

The Executive Director

DECISION No EX-21-4 of the Executive Director of the Office of 30 March 2021 on the Register of EU trade marks, the Register of Community designs, the database of proceedings before the Office, and on the case-law database.

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,

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 on the European Union trade mark and repealing Implementing Regulation (EU) 2017/1431⁽²⁾,

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, as amended⁽³⁾ (CDR), and to Commission Regulation (EC) No 2245/02 of 21 October 2002 implementing Council Regulation (EC) No 6/2002, as amended⁽⁴⁾ (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⁽⁵⁾,

Pursuant to Article 111(1) and (5) EUTMR, Article 72 CDR and Article 69(1) CDIR, the Office will keep a Register of EU trade marks and a Register of Community designs which may be maintained in electronic form.

Pursuant to Article 111(4) EUTMR and Article 69(4) CDIR, the Executive Director may determine that items other than those referred to in Article 111(2) and (3) EUTMR and Article 69(2) and (3) CDIR, are to be entered into the EU trade mark (EUTM) and Community design (CD) Registers, subject to Article 149(4) EUTMR.

⁽¹⁾ OJ L 154, 16.6.2017, p. 1.

⁽²⁾ OJ L 104, 24.4.2018, p. 37.

⁽³⁾ OJ L 386, 29.12.2006, p. 14.

⁽⁴⁾ OJ L 193, 25.7.2007, p. 13.

⁽⁵⁾ OJ L 295, 21.11.2018, p. 39.

Pursuant to Article 111(9) EUTMR, all data, including personal data, concerning the entries in Article 111(2) and (3) EUTMR will be considered to be of public interest and may be accessed by any third party. For reasons of legal certainty, the entries in the Register will be kept for an indefinite period of time. The purpose of the collection, storage and processing of this data is defined in Article 111(5) and (8) EUTMR.

Pursuant to Article 111(7) EUTMR and Article 69(6) CDIR, the Office will provide certified or uncertified extracts from the EUTM and CD Registers on request and on payment of a fee.

Pursuant to Article 72 CDR, the CD Register will be open to public inspection except to the extent that Article 50(2) CDR provides otherwise for registered Community designs (RCDs) subject to deferment of publication. In these cases, access to the CD Register and to certified or uncertified extracts from the CD Register will be limited, as established in Article 73 CDIR.

Pursuant to Article 114(5) EUTMR and Article 74 CDIR, inspection of the files of EUTM applications, registered EUTMs and RCDs, will include technical means of storage if the files are stored in this way. The Executive Director will determine the means of inspection. Article 5(3) of Decision No EX-20-9 of the Executive Director of the Office of 3 November 2020 on communication by electronic means, determines that online inspection of files may only be carried out through the User Area.

Pursuant to Article 147(2) EUTMR and Article 99(2) CDR, all entries in the EUTM and CD Registers will be in all the official languages of the Union. Pursuant to Article 147(3) EUTMR and Article 99(3) CDR, the text in the language of the Office in which the application was filed will be authentic. If the application was filed in an official language of the Union other than one of the languages of the Office, the text in the second language indicated by the applicant will be authentic.

Pursuant to Article 1(1) of Decision No EX-20-9 of the Executive Director of the Office of 3 November 2020 on communication by electronic means, 'User Area' is defined as a secure electronic communications platform maintained by the Office that enables account holders to submit applications and other documents, receive notifications and documents sent by the Office, reply to such notifications and perform other actions.

Pursuant to Article 112(1) EUTMR and Article 71(1) CDIR, the Office will maintain an electronic database, in addition to the Registers, for the purposes set out in Article 112(2) EUTMR.

Pursuant to Article 112(3) EUTMR and Article 71(2) CDIR, the Executive Director will determine the conditions of access to the electronic database and the manner in which its contents may be made available in machine-readable form, including the charge for such access.

Pursuant to Article 112(2) EUTMR, the database may include personal data, beyond that included in the Register pursuant to Article 111 EUTMR. Pursuant to Article 112(4) EUTMR, this data will not be made publicly available unless the party concerned has given their express consent.

Pursuant to Article 112(5) EUTMR, all data will be kept indefinitely. However, the party concerned may request the removal of any personal data from the database after 18 months from the expiry of the EU trade mark or the closure of the relevant *inter partes* procedure. The party concerned has the right to obtain the correction of inaccurate or erroneous data at any time.

