

The Executive Director

**DECISION No EX-17-7 OF THE EXECUTIVE DIRECTOR OF THE OFFICE**

**of 18 September 2017**

**concerning methods of payment of fees and charges and determining the insignificant amount of fees and charges**

THE EXECUTIVE DIRECTOR OF THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE,

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 (EUTMR),

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, as amended by Council Regulation No 1891/2006 of 18 December 2006 (CDR),

Having regard to Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office in respect of the registration of Community designs (CDFR),

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (CDR) and Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (CDIR),

Having regard to Decision BC-17-11 of the Budget Committee, obtained by way of written procedure, granting its consent on the establishment of specific methods of payment, other than those made by payment or transfer to a bank account held by the Office, and on the amount below which an excessive sum paid to cover a fee or a charge shall not be refunded,

Whereas,

- (1) pursuant to Article 157(4)(a) EUTMR and Article 97 CDR, the Executive Director shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office;
- (2) pursuant to Article 178(1) EUTMR and Article 3(1) CDFR, the Executive Director shall lay down the amount to be charged for any services rendered by the Office other than those set out in Annex I to the EUTMR and the Annex to the CDFR;
- (3) pursuant to Article 179(1) EUTMR, with the consent of the Budget Committee, Article 180(2) EUTMR and Articles 5(2) and 7(2) CDFR, the Executive Director may establish specific methods of payment, other than those made by payment or transfer to a bank account held by the Office, and shall establish the date on which such payments are to be considered to have been made;
- (4) pursuant to Article 181(4) EUTMR, with the consent of the Budget Committee and Article 9(1) CDFR, the Executive Director may determine the amount (see below) for

which an excessive sum paid to cover a fee or a charge shall not be refunded, if the amount is insignificant and the party concerned hasn't expressly requested a refund;

- (5) the rules concerning the creation of a system of current accounts and the rules concerning the use of credit or debit cards for electronic payments are already in place in the form of public decisions and communications, which have been amended and updated over the years;
- (6) for ease of reference and for legal certainty it is deemed fitting to unify all of the rules and texts relating to methods of payment of fees and charges and insignificant amounts and charges, and also to repeal any outdated sources;
- (7) it is necessary to adapt all the corresponding provisions in view of the recent legislative changes to Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017, which includes updating legal references and terminology;
- (8) it is appropriate to revise the rules concerning current accounts and credit and debit cards so as to take account of practical experiences and new technical developments and with a view to further facilitating the use of these methods of payment;
- (9) in the framework of the e-business initiative, rules must continue to allow users to settle fee payments in an easy, inexpensive and non-bureaucratic manner while also promoting alternative methods of payment to streamline filing procedures with the Office via the User Area of the Office's website;
- (10) it is pertinent to specify that in limited and well-defined circumstances use of a current account may be made for the payment of fees and charges in respect of applications or requests made by persons other than the holder of the current account;
- (11) it is essential to maintain that the holders of current accounts should not be placed in a less favourable position than those paying by other means as concerns the point in time when the current account is to be debited;
- (12) it is necessary to establish the conditions and the consequences of using current accounts or credit and debit cards as methods of payments, including the consequences of misuse of these payment methods;

HAS ADOPTED THE FOLLOWING DECISION:

### **General provisions on methods of payment referred to in this Decision**

#### *Article 1 Methods of payment*

The specific methods of payment, other than payment or transfer to a bank account held by the Office, established by Article 179(1) EUTMR and Article 5(2) CDFR of fees and charges due to the Office are those made through current accounts opened at the Office, or by credit and debit cards, under the terms and conditions and subject to the limitations of this Decision.

*Article 2*  
*Currency and amount*

1. All provisions, deposits, transactions and payments referred to in this Decision are made exclusively in euros (EUR). The current accounts are held in EUR and all credit or debit card transactions are effected in EUR.
2. Any fees as set out in Annex I EUTMR and Annex CDFR, or charges, will be effected for the amount of the fee, which is due in EUR.

**Current accounts**

*Article 3*  
*Holders of a current account*

1. In accordance with the present Decision, the following may be holders of current accounts:
  - (a) natural or legal persons who, in accordance with Article 5 EUTMR and Article 1(b) CDIR, may be proprietors of EU trade marks or holders of registered Community designs (RCDs);
  - (b) persons who may act as representatives in accordance with Article 120 EUTMR and Article 78 CDR;
  - (c) associations of representatives.
2. The persons and associations specified in paragraph 1 may not hold more than one Office current account.

*Article 4*  
*Opening a current account*

1. The application for opening a current account must be made in writing using the forms and means provided by the Office available in the User Area of the Office's website.
2. This application must be accompanied by a declaration signed by the applicant stating its acceptance of all the terms and conditions laid down in the present Decision, and authorising the Executive Director of the Office or his representative to debit from the current account, by standing order, all the fees and charges due to the Office.
3. The standing order to debit all the fees and charges due is valid for the payment of all fees and charges that become due to the Office by the holder of the current account or by any person specifically appointed and authorised to use this account, save where Article 6 applies.

