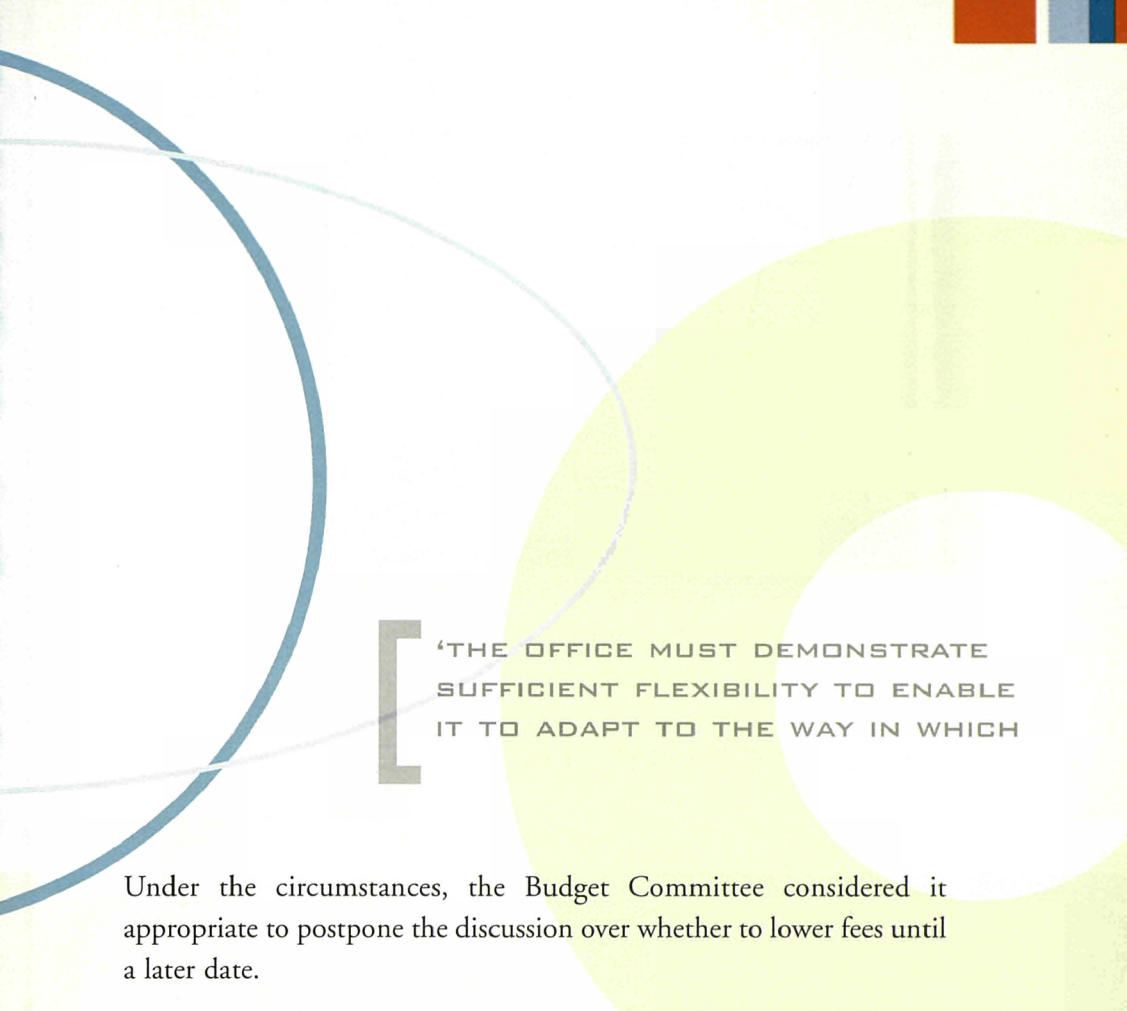
BY THE CHAIRMAN
OF THE BUDGET
COMMITTEE —
MR LAWRENCE



The Budget Committee plays an important part in monitoring the financial activities of the Office: it examines the budget estimates to ensure that the Office has sufficient revenue to incur the expenditure foreseen; it adopts the budget; before giving a discharge to the President of the Office in respect of the implementation of the budget, the Budget Committee checks that all expenditure has been incurred in a legitimate and appropriate manner.

2001 marked the beginning of a period of consolidation for the Office. After several years of experiencing rapid and sharp increases in the number of applications filed, the Office had to contend with an unexpected reduction in Community trade mark applications and, as a result, a reduction in revenue deriving from application fees. 2001 also showed that the demand for Community trade marks is fluctuating, making it difficult to predict how many applications will be filed per year in the future.

Faced with this new state of affairs, the Office must continue to meet the demand for Community trade marks using only the revenue deriving from the fees paid by its clients. The Office must therefore demonstrate sufficient flexibility to enable it to adapt constantly to the way in which its activities evolve. The efforts made by the Office in this regard over the last year are noteworthy.



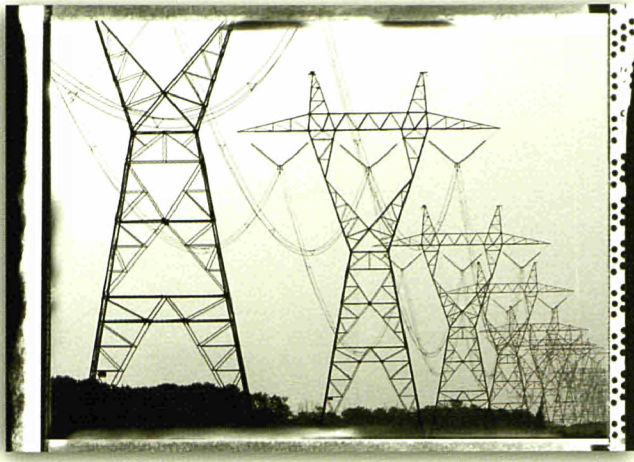
‘THE OFFICE MUST DEMONSTRATE
SUFFICIENT FLEXIBILITY TO ENABLE
IT TO ADAPT TO THE WAY IN WHICH

Under the circumstances, the Budget Committee considered it appropriate to postpone the discussion over whether to lower fees until a later date.

Budgetary discipline and sound financial management are essential to the Office. This will allow it to continue to carry out its activities independently, without having to rely on a subsidy from the general budget of the European Union. As long as the Office continues to be financed by its users, it will be able to ensure that it remains a client-driven organisation.

WORKING MORE EFFICIENTLY

The Administrative Board and the Budget Committee devised a system of joint meetings: the Administrative Board meets on its own first, then jointly with the Budget Committee, followed by the Budget Committee meeting on its own. This new system, coupled with the electronic distribution of preparatory documents and the minutes, enabled the Administrative Board and the Budget Committee to carry out their tasks with increased efficiency.



ONE MOVEMENT IS FOLLOWED BY ANOTHER

THE OFFICE IN 2001

A NEW SITUATION

The number of trade mark applications decreased considerably in 2001. This decrease, which should continue during part of 2002, put an end to the uninterrupted increase in the number of Community trade mark applications, experienced since 1997. Although the budget for 2001 was based on an estimated 60 000 applications, approximately 49 000 were received over the course of the last year. This is 15 % fewer applications than those filed in 2000, but is still 18 % more applications than those filed in 1999. The fall in the number of applications is partly due to the slump in the world economy. It also reveals that both for the Office and for the main trade mark offices around the world, 2000 was an exceptionally good year. In short, the fall in trade mark applications highlights how difficult it is to make reliable forecasts in this area (+30% in 1999; +39 % in 2000; -15 % in 2001). Despite the decrease in applications, the Office's workload continued to grow. The number of oppositions filed particularly increased, reflecting the record number of trade mark applications filed in 2000. The number of marks published and registered also increased in 2001.

CONSEQUENCES FOR THE BUDGET

The fall in Community trade mark applications has direct consequences on the budget of the Office. The fees paid by the users, mainly the application fee and the registration fee, are the principal source of income for the Office. In order to continue operating as a financially independent body, the Office made some adjustments in terms of expenditure. On the Commission's initiative, the level of fees was reconsidered in 2001. However, in view of the recent trend in the number of Community trade mark applications filed, the Office considered that the amounts of the fees should not be reviewed before the enlargement takes place and the first renewals of Community trade marks are effected (2004/2005/2006).

‘CARRYING OUT OUR WORK AS A
FINANCIALLY INDEPENDENT BODY’

THE NEED TO ADAPT

The Office is obliged to adapt its resources to any developments affecting its activity. This adaptation should be carried out cautiously - the last year has shown that it is very difficult to make accurate estimates regarding the number of Community trade mark applications filed - and on the basis of in-depth studies and analyses. These tasks will mainly be carried out by the new Quality Management Unit, responsible for making specific proposals designed to improve the quality and efficiency of the work effected at the Office, in the interests of its users and staff. This Unit is attached to the President from an administrative point of view, but is independent in carrying out its tasks. Approximately 40 officials and other staff members from other services participate in this work on a temporary basis. At the end of 2001, the Unit had almost completed the internal evaluation of all the services of the Office. The results of this exercise, together with the conclusions given in the external evaluation, will enable the Office to make an accurate evaluation to ensure that its human resources meet its workload and to reconsider the way in which its services are organised in order to provide the best possible service to the users.

A YEAR OF REFLECTION

After five years of exceptional growth (approximately 200 000 Community trade mark applications between 1996 and 2000), it was deemed appropriate to evaluate the way the Office operates and the procedures it deals with.

THE EXTERNAL EVALUATION

An evaluation was carried out by an accountancy firm of international repute. This study looked at various aspects of the Office: its organisation, procedures, resources and efficiency. User satisfaction (Community trade mark applicants and proprietors, professional representatives) was also evaluated.

