

**DECISION 2020-1 OF 27 FEBRUARY 2020
OF THE PRESIDUM OF THE BOARDS OF APPEAL ON
THE RULES OF PROCEDURE BEFORE THE BOARDS OF APPEAL**

(‘Rules of Procedure of the Boards of Appeal’)

Amended on

6 November 2020 (Presidium Decision 2020-11)

19 February 2021 (Presidium Decision 2021-4)

6 July 2021 (Presidium Decision 2021-10)

12 December 2023 (Presidium Decision 2023-22)

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THE PRESIDIUUM OF THE BOARDS OF APPEAL,

Having regard to Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark⁽¹⁾ (hereinafter referred to as the ‘**EUTMR**’), and in particular Article 165, Article 166, Article 167, Article 169 and Article 170 thereof,

Having regard to Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EC) No 2017/1001 of the European Parliament and of the Council on the European Union trade mark and repealing Delegated Regulation 2017/1430 of 18 May 2017 (hereinafter referred to as the ‘**EUTMDR**’) and in particular Article 46(1)(a), Article 46(1)(f) and Article 46(1)(g) thereof,

Having regard to Commission Implementing Regulation (EU) No 2018/626 of 5 March 2018⁽²⁾ (hereinafter referred to as the ‘**EUTMIR**’),

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs⁽³⁾ (hereinafter referred to as the ‘**CDR**’) and in particular Article 106 and Article 108 thereof,

Having regard to Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs⁽⁴⁾ (hereinafter referred to as the ‘**CDIR**’),

Having regard to Council Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office in respect of the registration of Community designs (hereinafter referred to as the ‘**CDFR**’),

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC⁽⁵⁾ (hereinafter referred to as ‘**Regulation (EU) 2018/725**’).

Having regard to the decisions and communications of the Executive Director of the Office⁽⁶⁾, in particular decisions No EX-22-7 of 29 November 2022 on the technical specifications for annexes submitted on data carriers, decision No EX-23-13 of the Executive Director of the Office on communication by electronic means (which entered into force on 16 December 2023), No EX-18-4 of 3 September 2018 concerning public notification, and No EX-21-5 of 21 July 2021 concerning methods of payment of fees and charges and determining the insignificant amount of fees and charges,

Whereas:

- (1) According to Article 165(1) EUTMR, the Boards of Appeal shall be responsible for deciding on appeals from decisions of the Office taken pursuant to Article 160 to 164 EUTMR.
- (2) Commission Regulation (EC) No 216/96⁽⁷⁾ of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs), has been replaced by the EUTMDR, in particular by Title V, Articles 21 to 47.

⁽¹⁾ [OJ L 154, 16.6.2017, p. 1-99](#)

⁽²⁾ [OJ L 104, 24.4.2018, p. 37](#)

⁽³⁾ [OJ L 3, 5.1.2002, p. 1-24 \(unofficial consolidation of 01/07/2013\)](#)

⁽⁴⁾ [OJ L 341, 12.12.2002, p. 28](#)

⁽⁵⁾ [OJ L 295, 21.11.2018, p. 39](#)

⁽⁶⁾ <https://www.euipo.europa.eu/en/protect-ip/law/communications-and-decisions-ed>

⁽⁷⁾ [OJ L 104, 24.4.2018, p. 1-36](#)

- (3) According to Article 106 CDR, in addition to the powers conferred upon it by the EUTMR, the Boards of Appeal shall be responsible for deciding on appeals from decisions of the examiners, the Invalidity Divisions and from the decisions of the Administration of Trade Marks and Designs and Legal Division as regards their decisions concerning Community designs.
- (4) According to Article 108 CDR, as confirmed by the jurisprudence of the General Court⁽⁸⁾, the provisions of the EUTMDR relating to proceedings before the Boards of Appeal are also applicable to appeals against the decisions referred to in Article 55 CDR.
- (5) According to Article 166(4)(a) EUTMR, the Presidium of the Boards of Appeal (hereinafter referred to as the '**Presidium**') is responsible for laying down the rules of the Boards.
- (6) According to Article 46(1)(g) EUTMDR, the Presidium shall take any other measure for the purpose of exercising its functions of laying down the rules and organising the work of the Boards of Appeal.
- (7) According to Article 42(2) and (5) as well as Article 46(1)(f) EUTMDR, the Registrar shall perform the tasks relating to the conduct of appeal proceedings entrusted to it by those provisions, or as delegated or instructed by the Presidium of the Boards of Appeal.
- (8) According to Article 48 EUTMDR, the provisions relating to proceedings before the instance of the Office which adopted the decision subject to appeal shall be applicable to appeal proceedings *mutatis mutandis*.
- (9) According to Article 36(1) CDR, save as otherwise provided, the provisions relating to proceedings before the department which has made the decision against which the appeal is brought shall be applicable to appeal proceedings *mutatis mutandis*.
- (10) According to Article 107 EUTMR and Article 68 CDR, in the absence of procedural provisions in these regulations or in acts adopted pursuant to them, the Office shall take into account the principles of procedural law generally recognised in the Member States.
- (11) The Office and its Boards of Appeal have a duty to exercise their powers in accordance with the general principles of EU law, including the principles of equal treatment and sound administration.
- (12) In light of the foregoing considerations, and in order to ensure an effective, efficient and complete review of the decisions of the Office by the Boards of Appeal, it is necessary to supplement the provisions applicable to appeal proceedings, and to specify the adjustments and adaptations needed for design appeal proceedings, with a view to ensuring consistent, transparent, thorough, timely, fair and equitable decision-taking.
- (13) The present Rules of Procedure of the Boards of Appeal, hereinafter the '**Rules**', shall apply to appeal proceedings before the Office's Boards of Appeal concerning both trade mark and design matters unless otherwise specifically provided for.
- (14) The present Rules are without prejudice to what is laid down in the EUTMR, EUTMDR, EUTMIR, CDR

⁽⁸⁾ 30/11/2022, T-611/21, Zubehör für kabellose Fernbedienungen, EU:T:2022:739, § 33; 24/03/2021, T-515/19, Building blocks from a toy building set, EU:T:2021:155, § 44.

and CDIR, which shall prevail in case of doubt.

HAS ADOPTED THE FOLLOWING DECISION:

CHAPTER I – GENERAL PROVISIONS

Article 1

Adversarial nature of appeal proceedings

1. In inter partes appeal proceedings, the parties to the proceedings shall have access to the documents and items submitted, as well as to decisions taken by the Office pertaining to their case, irrespective of whether the documents and items are marked confidential or not.
2. In design appeal proceedings, where a third party seeks to enter the appeal proceedings as an intervener pursuant to Article 54 CDR, access to the appeal file is granted only after the request to intervene has been accepted.

Article 2

Notifications to the parties

1. The Registrar shall effect the notification of decisions, summonses and any notice or other communication from which a time limit is calculated, or which otherwise are to be notified to the parties, through the User Area in accordance with **Decision No EX-23-13 of the Executive Director of the Office.**
2. The Registrar shall effect notification by either post or courier where:
 - (a) the User Area is manifestly not operational; or
 - (b) the person or entity to be notified does not have an active user account; or
 - (c) the notification is effected in respect of an addressee who has no establishment or domicile within the EEA, as laid down in Article 58(2) EUTMDR and Article 48(2) CDIR.
3. In the event notification is not successful despite having been attempted using the User Area, and either post or courier, the Registrar shall effect the notification by public notice in accordance with Decision No EX-18-4 of the Executive Director of the Office.
4. **The rules on notifications and communication related to alternative dispute resolution proceedings managed by the Mediation Centre, set forth in Decision No EX-23-9 of the Executive Director of the Office on the administration of mediation processes ('Rules on Mediation'), shall be applied with precedence to paragraphs 1 to 3 above.**

Article 3

Calculation and extension of time limits

1. Time limits mentioned in these Rules shall be calculated in accordance with Article 101 EUTMR and Articles 67 and 69 EUTMDR, or Articles 56, 57 and 58 CDIR respectively.
2. The time limits for filing a notice of appeal and statement of grounds cannot be extended.
3. **A reasoned request for extension of the time limit for filing a response to an appeal pursuant to Article 24(1) EUTMDR and for filing observations on a cross appeal pursuant to Article 25(5) EUTMDR shall be submitted within the original time limit.**
4. **For all other time limits set by the Boards of Appeal, an extension may be granted, in whole or in part, upon a reasoned request submitted by the party concerned within the original time limit.**
5. **Where a request for extension pursuant to paragraphs 3 or 4 above is not submitted within the original time limit or is not reasoned, the Registrar shall reject it. When the supporting reasoning or evidence is found to be insufficient, the request shall be rejected by the Chairperson before the Final Procedural Check is performed pursuant to Article 24(3) of these Rules, or by the Rapporteur under the direction of the Chairperson after the performance of the Final Procedural Check.**
6. **In inter partes proceedings, the Registrar shall grant extensions of time limits jointly requested by both parties within the original time limit for a maximum period of up to six months. In the event no time**

period is indicated in that request, the Registrar shall grant by default an extension for a period of two months.

