

***GUIDELINES FOR EXAMINATION***  
***EUROPEAN UNION***  
***INTELLECTUAL PROPERTY OFFICE***  
***(EUIPO)***

***Part E***

***Register operations***

***Section 5***

***Inspection of files***

Obsolete

## 1 General Principles

[Article 111\(1\) and \(5\)](#), [Article 114](#), [Article 117\(1\) and \(2\)](#) and [Annex 1 A\(30\) EUTMR](#)

Articles [20](#) and [21](#) EUTMIR

Articles 72, 74, and 75 CDR

Article 69(1), Articles 74, 75, 77 and 78 CDIR

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 (EUTM) applications and Community design applications and registered EUTMs and registered Community designs (RCD); 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, an RCD or when an 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 content of the file(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 the inspection of files of Community designs are almost identical to the equivalent provisions of the EUTM Regulations. Therefore, the following applies *mutatis mutandis* to Community designs. Where the procedure is different, the differences are specified under a separate sub-heading.

## 2 The Registers of EUTMs and Community Designs

[Article 111\(1\) and \(5\) 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, which is 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 EUTMs

[Article 111\(2\), \(3\) and \(4\) EUTMR](#)

Decision No [EX-00-1](#) of the President of the Office of 27/11/2000

Decision No [EX-07-1](#) of the President of the Office of 16/03/2007

The Register of EUTMs contains the information specified in [Article 111\(2\) and \(3\) EUTMR](#) and any other items determined by the Executive Director of the Office pursuant to [Article 111\(4\) EUTMR](#).

#### 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 16/03/2007

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 RCDs 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 differentiate between the following three categories:

- the applicant/proprietor of the EUTM or RCD;
- 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 (and their related annexes) established in the course of examination, as well as any correspondence concerning the ensuing EUTM or RCD. 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.

All original documents submitted become part of the file and, therefore, cannot be returned to the person who submitted them. When submitting documents, simple photocopies are sufficient. They do not need to be authenticated or legalised.

Where the parties make use of the mediation services offered by the Office in accordance with Decision No 2013-3 of the Presidium of the Boards of Appeal of 05/07/2013 on the amicable settlement of disputes ('Decision on Mediation'), or the conciliation services in accordance with Decision No 2014-2 of the Presidium of the Boards of Appeal of 31/01/2014 on the friendly settlement of disputes by the competent Board ('Decision on Conciliation'), all correspondence relating to that mediation or conciliation are excluded from inspection of files.

[Article 115 EUTMR](#)

## Article 76 CDIR

Even where an EUTM application is no longer pending, or an EUTM registration or RCD registration ceases 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 RCD application ceases to be pending when it is rejected, or when the application has been withdrawn or is considered to have been withdrawn, and an EUTM registration or RCD registration ceases to have effect when it expires or is surrendered, declared invalid or revoked. Where the files are kept in electronic format, the electronic files, or back-up copies thereof, will be kept indefinitely. Where, and to the extent that files or part of files are kept in any form other than electronically, the Office will keep the files in any form other than electronic format for at least 5 years from the end of the year in which such an event occurs.

## 4.2.1 The files relating to EUTM applications

Articles [44](#) and [114](#) EUTMR[Article 7 EUTMR](#)

The files relating to EUTM applications are available for inspection once the application has been published by the Office in the EUTM Bulletin. The day of publication is the date of issue shown in the EUTM 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 44 EUTMR](#) and [Article 7 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; 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).

[Article 41\(3\)](#) and [Article 115 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 RCD applications

Articles 50 and 74 CDR

Article 70 and Article 74(2) CDR

The files relating to RCD applications, or an RCD still subject to deferment of publication, including those that have been surrendered, are only available for inspection if one of the following conditions is fulfilled:

- the applicant for inspection is the RCD applicant/holder; or
- the applicant for the RCD has consented to inspection of the file relating to the RCD application; or
- the applicant for inspection has established a legitimate interest in the inspection of the RCD application, in particular where the applicant for the RCD 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 RCDs, this inspection restriction will only apply to information relating to the RCDs 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 EUTMs

The files relating to EUTMs after registration are available for inspection.

