

***GUIDELINES FOR EXAMINATION IN THE
EUROPEAN UNION INTELLECTUAL
PROPERTY OFFICE ON EUROPEAN UNION
TRADE MARKS***

PART A

GENERAL RULES

SECTION 5

PROFESSIONAL REPRESENTATION

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1 Introduction — Principle of Representation

Articles 92 and 93 EUTMR, Rule 76 EUTMIR, Articles 77 and 78 CDR

A new practice will apply to EUTMs regarding the obligation to be represented before the EUIPO and the professional representatives entitled to act before the EUIPO.

Persons having their domicile or their principal place of business or a real and effective industrial or commercial establishment within the European Economic Area (EEA), which consists of the European Union and Iceland, Liechtenstein and Norway, are not required to be represented in any proceedings before the Office (see paragraph 3.1.1 below).

Natural persons not domiciled in or legal persons that do not have their principal place of business or a real and effective industrial or commercial establishment in the EEA must be represented by a representative based within the EEA. This obligation exists in all proceedings before the Office, except for the act of filing an application for an EUTM or RCD. See paragraph 3.2.1 below on the consequences of not appointing a representative, when representation is mandatory, once the CTM application has been filed.

Representatives in the sense of Articles 92 and 93 EUTMR may be domiciled in the EEA.

For RCDs, the relevant territory for establishing the obligation to be represented and the place where representatives must be based in the sense of Article 78 CDR is the EU. This section will refer only to the **EEA**; however, references thereto should be replaced by the **EU** for RCD proceedings.

Representation is not required for applications to renew EUTMs or RCDs or for filing an application for inspection of files.

In principle, representatives do not need to file an authorisation to act before the Office unless the Office expressly requires it, or where, in *inter partes* proceedings, the other party expressly requests it. However, in RCD proceedings, employees acting on behalf of natural or legal persons must file a signed authorisation for insertion in the files.

Where a representative has been appointed, the Office will communicate solely with that representative.

For further information on specific aspects of professional representation during proceedings before the Office in relation to international marks, please consult the Guidelines, Part M, International Marks.

The first part of this section (paragraph 2) defines the different types of representatives.

The second part of this section (paragraphs 3 to 6) deals with the appointment of representatives or failure to do so and the authorisation of representatives.

2 Who May Represent

Article 92(3) and Article 93(1)(a) and (b) EUTMR, Rule 76 EUTMIR, Article 77(3) and Article 78(1)(a) and (b) CDR

In all Member States of the EEA, representation in legal proceedings is a regulated profession and may only be exercised under particular conditions. The terminology of Article 93 EUTMR encompasses different categories of representative under the heading ‘Professional representatives’. In proceedings before the Office, the following categories of representative are distinguished:

Legal practitioners (Article 93(1)(a) EUTMR and Article 78(1)(a) CDR) are professional representatives who, depending on the national law, are always qualified to represent third parties before national offices (see paragraph 2.2).

Other professionals (Article 93(1)(b) EUTMR and Article 78(1)(b) CDR) need to comply with further conditions and need to be included on a specific list maintained by the Office for this purpose (the Office’s list of professional representatives). Amongst these, two further groups need to be distinguished: those who may represent only in Community Design (CD) proceedings (‘designs list’) and those who may represent in both CTM and CD proceedings (see paragraph 2.3 below). The Office refers to these other professionals collectively as ‘**professional representatives**’.

Several legal practitioners and professional representatives may be organised in entities called ‘**associations of representatives**’ (Rule 76(9) CTMIR) (see paragraph 3.4.3 below).

The final category of representatives is made up of **employees** acting as representatives for the party to proceedings before the Office (Article 92(3) EUTMR, first alternative) (see paragraph 2.4.1 below) or employees of **economically linked** legal persons (Article 92(3) CTMIR, second alternative) (see paragraph 2.4.2 below).

Employees are to be distinguished from **legal representatives** under national law (see paragraph 2.5 below).

2.1 Database of representatives

All persons that identify themselves as representatives for or employees of individual parties to proceedings before the Office and that fulfil the requirements provided by the regulations are entered into the database of representatives and obtain an ID number. The database has a double function, providing all relevant contact details under the specific ID number for any type of representative as well as the public information on the Office’s list of professional representatives or designs list.

All representatives, including associations of representatives, must indicate the category of representative to which they belong, their name and their address in accordance with Rule 1 CTMIR.

A representative may have several IDs. For example, associations of representatives may have different IDs for different official addresses (to be distinguished from different correspondence addresses, which can be identified under a single ID; see the Guidelines, Part E, Register Operations, Section 1, Changes in a Registration).

Individual representatives may have one ID as an employee representative and a different ID as a legal practitioner in their own right.

A legal practitioner cannot, in principle, appear in the database as an ‘Office professional representative’, since they do not need to be admitted by the Office. The Office, therefore, almost invariably refuses requests from legal practitioners to be entered on the list of Office professional representatives. The only exception is where a professional representative on the list is also a legal practitioner and such dual qualification is allowed under national law.

The database of professional representatives is available online. In the database, representatives are identified as: association, employee, lawyer (legal practitioners), and professional representative. Internally, the latter category is divided into two subcategories: type 1 consists of design attorneys exclusively entitled to represent in CD matters under Article 78 CDR and type 2 of trade mark and design attorneys under Article 93 EUTMR.

2.2 Professional representation by legal practitioners

Article 93(1)(a) EUTMR and Article 78 CDR

A legal practitioner is a professional representative who is automatically and without any further formal recognition allowed to represent third parties before the Office provided that they meet the following three conditions:

- a) they must be qualified in one of the Member States of the EEA;
- b) they must have their place of business within the EEA; and
- c) they must be entitled, within that State, to act as a representative in trade mark and/or design matters.

2.2.1 The term ‘legal practitioner’

Directive 98/5/EC of the European Parliament and of the Council defines the term ‘lawyer’ (i.e. legal practitioner). The professional titles are identified in the column ‘Terminology for legal practitioner’ in Annex 1 of this section.

2.2.2 Qualification

The requirement to be qualified in one of the Member States of the EEA means that the person must be admitted to the bar or be admitted to practise under one of the professional titles identified in Annex 1 pursuant to the relevant national rules. The Office will not verify this unless there are serious doubts in this regard.