Article 4

Time limits applicable to parties outside of the EEA in design appeals

Where these Rules provide for a time limit to be set by the Board of Appeal or Registrar, a minimum time limit of two months shall be set for a party to a design appeal with no establishment or domicile within the EEA.

Article 5

Mandatory representation of parties outside of the EEA

1. A party having no establishment or domicile within the EEA, must be represented before the Board of Appeal in accordance with Article 119(2) EUTMR or Article 78(1) CDR.
2. Where, during appeal proceedings, the Boards of Appeal are informed that the representative of such a party:
 - (a) does not fulfil the requirements laid down in Article 120(1) EUTMR, or Article 78(1) CDR;
 - or
 - (b) has relinquished the representation of that party;and no new representative has been appointed, the Registry shall invite that party to remedy the deficiency within two months. Moreover, that party will be informed that, if no new representative has been appointed within the set time limit, any submission, document or item filed on behalf of, or by that party, shall be deemed not to have been filed.
3. The foregoing provisions are without prejudice to any on-going procedural time limits.

Article 6

Confidential information

1. A party may request that specific information in a submitted document or item is kept confidential. A request for confidentiality shall be explicit, defined as to its scope, and it shall include a justification of the party's special interest in keeping the document or item confidential.
2. Where confidentiality is requested, two versions of the document or item containing the information subject to the request pursuant to paragraph 1 shall be submitted concurrently: The unaltered version and a public version in which only the information subject to the request pursuant to paragraph 1 has been removed, unless it has been demonstrated that total confidentiality is justified.
3. Where a request fulfils these requirements, the Registrar shall mark the document or item containing the information for which confidentiality is requested by the party as confidential.
4. If a request does not contain justification, the Registrar shall reject it.
5. Where a request does not comply with the other formal requirements laid down in paragraphs 1 and 2, the Registrar shall invite the party to remedy the deficiency within a specified time limit. If the request is not remedied within the prescribed time limit, the Registrar may reject the request or remit it to a Chairperson or the Board of Appeal.
6. Where a request for confidentiality has been rejected by the Registrar, the party concerned may demand that the Board of Appeal decide on the request, in which case the Registrar shall mark the document as confidential until the Board of Appeal has taken its decision.
7. Where confidentiality is requested towards the other party, the Registrar shall invite the requesting party to withdraw either the request, or the document for which confidentiality is requested.
8. Where confidential information is communicated to the other party, this party shall keep the information

confidential.

Article 7

Sensitive personal data

Where a document or item contains data concerning a natural person's racial, ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, data concerning health, sex life or sexual orientation, the Registrar shall, of their own motion or on request of the competent Board, mark the document in question as confidential.

Article 8

Confidentiality of internal documents

1. All drafts, written opinions, notes, correspondence within the Boards of Appeal, as well as any other internal documents or items used for the preparation of deliberations and decisions, in particular opinions on admissibility, preliminary reports, deliberation minutes and draft decisions, shall be and remain secret.
2. No documents or items mentioned in the foregoing paragraph may be subject to inspection pursuant to Article 114 EUTMR or Article 74 CDR.
3. Documents relating to exclusion or objection pursuant to Article 169 EUTMR or Article 72(a) CDR shall be excluded from inspection.

Article 9

Information not to be disclosed in design appeal proceedings

Prior to the publication of a design, whether deferred pursuant to Article 50 CDR or not, the entire appeal file shall be considered information not to be disclosed. The Registrar shall of their own motion mark all documents and items contained in the aforementioned appeal file as confidential.

CHAPTER II – WRITTEN PROCEEDINGS

Article 10 **Notice of appeal**

1. Upon receipt of a notice of appeal, the Registrar shall examine whether it complies with the requirements laid down in Articles 66 to 68 EUTMR and Article 21 EUTMDR.
2. Where a notice of appeal does not comply with Article 68(1) EUTMR, the Registrar shall invite the appellant to file its observations on the admissibility of the appeal within one month.
3. Where a notice of appeal does not comply with Articles 66, 67 EUTMR or Article 21(1)(d), (2) and (3) EUTMDR, the Registrar shall inform the appellant of those deficiencies.
4. Where a notice of appeal does not comply with the requirements laid down in Article 21(1)(a), (b), (c) or (e) EUTMDR, the Registrar shall invite the appellant to remedy these deficiencies within one month pursuant to Article 23(1)(c) EUTMDR.
5. The notice of appeal shall be filed in the language of the first instance proceedings. In ex parte trade mark proceedings, where the decision subject to appeal has been taken in an official language of the EU other than the language of first instance proceedings, the appellant may file the notice of appeal either in the language of the first instance proceedings or in the language in which the decision subject to appeal was taken. In either case, the language used for the notice of appeal shall become the language of the appeal proceedings.
6. Where the notice of appeal is filed in an official language of the EU other than the language of proceedings, the appellant shall, within four months of the date of notification of the contested decision, provide a translation into the language of proceedings in accordance with Article 21(2) EUTMDR.
7. Where the time limits referred to in the foregoing paragraphs are not complied with, the Registrar shall give its reasoned opinion pursuant to Article 42(3)(c) EUTMDR to the Board of Appeal, which shall then decide on the admissibility of the appeal.
8. Should the Board of Appeal declare the appeal admissible, the file shall be remitted without delay to the Registrar for further prosecution.

Article 11 **Appeal fee**

1. In the event of insufficient payment of the appeal fee, pursuant to Article 68(1) EUTMR or Article 57 CDR respectively, or lack of payment within the prescribed time limit, the Registrar shall invite the appellant to file its observations on admissibility of the appeal within one month.
2. If no observations are filed, or the appellant is unable to prove due payment was made within the prescribed time limit, the Registrar shall remit the case to the competent Board for decision without delay.
3. In the event the observations submitted within the prescribed time limit prove the due payment of the appeal fee, or that payment has been made in accordance with the requirements laid down in Article 180(3) EUTMR or Article 7(3)(a)(ii) and Article 7(b) CDFR respectively, the Registrar shall deem the appeal as having been filed and continue written proceedings.

Article 12 **Reimbursement of the appeal fee in trade mark appeal proceedings**

1. The Registrar shall pursuant to Article 42(3)(e) EUTMDR order, on behalf of the Boards of Appeal, reimbursement of the appeal fee where a notice of appeal is deemed not to have been filed as referred to in Article 33(a) EUTMDR; or where the contested decision is revised or revoked by the decision making

- instance as referred to in Article 33(b) EUTMDR.
2. The Board of Appeal shall order reimbursement of the appeal fee where the contested decision has become devoid of purpose, as referred to in Article 33(c) EUTMDR; or where it considers such reimbursement equitable due to a substantial procedural violation as referred to in Article 33(d) EUTMDR.
 3. **In the aforementioned circumstances, reimbursement of the appeal fee shall be granted.**

Article 13

Reimbursement of the appeal fee in design proceedings

1. The Registrar shall order reimbursement of the appeal fee, on behalf of the Board of Appeal, where a notice of appeal is deemed not to have been filed pursuant to Article 57 CDR.
2. The Board of Appeal shall order reimbursement where it considers this reimbursement equitable due to a substantial procedural violation as referred to in Article 37 CDIR.
3. **In the aforementioned circumstances, reimbursement of the appeal fee shall be granted.**