#### 4.2.4 The files relating to RCDs

The files relating to RCDs 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.

For inspection of the files relating to an RCD that is subject to deferment of publication, please see [paragraph 4.2.2](#), above.

#### 4.2.5 The files relating to international registrations designating the European Union

Articles [114\(8\)](#), Articles [189](#) and [190](#) 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 an EUTM or an RCD.

The files kept by the Office relating to international trade mark registrations designating the EU may be inspected on request as from the date of publication referred to in Articles [114\(8\)](#) and [190\(1\)](#) EUTMR. The same rules apply as for the inspection of EUTMs.

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 the refusal of the 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 below) and subject to the same limitations as explained in paragraphs [4.2.2](#) and [4.2.4](#) above.

## 5 Parts of the File Excluded from Inspection

### 5.1 Excluded documents

[Article 114\(4\)](#) and [Article 169](#) 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).

The files relating to requests for entry on the Office's list of professional representatives or designs list, including all decisions taken therein, are not open to public inspection because the files do not relate to EUTM or RCD proceedings as such (see the Guidelines, [Part A, General rules, Section 5, Professional representation, paragraph 2.3.5](#)).

In principle, documents of a personal nature such as **passports or other identification documents**, which are submitted in particular as evidence in relation to requests for transfer, evidence of 'health data', which is submitted in particular as evidence in relation to *restitutio in integrum* or as supporting evidence for extension requests, and **bank account extracts**, which may, for example, be attached to applications and requests as evidence of fee payment, because of their inherent personal nature, confidentiality vis à vis any third parties is justified, and, in principle, overrides any third-party interest.

#### 5.1.1 Documents relating to exclusion or objection

[Article 114\(4\) 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, and 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 114\(4\) 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 printout 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 114\(4\) 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.

#### **Invoking confidentiality and expressing a special interest**

The party concerned must have expressly invoked, and sufficiently justified, a special interest in keeping the document confidential (see 08/11/2018, [R 722/2018-5](#), nume (fig.) / Numederm, § 16). Where any request is submitted on an Office form (paper or e-filing format), the form itself cannot be marked as confidential. However, any attachments thereto may be excluded from inspection of files. This applies to all proceedings as the form includes the minimum information, which is later included in the publicly available Register, and is, therefore, incompatible with a declaration of confidentiality.

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).

#### Confidentiality invoked and special interest claimed

Where special interest is invoked and elaborated upon, 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 because the special interests claimed do not justify maintaining the confidentiality of the document, prior to lifting the confidentiality it will communicate with the person who filed the documents and make a decision. In reply, 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.

Confidentiality invoked with no attempt to claim any special interest

Where a claim for confidentiality has been submitted by the party by use of a standard 'confidential' stamp on the cover page of the submission, or by ticking the 'confidential' tick-box when using the electronic communication platform, but the documents enclosed contain no explanation nor indication of any special interest nor any attempt on behalf of the party to justify the confidential nature or status of the submission, the Office will remove this indication.

This applies to all submissions where the party claims confidentiality 'by default', yet provides no justification in support of its claim. The party can at any time before the receipt of a request for inspection of files, invoke and sufficiently justify a special interest in keeping the document confidential.

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, must be sent to the party concerned, who has a right to be heard.

[Article 67 EUTMR](#)

Article 56 CDR

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

## 5.2 Access for applicant or proprietor to excluded documents

[Article 114\(4\) 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 114\(4\) EUTMR](#) and Article 72(a) and (b) CDIR.

In *inter partes* proceedings, where the one 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, Opposition Proceedings, paragraph 4.4.4](#)).

