

GUIDELINES FOR EXAMINATION
EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE
(EUIPO)

Part A

General rules

Section 2

***General principles to be respected in the
proceedings***

1 Adequate reasoning

Articles [94 to 97](#) and [109](#) EUTMR

Articles 62 to 65 and 70 EUDR

Article 38 EUDIR

Office decisions will be in writing and will state the reasons on which they are based. The reason for this is twofold: to explain to interested parties why the measure was taken so that they can protect their rights, and to enable the Courts of the European Union to exercise their power to review the legality of the decision (12/07/2012, [T-389/11](#), Guddy, EU:T:2012:378, § 16; 22/05/2012, [T-585/10](#), Penteo, EU:T:2012:251, § 37, as well as the case-law cited; 27/06/2013, [T-608/11](#), Instruments for writing, EU:T:2013:334, § 67).

However, if the Office does not respond to all the arguments raised by the parties, this does not necessarily infringe the duty to state reasons (11/06/2014, [T-486/12](#), Metabol, EU:T:2014:508, § 19; 28/01/2014, [T-600/11](#), Carrera Panamericana, EU:T:2014:33, § 21; 15/07/2014, [T-576/12](#), Protekt, EU:T:2014:667, § 78; 18/11/2015, [T-813/14](#), Cases for Portable computers, EU:T:2015:868, § 15).

It is sufficient that it sets out the facts and legal considerations of fundamental importance in the context of the decision (18/01/2013, [T-137/12](#), Vibrator, EU:T:2013:26, § 41-42; 20/02/2013, [T-378/11](#), Medinet, EU:T:2013:83, § 17; 03/07/2013, [T-236/12](#), Neo, EU:T:2013:343, § 57-58; 16/05/2012, [T-580/10](#), Kindertraum, EU:T:2012:240, § 28; or 10/10/2012, [T-569/10](#), Bimbo Doughnuts, EU:T:2012:535, § 42-46, 08/05/2014, [C-591/12 P](#), Bimbo Doughnuts, EU:C:2014:305).

The Office can use facts that are a matter of common knowledge as a basis for its reasoning. Well-known facts are those that are likely to be known by anyone or that may be learnt from generally accessible sources (16/10/2014, [T-444/12](#), Linex, EU:T:2014:886, § 30; 22/06/2004, [T-185/02](#) Picaro, EU:T:2004:189, § 29; 09/02/2011, [T-222/09](#), Alpharen, EU:T:2011:36, § 29; 28/09/2016, [T-476/15](#), FITNESS, EU:T:2016:568, § 41; 17/09/2020, [C-449/18 P – C-474/18 P](#), MESSI (fig.) / MASSI et al., EU:C:2020:722, § 74).

The Office is not required to prove the accuracy of these well-known facts and, therefore, it is not obliged to give examples of such practical experience; it is up to the party concerned to submit evidence to refute it (20/03/2013, [T-277/12](#), Caffè Kimbo, EU:T:2013:146, § 46; 11/07/2013, [T-208/12](#), Rote Schnürsenkelenden, EU:T:2013:376, § 24; 21/02/2013, [T-427/11](#), Bioderma, EU:T:2013:92, § 19-22; 08/02/2013, [T-33/12](#), Medigym, EU:T:2013:71, § 20, 25; 07/12/2012, [T-42/09](#), Quadratum, EU:T:2012:658, § 73; 19/09/2012, [T-231/11](#), Stoffmuster, EU:T:2012:445, § 51).

Where a party argues that the circumstances of the proceedings are comparable to a previous Office decision, and the Office departs from the position taken in said decision, this needs to be addressed and particular explanations may be required (see

the Guidelines, [Part A, General Rules, Section 2, General principles to be respected in the proceedings, Paragraph 3, Other General Principles of EU Law](#) in relation to the principle of sound administration).

2 The Right to Be Heard

Articles [94 to 97](#) and [109](#) EUTMR

Article 62 EUDR

The defence's right to be heard is a general principle of EU law, according to which a person whose interests are appreciably affected by a decision addressed to him or her by a public authority must be given the opportunity to make his or her point of view known. In accordance with that principle, the Office may base its decision only on matters of fact or of law on which the parties have been able to set out their views. Consequently, where the Office gathers facts to serve as a basis for its decision, it is obliged to notify the parties of those facts in order that the parties may submit their views on them (07/11/2014, [T-567/12](#), Kaatsu, EU:T:2014:937, § 50-51 and case-law cited therein).

The right to be heard covers all the matters of fact or law and evidence that form the basis for the decision.