As regards the internal aspect, the final report recommended creating a more horizontal structure

‘EVALUATING THE WAY
THE OFFICE OPERATES’

revolving around the main procedures administered by the Office. The current division between ‘legal’ work and ‘administrative’ work will be removed and there will be a greater harmonisation between services connected with ‘production’ and those related to administration.

This should lead to better communication between services and the work carried out by them should become more efficient. This new structure, which will be less hierarchical, will consist of several departments coming under the direct supervision of the President of the Office. An Appeals Department will also be set up.

Regarding human resources, the final report emphasised the importance of training, mobility and the development of management skills. As regards external relations, an improved communications policy with users was recommended. The evaluation nevertheless revealed that users are, in general, satisfied with the way the Office operates.

THE INTERNAL EVALUATION

A systematic evaluation of all the services of the Office began in April 2001. The aims of this evaluation, carried out by the new Quality Management Unit, are to verify whether the resources of the Office, both human and technical, are being used wisely, to analyse the staff situation within the Office, to assess possible risks that the Office may

encounter, to evaluate the legal compliance of the Office's activities and to check whether quantitative and qualitative production targets are being met.

This evaluation, which concerns the way the Office operates internally and covers all its activities, complements the external evaluation, which concerns the way the Office operates in general, including user satisfaction.

Three-quarters of the services of the Office have already been evaluated. The preliminary results of the evaluation coincide with the conclusions reached in the external evaluation: a more flexible, less hierarchical structure is advocated, based on a limited number of large, operative departments. Moreover, the Unit recommends adopting a 'service' or 'product' approach, which would bring the Office closer to its users, providing them with contact persons within the main services. By creating a long-term link between the client and a group of administrators, the Office will be able to improve communication and make the follow-up of particular cases more personal. The Unit also undertook a study with Office clients in order to determine which factors influence the decision to choose a Community trade mark and which do not.

PREPARING FOR THE FUTURE

Over the past year, the Office continued to prepare for several big events: the entry into force of the Community Designs Regulation, the enlargement of the European Union, the accession of the European Community to the Madrid Protocol and the launch of the Top Level Internet Domain Name '.EU'.

THE COMMUNITY DESIGN BECOMES REALITY.

The Community design was proposed in December 1993 and finally came into being with the adoption of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs. This represents an important step forward in setting up a legal framework guaranteeing uniform protection for designs in the European Union. This event was keenly awaited by certain industrial and handicraft sectors, such as the fashion industry, makers of speciality goods, the vehicle industry, and the clock-making, jewellery and furnishing sectors,

since the appearance of goods in these areas is an asset of increasing importance. An approximation of the laws of the Member States, which displayed substantial differences, was already undertaken with the adoption of Directive 98/71 on the legal protection of designs, which should have been implemented by all Member States by 28 October 2001. However, it continued to be a time-consuming and costly task for companies to obtain legal protection for designs across the whole of the territory of the Community. Regulation No 6/2002 offers a solution to this situation, by providing them with a new protection right with unitary character, extending its effects to the whole of the single market. Designs are set to follow Community trade marks, becoming the second area of activity of the Office.

MOVEMENT PROMOTES LINKS



In order to meet the needs of all sectors of the economy within the Community, there will be two ways of protecting Community designs: the registered Community design and the unregistered Community design. The unregistered Community design will enter into force on 6 March 2002. The first applications for Community designs will be possible approximately one

year after adoption of the implementing regulation and the fees regulation, which will be in 2003. The Office is working closely with the Commission to ensure that the implementing regulation can be adopted as early as possible in 2002. The procedure concerning registered Community designs will, for the most part, emulate the Community trade mark procedure, consisting of a computerised system preventing the use of paper as far as possible. Furthermore, the Office intends to publish registered designs solely by electronic means.

Having successfully administered the Community trade mark system for five years the Office will take advantage of this experience in order to administer the registered Community design. It expects this new uniform protection right for industrial designs to experience a similar success to that of the Community trade mark, given the increasing importance of designs to competing businesses. The Office has launched a study in order to assess more accurately the number of applications for Community designs that will be filed once the system becomes operational.

TWO TYPES OF PROTECTION TO MEET THE NEEDS OF ALL SECTORS OF THE ECONOMY

Unregistered Community designs are protected for a limited period of three years from the date on which the design was first made available to the public. Industries such as clothing and footwear, whose products often have a short market life, may choose this type of protection of limited duration and which does not require any formalities for registration. The unregistered design, however, has the disadvantage of providing a more restricted scope of protection than the registered design (only 'copies' and commercial use of them may be prohibited). More extensive protection may be obtained by filing an application for a Community design at the Office. Upon registration, the proprietor of a design is granted an exclusive right to use it during a period of five years. The term of protection may be renewed up to a maximum of 25 years. Registration will prohibit third parties from using any design which does not produce on the informed user a different overall impression from that of the protected design. Under the system for registering Community designs, the Office will only check formal requirements and whether the design is contrary to public policy.

It will not check the novelty or individual character of the design. Lack of novelty or individual character will, however, constitute grounds for invalidity. There will be no opposition procedure. The limited nature of the preliminary examination carried out by the Office is one of the fundamental objectives of the new Community designs registration system: to make it accessible to companies all over the world, including for both small and medium-sized enterprises and individual designers and, to this end, reduce costs and formalities for the applicant to the minimum. Community designs will usually be published by the Office upon registration. However, the applicant has the possibility of deferring the publication for a period of 30 months from the date of filing, which will guarantee that any dealings concerning the design remain secret during this period.

ENLARGEMENT

During 2001, the Office prepared for the enlargement and associated the candidate countries with its work. The process of enlargement of the European Union is irreversible. This was confirmed by the European Council of Göteborg, held on 15 and 16 June 2001. Accession negotiations are currently taking place with 12 candidate countries. The Laeken European Council, held on 14 and 15 December 2001, expressed its determination to bring the accession negotiations with the candidate countries that are ready to a successful conclusion by the end of 2002. If the current rate of the negotiations and the reforms being made is maintained, the countries that could be ready are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. The aim is that the candidate countries that are ready to do so will participate as Member States in the European Parliament elections in June 2004. Questions concerning industrial property rights form part of Chapter 5 of the accession negotiations. This Chapter has been provisionally closed with the 12 candidate countries with which negotiations are currently under way. The Office assisted the Commission throughout 2001 in the discussions regarding the transposition of the existing body of EU law relating to trade marks.

'PREPARING FOR ENLARGEMENT AND ASSOCIATING THE CANDIDATE COUNTRIES WITH THE WORK OF THE OFFICE'

The enlargement of the European Union is a considerable challenge for the Office. At an internal level, the Office drew up a road-map assessing all the consequences, both financial and practical, that enlargement would bring. This road-map included an action plan and a schedule for carrying it out. The impact of enlargement was also discussed with the users in the OAMI Trade Mark Group, where it was decided to set up a working group on enlargement. This working group devoted its first meeting in April 2001 to studying the legal consequences of accessions on the Community trade mark system and the Office. The Office took part in various events as part of its pre-accession cooperation with the candidate countries. It once again had a very active role in the fourth 'Regional Industrial Property Programme' ('RIPP4'), funded by the Commission and coordinated by the European Patent Office. The RIPP4 programme, which came to an end in 2001, was the last in a series of programmes set up in order to assist the national offices of the candidate countries. With the same aim in mind, the OHIM organised approximately ten seminars in which 40 experts from the Office participated. Over 700 people took part in these seminars, including trade mark experts, representatives, legal practitioners and judges. The Office was also involved in numerous activities with the candidate countries. In

October, a 10th meeting was held between the Office and the presidents of the national offices of the candidate countries. This served as an opportunity to assess the preparation of these offices in legal matters and to review cooperation with the OHIM. Several training sessions, including 'on-the-job training', and seminars and workshops were organised for the staff from the national offices of the candidate countries. The first Regional Seminar for representatives and agents from the candidate countries took place in Budapest in October 2001. The candidate countries were also invited to take part, for the first time, in the liaison meetings between the experts from the national offices of the Member States and the OHIM, and in the second European Trade Mark Judges' Symposium.

THE INTERNATIONAL REGISTRATION SYSTEM

The accession of the European Community to the Madrid Protocol, proposed in 1996 by the Commission, is designed to establish a link between the Community trade mark system and the international trade mark registration system set up under the Protocol. Accession would enable Community trade mark applicants and proprietors to extend their mark to other territories by filing an international application and holders of international registrations under the Madrid Protocol would be able to apply for protection of their marks as Community trade marks. It is difficult to estimate when this link will become effective, as the issue of the Community's accession is still encountering political problems at the level of the Council of the European Union. In the meantime, the Office continues to prepare itself and has already evaluated the implications, from a practical point of view, that accession would have on its computer system.

THE '.EU' DOMAIN NAME

From the outset, the Office has participated in the work surrounding the creation of the top level '.EU' domain. When an '.EU' domain name is registered, possible conflicts with earlier Community trade marks will be taken into account and the Office will use its experience and resources to resolve conflicts between domain names and intellectual property rights.

THE NEED TO ADAPT HUMAN AND TECHNOLOGICAL RESOURCES

The sound development of the Office is dependent on its flexibility and capacity to adapt its human and technological resources to outside changes.