2.2.3 Nationality and place of business

There is no requirement as to nationality. Therefore, the legal practitioner may be a national of a state other than one of the Member States of the EEA.

The place of business must be in the EEA. A PO box address does not constitute a place of business. The place of business need not necessarily be the only place of business of the representative. Furthermore, the place of business may be in a Member State of the EEA other than the one in which the legal practitioner is admitted to the bar. However, legal practitioners who have their sole place of business outside the EEA are not entitled to represent before the Office even when they are admitted to practise in one of the Member States of the EEA.

Where an association of representatives, such as a law firm or a law office, has several places of business, it may perform acts of representation only under a place of business within the EEA, and the Office will communicate with the legal practitioner only at an address within the EEA.

2.2.4 Entitlement to act in trade mark and/or design matters

The entitlement to act as a representative in trade mark and/or design matters in a state must include the entitlement to represent clients before the national industrial property office of that state. This condition applies to all Member States of the EEA.

Legal practitioners referred to in Article 93(1)(a) EUTMR who fulfil the conditions laid down in this article are automatically entitled as of right to represent their clients before the Office. This basically means that if a legal practitioner is entitled to act in trade mark and/or design matters before the central industrial property office of the Member State of the EEA in which they are qualified, they will also be able to act before the Office. Legal practitioners are not entered on the list of professional representatives to which Article 93(2) EUTMR refers, because the entitlement and the special professional qualifications referred to in those provisions relate to persons belonging to categories of professional representatives specialising in industrial property or trade mark matters, whereas legal practitioners are by definition entitled to be representatives in all legal matters.

If a legal practitioner (lawyer) who has already been attributed an identification number as a lawyer requests entry on the list, the number will be maintained but the status will be changed from 'lawyer' to 'professional representative'. The only exception is where a professional representative on the list is also a legal practitioner and is allowed, under national law, to act in both contexts.

Annex 1 gives a detailed explanation of the specific rules for most of the countries.

2.3 Professional representatives admitted and entered on the lists maintained by the Office

Article 93(1)(b) and Article 93(2) EUTMR and Article 78(1)(b) CDR

The second group of persons entitled to represent third parties professionally before the Office are those persons whose names appear on one of the two lists of professional representatives maintained by the Office, the Office's list of professional representatives and the designs list.

For this category of professional representatives, the entry on the Office's list of professional representatives or designs list entitles them to represent third parties before the Office. A representative who is entered on the Office's list of professional representatives, referred to in Article 93(1)(b) EUTMR, is automatically entitled to represent third parties in design matters according to Article 78(1)(b) CDR and will not be entered on the special list of professional representatives in design matters ('designs list').

If a person on the list maintained under Article 93 EUTMR requests entry on the designs list maintained for professional representatives authorised to act exclusively in Community Designs matters under Article 78(4) CDR, the request will be rejected.

The designs list is intended only for professional representatives who are entitled to represent clients before the Office in design matters but not trade mark matters.

Annex 2 gives a detailed explanation of the specific rules for most of the countries.

Entry on the lists is subject to a request being completed and signed individually by the person concerned, using the form established for this purpose by the Office at: http://oami.europa.eu/pdf/forms/prorep_form93_en.pdf.

In order to be entered on the list, three requirements must be fulfilled.

- a) The representative must be a national of one of the Member States of the EEA.
- b) They must have their place of business within the EEA.
- c) They must be entitled under national law to represent third parties in trade mark matters before the national industrial property office. To that end they must provide a certificate attesting this from the national industrial property office of a Member State of the EEA.

2.3.1 Entitlement under national law

The conditions for entry on the Office's list of professional representatives and the designs list depend on the legal situation in the Member State of the EEA concerned.

Article 93(2)(c) EUTMR and Article 78(1)(b) CDR

In a large number of Member States of the EEA, entitlement to represent third parties before the national office in trade mark matters is conditional upon possession of a special professional qualification (Article 93(2)(c) EUTMR, first alternative). Therefore, in order to be entitled to act as a representative, the person must have the required qualification. In other Member States of the EEA, there is no such requirement for a special qualification, that is to say, representation in trade mark matters is open to anybody. In this case, the person involved must have regularly represented third parties in trade mark or design matters before the national office concerned for at least five years (Article 93(2)(c) EUTMR, second alternative). A subcategory of this category of Member States of the EEA are those that have a system officially recognising a professional qualification to represent third parties before the national office concerned although such recognition is not a prerequisite for the exercise of professional

representation. In this case, persons so recognised are not subject to the requirement of having regularly acted as a representative for at least five years.

First alternative — Special professional qualifications

Where, in the Member State of the EEA concerned, entitlement is conditional upon having special professional qualifications, persons applying to be entered on the list must have acquired this special professional qualification.

This special professional qualification (often by means of an examination) is required in Austria, Bulgaria, Croatia, the Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom.

If the person confirms that they work for two different associations of representatives or from two different addresses, then they can have two different numbers attributed. It is also possible to have two different numbers, one as a lawyer and one as an Office professional representative where such a dual qualification is allowed under national law (e.g. this is not compatible in Belgium and France).

Second alternative — Five years' experience

Where, in the Member State of the EEA concerned, the entitlement is not conditional upon possession of special professional qualifications, persons applying to be entered on the list must have regularly acted as professional representatives for at least five years before a central industrial property office of a Member State of the EEA.

It is possible for the President to grant an exemption from this requirement (see paragraph 2.3.4 below).

This is the case for Benelux, Denmark, Malta, Finland and Sweden.

Third alternative — Recognition by a Member State of the EEA

Persons whose professional qualification to represent natural or legal persons in trade mark and/or design matters before the central industrial property office of one of the Member States of the EEA is officially recognised in accordance with the regulations laid down by that state shall not be subject to the condition of having exercised the profession for at least five years.

2.3.2 Nationality and place of business

Article 93(2)(a) and (b) EUTMR and Article 93(4) EUTMR
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A professional representative requesting to be entered on the list must be a national of a Member State of the EEA and must have their place of business or employment in the EEA. Entitlement to act as a representative in other Member States of the EEA, and professional experience obtained therein, can be taken into account only within the scope of Article 93(4) EUTMR. It is possible for the Executive Director to grant an exemption from this requirement (see paragraph 2.3.4 below).