4. The minimum initial deposit required to open a current account is EUR 1 000. There is no obligation to keep the minimum balance of EUR 1 000 in the account once it is operational.
5. After receipt of the abovementioned payment, the Office shall confirm the opening of the account to the interested party and provide it with an account number.
6. The current account shall become operational only when this initial deposit is actually entered in a bank account held by the Office.

*Article 5*  
*Depositing funds into the current account*

1. All provisions to replenish the current account must be made by bank transfer.
2. It falls to the account holder to ensure that there are sufficient provisions in the current account.
3. All bank charges incurred in any deposit operation for the current account shall be borne by the account holder.

*Article 6*  
*Authorising a third party to use the current account*

Where a party to a proceeding before the Office requests that a current account of which it is not the holder and for which it is not entitled to dispose of pursuant to Article 4(3) be debited with a particular fee, such request shall be disregarded by the Office, except where it submits written evidence to the Office, before the date on which payment of the fee is deemed to have been made in accordance with Article 8, that the holder of the current account consents to the debit of that fee. Payment shall be considered effective on the date on which the Office receives the authorisation.

*Article 7*  
*Debiting and refunding fees and charges from and to the current account*

1. From the day on which the account is opened, the Office may debit, according to the development of the procedures concerned and insofar as there are sufficient funds in the account, all fees and charges due within the limits of the aforementioned procedures, and each time a payment date will be accorded, always respecting the time limits laid down in Article 8.
2. However, the Office shall not debit the current account for a particular fee or charge if a specific indication is received in writing from the holder stating that the account may not be used for the payment of such a fee or charge.

3. Refunds shall be made to the current account of the natural or legal person entitled to the refund or, where applicable, to the current account of the representative at the moment when the refund is made.

*Article 8*

*Date on which payment is deemed to have been made*

With the carrying out of the debit of the current account the payment of the fee or charge shall be deemed to have been made:

- (a) for the basic fee for the application of an EU trade mark and for the class fee for the second and subsequent classes of goods and services for the application of an EU trade mark: on the day of receipt of the application; or if the applicant expressly requests, on another day until the last day of the one-month time limit provided for payment;
- (b) for the fees for the renewal of an EU trade mark (including class fees): on the day of receipt of the request; or if the proprietor expressly requests, on another day until the date of expiry of the registration;
- (c) for the fees for the renewal of an EU trade mark (including class fees and the additional fee for late payment), where renewal is requested within the further period of six months following the expiry of the registration: on the day of receipt of the request; or if the proprietor expressly requests, on another day until the last day of the six-month period;
- (d) for the registration fee, additional registration fee, publication fee and additional publication fee in respect of an application for an RCD, if no deferment of publication is requested: on the day on which the application for an RCD was filed;
- (e) for the registration fee, additional registration fee, deferment fee and additional deferment fee in respect of an application for an RCD, if deferment of publication is requested: on the day on which the application for an RCD was filed;
- (f) for the publication fee and additional publication fee in case of deferment in respect of an application for an RCD: on the day which is three months before the day on which the period for deferment expires, or on the day on which the holder requests the earlier publication pursuant to Article 15(1) CDIR, whichever is earlier;
- (g) for the fees for the renewal of an RCD: on the day of receipt of the request; or if the holder expressly requests on the last day of the six-month time limit provided for payment;
- (h) for the fees for the renewal of an RCD where renewal is requested within the further period of six months following the last day of the month in which protection ends: on the day of receipt of the request; or if the holder expressly requests on the last day of the six-month period and will include the additional fee for late payment;
- (i) for all other fees and charges: on the day of receipt of the request for which the fee or charge is due.

*Article 9*  
*Insufficient funds*

1. If, at the point in time when the Office proceeds to debiting the current account, the account lacks sufficient funds to cover the payment of the full amount of the fee(s) or charge(s) to be debited, the holder of the current account shall be notified.
2. If the current account is replenished with sufficient funds within one month after receipt of the notification referred to in the preceding paragraph, thus allowing payment of the fees concerned and of the administrative charges provided for in paragraph 3 to be made, the Office shall automatically debit the corresponding amount from the account, and the payment shall be considered to have been made on the day on which it was initially due.
3. The administrative charges referred to in paragraph 2 shall come to 20 % of the total of the late fee, and shall in no case exceed the maximum of EUR 500 or the minimum of EUR 100.
4. The administrative charges referred to in paragraph 2 shall not be payable if the holder of the current account submits evidence to the Office that the payment to provide the current account with sufficient funds was initiated, in the manner provided for in Article 180(3) EUTMR or Article 7(3)(a)(i), (ii) or (iii) CDFR, before the point in time when the Office proceeded to debit the current account.
5. Where the current account is replenished to cover only part of the amount due, the debit will be made, without exceptions, in the following order:
  - (i) the administrative charges referred to in paragraph 2 will be debited first;
  - (ii) if there are several fees or charges pending, the debit will be made in chronological order taking into account the date when the fees were due, and only where the complete fee can be debited.
6. When the current account is not replenished to cover all the administrative charges and the concerned fees or charges on time, for those fees not covered the payment will be deemed not to have been made and any rights depending on timely payment will be lost. No further communication regarding the lack of funds will be sent for any outstanding payments. A letter to inform of these deficiencies or loss to rights of the procedures concerned will be issued in accordance with the Regulations governing the proceedings of the particular fee(s) not paid.

