

The Executive Director

**DECISION No EX-19-1 of the  
Executive Director of the Office of  
18 January 2019 on communication  
by electronic means**

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<sup>(1)</sup> (EUTMR) and in particular Article 157(4)(a) thereof, pursuant to which the Executive Director must take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office,

Having regard to Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430<sup>(2)</sup>,

Having regard to Commission Implementing Regulation (EU) 2018/626 of 5 March 2018 laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Implementing Regulation (EU) 2017/1431<sup>(3)</sup>,

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, as amended<sup>(4)</sup> (CDR), and in particular Article 100 thereof, concerning the supplementary powers of the Executive Director, and to Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing the Council Regulation, as amended<sup>(5)</sup>, (CDIR),

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<sup>(6)</sup>,

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.

---

<sup>(1)</sup> OJ L 154, 16.6.2017, p. 1.

<sup>(2)</sup> OJ L 104, 24.4.2018, p. 1.

<sup>(3)</sup> OJ L 104, 24.4.2018, p. 37.

<sup>(4)</sup> OJ L 386, 29.12.2006, p. 14.

<sup>(5)</sup> OJ L 193, 25.7.2007, p. 13.

<sup>(6)</sup> OJ L 295, 21.11.2018, p. 39-98.

Notification by electronic means covers transmissions by wire, by radio, by optical means or by other electromagnetic means, including the internet. The Executive Director will 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.

- (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 will determine to what extent and under which technical conditions those communications may be submitted electronically.
- (3) In all the procedures relating to EU trade marks and Community designs, where fax is an accepted means of communication, it is pertinent to identify, in the interest of legal certainty, the specific fax number(s) to which users must address incoming fax correspondence.
- (4) Pursuant to Article 114(5) EUTMR, inspection of the files of EU trade mark applications and of registered EU trade marks must include technical means of storage if the files are stored in this way. The Executive Director will determine the means of inspection.
- (5) Pursuant to Article 31(3) EUTMR and Article 3(5) EUTMIR, where the representation of an EUTM application is provided electronically, the Executive Director will determine the formats and size of the electronic file as well as any other relevant technical specifications.
- (6) Pursuant to Article 51(2) CDIR, details of notification by technical means other than fax will be determined by the Executive Director.
- (7) 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 will be determined by the Executive Director.
- (8) Pursuant to Article 74 CDIR, inspection of the files of registered Community designs will include technical means of storage if the files are so stored. The Executive Director will determine the means of inspection.
- (9) 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.
- (4) In all the procedures relating to EU trade marks and Community designs, where fax is an accepted means of communication, all incoming fax submissions must be sent to the official general fax number(s) of the Office. The list of official fax numbers is attached in Annex 1 of this decision. Any incoming fax that is addressed to a fax number that is not included in Annex 1 will be deemed not to have been received.

*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) 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**

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 No EX-18-1 of 15 May 2018, is repealed as from the date of entry into force of the present decision.

*Article 7*  
**Entry into force**

This Decision will enter into force on **1 March 2019** and will be published in the Official Journal of the Office.

Done at Alicante, 18 January 2019.



Christian Archambeau  
Executive Director

Annex 1 — List of official fax numbers identified in Article 1(4).