

COMMISSION REGULATION (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (1), as amended by Regulation (EC) No 3288/94 (2) and in particular Article 139 thereof,

Having regard to Commission Regulation (EC) No 2868/95 of 13 December 1995, implementing Council Regulation (EC) No 40/94 on the Community trade mark (3),

Whereas Article 139 (3) of Regulation (EC) No 40/94 (hereinafter 'the Regulation') provides that the fees regulations shall be adopted in accordance with the procedure laid down in Article 141 of the Regulation;

Whereas Article 139 (1) of the Regulation provides that the fees regulations shall determine in particular the amount of the fees and the ways in which they are to be paid;

Whereas Article 139 (2) of the Regulation provides that the amounts of the fees shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient for the budget of the Office for Harmonization in the Internal Market (trade marks and designs) ('the Office') to be balanced;

Whereas, however, in the Office's start-up phase, balance can be achieved only if there is a subsidy from the general budget of the European Communities, in accordance with Article 134 (3) of the Regulation;

Whereas the basic fee for the application for a Community trade mark shall include the amount which the Office must pay to each central industrial property office of the Member States for each search report provided by such offices in accordance with Article 39 (4) of the Regulation;

Whereas to ensure the necessary flexibility, the President of the Office ('the President') should be empowered, subject to certain conditions, to lay down the charges which may be payable to the Office in respect of services it may render, the charges for access to the Office's data bank and the making available of the contents of this data bank in machine-readable form, and to set charges for the sale of its publications;

Whereas, in order to facilitate the payment of fees and charges, the President should be empowered to authorize methods of payment which are additional to those explicitly provided for in this Regulation;

Whereas it is appropriate that the fees and charges payable to the Office should be fixed in the same currency unit as is used for the budget of the Office;

Whereas the budget of the Office is fixed in ecus;

Whereas, moreover, the fixing of these amounts in ecus avoids discrepancies that may result from exchange rate variations;

Whereas payments in cash should be made in the currency of the Member State where the Office has its seat;

Whereas the measures envisaged in this Regulation are in accordance with the opinion of the Committee established under Article 141 of the Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

General

The following shall be levied in accordance with this Regulation:

(a) fees to be paid to the Office as provided for in the Regulation and in Regulation (EC) No 2868/95;

(b) charges laid down by the President pursuant to Article 3 (1) and (2)

Article 2

Fees provided for in the Regulation and Regulation (EC) No 2868/95

The fees to be paid to the Office under Article 1 (a) shall be as follows:

>TABLE>

Article 3

Charges laid down by the President

1. The President shall lay down the amount to be charged for any services rendered by the Office other than those specified in Article 2.

2. The President shall lay down the amount to be charged for the Community Trade Marks Bulletin and the Official Journal of the Office as well as any other publications issued by the Office.

3. The amounts of the charges shall be laid down in ecus.

4. The amounts of the charges laid down by the President in accordance with paragraphs 1 and 2 shall be published in the Official Journal of the Office.

Article 4

Due date for fees and charges

1. Fees and charges in respect of which the due date is not specified in the Regulation or in Regulation No 2868/95 shall be due on the date of receipt of the request for the service for which the fee or the charge is incurred.

2. The President may decide not to make services mentioned in paragraph 1 dependent upon the advance payment of the corresponding fees or charges.

Article 5

Payment of fees and charges

1. Fees and charges due to the Office shall be paid

(a) by payment or transfer to a bank account held by the Office,

(b) by delivery or remittance of cheques made payable to the Office, or

(c) in cash.

2. The President may allow methods of payment other than those set out in paragraph 1, in particular by means of deposits in current accounts held with the Office.

3. Determinations made pursuant to paragraph 2 shall be published in the Official Journal of the Office.

Article 6

Currencies

1. Payments or transfers to a bank account referred to in Article 5 (1) (a), by delivery or remittance of cheques referred to in Article 5 (1) (b) or any other method of payment allowed by the President pursuant to Article 5 (2) shall be made in ecus.