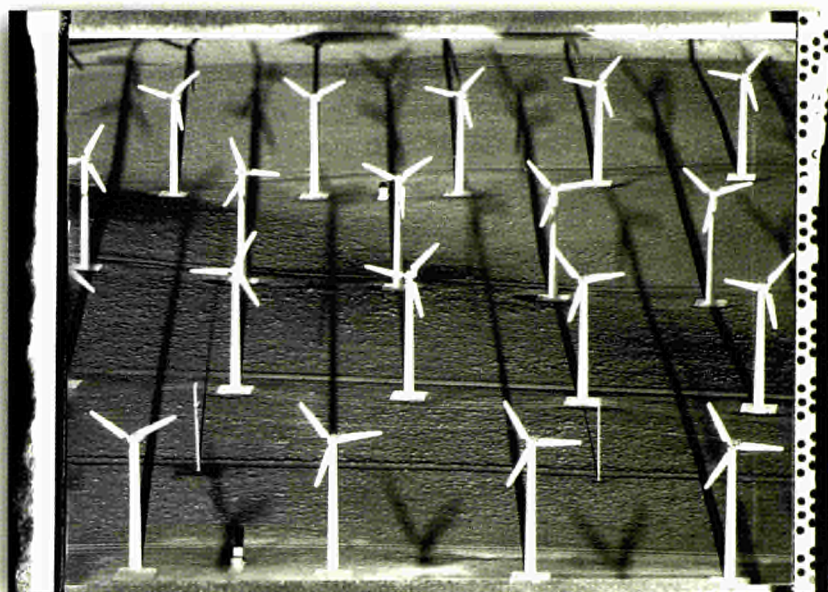
MAKING THE BEST USE OF THE STAFF AVAILABLE

From 1996 to 2000, the considerable increase in the number of Community trade mark applications entailed a simultaneous increase in the number of staff employed at the Office. The Office's human resources situation had to be reviewed in 2001 due to the fall in the number of Community trade mark applications. An open and constructive dialogue was conducted with the staff representatives and, as a result, the management of the Office decided not to fill all the posts entered in the budget for 2001, to freeze external recruitment and not to organise any more internal competitions establishing staff in their posts in the near future. This last measure is intended to ensure that the Office has sufficient flexibility to be able to adapt its staff numbers to any changes in its workload. At the end of 2001, the Office employed 698 people, slightly more than the previous year (662 people in 2000), but notably lower than the 798 posts provided for in the budget based on estimates of 60 000 applications. Of the 698 people employed by the Office, almost two thirds have a permanent status (officials) and just over a third have a temporary status (temporary or auxiliary employees). The distribution of staff amongst the different categories did not alter over the course of the year: most staff members belong to category C (52 %), 22 % belong to category A, 22 % to category B and 4 % to category D.

During 2001, the Office endeavoured to use its potential in human resources to continue to respond, to the best of its ability, to the expectations of its users. At the request of the staff, the Office decided to encourage internal mobility and to promote a dynamic policy as regards training. Internal mobility allows the human resources requirements of certain services to be met and staff motivation to be maintained. In addition, through assigning new tasks to the staff, internal mobility allows the best possible use to be made of their professional skills. This is particularly necessary for an organisation like the Office which employs a significant amount of highly-trained category C staff. Promoting a training policy will contribute to staff mobility within the Office. Training programmes are essential in order to deal with changes in the Office's activity and to maintain the quality of the services it pro-

vides. It is for this reason that the Office made training one of its priorities, despite the cuts in spending it is required to make. Each person employed by the Office will benefit, as of 2002, from 12 days' training per year. This is an unprecedented effort, both for the Office and for any Community institution. The Commission, as part of the reform taking place, has set a similar target to be reached by 2005. This investment in human resources demonstrates the Office's clear desire to allow its staff to enhance their knowledge, know-how and management abilities, thus contributing to their professional development and user satisfaction.

MOVEMENT GENERATES ENERGY



IMPROVING COMPUTER TOOLS AND INVESTING IN NEW TECHNOLOGIES.

In 2001, the Office sought to improve and update its computer tools, both from the point of view of the users within the Office and of the users of the Community trade mark system. At an internal level, the launch of the fourth version of Euromarc will allow time to be saved and will promote greater efficiency, particularly concerning the processing of oppositions and the administration of the Community Trade Marks Register. For the users of the Community trade mark system, 2001 witnessed several significant changes. The design of the Office's Internet site, OAMI-ONLINE, was modified to make it more user-friendly. The CTM-ONLINE database, which offers free online access to information

concerning Community trade marks via the Office's website, was enhanced with the addition of information regarding oppositions, and its search capabilities were extended. In addition, improvements were made to the system for consulting decisions of the Office on oppositions, appeals, cancellations and refused trade mark applications, which was incorporated into a search system similar to CTM-ONLINE. At the same time as all these changes, the layout of the Office's website was modified and a new page on enlargement was created. In addition, by means of the ACCOUNT ONLINE database, the increasing number of applicants and representatives that hold a current account with the Office can consult their statements of account via the Office's website. The possibility of filing applications electronically (CTM-APPLICATION) was the subject of a pilot study, the results of which are currently being assessed. These results will be used to make the final adjustments to this new tool. The Office is also preparing a new database, EURO-NICE ONLINE, which will allow applicants and their representatives to consult, in the 11 languages of the Community, descriptions of goods and services that have been accepted by the Office, together with the corresponding class. In addition to the developments that have taken place regarding the Office's website, it should also be noted that the software for consulting the Community Trade Marks Bulletin on CD-ROM and its cumulative version, EUROM, was replaced by new software using 32-bit technology, which offers considerable improvements as regards both performance and ergonomics. This new software is fully adapted for networking and is compatible with the major operating systems (Windows 95, Windows 98, Windows ME, Windows NT and Windows 2000). Finally, the Office commenced publication of Part C of the Community Trade Marks Bulletin concerning amendments affecting registered trade marks, and undertook a survey amongst users to assess the possibility of doing away with the paper version of the Bulletin in favour of publishing it only on CD-ROM or online.



THE OFFICE AND THE COMMUNITY TRADE MARK

CONSOLIDATION OF THE SYSTEM

The success, from the beginning, of the system administered by the Office, is indicative of the value placed on trade marks today and the importance attached to protecting them. The Community trade mark has adapted to the increasing process of harmonisation and globalisation of trade marks throughout the world and particularly in Europe by providing a modern and strong form of protection 'which crosses all borders'. In 2001, the Community trade mark system was consolidated. The many decisions taken by the Office originate from all its divisions and units, as well as the Boards of Appeal, which were strengthened by the creation of a fourth Board of Appeal and the two new members that took up their duties. The decision-making practice of the Office was complemented in 2001 by several judgments from the Court of First Instance and one judgment from the Court of Justice, and by the publication of various judgments from the national courts concerning actions for infringement (BETTY SPAGHETTI, MOZART and VIAGRA).

‘MORE THAN EVER BEFORE, THE COMMUNITY
TRADE MARK OFFERS BUSINESSES A
RELIABLE MEANS OF PROTECTING THEIR
DISTINCTIVE SIGNS THROUGHOUT THE

These decisions and judgments are monitored and analysed by a growing number of experts. In addition there was an increase in the number of professional representatives (over 6000) entered on the list of professional representatives. The Community trade mark system was therefore strengthened in 2001. More than ever before, the Community trade mark offers businesses a reliable means of protecting their distinctive signs throughout the European Union.

HARMONISATION ACTIVITIES

As its name implies, it is the Office's task to ensure that Council Regulation (EC) No 40/94 on the Community trade mark (CTMR) is interpreted and implemented harmoniously by the different administrative and judicial bodies that are required to apply it. The CTMR reproduces mainly those provisions and concepts contained in the First Council Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks, in particular in relation to which signs may constitute trade marks, the requirements to be met for registration and the scope of protection granted to a registered trade mark. It is clear that the Office's harmonisation activities extend beyond the Community trade mark system; the work of the Office contributes to the harmonisation of all trade mark law (national and Community) throughout Europe. The efforts of the Office in this area throughout 2001 were considerable and were even more noteworthy since they were not only aimed at the current Member States of the European Union, but also included the candidate countries in the enlargement process. These countries have, for the most part, adapted their legislation to Directive 89/104. The harmonisation activities undertaken by the Office included the liaison meetings, the 'Judges' Symposium', cooperation with the Legal Service of the Commission with respect to the questions referred for preliminary rulings as well as exchange and training programmes for examiners.

LIAISON MEETINGS

The Office enjoys a privileged relationship with the national trade mark offices of the European Union. The liaison meetings held at the Office provide an opportunity for the OHIM and the national offices to examine matters of common interest together, and to discuss and reach solutions which are acceptable to all. These meetings touch both on the procedure and practice followed by the Office and on computer-related questions and matters concerning the dissemination of information. This year, the 'Practice and Procedure' meeting covered the examination of absolute grounds in relation to sound marks, three-dimensional and olfactory marks, how to interpret the concept of the

likelihood of confusion, and questions linked to the possibility of registering marks for retail services. In the 'Informatics and Information' meeting, searches and the electronic filing of applications were the subject of discussion. Finally, an extraordinary meeting was devoted to studying the impact of the entry into force of the eighth edition of the Nice Classification from 1 January 2002.

THE SECOND JUDGES' SYMPOSIUM

The Community trade mark system is not only implemented by the Office. Actions for infringement, which are of particular importance since they confer international jurisdiction on the Community trade mark courts, are dealt with by national courts. The decisions of the Boards of Appeal of the Office are subject to review by the Court of First Instance and the Court of Justice. In order to ensure consistency between the Office and the various judicial bodies also required to implement the system, the Office has decided to organise, every two years, a forum for discussion and exchange between national and Community judges known as the 'Judges' Symposium'.

