

The Executive Director

DECISION No EX-18-1 of THE EXECUTIVE DIRECTOR OF THE OFFICE

of 15 May 2018

**concerning the amendment of DECISION No EX-17-4 of the Executive
Director of the Office of 16 August 2017**

The Executive Director of the European Union Intellectual Property Office (the 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)¹,

Having regard to Commission Delegated Regulation (EU) No 2018/625 of 5 March 2018 (EUTMDR)²,

Having regard to Commission Implementing Regulation (EU) No 2018/626 of 5 March 2018 (EUTMIR)³,

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (as amended) (CDR)⁴,

Having regard to Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community Designs (as amended) (CDIR)⁵,

Whereas:

- (1) Decision No EX 17-4 of the Executive Director of the Office of 16 August 2017 concerns communication by electronic means.
- (2) To further improve the precision and clarity of the text of Decision No EX 17-4 of the Executive Director of the Office of 16 August 2017 concerning communication by electronic means, it is pertinent to apply slight linguistic amendments in order to assure a uniform interpretation of the text in its different linguistic versions.
- (3) The amendments made do not imply any material change in the subject-matter of the Decision No EX 17-4 of the Executive Director of the Office of 16 August 2017 concerning communication by electronic means.

¹ OJ L 154, 16.6.2017, p. 1.

² OJ L 104, 24.4.2018, p. 1.

³ OJ L 104, 24.4.2018, p. 37.

⁴ OJ L 386, 29.12.2006, p. 14.

⁵ OJ L 193, 25.7.2007, p. 13.

HAS ADOPTED THE FOLLOWING DECISION:

Article 1
Amendment of previous decision

- (1) The title of Decision EX-17-4 of the Executive Director of the Office of 16 August 2017 is replaced by the following:

"Decision EX-17-4 of the Executive Director of the Office of 16 August 2017 concerning communication by electronic means as amended by Decision EX-18-1 of 15 May 2018"

- (2) The wording in Article 4, paragraph (6) is amended in two places as follows:

Firstly:

"(...) if the applicant is prevented from filing through the User Area due to a technical malfunction."

is replaced with:

"(...) if the applicant is prevented from filing the application through the User Area due to a technical malfunction."

Secondly:

"(...) it submits the application for renewal of an EUTM by fax no more than three working days before the expiry of the initial or extended statutory time limit for renewal;"

is replaced with:

"(...) it submits the application for renewal of an EUTM by fax within the last three working days before the expiry of the initial or extended statutory time limit for renewal;"

- (3) The amended Decision is hereby attached as an Annex.

Article 2
Entry into force

This Decision will enter into force on the day following its adoption and will be published in the Official Journal of the Office.

Done at Alicante, 15 May 2018.



António Campinos
Executive Director

Annex 1: *Decision EX-17-4 of the Executive Director of the Office of 16 August 2017 concerning communication by electronic means as amended by Decision EX-18-1 of 15 May 2018*



The Executive Director

DECISION No EX-17-4 OF THE EXECUTIVE DIRECTOR OF THE OFFICE

of 16 August 2017

concerning communication by electronic means as amended by Decision EX-18-1 of 15 May 2018.

The Executive Director of the European Union Intellectual Property Office (the 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)⁶,

Having regard to Commission Delegated Regulation (EU) 2017/1430 of 18 May 2017 (EUTMDR)⁷,

Having regard to Commission Implementing Regulation (EU) 2017/1431 of 18 May 2017 (EUTMIR)⁸,

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (as amended) (CDR)⁹,

Having regard to Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (as amended) (CDIR)¹⁰,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹¹,

Whereas:

- (1) Pursuant to Article 98(3) EUTMR and Article 57 EUTMDR, notifications by the Office may be effected by different means, including by electronic means. Notification by electronic means covers transmissions by wire, by radio, by optical means or by other electromagnetic means, including the internet. The Executive Director shall determine the details regarding the specific electronic means to be used, the manner in which electronic means will be used, and the time limit for notification by electronic means.

⁶ OJ L 154, 16.6.2017, p. 1.

⁷ OJ L 205, 8.8.2017, p. 1.

⁸ OJ L 205, 8.8.2017, p. 39.

⁹ OJ L 1, 5.1.2002, p. 1.

¹⁰ OJ L 341, 17.12.2002, p. 28.

¹¹ OJ L 8, 12.1.2001, p. 1.

- (2) Pursuant to Article 100(1) EUTMR and Article 63(1)(a) EUTMDR, applications for the registration of an EU trade mark as well as any other application provided for in the EUTMR and all other communications addressed to the Office may be submitted by transmitting a communication by electronic means. The Executive Director shall determine to what extent and under which technical conditions those communications may be submitted electronically.
- (3) Pursuant to Article 114(5) EUTMR, inspection of the files of EU trade mark applications and of registered EU trade marks shall include technical means of storage if the files are stored in this way. The Executive Director shall determine the means of inspection.
- (4) Pursuant to Article 31(3) EUTMR and Article 3(5) EUTMIR, where the representation of an EUTM application is provided electronically, the Executive Director shall determine the formats and size of the electronic file as well as any other relevant technical specifications.
- (5) Pursuant to Article 51(2) CDIR, details of notification by technical means other than fax shall be determined by the Executive Director.
- (6) Pursuant to Article 67(1) and (2) CDIR, applications for registration of a Community design may be submitted by electronic means, including the representation of the design. The conditions for filing applications for registration of a Community design by electronic means and the requirements for communication by electronic means, such as the equipment to be used, technical details of communication, and methods of identifying the sender shall be determined by the Executive Director.
- (7) Pursuant to Article 74 CDIR, inspection of the files of registered Community designs shall include technical means of storage if the files are so stored. The Executive Director shall determine the means of inspection.
- (8) Technical details and requirements may undergo frequent changes in order to facilitate use of the systems and such changes need not be reflected in this decision, but will be made available on the Office's website in a separate document on conditions of use,

