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2009 - 2014

Committee on Legal Affairs

2013/0088(COD)

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AMENDMENTS

71 - 189

Draft report
Cecilia Wikström
(PE516.715v01-00)

on the proposal for a regulation of the European Parliament and of the Council
amending Council Regulation (EC) No 207/2009 on the Community trade
mark

Proposal for a regulation
(COM(2013)0161 – C7-0087/2013 – 2013/0088(COD))

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Amendment 71

Marielle Gallo

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) As a consequence of the entry into force of the Lisbon Treaty, the terminology of Regulation (EC) No 207/2009 should be updated. This implies the replacement of ‘Community trade mark’ by ‘European trade mark’. In line with the Common approach on decentralised Agencies, agreed in July 2012 by the European Parliament, the Council and the Commission, the name ‘Office for Harmonisation in the Internal Market (trade marks and designs)’ should be replaced by ‘European Union **Trade Marks and Designs** Agency’ (hereinafter ‘the Agency’).

Amendment

(2) As a consequence of the entry into force of the Lisbon Treaty, the terminology of Regulation (EC) No 207/2009 should be updated. This implies the replacement of ‘Community trade mark’ by ‘European trade mark’. In line with the Common approach on decentralised Agencies, agreed in July 2012 by the European Parliament, the Council and the Commission, the name ‘Office for Harmonisation in the Internal Market (trade marks and designs)’ should be replaced by ‘European Union **Intellectual Property** Agency’ (hereinafter ‘the Agency’).

Or. en

Amendment 72

Sajjad Karim

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In order to allow for more flexibility while ensuring greater legal certainty with regard to the means of representation of trade marks, the requirement of graphic representability should be deleted from the definition of a European trade mark. A sign should be permitted to be represented in any appropriate form, and thus not necessarily by graphic means, as long as the **representation** enables the competent authorities and the public to determine **with**

Amendment

(9) In order to allow for more flexibility while ensuring greater legal certainty with regard to the means of representation of trade marks, the requirement of graphic representability should be deleted from the definition of a European trade mark. A sign should be permitted to be represented in any appropriate form, and thus not necessarily by graphic means, as long as the **sign is capable of being represented in a manner which is clear, precise, self-**

precision and clarity the precise subject matter of protection.

contained, easily accessible, durable and objective. A sign is therefore permitted in any appropriate form, taking account of generally available technology and enables the competent authorities and the public to determine *the* subject matter of protection.

Or. en

Amendment 73
Marielle Gallo

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) In order to allow for more flexibility while ensuring greater legal certainty with regard to the means of representation of trade marks, the requirement of graphic representability should be deleted from the definition of a **European** trade mark. A sign should be permitted to be represented in any appropriate form, and thus not necessarily by graphic means, as long as the representation enables the competent authorities and the public to determine with precision and clarity the precise subject matter of protection.

Amendment

(9) In order to allow for more flexibility while ensuring greater legal certainty with regard to the means of representation of trade marks, the requirement of graphic representability should be deleted from the definition of a **European Union** trade mark. A sign should be permitted to be represented in any appropriate form, and thus not necessarily by graphic means, as long as the representation *uses freely available technology and* enables the competent authorities and the public to determine with precision and clarity the precise subject matter of protection.

Or. en

Amendment 74
Pier Antonio Panzeri

Proposal for a regulation
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Notice of opposition to registration

of the trade mark may also be given by any natural or legal person and any group or body representing manufacturers, producers, suppliers of services, traders or consumers furnishing proof that a trade mark is of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service.

Or. en

Amendment 75
Marielle Gallo

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) In order to ensure legal certainty and clarity, it is necessary to clarify that not only in the case of similarity but also in case of an identical sign being used for identical goods or services, protection should be granted to a European trade mark only if and to the extent that the main function of the European trade mark, which is to guarantee the commercial origin of the goods or services, is adversely affected.

deleted

Or. en

Amendment 76
Christian Engström
on behalf of the Greens/EFA Group

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) In order to ensure legal certainty and

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clarity, it is necessary to clarify that not only in the case of similarity but also in case of an identical sign being used for identical goods or services, protection should be granted to a European trade mark only if and to the extent that the main function of the European trade mark, which is to guarantee the commercial origin of the goods or services, is adversely affected.

clarity, it is necessary to clarify that not only in the case of similarity but also in case of an identical sign being used for identical goods or services, protection should be granted to a European trade mark only if and to the extent that the main function of the European trade mark, which is to guarantee the commercial origin of the goods or services, is adversely affected.

When determining whether a trade mark is adversely affected, it is necessary to interpret this provision in the light of Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights in order to guarantee the fundamental right of freedom of expression.

Or. en

Amendment 77

Pier Antonio Panzeri, Bernhard Rapkay

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) In order to ensure legal certainty and clarity, it is necessary to clarify that not only in the case of similarity but also in case of an identical sign being used for identical goods or services, protection should be granted to a European trade mark only if and to the extent that the main function of the European trade mark, ***which is to guarantee the commercial origin of the goods or services,*** is adversely affected.

Amendment

(15) In order to ensure legal certainty and clarity, it is necessary to clarify that not only in the case of similarity but also in case of an identical sign being used for identical goods or services, protection should be granted to a European trade mark only if and to the extent that the main function of the European trade mark is adversely affected.

Or. en

Amendment 78

Pier Antonio Panzeri, Bernhard Rapkay

Proposal for a regulation

Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The main function of a trademark is to guarantee the origin of the product to the consumer or final user by enabling him or her to distinguish without any possibility of confusion between that product and products which have another origin;

Or. en

Amendment 79

Pier Antonio Panzeri

Proposal for a regulation

Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) When determining whether the main function of a trade mark is adversely affected, it is necessary to interpret this provision in the light of Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights in order to guarantee the fundamental right of freedom of expression.

Or. en

Amendment 80

Giuseppe Gargani, Raffaele Baldassarre

Proposal for a regulation

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16 bis) E' essenziale che il marchio conferisce al suo titolare un diritto esclusivo che deve essere protetto nella prassi commerciale. A questo scopo, il corso del commercio deve essere inteso come comprensivo di tutte le operazioni relative al commercio, comprese l'importazione, l'esportazione, la produzione, il transito o trasbordo, quando una di queste operazioni avviene all'interno del territorio dell'Unione europea, anche se i prodotti in questione non sono destinati ad essere immessi sul mercato europeo.

Or. it

Amendment 81

Christian Engström

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) With the aim of strengthening trade mark protection and combatting counterfeiting more effectively, the proprietor of a European trade mark ***should*** be entitled to prevent third parties from bringing goods into the customs territory of the Union without being released for free circulation there, where such goods come from third ***countries*** and bear without authorization a trade mark which is essentially identical to the European trade mark registered in respect of such goods.

Amendment

(18) With the aim of strengthening trade mark protection and combatting counterfeiting more effectively, the proprietor of a ***registered*** European trade mark ***shall also*** be entitled to prevent ***all*** third parties from bringing goods, ***in the context of commercial activity***, into the customs territory of the Union without being released for free circulation there, where such goods, ***including packaging***, come from ***a*** third ***country*** and bear without authorization a trade mark which is essentially identical to the European trade mark ***validly*** registered in respect of such goods ***and which cannot be distinguished in its essential aspects from that trade mark.***

In order not to hamper the production, circulation and distribution of legitimate goods, this rule should only apply if the proprietor of the trade mark is able to demonstrate clear and documented evidence of a substantial risk of fraudulent diversion of the allegedly counterfeit goods into a Member State.

The European Commission shall develop and implement guidelines for national customs authorities with clear indicators on how to establish such substantial risk of fraudulent diversion. The list of clear indicators shall reflect the importance of unrestricted trade in, inter alia, generic medicines, and shall be in line with prevailing CJEU case law.

Or. en

Amendment 82
Bernhard Rapkay

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) Um den Markenschutz zu stärken und wirksamer gegen Produktpiraterie vorzugehen, sollte der Inhaber einer europäischen Marke Dritten verbieten können, aus Drittstaaten stammende Waren, auf denen ohne Zustimmung des Markeninhabers eine Marke angebracht ist, die im Wesentlichen mit der für derartige Waren eingetragenen Marke identisch ist, in das Zollgebiet der Union zu verbringen, auch wenn sie dort nicht in den zollrechtlich freien Verkehr übergeführt werden.

Amendment

(18) Um den Markenschutz zu stärken und wirksamer gegen Produktpiraterie vorzugehen, sollte der Inhaber einer europäischen Marke Dritten verbieten können, aus Drittstaaten stammende Waren, auf denen ohne Zustimmung des Markeninhabers eine Marke angebracht ist, die im Wesentlichen mit der für derartige Waren eingetragenen Marke identisch ist, in das Zollgebiet der Union zu verbringen, auch wenn sie dort nicht in den zollrechtlich freien Verkehr übergeführt werden. ***Die Einhaltung der WTO-Regeln durch die Union, insbesondere von Artikel V des GATT zur Freiheit der Durchfuhr, bleiben hiervon unberührt.***

Or. de

Amendment 83
Christian Engström
on behalf of the Greens/EFA Group

Proposal for a regulation
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Recognising that the main public health concern lies with the quality of the medicines and not with trade mark or other intellectual property enforcement and should be addressed by other measures, including regulation aimed at improving quality standards.

Or. en

Amendment 84
Christian Engström
on behalf of the Greens/EFA Group

Proposal for a regulation
Recital 19

Text proposed by the Commission

Amendment

(19) In order to more effectively prevent the entry of infringing goods, particularly in the context of sales over the Internet, the proprietor should be entitled to prohibit the importing of such goods into the Union, where it is only the consignor of the goods who acts for commercial purposes.

deleted

Or. en

Justification

Through clever wording and the doctrine of regional exhaustion, this text, together with its

article, tries to restrict parallel imports. It may make it impossible for private individuals to buy completely legitimate goods, if they do this over the internet and from third countries. This affects not only counterfeits but completely legitimate originals as well: EU citizens would be forbidden to buy certain things over the internet, simply because they do this from, for example, a web shop in the US. Putting up such artificial barriers to trade through trade marks makes no economic sense.