The Second Judges' Symposium was organised by the Office and took place on its premises in September. It was one of the major events of 2001. This event brought together national trade mark judges from the Member States and the candidate countries, judges and members of the Court of Justice and the Court of First Instance, members of the Boards of Appeal and representatives of the Commission. The Symposium was an opportunity to examine the infringement proceedings concerning Community trade marks currently under way or judgments themselves in infringement proceedings. Other issues that were discussed included the descriptive or distinctive character of a word mark following the *BABY-DRY* judgment, the requirements to be met to register a three-dimensional sign or a colour as a Community trade mark, the scope of protection of a Community trade mark in the context of the likelihood of confusion, and the specific protection granted to trade marks with a reputation. The various provisional and protective measures available to Community trade mark proprietors in each Member State were also discussed. This event, which was a genuine success, will be repeated in 2003.

COOPERATION WITH THE LEGAL SERVICE OF THE COMMISSION

Every judgment under the preliminary ruling procedure constitutes a step forward not only in approximating national laws, but also in the emergence of a body of Community trade mark law. This is mainly due to the fact that many of the substantive provisions of Directive 89/104, which are interpreted by the Court of Justice, are repeated in the CTMR. Given the considerable number of questions referred to the Court for a preliminary ruling and the impact of these rulings on the future of trade mark law in Europe, the Office has always been willing to share its experience and make known the principles of interpretation it has developed when applying the CTMR. It is with this in mind that the Office cooperates with the Commission by providing the Commission with its written comments for the purpose of observations on how to interpret the contested provision in a reference for a preliminary ruling, which the Commission then puts before the Court. In particular, the Court gave a preliminary ruling in 2001 on the interpretation of the provision precluding the registration of signs which have become customary (BRAVO). In addition, several new issues of particular interest to the Office and trade mark experts were raised before the Court; they concerned the extent of the obligation to provide a graphic representation of a mark and the implications of this for olfactory and sound marks, the examination of three-dimensional signs which consist of the shape of the product itself, the protection of trade marks with a reputation in the context of the speciality rule, or the scope of protection of trade marks and types of use in the course of trade that could affect the exclusive right granted.

TRAINING AND EXCHANGE OF EXPERTISE

The aim to apply trade mark law harmoniously throughout Europe cannot become reality unless it is also pursued by examiners, who apply the CTMR or national laws in the first instance. For this reason, the Office set up workshops with other national offices, on-the-job training on absolute and relative grounds for refusal and exchange programmes for trade mark experts.

MAIN TRENDS IN CASE-LAW

Case-law on the Community trade mark developed considerably over 2001. In the *Kik* judgment, the Court of First Instance upheld the legality of the language rules governing the registration of a Community trade mark application. It held that the obligation to choose a second language when filing an application, from among the five languages of the Office, did not constitute discrimination under Community law, even if it was true that the languages of the Community were treated differently. The *Kik* judgment was, however, appealed before the Court of Justice. The Court of First Instance also upheld various decisions refusing registration of figurative or three-dimensional signs representing the shape of a washing tablet (*TABS* judgments), which were deemed devoid of distinctive character.

The Court of First Instance, however, rejected the Office's approach concerning the possibility granted to the Community trade mark applicant of amending a sign in the course of the registration procedure. The case in question concerned a request to change the Community trade mark application 'TELEYE' to the earlier mark 'TELEEYE', for which priority had been claimed. The Court of Justice and the Court of First Instance also questioned the examination carried out by the Boards of Appeal of the descriptive or distinctive character of various word marks (judgments of the Court of First Instance relating to 'DOUBLEMINT', 'EASYBANK', 'NEW BORN BABY' and the slogan 'DAS PRINZIP DER BEQUEMLICHKEIT'; judgment of the Court of Justice relating to the sign 'BABY-DRY'). The Office changed its examination practice to bring it in line with the principles laid down in the 'BABY-DRY' judgment in particular, a mark which the Court deemed distinctive and not descriptive for babies' diapers. On the other hand, the Office decided to bring appeals before the Court of Justice against the 'DOUBLEMINT' and 'NEW BORN BABY' judgments which, in its opinion, pose particular problems in terms of implementation of the changes required as a result.

DECISIONS OF THE OFFICE

ABSOLUTE GROUNDS FOR REFUSAL

The more liberal approach adopted by the Court of Justice and the Court of First Instance regarding the descriptive or distinctive character of word marks has immediately been applied by the Office and the Boards of Appeal in their decisions. First of all, when they consider that a sign is descriptive, the Boards, just as the Court of First Instance did in the VITALITE, EUROHEALTH, CINE-COMEDY or CINE-ACTION judgments, are careful to specify which goods and services are concerned (examples: the mark 'Cremino' was deemed descriptive for desserts, but was accepted for the other foodstuffs designated; 'REAL HEALTH & BEAUTY' was deemed descriptive for publications but distinctive for recording equipment; 'WORLD MASTERS GAMES' was deemed descriptive for sporting activities, sporting articles, games and playthings but accepted for clothing). The Boards also followed the BABY-DRY judgment, as is apparent from the decisions 'CLUBHOTEL', for hotel services, 'SUPPLYSTATION' for computers, 'LEVERPULL' for corkscrews, 'ADRELEVANCE' for advertising services, 'SPEECHNET' for computer programs, or 'EUROCLASSICS' for various goods and services in classes 14, 16, 18, 21, 25, 38 and 41.

'CASE-LAW ON THE COMMUNITY
TRADE MARK DEVELOPED CONSIDERABLY
OVER 2001'

As regards geographical names, the principles laid down in the 'CHIEM-SEE' judgment continue to be applied, as can be seen from the refusal of the trade mark 'JAVA COAST' for coffee, given this island's reputation for coffee.

A number of favourable decisions were taken in respect of slogans ('THE ART OF PERFORMANCE' for vehicles; 'LET'S TOAST' for alcoholic beverages; 'CREATING YOUR FUTURE' for books, tapes and services for arranging seminars; or 'ES GIBT SIE NOCH, DIE GUTEN DINGE' for household appliances).

It should also be observed that the Office accepted the registration of the colour brown applied for by UPS, since it was demonstrated that the colour had become distinctive through use for transport services. In addition, the Boards of Appeal considered a sign consisting of one

stylised letter distinctive (the letter 'J' for, inter alia, boats) several types of packaging (a perfume bottle applied for by the company Eurocos; a jar applied for by Nestlé for foodstuffs; a bottle with striations applied for by the company José Cuervo), the shapes of goods (the shapes of containers for paper or bottles, applied for by Premonex Consulting Limited, were considered distinctive per se as was the shape of a feeding bottle applied for by Benson Holdings Ltd.; moreover, the shape of a Pirelli tyre was accepted on the basis of distinctive character acquired through use). These decisions do not illustrate, by any means, the entire examination practice of the Office. In order to obtain a more complete picture, they should be contrasted with negative decisions concerning these types of signs, by consulting the Office's Internet site. As regards absolute grounds for invalidity, other than those connected with the application of absolute grounds for refusal, legal practitioners and representatives are advised to consult the decisions taken by the Office in the cancellation proceedings which give an interpretation of the concept of bad faith (namely the decisions 'BE NATURAL' or 'Trillium', which, incidentally, was cited as a precedent in a judgment given by a UK court).

RELATIVE GROUNDS FOR REFUSAL


When dealing with opposition and cancellation proceedings based on earlier rights, the Office and the Boards of Appeal apply the case-law of the Court of Justice on the interpretation of the provisions of Directive 89/104 concerning the scope of protection of national marks. It should be observed that appeals were brought mainly concerning opposition proceedings. As a rule, the Boards of Appeal upheld the approach adopted by the Opposition Division as regards the examination of likelihood of confusion. However, for various reasons, they annulled many decisions of refusal based on lack of proof of the earlier right or failure to translate particular evidence into the language of the proceedings and remitted these decisions to the Opposition Division. Certain other developments are also worthy of mention as regards relative grounds for refusal, as follows:

EARLIER RIGHTS EXCEPT FOR REGISTERED TRADE MARKS


The Office has started to take some significant decisions as regards conflicts with signs used in the course of trade. Amongst the earlier rights which can be relied on, the Office accepted the appellation of origin 'Budweiser', protected under the Lisbon Agreement. The concept of signs used in the course of trade was also defined in decisions taken in cancellation proceedings. In particular, the Office clarified the distinction between signs upon which an opposition may be

based and those which may only be relied upon after registration, by means of cancellation proceedings (cf. 'International Fleet Management' and 'The Challenger agency/Challenge publicidad'). Finally, the First Board of Appeal accepted, for the first time, an opposition based on an unregistered trade mark protected in the UK, holding that, under UK law, the proprietor of the mark would be entitled to bring a passing off action in respect of the trade mark 'DA VINCI'.

TRADE MARKS WITH A REPUTATION

The 'HOLLYWOOD' case was one of the major events of 2001, not only because it was one of the first cases which allowed a Board of Appeal to rule that a mark fulfilled the conditions to be protected as a trade mark with a reputation, but also because, before taking its decision, the Board invited the parties to attend oral proceedings. In this case, the company Kraft Jacobs Suchard opposed the registration of the Community trade mark 'HOLLYWOOD' for tobacco products claiming that such use would be detrimental to its French trade mark 'HOLLYWOOD', used in France for chewing gum, and to its dynamic, youthful and healthy image. The Opposition Division acknowledged that the trade mark had a reputation, but did not consider that its dynamic, youthful and healthy image had been proved and thus detriment to its reputation could not be established. The Board of Appeal, on the other hand, considered that the evidence submitted did indeed prove that the trade mark evoked such an image in the minds of French consumers and that the use of that sign for tobacco products would allow an unfair advantage to be taken of the reputation acquired by the earlier trade mark. In this context, other decisions are also worthy of mention such as those concerning the trade mark 'COSMOPOLITAN' or the mark , as well as several other decisions taken by the Opposition Division in this area.