2.3.3 Certificate

Article 93(3) EUTMR

Fulfilment of the abovementioned conditions laid down in Article 93(2) EUTMR must be attested by a certificate provided by the national office concerned. Some national offices issue individual certificates while others provide the Office with block certificates. They send regularly updated lists of professional representatives entitled to represent clients before their office (Communication No 1/95 of the President of the Office of 18/09/1995; OJ OHIM 1995, 16). Otherwise, the person concerned must accompany their request with an individual certificate (see http://oami.europa.eu/pdf/forms/prorep_form93_certificate_en.pdf).

2.3.4 Exemptions

Article 93(4) EUTMR

The Executive Director of the Office may, under special circumstances, grant exemption from the requirement to be a national of a Member State of the EEA and from the requirement of having regularly represented in trade mark matters for at least five years, provided that the professional representative submits proof that they have acquired the required qualification in another way. This power is of a discretionary nature.

All the cases presented to the Executive Director of the Office so far have allowed him to grant an exemption from the nationality requirement. Exemptions from the requirement for five years' experience are limited to where a qualification to act as a representative in trade mark matters acquired in another way has already been valid for the equivalent period.

For example, this comprises cases where the professional representative, before becoming an industrial property agent, was responsible for trade mark operations within a company without having personally acted before the national office concerned. The experience must have been acquired in a Member State.

2.3.5 Procedure for entry on the list

Article 93(3) EUTMR and Article 78 CDR
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Entry on the list is confirmed by notification of a positive decision, which contains the indication of the ID number attributed to the professional representative. Entries on the Office's list of professional representatives or designs list are published in the Official Journal of the Office.

If any of the requirements for entry on the list are not fulfilled, and after the applicant has been given the opportunity to reply to the Office's deficiency notification to that effect, a rejection decision will be issued unless the applicant remedies the said deficiency. The party concerned may file an appeal against this decision (Article 58(1) EUTMR and Article 133 EUTMR).

Professional representatives may obtain an additional copy of the decision without the payment of a fee. The files relating to requests for entry on the Office's list of professional representatives or designs list are not open to public inspection.

2.3.6 Amendment of the list of professional representatives

2.3.6.1 Deletion

First alternative, upon own request

Article 93(5) EUTMR, Rule 78(1) and (6) EUTMIR and Article 64(1) and (6) CDIR

The entry of a professional representative on the Office's list of professional representatives or designs list will be deleted at the request of that representative.

The deletion will be entered in the files kept by the Office. The notification of deletion will be sent to the representative and the deletion will be published in the Official Journal of the Office.

Second alternative, automatic deletion from the list of professional representatives

Rule 78(2) and (5) CTMIR and Article 64(2) and (5) CDIR

The entry of a professional representative in the Office's list of professional representatives or designs list will be deleted automatically:

- a) in the event of the death or legal incapacity of the professional representative;
- b) where the professional representative is no longer a national of a Member State; however, the Executive Director of the Office may still grant an exemption under Article 93(4)(b) EUTMR;
- c) where the professional representative no longer has their place of business or employment in the EEA; or
- d) where the professional representative is no longer entitled to represent third parties before the central industrial property office of a Member State of the EEA.

Where the professional representative changes from a Design Attorney to a trade mark attorney they will be removed from the designs list and introduced in the Office's list of professional representatives.

The Office may be informed of the above events in a number of ways. In case of doubt, the Office will, prior to deletion from the list, seek clarification from the national office concerned. It will also hear the professional representative, in particular where there is a possibility that they are entitled to remain on the list on another legal or factual basis.

The deletion will be entered in the files kept by the Office. The decision of the deletion will be notified to the representative and the deletion will be published in the Official Journal of the Office. The party concerned can lodge an appeal against this decision (Decision 2009-1 of the Presidium of the Boards of Appeal of 16 June 2009 regarding Instructions to Parties in Proceedings before the Boards of Appeal).

2.3.6.2 Suspension of the entry on the list

Rule 78(3) and (5) EUTMIR and Article 64(3) CDIR

The entry of the professional representative on the Office's list of professional representatives or designs list will be suspended of the Office's own motion where their entitlement to represent natural or legal persons before the national industrial property office of a Member State of the EEA has been suspended.

The national industrial property office of the Member State of the EEA concerned must, where aware of any such events, promptly inform the Office thereof. Before taking a decision to suspend the entry, which will be open to appeal, the Office will inform the representative and give them an opportunity to make comments (Decision 2009-1 of the Presidium of the Boards of Appeal of 16 June 2009 regarding Instructions to Parties in Proceedings before the Boards of Appeal).

2.3.7 Reinstatement in the list of professional representatives

Rule 78(4) EUTMIR and Article 64(4) CDIR

A person whose entry has been deleted or suspended will, upon request, be reinstated in the list of professional representatives if the conditions for deletion or suspension no longer exist.

A new request must be submitted in accordance with the normal procedure for obtaining an entry on the list of professional representatives (see paragraph 2.2 above).

2.4 Representation by an employee

Article 92(3) EUTMR and Article 77(3) CDR

Natural or legal persons whose domicile, principal place of business or real and effective industrial or commercial establishment is in the EEA may act before the Office through a natural person employed by them ('employee').

A natural person whose domicile is outside the EEA cannot designate an employee representative in the EU.

Employees of the abovementioned legal persons may also act on behalf of other legal persons who have economic connections with the first legal person (decision of 25/01/2012, R 0466/2011-4, FEMME LIBRE, § 10) (see paragraph 2.4.2 below). This applies even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the EEA (see paragraph 2.4.2 below). Where a legal person from outside the EEA is represented in this way, it is not required to appoint a professional representative within the meaning of Article 93(1) EUTMR, as an exception to the rule that parties to the

proceedings domiciled outside the EU are obliged to appoint a professional representative.

Rule 83(1)(h) EUTMIR

On the forms made available by the Office pursuant to Rule 83(1) EUTMIR, the employee signing the application or request must indicate their name and tick the checkboxes relating to employees, and fill in the field reserved for professional representatives on p. 1 of the form or the sheet with details relating to professional representatives.

Rule 12(b) EUTMIR and Rule 84(2)(e) EUTMIR

The name(s) of the employee(s) will be entered in the database and published under 'representatives' in the Community Trade Marks Bulletin.

