



Overview of the 2024 Edition of the Guidelines

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** This document contains the answers to relevant questions submitted by the audience during the webinar that could not be answered during the live session, and to which an answer is possible.*

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Questions and answers – Overview of the 2024 Edition of the Guidelines

What is the threshold for raising deficiencies in examination proceedings? Is a full index required when the applicant attaches 1-2 annexes? Just to illustrate - BoA raised a deficiency in a recent absolute grounds appeal case where an index was not included for a single annex consisting of 4 pages relating to the same subject matter. Is the office now going to apply a strict standard that all evidence always has to be referred to in an index?

Please note that the **Guidelines are not binding for the Boards of Appeal** as they are an independent body and when deciding a case are not bound by any such instructions. In this regard the Boards have their own Rules of Procedure which are available on the EUIPO website and the structure of written evidence, including the index, is covered by Article 51.

As to the guidance given in the new Evidence section of the guidelines, please note that this stems from Article 55 EUTMDR which sets out in paragraph 2 that an index should be included when submitting evidence. It is also important to note that Article 55(3) EUTMDR stipulates that where the submissions or index do not comply with paragraph 2, the Office will raise a deficiency so that the submitting party can remedy accordingly.

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How can we give a proof of the countries where a website is seeable/searchable?

Most websites can track information relating to the number of visitors, the length of time spent on the website, the countries where the visitors come from and whether any transactions were made and such statistics can be obtained upon request. For example, entities using Instagram, Facebook, Amazon or other similar commercial platforms can request statistical information and there are also tools such as Google Analytics, which is a frequently used means in this regard. When submitting such information, details and explanations should be provided so that it is clear to the Office and any other party involved in the proceedings.

It is also relevant to add that the top level domain of the website, the language and currency used are also highly indicative.

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Could you please elaborate how detailed the information is relating to surveys and opinion polls?

The information relating to surveys and opinion polls should contain information relating to the survey provider, that allows the Office to determine the provider's expertise and demonstrating its independence from the party concerned. Details regarding the target public, sample size, method used, questions asked and the circumstances under which the survey took place (over the phone, face to face etc.) as well as the relevant time-frame.

In this regard, **you can refer to the new Evidence section of the guidelines** which sets out in detail important aspects to consider when submitting such information.

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Does it exist any guidance in relation to invoices within sectors governed by strict rules of confidentiality? Presume that a bank is subject to a proof of use request. Then, it might be hard for the bank to disclose invoices without risking to disclose sensitive personal data in breach of various bank and financial regulations and EBA guidelines. Thank you!

Any confidential information on invoices that may be considered sensitive such as names, street address **can be blackened out.**

However, as mentioned in the webinar, it is important that the town, city, country information is still visible to support the territorial aspects, namely the place of use. Moreover, the invoices should reflect that there are a number of different clients and give indications of volumes/sales in order to support the extent of use. However, invoices are not only the means by which to prove use as there is a plethora of additional materials which can also be used (advertisements, leaflets for example with the relevant indications on distribution and circulation, annual reports).

Further information regarding means of evidence can be checked in our guidelines. Moreover, if there are circumstances such as regulatory controls which make invoices difficult/impossible to submit this should be explained and proven by the party and other forms of evidence that can demonstrate use should be submitted.

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Was also the Board of Appeal decision 2020-8 regarding surveys taken into account in connection with the new section on surveys or only CP12?

The case-law taken into consideration for describing the practice as regards surveys, in addition to CP12, has been quoted in the chapter.

We could not find the decision indicated in the question as the numbering does not correspond with the usual format for Boards of Appeal decisions.

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Do you mean that the EUIPO does/can assess the friendly agreements (coexistence agreement) that are signed by the parties?

As concerns **agreements between the parties**, the Office does not play a role and cannot assess any such agreements. Please note that this specific issue is related to a Best Practice.

If a party requests a restriction or amendment of a list of goods/services to avoid conflicts, such as in the course of *inter partes* proceedings, the parties should carefully agree on the wordings and ensure they are in line with the rules outlined above. This should be done before the request is submitted to the Office.

This is due to the limited possibilities that the Office has to assist in such matters. Parties could also consider a co-existence agreement as an alternative. It might be more suitable than attempting to include such an agreement in the list of goods and services.

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Is the number of followers on a social media account important as evidence of reputation?



The number of followers can be relevant and can contribute to prove that the mark has acquired reputation.

However, it is **important that relevant data are also provided**, in particular, specific dates and territorial or geographical location of the users. In addition, such data **must come from independent sources**, therefore the extracts coming from the social media platforms have to include information created by the platform itself that cannot be controlled or modified by the owner of the account. And, of course, the **information contained must allow mark to be identified in relation to the relevant products/services.**

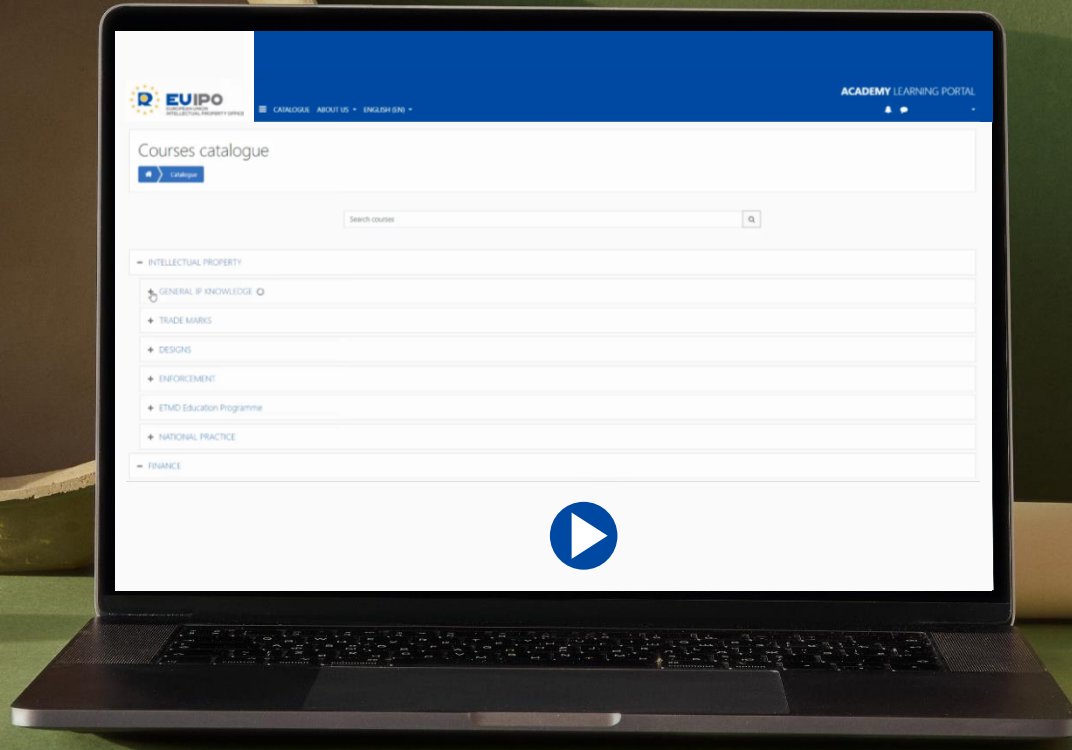
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Thank you very much for the very dense and important presentation. So we can use the information for the representatives as of April.

 **Yes, you can**

Decision No EX-24-2 on the adoption of the Guidelines of Examination of European Union Trade Marks at the European Union Intellectual Property Office entered into force on 31 March 2024.

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