

***GUIDELINES FOR EXAMINATION IN THE
EUROPEAN UNION INTELLECTUAL
PROPERTY OFFICE (TRADE MARKS AND
DESIGNS) ON EUROPEAN UNION TRADE
MARKS***

PART E

REGISTER OPERATIONS

SECTION 5

INSPECTION OF FILES

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1 General Principles

Articles 87(1)+(5), 88 and 90(1)+(2) EUTMR
Articles 72, 74, and 75 CDR
Rules 92 and 93 EUTMIR
Article 69(1), Articles 74, 75, 77 and 78 CDIR
Annex I A(30) EUTMR

The principle established under the European Union trade mark and design system is that:

- the ‘Register of European Union Trade Marks’ and the ‘Register of Community Designs’ contain all particulars relating to European Union trade mark and Community design applications and registered European Union trade marks and Registered Community designs; and
- the ‘files’ contain all correspondence and decisions relating to those trade marks and designs.

Both the Registers and the files of the Office are in principle open to inspection by the public. However, before publication of an EUTM application, a Community Design registration or when a Registered Community Design (RCD) is subject to deferred publication, inspection of files is possible only in exceptional cases (see paragraphs 4.2.1 and 4.2.2 below).

All the information in the Registers is stored in the Office’s databases and, where applicable, published in the EUTM/RCD Bulletin in electronic format.

This section of the Guidelines deals specifically with inspection of files.

Inspection of the files may involve:

- inspection of the registers;
- obtaining certified or uncertified extracts of the registers;
- inspection of the actual file document(s);
- the communication of information contained in the files, implying communication of specific information contained in the files without supplying the actual file document(s);
- obtaining certified or uncertified copies of documents contained in the files.

In these Guidelines, the term ‘inspection of the files’ is used to cover all of the abovementioned forms of inspection of files, unless otherwise stated.

The provisions in the CDR and CDIR dealing with inspection of files of Community designs are almost identical to the equivalent provisions of the EUTMR and EUTMIR, respectively. Therefore, the following applies *mutatis mutandis* to Community designs. Where the procedure is different, these differences are specified under a separate sub-heading.

2 The Registers of European Union Trade Marks and Community Designs

Article 87(1)+(5) EUTMR
Article 72 CDR
Article 69 CDIR

The Registers are maintained electronically and consist of entries in the Office's database systems. They are available on the Office website for public inspection, except, in the case of Community designs, to the extent that Article 50(2) CDR provides otherwise. Insofar as some data contained in the Registers are not yet available online, the only means of access is by a request for information or by obtaining certified or uncertified extracts or copies of the file documents from the Registers subject to the payment of a fee.

3 Inspection of the Registers

3.1 Information contained in the Registers

3.1.1 The Register of European Union trade marks

Article 87(2),(3) and (4) EUTMR
Decision No EX-00-1 of the President of the Office of 27 November 2000 concerning entries in the Register of Community Trade Marks
Decision No EX-07-1 of the President of the Office of 16 March 2007 concerning entries in the Register of Community Trade Marks

The Register of European Union Trade Marks contains the information specified in Article 87(2),(3) and (4) EUTMR and any other items determined by the Executive Director of the Office.

3.1.2 The Register of Community designs

Article 50 CDR
Articles 69 and 73 CDIR
Decision No EX-07-2 of the President of the Office of 16 March 2007 concerning entries in the Register of Community Designs

The Register of Community Designs contains the information specified in Article 69 CDIR and any other items determined by the Executive Director of the Office.

In accordance with Article 73(a) CDIR, where the registered Community designs are subject to a deferment of publication pursuant to Article 50(1) CDR, access to the Register to persons other than the holder shall 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.

4 Inspection of Files

4.1 Persons/Entities authorised to request access to the files

The rules and degree of access to the files vary according to who requests inspection.

The Regulations and the Implementing Regulations differentiate between the following three categories:

- the applicant/proprietor of the European Union trade mark or Community design;
- third parties;
- courts or authorities of the Member States.

Inspection of the files by courts or authorities of the Member States is covered by the system of administrative cooperation with the Office (see paragraph 7 below).

4.2 Documents that constitute the files

The files relating to an EUTM or RCD consist of all correspondence between the applicant/proprietor and the Office and all documents established in the course of examination, as well as any correspondence concerning the ensuing European Union trade mark or Community design. The file does not include trade mark search reports provided by national Offices.

Documents relating to opposition, cancellation, invalidity and appeal proceedings before the Office or other proceedings, such as recordals (transfer, licence etc.), also form part of the files.