HAS ADOPTED THE FOLLOWING DECISION:

Article 1
Means of electronic communication

1. The accepted means of electronic communication with the Office in procedures relating to EU trade marks are:
 - (a) a secure electronic communications platform maintained by the Office that enables users to submit applications and other documents, receive notifications and documents sent by the Office, reply to such notifications and perform other actions (User Area);
 - (b) fax, subject to the provisions of paragraph 2.

2. Fax is not an accepted means of communication for filing applications for the registration or renewal of an EU trade mark. Any such application submitted by fax will be deemed not to have been received.
3. In procedures relating to the registration of Community designs, the User Area is the accepted other technical means of communication with the Office, within the meaning of Article 51(2) CDIR.

Article 2
User account

1. The User Area can be accessed via a personal account (user account) by registering on the Office's website. A user may register for sub-accounts that are dependent on an existing user account.
2. The user is responsible for the proper use and maintenance of confidentiality as regards their account, passwords and, where appropriate, corresponding sub-accounts, irrespective of who uses the account or sub-accounts on the user's behalf. In the event of violation of the user's obligations as described above, the Office is entitled to revoke the user's access rights without prior notice.
3. Users can request the deactivation of their user account at any time. The account will be deactivated as soon as technically possible.

Article 3
Communication by the Office through the User Area

1. The User Area offers the option to receive all communications from the Office electronically. If the user selects this option, the Office will send all notifications through the User Area, unless this is impossible for technical reasons.
2. Users have the option of additionally receiving an alert for each notification sent to them through the User Area. The alert serves only to inform the user that a document has been placed in their inbox and does not constitute a notification.
3. The date on which the document is placed in a user's inbox will be recorded by the Office and mentioned in the User Area.
4. Without prejudice to accurately establishing the date of notification, notification will be deemed to have taken place on the fifth calendar day following the day on which the Office placed the document in the user's inbox.
5. The user can change the preferred means of communication with the Office at any time. However, any change in the status will be applicable only as soon as technically feasible.

Article 4

Communication with the Office through the User Area

1. Users can submit applications, communications and other documents to the Office and reply to notifications received from the Office electronically through the User Area.
2. When submitting an EU trade mark application through the User Area, the list of goods and services applied for must be entered solely in the field provided for that purpose. If the goods and services applied for are not entered solely in the field provided for that purpose but are submitted in a separate document as an annex or filed subsequently, the application will not be considered as an application filed by electronic means and the corresponding fee for applications not filed by electronic means will apply.
3. The contents of applications, communications and other documents submitted electronically will, upon receipt by the Office, be imported into the Office's database. Such electronic documents constitute part of the file and can be subject to inspection. Online inspection of files can be carried out only through the User Area.
4. Once an application, communication or other document submitted via the User Area has been received by the Office's electronic data processing system, an electronic receipt will be issued, which may be in the form of (i) a confirmation screen on the user's device, (ii) a communication via the User Area, where available, or (iii) another form of receipt as specified in the conditions of use. The time of submitting an electronic document is to be considered as the time when such an electronic receipt was issued by the Office's system.
5. In the event of a malfunction during the electronic transmission of an application, communication or other document, it must be resubmitted using one of the other accepted means of communication. The relevant time limits are not affected.
6. Notwithstanding paragraph (5) and without prejudice to Article 1(2) above, an application for the registration or renewal of an EUTM may be submitted by fax in order to secure its filing date, if the applicant is prevented from filing the application through the User Area due to a technical malfunction. The applicant may secure the date of the fax filing if:
 - (a) it resubmits, within three working days of the original fax submission, the application for registration of an EUTM with the same content through the User Area together with a fax receipt clearly identifying the original fax submission; failure to comply with these conditions will result in the original fax submission being deemed as not having been received;
 - (b) it submits the application for renewal of an EUTM by fax within the last three working days before the expiry of the initial or extended statutory time limit for renewal; any fax submission for a renewal of an EUTM outside the respective three-working-day period will be deemed not to have been received.

Article 5
Conditions of Use of the User Area

1. The electronic tools available through the User Area, the conditions of their use and the technical conditions of electronic communication with and by the Office are set out in a separate document available on the Office's website (Conditions of Use of the User Area).
2. Only applications, communications or other documents submitted electronically that comply with these conditions will be accepted.

Article 6
Repeal

The following decisions are repealed:

Decision No EX-13-2 of the President of the Office of 26 November 2013 concerning electronic communication with and by the Office (Basic Decision on Electronic Communication);

Decision No EX-15-1 of the President of the Office of 29 January 2015 amending Decision No EX-13-2 of 26 November 2013 concerning the Basic Decision on Electronic Communication;

Decision No EX-97-1 of the President of the Office of 1 April 1997 determining the form of decisions, communications and notices from the Office.

Article 7
Entry into force

1. This Decision shall enter into force on 1 October 2017, except for the provisions set out in paragraph (2). It shall be published in the Official Journal of the Office.
2. Articles 1(2) and 4(6) shall enter into force on 1 January 2018.

Done at Alicante, 16 August 2017



António Campinos
Executive Director