Article 14

Statement of grounds

1. Upon receipt of a statement of grounds, the Registrar shall examine whether it complies with the requirements laid down in the fourth sentence of Article 68(1) EUTMR and Article 22 EUTMDR.
2. **The extent of the appeal identified in the notice of appeal, as referred to in Article 21(1)(e) EUTMDR, cannot be broadened in the statement of grounds. In the event of contradiction, only the extent identified in the duly filed notice of appeal shall be taken into account.**
3. Where a statement of grounds does not comply with the relevant time limit laid down in Article 68 EUTMR, the Registrar shall invite the appellant to file its observations on the admissibility of the appeal within one month.
4. Where a statement of grounds does not comply with the requirements of identification pursuant to Article 22(1)(a) EUTMDR, the Registrar shall invite the appellant to remedy those deficiencies within one month pursuant to Article 23(1)(e) EUTMDR, unless the statement of grounds can be unambiguously matched to the relevant notice of appeal.
5. Where, according to Article 22(1)(b) EUTMDR, the contested decision is appealed in part, and the grounds of appeal are unclear and ambiguous with regard to the goods and services to which they refer, the Registrar shall invite the appellant to remedy that deficiency within one month pursuant to Article 23(1)(e) EUTMDR.
6. Where a statement of grounds is filed in an official language of the EU other than the language of proceedings, the appellant shall, within one month of the submission of the original, provide a translation into the language of proceedings in accordance with Article 22(2) EUTMDR.
7. Where a statement of grounds does not comply with the relevant language requirements laid down in Article 22(2) EUTMDR, the Registrar shall invite the appellant to file its observations on the admissibility of the appeal within one month.
8. Where the deficiencies referred to in the foregoing paragraphs are not remedied within the prescribed time limit, the Registrar shall give their reasoned opinion pursuant to Article 42(3)(c) EUTMDR to the Board of Appeal on the admissibility of the appeal.
9. **At the Chairperson's initiative, the Board of Appeal shall decide without delay on the admissibility of the appeal. Should the Board of Appeal declare the appeal admissible, the file shall without delay be remitted to the Registrar for further prosecution.**

Article 15

Admissibility of an appeal

1. An appeal shall be rejected as inadmissible unless both a notice of appeal pursuant to Article 10 of these Rules and a statement of grounds pursuant to Article 14 of these Rules have been duly filed within their respective time limits.
2. Where the deficiencies referred to in Articles 10 and 14 of these Rules are not remedied within the prescribed time limit, the Registrar shall, without delay, give their reasoned opinion on the admissibility of the appeal to the Board of Appeal, pursuant to Article 42(3)(c) EUTMDR.
3. At the Chairperson's initiative, the Board of Appeal shall decide without delay on the admissibility of the appeal. Should the Board of Appeal, however, declare the appeal admissible, the appeal proceedings shall continue.

Article 16

Revision and interlocutory revision of decisions in ex parte appeal proceedings

1. In ex parte proceedings, the Registrar shall, unless the appeal is rejected as inadmissible, remit the appeal to the instance which took the contested decision.
2. Where the instance which took the contested decision grants revision in accordance with Article 69(1) EUTMR or interlocutory revision in accordance with Article 58 CDR, the Registrar shall, on behalf of the Boards of Appeal, close appeal proceedings, reimburse the appeal fee in accordance with Articles 12 or 13 of these Rules, and inform the parties thereof.
3. Where the instance which took the contested decision, pursuant to Article 69(2) EUTMR or Article 58(2) CDR, remits the appeal to the Boards of Appeal without rectifying the contested decision, the Registrar shall continue the proceedings.

Article 17

Response

1. Upon receipt of a response, the Registrar shall examine whether it complies with the time limits laid down in Article 24 EUTMDR.
2. Where a response is submitted outside the time limit laid down in Article 24(1) EUTMDR, the Registrar shall invite the defendant to file its observations on the admissibility of the response within one month.
3. Where a response does not contain the contact information of a representative pursuant to Article 21(1)(b) or (c) EUTMDR, as referred to in Article 24(2) EUTMDR, the Registrar shall invite the defendant to remedy that deficiency within one month.
4. Where a response does not contain a clear and unambiguous identification of the appeal proceedings to which it refers, pursuant to Article 22(1)(a) EUTMDR in conjunction with Article 24(2) EUTMDR, the Registrar shall invite the defendant to remedy that deficiency within one month, unless the response can be matched to the relevant appeal.
5. Where a response is filed in an official language of the EU other than the language of proceedings, the defendant shall, within one month of the submission of the original, provide a translation into the language of proceedings in accordance with Article 22(2) EUTMDR, as referred to in Article 24(2) EUTMDR.
6. Where a response does not comply with the relevant language requirements laid down in Article 22(2) EUTMDR, the Registrar shall invite the defendant to file its observations within one month.

Article 18
Renewal certificates

1. Where an earlier right is relied upon in appeal proceedings, the Registrar shall record its expiry date in the Final Procedural Check foreseen in Article 24(3) of these Rules.
2. A party may at any time submit renewal certificates or equivalent documents concerning an earlier right relied upon.
3. Where the renewal certificate is in a language other than the language of proceedings, the right holder shall submit a translation of the certificate into the language of proceedings within one month.
4. If the party concerned has relied on online substantiation of an earlier right pursuant to Articles 7(3) and 16(2) EUTMDR, the Registrar shall verify the renewal in the online database relied upon.
5. Where it appears that the earlier right has expired without being renewed, or the online substantiation is not available, the Registrar, or, where the appeal file has been remitted to the Board of Appeal for decision, the Rapporteur, shall invite the party to submit proof of renewal of that earlier right within one month.
6. Where proof of renewal has been submitted, the Registrar shall communicate it to the other party.

Article 19
Cross appeal

1. A cross appeal, pursuant to Article 68(2) EUTMR and Article 25 EUTMDR, shall be submitted in a separate document within the original, or extended, time limit for filing a response. The cross appeal shall contain a clear and unambiguous identification of the extent of the cross appeal, as well as the corresponding grounds.
2. The cross appeal shall cease to have effect where the appellant discontinues the main appeal proceedings, or where the main appeal proceedings are otherwise closed.
3. Upon receipt of a cross appeal, the Registrar shall examine whether it complies with the requirements laid down in Article 68(2) EUTMR and Article 25 EUTMDR.
4. Where the cross appeal:
 - (a) is submitted outside of the aforementioned time limit for filing; or
 - (b) is not submitted in a separate document pursuant to Article 25(2) EUTMDR; or
 - (c) does not clearly and unambiguously identify the contested decision in accordance with Article 21(1)(d) EUTMDR, as referred to in Article 25(4)(b) EUTMDR;the Registrar shall invite the defendant to file its observations on the admissibility of the cross appeal within one month.
5. If the cross appeal exclusively concerns a point already raised in the appeal, the Registrar, upon instruction from the Board of Appeal, shall invite the defendant to file its observations on the admissibility of the cross appeal within one month.
6. Where a cross appeal does not contain the contact information of a representative pursuant to Article 21(1)(b), or (c) EUTMDR, as referred to in Article 25(3) EUTMDR, the Registrar shall, pursuant to Article 25(4)(c) EUTMDR, invite the defendant to remedy that deficiency within one month.
7. Where a decision is contested only in part by a cross appeal in accordance with Article 21(1)(e) EUTMDR, as referred to in Article 25(3) EUTMDR, and the grounds of the cross appeal are unclear and ambiguous with regard to the goods and services to which they refer, the Registrar shall invite the defendant to remedy that deficiency within one month.
8. Where a cross appeal is filed in an official language of the EU other than the language of proceedings, the defendant shall, within one month of the submission of the original, provide a translation into the language of the proceedings in accordance with Article 22(2) EUTMDR, as referred to in Article 25(4)(c) EUTMDR.
9. Where a cross appeal does not comply with the relevant language requirements laid down in Article 22(2) EUTMDR, the Registrar shall invite the defendant to file its observations within one month.

10. Where the deficiencies referred to in the foregoing paragraphs are not remedied within the prescribed time limit, the Registrar shall give a reasoned opinion to the Board of Appeal on the admissibility of the cross appeal, pursuant to Article 42(3)(c) EUTMDR.

Article 20

Observations on the cross appeal

1. Where a cross appeal has been duly filed, the Registrar shall invite the appellant to submit its observations thereon within two months of the date of the notification to the appellant.
2. Where observations on a cross appeal are filed in an official language of the EU other than the language of proceedings, the appellant shall, within one month of the submission of the original, provide a translation into the language of proceedings.
3. Where observations on the cross appeal have been filed late or in an incorrect language, the Registrar shall invite the appellant to file its comments on the admissibility of the observations on the cross appeal within one month.
4. The Registrar shall communicate the duly submitted observations of the appellant to the defendant.

Article 21

Claims of acquired distinctiveness and requests for proof of use

A claim of distinctiveness acquired through use, as referred to in Article 7(3) and Article 59(2) EUTMR, a claim of recognition of the earlier mark acquired through use for the purposes of Article 8(1)(b) EUTMR, or a request for proof of use pursuant to Article 47(2) and (3) EUTMR or Article 64(2) and (3) EUTMR or Article 25(1)(e) CDR, shall only be examined if:

- (a) it is made in the statement of grounds or, as the case may be, in the cross appeal; and
- (b) it was first raised in due time before the instance of the Office that took the contested decision.