Pursuant to Article 113(1) EUTMR, Office decisions will be made available online for the information and consultation of the general public in the interest of transparency and predictability. Any party to the proceedings that led to the decision's adoption may request the removal of any personal data included in the decision.

Pursuant to Article 113(2) EUTMR, the Office may provide online access to judgments of national and Union courts related to its tasks to raise public awareness of intellectual property matters and promote convergence of practices. The Office will respect the initial publication's conditions with regard to personal data.

Pursuant to Article 152(1) EUTMR, the Office and the central industrial property offices of the Member States and the Benelux Office for Intellectual Property will cooperate with each other to promote convergence of practices and tools in the field of trade marks and designs.

Whereas:

- (1) In view of the legislative changes brought about by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017, it is necessary to review all the corresponding provisions, in particular, in the framework of the e-business initiative to streamline procedures via the User Area and the Office's website.
- (2) To achieve the Office's objective of full transparency and guarantee the predictability and consistency of the EUTM and RCD systems, users need to have access to all the relevant information about EUTMs and RCDs, including entries into the Registers in EUTM and RCD proceedings.
- (3) Entries into the EUTM and CD Registers need to be made available as early as possible for consultation by public authorities and economic operators to determine whether there are any prior rights belonging to third parties and to enable the users to exercise the rights conferred on them by the EUTMR and CDR.
- (4) While Article 111(3)(i) EUTMR and Article 69(3)(k) CDIR provide that levy of execution and insolvency proceedings will be entered into the Registers, these provisions do not apply directly to protective entries requested by a national court, national administrative bodies or authorities, or by an EUTM or CD Court. It is considered appropriate that a protective entry be permitted in the EUTM Register and the CD Register to safeguard the interests of third parties consulting the Registers by providing full and accurate information and giving effect to the principle of administrative cooperation. For this reason, pursuant to Article 111(4) EUTMR and Article 69(4) CDIR, it is fitting that the Executive Director determine that protective entries may be entered in the EUTM and CD Registers.

- (5) It is necessary to differentiate between the EUTM and CD Registers, on the one hand, and the database of particulars of EUTMs, RCDs, international trade mark registrations designating the Union and proceedings before the Office and the case-law database, on the other, all serving different functions as laid down in Article 111(5) and (8) EUTMR and Article 69 CDIR, as well as in Article 112(1) and (2) EUTMR and in Article 71 CDIR and, therefore, containing different sets of data.
- (6) Article 111(5), (8) and (9) EUTMR applies *mutatis mutandis* to the collection, storage and processing of data, including personal data, entered in the CD Register.
- (7) Article 112(2), (4) and (5) EUTMR applies *mutatis mutandis* to the collection, storage and processing of data, including personal data in the database for RCDs.
- (8) Article 113 EUTMR applies to the online access to Office decisions on RCDs without prejudice to the restrictions laid down in Article 50(2) and (3) CDR and Article 14(3) CDIR.

HAS ADOPTED THE FOLLOWING DECISION:

SECTION 1 GENERAL PROVISIONS

Article 1 **Purpose**

The purpose of this decision is to:

- (i) determine the access to and a description of the main sources of data concerning EUTMs and RCDs made available by the Office, in particular the EUTM and CD Registers, the database of particulars of proceedings before the Office and the case-law database.
- (ii) determine which items, other than those referred to in Article 111(2) and (3) EUTMR and Article 69(2) and (3) CDIR, are to be entered into the EUTM and CD Registers.
- (iii) detail related features such as the provision of extracts from the Registers and downloads from the database of proceedings before the Office.

Article 2 **Definitions**

For the purpose of this decision:

- (i) '**register**' means an official record of all entries made in the EUTM and CD Registers in relation to an EUTM or RCD application or registration, where the entries are required by the EUTMR, CDR or acts adopted pursuant to them.

- (ii) **'entry in the register'** means each of the individual particulars laid down in the Regulations, namely each item listed in Article 111(2) and (3) EUTMR, Article 69(2) and (3) CDR or Article 6 of this decision.
- (iii) **'IP right'** means all EUTMs and RCD applications and registrations.

