

GUIDELINES FOR EXAMINATION
EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE
(EUIPO)

PART A

GENERAL RULES

SECTION 4

LANGUAGE OF PROCEEDINGS

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1 Introduction

Article 146 EUTMR
Article 24 EUTMIR
Articles 25 and 26 EUTMDR
Article 98 CDR
Articles 80, 81 and 83 CDIR

There are five Office languages: English, French, German, Italian and Spanish. However, an application for a European Union trade mark (EUTM) or Registered Community Design (RCD) may be filed in any of the official EU languages. The EUTMR and the CDR lay down rules for determining and using the language of proceedings. These rules may vary from one set of proceedings to another, in particular depending on whether the proceedings are *ex parte* or *inter partes*.

This section deals only with the horizontal provisions common to all types of proceedings. The exceptions for particular types of proceedings are dealt with in the corresponding sections of the Guidelines.

2 From Filing to Registration (Excluding Opposition)

Article 146 EUTMR
Article 98 CDR

EUTM and RCD applications may be filed in any of the official EU languages.

A second language must be indicated from among the five languages of the Office.

During the proceedings, the applicant may use:

- the first language;
- the second language, at its discretion, if the first language is not an Office language.

The Office uses:

- **only** the first language if it is an Office language;
- the first language if it is not an Office language, following the CJEU 'Kik' judgment (judgment of 09/09/2003, C-361/01 P), unless the applicant has declared its consent in writing for the Office to use the second language, in which case the Office proceeds accordingly. Consent to use of the second language must be given for each individual file; it may not be given for all existing or future files.

This language regime applies throughout the application and examination procedure until registration, except for oppositions and ancillary requests (see following paragraphs).

3 Opposition and Cancellation

Article 146(7) EUTMR
Article 3 EUTMDR

An opposition or request for cancellation (application for revocation or declaration of invalidity) may be filed:

- at the discretion of the opponent/applicant for cancellation in the first or second language of the EUTM application if the first language is one of the five languages of the Office;
- in the second language if the first language is not an Office language.

This language becomes the language of proceedings for the opposition or cancellation proceedings, unless the parties agree to a different one (from among the official EU languages).

An opposition or request for cancellation may also be filed in any of the other Office languages, provided that within one month of expiry of the opposition period or within one month of filing the application for cancellation, the opponent/applicant for cancellation files a translation into a language that is available as a language of proceedings.

4 Design invalidity

Article 98(4) and (5) CDR
Article 29 and Article 30(1) CDIR

An application for a declaration of invalidity may be filed:

- in the first language of the RCD if the first language is one of the five languages of the Office;
- in the second language if the first language is not an Office language.

This language becomes the language of proceedings for the invalidity proceedings.

The parties to the invalidity proceedings may agree on a different language of proceedings provided it is an official language of the European Union. Information as regards the agreement must reach the Office within two months after the holder has been notified of the application. Where the application was not filed in that language, the applicant must file a translation of the application in that language within one month of the date when the Office was informed of the agreement.

Where the application is not filed in the language of proceedings, the Invalidity Division will notify the applicant requesting it to file a translation within two months of the date of receipt of the notification. Where the applicant does not comply with the request, the application will be rejected as inadmissible.

For the linguistic regime applicable to the supporting documents filed in invalidity proceedings, see the Guidelines on Examination of Design Invalidity Applications, paragraph 3.9.2.

5 Other Requests

5.1 Before registration (excluding opposition)

Article 146(6) EUTMR Article 80(a) CDIR
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During the period from filing to registration, any request, application or declaration that is not concerned with the examination of the application as such but that starts an ancillary procedure (e.g. inspection of files, registration of a transfer or licence, request for conversion, declaration of division for EUTMs or RCD) may be filed in the first or second language, at the discretion of the applicant or third party. That language then becomes the language of proceedings for those ancillary proceedings. This applies irrespective of whether or not the first language is an Office language.

5.2 After registration (excluding cancellation and design invalidity)

Article 146(6) EUTMR Article 80(b) CDIR
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Any request, application or declaration filed after the EUTM or RCD has been registered must be submitted in one of the five Office languages.

Example: after an EUTM has been registered, the EUTM proprietor may file a request for the registration of a licence in English and, a few weeks later, file a request for renewal in Italian.

6 Invariable Nature of the Language Rules

The Regulations allow certain choices to be made from among the available languages in the course of the proceedings (see above) and, during specified periods, a different language to be chosen as the language of proceedings for opposition, cancellation and design invalidity. However, with those exceptions, the language rules are invariable. In particular, the first and second languages may not be amended in the course of the proceedings.

7 Translations and their Certification

Article 146(10) EUTMR Articles 24 to 26 EUTMIR Article 83 CDIR
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The general rule is that where a translation of a document is required, it must reach the Office within the time limit set for filing the original document. This applies unless an exception to this rule is expressly provided in the Regulations.

The translation must identify the document to which it refers and reproduce the structure and contents of the original document. The party may indicate that only parts of the document are relevant and limit the translation to those parts. However, the party does not have discretion to consider parts irrelevant that are required by the Regulations (for example, when proving the existence of an earlier trade mark registration in opposition proceedings).

In the absence of evidence or indications to the contrary, the Office will assume that a translation corresponds to the relevant original text. In the event of doubt, the Office may require the filing, within a specific period, of a certificate that the translation corresponds to the original text. If the required certificate is not submitted, the document for which the translation had to be filed will be deemed not to have been received by the Office.

8 Non-compliance with the Language Regime

If the language regime is not complied with, the Office will issue a deficiency letter, unless otherwise provided in the Regulations. Should the deficiency not be remedied, the application or the request will be refused.

For more information on language regimes for particular types of proceedings the corresponding sections of the Guidelines should be consulted.