

JOINT MEETING OF THE ADMINISTRATIVE BOARD
AND THE BUDGET COMMITTEE
OF THE
OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADEMARKS AND DESIGNS)
18 AND 19 SEPTEMBER 2008

CONCLUSIONS OF AGENDA ITEM
“HOW TO BETTER BALANCE OHIM’S BUDGET – THE WAY FORWARD”

The Joint Meeting of the Administrative Board (AB) and the Budget Committee (BC) of the Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM), held on 18 and 19 September, 2008, had a wide-ranging discussion over how to better balance OHIM’s Budget, based on document CA/08/S37C/2/EN-CB/08/S35C/2/EN, in annex.

Representatives from OHIM and the European Commission (EC) also took part in the discussions.

Member States recognized that discussions around how to better balance OHIM’s Budget, in particular about the OHIM's ever growing surplus, that currently reaches more than 300 million euros, is ongoing, without a positive outcome, for some time now and that two outstanding issues, arising in this context, need to be urgently solved: how to address the surplus generated so far and how to better balance income and expenditure in the future.

Member States acknowledged, in this context, that although solutions should be looked for in the existing legal framework, not excluding, nevertheless, those which would imply amending the existing regulations, and that the initiative rests with the European Commission, input from the Administrative Board, the Budget Committee and the OHIM top management would be helpful in this process, within the advisory role of those bodies, foreseen under Regulation 40/94, on drawing possible conclusions on a suitable way forward.

Member States also recalled that the Council, in 2007, has asked, besides the study on the overall functioning of the Community Trademark System, for an immediate reduction of the Community Trademark fees, but considered that it would be essential to agree on a set of complementary budgetary measures to accompany the abovementioned fee reduction, in order to assure a balanced budget for OHIM in the future.

Regarding the functioning of the trade mark system in Europe, the European Commission have informed the Board that these issues will be addressed by the Commission’s study on the overall functioning of the system to be presented by the end of 2009 and moreover that consultations will be held with all Member States and users regarding the main elements that should be addressed when elaborating the study on the overall functioning of the system.

Therefore, Member States recognized the importance and relevance associated with the consultation process initiated by the Chairman of the Administrative Board, in close cooperation with the Chairman of the Budget Committee, the President of the Office and the European Commission, on a package of possible measures aiming at better balancing OHIM’s Budget in the future, enclosed in document CA/08/S37C/2/EN-CB/08/S35C/2/EN.

On the abovementioned proposed package of budgetary measures, the results of the discussions are the following:

- As regards to the proposed fee reduction a new very straight forward proposal emerged during discussions, which would not only substantially reduce the fees, but simplify the fee structure and result in a significant reduction of administrative burden in relation to the handling of fees. This would consist of concentrating the impact of the fee reduction on the current registration fee, and bringing the combined value of the application and registration fees down to around €1000.

- Furthermore, as an alternative to the proposed automatic reduction mechanism of fees, Member States considered a regular biannual review of the financial situation of the Office by the Commission to be more appropriate in order to making the necessary proposals in the committee procedure with a view to balancing the Office's budget.

- Member States have supported the proposal of distributing to the National Offices of Member States an amount equivalent to 50% of the renewal fees in accordance with distribution criteria to be defined in a way which would guarantee a minimum amount for each Member State. It should be specified, in the Council Regulation 40/94, that the transfer of 50% of renewal fees should be done in a way that would ensure that the funds would be available to the Member States' National Offices and would be used for the purposes closely related to the protection, promotion and/or enforcement/combating counterfeiting of trade marks.

- The vast majority of Member States have supported the proposal to allocate around 190 million euros to the Reserve Fund and to create a Cooperation Fund. This Cooperation Fund would be established with an allocation of 50 million euros and would phase out once the repatriation of renewal fees is in force. It should be specified that the funds for cooperation should be available to the Member States National Offices, and would be used for the projects closely related to harmonization and the protection, promotion and/or enforcement of trade marks and designs. Users should be associated with the operation of this fund in an appropriate way. The structure of the fund should be as light as possible and its access should be facilitated and avoid unnecessary administrative bureaucracy.

- Member States supported the idea of using the remaining surplus in the interests of users, and asked the Commission to study this issue in consultation with users within the context of the overall evaluation of the trademark system to be conducted by the Commission.

Member States and the OHIM top management agreed that from the discussions held in this meeting, sufficient support was gathered around a number of basic elements, identified above, that should be included in a package of budgetary measures aiming at guaranteeing a balanced budget for OHIM in the future and took the decision to inform the European Commission accordingly, by way of formal joint letter from the Chairmen of the AB and BC and the President of the OHIM, to be considered within its forthcoming initiatives in this field.