Where the parties make use of the mediation services offered by the Office in accordance with Decision No 2011-1 of the Presidium of the Boards of Appeal of 14 April 2011 on the amicable settlement of disputes, or the conciliation services in accordance with Decision No 2014-2 of the Presidium of the Boards of Appeal of 31 January 2014, on the friendly settlement of disputes by the competent Board, all correspondence relating to that mediation or conciliation are excluded from inspection of files.

Article 88a EUTMR Article 76 CDIR

Even where an EUTM application is no longer pending or an EUTM registration or CD registration cease to have effect, inspection of the respective files remains possible just as if the application or registration were still pending or effective, as long as the files are kept. An EUTM application or CD application ceases to be pending when it is rejected, or when the application has been withdrawn or deemed to be withdrawn, and an EUTM registration or CD registration ceases to have effect when it expires or is surrendered, declared invalid or revoked. The Office will keep the complete files for at least five years from the end of the year in which such an event occurs.

4.2.1 The files relating to European Union trade mark applications

Articles 39 and 88 EUTMR
Rules 12 and 85 EUTMR

The files relating to European Union trade mark applications are available for inspection of files once the application has been published by the Office in the European Union Trade Marks Bulletin. The day of publication is the date of issue shown in the European Union Trade Marks Bulletin and is reflected under the INID code 442 in the Register. The dissemination of data relating to unpublished EUTM applications by means of online access or otherwise does not constitute publication of the application within the meaning of Article 39 EUTMR and Rule 12 EUTMR.

Before the publication of the application, inspection of the files is restricted and possible only if one of the following conditions is fulfilled:

- the applicant for inspection is the EUTM applicant/proprietor; or
- the EUTM applicant has consented to inspection of the file relating to the EUTM application (see paragraph 6.12.1 below); or
- the applicant for inspection can prove that the EUTM applicant has stated that it will invoke the rights under the EUTM, once registered, against the applicant for inspection (see paragraph 6.12.2 below).

Articles 36(3) and 88a EUTMR

The applicant always has access to the files relating to its own EUTM application. This comprises the following:

- the EUTM application, even where the Office has refused to attribute a filing date to it or where the application does not fulfil the minimum requirements for the attribution of a filing date, in which case the application will not be dealt with as an EUTM application and, legally speaking, there is no EUTM application;
- the files for as long as they are kept (see paragraph 4.2), even after the EUTM application has been rejected or withdrawn.

4.2.2 The files relating to Community design applications

Articles 50 and 74 CDR Article 70 and Article 74(2) CDIR

The files relating to Community design applications, or applications for a registered Community design that are subject to deferment of publication, which have been surrendered before or on the expiry of that period or, pursuant to Article 50(4) CDR, are deemed from the outset not to have had the effects specified in that Regulation, are available for inspection only if one of the following conditions is fulfilled:

- the applicant for inspection is the CD applicant/proprietor; or
- the applicant for the Community design has consented to inspection of the file relating to the Community design application; or
- the applicant for inspection has established a legitimate interest in the inspection of the Community design application, in particular where the applicant for the Community design has stated that after the design has been registered he/she will invoke the rights under it against the person requesting the inspection.

In the case of an application for multiple Community designs, this inspection restriction will only apply to information relating to the Community designs subject to deferment of publication, or to those that are not eventually registered, either due to rejection by the Office or withdrawal by the applicant.

4.2.3 The files relating to registered European Union trade marks

The files relating to European Union trade marks after registration are available for inspection.

4.2.4 The files relating to registered Community designs

The files relating to registered Community designs are available for inspection once the registration has been published by the Office in the Community Designs Bulletin. The day of publication is the date of issue shown in the Community Designs Bulletin and is reflected under the INID code 45 in the Register.

Where inspection of the files relates to a registered Community design that is subject to deferment of publication under Article 50 CDR, or which, being subject to such deferment, has been surrendered before or on the expiry of that period or which, pursuant to Article 50(4) CDR, is deemed from the outset not to have had the effects specified in that Regulation, inspection of files of the registration is restricted and possible only if one of the following conditions is fulfilled:

- the holder of the Community design has consented to inspection of the file relating to the Community design registration;
- the applicant for inspection has established a legitimate interest in the inspection of the files of the Community design registration, in particular where the holder of

the Community design has taken steps with a view to invoking the rights under it against the person requesting the inspection.

In the case of an application for multiple Community designs, this inspection restriction will apply only to information relating to the Community designs subject to deferment of publication, or to those that are not eventually registered either due to rejection by the Office or withdrawal by the applicant.

