

**Survey of Market Participants
Who Use the CTM System**

**The Findings of a Survey Among
CTM Applicants / Owners and their Professional
Representatives in All EU Member States**

Conducted in Spring, 2010

CONFIDENTIAL

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Contents

1	Objective and methodology	1	Objective
		1	Target public
		2	Region covered
		2	Investigative approach
		3	Sample composition
		3	Survey documentation
<hr/>			
2	Online survey	4	Quality requirement
		4	Response rate
<hr/>			
3	Methodological basics	6	Total findings
		6	Internal composition of the two main user groups
		9	Respondents' comments
<hr/>			
4	Findings	10	
4.1	Level and scope of users' trade mark activity	11	
4.2	Evaluations	19	(a) General attitudes towards the CTM system
		28	(b) Assessment of OHIM's current performance
		44	(c) Consistency of national trade mark offices and OHIM in comparison
		47	(d) OHIM's current performance in the areas of examination for absolute grounds of refusal, classifications and opposition proceedings
		56	(e) Opinions on the "cluttering" of the CTM register
4.3	Reactions to proposed changes	59	(a) Opinions on the option of filing CTMs via the EU Member States' national offices
		61	(b) Opinions on proposed changes at OHIM
4.4	OHIM fees	81	(a) Opinions on the appropriateness of various main OHIM fees
		86	(b) The impact of the OHIM filing fees on CTM applications
		96	(c) The impact of the OHIM "renewal" fee on CTM renewals
<hr/>			
	Summary: Main insights	99	
<hr/>			

Appendix

**(I) Registering licences
with OHIM**

(II) Survey data

**(III) Composition and structure
of the universe and sample**

(a) Structure of the CTM-ONLINE Database
(universe)

(b) Sample composition/Respondents by
category

(c) Sample: Respondents by country

(d) Sample: Respondents by OHIM activity

(e) Sample: Response rates per country and
respondent category

**(IV) Printout version of the
online questionnaire**

**(V) Data concerning
the accuracy of
representative surveys**

Statistical tolerance levels of the findings

1 Objective and methodology

Objective In 2010, an evaluation of the overall state of the CTM system is being completed jointly by the EUROPEAN COMMISSION INTERNAL MARKET AND SERVICES DIRECTORATE GENERAL, Brussels (BE) and the MAX PLANCK INSTITUTE FOR INTELLECTUAL PROPERTY, COMPETITION AND TAX LAW, Munich (DE).

One of the core elements of the evaluation is a survey among the market participants, i.e., persons who use the CTM system in all EU Member States, focusing on their experiences with the CTM system, their assessments of its current state and their recommendations for its future development.

The following report presents the findings of the survey, which was conducted by the INSTITUT FÜR DEMOSKOPIE ALLENSBACH, Allensbach (DE).

The survey was conducted as an online survey (CAWI)¹, with data being collected from February to March 2010. The survey is based on a random sample of 1,599 users.

Target public The survey targeted users registered in OHIM's CTM-ONLINE database who had professional dealings with OHIM at least once during the three-year period from 2007 to 2009 (n = 43,565). Of these, 73 percent had addresses in the EU and provided an e-mail address.

The sampling unit is the individual (company or office), not CTM cases.

Users can be divided into two main groups: "proprietors" (trade mark owners/applicants and their employees) and "agents" (professional legal representatives).

Not all proprietors registered in the CTM-ONLINE database actually deal with OHIM matters themselves: 15 percent only had entries in the

¹ Computer Assisted Web Interviewing

CTM-ONLINE database that were delegated to an external legal representative. In these cases, the external representatives are the relevant potential respondents for the survey. Thus, the views of trade mark owners/applicants whose OHIM matters were handled by professional agents during the relevant time period are not represented directly in the findings, but rather indirectly via the agents' opinions.

Region covered Responses were received from all 27 EU Member states, with at least seven responses per country from several small Member States.

Investigative approach Users were randomly selected from the CTM-ONLINE database and then sent an invitation by e-mail containing a link to the online survey.

Persons who received the e-mail but were not involved in CTM applications themselves were asked to forward the invitation to the person at their office or company who is responsible for trade mark applications at a European level.

Respondents were free to call up and complete the online survey at a time of their own choosing. Respondents received up to three reminders.

The online interviews were conducted using an online questionnaire that automatically proceeded from one question to the next.

The invitation, reminders and questionnaire were written in English. The questionnaire comprised 52 questions that were posed to proprietors, while agents were asked to answer a total of 47 questions.

Sample composition A random selection from the users registered in the CTM-ONLINE database would have yielded a sample in which the number of persons from some key subgroups would have been insufficient for analytical purposes. For example, agents represent 35 percent of the users registered in the CTM-ONLINE database, yet if the sample contained exactly this share of agents, this would not be enough cases for a thorough analysis.

For this reason, a stratified random sample was designed so that the sample included somewhat greater shares of respondents from the following two key groups than it would have given the initial database structure: 1. agents and 2. intensive OHIM users. This disproportionate stratification, which facilitates a sufficiently in-depth analysis of the various subgroups, is compensated for in the findings via weighting, so that the results properly reflect the structure of the users registered in the CTM-ONLINE database.

Survey documentation The following report presents the findings in summarised form. Details on the number of respondents, the statistical composition of the sample and the methodological approach used to complete the study are provided in the appendix, which also includes a complete printout of the online questionnaire employed.

2 Online survey

The online survey technique is a particularly appropriate and useful method for data collection when surveying smaller, specialised professional circles listed in a reliable database. OHIM's CTM-ONLINE database allows for a random selection of respondents.

Quality requirement An important requirement to ensure the quality of the survey is that the members of the professional group to be surveyed must be reachable by e-mail and accustomed to dealing with the Internet in a professional context. This requirement is fulfilled in the present investigation, since the vast majority of potential respondents—users of the CTM system—do in fact use the Internet intensively in the course of their day-to-day work.

To adequately assess the quality of the findings ascertained by the present online survey, the following aspects should be considered:

Response rate Survey quality is often evaluated in view of the so-called "response rate" (completed interviews as a percentage of the net sample). Online surveys typically obtain much lower response rates than traditional survey methods, such as face-to-face or telephone interviewing, but this is not necessarily indicative of lower quality. The response rate calculated for the present online survey is 8.3 percent, a result that is fully within the expected range (details on the calculation of the response rate are provided in the appendix).

Response rates obtained for online interviews can only be compared to a limited extent with those obtained for face-to-face or telephone interviews. The way in which response rates are calculated is stricter when applied to online interviews, since the reasons for nonresponses can hardly be divided with complete certainty into quality-neutral and non-neutral categories, as can be done with other types of interviews. In the case of online research, all nonresponses with no feedback have to be classified as "non-neutral" in terms of quality. Even if substantial—

albeit non-quantifiable—shares of such nonresponses are actually "quality-neutral" (for example, incorrect e-mail addresses), they have to be deducted from the response rate.

In online survey samples, active respondents with above-average interest in and more distinct views on the topic being investigated tend to be overrepresented. Conversely, users with below-average interest in the topic and less distinct attitudes tend to be underrepresented. However, in online surveys conducted among professional groups, as is the case here, this effect tends to be less pronounced compared with online surveys aimed at the general public. Furthermore, the present survey aims to gather assessments, opinions and proposals rather than measuring the absolute magnitude of any assessment in percentages. In any case, the results do not underestimate any distinct opinions—and this applies to both positive and negative views.

3 Methodological basics

Total findings CTM proprietors and agents consistently give such different responses that no total findings for both groups combined have been calculated for the present report.

Total values would not adequately represent the views of some groups of respondents—especially agents with the highest level of trade mark activity, who generally work for large law firms. Although these groups may be numerically small, their views are quite important when it comes to the current state and future development of the CTM system.

Conversely, calculating total findings in proportion to respondents' level of trade mark activity would insufficiently reflect the views of proprietors—and particularly those proprietors with a low level of trade mark activity. In the following report, the findings are thus shown separately for proprietors and agents.

Internal composition of the two main user groups The most important subgroups of proprietors and agents to be analysed in the present report are as follows: low, medium or high individual level of trade mark activity; low, medium or high individual level of OHIM activity; (proprietors only) company size: small/medium (SME) or large-scale enterprise; (proprietors only) no, low/medium or high export activity within the EU.

Users' individual activity level was measured using three questions:

- Q4 on the level of trade mark activity (national and CTM),
- Q10 on the level of OHIM activity,
- S11 (to proprietors only) on export activity within the EU.

In accordance with the structure of the CTM-ONLINE database, the majority of respondents in both major user groups (proprietors and agents) are less active users (cf. Chart 1 below).

Users with high levels of activity are in the minority. 5 percent of all proprietors can be classified as having a high level of general trade mark activity or OHIM activity; among agents, the corresponding share is about 30 percent.

Chart 1

PROPRIETORS

Q4 Level of trade mark activity ¹		Q10 Level of OHIM activity ²		
Low	68%	Low	50%	
Medium	27	Medium	45	
High	5	High	5	
S5 Size of company ³		S11 Exports within the EU ⁴		
Small	72%	} SME	None	17%
Medium	9		Low/medium	44
Large-scale enterprise	19		High	39

AGENTS

Q4 Level of trade mark activity ¹		Q10 Level of OHIM activity ²	
Low	15%	Low	13%
Medium	52	Medium	60
High	33	High	27

¹Number of different activities or proceedings over the past 5 years:

Low: <26 points
 Medium: 26-115 points
 High: >115 points

²Average number of different trade mark activities in which respondents were involved:

Low: 0-3
 Medium: 4-7
 High: 8-10

³Number of EU Member States in which the company offers products or services

Small: Number of employees < 50 and the total turnover in 2009 < 10 million euros
 Medium: Number of employees = 50 - 250 and/or turnover in 2009 = 10 - 50 million euros
 SME: Number of employees < 250 and/or turnover in 2009 < 50 million euros
 Large-scale enterprise: Number of employees > 250 and/or turnover in 2009 > 50 million euros

⁴Number of EU Member States in which the company offers its products or services

None: 1
 Low/medium: 2 - 9
 High: 10 or more

To evaluate proprietors' answers properly, it is important to note that about four fifths of the proprietors included in the sample work for small or medium-sized companies (SMEs: 81 percent, large-scale enterprises: 19 percent, cf. Chart 1 above). The definitions employed to group the companies by size conform to the official EU definitions of small, medium and large-scale enterprises (defined by the number of employees and annual turnover of the company; for details see footnote below Chart 1).

Just as the sample of proprietors is mainly composed of proprietors from companies with lower trade mark activity and SMEs, a rather large share of the proprietors' companies also have a low level of export activity within the EU (cf. Chart 1 above): a total of 61 percent report having no/low/medium export activity, including 17 percent who say they have no such export activity at all. In contrast, nearly 40 percent of the proprietors' companies have a high level of export activity within the EU (export to 10 countries or more).

Thus, the "total" values calculated for proprietors and agents predominantly represent the responses given by less active users and, in the case of proprietors, responses given by proprietors from SMEs and from companies with low export activity within the EU.

To arrive at a proper understanding of many findings, it is important to compare the responses given by less active and highly active users and, in the case of proprietors, responses given by proprietors from SMEs and from large-scale enterprises, along with those given by proprietors from companies with low and high export activity.

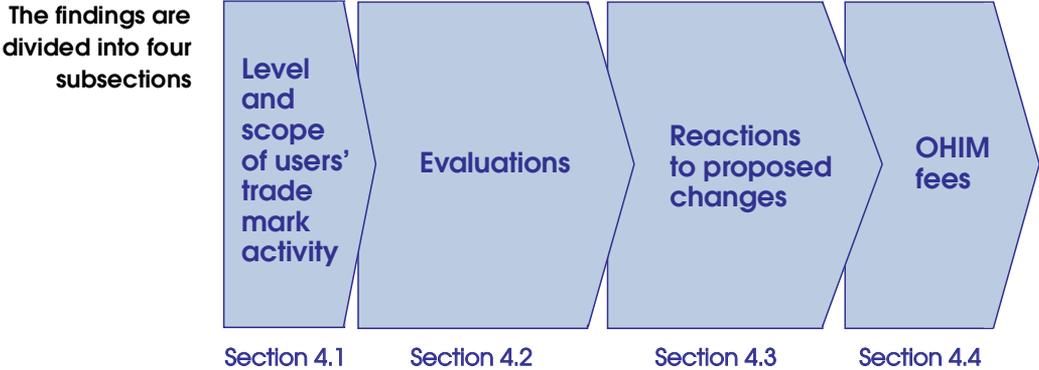
Respondents' comments Most of the test questions pertaining to potentially controversial issues were accompanied by a comment box where respondents could enter additional comments. In some sections of this report, a few selected comments by respondents are presented to highlight the findings. The remarks printed here are quotations: that is, they are cited exactly as entered by respondents—with only obvious spelling mistakes having been corrected—so as not to alter the intended meaning and style in any way.

4 Findings

This report covers the topics outlined in the "Invitation to tender no. MARKT/2009/12/D - STUDY ON THE OVERALL FUNCTIONING OF THE TRADE MARK SYSTEM IN EUROPE" by the European Commission, Internal Market and Service DG, insofar as they were suitable for inclusion in the survey.

An additional section on registering licenses with OHIM is to be found in the appendix, since this topic was not included in the "Invitation to tender."

Chart 2



4.1 Level and scope of users' trade mark activity

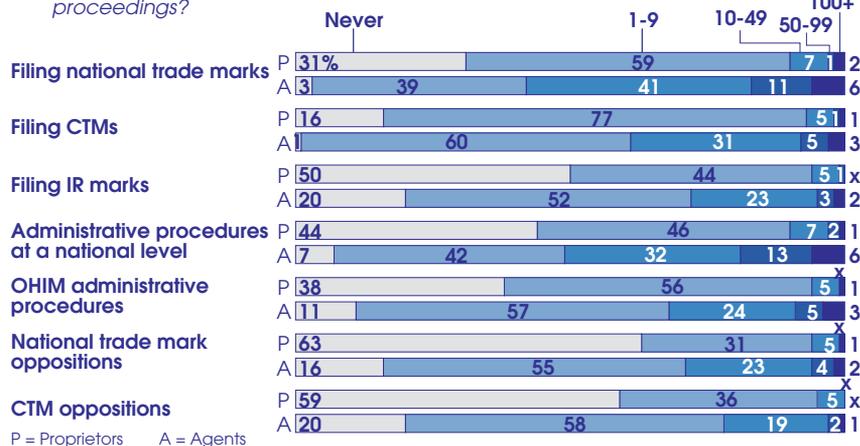
This section takes an initial look at the reported trade mark activities of users of the CTM system. Several survey questions determined respondents' individual level of activity in trade mark matters, along with the range of services they use, either on a national level or the OHIM level (Q4, Q7, Q10).

- Main findings (Q4, Q7, Q10)**
- **Whereas agents generally provide the full spectrum of services, most proprietors deal with a smaller number and range of national and OHIM trade mark activities**
 - **The OHIM activity profile of proprietors from large-scale enterprises shows more resemblance to the activity profile of agents than to that of proprietors from SMEs. Significant shares of proprietors from large-scale enterprises personally handle more complex procedures, such as CTM oppositions, administrative procedures at OHIM, CTM renewals, CTM appeals and CTM invalidity requests.**
 - **Proprietors from both SMEs and large-scale enterprises report that filing CTMs (either as CTMs only or also as national trademarks: 60 percent in total) is the prevalent practice at their company.**
 - **Regarding the prevalent practice among agents, filing CTMs (43 percent in total) is just about as frequent as national filings only (40 percent).**

Individual level of trade mark activity (Q4) A majority of proprietors report being personally involved in filing CTMs (84 percent in total, varying from 1-9 times per year to 100 times per year or more, cf. Chart 3 below), while 69 percent are involved in filing national trade marks, 62 percent in OHIM administrative procedures, and 56 percent in administrative procedures at a national level. On the whole, CTM proprietors are less active at the national level than at the CTM level.

Chart 3

Q4: About how many times per year are you personally involved in the following proceedings?



Proprietors and professional agents registered in the CTM-ONLINE database differ quite substantially in terms of the level and scope of trade mark matters they personally handle.

Compared to proprietors, professional agents deal with a greater number and broader range of trade mark activities (Q4)

As expected, proprietors are less involved in trade mark activities or proceedings than agents are. In keeping with their professional role, most agents deal with the full range of trade mark activities: compared to proprietors, agents deal with a greater number and broader range of trade mark activities.

The trade mark activities completed most often by agents registered in the CTM database are filing CTMs (99 percent, varying from 1-9 times per year to 100 times per year or more), filing national trade marks (97 percent), attending to administrative procedures at a national level (93 percent) and to OHIM administrative procedures (89 percent).

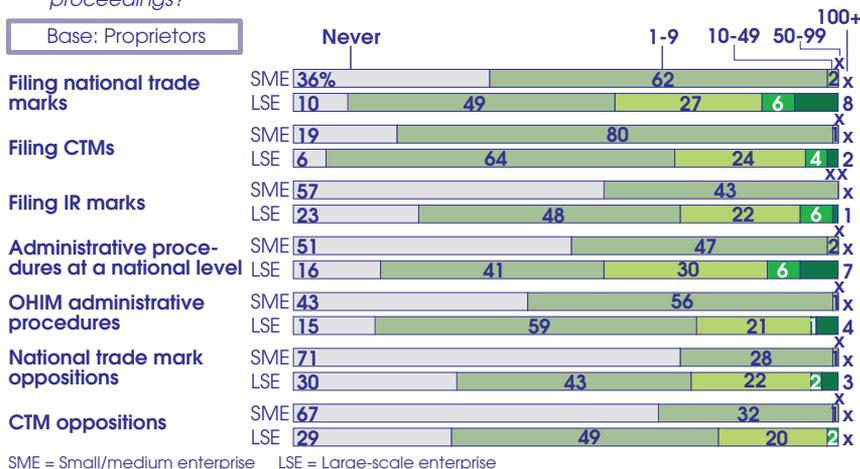
Filing IR marks (80 percent) and oppositions at both the national and CTM level is the domain of agents (84 percent and 80 percent, respectively).

Although CTMs and national trade marks are both very important in the agents' daily work, the highest frequencies are reported in conjunction with national trade mark proceedings (filing national trade marks: 17 percent "50-99 times a year" or "100 times or more," and administrative procedures at a national level: 19 percent "50-99 times a year" or "100 times or more"), as compared to filing CTMs and OHIM administrative procedures (8 percent of agents report being engaged in both of these activities "50-99 times a year").

Chart 4 analyses proprietors' activities more thoroughly by differentiating between proprietors from small or medium-sized enterprises (SME) and from large-scale enterprises. Proprietors from SMEs are involved in trade mark proceedings considerably less often than all proprietors on average (cf. Chart 3 above). Proprietors from large-scale enterprises are involved in trade mark proceedings to a similar extent as agents, albeit not quite as intensively: here, the highest frequencies are reported in conjunction with filing national trade marks (12 percent "50-99 times a year" or "100 times or more") and the corresponding administrative procedures at national level (13 percent), compared to filing CTMs and the corresponding administrative procedures (6 and 5 percent).

Chart 4

Q4: About how many times per year are you personally involved in the following proceedings?



OHIM activities (Q10) A second survey question focused exclusively on OHIM activities, covering ten possible activities at OHIM (Q10).

Methodological note *Since the response category "IR mark applications" did not remind respondents that the focus of Q10 was on dealings with OHIM, some respondents may have primarily been thinking of direct IR filings, rather than IR mark filings via OHIM, when giving their response.*

As Chart 5 shows, most proprietors have personally been involved in three main types of OHIM activities over the past five years: specifically, visiting OHIM's website (89 percent), filing CTM applications (78 percent) and searching the CTM register (76 percent).

Proprietors have less experience with IR mark applications, CTM oppositions, CTM renewals, CTM appeals and CTM invalidity requests (Q10) A maximum of about one third of proprietors have personally dealt with other OHIM activities (opposition procedures, IR mark applications, CTM renewals, CTM appeals, CTM invalidity requests, requesting national search reports, and other administrative procedures).

Chart 5

Q10: Thinking about your dealings with OHIM in trade mark matters over the past 5 years, which of the following activities or proceedings have you been involved in over the past 5 years?



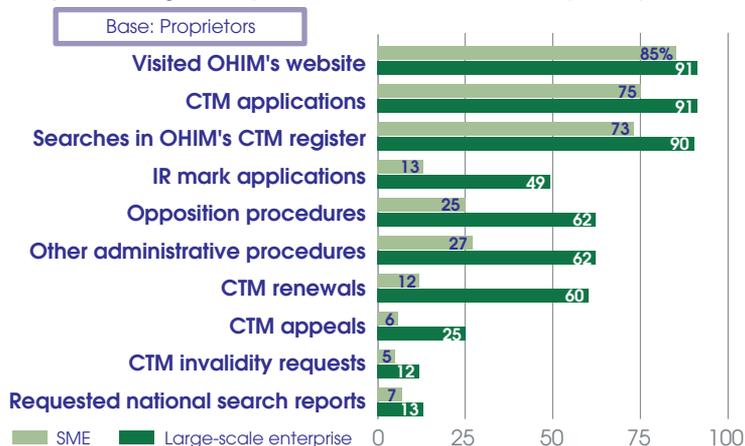
Agents provide the full spectrum of OHIM activities (Q10)

Nearly every agent has dealt with activities such as visiting OHIM's website, filing CTM applications and searching the CTM register over the past five years (94 percent). Most agents have also handled IR mark applications, CTM renewals, CTM oppositions and other administrative procedures (ranging from 49 to 71 percent). CTM appeals, CTM invalidity requests and requesting national search reports via OHIM are less common activities, having been dealt with by only 23 to 34 percent of agents over the past 5 years.

Next, the analysis shall examine proprietors' involvement in OHIM activities according to whether they are from small or medium-sized enterprises (SMEs) or from large-scale enterprises. As Chart 6 shows, the main finding here is that the OHIM activity profile of proprietors from large-scale enterprises generally resembles the profile of agents (cf. Chart 5 above) more closely than the profile of proprietors from SMEs. In comparison to proprietors from SMEs, a far greater share of proprietors from large-scale enterprises personally handled CTM oppositions and administrative procedures at OHIM (both 62 percent), as well as CTM renewals (60 percent), appeals (25 percent) and invalidity requests (13 percent).

Chart 6

Q10: Thinking about your dealings with OHIM in trade mark matters over the past 5 years, which of the following activities or proceedings have you been involved in over the past 5 years?



Prevailing practice at users' offices/companies (Q7)

A third question focused on the prevailing practice with respect to trade mark applications at users' offices or companies (Q7).

Methodological note

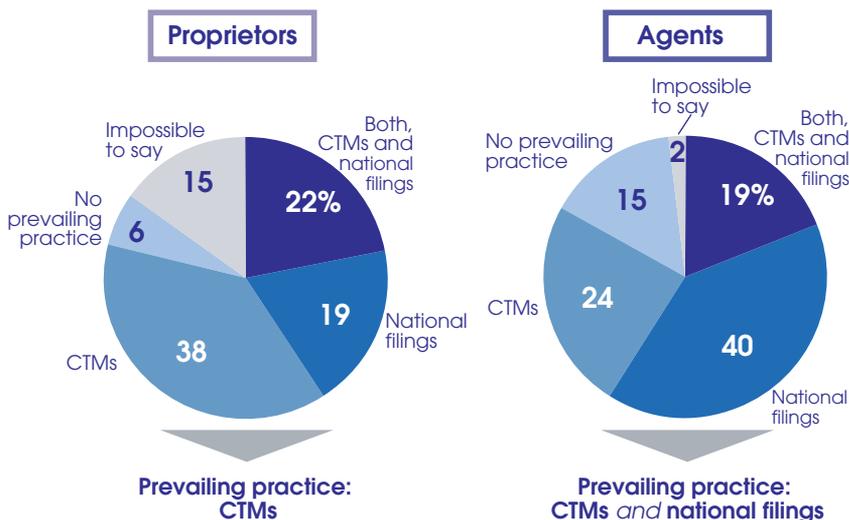
When assessing the findings, it should be noted that the question allowed respondents to think either of how often they file national trade marks and CTMs simultaneously or of the overall balance of filings at their office/company, regardless of whether these filings were made simultaneously or not.

The prevailing practice among proprietors is CTM applications, whereas CTMs and national filings are equally prevalent among agents (Q7)

Nearly two fifths of CTM proprietors (38 percent) report that the prevailing practice at their office/company is applying for CTMs, about one fifth (22 percent) says filing both CTMs and national trade marks is most prevalent, and an additional fifth (19 percent) says national filings are the prevailing practice (cf. Chart 7 below). Thus, filing CTMs is clearly the prevailing practice at proprietors' companies (60 percent in total).

Chart 7

Q7: Thinking of all your own trade mark applications, that is, national trade mark applications and CTM applications (including applications based on IR registrations): Which of the following applies best to your office or company?

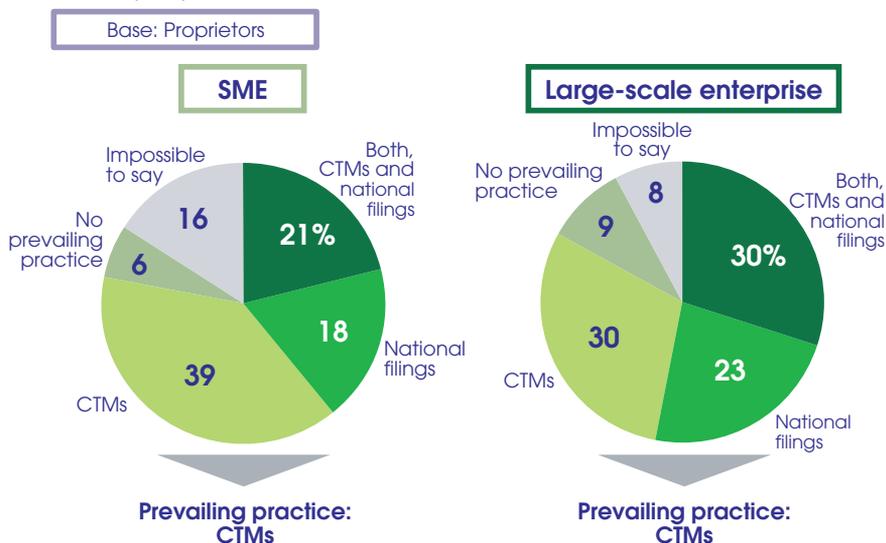


For two fifths of all agents (40 percent), national trade mark filings are the prevailing practice at their respective offices/companies, while about one quarter (24 percent) says applying for CTMs only is the prevailing practice, and an additional fifth (19 percent) reports filing both national trade marks and CTMs. Thus, among agents, filing CTMs in whichever way (43 percent in total) is just about as prevalent as filing national trade marks only (40 percent).

Chart 8 shows the results for proprietors from small or medium-sized enterprises (SMEs) and from large-scale enterprises, revealing that proprietors' practice does not vary greatly in conjunction with company size. For both groups, filing CTMs is the prevailing practice, although proprietors from SMEs report this somewhat more frequently than those from large-scale enterprises (39 vs. 31 percent). Conversely, filing national trade marks only is somewhat more prevalent among proprietors from large-scale enterprises than among those from SMEs (23 percent vs. 18 percent).

Chart 8

Q7: Thinking of all your own trade mark applications, that is, national trade mark applications and CTM applications (including applications based on IR registrations): Which of the following applies best to your office or company?