The Office will take legal issues into account, irrespective of whether or not they have been pleaded by the parties. For examination, it will examine the facts on its own motion; however, in opposition, cancellation and design invalidity proceedings, it will restrict its examination of facts, evidence and arguments to those provided by the parties. Nevertheless, this restriction does not prevent the Office from taking additional well-known facts into consideration.

While the Office must rule on each head of claim (10/06/2008, [T-85/07](#), Gabel, EU:T:2008:186, § 20), it is not required to give express reasons for its assessment in respect of each and every piece of evidence submitted or arguments put forward, where it considers that evidence or arguments to be unimportant or irrelevant to the outcome of the dispute (15/06/2000, [C-237/98 P](#), Dorsch Consult v Council and Commission, EU:C:2000:321, § 51).

The right to be heard does not apply to the final position to be adopted. Therefore, the Office is not bound to inform the parties of its legal opinion before issuing a decision and thus afford them the opportunity to submit their observations on that position or even to submit additional evidence (09/07/2014, [T-184/12](#), Heatstrip, EU:T:2014:621, § 37; 14/06/2012, [T-293/10](#), Colour per se, EU:T:2012:302, § 46 *in fine*; 08/03/2012, [T-298/10](#), Biodanza, EU:T:2012:113, § 101; 20/03/2013, [T-277/12](#), Caffè Kimbo, EU:T:2013:146, § 45-46).

Changing circumstances arising in the course of the proceedings (e.g. if during opposition proceedings the earlier right on which the opposition was based lapses

because it is not renewed or is declared invalid) will also be taken into account and the parties will be informed accordingly.

3 Other general principles of EU Law

The Office must respect the general principles of EU law, such as equal treatment and sound administration (24/01/2012, [T-260/08](#), Visual Map, EU:T:2012:23; 23/01/2014, [T-68/13](#), Care to care, EU:T:2014:29, § 51; 10/03/2011, [C-51/10 P](#), 1000, EU:C:2011:139, § 73).

For reasons of legal certainty and of sound administration, there must be a stringent and full examination of all applications in order to prevent trade marks and designs from being improperly registered. That examination must be undertaken in each individual case (23/01/2014, [T-68/13](#), Care to care, EU:T:2014:29, § 51).

The lawfulness of the Office's decisions must be assessed solely on the basis of EU regulations, as interpreted by the European Union judicature. Accordingly, the Office is not bound either by its previous decision-making practice or by a decision given in a Member State, or indeed a third country, that the sign/design in question is registrable as a national mark/design (23/01/2014, [T-513/12](#), Norwegian getaway, EU:T:2014:24, § 63). This is true even if the decision was adopted in a country belonging to the linguistic area in which the word sign in question originated (16/05/2013, [T-356/11](#), Equipment, EU:T:2013:253, § 7).

However, in the light of the principles of equal treatment and sound administration, the Office will take into account the decisions already taken in comparable cases and must carefully consider whether it should decide in the same way or not (28/06/2018, [C-564/16 P](#), DEVICE OF A JUMPING ANIMAL (fig.) / PUMA (fig.) et al., EU:C:2018:509, § 61 and 66; 10/03/2011, [C-51/10 P](#), 1000, EU:C:2011:139, § 74-75).

Moreover, the principle of equal treatment and sound administration must be applied in a manner that is consistent with the principle of legality, according to which a person may not rely, in support of his or her claim, on an unlawful act committed in another procedure (23/01/2014, [T-68/13](#), Care to care, EU:T:2014:29, § 51; 12/12/2013, [T-156/12](#), Oval, EU:T:2013:642, § 29; 02/05/2012, [T-435/11](#), UniversalPHOLED, EU:T:2012:210, § 38; 10/03/2011, [C-51/10 P](#), 1000, EU:C:2011:139, § 76-77).

4 Oral proceedings

Articles [96 to 97](#) EUTMR

Articles [49 to 55](#) EUTMDR

Articles 64 to 65 EUDR

Articles 42 to 46 and 82 EUDIR

[Article 96 EUTMR](#) and Article 64 EUDR provide that the Office may hold oral proceedings.

Any unofficial contacts such as telephone conversations will not be considered to constitute oral proceedings within the meaning of [Article 96 EUTMR](#) and Article 64 EUDR.

The Office will hold oral proceedings either on its own initiative or at the request of any party to the proceedings only when it considers these to be absolutely necessary. This will be at the Office's discretion (20/02/2013, [T-378/11](#), Medinet, EU:T:2013:83, § 72 and the case-law cited therein; 16/07/2014, [T-66/13](#), Flasche, EU:T:2014:681, § 88). In the vast majority of cases it will be sufficient for the parties to present their observations in writing.