2.4.1 Employees acting for their employer

Article 92(3) EUTMR and Article 77(3) CDR

Where employees act for their employer, this is not a case of professional representation under Article 93(1) EUTMR. As such, Rule 94(7)(d) EUTMIR is not applicable for the apportionment and fixing of costs in *inter partes* proceedings (decision of 03/02/2011, R 0898/2010-1, MYBEAUTY, § 11 and 12).

Natural or legal persons party to proceedings before the Office may act through their employees. No authorisation needs to be submitted in EUTM proceedings. The Office may ask for an authorisation only where there is some doubt. However, in RCD proceedings, the employee must file an authorisation. No other requirements, for example that the employees be qualified to represent third parties before national offices, need be met.

The Office will not generally verify whether there actually is an employee relationship with the party to the proceedings, but may do so where it has reason to doubt that an employment relationship exists, such as when different addresses are indicated or when one and the same person is nominated as the employee of different legal persons.

2.4.2 Representation by employees of a legal person with economic connections

Article 92(3) EUTMR and Article 77(3) CDR

Employees of legal persons may represent other legal persons provided that the two legal persons have economic connections with each other. Economic connections in this sense exist when there is economic dependence between the two legal persons, either in the sense that the party to the proceedings is dependent on the employer of the employee concerned, or vice versa. This economic dependence may exist:

- either because the two legal persons are members of the same group; or
- because of management control mechanisms.

In accordance with Article 2 of Commission Directive 80/723/EEC of 25/06/1980 (OJ L 195, 29/07/1980, p. 35) on the transparency of financial relations between Member States and public undertakings, and Article 10 of Commission Regulation No 240/96 of 31/01/1996 on the application of Article 85(3) of the Treaty to certain categories of technology transfer agreements (OJ L 31, 09/02/1996, p. 2), one enterprise has economic connections with another:

- if it holds more than half of the capital of the other; or
- if it holds more than half of the voting rights; or
- if it may appoint more than half the members of the managing body; or
- if it has the right to manage the affairs of the undertaking.

In accordance with the jurisprudence on Article 106 TFEU, there are also economic connections where both enterprises form an economic unit within which the subsidiary or branch does not have genuine autonomy in determining its marketing strategy.

On the other hand, the following are not sufficient to establish economic connections:

- a connection by virtue of a trade mark licensing agreement;
- a contractual relationship between two enterprises aimed at mutual representation or legal assistance;
- a mere supplier/client relationship, e.g. on the basis of an exclusive distribution or franchising agreement.

Where an employee representative wishes to rely on economic connections, they must tick the relevant section in the official form, and indicate their name and the name and address of their employer. It is recommended to give an indication of the nature of the economic connection, unless evident from the documents submitted. The Office will not generally make any enquiries in this regard, unless it has reason to doubt that economic connections exist. In this case, the Office may ask for further explanation and, where necessary, documentary evidence.

2.5 Legal representation

Legal representation refers to the representation of natural or legal persons through other persons in accordance with national law. For example, the president of a company is the legal representative of that company.

Furthermore, there is no representation within the meaning of the EUTMR when, in accordance with the applicable national law, a natural or legal person acts, in particular circumstances, through a legal representative, for example when minors are represented by their parents or by a custodian, or a company is represented by a

liquidator. In these cases, the person actually signing must demonstrate their capacity to sign, but is not required to provide an authorisation.

It should be borne in mind, however, that a legal person addressing the Office from outside the EEA must be represented by a professional representative within the EEA. This obligation exists for all proceedings before the Office, except for the act of filing an EUTM (representation is not required for applications to renew EUTMs or RCDs or for filing an application for inspection of files). See paragraph 3.2.1 below on the consequences of not appointing a representative, when representation is mandatory, once the EUTM application has been filed.

3 Appointment of a Professional Representative

3.1 Conditions under which appointment is mandatory

Subject to the exception outlined in paragraph 2.4 above, the appointment of a professional representative is mandatory for parties to proceedings before the Office that have neither domicile nor their principal place of business or a real and effective industrial or commercial establishment in the EEA. This obligation exists for all proceedings before the Office, except for the filing of an EUTM.

The same applies to international registrations designating the EU. For further information on this point, please consult the Guidelines, Part M, International Marks.

3.1.1 Domicile and place of business

The criterion for mandatory representation is the domicile or place of business or commercial establishment, not nationality. For example, a French national domiciled in Japan has to be represented, but an Australian national domiciled in Belgium does not have to be. The Office will determine this criterion with respect to the address indicated. Where the party to the proceedings indicates an address outside of the EEA, but relies on a place of business or establishment within the EEA, it must give the appropriate indications and explanations, and any correspondence with that party will have to be made to the address in the EEA. The criteria of the principal place of business or real and effective industrial or commercial establishment are not fulfilled where the party to the proceedings merely has a post office box or an address for service in the EEA, nor where the applicant indicates the address of an agent with a place of business in the EEA. A subsidiary is not a real and effective industrial or commercial establishment since it has its own legal personality (decision of 01/04/2014, R 1969/2013-4, DYNATRACE, § 17-19). Where the party to the proceedings indicates an address within the EU as its own address, the Office will not investigate the matter further unless exceptional reasons give rise to some doubt.

For legal persons, the domicile is determined in accordance with Article 65 TFEU. The actual seat or main domicile must be in the EEA. It is not sufficient that the law governing the company is the law of a Member State of the EEA.

3.1.2 The notion of 'in the EEA'

Article 92(2) EUTMR

In applying Article 92(2) EUTMR, the relevant territory is the territory of the EEA, which comprises the European Union and the countries of Iceland, Liechtenstein and Norway.

3.2 Consequences of non-compliance when appointment is mandatory

Article 93(1) EUTMR

Where a party to proceedings before the Office (applicant, proprietor/holder, opponent, cancellation applicant) is in one of the situations described under paragraph 3.1, but has failed to appoint a professional representative within the meaning of Article 93(1) EUTMR in the application or request, or where compliance with the representation requirement ceases to exist at a later stage (e.g. where the representative withdraws) the legal consequences depend on the nature of the proceedings concerned.

3.2.1 During registration

Article 92(2) EUTMR and Rule 9(3) EUTMIR
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Where representation is mandatory and the EUTM applicant fails to designate a professional representative in the application form, the examiner will invite the applicant to appoint a representative within a two-month time limit as part of the formality examination pursuant to Rule 9(3) EUTMIR. Where the applicant fails to comply with this communication, the EUTM application will be refused.