Selected comments by users on their filing practice (Q7)

"Bigger clients prefer to file CTMs as these are perceived as very cost effective, albeit potentially risky. Smaller more cost conscious clients tend to apply for UK marks. UK based clients also prefer UK marks as a basis for international applications (which often designate CTMs) as they are cheaper than CTMs, go through quicker and are less vulnerable to central attack." (Agent/UK)

"Depends on the requirements and geographic activity of the client." (Agent/UK)

"Depends of the cost. First as national and then, if we can, as CTMs." (Proprietor/F)

"For financial (official fee) reasons SME sector clients still prefer the national trade marks." (Agent/New EU-MS since 2004)

"Frequently trademarks are filed as national application for knowing possible oppositions and after CTM." (Agent/F)

"I have sought national trade marks first then CTM. The reason is one of cost. I would prefer to go straight to CTM." (Proprietor/UK)

"If the protection in the EU is required, we file the same trade mark as both, i.e. as a national trade mark and as CTM for more security; nevertheless, CTMs are growing more and more important for our company." (Proprietor/F)

"It is sometimes easier to file only one application (international) indicating many countries, and have a different proceeding in each of them, instead of filling one application which in case of opposition launched by one country will be cancelled in whole." (Proprietor/New EU-MS since 2004)

"My filing practice includes both large international companies who would only use the CTM and occasionally national marks SMEs and entrepreneurs for whom I am more likely to make national applications." (Agent/UK)

"TM applications depend on a wide range of strategies, i.e. the risk of oppositions is considered to be lower with national TM applications, on the other hand a double TM application (CTM and national) may be helpful in case of TM with a lower degree of distinction." (Proprietor/DE)

4.2 Evaluations

The evaluation section comprises the following topics: (a) respondents' general attitudes towards the CTM system, (b) an in-depth analysis of users' impressions of OHIM's current performance in the areas of examinations, cancellations, oppositions and appeals, in terms of quality, consistency and the time it takes to issue decisions, (c) a comparison of the consistency of decisions by the EU Member States' national trade mark offices and by OHIM, and (d) a detailed analysis of OHIM's current performance in examinations for absolute grounds of refusal, along with classification and opposition proceedings.

(a) General attitudes towards the CTM system

- Main insights (Q8 and 9)**
- **A broad majority of users acknowledge that the CTM system offers substantial advantages to trade mark owners (proprietors: 76 percent, agents: 86 percent)**
 - **Overall, respondents feel the CTM system is currently working fairly well, with most users saying the system is getting better and better (proprietors: 41 percent, agents: 58 percent)**
 - **Agents acknowledge the advantages offered by the CTM system to a greater degree than proprietors do and they are also considerably more convinced that the system is developing positively**
 - **Agents from Italy and Germany are most positive with respect to the advantages and development of the CTM system; agents from the U.K. represent the least positive group of users**
 - **General attitudes towards OHIM are significantly more positive among proprietors with high levels of all kinds of activity than among less active proprietors. In contrast, agents with a high OHIM activity level tend to have less positive general attitudes towards OHIM than agents with lower levels of OHIM activity do**

Methodological note (Q8 and 9) Answers provided by respondents in Spain and agents in France cannot be analysed since there is not a sufficient base for the analysis (50+ cases required).

A vast majority of users appreciate the benefits of the CTM system (Q9)

A vast majority of proprietors and agents realize that the CTM system offers trade mark owners substantial simplifications and strongly expanded possibilities aside from national trade mark registrations (cf. Chart 9 below): 76 percent of proprietors and 86 percent of agents agree with the corresponding statement, including 21 percent in both groups who "strongly agree." Thus, agents recognize the advantages of the CTM system to an even greater extent than proprietors do.

Chart 9

Q9: Please indicate how strongly you agree or disagree with the following statement: "The CTM system offers trade mark owners substantial simplifications and strongly expanded possibilities aside from national trade mark registrations."



The share of respondents who explicitly disagree with the statement on the advantages of the CTM system is remarkably small: this openly critical group comprises only 6 percent of proprietors and 8 percent of agents.

A total of 18 percent of proprietors felt it was impossible to say whether the CTM system is advantageous, as compared to 6 percent of agents. This share includes users who have had limited experience with the CTM system so far and thus refrain from giving an overall evaluation. It is possible, however, that some respondents' indifference towards the CTM system is actually a form of indirect criticism.

Broken down by country, proprietors from Italy are most enthusiastic—88 percent either "*agree/strongly agree*" that the CTM system is advantageous (cf. Chart 10 below), while only 4 percent "*strongly disagree*"—followed by proprietors from "Other EU Member States" (78 percent) and Germany (75 percent): although the share of German proprietors who "*strongly agree*" is less impressive, this is counterbalanced by the largest share who simply "*agree*."

French proprietors are in the middle range: 71 percent agree with the statement on the advantages of the CTM system, while only 2 percent contend that the CTM system offers no advantages.

Proprietors from the U.K. are least convinced of the benefits of the CTM system; proprietors from the new EU Member States disagree most with the statement on the advantages of the CTM system (Q9)

Proprietors from the U.K. are least positive about the advantages of the CTM system (66 percent agree with the statement). 8 percent of proprietors in the U.K. disagree with the statement and there is a fairly large share of British proprietors who are indifferent (26 percent).

73 percent of proprietors from the new EU Member States since 2004 agree with the statement, but a comparatively large share denies that the CTM system offers any advantages (14 percent).

Chart 10

Q9: Please indicate how strongly you agree or disagree with the following statement: "The CTM system offers trade mark owners substantial simplifications and strongly expanded possibilities aside from national trade mark registrations."

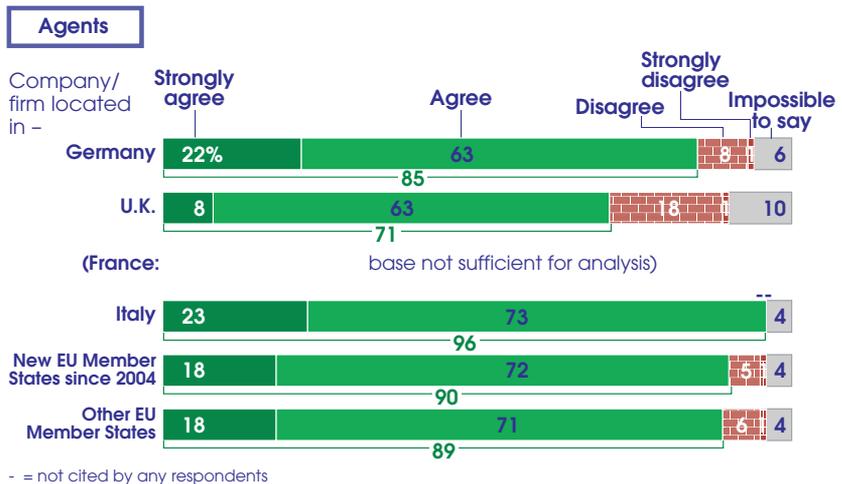


Agents from the U.K. are least convinced of the benefits of the CTM system (Q9)

As was the case with proprietors, support for the statement among agents is highest in Italy, in "Other EU Member States" and in Germany (where 96, 89 and 85 percent "agree"), but it is also remarkably high in the new EU Member States since 2004 (90 percent), cf. Chart 11 below). In comparison to these results, the share of agents from the U.K. who recognize the benefits of the CTM system is substantially lower (71 percent, including only 8 percent who "strongly agree" with the statement), while 19 percent explicitly disagree—which is the worst result obtained for all countries and analysable user groups.

Chart 11

Q9: Please indicate how strongly you agree or disagree with the following statement: "The CTM system offers trade mark owners substantial simplifications and strongly expanded possibilities aside from national trade mark registrations."



In all countries, the general attitude on whether the CTM system offers substantial benefits to trade mark owners depends to a considerable extent on respondents' individual activity level (cf. Chart 12 below). Proprietors with high activity levels (be it trade mark activity, OHIM activity or export activity within the EU) consistently express greater support for the statement on the CTM system's advantages than those with low levels of activity do. This pattern is not as pronounced among agents.

Among proprietors, the general attitude as to whether the CTM system offers substantial benefits to trade mark owners depends less on the size of the company than on its activity level.

Chart 12

BENEFITS OF THE CTM SYSTEM (Q9)

*"Strongly agree" / "Agree" with the statement:
"The CTM system offers trade mark owners substantial
simplifications and strongly expanded possibilities aside
from national trade mark registrations."*

PROPRIETORS



AGENTS

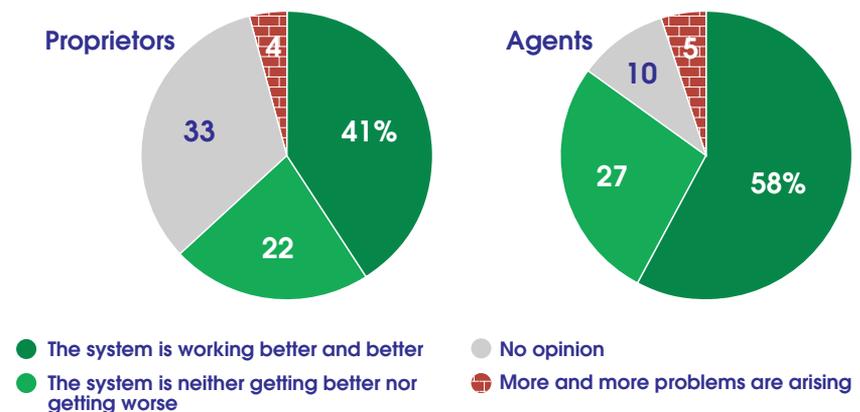


Users feel the CTM system is developing positively (Q8)

Overall, respondents think the CTM system is currently working fairly well, with most proprietors and agents agreeing that *"the system is working better and better"* (cf. Chart 13 below). The remaining respondents generally perceive the system as unchanging (*"The system is neither getting better nor getting worse"*), while only a small minority expresses an explicitly negative view (*"More and more problems are arising,"* selected by a maximum of 5 percent).

Chart 13

Q8: Thinking about the Community Trade Mark System in general: Which of the following statements comes closest to your impression of how the CTM system is currently working?



As with attitudes towards the benefits of the CTM system, agents generally have a better overall impression of the CTM system than proprietors do (58 percent of agents say *"the system is getting better and better,"* as compared to 41 percent of proprietors).

33 percent of proprietors have no opinion on this question, a finding that reflects the fact that many proprietors are only sporadic users and thus do not have an impression of how the system is working.

Similar to the general attitudes on the benefits offered by the CTM system, assessments as to whether the CTM system is developing positively also depend heavily on individual activity levels. Here again, the findings reveal that proprietors with high activity levels are significantly more positive (*"The system is getting better an better"*) than those with low levels of activity. For example, 31 percent of proprietors with low OHIM activity assess the development of the CTM system positively, as compared to 61 of proprietors with a high level of OHIM activity—a share that is about twice as high.

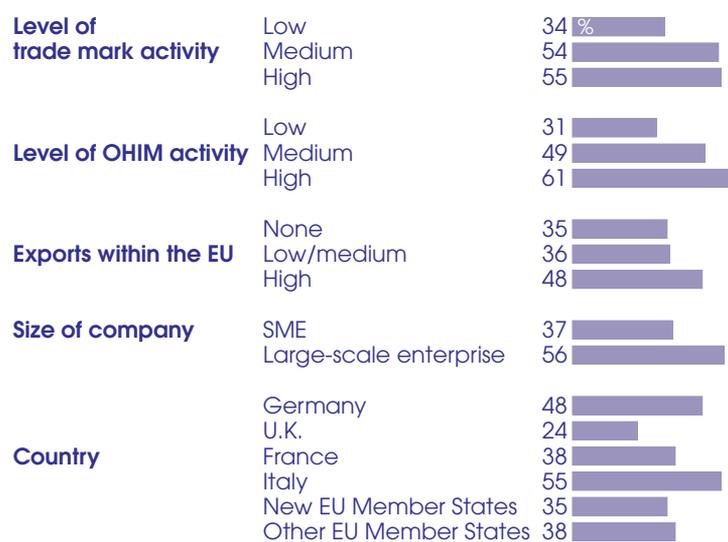
Among agents, however, the opposite applies: in contrast to agents with a low or medium level of OHIM activity, agents with high OHIM activity are less likely to assess the system's development positively (50 percent, compared to 60 and 61 percent, respectively).

Chart 14

DEVELOPMENT OF THE CTM SYSTEM (Q8)

"The system is getting better and better"

PROPRIETORS



AGENTS



(b) Assessments of OHIM's current performance²

- Main insights (Q13-15)
- For all of the basic questions on OHIM's current performance, the share of respondents who choose the response alternative "*impossible to say*" is high (ranging from 40 to 75 percent among proprietors, and from 11 to 50 percent among agents)
 - OHIM's current performance is predominantly perceived as "*average*," "*fairly consistent*," or "*fairly satisfactory*"—i.e. neither high nor low.
 - Regarding the quality of OHIM decisions, the shares of clearly positive ratings are generally greater than the shares of clearly negative ratings. When it comes to consistency, clearly negative ratings are somewhat more frequent than clearly positive ratings. Regarding the time needed to issue decisions, clearly negative ratings are definitely more frequent than clearly positive ratings.
 - Both agents and proprietors rate OHIM's decisions somewhat better in terms of quality and consistency than in terms of the time needed to issue decisions
 - Proprietors are slightly more critical than agents of the quality of OHIM's decisions
 - Agents are slightly more critical than proprietors with respect to the time it takes to issue decisions
 - OHIM's "examinations of formalities & classifications" and "appeal" is assessed relatively most positively; its performance in connection with "opposition" and "cancellation" proceedings is rated less positively
 - Even if no single OHIM activity was rated primarily as unsatisfactory, the fact that no single OHIM activity achieved a majority rating in the top category implies that there are shortcomings that should be addressed
 - OHIM's reputation among users could be significantly improved by giving priority to measures aimed at reducing the time it takes OHIM to issue decisions—without neglecting quality and consistency

² Cf. Invitation to tender no. MARKT/2009/12/D, 5.2, (5) – b)

The survey focused on the following four kinds of OHIM proceedings: 1. examination, 2. CTM oppositions, 3. CTM cancellations and 4. CTM appeals. Respondents were asked to assess OHIM's performance in these areas in terms of a) quality, b) consistency of the decisions and c) the time needed to issue decisions (Q13-15).

Overview To provide an initial overview, Chart 15 below combines the basic results of Q13-15 for proprietors and agents.

Methodological note (Q13-15) Q13 provided three response categories and Q14 and Q15 four. To facilitate a comparative analysis, two of the categories in Q14 and 15, "not at all consistent" and "not very consistent," were combined into a single category.

Chart 15

OVERVIEW OF Q13, 14 and 15
ON OHIM'S PERFORMANCE IN TERMS OF QUALITY, CONSISTENCY
AND THE TIME NEEDED TO ISSUE DECISIONS

	Proprietors				Agents			
	High	Average	Low	Impossible to say	High	Average	Low	Impossible to say
Q13 on quality	OHIM performance				OHIM performance			
Examination for absolute grounds of refusal	12%	27	6	55	21%	52	9	18
CTM oppositions	8	25	8	59	18	47	9	26
CTM cancellations	4	16	5	75	12	34	5	49
CTM appeals	6	17	4	73	17	35	4	44
Q14 on consistency	High ("Very consistent")	Average ("Fairly consistent")	Low ("Not very/not at all consistent")	Impossible to say	High ("Very consistent")	Average ("Fairly consistent")	Low ("Not very/not at all consistent")	Impossible to say
Examination of formalities and classification	16%	37	7	40	25%	53	9	13
Examination for absolute grounds of refusal	9	26	10	55	14	49	18	19
CTM oppositions	5	22	10	63	10	43	19	28
CTM cancellations	4	14	5	77	8	31	11	50
CTM appeals	5	15	5	75	10	35	9	46
Q15 on the time needed to issue decisions	High ("Very satisfactory")	Average ("Fairly satisfactory")	Low ("Not very/not at all satisfactory")	Impossible to say	High ("Very satisfactory")	Average ("Fairly satisfactory")	Low ("Not very/not at all satisfactory")	Impossible to say
Examination for absolute grounds of refusal	10%	32	18	40	16%	54	19	11
CTM oppositions	5	24	17	54	6	40	32	22
CTM cancellations	4	15	9	72	4	30	21	45
CTM appeals	6	16	9	69	5	33	20	42

As Chart 15 shows, rather large shares of respondents opt for the answer "impossible to say" in response to all the basic questions on OHIM's current performance (ranging from 40 to 75 percent among proprietors and from 11 to 50 percent among agents). The share is greatest in conjunction with higher-level OHIM proceedings that many users—and especially proprietors—have either not or only rarely

experienced in their own day-to-day work, e.g. CTM oppositions, CTM cancellations and CTM appeals.

Since the high share of "impossible to say"-responses makes it difficult to derive clear insights from the basic results, Chart 15 has essentially been included for purposes of documentation. The subsequent analysis focuses on the responses of users who were able to give a concrete assessment.

Methodological note

(Q13-15) The following in-depth analysis is based solely on the answers of those respondents who gave a concrete assessment, since a fairly large share of respondents—especially proprietors—selected the alternative, "Impossible to say."

The following two charts illustrate the predominant answers of those proprietors and agents who gave concrete assessments.

The different circle sizes correspond to the shares of respondents who gave a particular assessment: consequently, the larger a circle is, the more respondents who gave that assessment.³ A completely coloured circle would indicate that the predominant assessment was "high performance" (i.e. the categories "high quality" or "very consistent" or, regarding the time it takes to issue decisions, "very satisfactory"). A blank circle would indicate that the predominant assessment was "low performance."

OHIM's current performance is predominantly assessed as "average"(Q13-Q15)

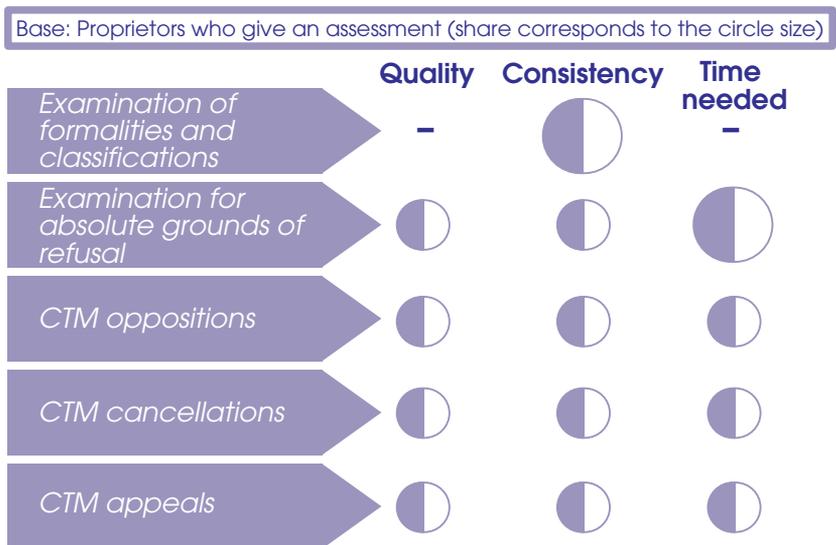
Both charts include only half-coloured circles, meaning that the predominant assessment was "average performance." From the users' perspective, therefore, OHIM's current performance in every single area ascertained—from examination to appeals—is perceived as acceptable on the whole, that is, as neither particularly good nor particularly bad.

³ Small circle: assessment given by less than 50 percent of respondents; medium circle: 50 to 79 percent; large circle: 80 percent or more

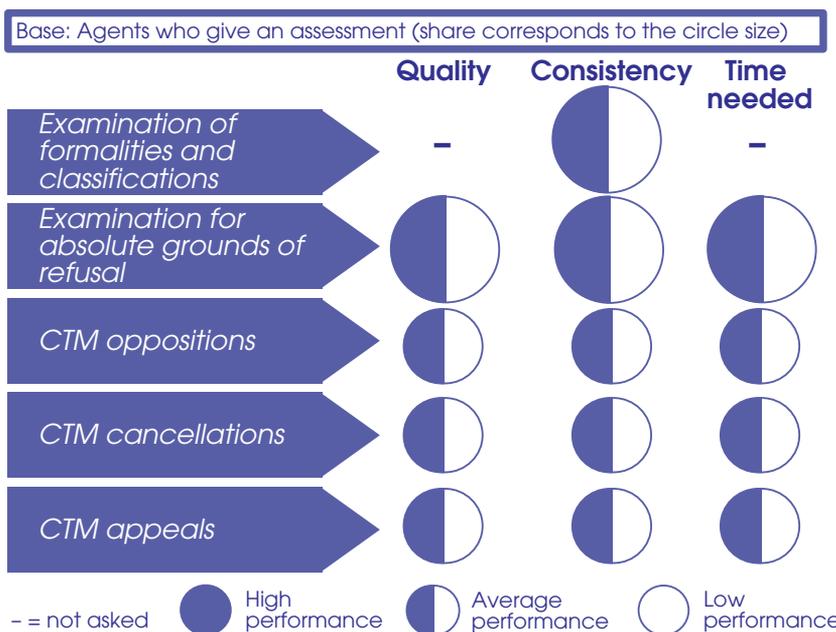
Chart 16

Proprietors' predominant impression of OHIM's performance is "average," i.e. neither high nor low

Overview of Q13, 14 and 15 on quality, consistency and time needed to issue decisions



Agents' predominant impression of OHIM's performance is "average," i.e. neither high nor low



Even if no single OHIM proceeding received an unsatisfactory overall rating, the fact that none of the areas assessed achieved a majority rating in the top category—but were instead all rated as only average—implies that there are shortcomings that should be addressed.

The next step is to conduct an in-depth analysis of OHIM's current performance in each individual area. Instead of considering the predominant assessment, these tabulations will look at the shares of explicitly positive or negative assessments.

**Assessment of OHIM's
current performance:
Quality of decisions
(Q13)**

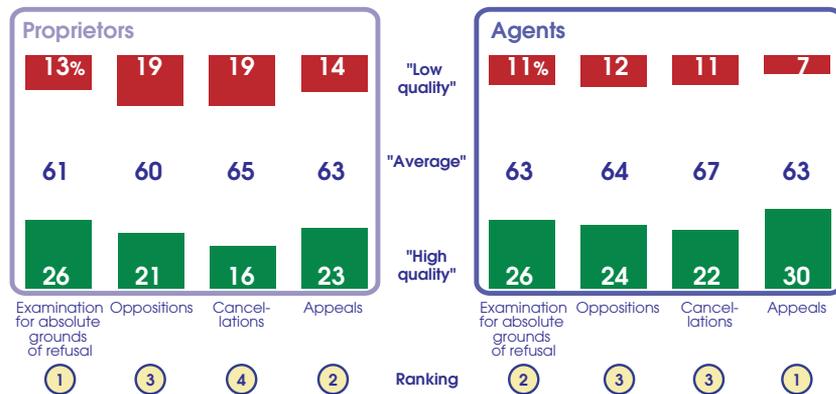
The quality of OHIM's decisions is predominantly assessed as "average", cf. Chart 17 below). Looking at the other response categories, it is evident that respondents tend to give slightly more positive than negative assessments. Among proprietors, "examination for absolute grounds of refusal" obtains the best ratio of praise vs. criticism (26 percent say these decisions are "*high quality*," as opposed to 13 percent who choose "*low quality*"). Agents rate the area of "appeals" most favourably (30 percent "*high quality*" vs. 7 percent "*low quality*"). In both user groups, the quality of OHIM's decisions in the area of "cancellations" obtains the most unfavourable ratio of praise vs. criticism.

Chart 17

"Examination for absolute grounds of refusal" and "appeals" have the best ratios of positive vs. negative ratings (Q13)

Q13: Next, please assess the quality of OHIM's decisions for the following proceedings:

Base: Respondents who give an assessment



Selected comments by respondents on the quality of OHIM's decisions (Q13)

"All decisions contain too much standard paragraphs, templates inserted with copy and paste. The dealing with the actual issues of case, arguments of the parties is too short, if ever dealt with." (Agent/DE)

"I found the OHIM impossible to communicate with." (Proprietor/UK)

"I have ticked off average quality, but might also tick off impossible to say because of the inconsistency of the decisions. Some are very well-founded and others are very poor. Consistency at a higher level than today is the key word." (Agent/Other EU-MS)

"In general the time taken to come to the decisions is much too long. Same applies to the answers of the Examiners. Moreover it is often difficult to reach them by telephone." (Agent/Other EU-MS)

"It appears to us that the professional expertise and training of 1st instance examination has been dramatically reduced over the years." (Proprietor/DE)

"It has to be noted that OHIM uses assistants without legal backgrounds and without specific specialization in IP law. These people shall not in any way be involved in drafting opposition decisions. ... Moreover the fact that an examiner has to fulfil a quantity target does not mean that the decisions are based on quality. ... It seems as the major task is to improve the quantity and not the quality as well as to improve the turnover encouraging the number of appeals." (Agent/I)

"It would be unfair to say that the OHIM decisions are of a low quality, although they are often too superficial and based on "cut and paste" practices. When choosing "average quality", I intend to say that sometimes they are good and sometimes bad (there is not a quality

regularity in the decisions, in particular concerning oppositions)." (Agent/ES)

"Office proceedings too formalistic (e.g. language regime). Reasoning of decisions often has too little thought and persuasiveness and is too formulaic." (Agent/DE)

"One of the main problems in CTM oppositions is that OHIM is not consistent when comparing goods (at least in class 5)." (Proprietor/UK)

"The quality of OHIM's decision differs considerably from case to case. Very often, the decision does not mirror the peculiarities of the conflict." (Agent/DE)

"The quality's OK when you get it - the timing is another matter entirely!" (Agent/UK)

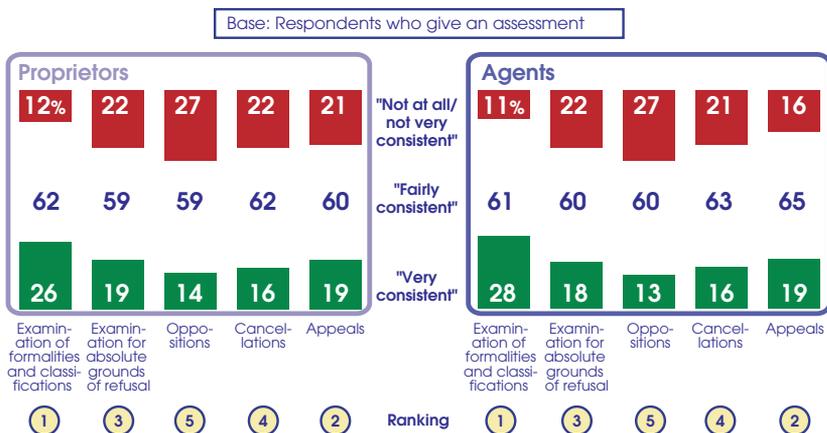
Assessment of OHIM's current performance: Consistency of decisions (Q14)

Regarding the consistency of OHIM's decisions, agents are slightly more positive than proprietors, cf. Chart 18 below). Both proprietors and agents assess OHIM's "examination of formalities and classifications" as relatively most consistent, while its decisions in the areas of "cancellations" and "appeals" seem to be somewhat less consistent in comparison. It should be noted, however, that the predominant answer here was also always the middle category ("fairly consistent").

Chart 18

OHIM's "examination of formalities and classification" is perceived as relatively most consistent (Q14)

Q14: Now please assess the consistency of OHIM's decision-making for the various proceedings.