Amendment 85

Evelyn Regner

Proposal for a regulation

Recital 19

Text proposed by the Commission

Amendment

(19) Um der Einfuhr rechtsverletzender Waren, insbesondere bei Internetverkäufen, wirksamer begegnen zu können, sollte der Markeninhaber die Einfuhr solcher Waren in die Union auch dann untersagen können, wenn nur der Versender der Waren aus kommerziellen Beweggründen handelt.

entfällt

Or. de

Amendment 86

Antonio Masip Hidalgo

Proposal for a regulation

Recital 20

Text proposed by the Commission

Amendment

(20) Afin que les titulaires de marques européennes puissent lutter plus efficacement contre la contrefaçon, il convient de leur permettre d'interdire l'apposition sur des produits d'une marque contrefaite et les actes préparatoires préalables à cette apposition.

(20) Afin que les titulaires de marques européennes puissent lutter plus efficacement contre la contrefaçon, il convient de leur permettre d'interdire l'apposition sur des produits d'une marque contrefaite et **tous** les actes préparatoires préalables à cette apposition.

Or. fr

Justification

Il s'agit ici d'une précision afin de donner la possibilité aux titulaires de marque d'interdire l'apposition d'une marque sur les produits mais également sur l'ensemble des actes préparatoires pour une meilleure sécurité juridique. En effet, dans le texte anglais, il existe une différence avec le texte français puisque le considérant parle de « and certain preparatory acts prior to the affixing ».

Amendment 87

Pier Antonio Panzeri, Bernhard Rapkay

Proposal for a regulation

Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The exclusive rights conferred by a trade mark should not entitle the proprietor to prohibit the use of signs or indications which are used for a due cause in order to allow consumers to make comparisons, to express opinions or where there is no commercial use of the mark.

Or. en

Amendment 88

Giuseppe Gargani, Raffaele Baldassarre

Proposal for a regulation

Recital 22

Text proposed by the Commission

Amendment

(22) Al fine di garantire la certezza del diritto e di salvaguardare i diritti conferiti dai marchi legittimamente acquisiti, è opportuno e necessario stabilire, senza violare il principio che il marchio posteriore non può essere fatto valere contro il marchio anteriore, che i titolari di marchio europeo non abbiano il diritto di opporsi all'uso di un marchio posteriore

(22) Al fine di garantire la certezza del diritto e di salvaguardare i diritti conferiti dai marchi legittimamente acquisiti, è opportuno e necessario stabilire, senza violare il principio che il marchio posteriore non può essere fatto valere contro il marchio anteriore, che i titolari di marchio europeo non abbiano il diritto di opporsi all'uso di un marchio posteriore

quando quest'ultimo è stato acquisito in un momento in cui il marchio anteriore non poteva essere fatto valere contro il marchio posteriore.

quando quest'ultimo è stato acquisito in un momento in cui il marchio anteriore non poteva essere fatto valere contro il marchio posteriore. ***Nello svolgimento dei controlli, le autorità doganali usano i poteri e le procedure previste dalla legislazione comunitaria pertinente in materia di applicazione delle normativa doganale dei diritti di proprietà intellettuale.***

Or. it

Justification

E' necessario assicurare la concreta operatività del diritto di intervento riconosciuto al titolare del marchio europeo nei casi di presunte violazioni dello stesso. A tal fin, risulta fondamentale che le autorità competenti in ciascuno Stato membro (quali l'Agenzia delle dogane o la polizia) possano segnalare la necessità di un controllo sulle presunte violazioni del marchio europeo e poter prevenire quindi l'ingresso di merci contraffatte nel territorio doganale dell'Unione europea.

Amendment 89 **Cecilia Wikström**

Proposal for a regulation **Recital 29**

Text proposed by the Commission

(29) In order to provide for an effective and efficient regime for the filing of European trade mark applications including priority and seniority claims, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the means and modalities of filing a European trade mark application, the details regarding the formal conditions of a European trade mark application, the content of that application, ***the type of application fee***, as well as the details on the procedures for ascertaining reciprocity, claiming the priority of a previous application, an exhibition priority and the seniority of a

Amendment

(29) In order to provide for an effective and efficient regime for the filing of European trade mark applications including priority and seniority claims, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the means and modalities of filing a European trade mark application, the details regarding the formal conditions of a European trade mark application, the content of that application, as well as the details on the procedures for ascertaining reciprocity, claiming the priority of a previous application, an exhibition priority and the seniority of a national trade mark.

national trade mark.

Or. en

Justification

See also amendment to Article 35a.

Amendment 90
Cecilia Wikström

Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) In order to allow European trade marks to be renewed in an effective and efficient manner and to safely apply the provisions on the alteration and the division of a European trade mark in practice without compromising legal certainty, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the **modalities** for the renewal of a European trade mark and procedures governing the alteration and division of a European trade mark.

Amendment

(32) In order to allow European trade marks to be renewed in an effective and efficient manner and to safely apply the provisions on the alteration and the division of a European trade mark in practice without compromising legal certainty, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the **procedure** for the renewal of a European trade mark and procedures governing the alteration and division of a European trade mark.

Or. en

Justification

See also amendment to Article 49a.

Amendment 91
Cecilia Wikström

Proposal for a regulation
Recital 36

Text proposed by the Commission

(36) In order to allow for an effective and efficient use of European collective and certification marks, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the ***periods for submitting*** the regulations governing the use of those marks ***and the content thereof***.

Amendment

(36) In order to allow for an effective and efficient use of European collective and certification marks, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the ***formal content of*** the regulations governing the use of those marks.

Or. en

Justification

See also amendment to Articles 74a and 74k.

Amendment 92
Cecilia Wikström

Proposal for a regulation
Recital 38

Text proposed by the Commission

(38) In order to ensure a smooth, effective and efficient operation of the European trade mark system, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the requirements as to the form of decisions, the details on oral proceedings and the modalities of taking of evidence, the modalities of notification, the procedure for the noting of loss of rights, the means of communication and the forms to be used by the parties to proceedings, the rules governing the calculation and duration of time limits, the procedures for the revocation of a decision or for cancellation of an entry in the Register and for the correction of obvious errors in decisions and errors attributable to the

Amendment

(38) In order to ensure a smooth, effective and efficient operation of the European trade mark system, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the requirements as to the form of decisions, the details on oral proceedings and the modalities of taking of evidence, the modalities of notification, the procedure for the noting of loss of rights, the means of communication and the forms to be used by the parties to proceedings, the rules governing the calculation and duration of time limits, the procedures for the revocation of a decision or for cancellation of an entry in the Register and for the correction of obvious errors in decisions and errors attributable to the

Agency, the modalities of the interruption of proceedings and the procedures concerning the apportionment and fixing of costs, the particulars to be entered in the Register, *the details concerning the inspection and keeping of files*, the modalities of publications in the European Trade Marks Bulletin and in the Official Journal of the Agency, the modalities of administrative cooperation between the Agency and the authorities of Member States, and the details on representation before the Agency.

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Or. en

Justification

See also amendment to Article 93a(l).

Amendment 93 **Bernhard Rapkay**

Proposal for a regulation **Recital 40**

Text proposed by the Commission

(40) Zur Förderung besser aufeinander abgestimmter Praktiken und der Entwicklung gemeinsamer Instrumente muss ein angemessener Regelungsrahmen für die Zusammenarbeit zwischen der Agentur und den Markenämtern in den Mitgliedstaaten geschaffen werden, der die Bereiche der Zusammenarbeit klar definiert und der Agentur ermöglicht, relevante gemeinsame Projekte, die im Interesse der Union liegen, zu koordinieren und diese gemeinsamen Projekte durch Finanzhilfen bis zu einer bestimmten Obergrenze zu finanzieren. Derartige Kooperationsmaßnahmen sollten den Unternehmen zugute kommen, die die Markensysteme in Europa benutzen. Durch die gemeinsamen Projekte, insbesondere

Amendment

(40) Zur Förderung besser aufeinander abgestimmter Praktiken und der Entwicklung gemeinsamer Instrumente muss ein angemessener Regelungsrahmen für die Zusammenarbeit zwischen der Agentur und den Markenämtern in den Mitgliedstaaten geschaffen werden, der die Bereiche der Zusammenarbeit klar definiert und der Agentur ermöglicht, relevante gemeinsame Projekte, die im Interesse der Union **oder der Mehrheit der Zentralbehörden für den gewerblichen Rechtsschutz der Mitgliedstaaten sowie des Benelux-Amts für geistiges Eigentum** liegen, zu koordinieren und diese gemeinsamen Projekte durch Finanzhilfen bis zu einer bestimmten Obergrenze zu finanzieren. Derartige

die Datenbanken zu Recherche- und Konsultationszwecken, sollten den Nutzern des in dieser Verordnung geregelten Systems der Union zusätzliche, inklusive, wirksame und kostenfreie Instrumente an die Hand gegeben werden, die den spezifischen Erfordernissen Rechnung tragen, die sich aus der Einheitlichkeit der europäischen Marke ergeben.

Kooperationsmaßnahmen sollten den Unternehmen zugute kommen, die die Markensysteme in Europa benutzen. Durch die gemeinsamen Projekte, insbesondere die Datenbanken zu Recherche- und Konsultationszwecken, sollten den Nutzern des in dieser Verordnung geregelten Systems der Union zusätzliche, inklusive, wirksame und kostenfreie Instrumente an die Hand gegeben werden, die den spezifischen Erfordernissen Rechnung tragen, die sich aus der Einheitlichkeit der europäischen Marke ergeben.