4.1 Summons to oral proceedings

Where the Office has decided to hold oral proceedings and to summon the parties, the period of notice may not be less than one month unless the parties agree to a shorter period.

Since the purpose of any oral proceedings is to clarify all outstanding points before the final decision is taken, the Office, in its summons, should draw the parties' attention to the points that need to be discussed in order for the decision to be taken.

Where the Office considers it necessary to hear oral evidence from the parties, witnesses or experts, it will take an interim decision stating the means by which it intends to obtain evidence, the relevant facts to be proven and the date, time and place of the hearing. The period of notice will be at least one month, unless the parties concerned agree to a shorter period. The summons will provide a summary of this decision and state the names of the parties to the proceedings and details of the costs, if any, that the witnesses or experts may be entitled to have reimbursed by the Office.

The Office may also offer the possibility of taking part in the oral proceedings by video conference or other technical means.

If required, and in order to facilitate the hearing, the Office may invite the parties to submit written observations or to submit evidence prior to the oral hearing. The period

fixed by the Office for receiving these observations must allow sufficient time for them to reach the Office and then be forwarded to the other parties.

The parties may likewise submit evidence in support of their arguments on their own initiative. However, if this evidence ought to have been produced at an earlier stage of the proceedings, the Office will decide whether these items of evidence are admissible, taking account of the principle of hearing both parties, where appropriate.

4.2 Language of oral proceedings

Oral proceedings will be in the language of the proceedings unless the parties agree to use a different official EU language.

The Office may communicate in oral proceedings in another official EU language and it may, upon prior written request, authorise a party to communicate in another official EU language provided that simultaneous interpretation of the communication into the language of proceedings can be made available. The costs of providing simultaneous interpretation will be paid by the party making the request or by the Office as the case may be.

4.3 Course of the oral proceedings

Oral proceedings before the examiners, the Opposition Division and the department in charge of the Register will not be public.

Oral proceedings, including the delivery of the decision, will be public before the Cancellation/Invalidity Division and the Boards of Appeal, insofar as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

If a party who has been duly summoned to oral proceedings does not appear before the Office, the proceedings may continue without them.

If the Office invites a party to give evidence orally, it will advise the other parties accordingly so that they can attend.

Similarly, when the Office summons an expert or a witness to a hearing, it will advise the parties concerned. These may be present and put questions to the person giving evidence.

At the end of the oral proceedings the Office will allow the parties to present their final pleadings.

4.4 Minutes of oral evidence and of oral proceedings

[Article 53 EUTMDR](#)

Article 46 EUDIR

Minutes of the taking of oral evidence and of oral proceedings will be confined to the essential elements. In particular, they will not contain the verbatim statements made nor be submitted for approval. However, any statements by experts or witnesses will be recorded so that at further instances the exact statements made can be verified.

Where oral proceedings or the taking of evidence before the Office are recorded, the recording will replace the minutes.

The parties will receive a copy of the minutes.

4.5 Costs of taking evidence in oral proceedings

The Office may make the taking of evidence conditional upon a deposit by the party requesting it. The amount will be fixed by the Office based on an estimate of the costs.

The witnesses and experts summoned or heard by the Office will be entitled to reimbursement of expenses for travel and subsistence, including an advance. They will also be entitled to compensation for loss of earnings and payment for their work.

The amounts reimbursed and the advances for expenses are determined by the Executive Director of the Office and are published in the Office's Official Journal. For details, see Decision No [EX-99-1](#) of the President of the Office of 12/01/1999 as amended by Decision No [EX-03-2](#) of the President of the Office of 20/01/2003.

Where the Office decides to adopt means of taking evidence that require oral evidence from witnesses or experts, the Office will bear the cost of this. However, where one of the parties has requested oral evidence, then that party will bear the cost, subject to a decision on the apportionment of costs in *inter partes* proceedings.

5 Decisions

5.1 Contents

[Article 94 EUTMR](#)

Article 62 EUDR

Articles 38 to 41 EUDIR

Office decisions will be reasoned to such an extent that their legality can be assessed at the appeal stage or before the General Court or Court of Justice.

The decision will cover the relevant points raised by the parties. In particular, if there are different outcomes for some goods and services of the EUTM application or registration concerned, the decision will make clear which of the goods and services are refused and which are not.

The name or names of the person(s) who took the decision will appear at the end of the decision.

At the end of the decision, there will also be a notice advising of the right to appeal.