Selected comments by respondents on the consistency of OHIM's decisions (Q14)

"As regards classification of goods, OHIM does not appear to respect its own precedents and goods that have been accepted in one class over the years are suddenly not acceptable. As regards absolute grounds of refusal, sometimes (but not always) OHIM grants registrations for descriptive terms just because they include a minor design element. This creates problems as to the value of those registrations when they are enforced." (Proprietor/UK)

"I'm not sure that OHIM sticks by decisions that it has made itself historically in relation to classification, things that were acceptable are refused without explanation." (Proprietor/UK)

"The office actions have been similar, except for the oppositions, where we don't quite follow the logic of the reasoning." (Proprietor/Other EU-MS)

Assessment of OHIM's current performance: Time it takes to issue decisions (Q15)

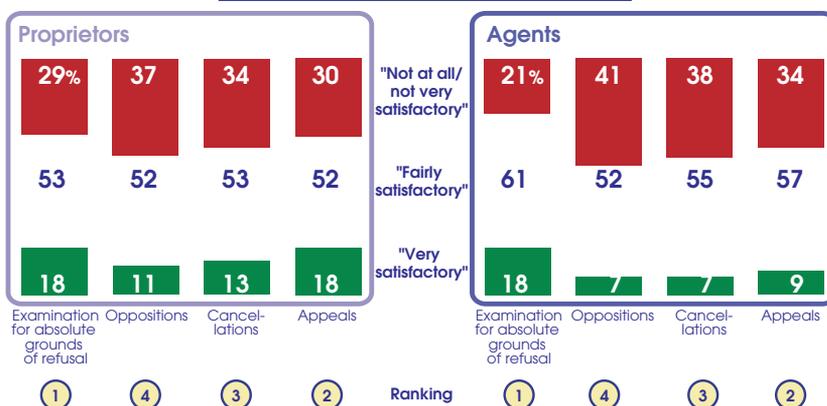
When it comes to the time it takes OHIM to issue decisions, users' ratings are clearly least favourable, compared to the quality and consistency of its decisions (cf. Chart 19 below). "Oppositions," "cancellations" and (among agents) "appeals" are rarely rated as "very satisfactory" and are much more frequently assessed as "not at all/not very satisfactory." Agents are especially critical of the time it takes OHIM to issue decisions in more complex proceedings, such as CTM oppositions, cancellations and appeals.

Chart 19

The time it takes to issue decisions is rated least favourably, in comparison to the quality and consistency of decisions (Q15)

Q15: And finally, what do you think of the time it takes for OHIM to issue decisions?

Base: Respondents who give an assessment



Whereas proprietors' and agents' opinions on the quality and consistency of OHIM's decisions are rather similar on the whole, agents are more critical when it comes to the time it takes OHIM to issue decisions. Nevertheless, the majority still rates OHIM's performance, in terms of the time needed to issue decisions, as "fairly satisfactory" in all four of the areas evaluated.

**Selected comments
by users on the time
it takes OHIM to
issue decisions
(Q15)**

"As a trademark lawyer I believe that the timing is not satisfactory. The way to make a better performance is not to recruit temporary staff but to have a well based, stable and long term employed people with high specialization. It is not understandable the policy of OHIM whereby skilled temporary people, who have been trained and who have been a cost for the Institution, have to leave after three or five years."
(Agent/I)

"Handling of some oppositions can be very slow with poor communications from the office - long delays in reporting submissions or responding to correspondence from the parties." (Agent/UK)

"I have a number of cases in which I have been waiting for a decision for over 6 months. This is unacceptable, as applicants need to get on with running their businesses, not waiting for the answer as to how they can act in the future." (Agent/UK)

"In general very good. Time for examination has been reduced drastically. However it takes varying time to receive news, if there is a problem with absolute grounds." (Agent/ES)

"OHIM is just too slow in making decisions, I always file in the UK because they examine and accept/reject marks in a matter of weeks not months like OHIM." (Proprietor/UK)

"Oppositions: 1 1/2-3 years, absolutely unacceptable." (Agent/New EU-MS since 2004)

"Problem is that for us as a trade mark demander we have no contact by email or phone with a dedicated person in your offices in Alicante willing to answer or helping us with our questions or remarks."
(Proprietor/DE)

"Reduce time for taking decisions. In particular, the extension of the cooling-off period is too long." (Agent/ES)

**Analysis of the assessments
by activity levels
(Q13-15)**

The following section analyses the findings for Q13-15 according to activity levels, along with additional tabulations in cases where it is possible to single out user groups with actual experience in a particular area, such as "CTM oppositions" (Q31) and "CTM appeals" (Q10).

Proprietors' opinions on the quality of all areas of OHIM activity are fairly independent from their individual OHIM activity level (cf. Chart 20 below): There are only small differences between proprietors with low/medium and high activity levels. Agents' opinions on quality, however, are clearly connected to their activity level: specifically, agents with a high level of OHIM activity rate the quality less favourably than other agents do.

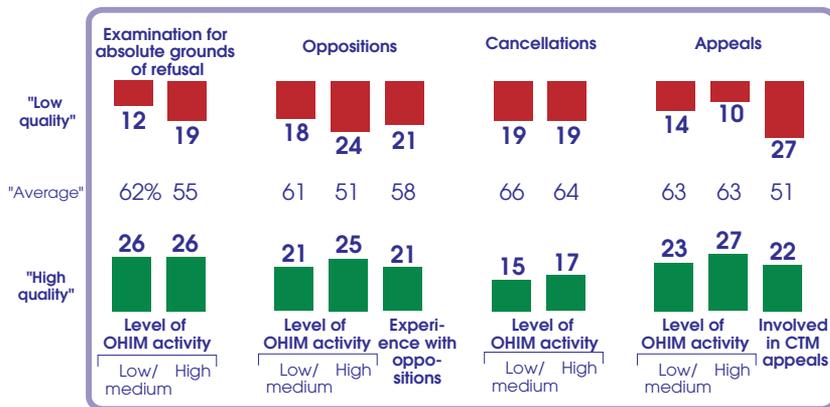
Respondents who are experienced with "CTM oppositions"—both proprietors and agents—do not assess the quality of OHIM's decisions in this area much differently than the average user in their respective groups (cf. the values from the following Chart 20 with the corresponding values shown above, Chart 17). The same applies to agents who were involved in CTM appeals. However, proprietors who were involved in CTM appeals view the quality of OHIM's decisions in the area of appeals much more critically than the average agent does (again, cf. Chart 20 with Chart 17 above)

Chart 20

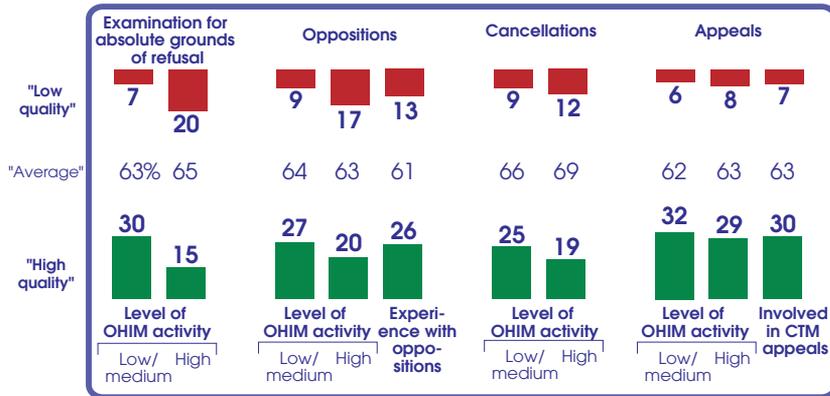
Assessments of quality according to users' activity levels (Q13)

Q13: Next, please assess the quality of OHIM's decisions for the following proceedings:

Base: Proprietors who give an assessment



Base: Agents who give an assessment

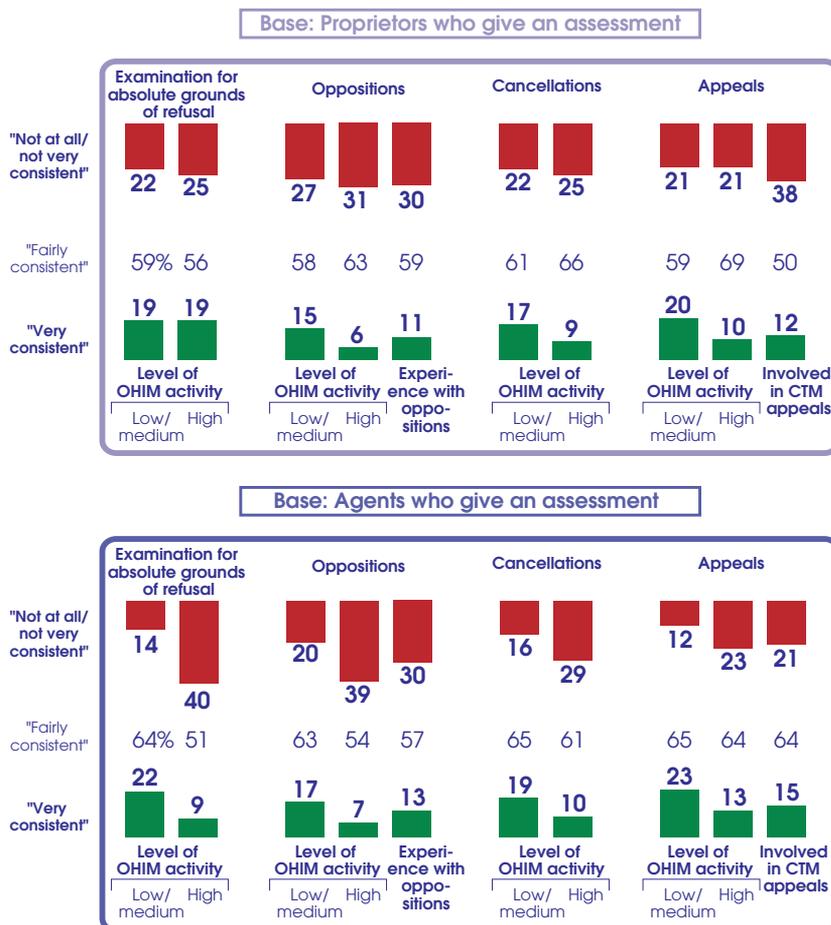


Both proprietors' and agents' opinions on the consistency of OHIM's decisions in the various areas are related to their individual OHIM activity levels, with favourable ratings declining by about half among those with a high OHIM activity level compared to those with a low/medium activity level (exception: proprietors' assessment of "examination for absolute grounds of refusal"). OHIM's consistency in the areas of "oppositions" and "appeals" tends to be rated somewhat more favourably by those users with experience in these areas, in comparison to the average values (see Chart 18 above).

Chart 21

Assessments of consistency according to users' activity levels (Q14)

Q14: Now please assess the consistency of OHIM's decision-making for the various proceedings:



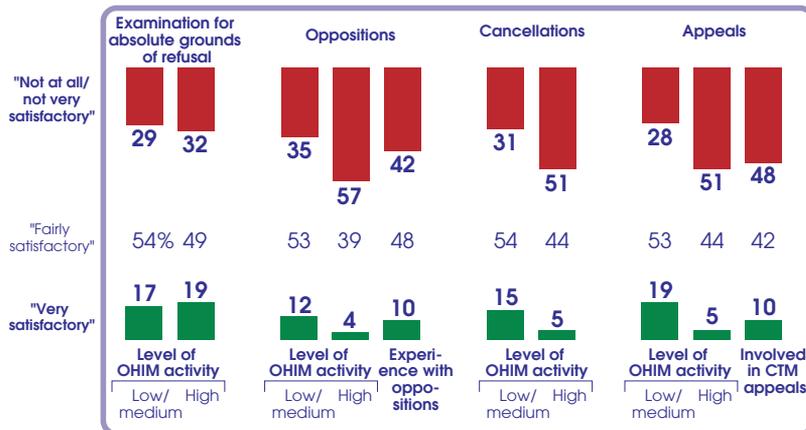
Proprietors' and agents' opinions on the time it takes OHIM to issue decisions also clearly depend on their level of OHIM activity (except for "examination for absolute grounds of refusal," as was the case above). Users with high OHIM activity more frequently assess the time spans needed as "not at all/not very satisfactory"—and this especially applies to proprietors in the case of "CTM oppositions" (57 percent negative, 4 percent positive). Prior experience with "CTM oppositions" and "CTM appeals" does not substantially affect agents' assessments of the time needed to issue decisions, but proprietors with such experience give less favourable ratings than the average proprietor does (see Chart 19 above).

Chart 22

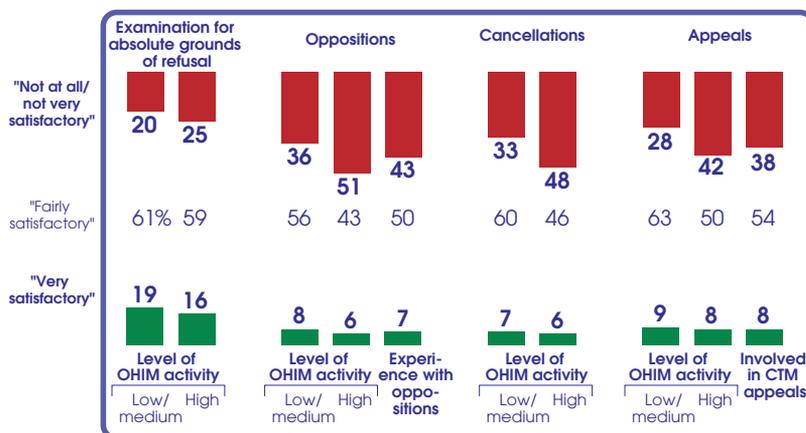
Assessments of the time needed according to activity levels (Q15)

Q15: And finally, what do you think of the time it takes for OHIM to issue decisions?

Base: Proprietors who give an assessment



Base: Agents who give an assessment



**Analysis of the
assessments
by country
(Q13-15)**

A comparative analysis of Q13-15 by country is possible, albeit with some restrictions: findings for proprietors cannot be analysed, since the base for analysis is insufficient in most EU Member States (i.e. fewer than 50 proprietors give assessments); the findings for agents are analysable, aside from a few instances in which the base is also insufficient.

The comparative analysis by country reveals that agents from the larger EU Member States tend to be more critical of OHIM's decisions in terms of quality, consistency and the time needed, in comparison to agents from smaller EU Member states ("*New EU Member States since 2004*" and "*Other EU Member States*"). Agents from the U.K. are far more critical than agents from any other country with respect to the time needed to issue decisions. Compared with total agents (see Chart 18 above), agents from Germany and the U.K. are also more critical of the consistency of OHIM's decisions in the various areas: in both countries, the share of agents who give negative assessments of OHIM's consistency is an average of about 7 percentage points higher than it is among all agents on average.

Chart 23

**ASSESSMENT OF OHIM'S CURRENT PERFORMANCE (Q13-15)
BY COUNTRY**

Negative assessments

(Q13 on quality: "Low quality"

Q14 on consistency: "Not at all/not very consistent"

Q15 on time: "Not at all/not very satisfactory")

AGENTS	Quality	Consistency	Time it takes to issue decisions
Germany			
Examination of formalities and classifications	- %	14	-
Examination for absolute grounds of refusal	17	32	24
CTM oppositions	16	32	41
CTM cancellations	14	27	41
CTM appeals	9	26	32
U.K.			
Examination of formalities and classifications	-	20	-
Examination for absolute grounds of refusal	13	28	19
CTM oppositions	13	25	56
CTM cancellations	13	---	60
CTM appeals	13	31	57
France (Base not sufficient for analysis)			
Italy			
Examination of formalities and classifications	-	6	-
Examination for absolute grounds of refusal	19	25	21
CTM oppositions	28	32	46
CTM cancellations	---	---	---
CTM appeals	---	---	---
New EU Member States since 2004			
Examination of formalities and classifications	-	8	-
Examination for absolute grounds of refusal	4	6	18
CTM oppositions	5	20	37
CTM cancellations	4	15	37
CTM appeals	2	13	32
Other EU Member States			
Examination of formalities and classifications	-	8	-
Examination for absolute grounds of refusal	6	16	21
CTM oppositions	8	24	39
CTM cancellations	9	18	34
CTM appeals	5	9	33

- = not asked --- = base not sufficient for analysis

One crucial factor identified by the survey is the time it takes for OHIM to issue decisions, especially in connection with more complex OHIM proceedings, such as CTM cancellations, oppositions and appeals. By focusing on reducing the time needed to issue decisions in these areas—without neglecting quality and consistency—OHIM's reputation among users could be significantly improved.

(c) Consistency of national trade mark offices and OHIM in comparison

- Main insights (Q6 and 14)**
- **The decisions by the national trade mark offices within the EU are predominantly rated as fairly consistent or better, but about 20 to 40 percent of respondents perceive inconsistencies**
 - **Respondents assess OHIM's decisions as being substantially more consistent than decisions by the national trade mark offices within the EU**
 - **To be most effective, efforts to improve the consistency should focus on the more complex trade mark matters, on both a national level and the OHIM level**

Methodological notes *Q6 asked respondents to assess the consistency of decisions by the national trade mark office in the EU that they deal with most often. A parallel question (Q14) asked them to assess the consistency of OHIM's decisions. The analysis contrasts the results obtained for both questions.*

As in the prior section, the tabulations for the following analyses are based on the answers of respondents who gave a concrete assessment.

In the following two charts, the upper bar for each proceeding shows how respondents assess the performance of the national trade mark office they deal with most often, while the bar below indicates their assessment of OHIM's performance in that same area.

National trade mark offices within the EU are basically rated as "fairly consistent" or better (Q6) On examining the results for the national trade mark offices within the EU, it is obvious that most respondents assess the performance of the national offices they deal with most often as "*fairly consistent*" or better for each of the proceedings included in the survey (cf. Chart 24 below). At the same time, about 20 to 40 percent of users perceive inconsistencies on the national level, a finding that is somewhat more pronounced among agents.

The national trade mark offices are rated as most consistent in the area of "examination of formalities and classifications" (assessed as "fairly consistent" or better by 79 percent of proprietors and 76 percent of agents), and as least consistent in the area of "oppositions" ("fairly consistent" or better: 60 percent of proprietors, 58 percent of agents).

Chart 24

National trade mark offices and OHIM in comparison: National offices are less consistent (Q6 and Q14)

Q6 and Q14

Proprietors

		Base: Proprietors who give an assessment	
	BASE	Very/fairly consistent	Not very/not at all consistent
Examination of formalities and classifications	50% = 100%	NOs 79%	21
	60% = 100%	OHIM 88	12
Examination for absolute grounds of refusal	44% = 100%	NOs 65	35
	45% = 100%	OHIM 78	22
Oppositions	35% = 100%	NOs 60	40
	37% = 100%	OHIM 73	27
Cancellations	29% = 100%	NOs 70	30
	23% = 100%	OHIM 78	22
Appeals	32% = 100%	NOs 62	38
	25% = 100%	OHIM 79	21

Agents

		Base: Agents who give an assessment	
	BASE	Very/fairly consistent	Not very/not at all consistent
Examination of formalities and classifications	84% = 100%	NOs 76%	24
	87% = 100%	OHIM 89	11
Examination for absolute grounds of refusal	83% = 100%	NOs 61	39
	81% = 100%	OHIM 78	22
Oppositions	72% = 100%	NOs 58	42
	72% = 100%	OHIM 73	27
Cancellations	60% = 100%	NOs 61	39
	50% = 100%	OHIM 79	21
Appeals	60% = 100%	NOs 62	38
	55% = 100%	OHIM 84	16

NOs = national offices

An obvious pattern throughout the entire survey is that "oppositions"—be they on the national or OHIM level—tends to attract the most criticism, followed by "cancellations" and "appeals." These low ratings may be attributable not just to actual shortfalls in the offices' performance, but also to the fact that these proceedings are viewed as rather unpleasant and tiresome experiences for users.

OHIM's decisions are rated as substantially more consistent than decisions by the national trade mark offices within the EU (Q6 and Q14)

Respondents rate OHIM's decisions as substantially more consistent than the national trade mark offices' decisions (cf. Chart 24 above). Whereas the consistency of the national offices' decisions is rated as "fairly satisfactory" or better by a range of about 60 to 80 percent of respondents, the corresponding share for OHIM's decisions ranges from about 70 to 90 percent. Up to 42 percent of users are critical of the national trade mark offices' consistency, as compared to a maximum of 27 percent who criticise the consistency of OHIM's decisions.

The gap in consistency between the national trade mark offices and OHIM is generally somewhat wider among agents than proprietors.

Among proprietors, the smallest gap in consistency between the national offices and OHIM is found in the areas of "examination of formalities and classifications" and "cancellations," whereas the smallest gap among agents is in the areas of "examination of formalities and classifications" and "oppositions." For both groups, the widest gap is in the area of appeals.

Selected comments by users on the national trade mark offices' examination procedures (Q6)

"My country is very new to this, our system is not computerised, trademarks are held in a very old and ridiculous file, you have to pay to see trademarks, it should be public information for everybody to see at any time like with OHIM." (Proprietor/New EU-MS since 2004)

"Do not have enough experience to comment." (Proprietor/UK)

"Due to lack of widespread experience impossible for me to say. In articles and seminars many colleagues mention that there is in fact no consistency at all." (Agent/DE)

*"Earlier found trademark rights can be an obstacle in some countries for the examiner. In other countries examiners do not have the right to refuse an application because of the existence of an earlier right."
(Agent/Other EU-MS)*

*"I only deal with one national office and so I cannot compare them."
(Agent/UK)*

*"Inconsistencies can be found in decisions on absolute grounds (e.g. some countries register descriptive terms +logo element but others don't) and also in relation to classification of goods."
(Proprietor/UK)*

*"There are only a few national offices which have a thorough examination approach on earlier rights; this applies to absolute grounds and even more to relative grounds (earlier rights). The results vary completely. Cancellation actions are the exception."
(Proprietor/DE)*

(d) OHIM's current performance in the areas of examination for absolute grounds of refusal, classifications and opposition proceedings⁴

**Main insights
(Q11-12, Q16, Q22 and Q26)**

- **Users predominantly rate OHIM's performance in the area of "examination for absolute grounds of refusal" as "just about right," with a tendency towards "too strict"**
- **A majority of users approve of OHIM's current "classification" approach, although users with high activity levels are more critical**
- **Small relative majorities of users rate OHIM's performance in the area of "CTM oppositions" as "just about right", with a tendency towards "granted too easily"**
- **In four out of four dimensions, user rate the CTM opposition process as average, with respondents leaning towards "simple" and "slow"**

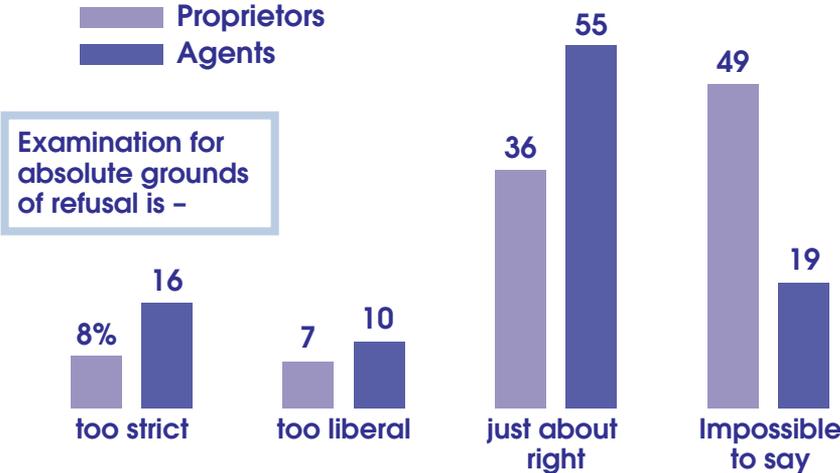
⁴ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (5), (a); 5.2, (5), (b); 5.2, (3)

The series of questions on OHIM's performance in terms of quality, consistency and the time needed to issue decisions, as described above, included OHIM's handling of "examinations for absolute grounds of refusal." In addition to these questions, another question was posed to determine whether OHIM's "examination for absolute grounds of refusal" is perceived as being too strict, too liberal or just about right.

OHIM's current performance: Examination for absolute grounds of refusal is "just about right" (Q11) A relative majority of respondents assess OHIM's current performance in connection with "examination for absolute grounds of refusal" as being "just about right" (36 percent of proprietors, 55 percent of agents), cf. Chart 25 below. The share of users who say OHIM's approach is either "too strict" or "too liberal" comprises 15 percent of proprietors and 26 percent of agents, more than half of whom select the response "too strict." A large share of proprietors select the response, "impossible to say" (49 percent).

Chart 25

*Q11: Some questions on OHIM's current practice:
First, please indicate whether you think OHIM's current examination for absolute grounds of refusal is too strict, too liberal or just about right.*



Selected comments by respondents on OHIM's handling of examinations for absolute grounds of refusals

(Q11)

"At the outset with decisions such as PostKantor and Baby Dry from a UK practice point of view I regarded with some scepticism however practice decisions have come closer to the UK rather more strict practice and I would say that it is just about right." (Agent/UK)

"For special types of trade marks (e.g. sound marks) the refusal practice seems to be somewhat restrictive." (Agent/New EU-MS since 2004)

"Grounds of refusal of Art. 7 1 b-e are used too often and strictly with regard to 3D-marks / shape of goods." (Proprietor/DE)

"In some cases too strict, in some cases too liberal." (Agent/DE)

"Many trademarks that would be refused by the national EU trademark offices as descriptive, are registered by OHIM." (Proprietor/DE)

"The examiners are using search engines too often. The internet is a collection even more exhaustive than dictionaries. Therefore, the existence of a search engine hit is not a proof of the descriptiveness of a term." (Proprietor/DE)

"Too often the EU examiners consider word trademarks with a meaning as descriptive even if not directly connected with the products. Furthermore the refusal/acceptance decisions of three-dimensional trademarks applications are not consistent." (Agent/I)

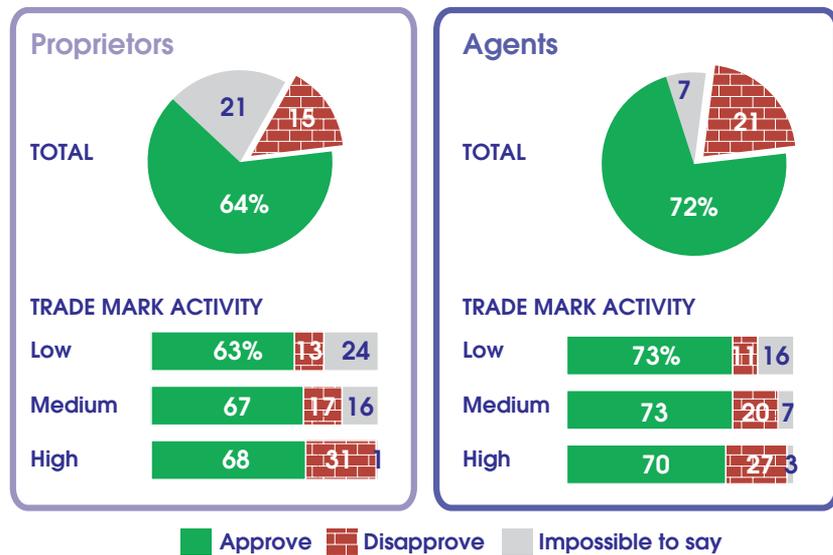
Classification: Majorities approve of the current approach, although users with high trade mark activity are more critical (Q22)

Broad majorities of users (64 percent of proprietors and 72 percent of agents) approve of OHIM's current classification approach, which allows the use of class headings and rather broad generic terms (cf. Chart 26 below).

The higher the level of individual trade mark activity, the greater the share of users who are dissatisfied with OHIM's classification approach: 31 percent of proprietors and 27 percent of agents with high trade mark activity are dissatisfied with it—a share which is not insignificant.