4.2.5 The files relating to international registrations designating the European Union

Articles, 88(8), 151 and 152 EUTMR Article 106(d) CDR Article 71 CDIR

International registrations are exclusive rights administered by the International Bureau of the World Intellectual Property Organization (WIPO) in Geneva according to the Madrid Protocol (in the case of trade marks) and the Geneva Act (in the case of designs). WIPO processes the applications and then sends them to the Office for examination in accordance with the conditions specified in the EUTMR and in the CDR. These registrations have the same effect as applying directly for a European Union trade mark or a registered Community design.

The files kept by the Office relating to international trade mark registrations designating the European Union may be inspected on request as from the date of publication referred to in Articles 152(1) and 88(8) EUTMR.

The Office provides information on international registrations of designs designating the EU in the form of an electronic link to the searchable database maintained by the International Bureau (<http://www.wipo.int/designdb/hague/en/>). The files kept by the Office may relate to refusal of international design pursuant to Article 106e CDR and the invalidation of the international design pursuant to Article 106f CDR. They may be inspected subject to the restrictions pursuant to Article 72 CDIR (see paragraph 5, Parts of the File Excluded from Inspection below).

5 Parts of the File Excluded from Inspection

5.1 Excluded documents

Articles 88(4) and 137 EUTMR Article 72 CDIR

Certain documents contained in the files are excluded from inspection of files, namely:

- documents relating to the exclusion of or objection to Office staff, for example on the grounds of suspicion of partiality;
- draft decisions and opinions and all other internal documents used for preparing decisions and opinions;

- parts of the file for which the party concerned expressed a special interest in keeping confidential;
- all documents relating to the invitation of the Office to find a friendly settlement, except those that have an immediate impact on the trade mark or design, such as limitations, transfers etc., and have been declared to the Office. (For mediation and conciliation proceedings, see paragraph 4.2 above).

5.1.1 Documents relating to exclusion or objection

Article 88(4) EUTMR
Article 72(a) CDIR

This exception relates to documents in which an examiner states that they consider themselves excluded from participating in the case, as well as documents in which such a person makes observations about an objection by a party to the proceedings on the basis of a ground for exclusion or suspicion of partiality. However, it does not relate to letters in which a party to the proceedings raises, either separately or together with other statements, an objection based on a ground for exclusion or suspicion of partiality, or to any decision on the action to be taken in the cases mentioned above. The decision taken by the competent instance of the Office, without the person who withdraws or has been objected to, will form part of the files.

5.1.2 Draft decisions and opinions and internal documents

Article 88(4) EUTMR
Article 72(b) CDIR

This exception relates to documents used for preparing decisions and opinions, such as reports and notes drafted by an examiner that contain considerations or suggestions for dealing with or deciding on a case, or annotations containing specific or general instructions on dealing with certain cases.

Documents that contain a communication, notice or final decision by the Office in relation to a particular case are not included in this exception. Any document to be notified to a party to the proceedings will take the form of either the original document or a copy thereof, certified by or bearing the seal of the Office, or a computer print-out bearing that seal. The original communication, notice or decision or copy thereof will remain in the file.

The Notes and the Guidelines of the Office relating to general procedure and treatment of cases, such as these Guidelines, do not form part of the files. The same is true for measures and instructions concerning the allocation of duties.

5.1.3 Parts of the file for which the party concerned expressed a special interest in keeping confidential

Article 88(4) EUTMR
Article 72(c) CDIR

Point in time for the request:

Keeping all or part of a document confidential may be requested on its submission or at a later stage, as long as there is no pending request for an inspection of files. During inspection of files proceedings confidentiality may not be requested.

Parts of the file for which the party concerned expressed a special interest in keeping confidential before the application for inspection of files was made are excluded from inspection of files, unless their inspection is justified by an overriding legitimate interest of the party seeking inspection.

The party concerned must have expressly invoked, and sufficiently justified, a special interest in keeping the document confidential when they submitted it. The official forms of the Office are excluded from inspection of files.

Where the party concerned requests confidentiality but does not justify its interest in keeping the document confidential, the Office will reject the request for confidentiality and will invite the party concerned to file observations within two months.

If a special interest in keeping a document confidential is invoked, the Office must check whether that special interest is sufficiently demonstrated. The documents falling into this category must originate from the party concerned (e.g. EUTM/RCD applicant, opponent). The special interest must be due to the confidential nature of the document or its status as a trade or business secret. This may be the case, for example, where the applicant has submitted underlying documentation as evidence in respect of a request for registration of a transfer or licence. Where the Office concludes that the requirements for keeping documents confidential are not met, it will communicate with the person who filed the documents and make a decision. The applicant may submit evidence in such a way that avoids revealing parts of the document or information that the applicant considers confidential, as long as the parts of the document submitted contain the required information. For example, where contracts or other documents are submitted as evidence for a transfer or licence, certain information may be blacked out before being submitted to the Office, or certain pages may be omitted altogether.