The same course of action will be taken where the appointment of a representative ceases to exist later during the registration process, up until any time before actual registration, that is to say even within the period between publication of the EUTMR application and registration of the EUTM.

Where a specific ('secondary') request is introduced on behalf of the EUTM applicant during the registration process, for example a request for inspection of files, a request for registration of a licence or a request for *restitutio in integrum*, the appointment of a representative need not be repeated, but the Office may in case of doubt request an authorisation. The Office will in this case communicate with the representative on file, and the representative for the recordal applicant, where different.

3.2.2 During opposition

For EUTM applicants, the preceding paragraphs apply. The procedure to remedy any deficiencies relating to representation will take place outside the opposition proceedings, which are terminated by the refusal of the EUTMR application where the applicant fails to comply with the communication.

Rule 15(2)(h)(ii) and Rule 17(4) EUTMIR

As regards the opponent, any initial deficiency relating to representation is a ground for inadmissibility of the opposition. Where the notice of opposition fails to contain the appointment of a representative, the examiner will, pursuant to Article 93(1) EUTMR, invite the opponent to appoint a representative within a two-month time limit. The opposition will be rejected as inadmissible unless this requirement is satisfied within the time limit set (see the Guidelines, Part B, Examination, Section 1, Proceedings, paragraph 2.4.2.6).

When a representative resigns, the proceedings continue with the opponent itself if it is from the EEA. The other party is informed of the resignation of the representative. If the party whose representative has resigned is from outside the EEA, a letter is sent informing the party concerned that, under the terms of Article 92(2) EUTMR, parties not having their domicile or their place of business or a real and effective industrial or commercial establishment in the EEA must be represented before the Office in accordance with Article 93(1) EUTMR in all proceedings other than the filing of the application, and that a new representative must be appointed within a two-month time limit.

Failure to do so will result in the opposition being rejected as inadmissible.

When there is a change of representative during opposition proceedings, the Office will inform the other party of such a change by sending a copy of the letter and of the authorisation (if submitted).

3.2.3 Cancellation

Rule 37(c)(ii) and Rule 39(3) EUTMIR

In cancellation proceedings, the above paragraph concerning opposition applies *mutatis mutandis* to the applicant for revocation or declaration of invalidity of an EUTM.

Where the proprietor of the EUTM is no longer represented, the examiner will invite them to appoint a representative. If they do not do so, procedural statements made by them will not be taken into account, and the request will be dealt with on the basis of the evidence that the Office has before it. However, the EUTM will not be cancelled simply because the EUTM proprietor is no longer represented after registration.

3.3 Appointment of a representative when not mandatory

Where the party to the proceedings before the Office is not obliged to be represented, they may nevertheless, at any time, appoint a representative within the meaning of Article 92 or 93 EUTMR.

Where a representative has been appointed, the Office will communicate solely with that representative (see paragraph 4 below).

3.4 Appointment of a representative

3.4.1 Explicit appointment

A representative is normally appointed in the official form of the Office initiating the procedure involved, for example the Application Form or the Opposition Form. More than one representative (up to a maximum of two) may be appointed by ticking the appropriate box 'multiple representatives' and giving the necessary details for each of the additional representatives.

A representative may also be appointed in a subsequent communication, whether signed by the party to the proceedings or by the representative (self-appointment). The appointment must be unequivocal.

If there is no representative in the proceedings, a communication made in respect of a particular procedure (e.g. registration or opposition), accompanied by an authorisation signed by the party to the proceedings, implies the appointment of a representative. This also applies where a General Authorisation is filed in the same way. For information about General Authorisations, see paragraph 5.2 below.

If there is already a representative in the proceedings, the represented person has to clarify if the former representative will be replaced.

3.4.2 Implicit appointment

Submissions, requests, etc. filed on behalf of the parties by a representative (hereafter: the 'new' representative) other than the one who appears in our register (hereafter: the 'old' representative) will initially be accepted.

The Office will then send a letter to the 'new' representative inviting them to confirm their appointment within one month. The letter will include a warning that if the representative does not reply within the time limit, the Office will assume that they have not been appointed as representative.

If the 'new' representative confirms their appointment, the submission will be taken into account and the Office will send further communications to the 'new' representative.

If the 'new' representative does not reply within one month or if they confirm that they are not the 'new' representative, the proceedings will go on with the 'old' representative. The submission and the answer from the 'new' representative will not be taken into account and will be forwarded to the 'old' representative for information purposes only.

In particular, when the submission leads to closure of the proceedings (withdrawals/limitations) the 'new' representative must confirm their appointment as representative so that the closure of proceedings or the limitation can be accepted. In any case, the proceedings will not be suspended.

3.4.3 Associations of representatives

Rule 76(9) EUTMIR

An association of representatives (such as firms or partnerships of lawyers or professional representatives or both) may be appointed rather than the individual representatives working within that association.

This must be indicated accordingly, with only the name of the association of representatives to be indicated, and not the names of the individual representatives working within that association. Experience has shown that in many instances equivocal indications are made. In such cases, the Office will, wherever possible, interpret such indications as the appointment and authorisation of an association of representatives, but if appropriate, advise the representative for future cases.

The appointment of an association of representatives automatically extends to any professional representative who, subsequent to the initial appointment, joins that association of representatives. Conversely, any representative who leaves the association of representatives automatically ceases to be authorised under that association. It is neither required nor recommended to provide information to the Office of the names of the representatives of whom the association consists. However, it is strongly recommended that any changes and information concerning representatives leaving the association be notified to the Office. The Office reserves the right to verify whether a given representative actually works within the association if this is justified under the circumstances of the case.

Article 93(1) EUTMR, Rule 76 EUTMIR

The appointment of an association of representatives does not result in departure from the general rule that only professional representatives within the meaning of Article 93(1) EUTMR may perform legal acts before the Office on behalf of third parties. Thus, any application, request or communication must be signed by a physical person possessing this qualification. The representative must indicate their name underneath the signature. They may indicate their individual ID number, if given by the Office, although it is not necessary to obtain an individual ID number, as the association ID number prevails.