Chart 26

Q22: OHIM allows the use of class headings and rather broad generic terms. Do you approve or disapprove of that?



Selected comments by respondents on OHIM's classification approach (Q22)

"But the class heading should not cover necessarily all goods/services of that class (which is the current OHIM practice which is contrary to most of the national practices)." (Agent/Other EU-MS)

"Classification should be up-dated. The obsolete headings make the choice of the right class difficult." (Proprietor/DE)

"Classifications need to catch up with technology."

"Problems that it creates could be resolved by requirement to file evidence of use after 5 years. Those not in use would then be deemed withdrawn." (Proprietor/Other EU-MS)

"The broad generic terms are absolutely necessary, but it is very questionable if the class headings are as well. The OHIM should not recognize class headings, but should accept broad generic terms." (Agent/Other EU-MS)

"The goods and services are so broad that it's almost impossible to know what the applicant is really using the mark for. This causes great problems when undertaking clearance searches." (Proprietor/UK)

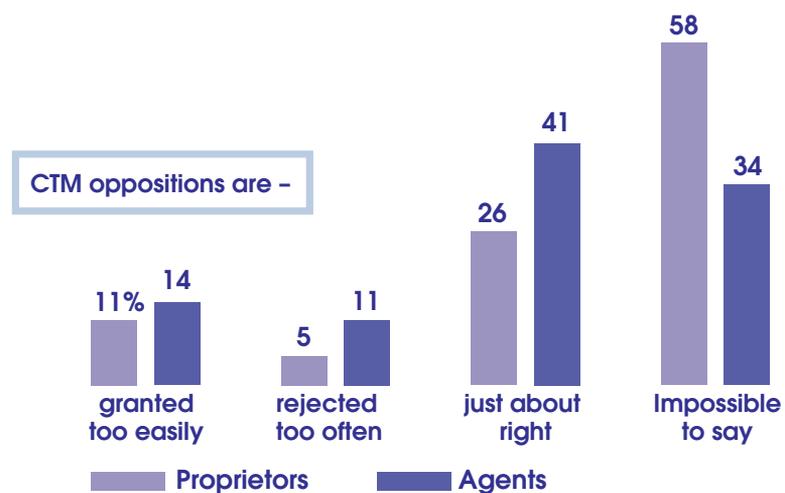
Several other questions facilitate a closer examination of the CTM opposition process.

OHIM's handling of "CTM oppositions" obtains less positive ratings (Q12)

OHIM's current performance in the area of "CTM oppositions" is generally perceived as being *"just about right,"* although the rating obtained here is somewhat less positive compared to "examination for absolute grounds of refusal" (see above). Among users who chose other response alternatives, the opinion that CTM oppositions are *"granted too easily"* is more frequent than the notion that they are *"rejected too often."*

Chart 27

Q12: Next, please indicate whether you think that CTM oppositions are granted too easily by OHIM, or whether they are rejected too often, or whether the current practice is just about right.



Among agents, having prior experience with CTM oppositions does not change the picture much. Among proprietors who have prior experience with CTM oppositions, however, the share of those who believe that CTM oppositions are *"granted too easily"* increases to 25 percent.⁵

⁵ The values reported are not included in the graphs.

Selected comments by respondents on OHIM's handling of CTM oppositions (Q12)

"Decisions routinely trot out lip service to the case law of the ECJ without actually applying it properly, and are all too ready to find confusion. The decisions do not credit the relevant consumer as having the intelligence to differentiate between marks." (Agent/UK)

"I consider the quality of opposition decisions to have deteriorated very fast for the past 3-5 years, where the decisions now lack a real and courtlike overall assessment of the likelihood of confusion and are almost similar to machine like decisions in format and style." (Agent/New EU-MS since 2004)

"Often rejected for formal reasons, that could easily be overcome." (Agent/Other EU-MS)

"The basic problem is one of unpredictability not of too hard or too easy." (Agent/UK)

"There is neither a tendency to reject too often nor to grant too easily, but we have noted that there are considerable differences regarding the quality of the decisions and a lack of consistency in decisions in parallel opposition procedures." (Agent/DE)

"Whilst some decisions are well founded, other decisions show to a certain extent a lack of diligence and appear not to be consistent with earlier decisions in similar cases." (Proprietor/DE)

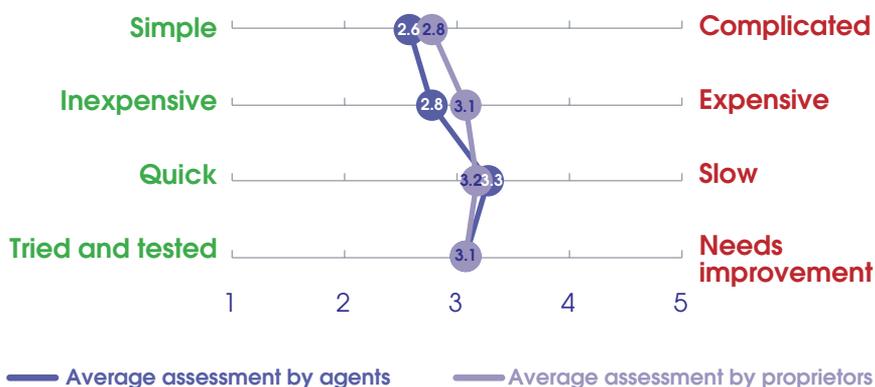
OHIM's "CTM opposition" process obtains average ratings in four out of four dimensions (Q26)

When asked to assess OHIM's current handling of CTM oppositions in more detail, respondents' answers tend to cluster in the middle of the scales provided, indicating an average performance in terms of complexity, the expense and time involved, along with whether the process is "tried and tested" or "needs improvement" (cf. Chart 28 below). In comparison to proprietors, agents give slightly more positive feedback in terms of the simplicity and cost of the procedure.

Chart 28

Evaluation of the OHIM opposition process

Q26: How would you describe the current opposition process at OHIM?



To analyse the results by country, overall ratings were calculated based on the four values obtained per country (cf. Chart 29 below): when it comes to agents' overall ratings, the values obtained were slightly above-average among German and Italian agents (DE: 2.8; I: 2.7, compared to the overall average of 3.0⁶), and somewhat below-average among agents from the U.K. (3.2). The overall rating by agents from the "New EU Member States since 2004" is 3.0, which is the same as the average for all agents.

⁶ Overall averages calculated from the four averages in Chart 29 below.

Chart 29

HOW THE "CTM OPPOSITION" PROCESS IS RATED ON 4 SCALES (Q26)

Average values selected on the 5-point scales

PROPRIETORS

Germany

Scale Simple – Complicated	2.7	
Scale Inexpensive – Expensive	2.9	
Scale Quick – Slow	3.2	
Scale Tried and tested – Needs improvement	3.1	
On average	3.0	

U.K.

Scale Simple – Complicated	2.9	
Scale Inexpensive – Expensive	3.1	
Scale Quick – Slow	3.2	
Scale Tried and tested – Needs improvement	3.0	
On average	3.1	

France

Scale Simple – Complicated	2.8	
Scale Inexpensive – Expensive	3.0	
Scale Quick – Slow	3.3	
Scale Tried and tested – Needs improvement	3.0	
On average	3.0	

Italy

Scale Simple – Complicated	2.6	
Scale Inexpensive – Expensive	3.0	
Scale Quick – Slow	2.9	
Scale Tried and tested – Needs improvement	3.0	
On average	2.9	

New EU Member States since 2004

Scale Simple – Complicated	2.7	
Scale Inexpensive – Expensive	3.0	
Scale Quick – Slow	3.1	
Scale Tried and tested – Needs improvement	3.1	
On average	3.0	

Other EU Member States

Scale Simple – Complicated	3.0	
Scale Inexpensive – Expensive	3.3	
Scale Quick – Slow	3.2	
Scale Tried and tested – Needs improvement	3.3	
On average	3.2	

Chart 30

HOW THE "CTM OPPOSITION" PROCESS IS RATED ON 4 SCALES (Q26)

Average values selected on the 5-point scales

AGENTS

Germany

Scale Simple – Complicated	2.6	%	
Scale Inexpensive – Expensive	2.6		
Scale Quick – Slow	3.1		
Scale Tried and tested – Needs improvement	3.0		
On average	2.8		

U.K.

Scale Simple – Complicated	3.0		
Scale Inexpensive – Expensive	2.9		
Scale Quick – Slow	3.6		
Scale Tried and tested – Needs improvement	3.4		
On average	3.2		

Italy

Scale Simple – Complicated	2.2		
Scale Inexpensive – Expensive	2.3		
Scale Quick – Slow	3.0		
Scale Tried and tested – Needs improvement	3.2		
On average	2.7		

New EU Member States since 2004

Scale Simple – Complicated	2.7		
Scale Inexpensive – Expensive	3.1		
Scale Quick – Slow	3.2		
Scale Tried and tested – Needs improvement	3.0		
On average	3.0		

Other EU Member States

Scale Simple – Complicated	2.7		
Scale Inexpensive – Expensive	2.9		
Scale Quick – Slow	3.4		
Scale Tried and tested – Needs improvement	3.2		
On average	3.1		

(e) Opinions on the "cluttering" of the CTM register

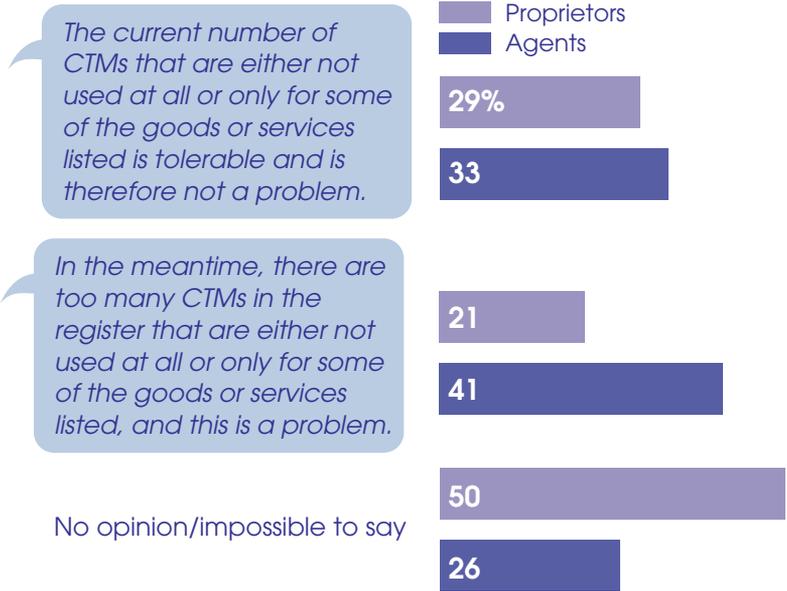
- Main insights (Q16)**
- Opinions are mixed regarding the number of CTMs in the register that are not or only partly used.
 - Here, agents are more alarmed than proprietors, particularly in the U.K. and the "New EU Member States since 2004"

Mixed opinions on the "cluttering" of the CTM register (Q16)

Users' opinions are divided when it comes to the question of whether the number of CTMs in the register that are either not used at all or only for some of the goods or services listed is tolerable or problematic (cf. Chart 31 below); proprietors view the situation more often as tolerable than problematic (29 vs. 21 percent), while agents perceive the situation more often as problematic than tolerable (41 vs. 33 percent).

Chart 31

Q16: Which of the following two opinions do you share?



Since users' answers do not differ much in conjunction with activity levels, only additional analyses broken down by size of company (proprietors only) and broken down by EU Member States (proprietors and agents) are provided.

Proprietors from large-scale enterprises more concerned about "cluttering" in the CTM register than proprietors from SME's (Q16)

Proprietors' opinions vary in conjunction with the size of the company they work for. 31 percent of proprietors from large-scale enterprises but only 19 percent of those from SMEs are of the opinion that there are too many CTMs in the register that are either not used at all or only for some of the goods or services listed and this is a problem.⁷

The opinions of proprietors from the various countries on this issue show less divergence than is found among agents. German proprietors are relatively more concerned about the current state of the CTM register than total proprietors are (26 percent compared to 21 percent of total proprietors). In contrast, German agents perceive the current situation as less problematic than total agents do (36 percent vs. 41 percent total), while agents from the U.K. and the new EU Member States since 2004 express greater concern than total agents do (54 and 49 percent vs. 41 percent total).

Chart 32

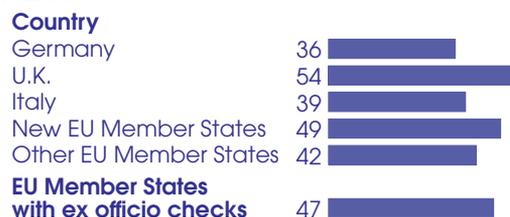
OPINIONS ON CTMS IN THE REGISTER THAT ARE NOT (FULLY) USED (Q16)

"In the meantime, there are too many CTMs in the register that are either not used at all or only for some of the goods or services listed, and this is a problem."

PROPRIETORS



AGENTS



⁷ The values reported are not represented in a graph.

In some EU Member States, ex officio checks to determine whether a new trade mark conflicts with earlier trade marks are the current practice at the national offices (e.g. Finland, Sweden, Ireland, Portugal, Estonia, Poland, Czech Republic, Slovakia, Bulgaria, Romania, Malta, Cyprus). The share of agents from these Member States who say that the number of CTMs in the register that are either not used or only for some of the goods or services listed is problematic is only somewhat higher than among agents from Member States whose national offices only check upon opposition (47 percent compared to 41 percent⁸). Among proprietors, there is no evidence of any effect of this kind.

Selected comments by respondents on CTMs in the register that are not or only partly used (Q16)

"My opinion is that there are too many very wide CTM registrations which attempt to monopolise the sign for vast ranges of goods and services." (Agent/UK)

"In practice whether or not there is a substantial number of CTMs registered or not does not matter. What matters is whether the holders of these CTMs have objections to new applied or registered CTMs." (Agent/Other EU-MS)

"It is extremely difficult now to do a sensible clearance search as there are so many CTMs that are not used or ones which are registered for class headings so that there is no indication of what the likely commercial interest is. Although it made translation simple, OHIM's encouragement of class headings has been very bad for European commerce as it encourages unnecessary oppositions and does not inform those who check the register the real purpose of the trademark." (Agent/UK)

"My view is that the problem arises from OHIM's acceptance of class headings. They should encourage trade mark owners to specify their goods/services more clearly or require a bona fide intention to use. Broadly specified goods/services tend to generate oppositions that could otherwise be avoided." (Proprietor/UK)

"Search costs for SMEs have grown to disproportionate amounts due to the high no. of registered (and often unused in some classes) CTM's." (Agent/New EU-MS since 2004)

⁸ The value reported is not included in the graph.

4.3 Reactions to proposed changes

Another central part of the survey was testing how users of the CTM system react to proposed changes. First, this section looks at whether the option of filing CTMs via the EU Member States' national offices should be maintained (Q18).⁹ The main part of the section will focus on proposed changes at OHIM.¹⁰

(a) Opinions on the option of filing CTMs via the EU Member States' national offices

- Main insights (Q18)**
- **About 30 percent of users want to continue filing CTMs via national trade mark offices**
 - **Maintaining this option primarily accommodates the needs of users—and especially agents—with a low OHIM activity level**

About one third of CTM users want to continue filing CTMs via national offices (Q18)

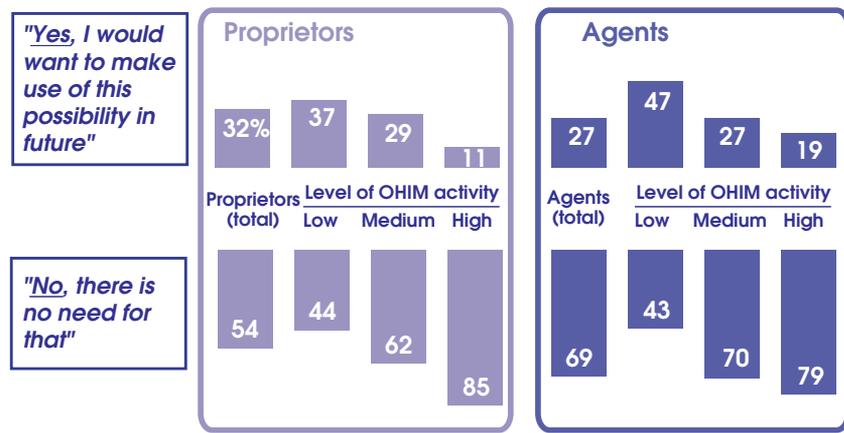
Although the possibility of filing CTMs via the EU Member States' national trade mark offices is not widely used, substantial minorities of users think this option should be maintained: nearly one third of CTM proprietors (32 percent) and 27 percent of agents want to use this possibility in future (cf. Chart 33 below).

⁹ Cf. Invitation to tender no. MARKT/2009/12/D, 5.5.1, (2), (c), (i).

¹⁰ Cf. Invitation to tender no. MARKT/2009/12/D, 5.5.2, (6), (a); 5.2, (8), (b); 5.5.2, (4); 5.1, (2), (c), (iii); 5.2, (9), (d); 5.2, (9), (a); 5.2, (9), (c); 5.2, (7), (b); 5.2, (7) (a); 5.2 (11).

Chart 33

Q18: Aside from filing directly with OHIM, it is also possible to file CTMs via the EU Member States' national trade mark offices. Would you yourself want to make use of this possibility in future, or is there essentially no need for that in your view?



Users with low OHIM activity are most likely to favour filing CTMs via national offices (Q18)

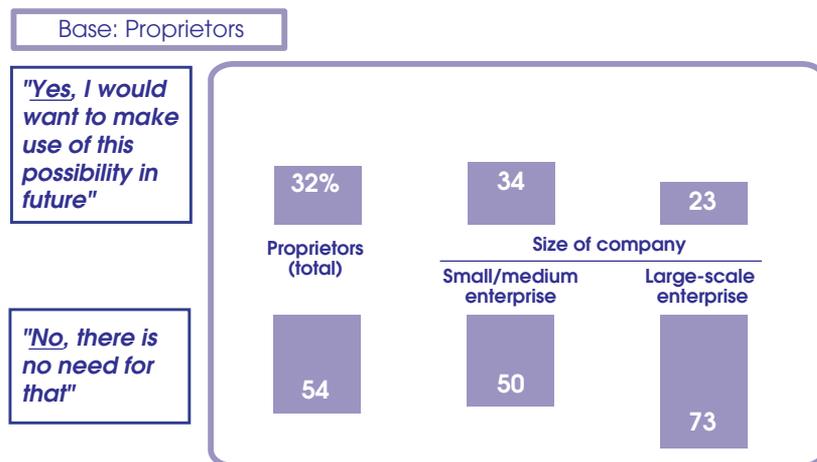
The share of users who want to make use of this possibility in future varies considerably in conjunction with individual OHIM activity levels: users with a low level of OHIM activity tend to advocate filing CTMs via the EU Member States' national offices more often than users with high OHIM activity do, particularly agents. Nearly half of those agents with a low OHIM activity level (47 percent) want to use this possibility in future, as compared to 27 percent of total agents.

Proprietors from SMEs want to retain the option more often than those from large-scale enterprises do (Q18)

Chart 34 below analyses proprietors' preferences in conjunction with the size of the company they work for. 34 percent of proprietors from SMEs want to make use of the option of filing CTMs via the Member States' national trade mark offices in future. Proprietors from large-scale enterprises want to do so to a somewhat lesser extent (27 percent), while a clear majority of 73 percent says "No, there is no need for that."

Chart 34

Q18: Aside from filing directly with OHIM, it is also possible to file CTMs via the EU Member States' national trade mark offices. Would you yourself want to make use of this possibility in future, or is there essentially no need for that in your view?



(b) Opinions on proposed changes at OHIM

The survey tested users' reactions to the following eight proposals for changes at OHIM:

- Proof of genuine use of CTMs within a 5-year period, as is currently the case, or within a 3-year period? (Q17)
- Introducing accelerated CTM registrations (for a higher fee and opposition only after registration): a good idea or should the current practice be retained? (Q21)
- Claiming priority: simply record priority claims (current approach) or full examination before registration? (Q23)
- Claiming seniority: verification limited to checking if both marks are identical (current approach) or should OHIM verify all seniority claims? (Q25)
- Time allowed for filing notice of opposition: Within 3 months of publication (current approach) or within 2 months? (Q27)
- Checking if a new CTM possibly conflicts with earlier trade marks: check only upon opposition (current approach) or should OHIM always check (ex officio)? (Q28)

-
- *Point in time when it is possible to file an opposition: before a new CTM is registered (current approach) or only after a CTM has been registered? (Q29)*
 - *Relative grounds of opposition: examination if a CTM conflicts with non-registered trade marks/signs within opposition proceedings (current approach) or within cancellation proceedings? (Q30)*

The following section compares reactions to all of the proposed procedural changes at OHIM that were tested (Q17-21, Q23, Q25, Q27-30, Q43, Q44, as listed at the beginning of this section).

**Main insights
(Q17-21, Q23, Q25, Q27-30,
Q43, Q44)**

- **A majority of agents and even more CTM proprietors favour retaining most of the current procedures and processes at OHIM, which indicates that users are generally satisfied with the existing procedures**
- **The only proposed change which users would clearly welcome is introducing full examination of priority claims by OHIM before registration**
- **Limited support—ranging from about 25 to 40 percent of users—is expressed for measures such as fully verifying seniority claims, accelerated CTM registrations, introducing an 'ex officio' approach to check if a new CTM conflicts with earlier trade marks, accelerated CTM registrations, and shortening the period for proof of genuine use or for filing an opposition**
- **Few users support changing the point of time when it is possible to file an opposition and when examinations of relative grounds of opposition should be carried out**
- **Users think searches of OHIM's database for possibly conflicting CTMs should continue to be offered as a mandatory service**
- **The OHIM search service offered by some national registers when filing CTMs is of limited use, especially to users with a high level of OHIM activity**
- **Users are highly satisfied with OHIM's e-business tools and want OHIM to develop them further, yet they also favour retaining traditional forms of communication with applicants, such as mail and fax**

Methodological notes *Reactions to proposed procedural changes at OHIM were tested via a single question for each proposal (Q17-21, Q23, Q25, Q27-30, Q43, Q44). Thus, it was possible to at least roughly describe the current approach and possible future solutions to respondents. The present analysis aims to provide an overview of the results.*

In the case of survey questions on proposed changes, there may be some general bias towards the current approaches, which respondents are already familiar with. Consequently, the most appropriate way to derive any conclusions from the findings is to rank the proposals according to levels of support, rather than considering the absolute magnitude of the percentages obtained. To rank the proposals according to the shares of users who either favour or oppose each proposal, index values were calculated.

In the following charts, the reactions to eight different proposals are shown successively for purposes of comparison, with results listed separately for CTM proprietors and agents. A "see-saw" was chosen to graphically represent the acceptance of the proposals: the end of the see-saw that is higher up in the air indicates which option is supported by the greatest share of respondents, whereas the end closest to the ground represents the minority position. The proposals are arranged according to index values (support for change in relation to support for the current approach). The index values are shown at the triangular base of each "see-saw.

As the findings show, CTM users answer rather conservatively (cf. Charts 35 and 36 below). For 6 out of 8 proposals, the majority of both proprietors and agents think the current approach should be retained. This indicates that users are generally satisfied with the existing procedures.

Chart 35

Not much support for procedural changes among proprietors, except for full examinations of priority claims and ex officio checks for possible conflicts with earlier trade marks

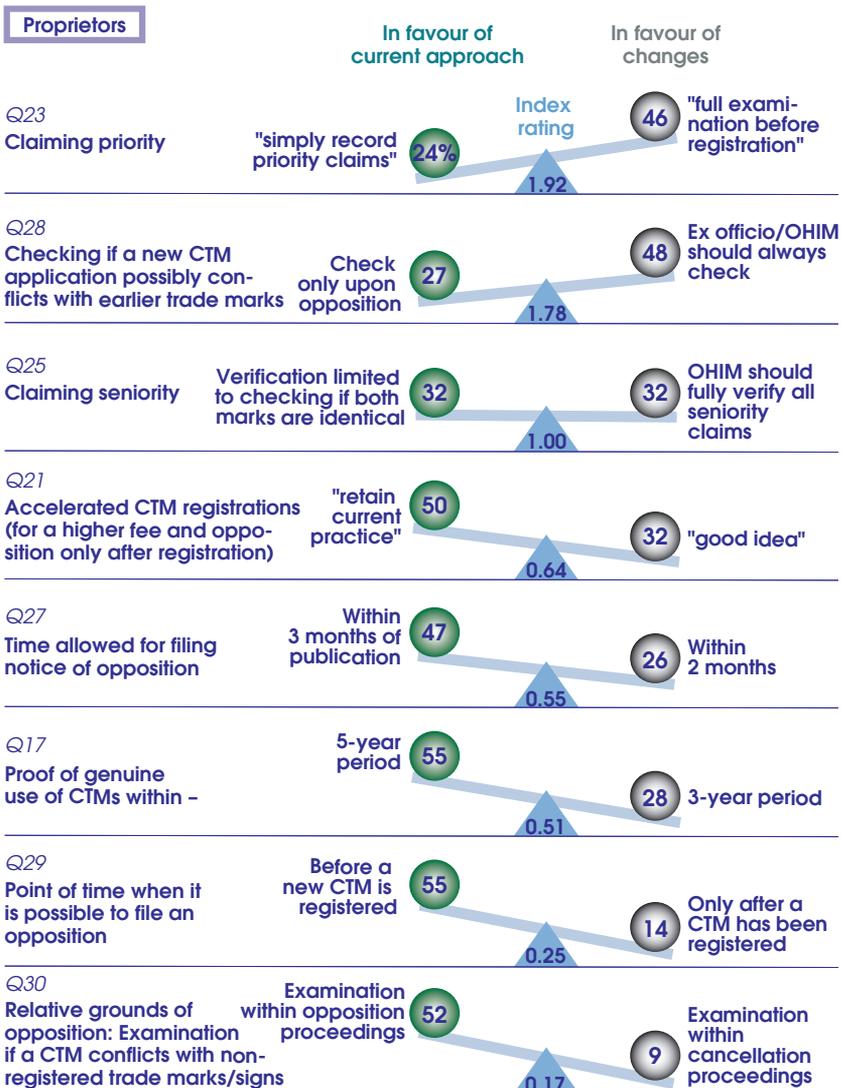
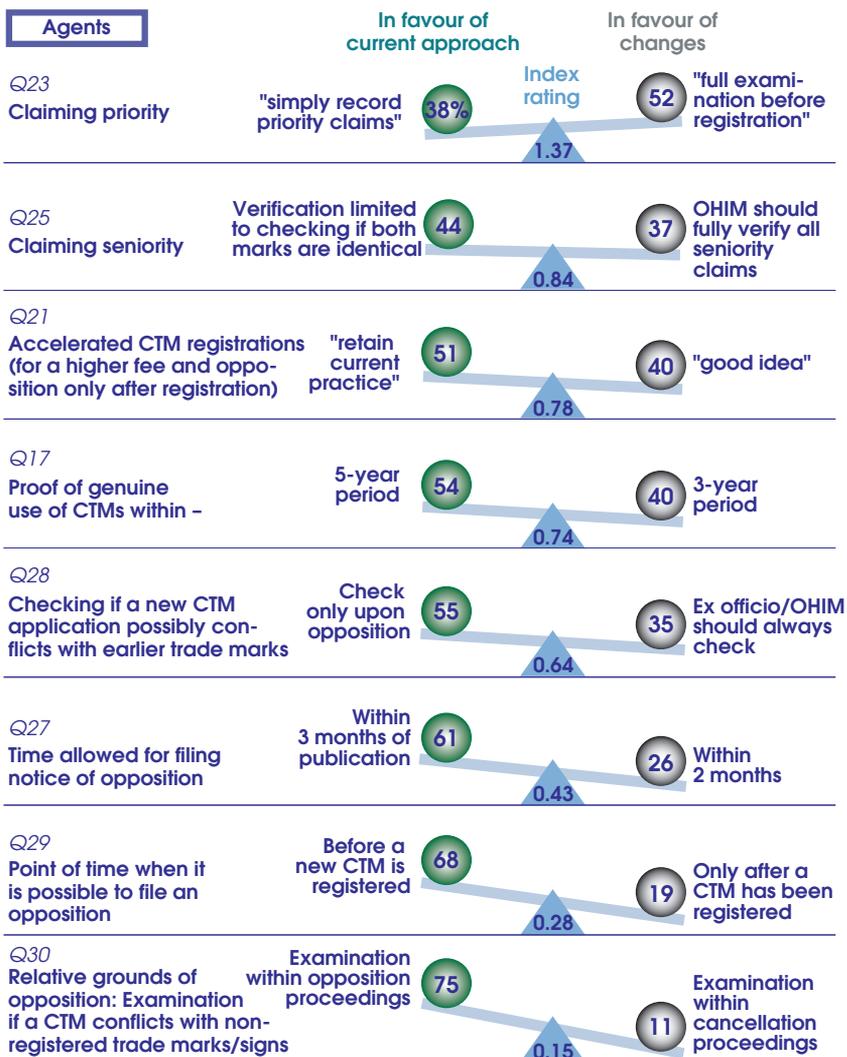


Chart 36

Except for full examination of priority claims, agents reject proposed changes even more clearly than proprietors do



Greatest support for introducing full examinations of priority claims (Q23)¹¹

The only proposal that is clearly embraced by clear majorities of both user groups, and which is thus ranked #1, is the idea of introducing full examinations of priority claims by OHIM before registration (supported by 46 percent of proprietors and 52 percent of agents, cf. Charts 37 and 38 above).