## 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 EUTMs

[Article 111\(7\) EUTMR](#)

The Office shall provide certified or uncertified extracts from the Register on request, on payment of a fee. Downloadable (certified) copies are, however, free of charge (see [paragraph 6.4](#) below).

Requests for an extract from the Register of EUTMs may be submitted using the online form which can be found on the Office's website at <https://euipo.europa.eu/ohimportal/en/forms-and-filings>, 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

#### [Article 63 EUTMDR](#)

An application for inspection of files may be submitted as a signed original by electronic means, post or courier (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 its representative.

Requests for an extract from the Register of Community designs may be submitted using the online form, which can be found on the Office's website at <https://euipo.europa.eu/ohimportal/en/forms-and-filings>, 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 and 67 CDIR

An application for inspection of files may be submitted as a signed original by electronic means, post or courier (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. Downloadable (certified) copies are, however, free of charge (see [paragraph 6.4](#) below).

Requests for certified or uncertified copies of documents may be submitted using the online form, which can be found on the Office's website at <https://euipo.europa.eu/ohimportal/en/forms-and-filings>, 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 EUTMs), 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 or 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 RCD 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 26/11/2013, 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 EUTMs) can be automatically generated and downloaded via a direct link from the Office's website using 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.

The copy of the document will be made available in PDF format, and will be composed of a cover page in the five Office languages, introducing the certified document and followed by the certified document itself. The document contains a unique identification code. 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 on request, and can be used either 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**

Users may access the application form online through their user account, where they will be invited to log in and complete the application for inspection of files requesting certified or uncertified copies of specific documents.

## **6.6 Written applications for inspection of files**

[Article 63 EUTMDR](#)

Article 65 CDIR

Applications for inspection may be submitted using the online form, which can be found on the Office's website at <https://euipo.europa.eu/ohimportal/en/forms-and-filings>, 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.

[Article 63 EUTMDR](#)

Article 67 CDIR

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

## 6.7 Languages

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

### 6.7.1 For EUTM or RCD applications

[Article 146\(6\) and \(9\) EUTMR](#)

[Article 25 EUTMIR](#)

Articles 80, 81, 83 and 84 CDIR

Where the application for an inspection of files relates to a EUTM application or RCD application, whether already published or not, it must be filed in the language in which the EUTM application or RCD application was filed (the 'first' language) or in the second language indicated by the EUTM applicant or RCD 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 1 month. If such a translation is not submitted within the deadline, the application for inspection of files will be considered 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. This 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

[Article 146\(6\) and \(9\) EUTMR](#)

[Article 25 EUTMR](#)

Article 80(b), Articles 81, 83 and 84 CDR

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 considered 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.
- 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 (applications may be made to inspect the whole file or specific documents only). In the case of an application to inspect a specific document, the nature of the document (e.g. 'application', 'notice of opposition') must 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 an RCD that has not yet been published or an RCD 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 [Article 63\(1\) EUTMDR](#) 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 established 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 114\(9\)](#) 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 114\(6\)](#) and [Annex I A\(30\) EUTMR](#)

Article 74(1) CDIR

Article 2 and 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 114\(7\)](#) and [Annex I A\(31\)\(a\) EUTMR](#)

Article 74(4) CDIR

Article 2 and 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.

[Article 51\(2\) EUTMR](#)

Articles [111\(7\)](#), [114\(7\)](#) and [Annex I A\(29\)\(a\) EUTMR](#)

Articles 17(2), 69(6) and 74(5) CDIR

Article 2 and 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.

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

[Article 114\(7\)](#) and [Annex I A\(31\)\(b\) EUTMR](#)

Article 74(4) CDIR

Article 2 and 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.