Or. de

Amendment 94 **Marielle Gallo**

Proposal for a regulation **Recital 40**

Text proposed by the Commission

(40) With the aim of promoting convergence of practices and of developing common tools, it is necessary to establish an appropriate framework for cooperation between the Agency and the offices of the Member States, clearly defining **the** areas of cooperation and enabling the Agency to coordinate relevant common projects of Union interest and to finance, up to a maximum amount, those common projects by means of grants. Those cooperation activities should be beneficial for undertakings using trade mark systems in Europe. For users of the Union regime laid down in this Regulation, the common projects, particularly the databases for search and consultation purposes, should provide additional, inclusive, efficient and free of charge tools to comply with the specific requirements flowing from the unitary character of the European trade

Amendment

(40) With the aim of promoting convergence of practices and of developing common tools, it is necessary to establish an appropriate framework for cooperation between the Agency and the offices of the Member States, clearly defining **key** areas of cooperation and enabling the Agency to coordinate relevant common projects of Union interest and to finance, up to a maximum amount, those common projects by means of grants. Those cooperation activities should be beneficial for undertakings using trade mark systems in Europe. For users of the Union regime laid down in this Regulation, the common projects, particularly the databases for search and consultation purposes, should provide additional, inclusive, efficient and free of charge tools to comply with the specific requirements flowing from the unitary character of the European trade **mark. Member States may opt out from**

mark.

*the implementation of common projects
by providing objective reasons justifying
their decision.*

Or. en

Amendment 95

Antonio López-Istúriz White

Proposal for a regulation

Recital 45

Text proposed by the Commission

(45) Con vistas a instaurar un método eficiente y eficaz de resolución de litigios, garantizar la coherencia con el régimen lingüístico establecido en el Reglamento (CE) nº 207/2009, velar por la rápida adopción de decisiones cuando se trate de cuestiones simples, y una organización eficiente y eficaz de las salas de recurso, y asegurar que las tasas percibidas por la Agencia se sitúen en un nivel adecuado y realista, de manera acorde con los principios presupuestarios definidos en el Reglamento (CE) nº 207/2009, procede otorgar a la Comisión poderes para adoptar actos delegados, de conformidad con el artículo 290 del Tratado, que especifiquen ***el régimen lingüístico aplicable en relación con la*** Agencia, los supuestos en los que incumbe a un solo miembro adoptar las decisiones sobre oposición y cancelación, las disposiciones relativas a la organización de las salas de recurso, la cuantía de las tasas que hayan de abonarse a la Agencia y las modalidades de pago.

Amendment

(45) Con vistas a instaurar un método eficiente y eficaz de resolución de litigios, garantizar la coherencia con el régimen lingüístico establecido en el Reglamento (CE) nº 207/2009, velar por la rápida adopción de decisiones cuando se trate de cuestiones simples, y una organización eficiente y eficaz de las salas de recurso, y asegurar que las tasas percibidas por la Agencia se sitúen en un nivel adecuado y realista, de manera acorde con los principios presupuestarios definidos en el Reglamento (CE) nº 207/2009, procede otorgar a la Comisión poderes para adoptar actos delegados, de conformidad con el artículo 290 del Tratado, que especifiquen ***las normas de aplicación del régimen lingüístico previsto para la*** Agencia, los supuestos en los que incumbe a un solo miembro adoptar las decisiones sobre oposición y cancelación, las disposiciones relativas a la organización de las salas de recurso, la cuantía de las tasas que hayan de abonarse a la Agencia y las modalidades de pago.

Or. es

Justification

Los poderes de la Comisión no especifican el régimen lingüístico aplicable, sino sólo los criterios o normas de aplicación de dicho régimen que ya está instaurado por el Reglamento

Base.

Amendment 96
Marielle Gallo

Proposal for a regulation
Article 1 – paragraph 1 – point 8
Regulation (EC) No 207/2009
Article 2 – paragraph 1

Text proposed by the Commission

1. A European Union ***Trade Marks and Designs*** Agency, hereinafter referred to as “the Agency”, is hereby established.

Amendment

1. A European Union ***Intellectual Property*** Agency, hereinafter referred to as “the Agency”, is hereby established.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 97
Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 9
Regulation (EC) No 207/2009
Article 4 – introductory part

Text proposed by the Commission

Europäische Marken können Zeichen aller Art sein, insbesondere Wörter einschließlich Personennamen, Abbildungen, Buchstaben, Zahlen, Farben als solche, die Form oder Aufmachung der Ware oder Klangbilder, soweit solche Zeichen geeignet sind,

Amendment

Europäische Marken können Zeichen aller Art sein, insbesondere Wörter einschließlich Personennamen, Abbildungen, Buchstaben, Zahlen, Farben als solche, die Form oder Aufmachung der Ware oder Klangbilder, soweit solche Zeichen geeignet sind ***und eine allgemein zugängliche Technologie verwendet wird,***

Or. de

Amendment 98
Evelyn Regner

Proposal for a regulation
Article 1 – paragraph 1 – point 9
Regulation (EC) No 207/2009
Article 4 – introductory part

Text proposed by the Commission

Europäische Marken können Zeichen aller Art sein, insbesondere Wörter einschließlich Personennamen, Abbildungen, Buchstaben, Zahlen, Farben als solche, die Form oder Aufmachung der Ware oder Klangbilder, soweit solche Zeichen geeignet sind,

Amendment

Europäische Marken können Zeichen aller Art sein, insbesondere Wörter einschließlich Personennamen, Abbildungen, Buchstaben, **Muster, Firmenemblem**, Zahlen, Farben als solche, die Form oder Aufmachung der Ware oder Klangbilder, soweit solche Zeichen geeignet sind,

Or. de

Amendment 99
Antonio Masip Hidalgo

Proposal for a regulation
Article 1 – paragraph 1 – point 9
Regulation (EC) No 207/2009
Article 4 – introductory part

Text proposed by the Commission

Peuvent constituer des marques européennes tous les signes, notamment les mots, y compris les noms de personnes, les dessins, les lettres, les chiffres, les couleurs en tant que telles, la forme d'un produit ou de son conditionnement, ou les sons, à condition que ces signes soient propres

Amendment

Peuvent constituer des marques européennes tous les signes, notamment les mots, y compris les noms de personnes, les dessins, les **modèles, motifs, dispositifs et logos**, les lettres, les chiffres, les couleurs en tant que telles, la forme d'un produit ou de son conditionnement, ou les sons, à condition que ces signes soient propres

Or. fr

Justification

Les modèles, motifs, dispositifs et logos sont très souvent des caractéristiques qui entrent dans la fabrication d'un signe utilisé comme marque.

Amendment 100

Giuseppe Gargani, Raffaele Baldassarre

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EC) No 207/2009

Article 4 – introductory part

Text proposed by the Commission

Possono costituire marchi europei tutti i segni, in particolare le parole, compresi i nomi di persone, i disegni, le lettere, le cifre, i colori in quanto tali, la forma dei prodotti o del loro imballaggio e i suoni, a condizione che tali segni siano adatti a:

Amendment

Possono costituire marchi europei tutti i segni, in particolare le parole, compresi i nomi di persone, i disegni, ***i modelli, i motivi, i dispositivi, i logo***, le lettere, le cifre, i colori in quanto tali, la forma dei prodotti o del loro imballaggio e i suoni, a condizione che tali segni siano adatti a:

Or. it

Amendment 101

Tadeusz Zwiefka

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point a

Regulation (EC) No 207/2009

Article 7 – paragraph 1 – point k

Text proposed by the Commission

(k) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional terms for wine and traditional specialities guaranteed;

Amendment

(k) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of ***spirit drinks***, traditional terms for wine and traditional specialities guaranteed;

Or. en

Justification

Undoubtedly, the provision is beneficial for the owners of GIs. However, the reason to identify spirit drinks in this provision results from the GIs covered by Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008. It is necessary

to distinguish them from other geographical indications and designations of origin for agricultural products and foodstuffs included in Council Regulation (EC) No 510/2006 or No 509/2006 of 20 March 2006.

Amendment 102

Sajjad Karim

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point b

Regulation (EC) No 207/2009

Article 7 – paragraph 2

Text proposed by the Commission

2. Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain:

(a) in only part of the Union;

(b) only where a trade mark in a foreign language or script is translated or transcribed in any script or official language of a Member State.

Amendment

2. Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Union.

Or. en

Amendment 103

Cecilia Wikström

Proposal for a regulation

Article 1 – point 10 – point b

Regulation (EC) No 207/2009

Article 7 – paragraph 2 – point b

Text proposed by the Commission

(b) only where a trade mark in a foreign language or script is translated or transcribed in any script or official language of a Member State.';

Amendment

(b) only where a trade mark in a foreign language or script is translated or transcribed in any script or official language of a Member State; *the applicant shall provide a translation or transcription in the language of the application upon request by the Agency.*';

Justification

The Commission suggests establishing an obligation to provide a translation or transcription by delegated acts (Article 24a (a) in the Commission's proposal). However, the establishment of such an obligation constitutes an essential element and can therefore not be left to delegated acts, but should rather be set out in the basic act.

Amendment 104

Sajjad Karim

Proposal for a regulation

Article 1 – paragraph 1 – point 11 – point a

Regulation (EC) No 207/2009

Article 8 – paragraph 3 – point b

Text proposed by the Commission

(b) where the trade mark is liable to be confused with an earlier trade mark ***protected outside the Union***, provided that, at the date of the application, the earlier trade mark was still in genuine use and the applicant was acting in bad faith.

Amendment

(b) where the trade mark is liable to be confused with an earlier trade mark, provided that, at the date of the application, the earlier trade mark was still in genuine use and the applicant was acting in bad faith.

