

***GUIDELINES FOR EXAMINATION IN THE  
OFFICE FOR HARMONIZATION IN THE  
INTERNAL MARKET (TRADE MARKS AND  
DESIGNS) ON COMMUNITY TRADE MARKS***

***PART A***

***GENERAL RULES***

***SECTION 5***

***PROFESSIONAL REPRESENTATION***

## Table of Contents

<b>1</b>	<b>Introduction – Principle of Representation .....</b>	<b>4</b>
<b>2</b>	<b>Who May Represent .....</b>	<b>4</b>
<b>2.1</b>	<b>Database of representatives .....</b>	<b>5</b>
<b>2.2</b>	<b>Professional representation by legal practitioners .....</b>	<b>6</b>
2.2.1	The term ‘legal practitioner’ .....	6
2.2.2	Qualification .....	6
2.2.3	Nationality and place of business .....	6
2.2.4	Entitlement to act in trade mark and/or design matters .....	7
<b>2.3</b>	<b>Professional representatives admitted and entered on the lists maintained by the Office .....</b>	<b>7</b>
2.3.1	Entitlement under national law .....	8
2.3.2	Nationality and place of business .....	9
2.3.3	Certificate .....	9
2.3.4	Exemptions .....	10
2.3.5	Procedure for entry on the list .....	10
2.3.6	Amendment of the list of professional representatives .....	10
2.3.6.1	Deletion .....	10
2.3.6.2	Suspension of the entry on the list .....	11
2.3.7	Reinstatement in the list of professional representatives .....	12
<b>2.4</b>	<b>Representation by an employee .....</b>	<b>12</b>
2.4.1	Employees acting for their employer .....	13
2.4.2	Representation by employees of a legal person with economic connections .....	13
<b>2.5</b>	<b>Legal representation .....</b>	<b>14</b>
<b>3</b>	<b>Appointment of a Professional Representative .....</b>	<b>14</b>
<b>3.1</b>	<b>Conditions under which appointment is mandatory .....</b>	<b>14</b>
3.1.1	Domicile and place of business .....	15
3.1.2	The notion of ‘in the Community’ .....	15
<b>3.2</b>	<b>Consequences of non-compliance when appointment is mandatory ..</b>	<b>15</b>
3.2.1	During registration .....	16
3.2.2	During opposition .....	16
3.2.3	Cancellation .....	17
<b>3.3</b>	<b>Appointment of a representative when not mandatory .....</b>	<b>17</b>
<b>3.4</b>	<b>Appointment of a representative .....</b>	<b>17</b>
3.4.1	Explicit appointment .....	17
3.4.2	Implicit appointment .....	18
3.4.3	Associations of representatives .....	18
3.4.4	ID numbers .....	19
<b>4</b>	<b>Communication with Representatives .....</b>	<b>19</b>
<b>5.</b>	<b>Authorisation .....</b>	<b>20</b>

<b>5.1</b>	<b>Individual authorisations .....</b>	<b>21</b>
<b>5.2</b>	<b>General authorisations.....</b>	<b>21</b>
5.2.1	Registration of General Authorisations.....	21
<b>5.3</b>	<b>Consequences where authorisation expressly requested by the Office is missing.....</b>	<b>22</b>
<b>6</b>	<b>Withdrawal of a Representative’s Appointment or Authorisation.....</b>	<b>22</b>
6.1	Action taken by the person represented .....	22
6.2	Withdrawal by the representative.....	22
<b>7</b>	<b>Death or Legal Incapacity of the Party Represented or Representative.....</b>	<b>23</b>
7.1	Death or legal incapacity of the party represented .....	23
7.2	Death or legal incapacity of the representative.....	23

## 1 Introduction – Principle of Representation

Articles 92(1) and (2) and 93(1) CTMR, Rule 76 CTMIR, Article 77 CDR

Persons having their domicile or their principal place of business or a real and effective industrial or commercial establishment in the European Union are not required to be represented in any proceedings before the Office (see paragraph 3.1.1 below).

Natural persons not domiciled or legal persons that do not have their principal place of business or a real and effective industrial or commercial establishment in the European Union must be represented by a representative based within the European Union. This obligation exists in all proceedings before the Office, except for the act of filing an application for a CTM or Community design. 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.