Failure to include this notice does not affect the legality of the decision and does not affect the deadline for filing an appeal.

5.2 Apportionment of costs

[Article 105\(5\)](#), [Article 109](#) and [Annex I A\(33\)EUTMR](#)

[Article 33 EUTMDR](#)

Article 70 EUDR and point 18 of the Annex to the EUDR

Articles 37 and 79 EUDIR

‘Costs’ comprise the costs incurred by the parties to the proceedings, chiefly (i) representation costs and costs for taking part in oral hearings (‘representation costs’ means the costs for professional representatives within the meaning of [Article 120 EUTMR](#) and Article 78 EUDR, not for employees — not even those from another company with economic links); and (ii) the opposition, cancellation or invalidity fee.

‘Apportionment of costs’ means that the Office will decide whether and to what extent the parties have to reimburse each other. It does not involve the relationship with the Office (fees paid, the Office’s internal costs).

In *ex parte* proceedings, there is no decision on costs, nor any apportionment of costs. The Office will not reimburse any fees paid (the exceptions are [Article 33 EUTMDR](#) and

Article 37 EUDIR, refund of the appeal fee in certain cases, and [Article 105\(5\) EUTMR](#), refund of the fee for continuation of proceedings if the application is not granted).

Decisions on costs, or the fixing of costs, are limited to opposition, cancellation and design invalidity proceedings (including the ensuing appeal proceedings or proceedings before the GC and CJEU).

If a decision is given in *inter partes* proceedings, the Office will also decide on the apportionment of costs.

The decision will fix the costs to be paid by the losing party/parties. The losing party will bear the fees and costs incurred by the other party that are essential to the proceedings. No proof that these costs were actually incurred is required.

If both parties fail on one or more heads or if reasons of equity so dictate, the Office may determine a different apportionment of costs.

If the contested EUTM application, EUTM or REUD is withdrawn or surrendered, or the opposition, request for cancellation or application for a declaration of invalidity is withdrawn, the Office will not decide on the substance of the case, although it will normally take a decision on costs. The party terminating the proceedings will bear the fees and costs incurred by the other party. Where the case is closed for other reasons, the Office will fix the costs at its discretion. This part of the decision can be enforced in simplified proceedings in all Member States of the EU once it becomes final.

In no case will the decision on costs be based on hypothetical assumptions about who might have won the proceedings if a decision on substance had been taken.

Furthermore, within one month of the date of notification fixing the amount of the costs, the party concerned may request a review. This request must state the reasons on which it is based and must be accompanied by the corresponding fee.

For further information see [the Guidelines, Part C, Opposition, Section 1, Opposition Proceedings, paragraph 6.5](#) and [the Guidelines on Examination of Design Invalidity Applications](#).

5.3 Public availability of decisions

[Article 113 EUTMR](#)

Decision No [EX-25-05](#) of the Executive Director of the Office of 7 April 2025 on the Register of EU trade marks, the Register of EU designs, the database of proceedings before the Office, and on the case-law database.

To promote convergence of practices, the Office maintains a case-law database, making publicly available Office decisions defined by the EUTMR, the EUDR and the legislative acts adopted pursuant to them, as well as judgments of national and EU courts in intellectual property matters.

For reasons of transparency and in the interest of the public, the Office makes its decisions publicly available upon their notification, irrespective of the fact whether the decisions have become final. This includes making decisions publicly available

following the examination of an EUTM application upon their notification, although the EUTM application may remain unpublished following its refusal or a withdrawal of the EUTM application (see the Guidelines, [Part B, Examination, Section 1, Proceedings, paragraph 4, Publication](#)). It also includes decisions even if they are annulled at a later stage, or if they do not become final for any other reason.

The Office's decisions will be kept in the database. Requests for removal of decisions from the database will be refused.

However, before the publication of an REUD pursuant to Article 49 or Article 50(4) EUDR, public availability of Office decisions is subject to the restrictions laid down in Article 50(2) and (3) EUDR and Article 14(3) EUDIR. These include REUD applications refused before reaching registration, and registered EU designs subject to deferment of publication. In both cases the disclosure of content is subject to the restrictions in the aforementioned articles.

Making such decisions publicly available in the database is not to be confused with their entry in the register. The outcome of the decisions is recorded in the EUTM or EUD registers only once they are final.

The judgments and decisions are made available in their original language. Official translations are published where available. The case-law database may contain unofficial translations, where indicated, or may facilitate automatic machine translations for information purposes only.

The case-law database is accessible free of charge on the Office's website through the tool [eSearch Case Law](#).