

The Executive Director

**DECISION No EX-20-06 of the
Executive Director of the Office of
31 July 2020 on the review of
objections of EU trade mark
applications (AG2Review)**

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

Whereas:

- (1) Pursuant to Articles 7, 42, 76, 85 and 160 EUTMR an examiner is responsible for deciding whether an EU trade mark application is ineligible for registration in respect of some or all of its goods or services due to absolute grounds for refusal.
- (2) Pursuant to Article 42(2) EUTMR, an EU trade mark application shall not be refused before the applicant has been allowed the opportunity to withdraw or amend the application or to submit observations on the notice of grounds for refusal notified by the examiner.
- (3) Pursuant to Articles 182, 193 and 194 EUTMR international registrations designating the Union shall be subject to examination as to their conformity to absolute grounds for refusal in the same way as EU trade mark applications.
- (4) As set out in its Strategic Plans 2020⁽²⁾ and 2025⁽³⁾, the Office aims to improve the quality and consistency of its decisions and to foster the exchange of knowledge among the Office's staff.
- (5) The implementation of an *ex ante* peer-to-peer review is considered an efficient measure for improving the quality of the notices of grounds for refusal of EU trade mark applications and international registrations designating the Union based on absolute grounds for refusal (AG2Review). In addition, this review exercise enables knowledge sharing and implementing any lessons learned within the review process among staff.

(1) OJ L 154, 16.6.2017, p. 1.

(2) Line of Action 1 'Build a dynamic and knowledgeable organisation'; Line of Action 5 'Enhance customer-driven quality services'.

(3) Goal 2.1 'Improved user experience, quality and efficiency'; Goal 1.3 'Developing an IP knowledge hub'.

- (6) The tasks of the reviewer are to be distinguished from those of the examiner in charge of the notice of grounds for refusal.
- (7) The AG2Review differs from the quality checks put in place pursuant to decision No ADM-18-71 concerning the Office Product Quality Framework in its purpose and process. Besides the improvement in quality, the AG2Review focuses on the diffusion of knowledge by means of a peer-to-peer quality review. This improvement in quality will be measured by the possible decrease of second notifications, by an increase in the Board of Appeal's confirmation rate, by the results of the internal quality checks (pursuant to decision No ADM-18-71), as well as by the perception of staff and external users, including that of the Stakeholder Quality Assurance Panels (SQAP).
- (8) The indication of the name of the examiner as the official⁽⁴⁾ responsible for the assessment of the EU trade mark application or the international registration designating the EU, and the name of the reviewer as the official responsible for the quality review of the respective notice of grounds for refusal, is personal data, which will be processed in line with Article 5(1)(b) of Regulation (EU) 2018/1725⁽⁵⁾, as it is necessary to comply with the legal obligation to which the controller is subject in accordance with Article 94(2) EUTMR,

HAS ADOPTED THE FOLLOWING DECISION:

Article 1
Definitions

- (1) 'Absolute grounds for refusal' are defined in Article 42 in conjunction with Article 7, in Article 76 and in Article 85 EUTMR.
- (2) 'Notice of grounds for refusal' is the examiner's notice informing the applicant of the EU trade mark application about the existence of absolute grounds for refusal and allowing the applicant to submit observations in reply.

Article 2
Purpose and scope

- (1) This decision establishes the system of an *ex ante* peer-to-peer review of the notices of the absolute grounds for refusal (AG2Review).
- (2) Objective criteria and operational workflows for the review will be established in internal working instructions set up by the department in charge of the examination of absolute grounds for refusal.

⁽⁴⁾ References to 'official' in this Decision will be understood to include other statutory staff and SNEs.

⁽⁵⁾ 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, OJ L 295, 21.11.2018, p. 39.

Article 3
Roles and responsibilities

- (1) The examiner is the sole official responsible for objecting to EU trade mark applications on absolute grounds for refusal.
- (2) The reviewer will not interfere with the examiner's responsibility in assessing the existence of absolute grounds for refusal. The reviewer revises the quality of the examiner's notice of grounds for refusal before its notification to the applicant. The notice of grounds for refusal should, where applicable, also indicate the name of the reviewer as being the official responsible for the quality review. A detailed workflow will be defined in the internal working instructions.

Article 4
Sampling

The notices of grounds for refusal to be reviewed are chosen randomly or according to objective criteria set out in the internal working instructions.

Article 5
International Registrations

This decision also applies to notices of grounds for refusal regarding international registrations designating the Union.

Article 6
Entry into force

This Decision will enter into force on 1 October 2020 and will be published in the Official Journal of the Office.

Done at Alicante, 31 July 2020.



Christian Archambeau
Executive Director