[Article 51\(2\) EUTMR](#)

Articles [111\(7\)](#), [114\(7\)](#) and [Annex I A\(29\)\(b\) EUTMR](#)

Articles 17(2), 69(6) and 74(5) CDIR

Article 2 and Annex (20) CDFR

A **certified** copy of an 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 114\(6\) EUTMR](#)

Article 74(1) CDIR

An application for inspection of files will be considered 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 an 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 an application for inspection of the files is rejected, the corresponding fee is not refunded. However, where, after the payment of the fee, the Office finds that not all the certified or uncertified copies requested may be issued (e.g. if the request concerns confidential documents and the applicant has not proven an overriding legitimate interest), any fees paid in excess of the amount actually 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 114\(1\) and \(2\) EUTMR](#)

Article 74 CDR

Article 74(2) CDIR

Where an application for inspection of files for an 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 (i.e. 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 114(1) and (2) EUTMR (see paragraph [4.2.1](#) above), or in Article 74(2) CDR or in Article 74(2) CDIR (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 consent of the EUTM applicant or RCD applicant or holder 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, 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 2 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 reject the application for inspection of files. The applicant for inspection will be informed of the decision to reject the application for inspection.

The decision may be appealed by the applicant for inspection (Articles [67](#) and [68](#) EUTMR and Article 56 CDR).

## 6.12.2 Statement that EUTM or RCD rights will be invoked

[Article 114\(2\) 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 proof to be submitted must take the form of documents, such as, statements by the EUTM applicant or RCD applicant or holder for the EUTM application, RCD application or registered and deferred RCD in question, business correspondence, etc. Filing an opposition based on an 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 [67](#) and [68](#) EUTMR and Article 56 CDR).

## 6.13 Grant of inspection of files, means of inspection

When inspection is granted, the Office will send the requested copies of file documents, or requested information, as appropriate, to the applicant for inspection or invite it to inspect the files at the Office's premises. The Office will not forward the requested documents to any third parties.

### 6.13.1 Communication of information contained in a file

[Article 114\(9\) EUTMR](#)

Article 75 CDIR

The Office may, on 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 application for inspection, 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 its 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 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 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 party will be sent the requested documents.

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

### 6.13.3 Specific interest concerning the inspection applicant

Where a party shows a specific interest in knowing whether its file has been inspected and by whom, there should be a compromise between the general interest of the public to be able to inspect files of proceedings before the Office with a minimum of formalities and the parties' specific interest to know who has inspected the file in exceptional, duly justified circumstances.

Considering that online inspection requests are not communicated as a matter of course to the party whose file has been inspected, that party must put forward a reasoned and substantiated request showing that there are legitimate reasons for being informed if its file has been inspected, and by whom. The Office will not automatically grant such a request. Instead, on a case-by-case basis, it will balance these reasons against the explanations provided by the person who made the

inspection within a period set by the Office to that effect, before any such request is granted.

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

[Article 117\(1\) EUTMR](#)

Article 75 CDR

Articles [20](#) and [21](#) EUTMIR

Articles 77 and 78 CDIR

For the purposes of administrative cooperation, the Office will, on request, assist the courts or authorities of the Member States by communicating information or opening files for inspection.

For the purposes of administrative cooperation, the Office will also, on 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**

[Article 20\(3\)](#) and [Article 21\(1\) and \(3\) EUTMIR](#)

Article 77(3) and Article 78(1) and (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.

[Article 21\(3\) 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 [114\(4\)](#) and [117\(1\)](#) EUTMR

[Article 20\(1\) EUTMIR](#)

Article 75 CDR

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 114 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 RCDs 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 114\(4\) EUTMR](#) and Article 72(b) CDIR, will not be made available to these bodies.

[Article 114\(4\) EUTMR](#)

[Article 21\(3\) EUTMIR](#)

Article 74 CDR

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 114\(4\) EUTMR](#) or Article 74 CDR, as if the inspection had been requested by a third party.

[Article 21\(2\) 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 registrations pursuant to [Article 114 EUTMR](#), and on the other hand to RCD applications or RCD registrations pursuant to Article 74 CDR and Article 72 CDIR.

### 7.3 Means of inspection

[Article 21\(1\) 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.

Obsolete