Representation is not required for applications to renew CTMs 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, 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) CTMR, Rule 76 CTMIR, Article 77(3) and Article 78(1)(a) and (b) CDR

In all Member States, representation in legal proceedings is a regulated profession and may only be exercised under particular conditions. The terminology of Article 93 CTMR 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) CTMR, 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) CTMR, 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 ‘OHIM prof. rep.’ list). 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). 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).

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

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

## 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 OHIM professional representatives list 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 ‘OHIM professional representative’, since they do not need to be admitted by OHIM. The Office, therefore, almost invariably refuses requests from legal practitioners to be entered on the list of OHIM 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 CTMR.

## 2.2 Professional representation by legal practitioners

Article 93(1)(a) CTMR
-----------------------

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;
- b) they must have their place of business within the European Union, and
- c) they must be entitled, within that State, to act as a representative in trade mark 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 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.

The place of business must be in the European Union (for the definition of what constitutes the European Union, see paragraph 3.1.2 below). 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 another Member State than the one in which the legal practitioner is admitted to the bar. However, legal practitioners who have their sole place of business outside of the European Union are not entitled to represent before the Office even when they are admitted to practise in one of the Member States.

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 European Union, and the Office will communicate with the legal practitioner only at an address within the European Union.

#### 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.

Legal practitioners referred to in Article 93(1)(a) CTMR 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 in which they are qualified, they will also be able to act before OHIM. Legal practitioners are not entered on the list of professional representatives to which Article 93(2) CTMR 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 each country.

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

Article 93(1)(b) and Article 93(2) CTMR 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 OHIM prof. rep. list and the designs list.

For this category of professional representatives, the entry on the OHIM prof. rep. list or designs list entitles them to represent third parties before the Office. A representative who is entered on the OHIM prof. rep. list referred to in Article 93(1)(b) CTMR 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 CTMR 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 each country.

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](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;
- b) they must have their place of business within the Community, and
- 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.

### 2.3.1 Entitlement under national law

The conditions for entry on the OHIM prof. rep. list and the designs list depend on the legal situation in the Member State concerned.

Article 93(2)(c) CTMR and Article 78(1)(b) CDR
--

In a large number of Member States, 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) CTMR, first alternative). Therefore, in order to be entitled to act as a representative, the person must have the required qualification. In other Member States, 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) CTMR, second alternative). A subcategory of this category of Member States are those Member States 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 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 OHIM



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 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.

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

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

### **Third alternative – Recognition by a Member State**

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 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) and Article 93(4) CTMR
---

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

## 2.3.3 Certificate

Article 93(3) CTMR
--------------------

Fulfilment of the abovementioned conditions laid down in Article 93(2) CTMR 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](http://oami.europa.eu/pdf/forms/prorep_form93_certificate_en.pdf)).

### 2.3.4 Exemptions

Article 93(4) CTMR
--------------------

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

All the cases presented to the President 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) CTMR and Article 78 CDR
---------------------------------------

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 OHIM prof. rep. list 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) CTMR and Article 133 CTMR).

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 OHIM prof. rep. list 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

Rule 78(1) and (6) CTMR and Article 64(1) and (6) CDIR
--

The entry of a professional representative on the OHIM prof. rep. list 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, Article 64(2) and (5) CDIR
--

The entry of a professional representative in the OHIM prof. rep. list 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 President of the Office may still grant an exemption under Article 93(4)(b) CTMR;
- c) where the professional representative no longer has their place of business or employment in the EU; or
- d) where the professional representative is no longer entitled to represent third parties before the central industrial property office of a Member State.

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 OHIM prof. rep. list.

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) CTMIR and Article 64(3) CDIR
---

The entry of the professional representative on the OHIM prof. rep. list 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 has been suspended.

The national industrial property office of the Member State 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) CTMIR 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) CTMR 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 Community may act before the Office through a natural person employed by them ('employee').