Amendment 105

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 1

Text proposed by the Commission

1. The registration of a European trade mark shall confer on the proprietor exclusive rights.

Amendment

1. The registration of a European trade mark shall confer on the proprietor exclusive rights ***in particular, the positive right to use it and to prevent any third party not having his consent from using it.***

Amendment 106
Marielle Gallo

Proposal for a regulation
Article 1 – paragraph 1 – point 12
Regulation (EC) No 207/2009
Article 9 – paragraph 2 – point a

Text proposed by the Commission

(a) the sign is identical with the European trade mark and is used in relation to goods or services which are identical with those for which the European trade mark is registered, ***and where such use affects or is liable to affect the function of the European trade mark to guarantee to consumers the origin of the goods or services;***

Amendment

(a) the sign is identical with the European trade mark and is used in relation to goods or services which are identical with those for which the European trade mark is registered;

Amendment 107
Pier Antonio Panzeri, Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 12
Regulation (EC) No 207/2009
Article 9 – paragraph 2 – point a

Text proposed by the Commission

(a) the sign is identical with the European trade mark and is used in relation to goods or services which are identical with those for which the European trade mark is registered, and where such use affects or is liable to affect the function of the European trade mark to guarantee to consumers the origin of the goods or services;

Amendment

(a) the sign is identical with the European trade mark and is used in relation to goods or services which are identical with those for which the European trade mark is registered, and where such use affects or is liable to affect the function of the European trade mark to guarantee to consumers the origin of the goods or services ***by enabling him or her to distinguish without any possibility of confusion between that***

product and products which have another origin;

Or. en

Amendment 108

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 2 – point b

Text proposed by the Commission

(b) the sign is identical, or similar to, the European trade mark and is used for goods or services which are identical with or similar to the goods or services for which the European trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

Amendment

(b) *without prejudice to point a* the sign is identical, or similar to, the European trade mark and is used for goods or services which are identical with or similar to the goods or services for which the European trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

Or. en

Amendment 109

Antonio Masip Hidalgo

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 2 – point c

Text proposed by the Commission

(c) ce signe est identique ou similaire à la marque européenne, indépendamment du fait que les produits ou services pour lesquels il en est fait usage soient identiques ou similaires, ou ne soient pas similaires, à ceux pour lesquels la marque

Amendment

(c) ce signe est identique ou similaire à la marque européenne, indépendamment du fait que les produits ou services pour lesquels il en est fait usage soient identiques ou similaires, ou ne soient pas similaires, à ceux pour lesquels la marque

européenne est enregistrée, lorsque celle-ci jouit d'une renommée dans l'Union et que l'usage de ce signe sans juste motif tire indûment profit du caractère distinctif ou de la renommée de la marque européenne ou leur porte préjudice.

européenne est enregistrée, lorsque celle-ci jouit d'une renommée dans ***une partie substantielle du territoire de*** l'Union et que l'usage de ce signe sans juste motif tire indûment profit du caractère distinctif ou de la renommée de la marque européenne ou leur porte préjudice.

Or. fr

Justification

L'amendement introduisant la précision que la renommée peut avoir été acquise dans une partie substantielle du territoire de l'Union fait référence à l'arrêt de la CJUE "Pago c/ Tirolmilch" (Affaire C-301/07 du 6 Octobre 2009) qui stipule que "l'article 9(1)c du Règlement (CE) n° 40/94 du 20 décembre 1993 sur la marque communautaire doit être interprété en ce sens que, .., une marque communautaire doit être connue d'une partie significative du public concerné".

Amendment 110

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 3 – point c

Text proposed by the Commission

(c) importing ***or*** exporting the goods under that sign;

Amendment

(c) ***manufacturing or placing under a suspensive procedure***, importing, ***exporting, re*** exporting ***or transshipping*** the goods under that sign;

Or. en

Amendment 111

Giuseppe Gargani, Raffaele Baldassarre

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 3 – point c

Text proposed by the Commission

(c) l'importazione o l'esportazione dei prodotti sotto la copertura del segno;

Amendment

(c) ***la produzione o il vincolo ad un regime sospensivo***, l'importazione o l'esportazione, ***la riesportazione o il trasbordo*** dei prodotti sotto la copertura del segno;

Or. it

Amendment 112
Tadeusz Zwiefka

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 3– point d

Text proposed by the Commission

(d) using the sign as a trade or company name or part of a trade or company name;

Amendment

(d) using the sign as a trade or company name or part of a trade or company name, ***or domain names***;

Or. en

Amendment 113
Christian Engström
on behalf of the Greens/EFA Group

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 4

Text proposed by the Commission

4. The proprietor of a European trade mark shall also be entitled to prevent the importing of goods referred to in paragraph 3(c) where only the consignor of the goods acts for commercial purposes.

Amendment

deleted

Amendment 114
Evelyn Regner

Proposal for a regulation
Article 1 – paragraph 1 – point 12
Regulation (EC) No 207/2009
Article 9 – paragraph 4

Text proposed by the Commission

Amendment

4. Der Inhaber einer europäischen Marke ist auch berechtigt, die Einfuhr von Waren nach Absatz 3 Buchstabe c zu unterbinden, wenn nur der Versender der Waren aus kommerziellen Beweggründen handelt.

entfällt

Amendment 115
Marielle Gallo

Proposal for a regulation
Article 1 – paragraph 1 – point 12
Regulation (EC) No 207/2009
Article 9 – paragraph 4

Text proposed by the Commission

Amendment

4. The proprietor of a **European** trade mark shall also be entitled to prevent the importing of goods **referred to in** paragraph 3(c) where only the consignor of the goods acts **for** commercial **purposes**.

4. The proprietor of a **registered** trade mark shall also be entitled to prevent the importing **into the Union** of goods **that may be prohibited pursuant to** paragraph 3(c) where only the consignor of the goods acts **in the context of** commercial **activity**.

Amendment 116
Giuseppe Gargani, Raffaele Baldassarre

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 4

Text proposed by the Commission

4. Il titolare del marchio europeo ha anche il diritto di impedire l'importazione dei prodotti di cui al paragrafo 3, lettera c), quando lo speditore è il solo ad agire **a fini commerciali**.

Amendment

4. Il titolare del marchio europeo ha anche il diritto di impedire l'importazione **nell'Unione europea** dei prodotti di cui al paragrafo 3, lettera c), quando lo speditore è il solo ad agire **nel contesto dell'attività commerciale**.

Or. it

Justification

L'espressione proposta dalla Commissione "nel contesto di un'attività commerciale" potrebbe essere interpretata come un equivalente di "prassi commerciale" e quindi in modo restrittivo. L'emendamento proposto chiarisce l'obiettivo fissato al considerando 18 e evita ogni ambiguità riguardo il paradosso tra la mancanza di obbligo di immissione in libera pratica e la nozione di "prassi commerciale".

Amendment 117

Christian Engström

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 5

Text proposed by the Commission

5. The proprietor of a European trade mark shall also be entitled to prevent all third parties from bringing goods, in the context of commercial activity, into the customs territory of the Union without being released for free circulation there, where such goods, including packaging, come from third **countries** and bear without authorization a trade mark which is identical to the European trade mark

Amendment

5. The proprietor of a **registered** European trade mark shall also be entitled to prevent all third parties from bringing goods, in the context of commercial activity, into the customs territory of the Union without being released for free circulation there, where such goods, including packaging, come from **a** third **country** and bear without authorization a trade mark which is **essentially** identical to the European trade

registered in respect of such goods, *or* which cannot be distinguished in its essential aspects from that trade mark.

mark *validly* registered in respect of such goods *and* which cannot be distinguished in its essential aspects from that trade mark.

In order not to hamper the production, circulation and distribution of legitimate goods, this rule shall only apply if the proprietor of the trade mark is able to demonstrate clear and documented evidence of a substantial risk of fraudulent diversion of the allegedly counterfeit goods into a Member State.

The European Commission shall develop and implement guidelines for national customs authorities with clear indicators on how to establish such substantial risk of fraudulent diversion. The list of clear indicators shall reflect the importance of unrestricted trade in, inter alia, generic medicines, and shall be in line with prevailing CJEU case law.

Or. en

Amendment 118

Marielle Gallo, Tadeusz Zwiefka

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 5

Text proposed by the Commission

5. The proprietor of a European trade mark shall also be entitled to prevent all third parties from bringing goods, in the context of commercial activity, into the customs territory of the Union without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorization a trade mark which is identical to the European trade mark registered in respect of such goods, or

Amendment

5. The proprietor of a European trade mark shall also be entitled to prevent all third parties from bringing goods, in the context of commercial activity, into the customs territory of the Union without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorization a trade mark which is identical to the European trade mark registered in respect of such goods, or

which cannot be distinguished in its essential aspects from that trade mark.

which cannot be distinguished in its essential aspects from that trade mark.

Customs authorities shall also carry out the relevant controls according to the rules laid down in Regulation (EC) 608/2013 at the request of rightholders and based on risk analysis criteria, on goods, including packaging, suspected of infringing a trade mark that are crossing the territory of the European Union under a suspensive procedure and are destined and released to the market of a third country.

Or. en

Amendment 119
Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 12
Regulation (EC) No 207/2009
Article 9 – paragraph 5

Text proposed by the Commission

5. Der Inhaber der europäischen Marke ist auch berechtigt, Dritten zu untersagen, im Rahmen der kommerziellen Tätigkeit Waren in das Zollgebiet der Union zu verbringen ohne diese in den zollrechtlich freien Verkehr zu überführen, wenn die Waren, einschließlich ihrer Aufmachung, aus Drittstaaten stammen und ohne Zustimmung eine Marke aufweisen, die mit der für derartige Waren eingetragenen europäischen Marke identisch ist oder in ihren wesentlichen Aspekten nicht von einer solchen Marke zu unterscheiden ist.

Amendment

5. Der Inhaber der europäischen Marke ist auch berechtigt, Dritten zu untersagen, im Rahmen der kommerziellen Tätigkeit Waren in das Zollgebiet der Union zu verbringen ohne diese in den zollrechtlich freien Verkehr zu überführen, wenn die Waren, einschließlich ihrer Aufmachung, aus Drittstaaten stammen und ohne Zustimmung eine Marke aufweisen, die mit der für derartige Waren eingetragenen europäischen Marke identisch ist oder in ihren wesentlichen Aspekten nicht von einer solchen Marke zu unterscheiden ist.
Die Einhaltung der WTO-Regeln durch die Union, insbesondere von Artikel V des GATT zur Freiheit der Durchfuhr, bleiben hiervon unberührt.