In the event that the Office invites the parties to opposition, cancellation or invalidity proceedings to consider a friendly settlement, all corresponding documents referring to those proceedings are considered confidential and in principle not open to inspection of files.

Access to documents that the Office has accepted as being confidential and thus, excluded from inspection, may nevertheless be granted to a person who demonstrates an overriding legitimate interest in inspecting the document. The overriding legitimate interest must be that of the person requesting inspection.

If the file contains such documents, the Office will inform the applicant for inspection of files about the existence of such documents within the files. The applicant for inspection of files may then decide whether or not it wants to file a request invoking an overriding legitimate interest. Each request must be analysed on its own merits.

The Office must give the party requesting inspection the opportunity to present its observations.

Before taking a decision, the request, as well as any observations, will have to be sent to the party concerned, who has a right to be heard.

Article 59 EUTMR
Article 56 CDR

The Office must make a decision as to whether to grant access to such documents. Such a decision will be subject to appeal by the adversely affected party.

5.2 Access for applicant or proprietor to excluded documents

Article 88(4) EUTMR
Article 72 CDIR

Where an applicant or proprietor requests access to their own file, this will mean all documents forming part of the file, excluding only those documents referred to in Article 88(4) CTMR and Article 72(a) and (b) CDIR.

In *inter partes* proceedings where the other party concerned (the opponent or applicant for revocation or declaration of invalidity) has shown a special interest in keeping its document confidential vis-à-vis third parties, it will be informed that the documents cannot be kept confidential with respect to the other party to the proceedings and it will be invited to either disclose the documents or withdraw them from the proceedings. If it confirms the confidentiality, the documents will not be sent to the other party and will not be taken into account by the Office in the decision.

If, on the other hand, it wants the documents to be taken into account but not available for third parties, the documents can be forwarded by the Office to the other party to the proceedings, but will not be available for inspection by third parties (for opposition proceedings, see the Guidelines, Part C, Opposition, Section 1, Procedural Matters).

6 Procedures Before the Office Relating to Applications for Inspection of Files

6.1 Certified or uncertified extracts of the registers

6.1.1 Extracts from the Register of European Union trade marks

Article 87(7) CTMR

The Office shall provide certified or uncertified extracts from the Register on request, on payment of a fee.

Requests for an extract from the Register of European Union Trade Marks may be submitted by filing the official 'Application for an Inspection of File' form, available in all languages of the Office or any equivalent request.

Any language version of this form may be used, provided that it is completed in one of the languages referred to in paragraph 6.7 below.

Rules 80 and 82 EUTMIR

An application for inspection of files may be submitted as a signed original form by fax, post or electronic means (see paragraph 6.5 below).

6.1.2 Extracts from the Register of Community Designs

Article 50 CDR
Articles 69 and 73 CDIR

Subject to Article 73 CDIR, the Office shall provide certified or uncertified extracts from the Register on request, on payment of a fee.

Where the registration is subject to a deferment of publication, pursuant to Article 50(1) CDR, certified (or uncertified) extracts from the Register shall contain only 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, except where the request has been made by the holder or his/her representative.

Requests for an extract from the Register of Community Designs may be submitted by filing the official 'Application for an Inspection of File' form, available in all languages of the Office or any equivalent request.

Any language version of this form may be used, provided that it is completed in one of the languages referred to in paragraph 6.7 below.

Articles 65, 66, 67 CDIR

An application for inspection of files may be submitted as a signed original by fax, post or electronic means (see paragraph 6.5 below).

6.2 Certified or uncertified copies of file documents

The Office shall provide certified or uncertified copies of documents constituting the files (see paragraph 4.2 above) on request, on payment of a fee.

Requests for certified or uncertified copies of documents may be submitted by filing the official 'Application for an Inspection of File' form, available in all languages of the Office or any equivalent request.

Any language version of this form may be used, provided that it is completed in one of the languages referred to in paragraph 6.7 below.

Certified and uncertified copies of the EUTM and RCD applications, registration certificates, extracts of the Register and copies of the documents in the file (available only for EUTM), may also be requested as an alternative to the downloadable copies available free of charge (see paragraph 6.4 below).