2. The payments in cash referred to in Article 5 (1) (c) shall be made in the currency of the Member State where the Office has its seat. The President shall determine the ecus equivalents in that currency on the basis of the exchange rate in force, which are fixed daily by the Commission and published in the Official Journal of the European Communities in accordance with Council Regulation (EC) No 3320/94 (4).

Article 7

Particulars concerning payment

1. Every payment must indicate the name of the person making the payment and must contain the necessary information to enable the Office to establish immediately the purpose of the payment. In particular, the following information shall be provided:

(a) when the application fee is paid, the purpose of the payment, namely 'application fee`;

(b) when the registration fee is paid, the file number of the application which is the basis for the registration and the purpose of the payment, namely 'registration fee`;

(c) when the opposition fee is paid, the file number of the application and the name of the applicant for the Community trade mark against which opposition is entered, and the purpose of the payment, namely 'opposition fee`;

(d) when the revocation fee and the invalidity fee are paid, the registration number and the name of the proprietor of the Community trade mark against which the application is directed, and the purpose of the payment, namely 'revocation fee` or 'invalidity fee`.

2. If the purpose of the payment cannot immediately be established, the Office shall require the person making the payment to notify it in writing of this purpose within such period as it may specify. If the person does not comply with this request in due time, the payment shall be considered not to have been made. The amount which has been paid shall be refunded.

Article 8

Deemed date of payment

1. The date on which any payment shall be considered to have been made to the Office shall be as follows:

(a) in the cases referred to in Article 5 (1) (a), the date on which the amount of the payment or of the transfer is actually entered in a bank account held by the Office;

(b) in the case referred to in Article 5 (1) (b), the date of the receipt of the cheque at the Office, provided that the cheque is met;

(c) in the cases referred to in Article 5 (1) (c), the date of receipt of the amount of the cash payment.

2. Where the President allows, in accordance with the provisions of Article 5 (2), other methods of paying fees than those set out in Article 5 (1), he shall also lay down the date on which such payments shall be considered to have been made.

3. Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it was due, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment -

(a) in a Member State, within the period within which the payment should have been made:

(i) effected the payment through a banking establishment;

(ii) duly gave an order to a banking establishment to transfer the amount of the payment; or

(iii) dispatched at a post office or otherwise a letter bearing the address of the Office and containing a cheque within the meaning of Article 5 (1) (b), provided that the cheque is met;

and -

(b) paid a surcharge of 10 % on the relevant fee or fees, but not exceeding ECU 200; no surcharge is payable if a condition according to sub-paragraph (a) has been fulfilled not later than 10 days before the expiry of the period for payment.

4. The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3 (a) was fulfilled and, where required, to pay the surcharge referred to in paragraph 3 (b), within a period to be specified by it. If the person fails to comply with this request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.

Article 9

Insufficiency of the amount paid

1. A time limit for payment shall, in principle, be considered to have been observed only if the full amount of the fee has been paid in due time. If the fee is not paid in full, the amount which has been paid shall be refunded after the period for payment has expired.

2. The Office may, however, in so far as this is possible within the time remaining before the end of the period, give the person making the payment the opportunity to pay the amount lacking or, where this is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment.

Article 10

Refund of insignificant amounts

1. Where an excessive sum is paid to cover a fee or a charge, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund. The President shall determine what constitutes an insignificant amount.

2. Determinations by the President pursuant to paragraph 1 shall be published in the Official Journal of the Office.

Article 11

Entry into force

This Regulation shall enter into force on the seventh day following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 December 1995.

For the Commission

MARIO MONTI

Member of the Commission

(1) OJ No L 11, 14. 1. 1994, p. 1.

(2) OJ No L 349, 31. 12. 1994, p. 83.

(3) See p. 1 of this Official Journal.

(4) OJ No L 350, 31. 12. 1994, p. 27.