Or. de

Amendment 120

Giuseppe Gargani, Raffaele Baldassarre

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 207/2009

Article 9 – paragraph 5

Text proposed by the Commission

5. Il titolare del marchio europeo ha inoltre il diritto di impedire a tutti i terzi di introdurre nel territorio doganale dell'Unione, ***nel quadro di un'attività commerciale***, prodotti che ***non siano stati*** immessi in libera pratica, quando detti prodotti, compreso l'imballaggio, provengono da paesi terzi e recano senza autorizzazione un marchio identico al marchio europeo registrato per tali prodotti o che non può essere distinto nei suoi aspetti essenziali da detto marchio.

Amendment

5. Il titolare del marchio europeo ha inoltre il diritto di impedire a tutti i terzi di introdurre nel territorio doganale dell'Unione, prodotti che ***anche se non sono destinati a essere*** immessi in libera pratica, quando detti prodotti, compreso l'imballaggio, provengono da paesi terzi e recano senza autorizzazione un marchio identico ***o simile*** al marchio europeo registrato per tali prodotti ***ai sensi del presente articolo, par. 2, lettere a), b) e c)*** o che non può essere distinto nei suoi aspetti essenziali da detto marchio. ***Le autorità doganali, anche su segnalazione del titolare del diritto, effettuano controlli adeguati, sulla base dei criteri di analisi del rischio, sulle merci sospettate di violare un diritto di proprietà intellettuale di cui è stata richiesta la tutela, che attraversano il territorio dell'Unione con destinazione Paese terzo.***

Or. it

Justification

Vedi motivazione al considerando 22.

Amendment 121

Cecilia Wikström, Rebecca Taylor

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Text proposed by the Commission

Amendment

5a. Member states shall take appropriate measures with regards to ensuring the smooth transit of generic medicines. Therefore a proprietor of a trade mark shall not have the right to prevent any third parties from bringing goods, in the context of commercial activity, into the customs territory of the Member State based upon similarities, perceived or actual, between the international non-proprietary name (INN) for the active ingredient in the medicines and a registered trademark.

Or. en

Justification

There have been cases where International non-proprietary names (INN) printed on the packaging of generic medicines have created a confusion on wheather this could constitute a risk for confusion with trademarks similar to the INN. One such case beeing a generic medicine containing Amoxicillin and the trademark Axmoxil. INNs by law have to be present on the packaging of pharmaceutical products to provide health professionals with a unique and universally available designated name to identify each pharmaceutical substance. It should thus be clarified that these generic names are not grounds for trademark infringements and thus should also not be grounds to intervene against generic medicines in transit.

Amendment 122

Christian Engström

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 1 – paragraph 1 – point 14

Regulation (EC) No 207/2009

Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12 a

Limitation of the rights conferred by a

trade mark

Nothing in this regulation shall limit the right of all persons, including legal persons, to publicly express themselves, through any means or media they choose, provided that they do not violate the rights afforded by Article 9.

This includes, but is not limited to, expressions for the purposes of political or social commentary, teaching, scientific research, journalism, artistic expression, personal communication, criticism or review, comparisons of products or services, caricature, parody or pastiche.

Or. en

Amendment 123

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 14

Regulation (EC) No 207/2009

Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The first subparagraph shall only apply where the use made by the third party is in accordance with honest practices in industrial or commercial matters.

Amendment

This paragraph shall only apply where the use made by the third party is in accordance with honest practices in industrial or commercial matters.

Or. en

Amendment 124

Pier Antonio Panzeri, Bernhard Rapkay

Proposal for a regulation

Article 1 – paragraph 1 – point 14

Regulation (EC) No 207/2009

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The trade mark shall not entitle the proprietor to prohibit a third party from using the trade mark for a due cause in connection with:

(a) advertising or promotion that permits consumers to compare goods or services; or

(b) identifying and parodying, criticizing, or commenting upon the trade mark proprietor or the goods or services of the trade mark owner proprietor; or

(c) any non-commercial use of a mark

Or. en

Amendment 125
Cecilia Wikström

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EC) No 207/2009

Article 13 – paragraph 1

Text proposed by the Commission

Amendment

(15) ***In Article 13(1), the words ‘in the Community’ are replaced by ‘in the European Economic Area’.***;

(15) Article 13(1) ***is replaced by the following:***

‘1. A European trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area under that trade mark by the proprietor or with his consent, or that have been sold to individual consumers in accordance with Article 9(4) ’.

Or. en

Justification

This amendment partly re-tables the technical changes made already in the draft report by the rapporteur but also adds a more substantive change by introducing a link to article 9(4)

Amendment 126

Christian Engström

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 1 – paragraph 1 – point 23 a (new)

Regulation (EC) No 207/2009

Article 23 a (new)

Text proposed by the Commission

Amendment

(23 a) The following Article 23a is inserted:

'Article 23a

Indemnification of the Importer and the Owner of the Goods

Appropriate agencies shall have the authority to order a proprietor of a trade mark to pay the importer, the consignee and owner of the goods appropriate compensation for any injury caused to them through a wrongful detention of goods due to import restriction rights granted in Article 9.'

Or. en

Justification

In accordance with TRIPS Article 56, the relevant agency shall have the authority to order an applicant, in this case a trade mark proprietor, to appropriately compensate importers or owners for wrongful detentions. Wrongful detentions are a major and escalating problem. According to the Commission annual report "EU Customs Enforcement of Intellectual Property Rights: Results at the Border", in 2011, goods were detained by mistake in more than 2 700 cases, an increase of 46 % over two years before.

Amendment 127

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 27

Regulation (EC) No 207/2009

Article 27

Text proposed by the Commission

The date of filing of a European trade mark application shall be the date on which documents containing the information specified in Article 26(1) are filed with the Agency by the applicant, subject to payment of the application fee ***for which the order for payment shall have been given at the latest on that date.***

Amendment

The date of filing of a European ***Union*** trade mark application shall be the date on which documents containing the information specified in Article 26(1) are filed with the Agency by the applicant subject to payment of the application fee ***within a period of one month of filing the abovementioned documents.***

Or. en

Amendment 128

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 28

Regulation (EC) No 207/2009

Article 28 – paragraph 8 – subparagraph 1

Text proposed by the Commission

Proprietors of European trade marks applied for before 22 June 2012 which are registered ***solely*** in respect of the entire heading of a Nice class, may declare that their intention on the date of filing had been to seek protection in respect of goods or services beyond those covered by the literal meaning of the heading of that class, provided that the goods or services so designated are included in the alphabetical list for that class of the edition of the Nice classification in force at the date of filing.

Amendment

Proprietors of European trade marks applied for before 22 June 2012 which are registered in respect of the entire heading of a Nice class, may declare that their intention on the date of filing had been to seek protection in respect of goods or services beyond those covered by the literal meaning of the heading of that class, provided that the goods or services so designated are included in the alphabetical list for that class of the edition of the Nice classification in force at the date of filing.

Or. en

Amendment 129
Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 28

Regulation (EC) No 207/2009

Article 28 – paragraph 8 – subparagraph 2

Text proposed by the Commission

The declaration shall be filed at the Agency within **4** months from the entry into force of this Regulation, and shall indicate, in a clear, precise and specific manner, the goods and services, other than those clearly covered by the literal meaning of the indications of the class heading, originally covered by the proprietor's intention. The Agency shall take appropriate measures to amend the Register accordingly. This possibility is without prejudice to the application of Articles 15, 42(2), 51(1)(a) and 57(2).

Amendment

The declaration shall be filed at the Agency within **9** months from the entry into force of this Regulation, and shall indicate, in a clear, precise and specific manner, the goods and services, other than those clearly covered by the literal meaning of the indications of the class heading, originally covered by the proprietor's intention. The Agency shall take appropriate measures to amend the Register accordingly. This possibility is without prejudice to the application of Articles 15, 42(2), 51(1)(a) and 57(2).

Or. en

Amendment 130
Sajjad Karim

Proposal for a regulation

Article 1 – paragraph 1 – point 28

Regulation (EC) No 207/2009

Article 28 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. Where the register is amended, the exclusive rights conferred on the European Union trade mark under Article 9 shall not prevent any third party from continuing to use a trade mark in relation to goods or services where and to the extent that:

(a) the use of the trade mark for those goods or services commenced before the

register was amended, and

(b) the use of the trade mark in relation to those goods or services did not infringe the proprietor's rights based on the literal meaning of the goods and services recorded in the register at that time.

In addition, the amendment of the list of goods or services recorded in the register shall not give the proprietor of the European Union trade mark the right to oppose or to apply to invalidate a later filed trade mark where and to the extent that:

(a) the later trade mark was either in use, or an application had been made to register the trade mark, for goods or services before the register was amended, and

(b) the use of the trade mark in relation to those goods or services did not infringe, or would not have infringed, the proprietor's rights based on the literal meaning of the goods and services recorded in the register at that time.

Or. en

Amendment 131
Antonio Masip Hidalgo

Proposal for a regulation
Article 1 – paragraph 1 – point 28
Regulation (EC) No 207/2009
Article 28 a (new)

Text proposed by the Commission

Amendment

Article 28 bis

Frais

L'enregistrement et le renouvellement d'une marque européenne doivent être sujets à des frais additionnels pour chaque classe de produits et services

inférieurs à la première classe.

Or. fr

Justification

Dans un souci d'harmonisation, la même disposition concernant les frais contenue dans la Directive devrait se retrouver ici dans le Règlement, et dans la mesure où elle facilite l'accès financier à la protection, ce qui ne peut qu'être bénéfique qu'aux petites et moyennes entreprises.