A relative majority of proprietors spontaneously support an ex officio approach to checking if a new CTM possibly conflicts with earlier trade marks, but the majority of agents dismiss the idea (Q23)

Another proposal ranked high by proprietors (#2) is switching from the current approach of checking if a new CTM possibly conflicts with earlier trade marks only upon opposition to a pre-emptive mandatory check (i.e. an 'ex officio' approach). Among agents, this proposal is only ranked #5.

Although a relative majority of proprietors favour ex officio checks to determine if new CTMs possibly conflict with earlier trade marks, the significance of this single finding should not be overestimated—and it is definitely not enough evidence to conclude that proprietors want to change the system. On the contrary, there is clear evidence that proprietors are satisfied with the current system overall: Proprietors think the CTM system is generally working well and their reactions to proposed changes are rather conservative on the whole, with majorities favouring most of the current procedures and processes. Q28 did not indicate that introducing ex officio checks to determine if new CTMs conflict with earlier trade marks actually represents a fundamental change of the CTM system, so most proprietors were probably not thinking along these lines when answering. To understand this finding, it helps to consider another general tendency observed among proprietors throughout the survey: specifically, proprietors tend to favour all types of mandatory approaches in which OHIM automatically carries out examinations, checks, searches, etc. Most likely, the support for ex officio checks again reflects proprietors' general desire to simplify their own trade mark activities by increasing the share of services that OHIM automatically offers, rather than a definite wish to change the existing system.

¹¹ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (4)

Some support for full verification of seniority claims (Q25),¹² accelerated CTM registrations (Q21),¹³ shortening the period for proof of genuine use (Q17)¹⁴ and of the time allowed for filing notice of opposition (Q27)¹⁵

Most of the other proposed changes could count on limited support from about 25 to 40 percent of users: namely, full verification of seniority claims by OHIM (#3 among proprietors and #2 among agents), introducing accelerated CTM registrations (#4 among proprietors, #3 among agents), and shortening the period for proof of genuine use from 5 years to 3 years (#6 among proprietors, #4 among agents) and, finally, shortening the time allowed for filing notice of opposition from 3 to 2 months after publication (#5 among proprietors, #6 among agents).

Little support for changing the points of time for filing an opposition (Q29)¹⁶ and for carrying out examinations of relative grounds of opposition (Q30)¹⁷

Two proposed procedural changes would definitely not be supported by users, at least initially, if they were to be adopted as OHIM's new practice: specifically, changing the point of time when it is possible to file an opposition from the current approach (before a new CTM is registered) to filing only after registration (#7 among proprietors and agents), and carrying out examinations of relative grounds of opposition within the framework of cancellation proceedings instead of within opposition proceedings (#8 among proprietors and agents).

The analysis shall now examine how the eight proposals are assessed by users with different activity levels, from different countries and by proprietors from SMEs, in comparison to those from large-scale enterprises.

¹² Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (2), (c), (iii)

¹³ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (8), (b)

¹⁴ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (6)

¹⁵ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (9), (d)

¹⁶ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (9), (a)

¹⁷ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (9), (c)

Respondents' reactions to the proposals are linked to individual OHIM activity levels. Like average users, proprietors and agents with a high level of OHIM activity also rank introducing full examination of priority claims by OHIM in 1st place (Q23: 52 and 56 percent, as compared to 46 and 52 percent among total proprietors and agents, compare Chart 37 below with Charts 35 and 36 above). They do not, however, favour an 'ex officio' approach to check if new CTMs possibly conflict with earlier trade marks (Q28): only 22 and 19 percent support this proposed change, as compared to 48 and 35 percent among total proprietors and agents (compare Chart 37 below with Charts 35 and 36 above).

On analysing the results by country and type of user (cf. Chart 37 below), there are three noteworthy results:

- Support for introducing full examinations of priority claims by OHIM (Q23) is especially high among agents with high OHIM activity, among agents from the U.K., the "New EU Member States since 2004" and those from "Other EU Member States" (56/57/57/54 percent),
- Support for an 'ex officio' approach to checking for conflicts (Q28) is strongest among agents from the U.K. (57 percent),
- Support for introducing accelerated CTM registrations (Q21) is strongest among German agents (55 percent).

When proprietors' responses are broken down according to company size, the analysis reveals that proprietors from SMEs support an ex officio approach to checking if new CTMs possibly conflicts with earlier trade marks (Q28) much more than proprietors from large-scale enterprises do (51 compared to 35 percent, cf. Chart 37 below). As explained above, this result must be interpreted with great caution, since it is obviously a reflection of the proprietors' desire to reduce complexity on their part, rather than a true wish to change the system.

Chart 37

REACTIONS TO THE PROPOSED PROCEDURAL CHANGES AT OHIM

% in favour of changes

PROPRIETORS

	Q23	Q28	Q25	Q21	Q27	Q17	Q29	Q30
Level of OHIM activity								
Low	44%	46	27	31	22	26	16	8
Medium	49	53	35	31	31	33	12	10
High	52	22	44	45	21	13	26	18

Export activity within the EU

None	50	43	28	31	24	26	17	9
Low/Medium	45	51	30	29	29	30	14	9
High	47	47	35	35	24	28	14	10

Size of company

SME	46	51	30	30	27	30	13	8
Large-scale enterprise	47	35	37	39	21	23	19	14

Country

Germany	40	47	34	39	20	27	17	8
U.K.	49	51	29	38	28	33	7	5
France	40	53	26	27	21	26	15	12
Italy	54	43	38	17	31	25	12	11
New EU Member States since 2004	55	62	25	47	38	36	12	18
Other EU Member States	51	45	33	27	28	29	15	9

AGENTS

Level of OHIM activity

Low	44	51	34	35	22	32	12	7
Medium	52	39	34	37	30	45	17	10
High	56	19	47	50	20	32	27	14

Country

Germany	49	27	37	55	20	32	36	13
U.K.	57	57	47	30	39	46	5	6
Italy	40	41	27	21	21	44	10	3
New EU Member States since 2004	57	49	35	29	24	48	7	10
Other EU Member States	54	33	37	36	31	43	13	12

Selected comments by respondents on proposed procedural changes (available for Q17, Q27-29)

Q17 on proof of genuine use

"A reduction to 3 years will just be impossible in some industries requiring long development process such as pharma industry." (Proprietor/F)

"And use should be for a substantial number of countries not only 1 or 2 member states in order to uphold a CTM registration." (Agent/Other EU-MS)

"Brand owners need more than 3 years to bring a product/service to market in respect of all of the g/s that they intend to provide under the name. They often have a 5 year business plan." (Proprietor/UK)

"Depends on goods involved, for some goods it might take five years to finalize development before launch." (Agent/Other EU-MS)

"I agree that proprietors should have 5 years before their own registrations can be challenged for non-use, BUT if they want to challenge others (e.g. in opposition, THEN they should have to be able to show evidence of actual use or preparations to use their mark regardless of whether it has been registered for 5 years or not." (Agent/UK)

"In the vast majority of cases, product cycles are short enough to start using a trademark within 3 years from its creation. In most cases, the trademark is already used at the time of filing or will be used shortly after filing. 5 years grace period of use is much too long, considering that this blocks the trademark for the entire territory of the EU, which has grown enormously over the last years and which will probably grow even further." (Agent/DE)

"Taking into consideration the economic crisis currently experienced, it is our opinion that the 5 year period is more friendly for the average trademark owner." (Proprietor/New EU-MS since 2004)

"Shortening the period to 3 years would only make sense if this became pretty much an universal standard." (Agent/DE)

Q27 on the time allowed for filing notice of opposition

"3 months is definitely needed, not in all cases but in quite some cases, in particular in those cases that - are more complex, - involve a plurality of different prior rights, - are filed by companies from abroad or by international companies where the decision making process might be complex, - etc., etc. Reducing the deadline from 3 to only 2 months might increase the number of oppositions that are filed "only to be on the safe side." (Agent/DE)

"If someone, as e.g. larger scale companies, have a watching system, then even 1 month would perhaps be enough, whereas for smaller and one-man companies / enterprises even 4 months would perhaps not suffice. It is a broad territory to watch over after all ..." (Agent/Other EU-MS)

"If there is pressure to reduce this to 2 months, this would be acceptable as long as the potential opponent could apply free of charge for a 1 month extension to 3 months, as happens in the UKIPO." (Proprietor/UK)

"Parties often negotiate a settlement during the opposition period and need some time." (Agent/DE)

"Today, the time to negotiate with the applicant before you post an opposition is too short. Typical, the first month is already lost because of the notification delay. This may force you to send in an opposition, which you then have to redraw later. This is a waste of time and money." (Proprietor/Other EU-MS)

Q28 on checking whether a new CTM application possibly conflicts with earlier trade marks

"Speedy registration system is a benefit to trade mark owners but a valid registration that has been checked for conflicts and any conflicts dealt with is much more beneficial than one that could be invalidated at any time because of an earlier prior right." (Agent/UK)

"Although the second approach is more beneficial for prospective trademark proprietors, the first approach is far more correct." (Proprietor/New EU-MS since 2004)

"An ex officio approach would be a huge step back. It invents conflicts where there is no conflict. With the number of marks on the registries in various countries as well as CTMs you would never get your mark cleared." (Proprietor/Other EU-MS)

"An ex officio approach would create a number of conflicts, which only exist on paper. Letting the owners decide when and how to react is best for the companies/ trademark owners." (Proprietor/Other EU-MS)

"Ex officio examinations are used in less and less jurisdictions, opposition systems have already proven to be effective in many EU member states." (Agent/New EU-MS since 2004)

"However, it should be more an advisory check." (Agent/I)

"I consider that the market will decide what trademark is viable." (Agent/New EU-MS since 2004)

Q29 on the point of time when it is possible to file an opposition

"A 'post-registration opposition system' creates the illusion that a trade mark has been granted, which is not the case until the opposition period has ended." (Proprietor/UK)

"Far better to do before registration, so that mark is never actually registered. It always seems harder to fight a mark once it is registered." (Agent/UK)

"I very much disapprove of a post-registration opposition system. It should be clear to third parties whether a mark is fully protected or not." (Agent/UK)

"Post-registration creates uncertainty. Smaller companies in particular wait for registration to launch their products and rely on registration as being meaningful." (Proprietor/UK)

"Whatever gives the shortest time for the application to get through a registration process is preferred." (Proprietor/Other EU-MS)

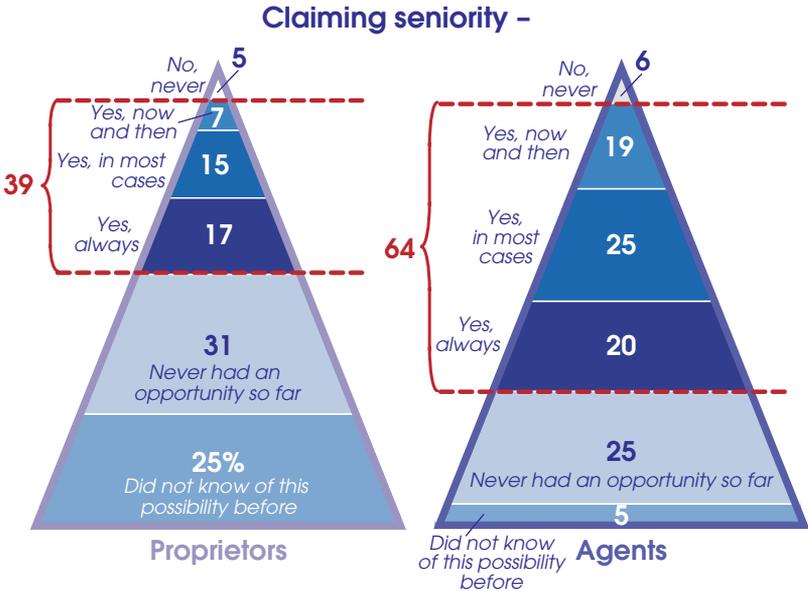
In the case of one of the proposed changes, that is, claiming seniority (Q25), the survey offers some background information on the extent to which respondents currently claim seniority at all (Q24).

Agents primarily use the possibility of claiming seniority (Q24)

The possibility of claiming seniority (either "now and then," "in most cases" or "always") is used by 39 percent of CTM proprietors (cf. Chart 38 below). One quarter of all proprietors were not aware of this possibility before (25 percent).

Chart 38

Q24: And now a question on seniority claims (Article 34 and 35 CTMR), that is, the possibility of integrating older national trade marks and their priorities into a new CTM and giving up the older national trade marks. Do you claim seniority whenever possible?



The broadest group that makes use of this possibility—ranging from now and then to always—comprises two thirds of all agents (64 percent), including 20 percent who say they "always" claim seniority.

Users with a high activity level use the option of claiming seniority most often (Q24)

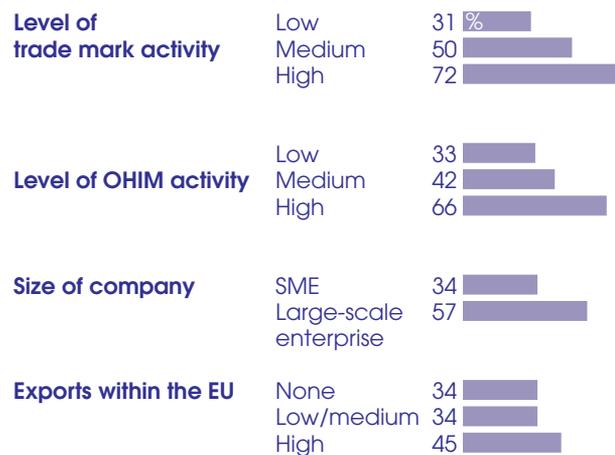
Seniority claims are made most often by users with a high level of any of the three types of activity measured, i.e. trade mark activity (cf. Chart 39 below), OHIM activity or—for proprietors only—export activity within the EU. Among proprietors, the possibility of claiming seniority is predominantly used by proprietors from large-scale enterprises (57 percent).

Chart 39

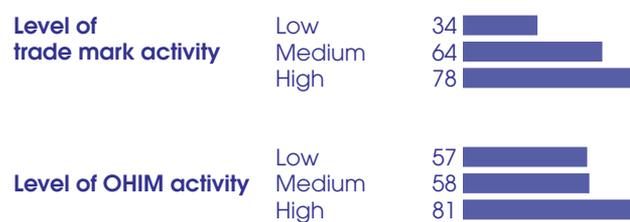
CLAIMING SENIORITY OF A NATIONAL TRADE MARK VIA OHIM (Q24)

"Yes, now and then/in most cases/always"

PROPRIETORS



AGENTS



Selected comments by respondents on claiming seniority (Q24)

"Clients feel more confident keeping the national right alive." (Agent/I)

"I do not think it is right for an owner to have to give up his national rights in order to have the CTM backdated. Why can't the owner keep his national right as well as having the CTM backdated?" (Agent/UK)

"It's a shame that the value of such seniority registrations has never been tested in court proceedings. Therefore, parties do not know to what extent they can rely on such seniority claims." (Proprietor/D)

"One does it when applicable because it's obviously a safer option and it does not cost much to deal with. Whether it really works in practice if one ever had to rely on it is much more questionable. I have not had to yet, but I suspect that there is wide variation in practice when you get back into the national offices. It sounded like a good idea in principle, but I'm not too sure it will work well in practice." (Agent/UK)

"Questionable if national systems have adapted law and keep files after years (conformity with Community legislation of national systems?)." (Proprietor/ES)

"Seniority is a very important feature of the CTM system since it helps to minimize costs in handling a trade mark portfolio, once national rights are abandoned." (Proprietor/UK)

"Still unclear whether the national offices register the seniority claim. A publication would be an advantage." (Agent/DE)

"The claim itself is a great tool, however, in some cases I am hesitant to 'activate' the claim by not renewing the national registration due to the lack of decisions based on the seniority throughout the EU." (Proprietor/DE)

Searches (Q19-20) The survey covers two kinds of searches: (a) the mandatory, automated search of OHIM's database for potentially conflicting trade marks within the framework of the registration procedure, and (b) the optional search service in some national registers.

Most users think the search for conflicting CTMs should be retained as a mandatory part of the registration process (Q19)¹⁸

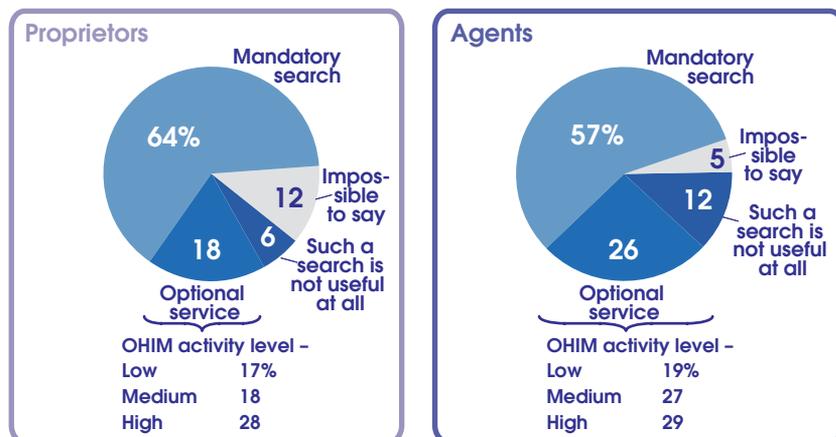
Regarding OHIM's mandatory, automated search of the CTM register for potentially conflicting CTMs as part of the registration procedure, a clear majority of users—and particularly proprietors—argue in favour of keeping this service mandatory (supported by 64 percent of proprietors and 57 percent of agents), cf. Chart 40 below. In comparison, 18 percent of proprietors and 26 percent of agents would prefer such searches to be offered as an optional service.

¹⁸ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (7), (b)

6 percent of all proprietors and 12 percent of all agents are generally doubtful about the usefulness of this search. Among users with a high OHIM activity level, the corresponding shares are 25 and 28 percent, respectively.¹⁹ Support for making this an optional service is also not overwhelming among this most active group (a maximum of 29 percent among agents with high OHIM activity, as compared to 26 percent among total agents).

Chart 40

Q19: As part of the registration procedure, OHIM conducts a mandatory, automated search of its database to check whether there are any CTMs that may conflict with the application. Suppose this search were offered as an optional service instead. What would you prefer?



¹⁹ These two figures are not displayed in graphic form.

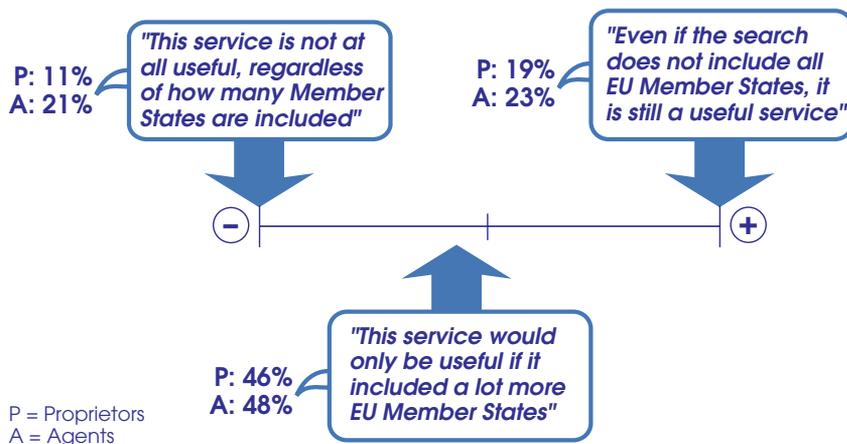
The optional service allowing for searches in some national registers is of limited use (Q20)²⁰

Most respondents do not view the optional search for potentially conflicting trade marks in national registers, which is currently available in 11 of 27 EU Member States, as a useful service (cf. Chart 41 below). The share of users who already say this service is useful comprises 19 percent of proprietors and 23 percent of agents.

This assessment could change, however, if a lot more national offices were included. 46 and 48 percent of users say such a search service would be useful to them on this condition.

Chart 41

Q20: In 2008, the search of national registers, which was mandatory up to that time, was replaced with an optional search, which applicants can request when filing a CTM: (Information on countries included in search) What do you think of that?



²⁰ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (7), (a)

OHIM's e-business tools (Q43 and 44)²¹

The survey included two questions on OHIM's e-business-tools (Q43 and 44): the first question established awareness and assessments of OHIM's e-business tools, while the second question explored users' opinions on how OHIM's e-business tools should be developed in future.

Methodological note

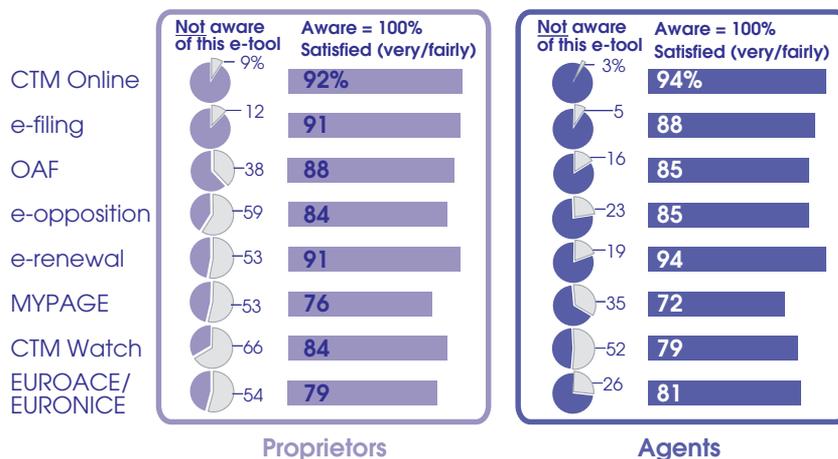
Q43 separates users who give an assessment from those who are unaware of the e-tools. The results for user satisfaction are based only on the answers given by users who are aware of each particular e-tool.

Awareness of OHIM's e-business tools (Q43)

Two OHIM e-tools which most proprietors are aware of are "CTM Online" and "e-filing" (only 9 and 12 percent of proprietors are "not aware" of these tools), cf. Chart 42 below. A third OHIM e-tool that is becoming better known among proprietors (38 percent are "not aware" of it) is "OAF" (Online access to all additional documents contained in a CTM file). Agents are more familiar with the broad range of OHIM's e-tools. Respondents are not very familiar with the following OHIM e-business services so far: "CTM Watch" is new to large shares of both proprietors and agents. In addition, most proprietors are unaware of the existing "e-opposition," "e-renewal," "MYPAGE" and "EUROACE / EURONICE" tools.

Chart 42

Q43: Please indicate how satisfied you are with each of the following e-business tools provided by OHIM.



²¹ Cf. Invitation to tender no. MARKT/2009/12/D, 5, 5.2, (11)

High satisfaction with OHIM's e-business tools (Q43)

User satisfaction with OHIM's e-business tools is generally high (cf. again Chart 42 above). All of the eight services tested received positive feedback from at least 72 percent of users, with some services—namely the CTM-ONLINE database and "e-filing"—receiving even more than 90 percent approval ratings. The results for "MYPAGE" are not quite as high as for the other OHIM e-tools. Some of the additional comments by respondents point to the possibility that there may be problems when accessing the system for the first time.

Users opt for e-business tools in combination with traditional forms of communication (Q44)

Users welcome OHIM's e-business tools, but the majority favours maintaining traditional forms of communication (mail, fax), cf. Chart 43 below: Proprietors tend to be somewhat more e-business oriented than agents, who prefer to have a choice of communication channels. Conducting all communication between OHIM and CTM applicants electronically in future would meet with the approval of 32 percent of proprietors and 24 percent of agents—that is, of a minority who have access to the necessary technology and who are accomplished in electronic communication. The largest share of users advocate a moderate approach: specifically, refining OHIM's e-business tools while at the same time maintaining traditional forms of communication, such as mail and fax (45 and 63 percent).

Chart 43

Q44: How should OHIM develop its e-business services in future?



Opinions on how to develop OHIM's e-business tools do not differ substantially in conjunction with individual OHIM activity levels, so no additional chart is provided showing these breakdowns: agents with high OHIM activity have essentially the same opinions on this issue as total agents do; proprietors with high OHIM activity are less convinced that communication should be restricted to e-business tools only (22 percent, as compared to 32 percent of total proprietors).