A natural person whose domicile is outside the Community 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). 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 EU (see paragraph 2.4.2). Where a legal person from outside the EU is represented in this way, it is not required to appoint a professional representative within the meaning of Article 93(1) CTMR, 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) CTMIR

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

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

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) CTMR, Rule 76(2) CTMIR, Article 77(3) CDR

Where employees act for their employer, this is not a case of professional representation under Article 93(1) CTMR. As such, Rule 94(7)(d) CTMIR 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, subject only to the requirement that the employee must file an authorisation (decision of 25/01/2012, R 0466/2011-4, FEMME LIBRE, § 9). 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) CTMR 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 CTMR 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 OHIM from outside the European Union must be represented by a professional representative within the European Union. This obligation exists for all proceedings before the Office, except for the act of filing a CTM (representation is not required for applications to renew CTMs 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 CTM 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 nor a real and effective industrial or commercial establishment in the European Union. This obligation exists for all proceedings before the Office, except for the filing of a CTM.

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 EU, but relies on a place of business or establishment within the EU, it must give the appropriate indications and explanations, and any correspondence with that party will have to be made to the address in the EU. 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 EU, nor where the applicant indicates the address of an agent with a place of business in the EU. 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 EU. It is not sufficient that the law governing the company is the law of a Member State.

### 3.1.2 The notion of ‘in the Community’

Article 92(2) CTMR
--------------------

In applying Article 92(2) CTMR, the relevant territory is the territory of the European Union, which refers to all of the Member States to which the TFEU applies under Article 355. It should be borne in mind that members of the European Economic Area falling outside the EU (i.e. EFTA Member States) are not considered to fulfil this requirement (decision of 22/06/2011, R 2020/2010-4, GRAND PRIX, § 13-14).

## 3.2 Consequences of non-compliance when appointment is mandatory

Article 93(1) CTMR
--------------------

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) CTMR 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) CTMR and Rule 9(3) CTMIR
--

Where representation is mandatory and the CTM 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) CTMIR. Where the applicant fails to comply with this communication, the CTM 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 CTM application and registration of the CTM.

Where a specific ('secondary') request is introduced on behalf of the CTM applicant during the registration process, e.g. 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 CTM 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 CTM application where the applicant fails to comply with the communication.

Rule 15(2)(h)(ii) and Rule 17(4) CTMIR
--

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) CTMR, 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 paragraph 2.4.2.6 of the Guidelines, Part B, Section 1).

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

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

Where the proprietor of the CTM 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 CTM will not be cancelled simply because the CTM 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 CTMR. If they do so, paragraph 3.4 is applicable, as are the requirements concerning authorisation (see paragraph 5 below).

Where a representative has been appointed, the Office will communicate solely with that representative (see under 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, e.g. 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) CTMIR
------------------

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) CTMR, Rule 76 CTMIR

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) CTMR 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 OHIM 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](http://www.oami.europa.eu)

## 4 Communication with Representatives

Rule 77 CTMIR

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), Rules 67(2) and 76(8) CTMIR

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) CTMIR;
- 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.

Rule 75(1) CTMIR

Where there is more than one CTM applicant, opponent or any other party to proceedings before the Office, the representative appointed by the CTM applicant, etc. that is named first in the official form will be the common representative for all those persons. If the person named first 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.

Where one of the co-owners is obliged to be represented before the Office but does not appoint a professional representative, the Office will communicate with the first person named in the official form who is based within the EU.

Articles 92 and 93 CTMR and Rule 67 CTMIR

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

## 5. Authorisation

Articles 92(3) and 93(1) CTMR and Rule 76 CTMIR

In principle, professional representatives do not need to file an authorisation to act before the Office. However, any professional representative (legal practitioner or OHIM 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, 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.

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

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) CTMIR. The procedure to which the authorisation relates must be indicated (e.g. 'concerning CTM application number 12345'). The authorisation will then extend to all acts during the lifetime of the ensuing CTM registration. 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

Rule 76(1) and Rule 83(1)(h) CTMIR

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 CTM 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 CTM 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 CTMIR

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) CTMIR

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. CTM/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) CTMIR

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) CTMIR

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, Chapter 5, Insolvency.