Article 22

Second round of written submissions

1. Upon a reasoned request submitted by the other party within two weeks of notification of a response, or the response to a cross appeal as the case may be, the Board of Appeal may, where necessary, having regard in particular to the right to be heard, grant a second round of written submissions pursuant to Article 26 EUTMDR and the last sentence of Article 25(5) EUTMDR.
2. Where a request for a second round of written submissions is not reasoned, the Registrar shall reject it.
3. Where a request for a second round of written submissions is submitted outside of the relevant time limit, the Registrar shall invite the requesting party to file its observations on the admissibility of the request within one month.
4. Where a second round of written submissions is granted, the Registrar shall invite the requesting party to supplement the statement of grounds, or the cross appeal respectively, by submitting a reply within one month.
5. Upon receipt of the reply, the Registrar shall invite the other party to supplement its response, or its response to the cross appeal as the case may be, by submitting a rejoinder within one month.

Article 23

Written observations by interested parties in proceedings before the Grand Board

1. A group or body representing manufacturers, producers, suppliers of services, traders or consumers, invoking an interest in the result of a case before the Grand Board may, pursuant to Article 37(6) EUTMDR, file written observations in the language of proceedings within two months following the publication in the Official Journal of the referral to the Grand Board.
2. Where the written observations are filed in an official language of the EU other than the language of proceedings, the Registrar shall invite the aforementioned groups or bodies to submit a translation within one month.
3. No account shall be taken of written observations which do not comply with the aforementioned requirements.
4. Where written observations have been duly filed, the Registrar shall invite the parties to file their comments on those observations within one month.

Article 24

Closure of written proceedings and Final Procedural Check

1. Written ex parte proceedings are closed when the time limit for filing a statement of grounds pursuant to Article 14 of these Rules has expired.
2. Unless otherwise specified by the Chairperson of the competent Board of Appeal, written inter partes proceedings are closed:
 - (a) when the time limit for filing a response to the statement of grounds pursuant to Article 17 of these Rules has expired; or
 - (b) where a cross appeal has been filed pursuant to Article 19 of these Rules, when the time limit for filing observations has expired; or
 - (c) where a second round of written submissions is granted pursuant to Article 22 of these Rules, when the time limit for the reply has expired without the submission of a writ, or when the time limit for the rejoinder has expired.
3. Where written proceedings are closed, the Registrar shall conduct a Final Procedural Check and provide a reasoned opinion to the Board of Appeal on the admissibility of the appeal.

Article 25

Invitation to file further observations

Notwithstanding Articles 22 and 24 of these Rules, the Board of Appeal may of its own motion, invite a party to file observations within one month on communications or submissions by the other party, or on any other subject that it deems necessary.

Article 26

Reopening of written proceedings

The Board of Appeal may, at any time before the notification of the decision on the appeal, reopen written proceedings as and when necessary.

CHAPTER III – ORAL PROCEEDINGS

Article 27

Ordering an oral hearing

1. At the request of a party or of its own motion, the Board of Appeal may decide to hold oral proceedings where it considers it to be expedient in accordance with Article 96 EUTMR or Article 64 CDR respectively.
2. Any request for an oral hearing made by a party must state the reasons why that party wishes to be heard, or, as the case may be, why it considers it necessary to hear witnesses or experts.
3. Where the Board of Appeal has decided to hold an oral hearing, the Registrar shall communicate this to the parties and issue the necessary summons accordingly.

Article 28

Date of the oral hearing

1. The Chairperson of the Board of Appeal shall fix the date of the oral hearing.
2. The Chairperson may, in exceptional circumstances, of their own motion or at the reasoned request of a party, adjourn the oral hearing to another date.
3. Where an oral hearing is ordered, the Board of Appeal shall give at least two months' notice of the summons to the parties.
4. The Board of Appeal may, together with the notice of summons, issue a communication drawing the attention of the parties to questions considered to be of particular significance to the case.

Article 29

Absence from an oral hearing

1. Where a party duly summoned informs the Board of Appeal that it will not be present at the hearing, or is absent without excuse, the hearing shall proceed in the absence of the party concerned.
2. Where all of the parties indicate to the Board of Appeal that they will not be present at the hearing, the Chairperson shall decide whether the oral part of the procedure shall be closed.

Article 30

Conducting an oral hearing

1. Where an oral hearing has been ordered, oral proceedings are conducted in accordance with Article 96 EUTMR and Articles 49 to 54 EUTMDR, or Article 64 CDR and Articles 42 to 45 CDIR, and the decision of the Presidium on oral hearings held by videoconference.
2. Without prejudice to Article 96(3) EUTMR and Article 64(2) CDR, oral hearings shall be public.
3. The Board of Appeal may deliver the operative part of its decision orally at the end of the hearing. Where the operative part of the decision is delivered orally, the Board of Appeal shall issue a reasoned written decision in a timely manner.

Article 31

Minutes

1. The Registrar shall draw up and sign the minutes of oral hearings in accordance with Article 53 EUTMDR, and Article 46 CDIR respectively, in the language of the proceedings.
2. The Registrar shall communicate the minutes to the parties.
3. In the event the hearing of witnesses or experts is not recorded, the Registrar shall, before signing the minutes, give the witness or expert the opportunity to check their content and sign them.
4. Where the oral hearing is recorded, the recording replaces the minutes or, if appropriate, becomes an integral part of the minutes.

CHAPTER IV – ALTERNATIVE DISPUTE RESOLUTION

Article 32 **Amicable settlement**

If, before the Board of Appeal has given its decision on the appeal, the parties in inter partes proceedings settle their dispute and, as a consequence, the appeal proceedings are either rendered devoid of purpose as laid down in Article 42 of these Rules, or the appeal, opposition, invalidity or revocation claims are withdrawn, the Board of Appeal shall close the proceedings, and where necessary, give a decision on the costs having regard to the agreement or any joint proposals made by the parties.

Article 33 **Attempting conciliation in inter partes proceedings**

1. After the submission of the statement of grounds in inter partes proceedings, each party may request in writing that the appeal proceedings be settled through conciliation. Upon receiving the written request for conciliation from one of the parties, the Registrar shall acknowledge receipt of the request and notify it to the other party in writing. The other party shall have one month from the date of notification to consider the request and respond in writing whether it agrees to participate in the conciliation. This deadline can be extended once by one month by the Board of Appeal of its own motion or upon request from the party to whom the proposal is addressed.
2. After the Final Procedural Check has been performed, pursuant to Article 24(3) of these Rules, the Rapporteur acting as conciliator under the direction of the Chairperson, may propose to the parties to attempt to resolve their dispute by conciliation. The Registrar shall notify the proposal to the parties, and they shall have two months from the date of notification to respond in writing indicating whether they agree to participate in the conciliation. That deadline can be extended once by one month by the Rapporteur of their own motion or upon request of one or both parties. Notwithstanding the foregoing, before making a formal proposal, the Rapporteur acting as conciliator may use any appropriate means of communication to explore the possibilities of entering into conciliation, including calling the parties individually or in a conference.
3. If a party submits a refusal to conciliate in writing or if no response in writing is received before the expiry of the original or extended time limit set in accordance with paragraph 1 or 2 above, the Registrar shall notify both parties that there is no agreement for entering into conciliation and that the Board of Appeal shall continue to examine the appeal.
4. Where both parties have submitted a written request or have confirmed in writing their agreement to participate in the conciliation, the Rapporteur shall assist the parties in reaching a friendly settlement agreement and may make proposals to that effect.