Certified copies of the EUTM application or the RCD registration certificate will only be available when a filing date has been accorded (for EUTM filing date requirements, see the Guidelines, Part B, Examination, Section 2, Formalities; for RCD filing date requirements, see the Guidelines on Examination of Applications for Registered Community Designs).

In the case of an application for multiple designs, certified copies of the application will only be available for those designs that have been accorded a filing date.

Where the EUTM application or RCD registration has not yet been published, a request for certified or uncertified copies of the file documents will be subject to the restrictions listed in paragraphs 4.2.1 to 4.2.4 above.

It should be borne in mind that the certified copy of the application or registration only reflects the data on the date of application/registration. The trade mark or design may have been the subject of a transfer, surrender, partial surrender or other act affecting its scope of protection, which will not be reflected in the certified copy of the EUTM application form or EUTM/RCD registration certificate. Up-to-date information is available from the electronic database or by requesting a certified extract of the Register (see paragraph 6.1 above).

6.3 Online access to the files

The contents of the files are available in the 'Correspondence' section of the file in the Office's online tool on the Office's website.

Providing the EUTM application or the CD registration (not subject to a deferment) has been published, registered users of the website can consult these files free of charge.

6.4 Downloadable certified copies

Decision No EX-13-2 of the President of the Office of 26 November 2013 concerning electronic communication with and by the Office ('Basic Decision on Electronic Communication'), Article 6.

Certified and uncertified copies of the EUTM and RCD applications, registration certificates, extracts of the Register and copies of the documents in the file (available only for EUTM) can be automatically generated and downloaded via a direct link from the Office's website via the Office's online tool, from within the Inspection of Files e-filing form and from within the files for a selected EUTM or RCD.

In the list of documents, an icon appears next to the document for which a certified or uncertified copy can be downloaded. Clicking on the icon will generate a certified or uncertified copy of the document in PDF format.

The PDF document is composed of a cover page in the five Office languages, introducing the certified document and containing a unique identification code for the original document, followed by the certified document itself (EUTM application form, EUTM registration certificate or RCD registration certificate). Each page of the document should bear a header and footer containing important elements in order to

guarantee the authenticity of the certified copy: a unique identification code, a 'copy' stamp, the signature of the Office staff member responsible for issuing certified copies, the date of the certified copy, the EUTM/RCD number and page number. The date indicated is the date when the certified copy was automatically generated.

The automatically generated certified copies have the same value as certified copies sent on paper upon request, and can either be used in electronic format or printed.

When an authority receives a certified copy, it can verify the original document online using the unique identification code given in the certified copy. A link 'Verify certified copies' is available under the 'Databases' section of the Office's website. Clicking on the link will bring up a screen with a box in which the unique identification code can be entered in order to retrieve and display the original document from the Office's online systems.

It should be borne in mind that the certified copy only reflects the data on the date of application/registration. The trade mark or design may have been the subject of a transfer, surrender, partial surrender or other act affecting its scope of protection, which will not be reflected in the certified copy of the EUTM application form or EUTM/RCD registration certificate. Up-to-date information is available from the electronic database or by requesting a certified extract of the Register or database.

6.5 Online applications for inspection of files

Applications for inspection may be filed online. Users may access the application form by clicking on the icon in the detail page of a selected EUTM or RCD. They will then be re-directed to their user account where they will be invited to login and complete the application for inspection of files requesting certified or uncertified copies of specific documents.

6.6 Written applications for inspection of files

Rule 79 EUTMIR Article 65 CDIR

Applications for inspection may be submitted by filing the official 'Application for an Inspection of File' form, available in all languages of the Office or any equivalent request.

Any language version of this form may be used, provided that it is completed in one of the languages referred to in paragraph 6.7 below.

Rules 80 and 82 EUTMIR Article 67 CDIR

An application for inspection of files may be submitted as a signed original form by fax, post or electronic means (see paragraph 6.5 above).

6.7 Languages

Applications for inspection of files must be filed in one of the languages indicated below.

6.7.1 For EUTM or CD applications

Rule 95(a), Rules 96 and 98 EUTMIR Articles 80, 81, 83 and 84 CDIR

Where the application for an inspection of files relates to a European Union trade mark application or Community design application, whether already published or not, it must be filed in the language in which the EUTM application or CD application was filed (the 'first' language) or in the second language indicated by the EUTM applicant or CD applicant in their application (the 'second' language).

Where the application for inspection is filed in a language other than indicated above, the applicant for inspection must, of its own motion, submit a translation into one of the languages indicated above within one month. If such a translation is not submitted within the deadline, the application for inspection of files will be deemed not to have been filed.