3.4.4 ID numbers

On any form and in any communication sent to the Office, the representative's address and telecommunication details may, and preferably should, be replaced by the ID number attributed by the Office, together with the representative's name. Not only Office professional representatives entered on the list maintained by the Office (see paragraph 2.2 above), but also legal practitioners and associations of representatives, will have such ID numbers. Furthermore, where representatives or associations of representatives have several addresses, they will have a different ID number for each of those addresses.

The ID number can be found by consulting any of the files of the representative in question through our website: www.oami.europa.eu.

4 Communication with Representatives

Rule 77 EUTMIR

Any notification or other communication addressed by the Office to the duly authorised representative will have the same effect as if it had been addressed to the represented person, and any communication addressed to the Office by the duly authorised representative will have the same effect as if it originated from the represented person (decision of 24/11/2011, R 1729/2010-1, WENDY'S OLD FASHIONED HAMBURGERS, § 21).

Rule 1(1)(e) and Rules 67(2) and 76(8) EUTMIR

A party to the proceedings before the Office may appoint several representatives, in which case each of the representatives may act either jointly or separately, unless the authorisation given to the Office provides otherwise. The Office, however, will as a matter of course communicate only with the first-named representative, except in the following cases:

- where the applicant indicates a different address as the address for service in accordance with Rule 1(1)(e) EUTMIR;
- where the additional representative is appointed for a specific secondary procedure (such as inspection of files or opposition), in which case the Office will proceed accordingly.

Article 92(4) EUTMR and Rule 75(1) EUTMIR

Where there is more than one EUTM applicant, opponent or any other party to proceedings before the Office, a common representative must be expressly appointed by the EUTM applicant, etc. If the common representative has not appointed a professional representative and one of the other persons is obliged to, and does, appoint a professional representative, that representative will be considered to be the common representative for all those persons.

Articles 92 and 93 EUTMR and Rule 67 EUTMIR

Where a representative within the meaning of Articles 92 or 93 EUTMR has been appointed, the Office will communicate solely with that representative.

5 Authorisation

Articles 92(3) and 93(1) EUTMR and Rule 76 EUTMIR

In principle, professional representatives do not need to file an authorisation to act before the Office. However, any professional representative (legal practitioner or Office professional representative entered on the list, including an association of

representatives) acting before the Office must file an authorisation for insertion in the files if the Office expressly requires this or, where there are several parties to the proceedings in which the representative acts before the Office, if the other party expressly asks for this.

In such cases, the Office will invite the representative to file the authorisation within a specific time limit (see the Guidelines, Part A, General Rules, Section 1, Means of Communication, Time Limits). The letter will include a warning that if the representative does not reply within the time limit, the Office will assume that they have not been appointed as representative and proceedings will continue directly with the party represented. Where representation is mandatory, the party represented will be invited to appoint a new representative and paragraph 3.2 above applies. Any procedural steps, other than the filing of the application, taken by the representative will be deemed not to have been taken if the party represented does not approve them within a period specified by the Office.

In RCD proceedings, employees acting on behalf of natural or legal persons must file a signed authorisation for insertion in the files.

An authorisation must be signed by the party to the proceedings. In the case of legal persons, it must be signed by a person who is entitled, under the applicable national law, to act on behalf of that person. The Office will not verify this.

Simple photocopies of the signed original may be submitted, including by fax. Original documents become part of the file and, therefore, cannot be returned to the person who submitted them.

Authorisations may be submitted in the form of individual or general authorisations.

5.1 Individual authorisations

Article 93(3) EUTMR and Rule 76(1) and Rule 83(1)(h) CTMIR

Individual authorisations may be made on the form established by the Office pursuant to Rule 83(1)(h) EUTMIR. The procedure to which the authorisation relates must be indicated (e.g. 'concerning EUTM application number 12345'). The authorisation will then extend to all acts during the lifetime of the ensuing EUTM. Several proceedings may be indicated.

Individual authorisations, whether submitted on the form made available by the Office or on the representative's own form, may contain restrictions as to its scope.

5.2 General authorisations

Article 93(1) EUTMR and Rule 76(1) and Rule 83(1)(h) EUTMIR

A 'general authorisation' authorises the representative, the association of representatives or the employee to perform all acts in all proceedings before the Office, including, but not limited to, the filing and prosecution of EUTM applications, the filing of oppositions and the filing of requests for a declaration of revocation or invalidity, as

well as in all proceedings concerning registered Community designs and international marks. The authorisation should be made on the form made available by the Office, or a form with the same content. The authorisation must cover all proceedings before the Office and may not contain limitations. For example, where the text of the authorisation relates to the 'filing and prosecution of EUTM applications and defending them', this is not acceptable because it does not cover the authority to file oppositions and requests for a declaration of revocation or invalidity. Where the authorisation contains such restrictions, it will be treated as an individual authorisation.

5.2.1 Registration of general authorisations

Since April 2002, and in accordance with Communication No 2/03 of the President of the Office of 10/02/2003, representatives will no longer be issued an authorisation number and will not be notified in any way regarding the internal handling of authorisations following receipt at the Office. However, termination of issuing such authorisation numbers does not affect the issuing of ID numbers to representatives entered in the database of representatives.

5.3 Consequences where authorisation expressly requested by the Office is missing

- a) If representation is not mandatory, the proceedings will continue with the person represented.
- b) If representation is mandatory, paragraph 3.2 above will apply.

6 Withdrawal of a Representative's Appointment or Authorisation

A withdrawal or change of representative may be brought about by an action of the person represented, the previous representative or the new representative.

6.1 Action taken by the person represented

Rule 79 EUTMIR

The person represented may at any time revoke, in a written and signed communication to the Office, the appointment of a representative or the authorisation granted to them. Revocation of an authorisation implies revocation of the representative's appointment.

Rule 76(6) EUTMIR

Where the person represented declares the revocation to their representative and not to the Office, this will have no effect on any proceedings before the Office until the revocation is communicated to the Office. Where the party to the proceedings is obliged to be represented, paragraph 3.2 above will apply.

6.2 Withdrawal by the representative

The representative may at any time declare, by a signed communication to the Office, that they withdraw as a representative. The request must indicate the number of proceedings (e.g. EUTM/RCD number, opposition etc.). If they declare that representation will as from that moment be taken over by another representative, the Office will record the change accordingly and correspond with the new representative. If the represented person is obliged to be represented, paragraph 3.2 above will apply.