Article 33a **Conducting conciliation**

1. Throughout the conciliation, the Rapporteur shall remain bound by the principles of independence and impartiality. The Rapporteur may ask the parties to supply information or particulars which may help to achieve a friendly settlement but shall not disclose any information received by a party in a private session to the other party, without obtaining the disclosing party's express consent.
2. The Rapporteur may conduct separate, confidential discussions with the parties if deemed useful and subject to agreement by all the parties thereto. No opinion expressed, suggestion made, proposal put forward, either by the parties or the Rapporteur, concessions made or documents drawn up for the purposes of the conciliation, may be relied on as evidence by the Board of Appeal or the parties, nor shall

- they be binding in any way in contentious proceedings, either for the parties or the Board of Appeal.
3. The discussions and negotiations conducted within the framework of conciliation shall be confidential. All correspondence, documents, items and information submitted within the framework of the conciliation shall not be subject to inspection pursuant to Article 114 EUTMR or Article 74 CDR. The Rapporteur shall neither be called as a witness nor be required to produce in evidence any records or notes related to the conciliation, in any administrative or judicial proceedings arising from or in connection with the dispute and the conciliation.
 4. The joint request for conciliation or confirmation of interest to participate in a conciliation by both parties during ongoing appeal proceedings shall have the effect of a suspension request for a period of six months under Article 71(2) EUTMDR. Upon a joint request by the parties, the Chairperson, before the Final Procedural Check is performed pursuant to Article 24(3) of these Rules, or the Rapporteur under the direction of the Chairperson after the performance of the Final Procedural Check, shall extend that suspension up to a total maximum of two years. If the parties wish to request the suspension of other proceedings pending before the Office in order to consider those disputes within the same conciliation, they shall do so in accordance with Article 71(2) EUTMDR. It is the parties' obligation to ensure that any related national, regional or international administrative or judicial proceedings that are affected by the conciliation are suspended by the relevant authorities.

Article 33b

Concluding conciliation

1. The conciliation is concluded:
 - (a) by an agreement resolving the issues in dispute between the parties, either partially or totally;
 - (b) by a decision of the Rapporteur if, despite undertaking efforts, conciliation is unlikely to lead to an amicable settlement of the dispute;
 - (c) by a written declaration from any party who may opt-out at any time after the commencement of the conciliation;
 - (d) by the expiration of the suspension period granted to the parties in accordance with Article 33(a), paragraph 4, sentence 1 or 2 above.
2. Neither the Office nor the Rapporteur shall be liable for the outcome of the conciliation and the implementation of a settlement agreement or its legality and enforceability.

Article 34

Mediation according to Article 170 EUTMR

1. After the submission of the notice of appeal, and following the payment of the appeal fee, the parties may request mediation according to Article 170(4) EUTMR.
2. After the Final Procedural Check has been performed, pursuant to Article 24(3) of these Rules, the Rapporteur under the direction of the Chairperson, may propose to the parties to attempt to resolve their dispute by mediation, submitting a joint request in that sense in accordance with Article 170(3) EUTMR.
3. Mediation shall be conducted in accordance with the Rules on Mediation.

CHAPTER V – DISCONTINUANCE AND OTHER SPECIAL TYPES OF PROCEEDINGS

Article 35

Withdrawal

1. An application for an EUTM or a registered design, an opposition, an application for revocation or for a declaration of invalidity, or an appeal, may be withdrawn at any time before the Board's decision closing the appeal proceedings has become final by means of an express, unequivocal and unconditional written declaration submitted in a separate document.
2. Where a declaration of withdrawal has been submitted before the decision on the appeal has been notified to the parties, and the appeal proceedings become devoid of purpose, the Board of Appeal shall, as a matter of priority, close the proceedings without deciding on the merits of the case.
3. The party withdrawing shall bear the fees and costs, unless an agreement to the contrary signed by the parties has been submitted.
4. Where appeal proceedings have been closed due to a withdrawal of the appeal, the contested decision shall become final, including the order on fees and costs; in all other cases of withdrawal, the contested decision shall cease to have legal effect.

Article 36

Restriction of an EU trade mark application

1. An application for an EU trade mark may be subject to a restriction at any time during appeal proceedings, by means of an express, unequivocal and unconditional written declaration made in a separate document. According to Article 27(5) EUTMDR, the Board of Appeal shall decide on requests for restriction at the latest in its decision on the appeal and, as the case may be, on the cross appeal.
2. Where a restriction does not fulfil the formal requirements pursuant to paragraph 1, the Registrar shall invite the party to remedy the deficiency within one month. Where the deficiency is not remedied within the prescribed time limit, the Board of Appeal may reject the restriction at the latest in its decision on the appeal.
3. Where a restriction appears to be otherwise unacceptable, the Board of Appeal shall invite the party to remedy the deficiency within one month. Where the deficiency is not remedied within the prescribed time limit, the Board of Appeal may reject the restriction at the latest in its decision on the appeal.
4. Where the restriction is admissible and acceptable, the Board of Appeal shall inform the party accordingly and it shall be entered into the Register of European Union Trade Marks.
5. The aforementioned paragraphs shall apply regardless of whether the appeal is found inadmissible.
6. In inter partes proceedings, the Registrar shall invite the other party to state whether and to what extent it intends to continue its action in light of the recorded restriction.

Article 37

Transfer of title during appeal proceedings

1. Where the contested EU trade mark or registered Community design has been transferred pursuant to Article 20 EUTMR or Article 28 CDR respectively, or an earlier right on which the opposition or invalidity action is based has been transferred in accordance with the applicable law, the successor in title shall have legal standing in the appeal proceedings:
 - (a) where the transfer concerns an EU trade mark or a registered Community design, once that transfer has been entered into the Register;
 - (b) where the transfer concerns a national registered right, once that transfer has been entered into the national register and evidence thereof has been submitted;

- (c) where the transfer concerns an unregistered right recognised by national or EU law, once evidence of a duly made transfer in accordance with the applicable law has been submitted.
2. Paragraph 1 shall apply *mutatis mutandis* where an application for an EU trade mark, or a national trade mark has been transferred during appeal proceedings.
 3. Where a request for transfer of an EU trade mark or a registered Community design has been filed during appeal proceedings, in accordance with Article 20 EUTMR or Article 28 CDR respectively, the Registrar will forward the confirmation of the recordal to the other party for information.
 4. Where a party submits a certificate of the transfer of an earlier national right, the Registrar will forward the certificate to the other party for information.
 5. Provided that a statement of grounds has been filed, once a request for transfer of an EU trade mark or a registered Community design has been filed in accordance with Article 20 EUTMR or Article 28 CDR respectively, and a deficiency was raised pursuant to Article 20(7) EUTMR or Article 23(5) CDIR, the appeal proceedings may be suspended pursuant to Article 71(1)(a) EUTMDR, until that transfer has been entered into the Register or the request has been rejected. Where appeal proceedings are suspended, any time limit related to the proceedings in question other than the time limit for the payment of the appeal fee, is interrupted. The time limit shall be recalculated to begin in full as from the day the transfer has been entered into the Register or rejected.
 6. The aforementioned provisions are without prejudice to Articles 50(2) and 56(2) EUTMR.

Article 38
Surrender

1. A registered EU trade mark or a registered Community design may be fully or partially surrendered at any time during appeal proceedings by means of an express, unequivocal and unconditional written declaration submitted in a separate document. According to Article 27(5) EUTMDR, the Board of Appeal shall decide on requests for partial surrender at the latest in its decision on the appeal and, as the case may be, on the cross appeal.
2. Where a declaration of surrender does not fulfil the formal requirements laid down in paragraph 1, the Registrar shall invite the party to remedy the deficiency within one month. Where the deficiency is not remedied within the prescribed time limit, the Board of Appeal may reject the surrender at the latest in its decision on the appeal.
3. Where a declaration of surrender appears to be otherwise unacceptable, the Board of Appeal shall invite the party to remedy the deficiency within one month. Where the deficiency is not remedied within the prescribed time limit, the Board of Appeal may reject the surrender at the latest in its decision on the appeal.
4. In invalidity proceedings, where the declaration of a partial surrender is admissible and acceptable, it shall be entered into the Register of EU Trade Marks, or the Community Design Register. The Registrar shall invite the other party to state whether and to what extent it intends to continue its action in light of that surrender.
5. In revocation proceedings, where the declaration of surrender of an EU trade mark is admissible and acceptable, the surrender shall, pursuant to Article 57(2) EUTMR, be without effect until the application for revocation is rejected or withdrawn. The Registrar shall invite the revocation applicant to state whether and to what extent it intends to continue its action in light of the surrender.
6. Where applicable, the surrender shall only be entered into the Register once proof has been received that all licensees of the EU trade mark being surrendered have been informed in accordance with Article 57(3) EUTMR.

Article 39

Division of EU trade mark applications and registrations

1. Where during appeal proceedings, a request to divide an EU trade mark application or an EU trade mark registration has been submitted in accordance with Articles 50 or 56 EUTMR, the Board of Appeal shall decide on the admissibility of the request for division at the latest in its decision on the appeal.
2. The Registrar shall inform the department in charge of the Register, and the departments dealing with parallel proceedings involving the same EU trade mark immediately after the notification of the decision.