This does not apply where the applicant for inspection could not have been aware of the languages of the EUTM application or RCD application (which can be the case only where such information is not available in the online register and the application can immediately be dealt with). In this case, the application for inspection may be filed in any of the five languages of the Office.

6.7.2 For registered EUTMs or RCDs

Rule 95(b), Rules 96 and 98 EUTMIR Article 80(b), Rules 81, 83 and 84 CDIR

Where the application for inspection of files relates to a registered EUTM or RCD, it must be filed in one of the five languages of the Office.

The language in which the application for inspection was filed will become the language of the inspection proceedings.

Where the application for inspection of files is made in a language other than indicated above, the party requesting inspection must, on its own motion, submit a translation into one of the languages indicated above within one month, or the application for inspection of files will be deemed not to have been filed.

6.8 Representation and authorisation

Representation is not mandatory for filing an application for inspection of files.

Where a representative is appointed, the general rules for representation and authorisation apply. See the Guidelines, Part A, General Rules, Section 5, Professional Representation.

6.9 Contents of the application for inspection of files

The application for inspection of files mentioned in paragraphs 6.5 and 6.6 above must contain the following:

- an indication of the file number or registration number for which inspection is applied for;
- the name and address of the applicant for inspection of files;
- if appropriate, an indication of the document or information for which inspection is applied for (applications may be made to inspect the whole file or specific documents only). In the event of an application to inspect a specific document, the nature of the document (e.g. 'application', 'notice of opposition') needs to be stated. Where communication of information from the file is applied for, the type of information needed must be specified. Where the application for inspection relates to an EUTM application that has not yet been published, the application for a registered Community design that has not yet been published or a registered Community design that is subject to deferment of publication in accordance with Article 50 CDR or which, being subject to such deferment, has been surrendered before or on the expiry of that period, and inspection of the files is applied for by a third party, an indication and evidence to the effect that the third party concerned has a right to inspect the file;
- where copies are requested, an indication of the number of copies requested, whether or not they should be certified and, if the documents are to be presented in a third country requiring an authentication of the signature (*legalisation*), an indication of the countries for which authentication is needed;
- the applicant's signature in accordance with Rule 79 EUTMIR and Article 65 CDIR.

6.10 Deficiencies

Where an application for inspection of the files fails to comply with the requirements concerning the contents of applications, the applicant for inspection will be invited to remedy the deficiencies. If deficiencies are not remedied within the fixed time limit, the application for inspection will be refused.

6.11 Fees for inspection and communication of information contained in the files

All fees are due on the date of receipt of the application for inspection (see paragraphs 6.5 and 6.6 above).

6.11.1 Communication of information contained in a file

Article 88(9) and Annex I A(32) EUTMR
Article 75 CDIR
Article 2 CDFR in conjunction with Annex(23) CDFR

Communication of information in a file is subject to payment of a fee of EUR 10.

6.11.2 Inspection of the files

Article 88(6) and Annex I A (30) EUTMR
Article 74(1) CDIR
Article 2 CDFR in conjunction with Annex(21) CDFR

A request for inspection of the files on the Office premises is subject to payment of a fee of EUR 30.

Article 88(7) and Annex I A (31)(a) EUTMR
Article 74(4) CDIR
Article 2 CDFR in conjunction with Annex(22) CDFR

Where inspection of a file is obtained through the issuing of **uncertified** copies of file documents, those copies are subject to payment of a fee of EUR 10 plus EUR 1 for every page exceeding ten.

Rule 24(2)EUTMIR
Articles 87(7), 88(7) and Annex I A (29)(a) EUTMR
Articles 17(2), 69(6) and 74(5) CDIR
Article 2 CDFR in conjunction with Annex(20) CDFR

An **uncertified** copy of an EUTM application or RCD application, an **uncertified** copy of the certificate of registration, an **uncertified** extract from the Register or an **uncertified** extract of the EUTM application or RCD application from the database is subject to payment of a fee of EUR 10 per copy or extract.

Article 88(7) and Annex I A (31)(b) EUTMR
Article 74(4) CDIR
Article 2 CDFR in conjunction with Annex(22) CDFR

Where inspection of a file is obtained through the issuing of **certified** copies of file documents, those copies are subject to payment of a fee of EUR 30 plus EUR 1 for every page exceeding ten.

Rule 24(2) EUTMIR
Articles 87(7), 88(7) and Annex I A (29)(b) EUTMR
Articles 17(2), 69(6) and 74(5) CDIR
Article 2 CDFR in conjunction with Annex(20) CDFR

A **certified** copy of a EUTM application or RCD application, a **certified** copy of the certificate of registration, a **certified** extract from the Register or a **certified** extract of the EUTM application or RCD application from the database is subject to payment of a fee of EUR 30 per copy or extract.