**Selected comments by
respondents on OHIM's
current e-business
tools (Q44)**

"Always it is VERY IMPORTANT to have a personal contact, a name, a person. The personal attending it is still basic." (Agent/ES)

"BUT you need to get Mypage to work in a satisfactory way." (Proprietor/Other EU-MS)

"Communications by means of e-mail must be accepted. It could be worthy to establish a system of certification of e-mail." (Agent/ES)

"Conducting communication electronically only has led to misunderstandings and loss of applications - the log of entries and opening of documents is not perfect at all!" (Agent/DE)

"I believe that electronic and non-electronic communications should be enhanced. For example, we did not receive any payment confirmation after the first money transfer was made to OHIM (we could only rely in the information provided by our bank in connection with the registration payments)." (Proprietor/ES)

"I want written confirmations of applications and registrations." (Proprietor/Other EU-MS)

"I would really like to use MYPAGE. But one can use MYPAGE only when one accepts to receive email communication from OHIM. This is, however, exactly NOT what I want. Therefore, since I cannot use MYPAGE, very useful tools offered by OHIM under MYPAGE are not available for me, such as "CTM Watch". I think OHIM should continue to develop further useful tools BUT OHIM SHOULD MAKE IT AVAILABLE TO EVERYBODY!" (Agent/DE)

"I would welcome less emphasis on working on how to automate the office and more emphasis on training the examiners in the office." (Agent/UK)

"It should be possible to call someone over the phone but only for quick and rare occasions, hinting web-information and covering non covered matters on the webpage." (Proprietor/Other EU-MS)

"It would be useful if OHIM accepted and entered into correspondence by email." (Proprietor/UK)

"Legal (final) decisions should still be sent as registered mail, but fax is completely outdated and much less secure than a digitally signed e-mail. It is extremely irritating that you cannot use e-mail correspondence to OHIM unless you are a registered user, that is, typical a professional." (Proprietor/Other EU-MS)

"Make payment by credit card available for all fees. Invoices are mandatory in business." (Proprietor/F)

"Mypage is not too user friendly - I have problems to be connected (passwords), did not succeed to change my dates - was not accepted by the system." (Agent/DE)

"The e-business tools should be more reliable and work all the time." (Agent/Other EU-MS)

"The way the OHIM communicates is so rudimentary. Mail and fax are the slowest and most inefficient ways of communicating. Most of the communication should be done through the website, email and phone. But for this to be efficient, the service hours need to be like in any other commercial business. And they need to respond email in a timely manner - a response that takes 2 weeks is unacceptable!" (Proprietor/UK)

"There should be more tools for direct contact between OHIM and user i.e. when I see a mistake on a webpage I should have a form that I could immediately and directly report this mistake." (Agent/New EU-MS since 2004)

"We would prefer to be able to communicate via email instead of correspondence via MyPage." (Agent/Other EU-MS)

4.4 OHIM fees²²

The survey included a series of questions on the current OHIM fees (Q35-42). The analysis will start with respondents' opinions on the appropriateness of various main OHIM fees (a). Next, the OHIM filing fee will be analysed (b), particularly in light of the question of whether the OHIM filing fee exerts a de facto influence on CTM applications, what strategies are applied in order to avoid such an impact and how users react to a proposed restructuring of the OHIM filing fee. The last part of this section focuses on the OHIM "renewal fee" and whether this fee influences decisions to renew CTMs (c).

(a) Opinions on the appropriateness of various main OHIM fees

- Main insights (Q35)**
- **Users express little acceptance of OHIM's current main fees, which suggests that several fees need adjusting—especially the OHIM "renewal" fee**
 - **The renewal fee was rejected most strongly by proprietors from SMEs ("far too high": 51 percent)**
 - **Proprietors in particular—and especially those from SMEs and those with low OHIM activity—would also welcome adjustments of the OHIM fees for "filing & registration," "cancellation" and "appeal"**
 - **Regarding the current OHIM "opposition" fee, users seem to perceive no need for adjustment at the present time**

Methodological notes (Q35) *To ensure valid responses, the exact amounts of the current main fees were communicated to respondents (differentiated according to e-filing and traditional filing methods, when applicable).*

In surveys, results of direct questions on the appropriateness of fees or prices, like those employed here, may contain a certain amount of strategic ratings, since respondents may hope to influence future decisions on fees in a desired direction. Thus, a general tendency towards critical results should be taken into account when evaluating the results obtained.

²² Cf. Invitation to tender no. MARKT/2009/12/D, 5.2, (5) – b)

Both proprietors and agents feel the current OHIM fees are too high (either "far too high" or "a bit too high")—proprietors to a greater extent than agents (on average, 60 percent compared to 46 percent), cf. Charts 44 and 45 below.²³ Such shares indicate that there is low acceptance of the fees, even if the effect described above is taken into account, i.e. that questions on the appropriateness of fees generally tend to obtain negative ratings.

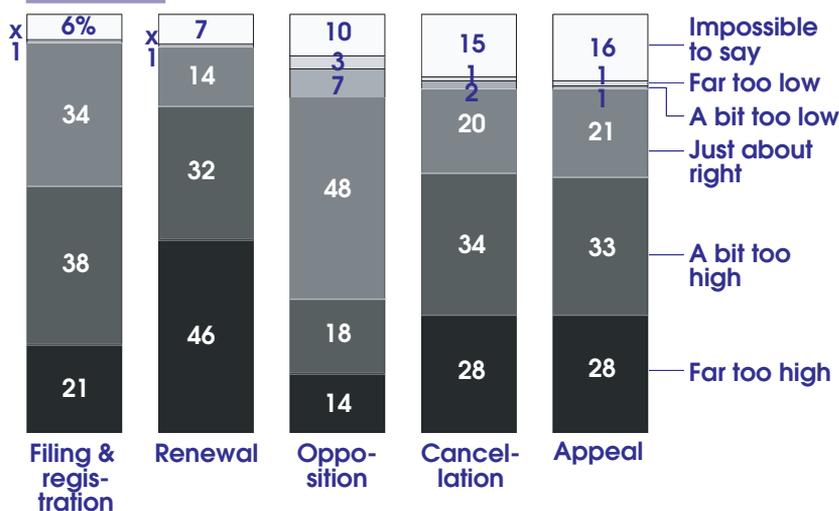
The following charts present the results obtained for the five main OHIM fees tested, whereby the first chart shows the results for proprietors and the second for agents.

Chart 44

Proprietors: Low acceptance of all main OHIM fees— "Opposition" fee meets expectations, "renewal" fee is least accepted

Q35: What do you think about the fees at OHIM?

Proprietors



x = less than 0.5 percent

In assessing the results of the present analysis, the most significant finding is the share of respondents who say a fee is "far too high," as this answer indicates definite rejection. Among proprietors, the share of definite rejection varies greatly, ranging from 14 to 46 percent per fee.

²³ Averages calculated based on the five averages in Charts 44 and 45; the averages are not displayed in graphic form.

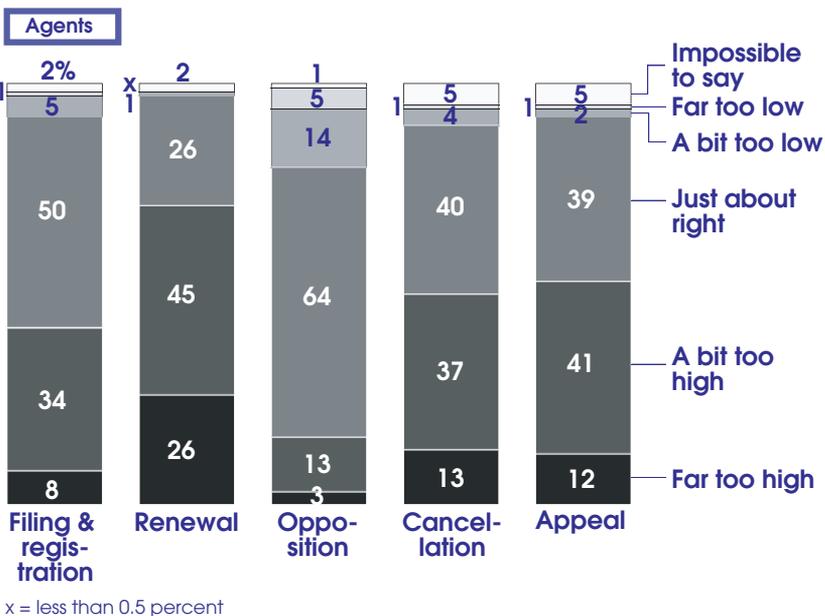
The only fee that essentially meets proprietors' expectations is the OHIM opposition fee, which is definitely rejected as being "far too high" by only 14 percent and which is accepted by a total of 58 percent (either "far too low," "a bit too low" or "just about right"). In contrast, the OHIM "renewal" fee is least accepted by proprietors (definitely rejected as "far too high" by 46 percent, accepted by only 15 percent).

In comparison to proprietors, the share of agents who definitely reject the OHIM fees varies less greatly (ranging from 3 to 26 percent):

Chart 45

Agents: Low acceptance of most OHIM fees— "opposition" and "filing & registration" fees meet expectations, "renewal" fee is least accepted (Q35)

Q35: What do you think about the fees at OHIM?



The OHIM "opposition" fee is also essentially in line with agents' expectations, being accepted by a total of 83 percent of agents (either "far too low," "a bit too low" or "just about right") and definitely rejected by only 3 percent.

A majority of agents also approve of the OHIM fee for "filing and registration" (56 percent in total), while 8 percent definitely reject it. The fact that the OHIM accession fee ("filing and registration") ranks second in acceptance among both proprietors and agents may be at least partly attributable to the fact it was reduced in May 2009. Still, it is primarily proprietors who reject the current accession fee as being *"far too high"* (21 percent).

On analysing the findings in view of individual activity levels (cf. Chart 46 below), it appears that users with high levels of activity are least critical of the various OHIM fees: proprietors with a high OHIM activity level reject the OHIM fees to a much lesser extent as being *"far too high"* than total proprietors do (rejected by 13 percent on average, as compared to 27 percent on average²⁴). Among agents, no such effect is evident (average rejection of OHIM fees among agents with high OHIM activity: 12 percent, as compared to 11 percent among total agents²⁵). Nevertheless, users with high OHIM activity are also predominantly critical of the OHIM "renewal fee," which is definitely rejected by about 19 percent of proprietors and 27 percent of agents with a high level of OHIM activity. Similar to the total findings for proprietors and agents, the OHIM opposition fee is viewed least critically by the most active users (definitely rejected by about 4 percent of proprietors and 3 percent of agents with a high OHIM activity level).

Proprietors' opinions differ substantially depending on company size (cf. Chart 46 below). On average, 31 percent of proprietors from SMEs regard the fees as being *"far too high"* (with 51 percent of proprietors from SMEs specifically criticising the renewal fee), as compared to an average of only 12 percent among proprietors from large-scale enterprises.

²⁴ Average calculated using the five values obtained for the category *"far too high"* in Chart 46 below.

²⁵ Average calculated using the five values obtained for the category *"far too high"* in Chart 45 above.

Chart 46

ACCEPTANCE OF OHIM MAIN FEES (Q35)

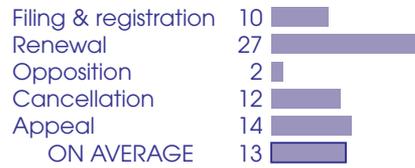
Fee is "far too high"

PROPRIETORS

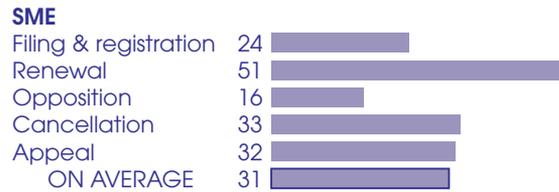
Level of trade
mark activity "high"



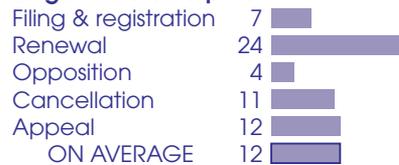
Level of
OHIM activity "high"



Size of company

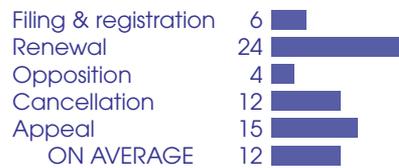


Large-scale enterprise

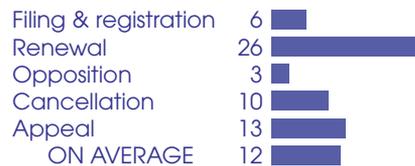


AGENTS

Level of trade
mark activity "high"



Level of
OHIM activity "high"



(b) The impact of OHIM filing fees on CTM applications

For a more thorough analysis of whether the OHIM fee structure definitely needs to be adjusted, the survey went beyond users' opinions on the fees, exploring the question of whether the OHIM fees have a definite impact on their CTM applications, along with the strategies employed in order to minimize that impact (Q36-39). Q40 tested reactions to a proposed change in the OHIM filing fees.

- Main insights (Q36-40)**
- **Users report that the current OHIM filing fees definitely influence their CTM application decisions, with only a minority stating that the fees have no such impact**
 - **Such an impact is primarily reported by SMEs and users with low or medium levels of trade mark, OHIM and/or export activity**
 - **To minimize the impact of the OHIM filing fees, more than half of all proprietors limit the number of CTM applications they make**
 - **Because of the OHIM filing fees, nearly one third of all proprietors only apply for the absolute minimum number of CTMs**
 - **Adjusting the filing fees would probably increase the number of CTM applications by smaller, less active proprietors, but the total effect would be limited, as it would not substantially impact the filing habits of larger, more active users**
 - **A majority of users in all categories reject the idea of adjusting the OHIM filing fee so that it depends more heavily on the number of goods and services being applied for**

Methodological notes (Q36/39) Whereas proprietors can give a first-hand account of how the OHIM filing fees influence their company's decisions to apply for CTMs, agents were asked for their indirect observations as to how their clients are influenced by the fee.

Q37/39 on the strategies employed to minimize the impact of the filing fee was posed to all respondents who had previously (Q36/38) stated that the fees had "some" or "the greatest influence" on their or their clients' decisions to file CTMs, not only to those respondents who said the fees had the "greatest influence." The question allowed for multiple responses.

A shortcoming of Q40 is that a realistic scenario of the exact form the alternative filing fee structure might take was not available at the time of the survey. Respondents' caution may, therefore, be partly caused by the relative imprecision of the proposal.

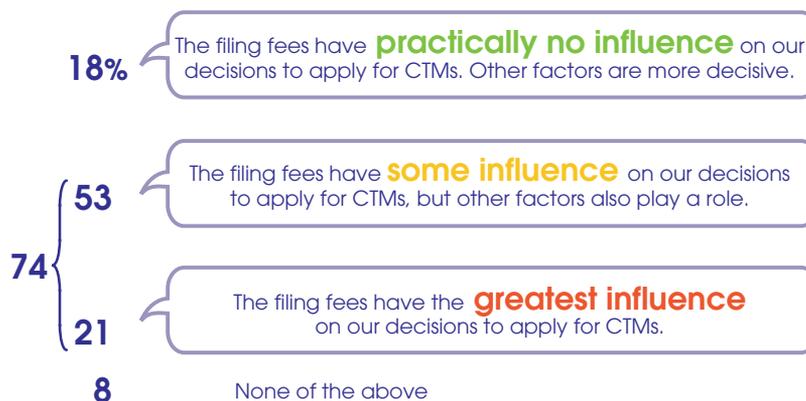
The survey results indicate that the OHIM filing fees have a significant impact on CTM applications.

74 percent of proprietors state that the current OHIM fees have an influence on their company's decisions to apply for CTMs, with 21 percent saying the fees have the "greatest influence" and 53 percent saying they have "some influence", cf. Chart 47 below).

Chart 47

Impact of CTM filing fees on proprietors: 74% say fees have a moderate/strong influence on their CTM applications (Q36)

Q36: How much do the filing fees influence your company's decisions to apply for CTMs?

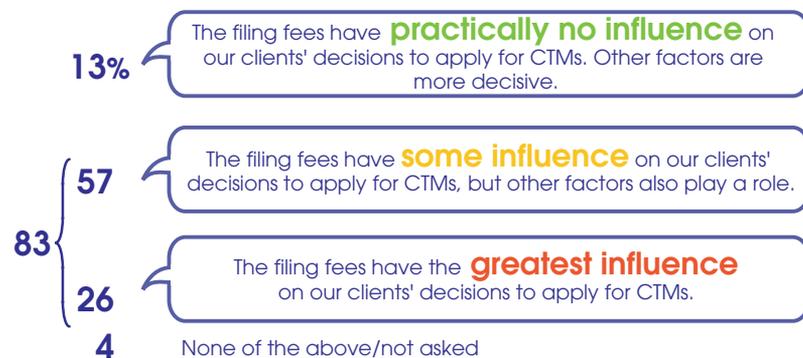


Among agents, 83 percent assume the OHIM filing fees have a moderate or strong influence on their clients' decisions to file CTMs (26 percent assume the fees have the "greatest influence," while 57 percent say they have "some influence"), thus confirming the responses given by proprietors, cf. Chart 48 below.

Chart 48

Agents' perspective on the impact of CTM filing fees: 83% say fees have a moderate/strong influence on their clients' CTM applications

Q38: Focusing on the basic OHIM fees for filing and registering an individual CTM (currently EURO 1,050 for filings by mail or fax / EURO 900 when e-filing): In your experience, how much do the filing fees influence your clients' decisions to apply for CTMs?



The total findings for proprietors conceal the fact that there are important differences between user segments:

In comparison to proprietors from large-scale enterprises, the share of proprietors from SMEs who say that the filing fees have the "greatest influence" on their companies' decisions to apply for CTMs is nearly twice as high (23 vs. 13 percent, cf. Chart 49 below).²⁶

²⁶ The share of proprietors from SMEs choosing the answer "The filing fees have practically no influence on our decisions to apply for CTMs. Other factors are more decisive" is 17 percent and 23 percent among proprietors from large-scale enterprises; the share of proprietors from SMEs choosing the answer "The filing fees have some influence on our decisions to apply for CTMs, but other factors also play a role" is 51 percent among proprietors from SMEs and 58 percent among proprietors from large-scale enterprises (values not represented graphically).

Among proprietors with low or medium levels of trade mark or OHIM activity, the share who say that the current OHIM filing fees have the "greatest influence" on their CTM applications ranges from 20 to 24 percent, whereas proprietors with high activity levels rarely report that their CTM applications are significantly influenced by the fees (ranging from 5 to 9 percent, respectively).

A similar pattern is found when proprietors' answers are broken down according to their companies' export activity within the EU. Proprietors from companies with low or medium export activity are more likely to say that the CTM filing fees decisively influence their CTM applications than proprietors who are highly export-oriented (25 and 23 percent, as compared to 18 percent in the latter category).

Chart 49

Proprietors most affected by CTM filing fees: SMEs, low levels of trade mark and export activity (Q36)

Q36: How much do the filing fees influence your company's decisions to apply for CTMs?

Proprietors

The filing fees have the **greatest influence** on our decisions to apply for CTMs.

Size of company	SME		Large-scale enterprise
		23%	13%
Level of trade mark activity	Low	Medium	High
	22%	23%	5%
Level of OHIM activity	Low	Medium	High
	24%	20%	9%
Export activity within the EU	None	Low/medium	High
	25%	23%	18%

Thus, the current OHIM filing fees represent a greater burden for some subgroups of proprietors than for others (cf. Chart 49 above). The segment of proprietors affected most displays the following set of characteristics:

- Small/medium enterprises (SMEs),
- Low or medium level of trade mark and OHIM activity,
- No or low/medium export activity.

Selected comments by users on how the OHIM filing fees influence their (clients') decisions to apply for CTMs (Q36/38)

"For me this has total influence on my choice. This system should be changed so that costs is banded in to affordability dependent on the size of organisation and include a single persons fee. For me 1,050 EURO is really a lot of money." (Proprietor/UK)

"I would prefer an US fee system (the bigger the company the higher the fee)." (Proprietor/Other EU-MS)

"Official fees should be set at a level which reflects the income and expenditure incurred by OHIM. The same is applicable to national office fees." (Proprietor/UK)

"My clients often flinch from filing a CTM because of the costs even though national filings would be much more expensive." (Agent/DE)

"Because it is relatively economic, the CTM often seems tempting to companies that do not export and have no intention of doing so. We need a mechanism to exclude surely local businesses from the CTM register." (Agent/UK)

Users' strategies to minimize the impact of OHIM filing fees (Q37/39)

To minimize the impact of the current OHIM filing fees, the users' main strategy is to limit the number of CTM applications they make (cf. Charts 50 and 51 below).

More than half of all users limit the number of their CTM applications because of the fees, whereby the share of proprietors who limit their applications ("somewhat" or strongly, selected by a total of 56 percent) is clearly confirmed by the agents' responses (57 percent say their clients ask them to limit the number of applications).

30 percent of all proprietors even report that the OHIM filing fees force them to restrict their applications to an absolute minimum. Accordingly, 33 percent of all agents report that their clients ask them to only apply for a few absolutely essential CTMs in order to avoid the fees.

Chart 50

To minimize the impact of fees, proprietors' main strategy is to severely limit CTM applications

Q37/39: And what impact do the current filing fees have on the number or type of trade marks you apply for?

PROPRIETORS	%
Fees have no influence on applications	18
Fees have moderate/strong influence and thus ...	74
... we apply for national trade marks rather than CTMs	7
... we limit the number of our CTM applications somewhat	26
... we only apply for a few absolutely essential CTMs	30
None of the above	17
	80*)
None of the above/impossible to say	8
TOTAL	100

*) multiple responses possible

Chart 51

To minimize the impact of fees, agents say their clients' main strategy is to severely limit CTM applications

AGENTS	%
Fees have no influence on clients' applications	13
Fees have moderate/strong influence, so clients ask me ...	83
... to apply for national trade marks rather than CTMs	25
... to limit the number of CTM applications somewhat	24
... to only apply for a few absolutely essential CTMs	33
None of the above	18
	100*)
None of the above/impossible to say	4
TOTAL	100

*) multiple responses possible

The impact of OHIM filing fees on proprietors differs greatly depending on activity levels and company size

Nevertheless, only 3 percent of proprietors with a high level of general trade mark activity—and only 14 percent of proprietors with high OHIM activity—opt for the statement: *"Because of the filing fees, we can only apply for a few absolutely essential CTMs"* (cf. Chart 52 below).

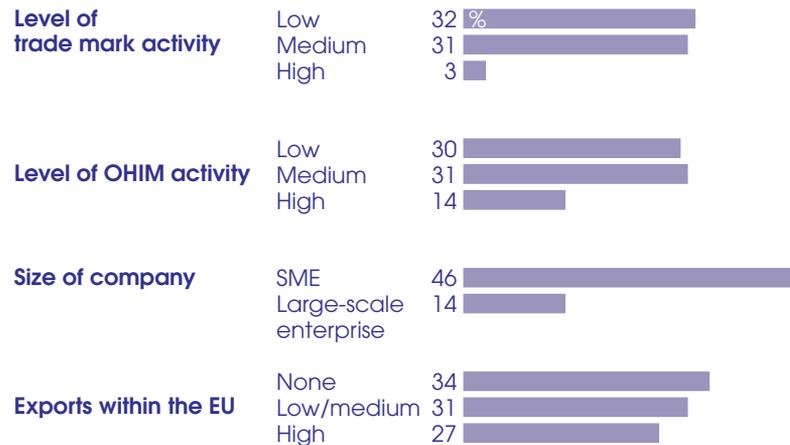
The differences are even more striking when it comes to company size: 46 percent of proprietors from SMEs say, *"Because of the filing fees, we can only apply for a few absolutely essential CTMs,"* as compared to only 14 percent of proprietors from large-scale enterprises (again, cf. Chart 52 below).²⁷

Chart 52

IMPACT OF OHIM FILING FEES DEPENDS ON COMPANY SIZE AND ACTIVITY LEVEL (Q37)

"Because of the filing fees, we can only apply for a few absolutely essential CTMs."

PROPRIETORS^{*)}



^{*)} Since agents' observations of their clients' strategies are relatively independent of their own activity levels, percentages for agents are not presented here.

²⁷ The share of proprietors from SMEs choosing the answer *"Because of the filing fees, we tend to apply for national trade marks rather than for CTMs"* is 10 percent and 9 percent among proprietors from large-scale enterprises; the share of proprietors from SMEs choosing the answer *"Because of the filing fees, we have to limit the number of our CTM applications somewhat"* is 36 percent among proprietors from SMEs and 34 percent among proprietors from large-scale enterprises (values not represented graphically).

Selected comments by users on strategies employed to limit the impact of OHIM filing fees (Q37/39)

"I am trying to start a new business and this is a very big factor for me. I cannot afford the CTM I want and the business needs." (Proprietor/UK)

"Because of the filing fees, a substantial number of clients ask me to apply for CTMs for all their trademarks, rather than to apply for national trade marks." (Agent/Other EU-MS)

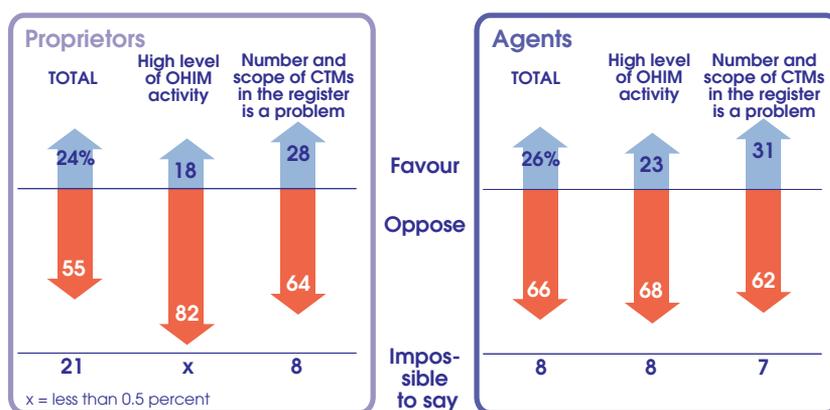
"In the decision of applying for CTM fees are not important. In fact, due to the fees, is frequent to file a CTM instead three or more national applications in countries of the EU. It is cheaper." (Agent/ES)

Proposed change in OHIM filing fees: Paying separate fees for each single class is clearly rejected (Q40)

Users reject the idea of restructuring the OHIM filing fees in a way that depends more heavily on the number of goods and services being applied for, cf. Chart 53 below. Clear majorities in both user groups uniformly oppose paying separate filing fees for each single class of goods or services. 55 percent of proprietors and 66 percent of agents reject such an alternative fee structure.

Chart 53

Q40: Currently, the basic fee for a CTM application covers 3 classes of goods and services, and every additional class of goods and services costs the same additional fee. Suppose that in future, separate fees had to be paid for each single class starting with the very first class. Would you favour or oppose this?



Proprietors with high level of OHIM activity strongly reject the proposed change (82 percent, cf. again Chart 53 above), whereas agents with the highest level of OHIM activity do not oppose the idea much more than the average agent does.

Interestingly, reactions to the proposed change in the basic filing fee structure do not depend very much on whether respondents believe that the number and scope of CTMs currently in the register is a problem (Q16, see section 4.2 above, "Evaluations"): Users who share this view, be they proprietors or agents, do not support the proposed change in the filing fee structure much more than the average user does (cf. Chart 53 above).

In comparison to proprietors from large-scale enterprises, the share of proprietors from SMEs who favour the proposed change in the filing fee is almost twice as high (27 vs. 14 percent, cf. Chart 54 below), although this hardly represents a majority.

Chart 54

PROPOSED CHANGE IN FILING FEE (Q40)

"Favour"

PROPRIETORS

Size of company

Small/medium	27 %	
Large	14	

Level of trade mark activity

Low	25	
Medium	24	
High	16	

AGENTS

Level of trade mark activity

Low	21	
Medium	29	
High	25	

**Selected comments by
respondents on the proposed
change in OHIM filing fees
(Q40)**

"But only if the fees would be reduced accordingly!" (Agent/Other EU-MS)

"As long as this is not used to put through a disguised fee increase." (Proprietor/Other EU-MS)

"It is a great benefit over the UK system to offer 3 classes." (Agent/UK)

"Provided that the fees were reduced, because some clients simply take advantage of filing in three classes because they have paid for it – they do not necessarily have a strong commercial need for all three classes." (Agent/UK)

"This is a key element to minimize the cluttering of the register." (Agent/DE)

"Only one classification of goods or services usually does not cover all economic activities pronounced by an average company." (Proprietor/ES)

"Unless the basic fee was much lower I would favour a certain number of classes being included in the initial registration fee." (Agent/Other EU-MS)

(c) The impact of the OHIM "renewal" fee on CTM renewals

Main insight (Q41/42) ▪ **As with the OHIM filing fee, a majority of users also say that the OHIM "renewal" fee influences their or their clients' decisions to renew CTMs**

Methodological note *Although Q41/42 are parallel to the questions on the impact of the OHIM filing fees, they were not followed by a question on the strategy employed to minimize the fee's impact, as relinquishing a CTM because of the renewal fee would not be a realistic option.*

Majorities of proprietors and agents (63 and 56 percent, respectively) report that the renewal fees have an influence on their or their clients' decisions to renew CTMs (cf. Chart 55 below).