SECTION 2 ELECTRONIC REGISTER

Article 3 **Structure and contents of eRegister**

- (1) All entries made in the Registers are made into an electronic archive ('eRegister'). The eRegister provides one accessible electronic repository of all entries in the register for a specific IP right.
- (2) The eRegister comprises two main features: a back-office tool allowing the technical storage and compilation of all the entries in the Registers, and a front-office feature offering a publicly accessible user interface to view the information contained therein.
- (3) The entries in the register for each EUTM will become available in the eRegister once the EUTM application is considered to have been filed pursuant to Article 32 EUTMR. The entries in the register for each RCD will become available in the eRegister once the RCD is registered pursuant to Article 48 CDR.
- (4) The entries in the register are presented in chronological order in the eRegister and serve historical reference purposes.
- (5) Annexes I and II to this decision provide a breakdown of the content of each of the entries in the register for EUTMs and RCDs, respectively, namely the details of the particulars that will be visible in the eRegister.
- (6) The detailed information visible in the eRegister, as laid out in Annexes I and II of this decision, will be available from 31 March 2021, the date from which all the data is stored in full in the back-office tool of the eRegister. Entries in the register made before this date may contain limited data. Where more information is required on an entry in the register, online inspection of files is available free of charge pursuant to Article 114(5) EUTMR and Article 74 CDIR, and through the User Area pursuant to Article 5(3) of Decision No EX-20-9, and in particular for detailed information of any entry in the register made before that date.
- (7) The eRegister may be viewed in all the official languages of the Union. Where, the translation of a textual element is not available in the language chosen, the eRegister will show this item in the authentic language of the IP right.
- (8) All entries will be kept for an indefinite period of time.

Article 4
Access to the eRegister

- (1) The eRegister is accessed through the 'eSearch plus' tool available on the Office's website. On finding an IP right in eSearch plus, the user is presented with the option of viewing the eRegister repository for this IP right in a separate interface.
- (2) There is public access to the eRegister of any IP right, except for RCDs subject to deferment of publication.
- (3) For RCDs subject to deferment of publication, the entries in the eRegister will become fully publicly available only once the RCD is published at the expiry of the period of deferment in accordance with Article 50(4) CDR and Article 73 CDIR. During the period of deferment of publication, only the registered RCD holder and appointed representative will be able to view the full details of the RCD in the eRegister. For all other persons, pursuant to Article 73(a) CDIR, access to these files in the eRegister will be limited to the name of the holder, the name of any representative, the date of filing and registration, the file number of the application and the mention that publication is deferred.

Article 5
Extracts from the EUTM and CD Registers

- (1) Extracts from the EUTM and CD Registers can be obtained through any of the methods detailed below.
 - i) The eRegister: on entering the eRegister repository of an IP right, a user who is logged into their User Area account has the option of downloading a certified copy of the extract from the Register for this IP right. Generating this extract directly from the eRegister is free of charge.
 - ii) An online request in the User Area: where this is carried out online through the User Area account, the user will be redirected to the eRegister repository (see point i) to download a certified copy of the extract immediately and free of charge.
 - iii) An online request in the User Area where the user expressly requests the Office to send them an extract, or a similar request by post: the Office will send the user the certified or uncertified extract that is retrieved from, and corresponds to, the extracts retrievable online through the eRegister. The request is subject to the payment of a fee pursuant to Article 111(7) EUTMR and point A.29 of Annex I EUTMR, Article 107(2)(i) CDR and point 20 of the Annex 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⁽⁶⁾.

⁽⁶⁾ Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) in respect of the registration of Community designs, as amended, OJ L 193, 25.7.2007, p. 16.

- (2) Extracts downloaded from the eRegister for any IP right are considered to be authentic extracts from the EUTM and CD Registers. They are certified by default, and bear an identification code that may be used to verify the authenticity of certified copies online⁽⁷⁾.
- (3) Extracts from the eRegister will be available in all official languages of the Union. Where the translation of a textual element is not available in the language chosen, the extract will show this term in the authentic language of the IP right.
- (4) For RCDs subject to deferment of publication, the contents of the extract from the eRegister will become available only once the RCD is published at the expiry of the period of deferment in accordance with Article 50(4) CDR and Article 73 CDIR. During the period of deferment of publication, only the registered RCD holder and appointed representative, once logged into their respective User Area accounts, will be able to request and download the extract that contains the full details of the RCD. For all other persons, pursuant to Article 73(b) CDIR, the extract for these IP rights will only contain the holder's name, the name of any representative, the filing and registration dates, the file number of the application and the mention that publication is deferred.