However, registered users of the website can obtain electronic certified copies of EUTM or RCD applications or registration certificates free of charge through the website.

6.11.3 Consequences of failure to pay

Article 88(6) EUTMR
Article 74(1) CDIR

An application for inspection of files will be deemed not to have been filed until the fee has been paid. The fees apply not only where the application for inspection has been filed by a third party, but also where it has been filed by the EUTM or RCD applicant or proprietor. The Office will not process the inspection application until the fee has been paid.

However, if the fee is not paid or is not paid in full, the Office will notify the applicant for inspection:

- if no payment is received by the Office for a certified or uncertified copy of a EUTM application or RCD application, a certificate of registration or an extract from the Register or from the database;
- if no payment is received by the Office for inspection of the files obtained through the issuing of certified or uncertified copies of file documents;
- if no payment is received by the Office for the communication of information contained in a file.

The Office will issue a letter indicating the amount of fees to be paid. If the exact amount of the fee is not known to the applicant for inspection because it depends on the number of pages, the Office will either include that information in the standard letter or inform the applicant for inspection by other appropriate means.

6.11.4 Refund of fees

Where the application to obtain certified or uncertified copies or information contained in the files is withdrawn before the Office has dealt with it, the fee will be refunded or, in the case of a current account, the account will not be debited.

Where an application for inspection of the files is rejected, the corresponding fee is not refunded. However, where, subsequent to the payment of the fee the Office finds that

not all the certified or uncertified copies requested may be issued, any fees is paid in excess of that which is eventually due will be refunded.

6.12 Requirements concerning the right to obtain inspection of files concerning an unpublished EUTM application, or a deferred RCD filed by a third party

Article 88(1) and (2)EUTMR Article 74 CDR Article 74(2) CDIR
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Where an application for inspection of files for a EUTM application that has not yet been published, or for files relating to an RCD subject to deferment of publication in accordance with Article 50 CDR, or for those which, subject to such deferment, have been surrendered before or on the expiry of that period, (see paragraphs 4.2.1 and 4.2.2 above) is filed by a third party (*that is by a person other than the EUTM or RCD applicant or its representative*), different situations may arise.

If the application by a third party is based on the grounds specified in Article 88(1) and (2) EUTMR (see paragraph 4.2.1 above), or in Article 74(2) CDIR or Article 74(2) CDR (see paragraph 4.2.2 above) it must contain an indication and evidence to the effect that the EUTM applicant or RCD applicant or holder has consented to the inspection, or has stated that it will invoke the rights under the RCD, once registered, against the applicant for inspection.

6.12.1 Consent

The EUTM applicant RCD applicant or holder's consent must be in the form of a written statement in which it consents to the inspection of the particular file(s). Consent may be limited to inspection of certain parts of the file, such as the application, etc., in which case the application for inspection of files may not exceed the scope of the consent.

Where the applicant for inspection of files does not submit a written statement from the EUTM applicant, RCD applicant or holder consenting to the inspection of the files, the applicant for inspection will be notified and given two months from the date of notification to remedy the deficiency.

If, after expiry of the time limit, no consent has been submitted, the Office will refuse the application for inspection of files. The applicant for inspection will be informed of the decision to refuse the application for inspection.

The decision may be appealed by the applicant for inspection (Articles 59 and 60 EUTMR and 56 CDR).

6.12.2 Statement that EUTM or RCD rights will be invoked

Article 88(2) EUTMR
Article 74(2) CDR
Article 74(2) CDIR

Where the application relies on the allegation that the EUTM or RCD proprietor will invoke the rights under the EUTM or RCD, once registered, it is up to the applicant for inspection to prove this allegation. The evidence to be submitted must take the form of documents, for example, statements by the EUTM applicant or RCD applicant or holder for the EUTM application, RCD application or registered and deferred Community design in question, business correspondence, etc. Filing an opposition based on a EUTM application against a national mark constitutes a statement that the EUTM will be invoked. Mere assumptions on the part of the applicant for inspection of the file will not constitute sufficient proof.

The Office will first examine whether the proof is sufficient.

If so, the Office will send the application for inspection of files and the supporting documents to the EUTM applicant or RCD applicant or holder and invite it to comment within two months. If the EUTM applicant or RCD applicant or holder consents to an inspection of the files, it will be granted. If the EUTM applicant or RCD applicant or holder submits comments contesting inspection of the files, the Office will send the comments to the applicant for inspection. Any further statement by the applicant for inspection will be sent to the EUTM applicant or RCD applicant or holder and vice versa. The Office will take into account all submissions made on time by the parties and decide accordingly. The Office's decision will be notified to both the applicant for inspection of the files and the EUTM applicant or RCD applicant or holder. It may be appealed by the adversely affected party (Articles 59 and 60 EUTMR and 56 CDR).