THE BOARDS TAKE DECISIONS REGARDING TRADE MARKS WITH A REPUTATION

In the proceedings regarding 'COSMOPOLITAN', a trade mark that is well known for magazines, the company 'The Hearst Corporation', filed an opposition against the registration of the trade mark 'COSMOPOLITAN COSMETICS' for cosmetics. The Board of Appeal upheld the decision of the Opposition Division and was of the opinion that the reputation of the mark had been established. In view of a combination of circumstances (a significant number of advertisements for cosmetics in the magazines concerned, a relevant public consisting mainly of women, use of an identical term, 'COSMOPOLITAN', in combination with a descriptive term), the Board held that use of the mark 'COSMOPOLITAN COSMETICS' would take unfair advantage of the reputation of the earlier mark. In the  case, the Board confirmed the reputation of the earlier mark and, in addition, held that the fact that the Community trade mark application was for an identical sign could only be due to the applicant wishing to take advantage of the reputation of the earlier mark.

CHANGES IN PRACTICE

A NEW SERVICE AND NEW CLASSES

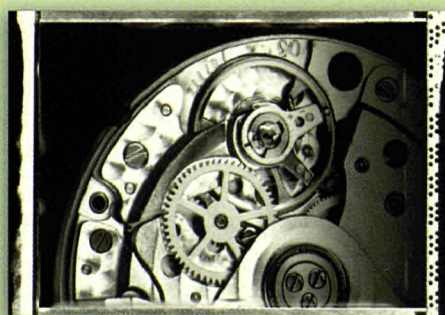
2001 saw significant changes regarding classification, the first of which concerned the possibility of registering Community trade marks for retail services. This new policy, outlined in Communication No 3/01 of the President of the Office of 12 March 2001, is a result of the 'GIACOMELLI' and 'ZARA' decisions of the Second Board of Appeal and of a consultation from relevant sectors and national offices. In addition, in November 2001, the Office held an extraordinary liaison meeting with the delegations from the offices of the Member States in order to assess the implications of the 8th edition of the Nice Classification, which includes three new classes of services that will take effect as of 1 January 2002. The Office will only apply this new edition of the classification to Community trade mark applications filed after this date. Finally, in an effort to simplify the task of applicants and to limit the number of objections raised concerning classification problems, the Office considered the possibility of making the EURONICE list available on its Internet site in 2002 (EURONICE ONLINE).

PHARMACEUTICAL MARKS

Having taken decisions in which the likelihood of confusion between pharmaceutical marks was consistently assessed on the basis of consumers having a high level of attention, the Office decided to abandon this approach and to use as a reference, in general, a consumer with an average level of attention. This approach has the effect of strengthening the protection granted to pharmaceutical marks. This change in policy is due to various decisions of the Boards of Appeal ('Mademoiselle', 'Almoxin/Almusin') and observations made by relevant sectors at the OAMI Trade Mark Group meetings.

CONSISTENT RULINGS

In the past year, a certain lack of consistency in the decision-making practice of the Office and the Boards of Appeal became apparent. The Boards and the Office took different approaches to procedural issues, regarding proof of earlier rights in particular. In order to encourage a common approach, or at least a degree of consistency between the various departments taking decisions in the Office and the Boards of Appeal, the Office set up a 'forum' enabling the departments concerned to discuss matters of common interest relating to trade mark law or the implementation of procedural provisions. The decision of the Administrative Board to create, as of 2002, a post of President of the Boards of Appeal and, in the future, an enlarged Board of Appeal, will favour the development of consistency in the decisions taken by the Boards.



MOVEMENT
KEEPS RHYTHM

THE OFFICE AND ITS 'CLIENTS'

While the Community trade mark is an industrial property right that offers many advantages, the CTMR and the Implementing Regulation contain certain constraints laid down both in the general interest and in an effort to guarantee the equal treatment of the parties to the procedures. Aware of the technical nature of these rules, which must be

known by parties in order to carry out procedures correctly, the Office has, since the outset, always had a transparent policy involving informing the public of how it administers the Community trade mark system and how it applies the CTMR. The Office also maintains contact with the relevant sectors, applicants, representatives, academics and non-governmental organisations with a view to establishing an open dialogue and thus ensuring that the services it provides meet its 'clients' needs.

A POLICY OF OPENNESS

For the Office, conveying information on the Community trade mark is essential, whatever methods are used to achieve this (in writing, by telephone, direct contact, etc...). With this in mind, the Office took part in activities aimed at promoting the Community trade mark and providing users with the information required to carry out their procedures. The Office takes part in most of the conferences and seminars relating to intellectual property organised worldwide. It also receives visitors interested in learning about the Community trade mark and the evolution of the Office's work. It should be pointed out that in 2001, the Office received twice as many visitors as in 2000.

THE OFFICE AND NON-GOVERNMENTAL ORGANISATIONS

The Office maintains a close, direct relationship with the non-governmental organisations representing the users of the Community trade mark system. The Office consults with these organisations whenever it wishes to alter particular policies as a result of changes made to legislation or arising from developments in case-law. The Office consults them whenever it contemplates adopting new guidelines, using new forms or making changes to its examination practice. In 2001, the Office requested observations from them regarding:

- > draft guidelines on substance in relation to opposition proceedings, defining the concept of unregistered trade marks and other signs used in the course of trade;
- > draft guidelines on the renewal procedure;
- > proposed amendments to the conversion guidelines and the conversion form, which is now available to the public.

OAMI TRADE MARK GROUP

One of the most important meetings is held with the OAMI Trade Mark Group, a discussion forum attended by 14 non-governmental organisations to exchange views on matters related to the implementation of the Community trade mark system by the Office. During 2001, the OAMI Trade Mark Group discussed matters such as the examination of colour marks, olfactory marks and three-dimensional marks, criteria for assessing likelihood of confusion with regard to pharmaceutical products and the acceptance of applications for retail services. The draft guidelines on earlier rights other than registered trade marks were also considered. Other matters discussed included the enlargement of the European Union and the impact on the Office's work, assessment of search reports communicated in accordance with the CTMR and whether it would be appropriate to revise the Implementing Regulation.

The Office also received visits from several associations such as the European Communities Trade Mark Association (ECTA), represented by its OHIM link sub-committee, as well as various national delegations of experts, professional representatives, legal practitioners and university lecturers, from France, Germany, Sweden and the United Kingdom.

AN EVOLVING WEBSITE

The Office's website contains all the information required for carrying out procedures before the Office. Users may consult the legislation in force, including the guidelines, communications and decisions of the President of the Office, refusal decisions relating to absolute grounds, decisions from the Opposition Division and the Boards of Appeal, and forms relating to the various procedures.

REFLECTIONS ON IMPROVING LEGISLATION

The Office commenced a process of reflection regarding changes to be made to the Community trade mark system in order to improve it and make it more accessible. These changes would aim to open the Community trade marks register to people from countries all over the world, to eliminate formalities such as filing authorisations, to solve particular problems concerning seniority and, in the light of experience gained, modify certain procedural rules in order to deal with problems and take account of user needs.

2001 IN FIGURES

Despite the considerable fall in the number of Community trade mark applications compared to the results from the previous year, the volume of work performed increased in 2001, which allowed a reduction in the backlog of pending cases to be anticipated.

EXAMINATION

Over 48 000 applications were published as opposed to 43 000 in 2000. It should be observed that the average length of examination proceedings was reduced to 9.7 months, while the length was 10 months in 2000.

OPPOSITION

More oppositions were filed due to the higher number of applications that were published. However, this increase included a considerable number of 'multiple' oppositions filed (proceedings in which the same application is the subject of several oppositions); this did not, however, alter the proportion of applications published that are opposed, which remained stable (20.5 % of published Community trade mark applications are opposed). In 2001, 10 655 opposition files were closed and a considerable proportion of these files (77 %) were closed as a result of a partial or total withdrawal of the opposition or of the Community trade mark application, or due to a friendly settlement between the parties. It is also interesting to observe that, in 70 % of cases, opposed applications are eventually registered. At the end of 2001, the typical duration of opposition proceedings, excluding the 'cooling-off' period and extensions, was 19.5 months. Appeals were brought against 19 % of opposition decisions (as opposed to 21.6 % in 2000).

REGISTRATION

In 2001, there was an increase of 11 % in the amount of Community trade mark registrations (34 318 in 2000; 38 500 in 2001).

CANCELLATION

The figure for cancellation proceedings remained quite low (under 1 % of registered trade marks have been subject to such proceedings), although a constant increase can be detected. The number of appeals brought against these decisions is quite low.

CONVERSIONS, RECORDALS AND INSPECTION

The amount of recordals made in the Register increased considerably: 5 348 requests were processed in 2001, of which 2 939 were transfers and 164 licences. This contrasts with the 3 959 files processed in 2000.

APPEALS

The number of appeals filed evened out, while the number of cases ruled on increased (877 cases ruled on in 2001, compared to 564 cases in 2000, an increase of 55 %). In 45 % of these cases, the decisions taken at first instance were upheld. Most of the appeals filed concerned *inter partes* cases (approximately 66 %), which appears to be due to a fall in the amount of negative decisions taken by the Examination Division and the considerable number of decisions taken by the Opposition Division.