*Article 10*  
*Current account statements*

1. The holder of the current account can view, save or print account movements and pending debits online via the User Area of the Office's website.
2. In the event the holder of the current account identifies any irregularity or mistake in the operations carried out in the current account, it shall notify the Office.

*Article 11*  
*Corrections of mistakes and errors*

If the Office considers that an error has been made in the debiting of the standing order, it shall make a reverse of accounts backdated to the day on which the payment was made.

*Article 12*  
*Closure of a current account by the holder*

1. The holder of a current account may close the account by written notification to the Office.
2. The standing order will cease to have effect as from the date of receipt of this notification. The Office shall settle the account and any payments will be backdated to the day following the date of receipt of the aforementioned notification.
3. It falls to the account holder to ensure the timely payment of any outstanding debits at the date of submitting the notification referred to in paragraph 1. Consequently, the payment of all debits due following the receipt of the notification will not be completed through the current account. If payment is not received for these debits by bank transfer or by any other means of payment available, the lack of payment may lead to a loss of rights. The Office will not inform the holder of these outstanding debits at the time of closing the account or suspending the standing order.

*Article 13*  
*Closure of a current account by the Office*

1. The Office reserves the right to close the current account by written notification to the holder, in particular where it deems that the use made of the current account was not in accordance with the terms and conditions laid down in this Decision or where it is determined that there has been a misuse of the account. Misuse could be considered in situations such as systematic lack of funds, repeated misuse of third party authorisations or multiple accounts, non-payment of the administrative charges set out in Article 9, or situations where the actions of the account holder have led to an excessive administrative burden on the Office.
2. The Office will inform the holder of its intention to close the current account stating the reasons for which the closure is based, and the holder will be allowed a two-month time limit to submit observations in reply. Following the expiry of this time limit, and taking into account any observations filed, the Office shall notify the current account holder of the outcome.
3. The closing of the account shall come into effect on the day when the decision to close the current account by the Office becomes final. The balance of the current account shall be refunded to the holder.
4. The decision to close a current account by the Office shall be taken by the Director of the Department entrusted with the management of the Office's finances.

## Credit and debit cards

### *Article 14*

#### *Credit and debit cards as a method of payment*

Credit or debit card payments can only be made by electronic means: they are accepted only when they accompany an act performed via electronic systems and are permitted by those systems.

### *Article 15*

#### *Payments for which credit and debit cards may be used*

1. Certain fees payable to the Office may be paid by credit or debit card, provided that payment is made in the context of an act performed via the User Area. The relevant online tool (e.g. e-filing) will indicate when a fee can be paid by credit or debit card.
2. Credit or debit cards may not be used:
  - (a) for the payment of charges, as referred to in Article 178(1) EUTMR;
  - (b) for the filling up of a current account.

### *Article 16*

#### *Date on which payment is deemed to have been made*

Payment by credit or debit card is deemed to have been made on the date when the related electronic filing or request it refers to is successfully completed via the User Area and if the money actually reaches the Office's account as a consequence of the credit or debit card transaction, and is not withdrawn at a later date.

### *Article 17*

#### *Failure of acceptance*

Where the terms and conditions laid down in this decision are fulfilled, the Office will proceed with the transaction of debiting the credit or debit card. Where the transaction fails for whatever reason, payment is considered not to have been made. The Office declines any responsibility, even when the failure of the transaction was not the responsibility of the payer.



## Insignificant amounts

### *Article 18* *Refunds of excessive amounts*

The insignificant amount referred to in Article 181(4) EUTMR and Article 9(1) CDFR shall be EUR 15.

## Final provisions

### *Article 19* *Repeal of other provisions*

- Decision **EX-96-1** of 11 January 1996 concerning the conditions for opening current accounts at the Office; and
- Decision **EX-96-7** of 30 July 1996 concerning the conditions for opening current accounts at the Office; and
- Decision **EX-03-1** of 20 January 2003 amending Decision No EX-96-1 of 11 January 1996 concerning the conditions for opening current accounts at the Office; and
- Decision **EX-06-1** of 12 January 2006 amending Decision No EX-96-1 of 11 January 1996 concerning the conditions for opening current accounts at the Office; and
- Decision **EX-06-3** of 18 May 2006 concerning electronic payment of fees by credit card; and
- Decision **EX-03-6** of 20 January 2003 determining the insignificant amount of fees and charges; and
- Communication No **5/96** of 8 August 1996 concerning current accounts; and
- Communication No **6/96** of 8 August 1996 concerning payment of fees by cheque; and
- Communication No **5/01** of 29 June 2001 concerning the availability of current account statements on the Office's website;

are all repealed.

*Article 20*  
*Entry into force*

The present Decision shall enter into force on 1 October 2017. It shall be published in the Official Journal of the Office.

Done at Alicante, 18 September 2017



António Campinos  
Executive Director

DJIN: 0048939992