Amendment 132
Cecilia Wikström

Proposal for a regulation

Article 1 – point 30

Regulation (EC) No 207/2009

Article 30 – paragraph 1

Text proposed by the Commission

1. Priority claims shall be filed together with the European trade mark application and shall include the date, number and country of the previous application.

Amendment

1. Priority claims shall be filed together with the European trade mark application and shall include the date, number and country of the previous application. ***The applicant shall file a copy of the previous application within three months from the filing date. If the previous application is an application for a European Union trade mark, the Agency shall ex officio include a copy of the previous application in the file.***

Or. en

Justification

The formal conditions of the application should not be entirely left to delegated acts. Some basic rules should be directly established in the basic act. It is suggested to take over some of the content of Rule 6(1) of Regulation (EC) No 2868/95.

Amendment 133
Cecilia Wikström

Proposal for a regulation

Article 1 – point 33

Regulation (EC) No 207/2009

Article 35a – point b

Text proposed by the Commission

(b) the details regarding the content of the application for a European trade mark referred to in Article 26(1), ***the type of fees payable for the application referred to in Article 26(2), including the number of classes of goods and services covered by those fees,*** and the formal conditions of the application referred to in Article 26(3);

Amendment

(b) the details regarding the ***formal*** content of the application for a European trade mark referred to in Article 26(1) and the formal conditions of the application referred to in Article 26(3);

Or. en

Justification

It needs to be clarified that only the formal content can be specified by delegated acts, not the content in terms of substance. The fees structure is an important element of the EU trade mark system and should therefore be directly regulated in the Regulation, as suggested in the amendments on Article 26(2), Article 47(1a) and Annex -I in the draft report.

Amendment 134

Sajjad Karim

Proposal for a regulation

Article 1 – paragraph 1 – point 36

Regulation (EC) No 207/2009

Article 38 – paragraph 1a

Text proposed by the Commission

(36) In ***Title IV, Section 2*** is deleted;

Amendment

(36) In ***Article 38, the following paragraph 1a*** is inserted:

1a. Upon notification to the Agency at the time of registration, applicants may choose to not receive the Union search report referred to in paragraph 1.

Or. en

Amendment 135
Pier Antonio Panzeri

Proposal for a regulation
Article 1 – paragraph 1 – point 38
Regulation (EC) No 207/2009
Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

***They shall not be parties to the
proceedings before the Agency.***

deleted

Or. en

Amendment 136
Pier Antonio Panzeri

Proposal for a regulation
Article 1 – paragraph 1 – point 39 a (new)
Regulation (EC) No 207/2009
Article 41 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

***4a. Notice of opposition to registration of
the trade mark may also be given by any
natural or legal person and any group or
body representing manufacturers,
producers, suppliers of services, traders or
consumers furnishing proof that a trade
mark is of such a nature as to deceive the
public, for instance as to the nature,
quality or geographical origin of the
goods or service;***

Or. en

Amendment 137
Cecilia Wikström

Proposal for a regulation
Article 1 – point 45

Text proposed by the Commission

(a) the ***procedural modalities*** for the renewal of the European trade mark pursuant to Article 47, including the type of fees to be paid;

Amendment

(a) the ***procedure*** for the renewal of the European trade mark pursuant to Article 47, including the type of fees to be paid;

Or. en

Amendment 138
Cecilia Wikström

Proposal for a regulation

Article 1 – point 46

Regulation (EC) No 207/2009

Article 50 – paragraph 3

Text proposed by the Commission

3. Surrender shall be entered only with the agreement of the proprietor of a right entered in the Register. If a licence has been registered, surrender shall be entered in the Register only if the proprietor of the trade mark proves that he has informed the licensee of his intention to surrender; this entry shall be made on expiry of a period ***established in accordance with Article 57a(a)***.

Amendment

3. Surrender shall be entered only with the agreement of the proprietor of a right entered in the Register. If a licence has been registered, surrender shall be entered in the Register only if the proprietor of the trade mark proves that he has informed the licensee of his intention to surrender; this entry shall be made on expiry of a period ***of three months after the date on which the proprietor of the trade mark satisfies the Agency that he has informed the licensee of his intention to surrender it.***

Or. en

Justification

The provision as proposed by the Commission would not be operational and no surrender could be entered in the Register before the adoption of a delegated act in accordance with Article 57a(a). The period should therefore be directly established in the basic act. It is suggested to maintain the same length of period as in Rule 36(2) of Regulation (EC) No 2868/95. See also amendment to Article 57a(a).

Amendment 139
Antonio Masip Hidalgo

Proposal for a regulation
Article 1 – paragraph 1 – point 46
Regulation (EC) No 207/2009
Article 52 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Le paragraphe 2 s'applique également lorsque le caractère distinctif a été acquis après la date de la demande d'enregistrement et avant la date d'enregistrement.

Or. fr

Justification

La proposition de Règlement devrait être en accord avec la refonte de la Directive et contenir des dispositions qui permettent au titulaire d'une marque européenne de prouver l'acquisition du caractère distinctif (i) avant la date de demande d'enregistrement et (ii) entre les dates d'application et d'enregistrement.

Amendment 140
Cecilia Wikström

Proposal for a regulation
Article 1 – point 51
Regulation (EC) No 207/2009
Article 57 a – point a

Text proposed by the Commission

Amendment

(a) the procedure governing the surrender of a European trade mark set out in Article 50, *including the period referred to in paragraph 3 of that Article*;

(a) the procedure governing the surrender of a European trade mark set out in Article 50;

Or. en

Justification

The period should be directly established in the basic act. See also amendment to Article 50(3).

Amendment 141
Cecilia Wikström

Proposal for a regulation

Article 1 – point 56

Regulation (EC) No 207/2009

Article 65 a – point a

Text proposed by the Commission

(a) the content of the notice of appeal referred to in Article 60 and the procedure for the filing and the examination of an appeal;

Amendment

(a) the **formal** content of the notice of appeal referred to in Article 60 and the procedure for the filing and the examination of an appeal;

Or. en

Justification

It needs to be clarified that only the formal content can be specified by delegated acts, not the content in terms of substance.

Amendment 142
Cecilia Wikström

Proposal for a regulation

Article 1 – point 56

Regulation (EC) No 207/2009

Article 65 a – point b

Text proposed by the Commission

(b) the content and form of the Board of Appeal's decisions referred to in Article 64;

Amendment

(b) the **formal** content and form of the Board of Appeal's decisions referred to in Article 64;

Or. en

Justification

It needs to be clarified that only the formal content can be specified by delegated acts, not the content in terms of substance.

Amendment 143
Cecilia Wikström

Proposal for a regulation

Article 1 – point 60

Regulation (EC) No 207/2009

Article 67 – paragraph 1

Text proposed by the Commission

(60) *In* Article 67(1), *the words 'within the period prescribed' are replaced by 'within the period prescribed in accordance with Article 74a';*

Amendment

(60) Article 67(1) *is replaced by the following:*

'1. An applicant for a *European Union* collective mark *shall* submit regulations governing its use within a period of two months after the date of filing.'

Or. en

Justification

The provision as proposed by the Commission would not be operational and the period would not be defined before the adoption of a delegated act in accordance with Article 74a. The period should therefore be directly established in the basic act. It is suggested to maintain the same length of period as in Rule 43(1) of Regulation (EC) No 2868/95.

Amendment 144
Cecilia Wikström

Proposal for a regulation

Article 1 – point 62

Regulation (EC) No 207/2009

Article 74 a

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying *the period referred to in Article 67(1) for submitting the regulations governing use of the European collective mark to the Agency and the content of those* regulations as set

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying the *formal* content of *the* regulations *governing use of the European collective mark* as set out in Article 67(2).

out in Article 67(2).

Or. en

Justification

The period should be directly established in the basic act. See also amendment to Article 67(1).

Amendment 145
Cecilia Wikström

Proposal for a regulation
Article 1 – point 63
Regulation (EC) No 207/2009
Article 74 c – paragraph 1

Text proposed by the Commission

1. An applicant for a European certification mark shall submit regulations governing the use of the certification mark within *the* period *prescribed in accordance with Article 74k*.

Amendment

1. An applicant for a European certification mark shall submit regulations governing the use of the certification mark within *a period of two months after the date of filing*.

Or. en

Justification

The provision as proposed by the Commission would not be operational and the period would not be defined before the adoption of a delegated act in accordance with Article 74a. The period should therefore be directly established in the basic act. It is suggested to establish the same length of period as foreseen for the regulations governing the use of collective marks. See also amendment to Article 74k.

Amendment 146
Cecilia Wikström

Proposal for a regulation
Article 1 – point 63
Regulation (EC) No 207/2009
Article 74 k

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying ***the period referred to in Article 74c(1) for submitting the regulations governing use of the European certification mark to the Agency and the content of those*** regulations as set out in Article 74c(2).';

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying the ***formal*** content of ***the*** regulations governing use of the European certification mark as set out in Article 74c(2).';

Or. en

Justification

The period should be directly established in the basic act. It needs to be clarified that only the formal content of the regulations can be further specified by delegated acts, not the content in terms of substance. See also amendment to Article 74c(1).

Amendment 147
Cecilia Wikström

Proposal for a regulation
Article 1 – point 68
Regulation (EC) No 207/2009
Article 79 c – paragraph 1

Text proposed by the Commission

1. ***The calculation and duration of time limits shall be subject to the rules adopted in accordance with Article 93a(f).***

Amendment

1. Time limits ***shall be laid down in periods of full years, months, weeks or days. Calculation shall start on the day following the day on which the relevant event occurred.***

Or. en

Justification

The basic rules for the calculation of time limits should be established directly in the basic act. This amendment furthermore corrects the problem of circular cross-references in the Commission's proposal.