THE OFFICE IN THE WORLD

As mentioned previously, the Office maintains close relations with the Member States represented in the Administrative Board and the Budget Committee and which take part in the liaison meetings. As a decentralised Community agency and a regional industrial property office, the Office also has close contact with the Community institutions, other regional organisations in the field of intellectual property such as the European Patent Office (EPO) or the World Intellectual Property Organization (WIPO), as well as other industrial property offices throughout the world.

THE OFFICE AS A COMMUNITY AGENCY

The Office is a Community agency created by the CTMR to administer the Community trade mark system, the first industrial property right with a unitary character at Community level. By its very nature, the Office is linked to the Community institutions and is in contact with the other Community agencies.

THE COMMISSION

The CTMR confers powers of control on the Commission regarding the activities of the Office. The Commission is represented within the Administrative Board and the Budget Committee. When Mr Mogg, Director-General of the Directorate-General for the Internal Market, visited the Office in 2001, he expressed support for the efforts undertaken to adapt the Office's expenditure to the amount of fees received from its users, enabling it to balance the budget and to be the only self-financing Community agency. Over the year, the relationship between the Commission and the Office continued to be characterised by cooperation. On the one hand, the Commission was involved in the work of the Office; it took part in the liaison meetings, the OAMI Trade Mark Group meetings and the Judges' Symposium. On the other hand, with regard to the references for a preliminary ruling concerning the interpretation of Directive No 89/104, when drafting its observations for the Court of Justice, the Commission took account of the Office's contributions. The Office, moreover, continued to assist the Commission with the work carried out at WIPO by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications.

The Commission has an exclusive right of initiative in the Community legislative process and the proposals for amendments to the regulations, prepared by the Office in 2001, were informally presented to Mr Mogg when he visited Alicante. They will be submitted to the Commission in due course. For the time being, the Commission has collected opinions from the relevant sectors regarding the search system provided for in the CTMR. In order to assist the relevant sectors in answering the questionnaire, the Office placed a document on its website describing the format and content of the national and Community search reports in question. The opinions given will serve as a basis for a report soon to be presented by the Commission to the Council on the operation of the system, accompanied, if necessary, by proposals for changes.

THE COUNCIL

The Council is the institution which adopted the CTMR and which has the power to appoint the President and the Vice-Presidents of the Office and the members of the Boards of Appeal. In 2001, the Council adopted Regulation No 06/02 on Community designs and appointed two additional members of the Boards of Appeal.

THE COURT OF JUSTICE

The Court of Justice and the Court of First Instance are responsible for reviewing the legality of the decisions taken by the Boards of Appeal in implementing the CTMR and the decisions taken by the Office of a general nature in other areas. The Office is the defendant in a growing number of direct appeals brought before the Court of Justice and the Court of First Instance. In 2001, the Office brought two appeals before the Court of Justice for the first time. The Office also contributes to the observations submitted by the Commission to the Court of Justice as part of the preliminary ruling procedure regarding Directive 89/104.

THE COURT OF AUDITORS

The Court of Auditors has powers of control over the Office's budget. This year, particular attention was paid to two areas: computing and personnel management. The results of this examination were, in general, satisfactory.

THE OTHER EUROPEAN AGENCIES

The Office cooperates with other European agencies. These agencies meet on a regular basis to study issues relating to the reform of the Staff Regulations and to adopt common positions. They appoint a person, on a rota basis, to represent them before the Commission.

ASSEMBLY OF AGENCY STAFF COMMITTEES

An assembly of staff committees from 12 Community agencies (AASC) was founded in 2001. Two meetings were held in the past year, one in Alicante and the other in London. The Assembly is a permanent forum for dialogue and consultation which coordinates and represents staff with respect to the agencies and the authorities of the European Union. The Assembly drew particular attention, at the highest level, to the fact that the agencies do not yet have their rightful place within the European civil service. The Staff Committee of the Office is a permanent member of the secretariat and the other members are the Staff Committees of the European Environment Agency (Copenhagen) and the European Foundation for the Improvement of Living and Working Conditions (Dublin).

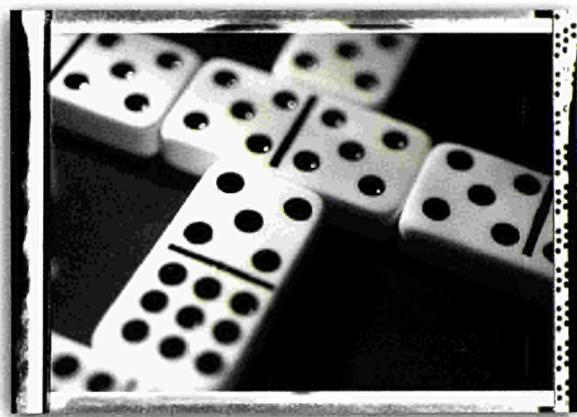
THE OFFICE AS AN INDUSTRIAL PROPERTY AGENCY

The Office conducts a policy of cooperation in areas related to the work it carries out. Its relations with the EPO and WIPO were strengthened in 2001, when these two organisations were invited to take part, as observers, in the liaison meetings with the Office. The Office cooperated with the EPO in setting up technical cooperation programmes with India and the Association of South-East Asian Nations (ASEAN) and took part in the RIPP4 programme for candidate countries. It also took part in the PATINOVA conference.

As regards WIPO, the Office assists the Commission, as an observer, with the work of the committees. Where the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications is concerned, work is aimed at an increasing harmonisation of industrial property law at an international level. This year the Committee's attention focused on drawing up a recommendation concerning the protection of marks, and other industrial property rights in signs, on the Internet. This recommendation was adopted by the governing bodies of WIPO in October 2001. The Standing Committee also considered whether it was appropriate to improve the harmonisation of trade mark law introduced by the Trade Mark Law Treaty. As regards the Standing Committee on Information Technologies, the Office took part in the Plenary Session and also the Information Technologies and Standards and Documentation

Working Groups. Finally, the Office took part in the meetings of the Preparatory Working Group of the Nice Union for the Classification of Goods and Services and the meetings of the Committee of Experts of the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

As a trade mark office, soon to take on the role of a designs office too, the OHIM also attends the meetings organised by the major non-governmental organisations that share the OHIM's field of work. The Office was represented in 2001 in the International Association for the Protection of Industrial Property (IAPIP) congress held in Melbourne, the International Trademark Association (INTA) meeting held in San Francisco and the ECTA conference which took place in Rotterdam. At these conferences, the Office set up stands providing information to the public enabling them to learn more about the Community trade mark system or to question lawyers from the Office on specific matters.



'MOVEMENT LEADS TO UNION'

'THE OFFICE ATTENDED MAJOR
EVENTS IN 2001'

THE OFFICE AND ITS RELATIONS WITH NON-MEMBER COUNTRIES

The OHIM's relations with non-member countries are conducted within the more general context of the relations between these countries and the European Union. They fall into different categories according to the intensity of the links established by the European Union with the non-member countries. They can be distinguished according to those countries which have harmonised their legislation with EU law as a result of belonging to the European Free Trade Association (EFTA) or the European Economic Area (EEA); the candidate countries that have transposed or are still transposing the body of EU law into their national laws as part of their accession preparations; the Mediterranean countries that have concluded Euro-Mediterranean agreements with the European Union and other non-member countries with which various types of agreement have been concluded. The map of the world which appears on p. 43 gives a full picture of the activities organised by the Office in the EC and throughout the world. The most notable events are outlined below.

SWITZERLAND AND NORWAY

The Office strengthened its links in 2001 with Switzerland and Norway, members of EFTA and the EEA respectively. It endeavoured to ensure close involvement of the national offices of these two countries in its activities. As a result, the two countries began to participate in the liaison meetings in 2001. Furthermore, a second meeting took place between the President of the Swiss office and the President of the OHIM, as well as meetings between examiners and various study visits.

CANDIDATE COUNTRIES

Pre-accession cooperation with the candidate countries intensified. In order to prepare these countries for accession to the European Union, various activities were carried out aimed at the staff of the national offices of the candidate countries and interested sectors, both at a national and regional level, and various seminars were organised together with the EPO (see pages 14-15).

MEDITERRANEAN COUNTRIES

The President of the Office attended an industrial property conference in Egypt which was held in Cairo on 29 May 2001. A proposal was made to set up a programme for promoting and modernising the

industrial property system in Egypt, which could be financed by MEDA, the financial instrument of the Euro-Mediterranean partnership. The conference saw the launch of a programme for modernising the industrial property systems of the Southern Mediterranean countries, which could, in the future, also be extended to other Mediterranean partners of the European Union.

THE AMERICAS

Cooperation focused on the European Union's main trading partners on the American continent: the United States, Mexico, Brazil, Argentina and Chile. In Mexico and Chile, the Office organised training seminars for the staff of the national offices. In Argentina, experts from the OHIM took part in an audit at the industrial property office. In Mexico, over 190 representatives of different companies attended a seminar on the Community trade mark which took place successively in three cities: Mexico City, Guadalajara and Monterrey. The OHIM also set up a stand and a workshop at the Latin American Encounter on Patent Information Dissemination (ELDIPAT) which took place in Mexico City. In Brazil, 163 businessmen and industrial property agents attended a seminar which took place successively in the cities of São Paulo, Porto Alegre and Fortaleza. Finally, a seminar was organised in Chile especially for wine producers and exporters.

FIRST TRILATERAL MEETING

One of the major events of the year was the first trilateral meeting between the American and Japanese offices and the OHIM, which was held on 22 and 23 May at the seat of the American office in Washington. The meeting was an opportunity to discuss, over two days, questions of common interest concerning the organisation and optimisation of working methods and developments in trade mark law. These meetings are very important for the OHIM since they provide an opportunity to exchange best practices between the three biggest trade mark offices in the world and enable the OHIM to learn more about the expectations of American and Japanese companies, which apply for the highest number of Community trade marks.