Article 40

Conversion of an EU trade mark application or EU trade mark

1. Where an earlier EU trade mark application, or an earlier EU trade mark on which the opposition, application for revocation, or for a declaration of invalidity is based, is subject to conversion in accordance with Articles 139, 140, and 141 EUTMR during appeal proceedings, the resulting national earlier rights may be maintained as a basis for the opposition, application for revocation, or for a declaration of invalidity.
2. The Board of Appeal shall take such national earlier rights into account, provided that the proprietor has submitted evidence substantiating those earlier rights in accordance with Articles 7(4) or 16(2) EUTMDR respectively.

Article 41

Revocation of the contested decision

Where, during the appeal proceedings, the contested decision is revoked by the decision-making instance pursuant to Article 103 EUTMR, the Registrar shall inform the parties and the Board of Appeal shall close the appeal proceedings and order a reimbursement of the appeal fee.

Article 42

Appeal proceedings rendered devoid of purpose

1. Without prejudice to Articles 35 to 41 of these Rules, an appeal is rendered devoid of purpose where:
 - (a) the earlier rights on which the opposition or invalidity action is based have been declared invalid, revoked, or are restricted, transferred, surrendered or the term of protection has expired with regard to the goods and services relevant to the appeal proceedings;
 - (b) an initially successful contested application has been rejected after revision pursuant to Article 34 EUTMDR, or a reopening of the examination on absolute grounds pursuant to Article 30 EUTMDR;
 - (c) an interlocutory revision has been granted pursuant to Article 58 CDR; or
 - (d) the appellant otherwise no longer has a legal interest in maintaining appeal proceedings.
2. In the aforesaid situations the Board of Appeal, having heard the parties, shall give a decision on costs if necessary and close the relevant proceedings as devoid of purpose without deciding on the merits.

Article 43

Expedited examination of an appeal

1. Having regard to the particular urgency and circumstances of a case, the Board of Appeal to which that case is allocated may:
 - (a) at the request of a party, and having heard the other party; or
 - (b) upon the suggestion of a national court dealing with trade mark or design matters;decide to examine an appeal as a matter of priority.
2. The request of a party for expedited examination may be filed at any time during the proceedings, and shall:
 - (a) give reasons for the urgency and be supported by evidence of the same;
 - (b) be unconditional and unequivocal; and
 - (c) be made in a separate document.
3. Where the request does not fulfil the requirement laid down in paragraph 2(c), the Registrar shall invite the party to remedy the deficiency within one month.
4. The Board of Appeal shall decide without delay on the request and the Registrar shall communicate that decision in *ex parte* cases to the party or in *inter partes* cases to the parties and, where applicable, to the national court.
5. The granting of the request shall have the following effects:
 - (a) the Board of Appeal shall examine the appeal as a matter of priority;
 - (b) the Board of Appeal shall apply any means available to it, including alternative dispute resolution, for resolving the case in the most efficient and timely manner;
 - (c) the Board of Appeal may not suspend the appeal proceedings by remitting the contested application for reopening of the examination of absolute grounds pursuant to Article 45(2) of these Rules unless the Rapporteur finds that there are particular reasons justifying a remittal; and
 - (d) the Board of Appeal may not grant a second round of written submissions pursuant to Article 22 of these Rules unless the Rapporteur finds that there are particular reasons justifying a second round.
6. Following the examination of the allowability of the appeal, the Board of Appeal shall exercise, as the case may be, any power within the competence of the department that took the appealed decision.

Article 44

Suspension

1. In *ex parte* proceedings, upon a reasoned request by a party, the Registrar shall grant a suspension that shall not exceed six months. The suspension may also be granted by the Board of Appeal of its own motion.
2. In *inter partes* proceedings, the Registrar shall grant suspensions requested by both parties. The initial suspension shall not exceed six months and shall be extended, upon a request by both parties, up to a total maximum of two years.
3. Appeal proceedings may be suspended *ex officio*:
 - (a) by the Chairperson, before the Final Procedural Check pursuant to Article 24(3) of these Rules, where this is appropriate under the circumstances of the case, taking into account the interests of the parties, and the stage of the proceedings;
 - (b) by the Rapporteur, under the direction of the Chairperson, after the performance of the Final Procedural Check, taking into account the factors mentioned in Article 44(3)(a) of these Rules.
4. In *inter partes* proceedings, the proceedings may be suspended at the reasoned request of one of the parties. Any request for suspension that does not contain reasons shall be rejected by the Registrar.
5. A request for suspension shall indicate the period for which suspension is requested. In the event no period is indicated, suspension shall be granted by default for two months.

6. Suspension may not be granted prior to the due filing of a statement of grounds of appeal, unless the parties have submitted a joint request for mediation pursuant to Article 170(4) EUTMR, in which case paragraph 8 below shall apply.
7. The Registrar shall invite the other party to file its observations on a unilateral request for suspension within one month. Where the other party opposes the suspension, the Chairperson or the Rapporteur under the direction of the Chairperson, shall decide on the matter, taking into account the factors mentioned in Article 44(3)(a) of these Rules.
8. Where a joint request for mediation has been submitted by the parties in accordance with Article 170(2) to (4) EUTMR, whether on the parties' own initiative or following a proposal from the Rapporteur, appeal proceedings shall be automatically suspended in accordance with Article 170(5) EUTMR and the Registrar shall inform the parties accordingly. Following the conclusion of the mediation proceedings in accordance with Article 170(8) and (9) EUTMR, the Registrar shall inform the parties of the resumption of the appeal proceedings.

Article 45

Reopening of the examination on absolute grounds in trade mark proceedings

1. Where in *ex parte* proceedings, the Board of Appeal considers that an absolute ground is applicable to goods and services outside the extent of the appeal, the Board of Appeal shall, in accordance with Article 30(1) EUTMDR, inform the instance that took the contested decision by reasoned letter. Where the first instance informs the Board of Appeal that the examination of absolute grounds will be reopened, the Board of Appeal suspends the appeal proceedings, if appropriate.
2. In appeals on a decision of the opposition division, the Board of Appeal may, at any time, by means of a reasoned remittal decision in accordance with Article 30(2) EUTMDR, refer the EU trade mark application to the instance that took the contested decision, with the recommendation to reopen the examination on absolute grounds.
3. Where the Board of Appeal has remitted an application in accordance with paragraph 2, the Registrar shall suspend the appeal proceedings until the instance that took the contested decision either:
 - (a) informs the Board of Appeal that the examination of absolute grounds will not be reopened; or,
 - (b) takes a new decision following the reopening of the examination and informs the Board of Appeal accordingly.
4. Where the decision of the examiner following a reopened examination of absolute grounds is appealed, the Registrar shall allocate the appeal to the Board of Appeal that recommended the reopening in accordance with paragraphs 1 or 2.
5. Appeal proceedings concerning a decision of the Opposition Division shall be resumed once the decision on absolute grounds has become final.

Article 46

Referral to the Grand Board

1. Where the case is referred to the Grand Board, in accordance with Article 37 EUTMDR, the Registrar shall communicate the decision on referral to the parties and take the necessary steps to have it published in the Official Journal of the Office.
2. Following such a referral, the President of the Boards shall take a decision on the composition of the Grand Board in accordance with Article 45(1) EUTMDR; the Registrar shall notify that decision to the parties as well as any subsequent changes in the composition.
3. Following the referral, or upon the closure of written proceedings where observations pursuant to Article 37(6) EUTMDR have been submitted, the Rapporteur shall submit a preliminary report on the case.

4. Immediately following the distribution of the preliminary report, the Chairperson of the Grand Board shall schedule a first deliberation meeting.
5. Where the Grand Board refers a case back to the Board of Appeal to which it was originally allocated, the Registrar shall inform the parties accordingly and remit the appeal file to that Board.

Article 47

Restitutio in integrum

1. A request for *restitutio in integrum* concerning an omitted act to be performed before the Boards of Appeal within a set time limit shall be filed in the language of proceedings.
2. Where the fee foreseen in Article 104(3) EUTMR or Article 67(3) CDR has not been paid, the Registrar shall inform the party that the request is deemed not to have been filed.
3. Where such a request is deemed to have been filed, the Registrar shall examine whether it complies with the admissibility requirements laid down in Article 104 EUTMR or Article 67 CDR respectively.
4. The Registrar shall remit the request to the Board of Appeal for decision, together with a reasoned opinion on its admissibility.
5. Where the request concerns a time limit for filing an appeal foreseen in Article 68(1) EUTMR or Article 57(1) CDR respectively, the Registrar shall remit the file to the Board of Appeal to decide on the admissibility of the appeal. Where the appeal is found to be admissible, the Board of Appeal shall remit the appeal to the Registrar for further prosecution of the written proceedings.
6. Where the request concerns a time limit other than those provided for in paragraph 5, the Registrar shall continue the written proceedings and inform the parties that the Board of Appeal shall decide on the request after the closure of the written proceedings.
7. Where, following the granting of a request, the requesting party has had its rights re-established, written proceedings shall be reopened at the stage at which the obstacle to compliance occurred.
8. Where a decision has already been taken, that decision shall be deemed to be void.