Amendment 148
Cecilia Wikström

Proposal for a regulation

Article 1 – point 71

Regulation (EC) No 207/2009

Article 82 a

Text proposed by the Commission

When interrupting or resuming proceedings, the Agency shall comply with the modalities set out in accordance with Article 93a(i).';

Amendment

1. Proceedings before the Agency shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for or proprietor of a European Union trade mark or of the person authorized by national law to act on his behalf. To the extent that the above events do not affect the authorization of a representative appointed under Article 89 of the Regulation, proceedings shall be interrupted only on application by such representative;

(b) in the event of the applicant for or proprietor of a European Union trade mark, as a result of some action taken against his property, being prevented for legal reasons from continuing the proceedings before the Agency;

(c) in the event of the death or legal incapacity of the representative of an applicant for or proprietor of a European Union trade mark or of his being prevented for legal reasons resulting from action taken against his property from continuing the proceedings before the Agency.

(2) When, in the cases referred to in paragraph 1 (a) and (b), the Agency has been informed of the identity of the person authorized to continue the proceedings before the Agency, the Agency shall communicate to such person and to any interested third parties that the

proceedings shall be resumed as from a date to be fixed by the Agency.

(3) In the case referred to in paragraph 1 (c), the proceedings shall be resumed when the Agency has been informed of the appointment of a new representative of the applicant or when the Agency has notified to the other parties the communication of the appointment of a new representative of the proprietor of the European Union trade mark. If, three months after the beginning of the interruption of the proceedings, the Agency has not been informed of the appointment of a new representative, it shall inform the applicant for or proprietor of the European Union trade mark:

(a) where Article 92(2) of the Regulation is applicable, that the European Union trade mark application will be deemed to be withdrawn if the information is not submitted within two months after this communication is notified; or

(b) where Article 92(2) of the Regulation is not applicable, that the proceedings will be resumed with the applicant for or proprietor of the European Union trade mark as from the date on which this communication is notified.

(4) The time limits, other than the time limit for paying the renewal fees, in force as regards the applicant for or proprietor of the European Union trade mark at the date of interruption of the proceedings, shall begin again as from the day on which the proceedings are resumed.

Or. en

Justification

The rules for the interruption of proceedings should be established directly in the basic act. It is suggested to take over the rules established in Rule 73 of Regulation (EC) No 2868/95. This amendment furthermore corrects the problem of circular cross-references in the Commission's proposal.

Amendment 149
Cecilia Wikström

Proposal for a regulation

Article 1 – point 73

Regulation (EC) No 207/2009

Article 85 – paragraph 1

Text proposed by the Commission

(73) *In* Article 85(1), *the words 'under the conditions laid down in the Implementing Regulation' are replaced by 'under the conditions laid down in accordance with Article 93a(j).';*

Amendment

(73) Article 85(1) *is* replaced by *the following:*

'1. The losing party in opposition proceedings, proceedings for revocation, proceedings for a declaration of invalidity or appeal proceedings shall bear the fees incurred by the other party as well as all costs, without prejudice to Article 119(6), incurred by him essential to the proceedings, including travel and subsistence and the remuneration of an agent, adviser or advocate, within the limits of the scales set for each category of costs [...].';

Or. en

Justification

The deletion of the words "under the conditions laid down in accordance with Article 93a(j)" corrects the problem of circular cross-references in the Commission's proposal.

Amendment 150
Cecilia Wikström

Proposal for a regulation

Article 1 – point 75

Regulation (EC) No 207/2009

Article 87 – paragraph 1

Text proposed by the Commission

Amendment

1. The Agency shall keep a Register, **which shall contain those particulars the registration or inclusion of which is provided for by this Regulation or by a delegated act adopted pursuant to this Regulation. The Agency shall** keep the Register up to date.

1. The Agency shall keep a Register **of European trade marks and** keep **this** Register up to date.

Or. en

Justification

It is obvious that the Register contains the particulars which are provided for by the Regulation. This amendment also corrects the problem of circular cross-references in the Commission's proposal. See also amendment to Article 93a(k).

Amendment 151
Cecilia Wikström

Proposal for a regulation

Article 1 – point 77

Regulation (EC) No 207/2009

Article 89 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) a European Trade Marks Bulletin containing entries made in the Register as well as other particulars **the publication of which is prescribed by this Regulation or by delegated acts adopted in accordance with this Regulation;**

(a) a European Trade Marks Bulletin containing entries made in the Register as well as other particulars;

Or. en

Justification

It is obvious that the European Trade Marks Bulletin contains the particulars which are provided for by the Regulation and does hence not to be explicitly mentioned. This amendment also corrects the problem of circular cross-references in the Commission's proposal.

Amendment 152
Cecilia Wikström

Proposal for a regulation

Article 1 – point 78

Regulation (EC) No 207/2009

Article 92 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

By way of derogation from the first subparagraph, the natural or legal persons referred to in that subparagraph need not be represented before the Agency in the cases provided for in accordance with Article 93a(p).'; ***deleted***

Or. en

Justification

This subparagraph has no added legal value because it simply refers to the content of delegated acts to be adopted in the future. This amendment corrects the problem of circular cross-references in the Commission's proposal.

Amendment 153
Cecilia Wikström

Proposal for a regulation

Article 1 – point 78

Regulation (EC) No 207/2009

Article 92 – paragraph 4

Text proposed by the Commission

Amendment

'4. Where the conditions established in accordance with Article 93a(p) are fulfilled, a common representative shall be appointed.'; ***deleted***

Or. en

Justification

This subparagraph has no added legal value because it just refers to the content of delegated acts to be adopted in the future. This amendment corrects the problem of circular cross-

references in the Commission's proposal. See also amendment to Article 93a(p).

Amendment 154
Cecilia Wikström

Proposal for a regulation
Article 1 – point 78
Regulation (EC) No 207/2009
Article 92 – paragraph 5

Text proposed by the Commission

Amendment

'5. A person may be removed from the list of professional representatives under the conditions established in accordance with Article 93a(p).'; **deleted**

Or. en

Justification

This subparagraph has no added legal value because it just refers to the content of delegated acts to be adopted in the future. This amendment corrects the problem of circular cross-references in the Commission's proposal. See also amendment to Article 93a(p).

Amendment 155
Cecilia Wikström

Proposal for a regulation
Article 1 – point 80
Regulation (EC) No 207/2009
Article 93 a – point j

Text proposed by the Commission

Amendment

(j) the procedures concerning the apportionment and fixing of costs, as referred to in Article 85(I);

(j) the procedures concerning the apportionment and fixing of costs as referred to in Article 85;

Or. en

Justification

Correction of the reference. The apportionment and fixing of costs is further regulated in other paragraphs of Article 85.

Amendment 156
Cecilia Wikström

Proposal for a regulation

Article 1 – point 80

Regulation (EC) No 207/2009

Article 93a – point k

Text proposed by the Commission

Amendment

(k) the particulars referred to in Article 87(1);

(k) the particulars ***to be entered in the Register*** referred to in Article 87;

Or. en

Justification

This amendment corrects the problem of circular cross-references in the Commission's proposal. See also amendment to Article 87(1).

Amendment 157
Cecilia Wikström

Proposal for a regulation

Article 1 – point 80

Regulation (EC) No 207/2009

Article 93 a – point l

Text proposed by the Commission

Amendment

(l) the procedure for the inspection of files provided for in Article 88, including the parts of the file excluded from inspection, and the modalities of the keeping of files of the Agency provided for in Article 88(5);

deleted

Or. en

Amendment 158
Cecilia Wikström

Proposal for a regulation

Article 1 – point 80

Regulation (EC) No 207/2009

Article 93 a – point p

Text proposed by the Commission

(p) derogations from the obligation to be represented before the Agency pursuant to Article 92(2), the conditions under which a common representative shall be appointed **pursuant to Article 92(4)**, the conditions under which employees referred to in Article 92(3) and professional representatives referred to in Article 93(1) must file with the Agency a signed authorisation in order to be able to undertake representation, the content of that authorisation, and the conditions under which a person may be removed from the list of professional representatives **referred to in Article 93(5).**';

Amendment

(p) derogations from the obligation to be represented before the Agency pursuant to Article 92(2), the conditions under which a common representative shall be appointed, the conditions under which employees referred to in Article 92(3) and professional representatives referred to in Article 93(1) must file with the Agency a signed authorisation in order to be able to undertake representation, the content of that authorisation, and the conditions under which a person may be removed from the list of professional representatives.';

Or. en

Justification

This amendment corrects the problem of circular cross-references in the Commission's proposal. See also amendments on Article 92(4) and (5).

Amendment 159

Tadeusz Zwiefka

Proposal for a regulation

Article 1 – paragraph 1 – point 98

Regulation (EC) No 207/2009

Article 123 b – paragraph 1 – introductory part

Text proposed by the Commission

The Agency shall have the following tasks:

Amendment

The Agency shall have the following **primary** tasks:

Or. en

Amendment 160
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123 b – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

The Agency shall have the following other tasks:

Or. en

Amendment 161
Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123b – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) Aufgaben, die ihr durch die Richtlinie des Europäischen Parlaments und des Rates über bestimmte zulässige Formen der Nutzung verwaister Werke 2012/28/EU übertragen wurden.

Or. de

Amendment 162
Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123b – paragraph 3

Text proposed by the Commission

Amendment

3. Die Agentur kann den Parteien

3. Die Agentur kann den Parteien

freiwillige **Mediationsdienste** zur Herbeiführung einer gütlichen Einigung anbieten.

freiwillige **Mediations- und Schiedsdienste** zur Herbeiführung einer gütlichen Einigung anbieten.

Or. de

Amendment 163
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123c – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

This cooperation shall cover the following areas of activity:

Amendment

This cooperation shall ***in particular*** cover the following areas of activity:

Or. en

Amendment 164
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123 c – paragraph 2

Text proposed by the Commission

2. The Agency shall define, elaborate and coordinate ***common*** projects of Union ***interest*** with regard to the areas referred to in paragraph 1. The project definition shall contain the specific obligations and responsibilities of each participating industrial property office of the Member States and the Benelux Office for Intellectual Property.