### **7.2 Death or legal incapacity of the representative**

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

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, par. 13, 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 OHIM PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
<b>Austria</b>	Rechtsanwalt	<b>Lawyers are fully entitled</b>	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.
<b>Belgium</b>	Avocat, Advocaat, Rechtsanwalt	<b>Lawyers are fully entitled</b> 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 <b>not conditional</b> 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 <b>five years</b> before a central industrial property office of a Member State.
<b>Bulgaria</b>	Адвокат/Практикуващ Право Advokat/Praktikuvasho Pravo	<b>Lawyers are not entitled</b>	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.
<b>Croatia</b>	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.
<b>Czech Republic</b>	Advokát	<b>Lawyers are fully entitled</b>	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 CTMR. 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 OHIM PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
<b>Cyprus</b>	Δικηγόρος Dikigoros	Lawyers <b>ONLY</b> are entitled	nihil	Not relevant
<b>Denmark</b>	Advokat	Lawyers <b>are fully entitled</b>	Varemaerkefuldmaegtig	The entitlement is <b>not conditional</b> 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 <b>five years</b> before a central industrial property office of a Member State.
<b>Estonia</b>	Jurist, Advokaat	Lawyers <b>are not entitled</b> 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 CTMR. Entry on the list is open to persons who have passed the trade marks, industrial designs and geographical indications part.
<b>Finland</b>	Asianajaja, Advokat	Lawyers <b>are fully entitled</b>	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) CTMR 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 OHIM PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
France	Avocat	Legal practitioners <b>are entitled</b> 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: The <b>Liste des Conseils en propriété industrielle</b> and the Liste des Personnes qualifiées en Propriété industrielle.</p> <p>Only persons on the <b>'Liste des Conseils en propriété industrielle'</b> are entitled to represent third parties before the French Patent Office. Therefore, only these persons are entitled to be on the OHIM 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 <b>are fully entitled</b>	Patentanwalt /	A 'Patentassessor' is not qualified to act as a professional representative. He may act as an employee representative.
Greece	Δικηγόρος - Dikigoros	<b>ONLY</b> Lawyers <b>are entitled</b>	nihil	Not relevant
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 OHIM prof. rep. list.	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 OHIM prof.rep list.

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 OHIM PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
Ireland	Barrister, Solicitor	Lawyers <b>are fully entitled</b>	Trade mark agent	The person has to be entered in the Register of TM Agents
Italy	Avvocato	Lawyers <b>are fully entitled</b>	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	<b>Lawyers can only represent clients whose permanent residence is in the European Union.</b> 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	<b>Lawyers can only represent clients whose permanent residence is in the European Union.</b> 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.
Luxembourg	Avocat/Rechtsanwalt	Lawyers <b>are fully entitled</b> 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 <b>not conditional</b> 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 <b>five years</b> before a central industrial property office of a Member State.

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 OHIM PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
<b>Malta</b>	Avukat, Prokuratur Legali	Lawyers <b>are fully entitled</b> .		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.
<b>Poland</b>	Adwokat, radca prawny	Lawyers <b>are not fully entitled</b> . 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.
<b>Portugal</b>	Avogado	Lawyers <b>are fully entitled</b> .	Agente Oficial da Propriedade Industrial	5 years' experience or special qualifications. A notary is not a legal practitioner and, therefore, may apply to be entered on the list.
<b>Romania</b>	Avocat	Lawyers <b>are not fully entitled</b> .	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.
<b>Slovakia</b>	Advokát, Právník Komerčný	Lawyers <b>are fully entitled</b> .	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.
<b>Slovenia</b>	Odvetnik	Lawyers <b>are fully entitled</b> .	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.

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 OHIM PROF REP)	Entitlements/specific rules for representing clients in trade mark and design matters
<b>Spain</b>	Abogado	Lawyers <b>are fully entitled</b> .	Agente Oficial de la Propiedad Industrial	Entry on the list is conditional upon an examination.
<b>Sweden</b>	Advokat	Lawyers <b>are fully entitled</b> .	Varumaerkesombud	Entitlement is <b>not conditional</b> 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 <b>five years</b> before a central industrial property office of a Member State.
<b>The Netherlands</b>	Advocaat	Lawyers <b>are fully entitled</b> 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 <b>not conditional</b> 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 <b>five years</b> before a central industrial property office of a Member State.
<b>United Kingdom</b>	Advocate, Barrister, Solicitor	Lawyers <b>are fully entitled</b> .	Registered Trade Mark Agent	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.

<b>COUNTRY</b>	<b>Design Attorney</b>
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
Sweden	Varumaerkesombud
The Netherlands	Modellengemachtigde
United Kingdom	Registered Patent Agent