Fewer agents than proprietors report that the renewal fees have a "great" influence (15 compared to 25 percent).

Chart 55

Renewal fees have less severe impact than filing fees do (Q41/42)

Q41/42: How much do the current OHIM renewal fees influence your company's/your clients' decisions to renew CTMs?



On the whole, the current renewal fees obviously have a less severe impact on users' actions than the filing fees do.

As with the impact of the OHIM filing fees (see above, Chart 49), proprietors with low or medium levels of trade mark or OHIM activity tend to report that the OHIM renewal fees have the "greatest influence" on their companies' decisions to renew CTMs more often than those with high activity levels do (cf. Chart 56 below).

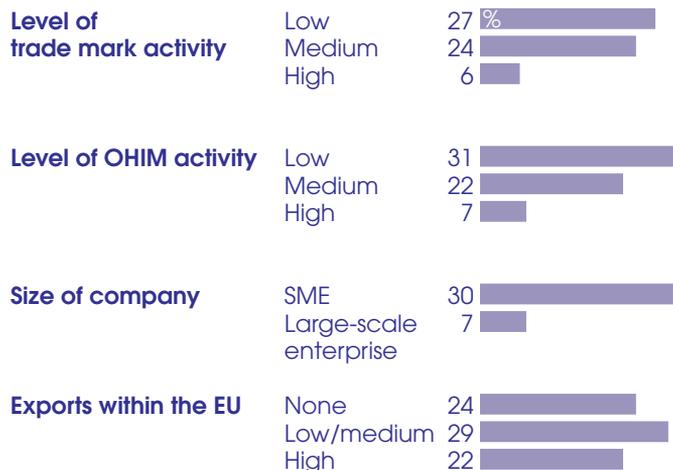
Similarly, the share of proprietors from SMEs who report that the renewal fees have the "greatest influence" is much larger than the share of proprietors from large-scale enterprises who say the same (30 vs. 7 percent).²⁸

Chart 56

THE IMPACT OF OHIM RENEWAL FEES ON CTM RENEWALS (Q41)

"The renewal fees have the greatest influence on our decisions to renew CTMs."

PROPRIETORS*)



*) Since agents' observations of their clients' strategies are relatively independent of their own activity levels, percentages for agents are not presented here.

²⁸ The share of proprietors from SMEs choosing the answer "The renewal fees have practically no influence on our decisions to renew CTMs. Other factors are more decisive" is 18 percent, compared to 45 percent among proprietors from large-scale enterprises; the share of proprietors from SMEs choosing the answer "The renewal fees have some influence on our decisions to renew CTMs, but other factors also play a role" is 37 percent among proprietors from SMEs compared to 39 percent among proprietors from large-scale enterprises (values not represented graphically).

Selected comments by respondents on the OHIM renewal fee's impact on their (clients') renewal decisions (Q41 and Q42)	<p><i>"I was not aware that there was a renewal procedure for a trade mark. Where can I find more details for this?" (Proprietor/Other EU-MS)</i></p> <p><i>"If we do use a trademark why to pay so much for a renewal? I can't imagine there is so much effort on the renewal process and it was done for the registering. It is a captive value as is unavoidable to keep the trademark." (Proprietor/ES)</i></p> <p><i>"It is clear and obvious, that company is forced to renew CTM - no reasons are needed, but the fee is too high." (Proprietor/New EU-MS since 2004)</i></p> <p><i>"We need to renew our TM therefore there is no choice." (Proprietor/F)</i></p> <p><i>"It is difficult to understand why the renewal (a short proceedings, with no need of examination nor documents, nor title of granting and low exigencies on people involved in same) is much more expensive than the application." (Agent/ES)</i></p> <p><i>"Many clients renew with grinding teeth the high fee doesn't stand for the mere admin service and is not at all in line with the good cost-benefit-ratio of other OHIM services." (Agent/DE)</i></p>
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Summary: Main insights

Level and scope of users' trade mark activities

In daily practice, CTM owners/applicants ("proprietors") registered in the OHIM CTM-ONLINE database are primarily involved in the following four proceedings: filing national trade marks, filing CTMs, attending to OHIM administrative procedures, as well as administrative procedures at the EU Member States' national offices. In line with their professional role, professional agents deal with the entire spectrum of trade mark procedures and they are involved in trade mark proceedings far more frequently (see above, section 4.1).

General attitudes towards the CTM system

The broad majority of users of the CTM system recognise that the CTM system offers trade mark owners expanded possibilities (76 percent of proprietors, 84 percent of agents; section 4.2.a)

Users' main impression is that the CTM system is currently developing positively, a view expressed by more agents than proprietors (proprietors: 41 percent, agents: 58 percent). Less than 10 percent of users perceive a negative development; section 4.2.a).

Assessments of OHIM's performance

Users predominantly rate OHIM'S current performance—in terms of quality, consistency and the time it takes to issue decisions—as "average," "fairly consistent" or "fairly satisfactory." No single area of OHIM activity is primarily rated as below average, but at the same time, none achieves a majority top rating. This implies that there are some shortcomings (section 4.2.b).

When it comes to basic proceedings, like examination of formalities and examination for absolute grounds of refusal, users tend to rate OHIM's performance better than with respect to more complex proceedings: here, opposition proceedings are criticised relatively most often (section 4.2.b, on opposition proceedings, and section 4.2.d).

Respondents rate OHIM's decisions as being substantially more consistent than decisions by the national trade mark offices within the EU (section 4.2.c).

The factor that users view most critically is clearly the time it takes OHIM to issue decisions. Reducing the time needed to issue decisions, without neglecting quality and consistency, is thus a priority task, which would have a positive impact on users' overall assessments of OHIM (section 4.2.b).

**Communication
with OHIM**

OHIM's e-business services receive good ratings, even if they have not yet achieved their full potential, since many proprietors are still not aware of them. Traditional forms of communication like mail or fax should be maintained. Users' comments indicate a desire for more direct communication with OHIM officials by email and telephone (section 4.3.b).

**Users' reactions
to proposed changes**

Maintaining the option of filing CTMs via the EU Member States' national offices is important for about one third of the respondents and would especially meet the needs of users with low OHIM activity levels (section 4.3.a).

A majority of proprietors and even more agents favour retaining most of OHIM's current procedures and processes—thus indicating that users are generally satisfied with the existing procedures (section 4.3.b).

The only proposal that would definitely be supported by substantial shares of all users is introducing full examinations of priority claims by OHIM before registration (supported by 46 percent of proprietors and 52 percent of agents, section 4.3.b).

Other proposed changes, such as introducing full verifications of seniority claims by OHIM, an 'ex officio' approach to checking if new CTMs conflict with earlier trade marks, introducing accelerated CTM registrations, shortening the period for proof of genuine use and for filing notice of opposition, could count on limited support from about 25 to 40 percent of CTM users (section 4.3.b).

The finding that 48 percent of the proprietors would favour ex officio checks to determine if new trade marks possibly conflict with earlier trade marks—which would imply a fundamental system change—is an isolated finding that must be interpreted with great caution. Obviously, this is more a reflection of proprietors' desire to reduce complexity on their part, rather than a true wish to change the system. All in all, proprietors think the CTM system is generally working well and their reactions to proposed changes are rather conservative on the whole, with majorities favouring most current approaches. Taken altogether, this is striking evidence that proprietors are satisfied with the current system.

OHIM fees Users express low acceptance of OHIM's current main fees: here, the fee for filing and registration is most accepted, while the renewal fee is least accepted. Fee reductions would be particularly welcomed by proprietors, especially those with a low OHIM activity level and from SMEs (section 4.4.a).

Both proprietors and agents say that the current filing and registration fees, as well as—to a lesser extent—the renewal fee have a definite impact on their or their clients' decisions to file or renew CTMs. To minimize the registration fee's impact, most users react by reducing the number of CTMs they apply for, with one third of all proprietors (mostly small enterprises with low levels of trade mark and export activity) only applying for the absolute minimum number of CTMs (section 4.4.b, c).

Proprietors in particular—and especially those from SMEs—generally regard the current OHIM main fees as being too high (31 percent on average, with 51 percent specifically criticising the renewal fee). 46 percent of proprietors from SMEs say, "*Because of the filing fees, we can only apply for a few absolutely essential CTMs*" and 30 percent say that the OHIM renewal fees have the "*greatest influence*" on their companies' decisions to renew CTMs.

Challenges In summary, from the viewpoint of users of the CTM system, it seems to be more important to improve the current CTM system—which is definitely assessed as useful and which is perceived to be working relatively satisfactorily on the whole—in terms of timeliness, quality and consistency of the procedures, along with improving communication with users, rather than reforming the CTM system itself or changing many existing procedures.

Allensbach on Lake Constance,
October 1, 2010

INSTITUT FÜR DEMOSKOPIE ALLENSBACH

Appendix

(I) Registering licenses with OHIM

- Main insight**
- **Less than half of all proprietors—as compared to more than three quarter of agents—deal with trade marks that are subject to licensing contracts in the context of CTM applications.**
 - **About half of all users register licenses with OHIM at least "now and then." Only 6 percent "always" do so.**
 - **The main reasons for not registering licenses with OHIM are not connected with the registration process. Rather, proprietors are not sufficiently informed about this possibility, while agents doubt that there are any benefits for trade mark owners.**

**Users' current practise
(Q32)**

Although it is currently possible to register licenses with OHIM within the framework of CTM applications, this option is not widely used. To find out why, respondents were first asked if they ever deal with CTM applications or CTMs that are the subject of licensing contracts. Less than half of all proprietors (42 percent) and more than three quarters of the agents interviewed (78 percent) said this was the case at least "rarely", cf. Chart 57 below.

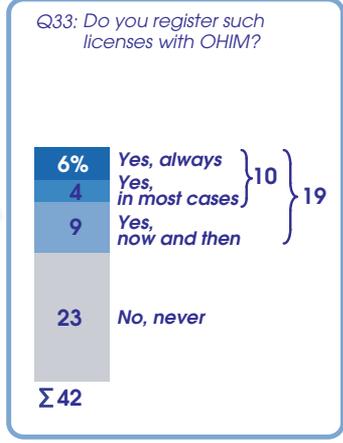
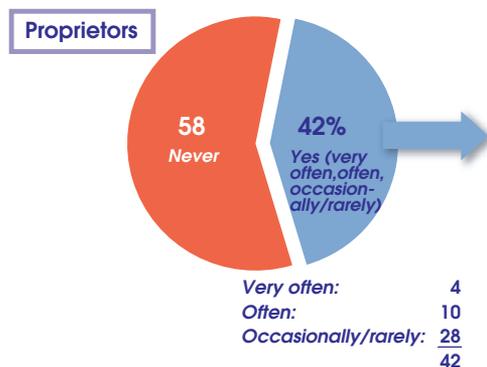
Of those proprietors who deal with trade marks that are the subject of licensing contracts, less than half register them with OHIM (19 percent in total), with the greatest share doing so only "*now and then*." Similarly, only about half of the agents register licenses with OHIM (37 percent)—and here again, the greatest share generally does so only "*now and then*."

The core group of users who say they "*always*" register licenses with OHIM is small, comprising a mere 6 percent. The number of licenses that could potentially be registered with OHIM is far greater than that.

Chart 57

Licenses: Less than half of all proprietors deal with licenses; of these, about half register them with OHIM at least "now and then" (Q32)

Q32: In your work, do you deal with CTM applications or CTMs that are the subject of licensing contracts?



Reasons for not registering licenses with OHIM (Q33)

Subsequently, users who do not always register licenses with OHIM were asked why they do not do so.

For both proprietors and agents, the reasons for not registering licenses with OHIM are not related to the registration process, which users view as neither too time consuming nor too complicated, cf. Chart 58 below.

Proprietors' responses do not focus any particular reason. Since "I did not know of this possibility before" is the response chosen most often (9 percent), it would seem that proprietors have an information deficit in this regard.

The main reason why agents do not register licenses with OHIM is that they doubt that registering has any benefits for the trade mark owner (31 percent). A substantial share of agents also point to the need to maintain confidentiality for strategic reasons (24 percent).

Chart 58

Proprietors' main reason for not registering licenses with OHIM: Did not know of this possibility before (Q32-34)

Q32, 33 and 34

Proprietors

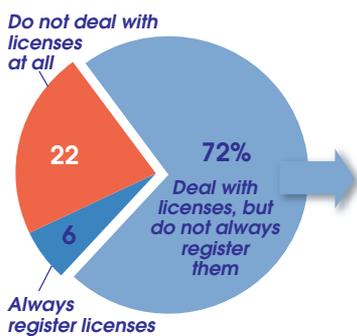


Q34: What are your reasons for not registering licenses of CTMs with OHIM? Please select all applicable items. (Multiple responses possible)

(1) I did not know of this possibility before	9
(2) There are no substantial benefits for the trade mark owner	8
(3) To save fees	8
(4) Registering often conflicts with the trade mark owner's desire to maintain confidentiality for strategic reasons	6
(5) The registration process is too time consuming	5
(6) The registration process is too complicated	3
(7) No opinion, impossible to say	10

Agents' main reasons for not registering licenses with OHIM: No benefit for the trade mark owner and disclosure (Q32-34)

Agents



Q34: What are your reasons for not registering licenses of CTMs with OHIM? Please select all applicable items. (Multiple responses possible)

(1) There are no substantial benefits for the trade mark owner	31
(2) Registering often conflicts with the trade mark owner's desire to maintain confidentiality for strategic reasons	24
(3) To save fees	13
(4) I did not know of this possibility before	5
(5) The registration process is too time consuming	2
(6) The registration process is too complicated	2
(7) No opinion, impossible to say	18

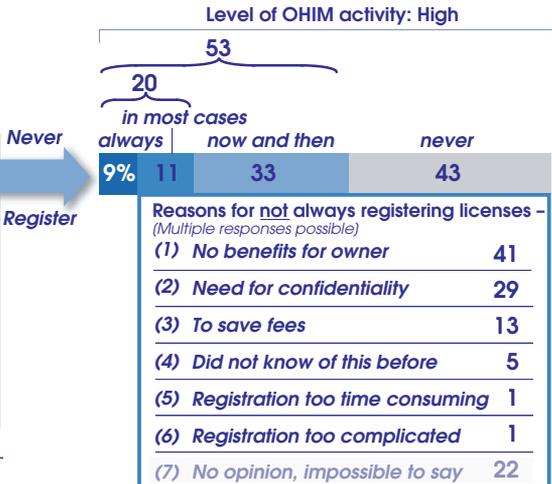
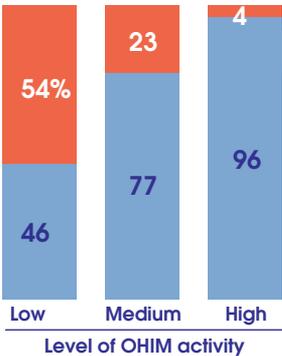
Agents with a high level of OHIM activity are the subgroup that deals most often with CTM applications or CTMs that are subject to licensing contracts (cf. Chart 59 below). As with the total group of agents, when asked why they do not register such licenses, highly active agents also most frequently say that they do not think there are any benefits for the trade mark owner (41 percent), while 29 percent mention the need to maintain confidentiality.

Chart 59

Group that deals with licenses most often: Agents with a high level of OHIM activity (Q32-34)

Q32, 33 and 34

Agents



(II) SURVEY DATA

for the online survey among users of the CTM-ONLINE database

Overall responsibility for methods: Institut für Demoskopie Allensbach

Target group interviewed (universe): Users from the 27 EU Member States registered in the OHIM (CTM-ONLINE) database in the time period from 2007 to 2009 (n=41,392). The survey considered all representatives of companies/trade mark owners with registered activities in the stipulated time period, along with companies/trade mark owners with registered activities that were completed without the aid of a legal representative. The invitation to participate in the survey was addressed to the person/one of the persons at each company/office who is responsible for trade mark applications at a European level.

Appendix A provides more detailed information on the definition and composition of the universe from which the sample was drawn.

Type of interview: Online survey
Each of the users selected for the survey was sent an e-mail inviting him/her to take part in the survey. The e-mail contained a user-specific link leading to the online questionnaire. By employing user-specific links, it was ensured that only the users selected could complete the questionnaire—and that they could do so one time only.

Interview length: The median interview length was 22 1/2 minutes.

Dates of fieldwork: January 25 - April 5, 2010

Sampling method: Stratified random sampling
The sample was drawn using random sampling stratified according to user groups and intensity of use. Only those database entries that included an e-mail address were considered. For entries with identical e-mail addresses, only those with the most registered procedures were considered.

The sample drawn was disproportionate in two respects:

- a) To facilitate a comparably in-depth analysis of both trade mark owners/applicants and their in-house representatives ("proprietors") and external legal representatives ("agents"), the sample included roughly one half of respondents from the first group and one half from the latter.
- b) Use of the CTM database is highly concentrated, with the bulk of all activities being completed by a relatively small number of users. In order to include a sufficient number of these more intensive users in the sample, they were considered to a much greater extent than they would be if selected according to their actual share among all users.

Appendix B provides a detailed overview of which groups were considered to what degree in the sample.

Weighting: In calculating the combined findings, this disproportionality is compensated for via factorial weighting. The weighted sample is representative of the universe described above.

(II) SURVEY DATA

for the online survey among users of the CTM-ONLINE database

Number of respondents /response rate for the net sample:

Of 23,562 addresses employed, a total of 1,599 complete interviews were realised, resulting in a gross response rate of 8.3 percent. Up to three reminders asking respondents to complete the questionnaire were sent to each address. Although this response rate may seem rather low at first glance, it should be remembered that some of the companies contacted via e-mail probably no longer exist, and when it comes to many of the other addresses that were not successful, it is unclear whether the invitations ever actually reached the responsible person at the particular company or office.

		Total	Proprietors	Agents
Gross sample	= Selected users	23,562	14,189	9,373
Dropouts (neutral)	Undeliverable e-mails	4,373	2,753	1,620
	Duplicates (interview already completed via different e-mail address)	37	9	28
Net sample	= Gross sample minus dropouts	19,152	11,427	7,725
Non-responses (non-neutral)	Confirmations (receipt of e-mail confirmed, including out-of-office messages)	480	277	203
	Explicit refusals	73	59	14
	No information available (no feedback at all)	16,048	9,651	6,397
	Break-offs (interview started but not completed)	952	664	288
Interviews	Completed interviews	1,599	776	823
Response rate	as a percentage of the net sample	8.3%	6.8%	10.7%

IfD survey no.: 2784

(III) COMPOSITION AND STRUCTURE OF THE UNIVERSE AND SAMPLE

a) Structure of the CTM-ONLINE Database (universe)

At the time when the sample was drawn, the CTM-ONLINE database included 41,392 users with an EU address and with registered activities in the time from 2007 to 2009. These users accounted for a total of 1,983,220 procedures which were registered in the database over that time period.

Users¹ with registered procedures/activities from 2007 to 2009

User category	Total	with EU address (=universe)	with EU address and e-mail	Total	with EU address (=universe)	with EU address and e-mail
	#	#	#	%	%	%
Owners ²	25,107	22,954	16,847	57.6	55.5	52.8
Employees	4,012	3,998	3,159	9.2	9.7	9.9
Associations	6,782	6,777	5,722	15.6	16.4	17.9
Lawyers	5,232	5,231	4,337	12.0	12.6	13.6
OHIM representatives	2,432	2,432	1,833	5.6	5.9	5.7
Total	43,565	41,392	31,898	100.0	100.0	100.0

Registered procedures/activities from 2007-2009

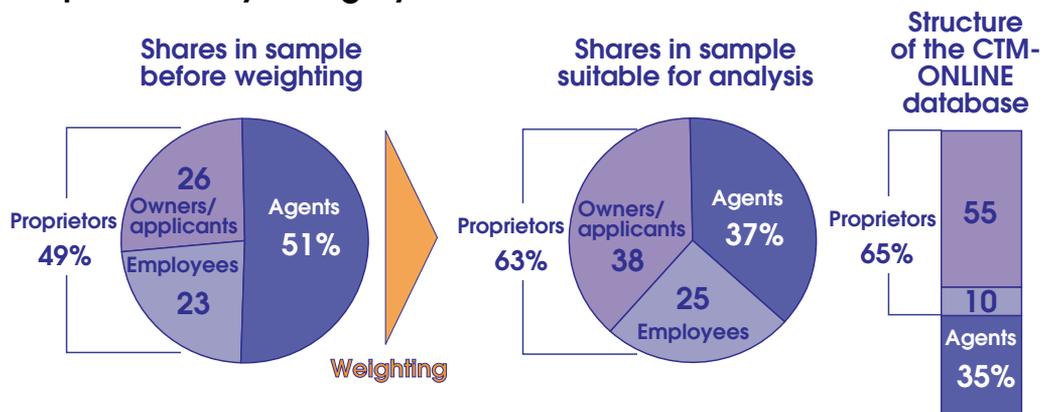
User category	Total	with EU address (=universe)	with EU address and e-mail	Total	with EU address (=universe)	with EU address and e-mail
	#	#	#	%	%	%
Owners ²	118,489	112,759	92,557	6.0	5.7	4.9
Employees	77,289	77,252	63,936	3.9	3.9	3.4
Associations	1,577,576	1,577,536	1,537,204	79.3	79.5	81.5
Lawyers	70,675	70,671	64,515	3.6	3.6	3.4
OHIM representatives	145,002	145,002	127,695	7.3	7.3	6.8
Total	1,989,031	1,983,220	1,885,907	100.0	100.0	100.0

¹ The tables are based on ID numbers by which users are registered in the database, i.e. each ID number stands for one user.

Since many companies/representatives have more than one ID number in the database, the number of users shown may not be equated with the number of companies registered in the database.

² trade mark owners/applicants were only considered if they had registered activities that were completed without the aid of a legal representative.

b) **Sample composition/
Respondents by category**



The overall composition for the sample suitable for analysis corresponds to the structure of the CTM-ONLINE database. Deviations result from some owners delegating the interviews to employees.

c) **Sample: Respondents by country**

	Share in sample before weighting	Share in weighted sample	Structure of the CTM-ONLINE database
Germany	29%	29 %	29%
United Kingdom	11	10	10
France	7	12	13
Italy	8	8	8
Spain	5	8	9
Other EU Member States	39	32	31
Other countries	1	1	-
TOTAL	100	100	100

- = no cases

d) **Sample: Respondents by OHIM activity**

User category	Activities per user from 2007-2009	Universe	Sample:	Universe	Weighted	Unweighted
		(=users of the CTM database from 2007-2009)	unweighted cases	(=users of the CTM database from 2007-2009)	sample (adjusted to universe)	sample
		#	#	%	%	%
Owners	1-4 activities	16,166	318	39.1	39.1	19.9
	5+ activities	6,788	281	16.4	16.4	17.6
	Total	22,954	599	55.5	55.5	37.5
Employees	1-4 activities	2,178	60	5.3	5.3	3.8
	5+ activities	1,820	117	4.4	4.4	7.3
	Total	3,998	177	9.7	9.7	11.1
Proprietors		26,952	776	65.1	65.1	48.5
Associations	1-9 activities	2,927	71	7.1	7.1	4.4
	10-99 activities	2,229	114	5.4	5.4	7.1
	100+ activities	1,621	223	3.9	3.9	14.0
	Total	6,777	408	16.4	16.4	25.5
Lawyers	1-9 activities	3,878	154	9.4	9.4	9.6
	10-99 activities	1,259	69	3.1	3.1	4.3
	100+ activities	94	19	0.2	0.2	1.2
	Total	5,231	242	12.6	12.6	15.1
OHIM representatives	1-9 activities	1,182	69	2.9	2.9	4.3
	10-99 activities	944	56	2.3	2.3	3.5
	100+ activities	306	48	0.7	0.7	3.0
	Total	2,432	173	5.9	5.9	10.8
Agents		14,440	823	34.9	34.9	51.5
Total		41,392	1,599	100.0	100.0	100.0

e) **Sample: Response rates per country and respondent category**

	Response rates/ country %		Response rates/ respondent category %
Germany	7.9	Proprietors	6.8
United Kingdom	11.0		
France	5.0		
Italy	7.2		
Spain	5.4		
Other EU Member States	10.0	Agents	10.7
TOTAL	8.3		
TOTAL	8.3	TOTAL	8.3

INSTITUT FÜR DEMOSKOPIE ALLENSBACH

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European Commission Directorate General Internal Market and Services /
Max Planck Institute for Intellectual Property, Competition and Tax Law

Survey on the Functioning of the Trade Mark System in Europe
Online Survey 2784 / Questionnaire Printout

Thank you for taking part in this survey. To start the survey, please click the button below ("next").

Q1. Where is the company or firm where you work located?
Please select the country from the drop-down menu.
[One response only]

[Drop-down list of European countries, in alphabetical order]

Austria
Belgium
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
The Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom
Other country (please specify):

[All answers --> Go to Q2]

Q2. Which of the following applies to you?
(One response only)

I am a trade mark owner / applicant [= definition 'owner'] *[--> Go to Q4]*

I am employed by a trade mark
owner / applicant [= definition 'owner'] *[--> Go to Q4]*

I am a legal practitioner or trade mark attorney acting
as a professional representative of trade mark
Proprietors / applicants [= definition 'agent'] *[--> Go to Q3]*

[To agents only]

- Q3. Do you work for a ...
 (Please check all applicable responses)
 [Multiple responses possible]

Trade mark/patent firm

Law firm/law office

Other (please specify):

[All answers --> Go to Q4]

- Q4. About how many times per year are you personally involved in the following proceedings?
 Please select the box showing the applicable number of times for each proceeding.
 (Only one check per line)

[Respondents must provide a response for each line]

	1 – 9 times per year	10 – 49 times per year	50 – 99 times per year	100 times per year or more	Never
Filing national trade marks					
Filing Community trade marks (CTMs)					
Filing IR marks (International trade marks)					
Administrative procedures at a national level (e.g. address changes, transfers, renewals, conversions)					
OHIM administrative procedures (e.g. address changes, transfers, renewals)					
National trade mark oppositions					
CTM oppositions					

[All answers --> Go to Q5]

- Q5. Now a question on the national trade mark office in Europe that you personally deal with most often:
In which country or territory is this office located?
Please select the country from the drop-down menu.
[One response only]

[Drop-down list of EU countries/regions with trade mark offices, in alphabetical order]

Austria
Benelux
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Malta
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom
Other country (please specify):

[All answers --> Go to Q6]

- Q6. If you compare the examination practices of the various EU Member States' national trade mark offices: How consistent, i.e. how similar are the results of examinations by the different national trade mark offices in the EU at the moment?

For each of the proceedings listed below, please indicate how consistent you think they are.

[Only one response per line; respondents must provide a response for each line]

Examination of formalities and classifications

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

Examination for absolute grounds of refusal

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

Examination of earlier rights

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

Opposition

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

Cancellation

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

Appeal

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

Additional comments:

.....

[All answers --> Go to Q7]

- Q7. Thinking of all your own trade mark applications, that is, national trade mark applications and CTM applications (including applications based on IR registrations): Which of the following applies best to your office or company?

[One response only]

- (1) Most frequently, trade marks are filed as national trade marks
- (2) Most frequently, trade marks are filed as CTMs
- (3) Most frequently, the same trade mark is filed as both, i.e. as a national trade mark and as a CTM
- (4) All occur about equally often
- (5) Impossible to say

Additional comments (for example, why you prefer this option):

.....
.....
.....

