



European Communities Trade Mark Association

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OHIM

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Dear Mr. O'Reilly,

Draft Guidelines concerning proceedings before the Office for the Harmonization in the internal market - Registered Community Design - Renewal

We thank you very much for having invited ECTA to comment on the draft for the Community Design Renewal Guidelines.

The Design Committee of ECTA has reviewed the Guidelines and would like to make the following suggestions:

1) The heading of Section 3 of the draft refers to "Formal Requirements for the Request for Renewal". However, the content of this Section does not only deal with the "Request for Renewal", but also with the "Renewal Fees" (in particular under Section 3.3). In order to remedy the inconsistency (between heading and content), we suggest to either refer within the heading expressly also to "Fees" or to - even better - dedicate one first Section to the "Request for Renewal" and a new, separate Section on "Fees".

We mention this point not for being overly formalistic but to highlight right at the beginning of our suggestions that the entire draft could deserve even more accuracy with regard to the use of the term "Request for Renewal" as opposed to the "Renewal" as a whole and other formal requirements. This will also be shown at other occasions in the draft.

2) Section 3, third paragraph, last sentence refers to the additional fee in case of late request for renewal. Express reference should be made so the specific entry on the fee table as Annex to the Regulation (EC) No. 2246/2002 of 16 December 2002 with regard to the fees for registered Community designs.

3) Section 3, paragraph 1 deals with the renewal request in case of multiple or various designs. We suggest to not make reference to the fees at this point. The renewal fees (for multiple and various designs) are addressed at various occasions in the subsequent parts of the draft. Under Section 3, only the request for renewal as such should be addressed. This may also help to clarify the draft further.

4) Section 3.3 deals with the fees for renewal. If it is at all advisable to repeat the fees as set out in the Annex of the Regulation (EC) No. 2246/2002 on fees for Community designs, we suggest to put this at the beginning of Section 3.3. According to the general structure of the draft, repetitions of the Regulations are usually the starting point for further guidelines and should be placed at the beginning.

5) Section 3.3, penultimate paragraph refers to the payment of fees from a "current account". It is stated that the current account will only be debited "once a request for renewal is filed". We understand that this is rather not correct or at least imprecise. Debiting from the current account should only require a "money transfer instruction from the right holder". It is our understanding that the payment via current account does not presuppose the compliance with all requirements of a "request for renewal". Hence, this - legally defined - term should not be used in this context.

6) In Section 3.3, last paragraph, reference is made to the situation that the request for renewal is filed belatedly. In this case, the debiting from the current account shall not take place before a request for renewal is filed. It seems to be in contrast with the provision under Section 4.2.1 a), second paragraph. According to the latter provision, the payment of a renewal fee may constitute a request for renewal.

In our view, the conflict between both provisions should be remedied by an amendment of both of them. With regard to Section 3.3, it should be made clear that a proper payment instruction will suffice to effect payment from a current account. With regard to 4.2.1 a) it is probably not correct to suggest that the payment of the renewal fee constitutes or ("replaces") as well a proper request for renewal. According to Article 13 of the Community Design Regulation, the request and the payment is necessary to effect the renewal.

7) There are various provisions that relate to the insufficient payment for various or multiple designs, such as Section 4.2.1 a), 4.2.1 b) and 4.2.2. All these provisions stipulate that the Office can determine the repartition of fees in case of insufficient clarification given by the right holder.

In Section 4.2.2, fourth paragraph, it is even suggested that all affected designs will expire if the uncertainties cannot be overcome.

According to our view, the Office should determine in any event **before** the expiration of the renewal deadline (or the extended deadline as the case may be) to which design the payment applies. In the absence of any further evidence, payment should be allocated to the designs in their chronological or numerical order.

We are very happy to discuss these suggestions with you further if you deem it appropriate.

Yours sincerely,



Mireia Curell
President



Leopold von Gerlach
Chair of the Design Committee