



European Communities Trade Mark Association

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Dear Lord Mogg,

### **OHIM Cooperation Fund - Proposal for field 3, information services**

Following the last extraordinary joint meeting of the Administrative Board and Budget Committee of 24 February 2010 and your letter and annexes dated 5 March 2010, please find below ECTA's ideas and proposals in connection with field 3, information services comprising communication initiatives to help companies to better protect and enforce their trade mark and design rights at national and EU level, as well as training initiatives both for companies and their representatives.

Having considered the General Principles and Merits of the European Union and its Member States; the interests of the users of the CTM system, especially smaller and medium sized corporations; that the Cooperation Fund should take into account the concerns raised about those National Offices with fewer budgetary resources and that some national patent and trade mark offices have already started to compete with the private sector, such as offering searches or so called "expert advice", the present status as presented by national delegations is as follows:



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### Field 3 – Information Services

Project	Proposed by:
Training and information sharing, including E-Learning modules for National Office examiners and other actors confronted with the prosecution and enforcement of trade mark rights	Czech Republic; Denmark; France; Hungary; Lithuania; Malta; Poland; Portugal; Slovak Republic; Slovenia; Spain; Sweden; AIM, BusinessEurope, ECTA, INTA, Marques
End-user training and information in the area of the registration process	Poland; Portugal; Slovak Republic; Spain
Establish and educate a special group of CTM&RCD experts who would help National Offices, OHIM and EU industry to become the most advanced and competitive environment	Bulgaria; Hungary; Romania; Slovenia
Training for National Office examiners, and users, to teach about aspects of trade mark law and jurisdiction of the ECJ, with the interpretation of it by National Offices and national courts, grouping together coherent interpretations, and possibly helping to harmonize practice in such areas.	Germany

Field 3 mentions two main areas, namely communication initiatives and training initiatives:

#### Preliminary remarks

It should be clear that the funds of the Cooperation Fund are not to be misused to enable NPTOs to better compete with the private sector as it comes to trade mark searches or legal advice. Apart from the liability problem, which NPTOs would have to think about, any subsidising of NPTOs in that regard would have a great impact on the competitiveness of private search firms as well as to the legal representatives who are organized in all member states in larger or smaller IP firms and who would suffer a substantial loss in income if money from the applicants and users of the CTM system would be given to NPTOs. In that case, in fact, such money would have to be proliferated to all “information providers” in the EU, namely NPTOs, private search firms and legal representatives. Any other regulation would be anti-competitive and a misuse of the funds.



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Hence, “information services” under this field are not meant to be providing free expert advice by NPTOs, but rather information services

- aiming at raising the awareness on the importance of IP protection,
- holding seminars for education purposes,
- dissemination of case-law and office practice information, and
- training sessions both for in-house experts and IP professionals on new e-tools to protect their own and their client's rights.

## **Proposals**

The following projects are therefore proposed:

### **I. Communication Initiatives**

Information sharing, including E-Learning modules for National Office examiners and other actors confronted with the prosecution and enforcement of trade mark rights:

- Providing one database with free access for the public (and for national examiners) to all decisions of OHIM and national offices (examination decisions, opposition decisions, appeal decisions, etc.).
- Providing free databases at all national trade mark offices about trade marks filed and registered (presently some national offices still keep such digitally available information secret).
- Providing one classification list which is accepted by all national Offices and OHIM.
- Creating a “Minimum Standard EU Examination Guideline” which all NPTOs can agree upon.

### **II. Training Initiatives**

- a. Establishing and educating a special group of CTM and RCD experts who would help NPTOs and users to become the most advanced and competitive environment. The training should last 3 days and will be held at OHIM once a year.
- b. Training by a special group of CTM and RCD experts (see a) to National Office examiners and users confronted with the prosecution and enforcement of trade mark rights.



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This group will visit national Office Examiners and users to explain:

- E-Learning programme showing how to standardize the examination procedure, including classification issues and examining trade marks on absolute grounds along certain examination guidelines (which ensures a reliable, coherent and predictable examination and registration of trade marks);
- Use of databases;
- Minimum Standard EU Examination Guidelines;
- Minimum Standard EU Opposition Guidelines.

The seminar should be held at the NPTOs and/or OHIM. It should be open to examiners and users, and last 2 days (14 hours). Afterwards, there should be 50 hours of training on computers which could be divided into modules.

- c. Training by the group of CTM and RCD experts for National Office examiners, users and judges to lecture them on recent developments on trade mark decisions of the Court of Justice, the General Court and national courts, grouping together coherent interpretations, and possibly helping to harmonize practice in such areas.

The training should last 5 days: 3 days covering TM registration and opposition procedures (Court of Justice and General Court) and 2 days covering infringement national cases which have a European impact. The training should take place in all interested Members States once a year without any charge for the participants.

We remain at your disposal should you have any questions or should you need any clarification.

Yours sincerely,

Simon Reeves

President

F. Peter Müller Chairman  
of the Professional Affairs Committee