[All answers --> Go to Q8]

- Q8. Thinking about the Community trade mark system in general: Which of the following statements comes closest to your impression of how the CTM system is currently working?

[One response only]

- (1) The system is working better and better
- (2) The system is neither getting better nor getting worse
- (3) More and more problems are arising
- (4) No opinion, impossible to say

[All answers --> Go to Q9]

- Q9. Please indicate how strongly you agree or disagree with the following statement:

The CTM system offers trade mark owners substantial simplifications and strongly expanded possibilities aside from national trade mark registrations.

[One response only]

Strongly agree	Agree	Disagree	Strongly disagree	Impossible to say
----------------	-------	----------	-------------------	-------------------

[All answers --> Go to Q10]

- Q10. Thinking about your dealings with OHIM in trade mark matters over the past 5 years, which of the following activities or proceedings have you been involved in over the past 5 years? Please select all applicable items.

[Multiple responses possible]

Visited OHIM's website
 Searches in OHIM's CTM register
 CTM applications
 IR mark applications
 Opposition procedures
 CTM invalidity requests
 CTM renewals
 Other administrative procedures (e.g. address changes, transfers, registering licenses)
 CTM appeals
 Requested national search reports

None of the above

[All answers --> Go to Q11]

- Q11. Some questions on OHIM's current practice:
 First, please indicate whether you think OHIM's current examination for absolute grounds of refusal is too strict, too liberal or just about right.

[One response only]

Examination for absolute grounds of refusal

Too strict	Too liberal	Just about right	Impossible to say
------------	-------------	------------------	-------------------

Additional comments:

.....

[All answers --> Go to Q12]

- Q12. Next, please indicate whether you think that CTM oppositions are granted too easily by OHIM, or whether they are rejected too often, or whether the current practice is just about right.

[One response only]

CTM oppositions

Granted too easily	Rejected too often	Just about right	Impossible to say
--------------------	--------------------	------------------	-------------------

Additional comments:

.....

[All answers --> Go to Q13]

Q13. Next, please assess the quality of OHIM's decisions for the following proceedings:
[Only one response per line; a response must be entered for each line]

Examination for absolute grounds of refusal

High quality	Average quality	Low quality	Impossible to say
--------------	-----------------	-------------	-------------------

CTM oppositions

High quality	Average quality	Low quality	Impossible to say
--------------	-----------------	-------------	-------------------

CTM cancellations

High quality	Average quality	Low quality	Impossible to say
--------------	-----------------	-------------	-------------------

CTM appeals

High quality	Average quality	Low quality	Impossible to say
--------------	-----------------	-------------	-------------------

Additional comments:

<p>.....</p> <p>.....</p> <p>.....</p>

[All answers --> Go to Q14]

Q14. Now please assess the consistency of OHIM's decision-making for the various proceedings:
[Only one response per line; a response must be entered for each line]

Examination of formalities and classifications

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

Examination for absolute grounds of refusal

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

CTM oppositions

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

CTM cancellations

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

CTM appeals

Very consistent	Fairly consistent	Not very consistent	Not at all consistent	Impossible to say
-----------------	-------------------	---------------------	-----------------------	-------------------

Additional comments:

.....
.....
.....

[All answers --> Go to Q15]

- Q15. And finally, what do you think of the time it takes for OHIM to issue decisions?
[Only one response per line; a response must be entered for each line]

Examination for absolute grounds of refusal

Very satisfactory	Fairly satisfactory	Not very satisfactory	Not at all satisfactory	Impossible to say
----------------------	------------------------	--------------------------	----------------------------	----------------------

CTM oppositions

Very satisfactory	Fairly satisfactory	Not very satisfactory	Not at all satisfactory	Impossible to say
----------------------	------------------------	--------------------------	----------------------------	----------------------

CTM cancellations

Very satisfactory	Fairly satisfactory	Not very satisfactory	Not at all satisfactory	Impossible to say
----------------------	------------------------	--------------------------	----------------------------	----------------------

CTM appeals

Very satisfactory	Fairly satisfactory	Not very satisfactory	Not at all satisfactory	Impossible to say
----------------------	------------------------	--------------------------	----------------------------	----------------------

Additional comments:

.....

[All answers --> Go to Q16]

Q16. Which of the following two opinions do you share?
[One response only]

- (1) In the meantime, there are too many CTMs in the register that are either not used at all or only for some of the goods or services listed, and this is a problem
- (2) The current number of CTMs that are either not used at all or only for some of the goods or services listed is tolerable and is therefore not a problem
- (3) No opinion, impossible to say

[Rotate items 1 and 2]

Additional comments:

.....
.....
.....

[All answers --> Go to Q17]

Q17. Currently, CTMs have to be put to genuine use within a period of 5 years following registration. Suppose this period were reduced to 3 years. What would you prefer?
[One response only]

- (1) I would favour retaining the current period of 5 years
- (2) I would welcome such a change (period of 3 years)
- (3) No opinion, impossible to say

[Rotate items 1 and 2]

Additional comments:

.....
.....
.....

[All answers --> Go to Q18]

Q18. Aside from filing directly with OHIM, it is also possible to file CTMs via the EU Member States' national trade mark offices. Would you yourself want to make use of this possibility in future, or is there essentially no need for that in your view?
[One response only]

- Yes, I would want to make use of this possibility in future
- No, there is no need for that
- No opinion, impossible to say

[All answers --> Go to Q19]

Q19. As part of the registration procedure, OHIM conducts a mandatory, automated search of its database to check whether there are any CTMs that may conflict with the application. Suppose this search were offered as an optional service instead. What would you prefer?
[One response only]

- Mandatory search
- Optional service
- None of the above, such a search is not useful at all

No opinion, impossible to say

[All answers --> Go to Q20]

Q20. In 2008, the search of national registers, which was mandatory up to that time, was replaced with an optional search, which applicants can request when filing a CTM:

This search currently comprises 11 national offices (Austria, Czech Republic, Denmark, Finland, Greece, Hungary, Lithuania, Poland, Romania, Slovakia, Spain). The fee for this optional search is EURO 132.

What do you think of that?
[One response only]

- (1) Even if the search does not include all EU Member States, it is still a useful service
- (2) This service would only be useful if it included a lot more EU Member States
- (3) This service is not at all useful, regardless of how many Member States are included
- (4) No opinion, impossible to say

[Rotate items 1 and 3 only]

[All answers --> Go to Q21]

Q21. Suppose applicants could request an accelerated CTM registration against payment of a higher fee, and third parties would not be able to file an opposition until after registration. What would you think of that?
[One response only]

- (1) No such option should be introduced, the current procedure should not be changed
- (2) Introducing this type of option would be a good idea
- (3) No opinion, impossible to say

[Rotate items 1 and 2]

[All answers --> Go to Q22]

Q22. Now a question on the classification of goods and services for CTM applications:

OHIM allows the use of class headings and rather broad generic terms.

Do you approve or disapprove of that?

[One response only]

- Approve
- Disapprove
- No opinion, impossible to say

Additional comments:

.....
.....
.....

[All answers --> Go to Q23]

Q23. Now a question on claiming priority (Article 29 CTMR), that is, taking advantage of the priority of an earlier national or IR registration by obtaining that earlier date for the CTM. How should OHIM handle priority claims?

[One response only]

- (1) OHIM should simply record priority claims
- (2) OHIM should carry out full examinations of the requirements before registration
- (3) No opinion, impossible to say

[Rotate items 1 and 2]

[All answers --> Go to Q24]

Q24. And now a question on seniority claims (Article 34 and 35 CTMR), that is, the possibility of integrating older national trade marks and their priorities into a new CTM and giving up the older national trade marks. Do you claim seniority whenever possible?

[One response only]

- Yes, always
- Yes, in most cases
- Yes, now and then
- No, never
- Never had an opportunity so far
- Did not know of this possibility before

Additional comments:

.....
.....
.....

[All answers --> Go to Q25]

Q25. How should OHIM handle seniority claims in future?

[One response only]

- (1) In future, OHIM should fully verify all seniority claims
- (2) OHIM should retain the current practice of verification limited to checking if both marks are identical
- (3) No opinion, impossible to say

[Rotate items 1 and 2]

[All answers --> Go to Q26]

Q26. How would you describe the current opposition process at OHIM?

Please choose the applicable button in each line.

[Allow only one check per line; respondents must provide a response for each line]

- | | | | | | | |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-------------------|
| Simple | <input type="radio"/> | Complicated |
| | 1 | 2 | 3 | 4 | 5 | |
| Inexpensive | <input type="radio"/> | Expensive |
| | 1 | 2 | 3 | 4 | 5 | |
| Quick | <input type="radio"/> | Slow |
| | 1 | 2 | 3 | 4 | 5 | |
| Tried and tested | <input type="radio"/> | Needs improvement |
| | 1 | 2 | 3 | 4 | 5 | |

[All answers --> Go to Q27]

Q27. After publication of a CTM application, how much time should be allowed for filing a notice of opposition?

Please note: The question here is only how much time should be allowed for filing the notice of opposition. The substantiation of the opposition (that is, evidence and arguments supporting the opposition) does not have to be submitted at this point in time.

[One response only]

- (1) The current deadline should be retained, i.e. notice of opposition within 3 months of publication
- (2) The deadline for notice of opposition should be shortened to 2 months
- (3) The deadline for notice of opposition should be prolonged, for example, to 4 months
- (4) No opinion, impossible to say

Additional comments:

.....
.....
.....

[All answers --> Go to Q28]

Q28. From the list below, please select the procedural approach that you think is best for checking if new CTM applications possibly conflict with earlier trade marks:
[One response only]

- (1) The current approach is best, i.e. OHIM examines whether new CTM applications conflict with earlier trade marks only upon opposition
- (2) An 'ex officio' approach would be best, i.e. OHIM should always check whether CTM applications conflict with earlier trade marks

[Rotate items 1 and 2]

- (3) It makes no difference which approach is used
- (4) No opinion, impossible to say

Additional comments:

.....
.....
.....

[All answers --> Go to Q29]

Q29. At what point of time in the procedure should it be possible to file an opposition?
[One response only]

- (1) As has been the case so far, it should be possible to file an opposition before a new CTM is registered ("pre-registration opposition system")
- (2) Oppositions should be filed only after a CTM has been registered ("post-registration opposition system")

[Rotate items 1 and 2]

- (3) It makes no difference which approach is used
- (4) No opinion, impossible to say

Additional comments:

.....
.....
.....

[All answers --> Go to Q30]

Q30. One of the "relative grounds of opposition" is when a CTM conflicts with non-registered earlier trade marks or other signs, like company names, that are protected at a national level. Please select the procedural approach that you think is best.
[One response only]

- (1) The current practice is best, that is, such examinations are made within the framework of opposition proceedings
- (2) It would be best if such examinations were made at a different stage, i.e. within the framework of cancellation proceedings
- (3) No opinion, impossible to say

[All answers --> Go to Q31]

Q31. Has an opposition ever been filed against a CTM that you had applied for?
[One response only]

- Yes, several times
- Yes, once
- No, never

[All answers --> Go to Q32]

Q32. In your work, do you deal with CTM applications or CTMs that are the subject of licensing contracts?
[One response only]

- | | |
|------------------------|-----------------------------|
| Very often | <i>[--> Go to Q33]</i> |
| Often | <i>[--> Go to Q33]</i> |
| Occasionally or rarely | <i>[--> Go to Q33]</i> |
| Never | <i>[--> Go to Q35]</i> |
-

Q33. Do you register such licenses with OHIM?
[One response only]

- | | |
|--------------------|-----------------------------|
| Yes, always | <i>[--> Go to Q35]</i> |
| Yes, in most cases | <i>[--> Go to Q34]</i> |
| Yes, now and then | <i>[--> Go to Q34]</i> |
| No, never | <i>[--> Go to Q34]</i> |
-

Q34. What are your reasons for not registering licenses of CTMs with OHIM?
 Please select all applicable items.
[Multiple responses possible]

- (1) The registration process is too complicated
- (2) The registration process is too time consuming
- (3) To save fees
- (4) There are no substantial benefits for the trade mark owner
- (5) Registering often conflicts with the trade mark owner's desire to maintain confidentiality for strategic reasons
- (6) I did not know of this possibility before
- (7) No opinion, impossible to say

[All answers --> Go to Q35]

Q35. What do you think about the fees at OHIM?

For each of the following fees, please indicate whether you think they are too high, too low or just about right.

[Only one check per line; respondents must provide a response for each line]

Basic filing and registration fee for obtaining an individual CTM
(currently EURO 1,050 for filings by mail or fax / EURO 900 when e-filing)

Far too high	A bit too high	Just about right	A bit too low	Far too low	Impossible to say
--------------	----------------	------------------	---------------	-------------	-------------------

Basic fee for renewals of individual marks
(currently EURO 1,500 for renewals by mail or fax / EURO 1,300 for e-renewal)

Far too high	A bit too high	Just about right	A bit too low	Far too low	Impossible to say
--------------	----------------	------------------	---------------	-------------	-------------------

Opposition fee
(currently EURO 350)

Far too high	A bit too high	Just about right	A bit too low	Far too low	Impossible to say
--------------	----------------	------------------	---------------	-------------	-------------------

Fees for cancellations
(currently EURO 700 either for revocation or for declaration of invalidity)

Far too high	A bit too high	Just about right	A bit too low	Far too low	Impossible to say
--------------	----------------	------------------	---------------	-------------	-------------------

Appeal fee
(currently EURO 800)

Far too high	A bit too high	Just about right	A bit too low	Far too low	Impossible to say
--------------	----------------	------------------	---------------	-------------	-------------------

[Proprietors --> Go to Q36; Agents --> Go to Q38]

[Questions Q36 and Q37 to proprietors only; agents proceed to Q38]

Q36. Focusing on the basic OHIM fees for filing and registering an individual CTM (currently EURO 1,050 for filings by mail or fax / EURO 900 when e-filing):
How much do the filing fees influence your company's decisions to apply for CTMs?
[One response only]

- (1) The filing fees have practically no influence on our decisions to apply for CTMs. Other factors, such as business needs, are more decisive [--> Go to Q40]
- (2) For us, the filing fees have some influence, but other factors also play a role [--> Go to Q37]
- (3) The filing fees have the greatest influence on our decisions to apply for CTMs [--> Go to Q37]

[Rotate items 1 and 3]

- (4) None of the above [--> Go to Q37]

Additional comments:

.....
.....
.....

Q37. And what impact do the current filing fees have on the number or type of trade marks you apply for? Please check all applicable responses.
[Multiple responses possible]

- (1) Because of the filing fees, we tend to apply for national trade marks rather than CTMs
- (2) Because of the filing fees, we have to limit the number of our CTM applications somewhat
- (3) Because of the filing fees, we can only apply for a few absolutely essential CTMs and cannot apply for other CTMs that would be useful

[Rotate items 1 and 3]

- (4) None of the above

Additional comments:

.....
.....
.....

[All answers --> Go to Q40]

[Question Q38 and Q39 to agents only; proprietors proceed to Q40]

Q38. Focusing on the basic OHIM fees for filing and registering an individual CTM (currently EURO 1,050 for filings by mail or fax / EURO 900 when e-filing):
In your experience, how much do the filing fees influence your clients' decisions to apply for CTMs?
[One response only]

- (1) The filing fees have practically no influence on our clients' decisions to apply for CTMs. Other factors, such as business needs, are more decisive [--> Go to Q40]
- (2) For our clients, the filing fees have some influence, but other factors also play a role [--> Go to Q39]
- (3) The filing fees have the greatest influence on our clients' decisions to apply for CTMs [--> Go to Q39]
- [Rotate items 1 and 3]
- (4) None of the above [--> Go to Q39]

Additional comments:

.....
.....
.....

Q39. And what impact do the current filing fees have on the number or type of trade marks you apply for? Please check all applicable responses.
[Multiple responses possible]

- (1) Because of the filing fees, a substantial number of clients ask me to apply for national trade marks rather than CTMs
- (2) Because of the filing fees, a substantial number of clients ask me to limit the number of CTM applications somewhat
- (3) Because of the filing fees, a substantial number of clients ask me to apply for only a few absolutely essential CTMs and not to apply for other CTMs that would be useful

[Rotate items 1 and 3]

- (4) None of the above

Additional comments:

.....
.....
.....

[All answers --> Go to Q40]

Q40. Currently, the basic fee for a CTM application covers 3 classes of goods and services, and every additional class of goods and services costs the same additional fee. Suppose that in future, separate fees had to be paid for each single class starting with the very first class. Would you favour or oppose this?
[One response only]

- Favour
- Oppose
- No opinion, impossible to say

Additional comments:

.....

.....

.....

[Proprietors --> Go to Q41; Agents --> Go to Q42]

[Question Q41 to proprietors only; agents proceed to Q42]

Q41. How much do the current OHIM renewal fees influence your company's decisions to renew CTMs (currently EURO 1,500 for renewals by mail or fax / EURO 1,300 for e-renewal)?
(One response only)

- (1) The renewal fees have practically no influence on our decisions to renew CTMs. Other factors, such as business needs, are more decisive
- (2) For us, the renewal fees have some influence, but other factors also play a role
- (3) The renewal fees have the greatest influence on our decisions to renew CTMs

[Rotate items 1 and 3]

- (4) None of the above

Additional comments:

.....

.....

.....

[All answers --> Go to Q43]

[Question Q42 to agents only; proprietors proceed to Q43]

Q42. How much do the current OHIM renewal fees influence your clients' decisions to renew CTMs (currently EURO 1,500 for renewals by mail or fax / EURO 1,300 for e-renewal)?
(One response only)

- (1) The renewal fees have practically no influence on our clients' decisions to renew CTMs. Other factors, such as business needs, are more decisive
- (2) For our clients, the renewal fees have some influence, but other factors also play a role
- (3) The renewal fees have the greatest influence on our clients' decisions to renew CTMs

[Rotate items 1 and 3]

- (4) None of the above

Additional comments:

.....

.....

.....

[All answers --> Go to Q43]

Q43. Please indicate how satisfied you are with each of the following e-business tools provided by OHIM:

[Only one check per line; respondents must provide a response for each line]

	Very satisfied	Fairly satisfied	Not very satisfied	Not at all satisfied	I am not aware of this e-tool
CTM Online (OHIM database of Community trade marks)					
e-filing for CTM (applying for CTMs online)					
OAF (online access to all additional documents contained in a CTM file)					
e-opposition (filing an opposition online)					
e-renewal (renewing a CTM online)					
MYPAGE (personalised area of the OHIM website, accessible via login ID and password)					
CTM Watch (automated monitoring of trade marks, service accessible via MYPAGE)					
EUROACE / EURONICE (database of accepted classification terms and their translations)					

[All answers --> Go to Q44]

STATISTICS: In conclusion, we would like to ask you to provide some information about yourself and your company/firm for statistical purposes.

[To all respondents:]

S1. What is your age? (Please check the applicable category)
[One response only]

- Under 30
- 30 – 39
- 40 – 49
- 50 – 59
- 60 and over

[All answers --> Go to S2]

S2. Gender (Please check the applicable box):
[One response only]

- Male
- Female

[Owners --> Go toS3; Agents --> Go to S4]

[To Proprietors:]

S3. What position do you hold at your company?
(One response only)

- Owner
- Member of the board of directors
- Director
- Executive, managerial position
- Employee in non-managerial position
- OTHER, please specify:.....

[All answers --> Go to S5]

[To agents:]

S4. What position do you hold at your office / firm?
(One response only)

- Owner / director
- Partner
- Employed as lawyer / trade mark attorney
- Other law firm employee

[All answers --> Go to S12]

[To Proprietors only]

- S5. What is the total number of employees at your company/firm? If you work for a company with offices, plants or facilities in more than one location, please indicate the number of all employees taken together.

[One response only]

Less than 5
5 – 9
10 – 49
50 – 249
250 – 499
500 or more

[All answers --> Go to S6]

[To Proprietors only]

- S6. Approximately how high was the total turnover of your company/firm in the year 2009 in euros? Again, if you work for a company with offices, plants or facilities in more than one location, please indicate the total turnover of all locations taken together.

[One response only]

Less than 2 million euros
2 to less than 10 million euros
10 to less than 50 million euros
50 million euros or more

[All answers --> Go to S7]

[To Proprietors only]

- S7. What are your company's sectors of activity?
Please select all applicable sectors.

[Multiple responses possible]

Agriculture, forestry and fishing	[--> Go to S9]
Mining and quarrying	[--> Go to S9]
Manufacturing	[--> Go to S8]
Electricity, gas, steam and air conditioning supply	[--> Go to S9]
Water supply, sewage, waste management and remediation activities	[--> Go to S9]
Construction	[--> Go to S9]
Wholesale trade	[--> Go to S9]
Retail trade	[--> Go to S9]
Repair of motor vehicles and motorcycles	[--> Go to S9]
Transportation and storage services	[--> Go to S9]
Accommodation and food services	[--> Go to S9]
Information and communication services	[--> Go to S9]
Financial and insurance services	[--> Go to S9]
Real estate services	[--> Go to S9]
Professional, scientific and technical services	[--> Go to S9]
Administrative and support services	[--> Go to S9]
Education services	[--> Go to S9]
Human health and social work services	[--> Go to S9]
Arts, entertainment and recreation services	[--> Go to S9]
Other services (please specify):	[--> Go to S9]

[To owner who selected "manufacturing" in response to S7, either as a single response or as one of multiple responses]

- S8. Please select the applicable manufacturing categories:
(Multiple responses possible)

Food, beverages and tobacco
Textiles and textile products
Leather and leather products
Wood and wood products
Pulp, paper and paper products, recorded media
and print services
Coke, refined petroleum products and nuclear fuel
Chemicals, chemical products and man-made fibres
Rubber and plastic products
Other non-metallic mineral products
Basic metals and fabricated metal products
Electrical and optical equipment
Transport equipment
Other machinery and equipment
Other manufactured goods (please specify):

[All answers --> Go to S9]

[S9 only to Proprietors who marked more than one sector of activity in S7 and/or S8; all others proceed to S10]

[Fade in only those sectors which were selected in S7 and/or S8]

- S9. And what is your company's main sector of activity?
Please select the applicable sector.
(One response only)

Agriculture, forestry and fishing
Mining and quarrying
Food, beverages and tobacco
Textiles and textile products
Leather and leather products
Wood and wood products
Pulp, paper and paper products, recorded media
and print services
Coke, refined petroleum products and nuclear fuel
Chemicals, chemical products and man-made fibres
Rubber and plastic products
Other non-metallic mineral products
Basic metals and fabricated metal products
Electrical and optical equipment
Transport equipment
Other machinery and equipment
Other manufactured goods (please specify):
Electricity, gas, steam and air conditioning supply
Water supply, sewage, waste management and
remediation activities
Construction
Wholesale trade
Retail trade
Repair of motor vehicles and motorcycles
Transportation and storage services
Accommodation and food services
Information and communication services
Financial and insurance services
Real estate services
Professional, scientific and technical services/
Administrative and support services
Education services
Human health and social work services
Arts, entertainment and recreation services
Other services (please specify):
Company / firm has no main sector of activity

[All answers --> Go to S10]

[To Proprietors only]

- S10. In which country is your company's head office located?
Please select the country from the drop-down menu:
(One response only)

[Drop-down list of countries, in alphabetical order]

Austria
Australia
Belgium
Bulgaria
Canada
China (The People's Republic of)
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
The Hong Kong Special Administrative Region of the People's Republic of China
Ireland
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Malta
The Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
Switzerland
Taiwan
United Kingdom
United States of America
Other country (please specify):

[All answers --> Go to S11]

[To Proprietors only]

- S11. In how many EU Member States does your company offer its products or services?
[One response only]

In 1 EU Member State
In 2 – 4 EU Member States
In 5 – 9 EU Member States
In 10 – 27 EU Member States

[All answers --> Go to S13]

[To agents only]

- S12. Is your law office or firm part of a larger consortium of law offices, for example, is it part of a large, internationally active law firm, or is that not the case?
[One response only]

Yes, my office / firm is part of a larger consortium
No, office / firm is not part of a larger consortium

[All answers --> Go to S13]

[To all]

- S13. A summary of the main results of the survey will be published by the EU Commission (DG) and MPI and will be accessible online in summer 2010. If you would like to be notified once the results are available, please fill in your e-mail address.
If you do not wish to be notified, please just click the button to proceed to the next page

E-mail address:

[All respondents --> Go to end panel]

[Fade in panel]

<p>You have now reached the end of the survey. Thank you very much for participating. Your opinions are very important to us.</p>

Data Concerning the Accuracy of Representative Surveys (Statistical Tolerance Levels of the Findings)

Percentages of a population ascertained in representative surveys using sampling principles can deviate from the percentage which is actually present in that population. This deviation depends on levels of tolerance.

The size of a particular margin of tolerance depends on the sampling method used, the size of the sample, and the percentage of respondents who display the attribute of interest. Since it can be assumed that the customary selection methods are of equal merit, tolerance levels are commonly ascertained without taking the specific selection method used into consideration and by therefore applying the approximation formula for the simple random selection method instead. Based on this simple random sampling method, corresponding tabular overviews have been devised, which consider the sample size and the percentage of respondents who display the particular attribute.

The following table shows the maximum deviation in a representative sample of n persons between the percentage obtained (p) and the actual value, with a probability level of 95 percent.

Statistical Tolerance Levels (Confidence Probability: 95 percent)

Number of persons in the sample n	p = percentage of respondents who display the attribute									
	50	45	40	35	30	25	20	15	10	5
	50	55	60	65	70	75	80	85	90	95
100	9.80	9.75	9.60	9.35	8.98	8.49	7.84	7.00	5.88	-
150	8.00	7.96	7.84	7.63	7.33	6.93	6.40	5.71	4.80	3.49
200	6.93	6.89	6.79	6.61	6.35	6.00	5.54	4.95	4.16	3.02
300	5.66	5.63	5.54	5.40	5.19	4.90	4.53	4.04	3.39	2.47
400	4.90	4.88	4.80	4.67	4.49	4.24	3.92	3.50	2.94	2.14
500	4.38	4.36	4.29	4.18	4.02	3.80	3.51	3.13	2.63	1.91
1,000	3.10	3.08	3.04	2.96	2.84	2.68	2.48	2.21	1.86	1.35
1,600	2.45	2.44	2.40	2.34	2.25	2.12	1.96	1.75	1.47	1.07
1,800	2.31	2.30	2.26	2.20	2.12	2.00	1.85	1.65	1.39	1.01
2,000	2.19	2.18	2.15	2.09	2.01	1.90	1.75	1.56	1.31	0.96
5,000	1.39	1.38	1.36	1.32	1.27	1.20	1.11	0.99	0.83	0.60

Example of how to read the table: If it is found in a representative survey of the population with n = 1,800 persons that 75 percent of these persons are familiar with a particular product, the tolerance level can be determined by finding the point of intersection between the line n = 1,800 and the column p = 75, showing that this finding has a tolerance margin of +/- 2.00 percent. We can thus say with 95 percent probability that the actual value which would have been ascertained in a survey of the entire population would have been somewhere between 73.00 percent and 77.00 percent.

When using tolerance margin tables, it is important to remember that the values within the margins are not equally probable. Rather, the value actually obtained has the greatest probability, as illustrated by Gauss' bell curve.

Note: The reason for the gap in the upper right-hand corner of the table is that the standard error cannot be expressed by means of one single number in such cases. The table above is derived from an approximation of the binomial distribution, which is in line with the distribution of percentages in the sample, via the normal distribution. When the percentage of persons who display the attribute in question approaches 0 percent or 100 percent, the binomial distribution becomes noticeably unsymmetrical and deviates from the normal distribution, i.e. the margins of error in the + and range taken on different values.