6.13 Grant of inspection of files, means of inspection

When inspection is granted, the Office will, as appropriate, send the requested copies of file documents, or requested information, to the applicant for inspection or invite it to inspect the files at the Office's premises.

6.13.1 Communication of information contained in a file

Article 88(9) CTMR
Article 75 CDIR

The Office may, upon request, communicate information contained in any file relating to EUTM or RCD applications or registrations.

Information contained in the files will be provided without an inspection application, inter alia, where the party concerned wishes to know whether a given EUTM application has been filed by a given applicant, the date of such application, or whether the list of goods and services has been amended in the period between the filing of the application and publication.

Having obtained this information, the party concerned may then decide whether or not to request copies of the relevant documents, or to apply for inspection of the actual file.

Where the party concerned wishes to know, inter alia, which arguments an opponent has brought forward in opposition proceedings, which seniority documents have been filed, or the exact wording of the list of goods and services as filed, such information will not be provided. Instead the Office will advise the party to apply for inspection of the actual file.

In such cases, the quantity and complexity of the information to be supplied would exceed reasonable limits and create an undue administrative burden.

6.13.2 Copies of file documents

Where inspection of the files is granted in the form of the provision of certified or uncertified copies of file documents, the requested documents will be sent by post.

Where inspection of files is granted on the Office premises, the applicant will be given an appointment to inspect the files.

7 Procedures to Give Access to the Files to Courts or Authorities of the Member States

Article 90(1) EUTMR Article 75 CDR Rules 92 and 93 EUTMR Articles 77 and 78 CDIR

For the purposes of administrative co-operation, the Office will, upon request, assist courts or authorities of the Member States by communicating information or opening files for inspection.

For the purposes of administrative co-operation, the Office will also, upon request, communicate relevant information about the filing of EUTM or RCD applications and proceedings relating to such applications and the marks or designs registered as a result thereof to the central industrial property offices of the Member States.

7.1 No fees

Rules 92(3) and 93(1), (2) EUTMIR Articles 77(3) and 78(1), (2) CDIR

Inspection of files and communication of information from the files requested by the courts or authorities of the Member States are not subject to the payment of fees.

Rule 93(2) EUTMIR
Article 78(2) CDIR

Courts or public prosecutors' offices of a Member State may open to inspection by third parties files, or copies thereof that have been transmitted to them by the Office. The Office will not charge any fee for such inspection.

7.2 No restriction as to unpublished applications

Articles 88(4) and 90(1) EUTMR
Article 75 CDR
Rule 92(1) EUTMIR
Article 72 and Article 77(1) CDIR

Inspection of files and communication of information from the files requested by the courts or authorities of the Member States is not subject to the restrictions contained in Article 88 EUTMR and Article 74 CDR. Consequently, these bodies may be granted access to files relating to unpublished EUTM applications (see paragraph 4.2.1 above) and RCD's subject to deferment of publication (see paragraph 4.2.2 above) as well as to parts of the files for which the party concerned has expressed a special interest in keeping confidential. However, documents relating to exclusion and objection, as well as the documents referred to in Article 88(4) EUTMR and Article 72(b) CDIR, will not be made available to these bodies.

Article 88(4) EUTMR
Rule 93(2) EUTMIR
Article 74 CDR and Article 72 and Article 78(2) CDIR

Courts or public prosecutors' offices of the Member States may open to inspection by third parties files or copies that have been transmitted to them by the Office. Such subsequent inspection shall be subject to the restrictions contained in Article 88(4) EUTMR or Article 74 CDR, as if the inspection had been requested by a third party.

Rule 93(3) EUTMIR
Article 78(4) CDIR

When transmitting files or copies thereof to the courts or public prosecutors' offices of the Member States, the Office will indicate the restrictions imposed on inspection of files relating, on the one hand to EUTM applications or registered Community trade marks pursuant to Article 88 EUTMR, and on the other hand to CD applications or RCD registrations pursuant to Article 74 CDR and Article 72 CDIR.

7.3 Means of inspection

Rule 93(1) EUTMIR
Article 78(1) CDIR

Inspection of the files relating to EUTM/RCD applications or registrations by courts or authorities of the Member States may be granted by providing copies of the original

documents. As the files contain no original documents as such, the Office will provide printouts from the electronic system.