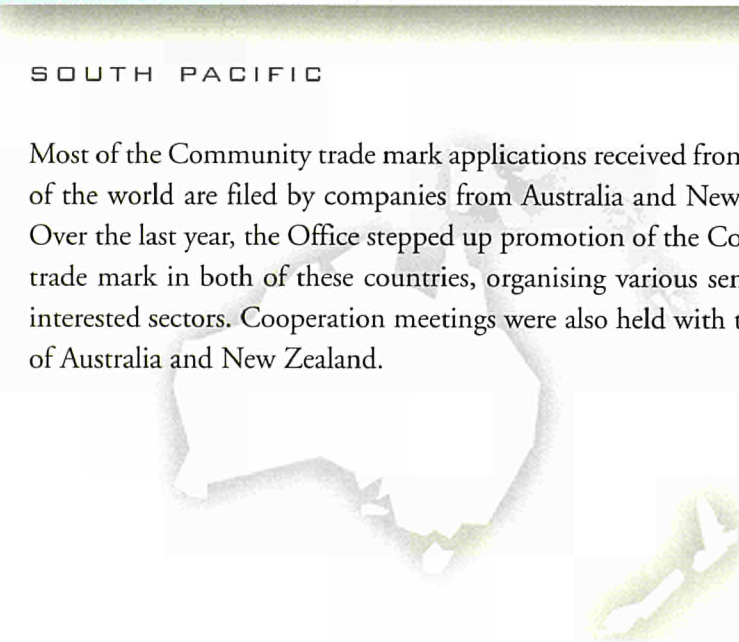
ASIA

The Office mainly had contact with China, India, Japan, Korea, the Philippines, Thailand and Vietnam in 2001. In Korea and Japan, meetings between experts from the OHIM and the national offices were held to compare examination practices. In Vietnam, the Office organised a course for the staff of the Vietnamese office and representatives from this country on the practice it follows in examining trade marks. During the visit of the Chinese office to Alicante, procedures followed in data processing by the OHIM were studied. As part of two EC cooperation programmes, various activities were carried out in India and the member states of ASEAN. As regards the ASEAN countries, exchanges took place in particular with the Thai and Philippine offices. Delegations from these offices visited the seat of the OHIM to attend a training course on absolute grounds for refusal. With regard to India, the Office sent a team to assess the system of industrial property protection in that country and to make recommendations intended to modernise the procedures and practices followed by the Indian office.



CONTACTS WITH RUSSIA

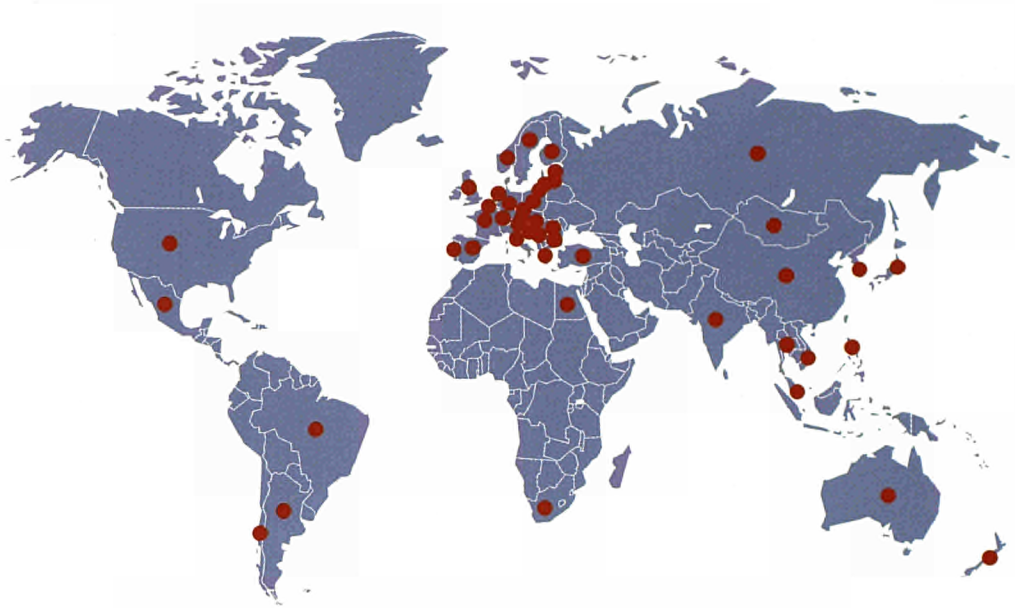
The Russian industrial property office visited the OHIM on 13 and 14 December 2001. This was the first meeting at the highest level between the two organisations.



SOUTH PACIFIC

Most of the Community trade mark applications received from this part of the world are filed by companies from Australia and New Zealand. Over the last year, the Office stepped up promotion of the Community trade mark in both of these countries, organising various seminars for interested sectors. Cooperation meetings were also held with the offices of Australia and New Zealand.

THE OHIMS'S CONTACTS THROUGHOUT THE WORLD



● Countries where the Office has taken part in activities.

EUROPEAN UNION

- Austria
- Benelux
- Denmark
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Portugal
- Spain
- Sweden
- United Kingdom

OTHER EUROPEAN COUNTRIES

- Bulgaria
- Cyprus
- Czech Republic
- Estonia

- Hungary
- Latvia
- Lithuania
- Malta
- Norway
- Poland
- Romania
- Russia
- Slovakia
- Slovenia
- Switzerland
- Turkey

ASIA

- China
- India
- Japan
- Mongolia
- Philippines
- Singapore
- South Korea
- Thailand
- Vietnam

SOUTH PACIFIC

- Australia
- New Zealand

AFRICA

- Egypt
- South Africa

THE AMERICAS

- Argentina
- Brazil
- Chile
- Mexico
- USA

LIST OF THE MEMBERS OF THE BUDGET COMMITTEE ON 30 NOVEMBER 2001

CHAIRMAN:
PETER LAWRENCE

DEPUTY CHAIRMAN:
JOSÉ MARIA MAURICIO ⁽¹⁾

BELGIQUE/BELGIË ⁽¹⁾

Leopold WUYTS *
Conseiller
Office de la Propriété industrielle
de l'Administration de la Politique
commerciale

DANMARK

Hans JAKOBSEN
Deputy Director-General
Patent- og Varemærkestyrelsen

Dorrit PETERSEN *
Head of Section
Patent- og Varemærkestyrelsen

DEUTSCHLAND

Raimund LUTZ
Ministerialrat
Bundesministerium der Justiz

Stefan GÖHRE * ⁽²⁾
Richter am Landgericht
Bundesministerium der Justiz

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STATISTICAL ANNEX

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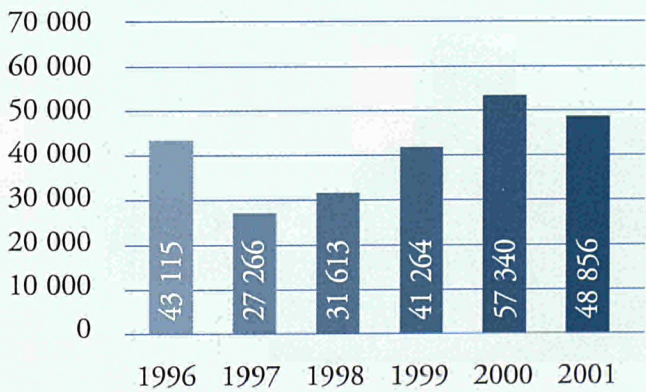
OVERVIEW

	CUMULATIVE	AVERAGE FOR PREVIOUS YEARS	2001
Community trade mark applications	249 454	40 120 ⁽¹⁾	48 856
Registrations	132 218	31 238 ⁽²⁾	38 504
Oppositions	46 298	11 170 ⁽²⁾	12 787
Oppositions resolved	28 859	9 102 ⁽³⁾	10 655
Appeals before the Boards of Appeal	3 414	1 184 ⁽³⁾	1 046
Decisions taken	1 901	512 ⁽³⁾	877
Appeals before the CFI	90	27 ⁽³⁾	36
Judgments given by the CFI	38	5 ⁽³⁾	29
Appeals before the Court of Justice	16	2 ⁽³⁾	13
Judgments given by the Court of Justice	1	0 ⁽³⁾	1

(Reference years : ⁽¹⁾ 1996-2000 - ⁽²⁾ 1998-2000 - ⁽³⁾ 1999-2000)

COMMUNITY TRADE MARK
APPLICATIONS

	AVERAGE 1996-2000		2001	
	NUMBER	%	NUMBER	%
EU-15	24 718	62%	30 514	62%
NON EU-15	15 402	38%	18 342	38%
TOTAL	40 120	100%	48 856	100%