7 Death or Legal Incapacity of the Party Represented or Representative

7.1 Death or legal incapacity of the party represented

Rule 76(7) EUTMIR

In the event of the death or legal incapacity of the authorising party, the proceedings will continue with the representative, unless the authorisation contains provisions to the contrary.

Rule 73(1)(a) EUTMIR

Depending on the proceedings, the representative will have to apply for registration of a transfer to the successor in title. However, the representative may apply for an interruption to the proceedings. For more information on the interruption of opposition proceedings following death or legal incapacity, see the Guidelines, Part C, Opposition, Section 1, Procedural Matters.

For insolvency proceedings, once a liquidator has been nominated, they will assume the capacity to act on behalf of the bankrupt person and may, or in the case of mandatory representation must, appoint a new representative, or confirm the appointment of the existing representative.

For more information on insolvency proceedings, see the Guidelines, Part E, Register Operations, Section 3, EUTMs as Objects of Property, Chapter 5, Insolvency Proceedings or Similar Proceedings.

7.2 Death or legal incapacity of the representative

Rule 73(1)(c) and (3)(a) and (b) EUTMIR

In the event of the death or legal incapacity of a representative, the proceedings before the Office will be interrupted. If the Office has not been informed of the appointment of a new representative within a period of three months after the interruption, the Office will:

- where representation is not mandatory, inform the authorising party that the proceedings will now be resumed with them;

- where representation is mandatory, inform the authorising party that the legal consequences will apply, depending on the nature of the proceedings concerned (e.g. the application will be deemed to have been withdrawn, or the opposition will be rejected), if a new representative is not appointed within two months from the date of notification of that communication (decision of 28/09/2007, R 0048/2004-4, PORTICO, paras 13 and 15).

Annex 1

COUNTRY	National terminology for legal practitioner	Entitlements/specific rules for representing clients in trade mark and design matters	National terminology for person with the special qualification – patent/trade mark/design attorney (the Office PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
Austria	Rechtsanwalt	Lawyers are fully entitled	Patentanwalt	Notaries may represent third parties before the Austrian central industrial property office because of their special professional qualification. Therefore, notaries may apply to be entered on the list of professional representatives.
Belgium	Avocat, Advocaat, Rechtsanwalt	Lawyers are fully entitled but a person cannot be a lawyer and a professional representative at the same time.	In Dutch: Merkgemachtigde In French: Conseil en Marques/Conseils en propriété industrielle In German: Patentanwalt	Falls under the Benelux Treaty for Intellectual Property (Article 4.1). Any person having an address in Benelux territory may represent clients in IP matters. The entitlement is not conditional upon the need for special professional qualifications; persons applying to be entered on the list must have regularly acted as professional representatives for at least five years before a central industrial property office of a Member State.
Bulgaria	Адвокат/Практикуващ Право Advokat/Praktikuvasho Pravo	Lawyers are not entitled	Spetsialist po targovski marki/Spetsialist po dizayni Специалист по търговски марки/Специалист по дизайни	Special professional qualification is required. The Bulgarian Patent Office is able to certify that someone has acted as representative for five years.
Croatia	Odvjetnik	Lawyers are fully entitled	Zastupnik Za Žigove	Special professional qualification is required. The 'authorised representative' is the person who passed an exam for TM representatives before the Croatian Office.
Czech Republic	Advokát	Lawyers are fully entitled	Patentový zástupce	The Czech Republic has a two-part examination. Persons who have passed part B (trade marks and appellation of origin) may act as representatives in this field and hence be entered on the list of Article 93 EUTMR. Patent attorneys, who have passed both parts of the examination, are entitled to represent applicants in all procedures before the Office.

COUNTRY	National terminology for legal practitioner	Entitlements/specific rules for representing clients in trade mark and design matters	National terminology for person with the special qualification – patent/trade mark/design attorney (the Office PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
Cyprus	Δικηγόρος Dikigoros	Lawyers ONLY are entitled	nihil	Not relevant.
Denmark	Advokat	Lawyers are fully entitled	Varemaerkefuldmaegtig	The entitlement is not conditional upon the need for special professional qualifications; persons applying to be entered on the list must have regularly acted as professional representatives for at least five years before a central industrial property office of a Member State.
Estonia	Jurist, Advokaat	Lawyers are not entitled unless dually qualified as IP agent.	Patendivolinik	The examination consists of two independent parts: on the one hand, patents and utility models and, on the other, trade marks, designs and geographical indications. Both types of representatives are 'patendivolinik'. Persons who have only passed the patents part of the examination may not be entered on the list of Article 93 EUTMR. Entry on the list is open to persons who have passed the trade marks, industrial designs and geographical indications part.
Finland	Asianajaja, Advokat	Lawyers are fully entitled	In Finnish: Tavamerkkiasiamies In Swedish: Varumaerkesombud	As from 1 July 2014, the Finnish Patent Office will issue certificates to those professional representatives who comply with the conditions laid down in Article 93(2) EUTMR to be entered in the list of professional representatives.

COUNTRY	National terminology for legal practitioner	Entitlements/specific rules for representing clients in trade mark and design matters	National terminology for person with the special qualification – patent/trade mark/design attorney (the Office PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
France	Avocat	Legal practitioners are entitled but a person cannot be a lawyer and a professional representative at the same time.	Conseil en Propriété Industrielle marques et modèles ou juriste.	<p>INPI maintains two different lists:</p> <p>The Liste des Conseils en propriété industrielle and the Liste des Personnes qualifiées en Propriété industrielle.</p> <p>Only persons on the 'Liste des Conseils en propriété industrielle' are entitled to represent third parties before the French Patent Office. Therefore, only these persons are entitled to be on the Office professional representatives list. These people appear on the block certificate.</p> <p>A 'Conseil en PI' is the person who works for an Association (Cabinet). The 'Personne qualifiée en PI' is the person who works for a private company (e.g. in the trade marks department). They are automatically switched from one list to the other in France.</p> <p>Since the 'personne qualifiée' acquired the same professional qualifications as the 'Conseils' they are entitled to apply for entry on our list, but they have to provide an individual certificate signed by the Directeur des Affaires Juridiques et Internationales.</p>
Germany	Rechtsanwalt	Lawyers are fully entitled	Patentanwalt	A 'Patentassessor' is not qualified to act as a professional representative. He may act as an employee representative.
Greece	Δικηγόρος - Dikigoros	ONLY Lawyers are entitled	nihil	Not relevant.