Article 6

Other entries in the register

- (1) Pursuant to Article 111(4) EUTMR and Article 69(4) CDIR, the date of any request for protective entry by a national court, national administrative body or authority, an EUTM Court or an CD Court will be entered in the Registers.
- (2) On request and on submission of supporting evidence, the date of the decision on the substance of the proceedings underlying the request for protective entry, mentioned in paragraph 1, will be entered in the Register, together with the identity of the body taking that decision.
- (3) Pursuant to Article 111(4) EUTMR, where an EUTM application has been totally refused by final decision before the publication of the EUTM application for the purposes of Article 44(1) EUTMR, an entry in the register will reflect the final total refusal of the EUTM application.
- (4) Pursuant to Article 57 CDR and by analogy with Article 111(3)(n) EUTMR, where an Office decision is appealed, the information on the submission of the appeal will be entered into the Register.
- (5) Pursuant to Article 60 CDR and by analogy with Article 111(3)(o) EUTMR, the date and content of a decision on an appeal will be entered into the Register.

(7) <https://euipo.europa.eu/ohimportal/en/certified-copies>

SECTION 3
ELECTRONIC DATABASE

Article 7

Contents of the database

- (1) The Office maintains an electronic database with particulars of IP rights, international trade mark registrations designating the Union and the related proceedings, submitted to it pursuant to the EUTMR, the CDR and the acts adopted pursuant to them.
- (2) All data will be kept indefinitely, without prejudice to Article 10(2) and (3) of this Decision.

Article 8

Access to the database

- (1) The database is integrated into the 'eSearch plus' tool available on the Office's website, and is accessible free of charge.
- (2) The database contents may be downloaded in various ways including, but not limited to, to online platforms and data carriers free of charge.
- (3) The database contents, including personal data, can also be accessed by downloading the information in bulk after signing a licence agreement, or an agreement to the same effect, with the Office; access to and use of the database contents are subject to the terms and conditions laid down in the licence agreement. Bulk download of the database contents as open data does not include the personal data referred to in Article 10, paragraph 2 of this Decision.

SECTION 4
CASE-LAW DATABASE

Article 9

Case-law database

- (1) To promote convergence of practices the Office will maintain a case-law database, making publicly available Office decisions defined by the EUTMR, the CDR and the legislative acts adopted pursuant to them, as well as judgments of national and Union courts in intellectual property matters. Before the publication of an RCD pursuant to Article 49 or Article 50(4) CDR, the publication of Office decisions is subject to the restrictions laid down in Article 50(2) and (3) CDR and Article 14(3) CDIR.
- (2) The judgments and decisions are made available in their authentic language. Official translations thereof are published where available. The case-law database may contain unofficial translations, where indicated, or may provide automatic machine translation facilities for information purposes only.
- (3) The case-law database is accessible free of charge on the Office's website.

SECTION 5
PERSONAL DATA

Article 10

Collection, storage and processing of personal data

- (1) Article 111(5), (8) and (9) EUTMR applies *mutatis mutandis* to the collection, storage and processing of any data, including personal data, in the eRegister repository for RCD applications and registrations.
- (2) Beyond the register data, the database also contains the following personal data of parties to the proceedings before the Office and their representatives: email addresses, fax numbers and phone numbers. This data will only be made publicly available where the person concerned has given their express consent. Consent may be given and withdrawn at any time through the User Area on the Office's website.
- (3) Article 112(4) and (5) EUTMR applies *mutatis mutandis* to the collection, storage and processing of any data in the database in relation to RCD applications and registrations and for international trade mark registrations designating the Union.
- (4) Article 113(1) EUTMR applies *mutatis mutandis* to decisions in RCD proceedings.
- (5) The Office will respect the initial publication's conditions with regard to personal data in judgments of national and Union courts.

SECTION 6
FINAL PROVISIONS

Article 11

Repeal of previous decisions

The following decisions are hereby repealed:

Decision No EX-07-1 of the President of the Office of 16 March 2007 concerning entries in the Register of Community Trade Marks;

Decision No EX-07-2 of the President of the Office of 16 March 2007 concerning entries in the Register of Community Designs;

Decision No EX-14-3 of the President of the Office of 22 October 2014 concerning publicly available particulars of CTM and RCD applications and registrations.

Article 12
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, 30 March 2021.



Christian Archambeau
Executive Director

Annex I – Content of the individual entries in the register for EUTMs
Annex II – Content of the individual entries in the register for RCDs