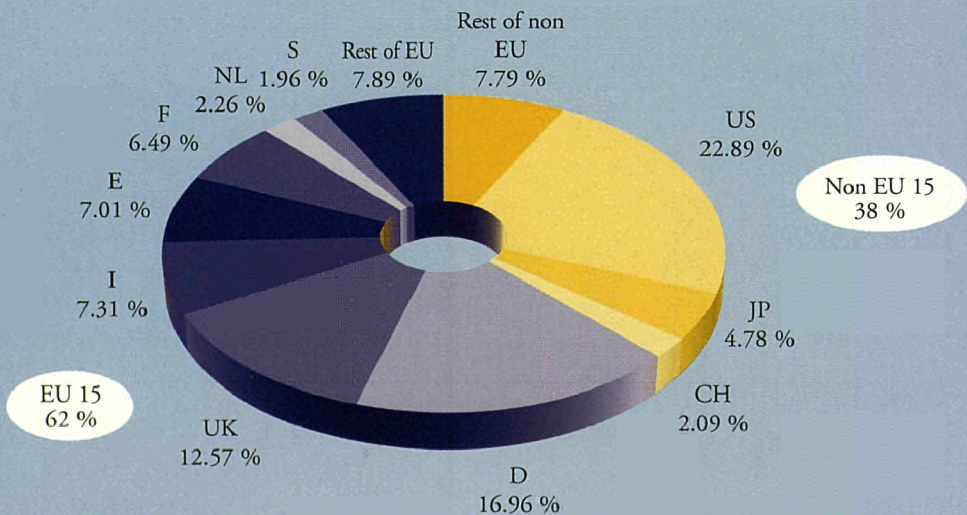


Total: 249 454
Average:
42 000/year

BREAKDOWN OF APPLICATIONS BY
COUNTRY OF ORIGIN

COUNTRY	APPLICATIONS 2001	% WORLD 2001	APPLICATIONS AVERAGE 1996-2000	% WORLD 1996-2000
TOP 10				
United States [US]	11 182	22.89	10 759	26.82
Germany (D)	8 285	16.96	6 682	16.66
United Kingdom (UK)	6 141	12.57	5 316	13.25
Italy [I]	3 570	7.31	2 827	7.05
Spain [E]	3 426	7.01	2 455	6.12
France [F]	3 171	6.49	2 350	5.86
Japan [JP]	2 333	4.78	1 012	2.52
Netherlands [NL]	1 106	2.26	1 084	2.70
Switzerland[CH]	1 019	2.09	769	1.92
Sweden [S]	959	1.96	918	2.29
REST OF EUROPEAN UNION				
Denmark [DK]	767	1.57	629	1.57
Austria [A]	711	1.46	594	1.48
Belgium [B]	687	1.41	588	1.47
Ireland [IRL]	484	0.99	371	0.92
Finland [FIN]	483	0.99	374	0.93
Portugal [P]	297	0.61	245	0.61
Luxembourg [L]	279	0.57	186	0.46
Greece [EL]	148	0.30	100	0.25
Rest of Non European Union	3 808	7.79	2 861	7.13
TOTAL	48 856	100.00	40 120	100.00

APPLICATIONS 2001

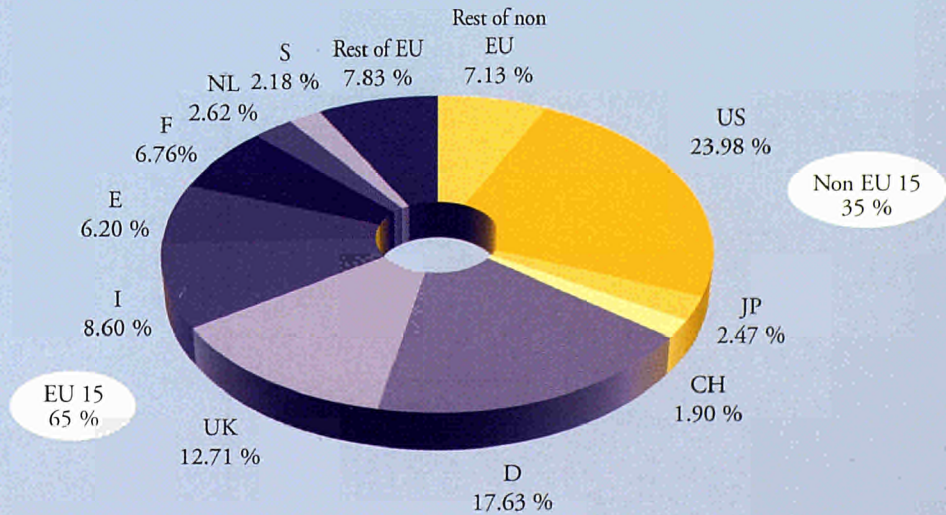


BREAKDOWN OF REGISTERED TRADE MARKS BY COUNTRY OF ORIGIN

COUNTRY	REGISTERED TRADE MARKS 2001	% WORLD 2001	REGISTERED TRADE MARKS AVERAGE 1996-2000	% WORLD 1996-2000
TOP 10				
United States [US]	9 233	23.98	5 043	26.91
Germany (D)	6 788	17.63	3 020	16.11
United Kingdom (UK)	4 894	12.71	2 430	12.96
Italy [I]	3 311	8.60	1 387	7.40
France [F]	2 601	6.76	1 089	5.81
Spain [E]	2 387	6.20	1 189	6.34
Netherlands [NL]	1 009	2.62	492	2.62
Japan [JP]	952	2.47	603	3.22
Sweden [S]	838	2.18	431	2.30
Switzerland [CH]	733	1.90	406	2.17
REST OF EUROPEAN UNION				
Denmark [DK]	589	1.53	302	1.61
Belgium [B]	574	1.49	296	1.58
Austria [A]	497	1.29	278	1.48
Finland [FIN]	414	1.08	182	0.97
Ireland [IRL]	412	1.07	153	0.82
Portugal [P]	217	0.56	112	0.60
Luxembourg [L]	197	0.51	82	0.44
Greece [EL]	113	0.29	30	0.16
Rest of Non European Union	2 745	7.13	1 218	6.50
TOTAL	38 504	100.00	18 743	100.00

REGISTERED MARKS 2001

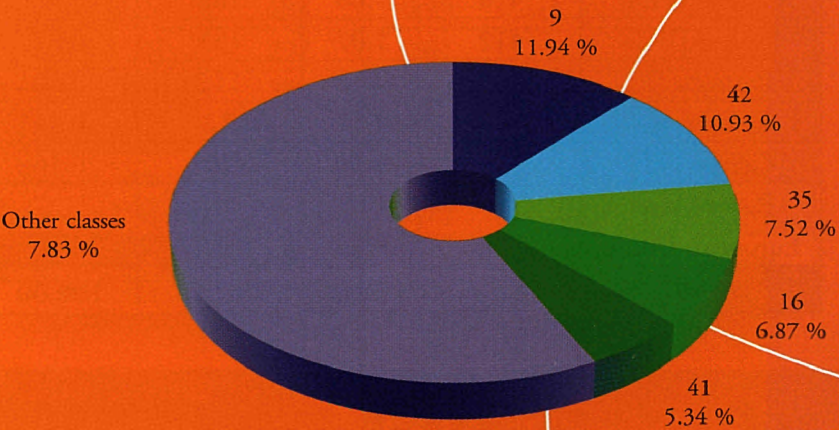
53



BREAKDOWN BY CLASS - TOP 5

CLASS	APPLICATIONS 2001	% 2001	APPLICATIONS 1996-2000	% 1996-2000
9	15 875	11.94	63 726	12.15
42	14 527	10.93	50 001	9.54
35	9 994	7.52	35 985	6.86
16	9 130	6.87	31 134	5.94
41	7 097	5.34	25 822	4.92
Other classes	76 332	57.41	317 718	60.59
TOTAL	132 955	100.00	524 386	100.00

APPLICATIONS 2001



OPPOSITION

	AVERAGE FOR PREVIOUS YEARS	2000-2001
Applications published	32476	48667
Applications opposed	6304	9567
% applications published	19.4 %	19.7%

PROCESSING OF OPPOSITIONS

	AVERAGE FOR PREVIOUS YEARS	2001
Oppositions filed	8378	12787
Oppositions resolved	4551	10655
- by taking a decision	923	2290
- without a decision	3628	8365
Oppositions in process		17000
- subject to cooling-off period		8000

INVALIDITY/REVOCATION

	AVERAGE FOR PREVIOUS YEARS	2001
Applications made	67	167
Cases closed	29	61
- by taking a decision	19	52
- without a decision	11	9
Applications pending	90	228

APPEALS

	2000	2001
Appeals before the Boards of Appeal	1236	1046
- <i>ex parte</i>	493	357
- <i>inter partes</i>	743	689
Appeals before the CFI	34	37
- <i>ex parte</i>	31	14
- <i>inter partes</i>	3	23
Judgments of the CFI	6	27
- upholding decision	5	14
- partial annulment	0	6
- total annulment	1	5
- inadmissibility	0	1
- case does not proceed to judgment	0	1
Appeals before the Court of Justice	1	13
- <i>ex parte</i>	1	13
- <i>inter partes</i>	0	0
Judgments of the Court of Justice	0	1
- annulment	0	1

Ex parte APPEALS BEFORE THE BOARDS OF APPEAL

	2000	2001
Appeals lodged	493	357
Cases resolved	438	402
• without a decision	77	47
- interlocutory revision	32	17
- withdrawal/restitutio in integrum	45	30
• with a decision	361	355
- inadmissibility	16	32
- decision upholding previous decision	233	192
- annulment	94	104
- partial annulment	18	27

Inter partes APPEALS BEFORE THE
BOARDS OF APPEAL

	2000	2001
Appeals lodged	743	689
Cases resolved	138	475
• without a decision	40	41
- withdrawal/restitutio in integrum	40	41
• with a decision	98	434
- inadmissibility	5	33
- decision upholding previous decision	49	164
- annulment	30	128
- partial annulment	4	30
- decision on costs after friendly settlement	10	79

AVERAGE DURATION
OF PROCEDURES CONCLUDED
IN 2000 AND 2001
(IN MONTHS)

	2000	2001
From application to publication	10	9.7
From application to registration		
- without opposition	18.1	16.1
- with opposition	37.1	36.5

USEFUL NUMBERS

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General enquiries fax number

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