COUNTRY	National terminology for legal practitioner	Entitlements/specific rules for representing clients in trade mark and design matters	National terminology for person with the special qualification – patent/trade mark/design attorney (the Office PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
Hungary	Ügyvéd	Legal advisers are not allowed to act as legal practitioners in procedures relating to industrial property matters. Therefore, they may not be entered on the Office's list of professional representatives.	Szabadalmi ügyvivő	A special professional qualification is required to be a patent attorney. Patent attorneys are entitled to represent clients in all procedures before the Office. Notaries are not allowed to act as legal practitioners in procedures relating to industrial property matters. Therefore, they may apply to be entered on the Office's list of professional representatives.
Ireland	Barrister, Solicitor	Lawyers are fully entitled	Trade mark agent	The person has to be entered in the Register of TM Agents.
Italy	Avvocato	Lawyers are fully entitled	Consulenti abilitati/Consulenti in Proprietà Industriale	The person has to be entered in the Register of 'Consulenti in Proprietà Industriale' ('Albo') kept by the Bar ('Consiglio dell'Ordine') and the register communicated to the Italian trade mark and patent office ('UIBM').
Latvia	Advokāts	Lawyers can only represent clients whose permanent residence is in the European Union. Clients whose permanent residence is not in the EU have to be represented by a professional representative.	Patentu pilnvarotais/Preču zīmju aģents/Profesionāls patentpilnvarotais	There is a trade mark examination. Clients whose permanent residence is not in the EU have to be represented by a professional representative. Notaries cannot act as representatives by right.
Lithuania	Advokatas	Lawyers can only represent clients whose permanent residence is in the European Union. Clients whose permanent residence is not in the EU have to be represented by a professional representative.	Patentinis patikėtinis	Clients whose permanent residence is not in the EU have to be represented by a professional representative. Notaries cannot act as representatives by right.

COUNTRY	National terminology for legal practitioner	Entitlements/specific rules for representing clients in trade mark and design matters	National terminology for person with the special qualification – patent/trade mark/design attorney (the Office PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
Luxembourg	Avocat/Rechtsanwalt	Lawyers are fully entitled but a person cannot be a lawyer and a professional representative at the same time.	In French: Conseil en Marques/Conseils en propriété industrielle In German: Patentanwalt	Falls under the Benelux Treaty for Intellectual Property (Article 4.1). Any person having an address in the Benelux territory may represent clients in IP matters. The entitlement is not conditional upon the need for special professional qualifications; persons applying to be entered on the list must have regularly acted as professional representatives for at least five years before a central industrial property office of a Member State.
Malta	Avukat, Prokuratur Legali	Lawyers are fully entitled .		Anyone with a legal background, including notaries, can act as a trade mark agent. No documentary proof of the qualification of legal practitioners acting as trade mark agents is required.
Poland	Adwokat, radca prawny	Lawyers are not fully entitled . The lawyer can only represent in opposition and cancellation (invalidity) proceedings.	Rzecznik Patentowy	The representative has to be on the list of patent attorneys maintained by the Polish Patent Office. In Poland, a trade mark attorney must be appointed for any proceeding other than opposition and cancellation. Trade mark attorneys must have passed the appropriate examinations.
Portugal	Avogado	Lawyers are fully entitled .	Agente Oficial da Propriedade Industrial	Five years' experience or special qualifications. A notary is not a legal practitioner and, therefore, may apply to be entered on the list.
Romania	Avocat	Lawyers are not fully entitled .	Consilier în proprietate industrială	In Romania, three lists are maintained. Representatives are required to have special qualifications or five years' experience and be a member of a national chamber. A special professional qualification is required to be a professional representative.

COUNTRY	National terminology for legal practitioner	Entitlements/specific rules for representing clients in trade mark and design matters	National terminology for person with the special qualification – patent/trade mark/design attorney (the Office PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
Slovakia	Advokát, Komerčný Právnik	Lawyers are fully entitled .	Patentový zástupca	In Slovakia, legal practitioners ('advokáts') listed in the Slovak BAR Association may act as representatives before the Industrial Property Office of the Slovak Republic.
Slovenia	Odvetnik	Lawyers are fully entitled .	Patentni zastopnik	Legal practitioners who are not entered in the Slovenian register as patent/trade mark agents are not allowed to represent parties before the Office. Notaries are not entitled by right.
Spain	Abogado	Lawyers are fully entitled .	Agente Oficial de la Propiedad Industrial	Entry on the list is conditional upon an examination.
Sweden	Advokat	Lawyers are fully entitled .	Patentombud	Entitlement is not conditional upon the need for special professional qualifications; persons applying to be entered on the list must have regularly acted as professional representatives for at least five years before a central industrial property office of a Member State.
The Netherlands	Advocaat	Lawyers are fully entitled but a person cannot be a lawyer and a professional representative at the same time.	Merkengemachtigde	Falls under the Benelux Treaty for Intellectual Property (Article 4.1). Any person having an address on Benelux territory can represent clients in IP matters. The entitlement is not conditional upon the need for special professional qualifications; persons applying to be entered on the list must have regularly acted as professional representatives for at least five years before a central industrial property office of a Member State.
United Kingdom	Barrister, Solicitor, Registered Trade Mark Attorney	Lawyers are fully entitled .	Registered Trade Mark Attorney	Upon examination.

Annex 2

The list below shows the countries where a title exists for a person who is only entitled to represent in design matters. If the country is not on the list it means that the relevant entitlement also covers trade mark matters and so this person would not be on the special Design list.

COUNTRY	Design Attorney
Belgium	Modellengemachtigde, Conseil en modèles
Czech Republic	Patentový zástupce (the same denomination as trade mark agent)
Denmark	Varemaerkefuldmaegtig
Estonia	Patendivolinik
Finland	Mallioikeusasiamies/, Mönsterrättsombud
Ireland	Registered Patent Agent
Italy	Consulente in brevetti
Latvia	Patentpilnvarotais dizainparaugu lietas
Luxembourg	Conseil en Propriété Industrielle
Romania	Consilier de proprietate industrială
The Netherlands	Modellengemachtigde
United Kingdom	Registered Patent Agent