Article 48

Continuation of proceedings on trade mark appeals

1. A request for continuation of trade mark proceedings before the Boards of Appeal shall be filed in the language of proceedings.
2. Where such a request has been filed, the Registrar shall examine whether it complies with the requirements laid down in Article 105 EUTMR.
3. The Registrar may grant an application for continuation of proceedings if the foregoing requirements have been complied with.
4. Where the request does not comply with one or more of the formal requirements laid down in Article 105 EUTMR, or is not in the language of the proceedings, the Registrar shall remit the request to the Board of Appeal for decision.
5. The Registrar shall notify the parties of the decision on continuation of proceedings.

CHAPTER VI – EVIDENCE

Article 49

Means of providing written evidence

1. Evidence shall, in accordance with **Decision No EX-23-13 of the Executive Director of the Office**, be submitted using the electronic communications platform maintained by the Office.
2. Evidence may be given on data carriers in accordance with the technical specifications laid down in **Decision No EX-22-7 of the Executive Director of the Office**. Where evidence submitted by means of a data carrier that complies with those technical specifications is illegible, in the sense that it cannot be opened, the Registry shall invite the party to remedy the deficiency within one month. Where the deficiency is not remedied within the prescribed time limit, the evidence shall be deemed not to have been filed pursuant to Article 4 of said decision of the Executive Director.
3. Alternatively, evidence can be submitted by post or courier. Where post or courier is used, evidence shall be submitted in as many copies as there are parties to the proceedings. The copies must be clearly identified.
4. Where a party provides evidence pursuant to Article 7(3), Article 16(1)(c) and Article 16(2) EUTMDR, by making reference to a freely accessible online source recognised by the Office, the party shall expressly indicate the specific information it puts forward as evidence from that source.
5. Where evidence does not comply with paragraphs 3 to 4, the Registrar shall invite the submitting party to remedy the deficiency within one month indicating that where the request is not remedied within the prescribed time limit, the Board of Appeal shall not take the evidence in question into account.

Article 49a

Evidence by means of reference

1. Where a party relies on documents or items previously submitted before the Office in separate proceedings by means of reference, this reference shall:
 - (a) provide the identification number of the EUIPO proceedings in which the document(s) or item(s) was/were submitted;
 - (b) precisely and expressly identify the document(s) or item(s) relied upon as evidence;
 - (c) give a short description of the document(s) or item(s) and, where applicable, the number of pages;
 - (d) indicate which specific part of a document is relied upon in support of its arguments.
2. Where the requirements of paragraph 1 hereof are not met, the Registrar shall invite the party to remedy the deficiencies within one month.
3. In the event a Board of Appeal does not have access to a document or item referred to by a party, the Registrar shall, upon instruction of the Board of Appeal, invite the party to produce the evidence in question within one month.
4. Where a party fails to comply with the communications referred to in paragraphs 2 or 3 hereof, the Board of Appeal shall disregard that evidence.

Article 50

Types of written evidence

1. In the substantiation of earlier rights, a party may rely on registration certificates or extracts from:
 - (a) official databases of the EU;
 - (b) databases maintained by organisations of the EU or international organisations, for example the WIPO Global Brand Database, TMview, DesignView;

- (c) official bulletins of the relevant national or regional trade mark office and WIPO;
 - (d) databases maintained by the national or regional IP offices or other national authorities of Member States;
- provided that they contain sufficient data to determine all the relevant particulars of the earlier right.
2. In the substantiation of the content of national law, a party must produce elements thereof that enable the Board of Appeal to correctly and unequivocally identify and verify the relevant provisions of the applicable national law, including their interpretation by the national courts. In doing so, a party may in particular rely on:
- (a) excerpts of legislative acts and translations thereof published by a public body;
 - (b) relevant jurisprudence;
 - (c) excerpts from official publications; legal commentaries, legal encyclopaedias;
 - (d) databases maintained by the national or regional IP offices or other national authorities of Member States;
 - (e) publications in official gazettes published by national or regional IP offices.
3. Where required to show use of a trade mark, or substantiate acquired or enhanced distinctiveness, or reputation, a party may rely in particular on:
- (a) supporting documents such as packages, labels, price lists, catalogues, photographs, newspaper advertisements;
 - (b) market surveys representative of the relevant public and relevant time period, which specifically target the recognition of the mark in question by use of neutral non-suggestive questions;
 - (c) promotional material for which the scope of use is clearly established;
 - (d) invoices linked to the trade mark or design in question and referring to the relevant period;
 - (e) quotations of the trade mark in lists and publications of associations of the relevant profession;
 - (f) sworn or affirmed statements in writing pursuant to Article 97(1)(f) EUTMR;
- provided that they establish the place, time, extent and nature of use of the trade mark for the goods and services in respect of which it is registered and upon which the opposition or application for a declaration of invalidity or revocation is based.

Article 51

Structure of written evidence

1. Evidence shall comply with Article 55(2) EUTMDR. In particular, both the annexes and the pages of written evidence shall be consecutively numbered. The parties shall, for voluminous documents or items, indicate in the index of annexes which specific part of the document supports the facts, grounds and arguments relied upon by the party.
2. Where the evidence or the index of annexes does not comply with the aforementioned requirements, the Registrar shall invite the submitting party to remedy the deficiency within one month indicating the consequences laid down in paragraph 3.
3. Where the deficiency is not remedied within the prescribed time limit, the evidence will not be taken into account, unless the Board of Appeal finds that it is possible to clearly establish to which ground or argument a document or evidence refers.

Article 52

Translation of evidence

1. Where evidence pursuant to the first sentences of Articles 7(4) or 16(2) EUTMDR or Article 29(5) and (6) CDIR is not submitted in the language of proceedings within the time limits referred to in said articles, the Registrar shall invite the appellant to submit its observations on the admissibility of said evidence within one month, indicating that the Board of Appeal shall not take the evidence in question into account

- in accordance with Articles 7(4), 7(5) or 16(2) EUTMDR.
2. In accordance with Article 24 EUTMIR, or Article 81(2) CDIR, the Board of Appeal may:
 - (a) at the reasoned request of the other party; or
 - (b) of its own motion;require that the supporting documents other than the evidence mentioned in the foregoing paragraphs, is translated into the language of proceedings within a specified time limit.
 3. If the party fails to submit the translation as required in paragraphs 1 or 2 within the relevant time limit, the documents concerned will not be taken into account in accordance with Article 7(5) EUTMDR and the last sentence of Article 16(2) EUTMDR.

Article 53

Incomplete or illegible evidence

1. Where evidence submitted in accordance with Article 49 of these Rules, or translations of evidence submitted in accordance with Article 52 of these Rules, is incomplete, illegible, cannot be opened, or where the Registrar has reasonable doubts as to the accuracy of the transmissions, the Registrar shall invite the submitting party to retransmit the originals within one month. Where the request has been complied with, the date of receipt shall be deemed to be the date of the original. Where the request has not been complied with within the prescribed time limit, the evidence shall not be taken into account.
2. Where, in connection to an aforementioned retransmission, evidence is altered or new evidence is added after the original time limit, this new or altered evidence will not be taken into account.

Article 54

Evidence submitted for the first time in appeal proceedings

1. Facts or evidence submitted for the first time before the Boards of Appeal shall be disregarded by the Board of Appeal, unless these facts or evidence are prima facie likely to be relevant for the outcome of the case and:
 - (a) are merely supplementing relevant facts or evidence which had already been submitted in due time; or
 - (b) are filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal; or
 - (c) were not available before or at the time the contested decision was taken; or
 - (d) are justified by any other valid reason.
2. Where facts or evidence pursuant to paragraph 1 are submitted to the Boards of Appeal, the Registrar shall forward them to the other party for observations, and inform both parties that the Board of Appeal will decide on whether those facts or evidence are to be taken into account.

CHAPTER VII – DECISIONS TAKEN BY THE BOARDS

Article 55

Treatment of information marked confidential in decisions

1. The decision of the Board of Appeal shall, to the extent possible, while clearly indicating the grounds, facts and evidence integrally affecting the resolution, be drafted without expressing:
 - (a) confidential data pursuant to Article 6, and sensitive personal data pursuant to Article 7 of these Rules;
 - (b) in design cases, unpublished designs pursuant to Article 9 of these Rules, views, Locarno Classes, indications or descriptions of the product concerned; and
 - (c) personal data, where a party has requested its removal pursuant to Article 58 of these Rules.
2. The Board of Appeal may reject a request for confidentiality insofar as it concerns information for which a special interest in confidentiality does not apply. The Board of Appeal may disregard the request without hearing the parties if it concerns information for which a special interest in confidentiality is manifestly unfounded.
3. Where a request for confidentiality is not rejected or disregarded pursuant paragraph 2, and it is necessary for the decision to express information laid down in paragraph 1(a) to (c), the Board of Appeal shall make a redacted version of the decision by removing that information.
4. Subsequent to the rejection of a request for confidentiality, the Registrar shall update the confidentiality status of the concerned document accordingly. Where a decision is redacted, the Registrar shall mark the unaltered version of the decision as confidential.

Article 56

Remittal to the instance that took the contested decision

Where, pursuant to Article 71(1) and (2) EUTMR or Article 60(1) and (2) CDR respectively, the Board of Appeal decides to annul the contested decision and remits the case to the instance that took the decision, the Registrar shall make the case file available to that instance.

Article 57

Publication of decisions

1. Upon notifying a decision to the parties, the Registrar shall undertake the necessary steps to make it available online.
2. Where a decision is redacted pursuant to Article 55(3) of these Rules, only the redacted version shall be published.
3. Without prejudice to paragraph 2, and notwithstanding the right to inspection pursuant to Articles 114 and 117(1) EUTMR and Articles 74 and 75 CDR, the Board of Appeal may exceptionally decide not to publish a decision where a redaction would severely limit or distort its informational value, in particular where:
 - (a) a request for removal of personal data pursuant to Article 58(2) of these Rules is granted; or
 - (b) a decision of the first instance rejecting an application for a registered Community design for non-compliance with formal requirements is confirmed; or
 - (c) the deferral period, pursuant to Article 50 CDR, has not yet expired.
4. Where a decision is taken in an official language of the EU other than English, an unofficial translation into English shall be published online. Where available, unofficial translations in other languages shall also be published online.

Article 58

Request for removal of personal data

1. A party to the appeal proceedings may request that any personal data as defined in Article 3(1) of Regulation (EU) 2018/1725, is removed from the published decision. A request for removal shall be explicit and specify the data to be removed.
2. Where a request for removal is granted, the Registrar shall take the necessary steps to remove the data concerned from the decision in question.
3. A request to remove a trade mark or a trade mark number, as well as a design or a design number respectively, shall not be granted.

Article 59

Correction of errors and manifest oversights

1. At the reasoned request of a party, or of its own motion, the Board of Appeal shall at any time correct errors in spelling or grammatical errors, errors of transcription, technical errors, or other errors which are so obvious that nothing other than the wording as corrected could have been understood in its decision, in accordance with Article 102 EUTMR or Article 39 CDIR respectively.
2. The aforementioned errors and manifest oversights in decisions are corrected by sending a reasoned corrigendum to the parties.
3. A corrigendum shall not affect the date of the corrected decision.

Article 60

Revocation of a trade mark decision of a Board of Appeal

1. Where a decision on a trade mark appeal contains an obvious error attributable to the Board of Appeal that took the decision, the latter may, at the reasoned request of a party, or of its own motion in accordance with Article 103 EUTMR, revoke its decision within one year of the date on which it was taken.
2. Prior to the revocation of a decision, the Rapporteur shall invite the other party, or, as the case may be, both parties, to submit observations on the intended revocation within one month.
3. The Registrar shall keep records of any such revocation.

Article 61

Revocation of a design decision of a Board of Appeal

Article 60 of these Rules shall apply where a decision on a design appeal contains an obvious error attributable to the Board of Appeal.

CHAPTER VIII – COSTS

Article 62

Recoverability and apportionment of costs

1. Fees paid to the Office, representation costs and other costs essential to the proceedings shall be apportioned between the parties in accordance with Article 109 EUTMR or Article 70 CDR.
2. A party who has not been represented in the appeal proceedings, shall not be awarded reimbursement of costs.
- 2b. Where the appeal is declared inadmissible due to the absence or belated filing of the statement of grounds, the appellant shall bear the representation costs of the other party in accordance with Article 109(1) EUTMR or Article 70(1) CDR.
3. Representation costs may be recovered where the party is represented by a professional representative as defined in Article 120(1) EUTMR or Article 78(1) CDR.
4. Where a party is represented by an employee representative according to Article 119(3) EUTMR, there shall be no entitlement to representation costs even if that representative is also listed as a professional representative.
5. The Board of Appeal shall take note of any agreement on costs reached by the parties provided that evidence of this agreement has been submitted.

Article 63

Decisions on costs in trade mark appeal proceedings

1. The Board of Appeal shall, of its own motion, decide on the apportionment of costs limited to fees paid to the Office and representation costs, and fix those costs in the decision on the appeal.
2. Pursuant to the second sentence of Article 109(7) EUTMR, the amount of costs essential to the proceedings, other than those mentioned in the foregoing paragraph, shall be fixed separately at the request of a party filed within the two months following the date on which the decision closing the appeal proceedings becomes final.
3. Any such request for fixing the amount of costs must be made in the language of proceedings and shall unequivocally specify the appeal proceedings to which it refers.
4. That request must be accompanied by an invoice and supporting evidence.
5. The Registry shall decide on the request, having heard the other party, after the decision of the Board of Appeal has become final.
6. The rates for the various categories of costs shall be calculated in accordance with Article 18 EUTMR.

Article 64

Decisions on costs in design appeal proceedings

1. At the request of a party, the Board of Appeal shall decide on the fixing of costs consisting of fees paid to the Office and representation costs.
2. The amount of costs other than those consisting of fees paid to the Office and representation costs shall be fixed by the Registry in accordance with Article 65 of these Rules.
3. The rates for the various categories of costs shall be calculated in accordance with Article 79(6) and (7) CDR.

Article 65

Request for fixing the amount of other essential costs in design appeals

1. The Registry shall, at the request of a party, and having heard the other party, fix the amount of essential costs to be reimbursed, other than representation costs and fees paid to the Office.
2. In order to be admissible, this request shall be filed after the decision closing the appeal proceedings has become final.
3. This request must be accompanied by an invoice and supporting evidence, such as receipts and invoices issued to the requesting party or its representative.
4. Any request for fixing the amount of costs must be made in the language of proceedings, and shall unequivocally specify the appeal proceedings to which it refers.

Article 66

Review of a decision on costs

1. At the reasoned request of a party submitted in the language of proceedings within one month of the notification of the awarding of costs, and upon payment of the corresponding fee within said time, the Board of Appeal shall review a decision on costs in accordance with Article 109(8) EUTMR or the second sentence of Article 70(6) CDR.
2. Where the request is filed in an official language of the EU other than the language of proceedings, the Registrar shall invite the party to submit a translation within one month.
3. The Registrar shall reject the request where:
 - (a) it has been filed outside of the time limit laid down in paragraph 1; or
 - (b) the fee has not been paid in full, or is paid outside of the time limit laid down in paragraph 1;
or
 - (c) a translation has not been submitted within the time limit laid down in paragraph 2.
4. Where a request pursuant to paragraph 1 has been duly filed, the Registrar shall invite the other party to submit its observations within one month.
5. Upon receipt of the observations of the other party, the Registry shall remit the request to the Board of Appeal for decision.
6. Costs or fees incurred in the review procedure cannot be recovered or reimbursed.

CHAPTER IX – FINAL PROVISIONS

Article 67

Repeal

Decision 2009-1 concerning instructions to the parties and Decision 2014-2 on Conciliation are repealed.

Article 68

Implementation

In accordance with Article 166(4)(b) EUTMR, the President of the Boards of Appeal is entrusted with the implementation of the present decision.

Article 69

Entry into force

The present decision amends the previous decision of 6 July 2021 (Presidium Decision 2021-10) and shall enter into force on 1 March 2024.

Done at Alicante, 12 December 2023

For the Presidium
President of the Boards of Appeal ad interim
Gordon HUMPHREYS