Amendment

2. The Agency shall define, elaborate and coordinate ***the*** projects of ***interest to the*** Union ***and Member States*** with regard to the areas referred to in paragraph 1. The project definition shall contain the specific obligations and responsibilities of each participating industrial property office of the Member States and the Benelux Office for Intellectual Property.

Or. en

Amendment 165
Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123 c – paragraph 2

Text proposed by the Commission

2. Die Agentur definiert, beschreibt und koordiniert bezüglich der in Absatz 1 genannten Tätigkeitsbereiche gemeinsame Projekte, die im Interesse der Union liegen. In der Projektbeschreibung sind die besonderen Pflichten und Aufgaben jeder teilnehmenden Zentralbehörde für den gewerblichen Rechtsschutz der Mitgliedstaaten sowie des Benelux-Amtes für geistiges Eigentum darzulegen.

Amendment

2. Die Agentur definiert, beschreibt und koordiniert bezüglich der in Absatz 1 genannten Tätigkeitsbereiche gemeinsame Projekte, die im Interesse der Union ***oder im Interesse der Mehrheit der Zentralbehörden für den gewerblichen Rechtsschutz der Mitgliedstaaten sowie des Benelux-Amtes für geistiges Eigentum*** liegen. In der Projektbeschreibung sind die besonderen Pflichten und Aufgaben jeder teilnehmenden Zentralbehörde für den gewerblichen Rechtsschutz der Mitgliedstaaten sowie des Benelux-Amtes für geistiges Eigentum darzulegen.

Or. de

Amendment 166
Sajjad Karim

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123 c – paragraph 2

Text proposed by the Commission

2. The ***Agency*** shall define, ***elaborate and coordinate*** common projects of Union interest with regard to the areas referred to in paragraph 1. The project definition shall ***contain*** the specific obligations and responsibilities of each participating industrial property office of the Member States and the Benelux Office for Intellectual Property.

Amendment

2. The ***Management Board*** shall define ***and elaborate*** common projects of Union interest with regard to the areas referred to in paragraph 1. The project definition shall ***set out*** the specific obligations and responsibilities of each participating industrial property office of the Member States and the Benelux Office for Intellectual Property. ***Throughout all***

phases of the common projects, the Agency shall coordinate the common projects and consult with representatives from users.

Or. en

Amendment 167
Marielle Gallo

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123c – paragraph 3

Text proposed by the Commission

The Agency and the industrial property offices of the Member States and the Benelux Office for Intellectual Property shall cooperate with each other to promote convergence of practices and tools in the field of trade marks and designs.

Amendment

The Agency and the industrial property offices of the Member States and the Benelux Office for Intellectual Property shall cooperate with each other to promote convergence of practices and tools in the field of trade marks and designs. ***Member States may opt out from the implementation of the common projects by a substantiated decision.***

Or. en

Amendment 168
Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123 c – paragraph 3

Text proposed by the Commission

3. Die Zentralbehörden für den gewerblichen Rechtsschutz der Mitgliedstaaten sowie das Benelux-Amt für geistiges Eigentum beteiligen sich aktiv an den in Absatz 2 genannten

Amendment

3. Die Zentralbehörden für den gewerblichen Rechtsschutz der Mitgliedstaaten sowie das Benelux-Amt für geistiges Eigentum beteiligen sich aktiv an den in Absatz 2 genannten

gemeinsamen Projekten mit dem Ziel, sie weiterzuentwickeln, funktionsfähig zu machen sowie ihre Interoperabilität und Aktualität zu gewährleisten.

gemeinsamen Projekten mit dem Ziel, sie weiterzuentwickeln, funktionsfähig zu machen sowie ihre Interoperabilität und Aktualität zu gewährleisten. ***Die Teilnahme an diesen Projekten ist verpflichtend. Wenn allerdings das Ergebnis dieser Projekte in der Entwicklung von Instrumenten resultiert, die gleichwertig zu Instrumenten sind, die in den Mitgliedstaaten bereits existieren, erwächst aus der Teilnahme keine Verpflichtung, das Ergebnis in den jeweiligen Mitgliedstaaten umzusetzen.***

Or. de

Amendment 169
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 98
Regulation (EC) No 207/2009
Article 123 c – paragraph 4

Text proposed by the Commission

4. The Agency shall provide financial support to the common projects of Union ***interest*** referred to in paragraph 2 to the extent this is necessary to ensure the effective participation of the industrial property offices of the Member States and the Benelux Office for Intellectual Property in the projects within the meaning of paragraph 3. That financial support may take the form of grants. The total amount of funding shall ***not exceed 10%*** of the yearly income of the Agency. The beneficiaries of grants shall be the industrial property offices of the Member States and the Benelux Office for Intellectual Property. Grants may be awarded without calls for proposals in accordance with the financial rules applicable to the Agency and with the principles of grant procedures contained in

Amendment

4. The Agency shall provide financial support to the common projects of ***interest to the Union and Member States*** referred to in paragraph 2 to the extent this is necessary to ensure the effective participation of the industrial property offices of the Member States and the Benelux Office for Intellectual Property in the projects within the meaning of paragraph 3. That financial support may take the form of grants. The total amount of funding shall ***be at least 5%*** of the yearly income of the Agency ***and cover the minimal amount for every Member State for purposes closely related to the protection, promotion or enforcement.*** The beneficiaries of grants shall be the industrial property offices of the Member States and the Benelux Office for Intellectual Property. Grants may be

the Financial Regulation (EU) No 966/2012 of the European Parliament and of the Council (***) and in the Commission delegated Regulation (EU) No 1268/2012 (****).

awarded without calls for proposals in accordance with the financial rules applicable to the Agency and with the principles of grant procedures contained in the Financial Regulation (EU) No 966/2012 of the European Parliament and of the Council (***) and in the Commission delegated Regulation (EU) No 1268/2012 (****).

Or. en

Justification

This provision is in accordance with the Max Planck Institute's Study on the Overall Functioning of the European Trade Mark System from 2011.

Amendment 170

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 99

Regulation (EC) No 207/2009

Article 124 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) in accordance with paragraph 2, it shall exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude Contract of Employment (“the appointing authority powers”);

deleted

Or. en

Amendment 171

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 99

Text proposed by the Commission

Amendment

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations and 142 of the Conditions of Employment of Other Servants, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended.

deleted

The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Or. en

Amendment 172
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 99
Regulation (EC) No 207/2009
Article 125 – paragraph 1

Text proposed by the Commission

Amendment

1. The Management Board shall be composed of one representative of each Member State and **two representatives** of the Commission and their alternates.

1. The Management Board shall be composed of one representative of each Member State and **one representative** of the Commission and their alternates.

Amendment 173
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 99
Regulation (EC) No 207/2009
Section 2 a

Text proposed by the Commission

Amendment

SECTION 2a

deleted

Executive Board

Article 127a

Establishment

***The Management Board may establish an
Executive Board.***

Article 127b

Functions and organisation

***1. The Executive Board shall assist the
Management Board.***

***2. The Executive Board shall have the
following functions:***

***(a) preparing decisions to be adopted by
the Management Board;***

***(b) ensuring, together with the
Management Board, adequate follow-up
to the findings and recommendations
stemming from the internal or external
audit reports and evaluations, as well as
from investigations of the European Anti-
fraud Office (OLAF);***

***(c) without prejudice to the functions of
the Executive Director, as set out in
Article 128, assisting and advising the
Executive Director in the implementation
of the decisions of the Management
Board, with a view to reinforcing
supervision of administrative
management.***

3. When necessary, because of urgency, the Executive Board may take certain provisional decisions on behalf of the Management Board, in particular on administrative management matters, including the suspension of the delegation of the appointing authority powers.

4. The Executive Board shall be composed of the Chairperson of the Management Board, one representative of the Commission to the Management Board and three other members appointed by the Management Board from among its members. The Chairperson of the Management Board shall also be the Chairperson of the Executive Board. The Executive Director shall take part in the meetings of the Executive Board, but shall not have the right to vote.

5. The term of office of members of the Executive Board shall be four years. The term of office of members of the Executive Board shall end when their membership of the Management Board ends.

6. The Executive Board shall hold at least one ordinary meeting every three months. In addition, it shall meet on the initiative of its Chairperson or at the request of its members.

7. The Executive Board shall comply with the rules of procedure laid down by the Management Board.

Or. en

Amendment 174
Marielle Gallo

Proposal for a regulation
Article 1 – paragraph 1 – point 99
Regulation (EC) No 207/2009
Article 128 – paragraph 4 – point 1 a (new)

Text proposed by the Commission

Amendment

(la) without prejudice to Articles 125 and 136, he shall exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude Contract of Employment ("the appointing authority powers");

Or. en

Amendment 175

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 99

Regulation (EC) No 207/2009

Article 128 – paragraph 4 – point m

Text proposed by the Commission

Amendment

(m) he shall exercise the powers entrusted to him in respect of the staff by the Management Board under Article 124(1)(f);

deleted

Or. en

Amendment 176

Cecilia Wikström

Proposal for a regulation

Article 1 – paragraph 1 – point 99

Regulation (EC) No 207/2009

Article 128 – paragraph 4 – point m a (new)

Text proposed by the Commission

Amendment

(ma) he may submit to the Commission any proposal to amend this Regulation,

the delegated acts adopted pursuant to this Regulation and any other rules applying to European trade marks after consulting the Management Board and, in the case of fees and budgetary provisions of this regulation, the Budget Committee;

Or. en

Justification

The addition corresponds largely to current Article 124 (2) (b) of the CTMR. The provision would naturally be without prejudice to the right of initiative of the European Commission and would only be a suggestion that the commission can choose whether to act or not to act on. Nevertheless it would be reasonable to give this formal way for the office to express an opinion on how to improve the functioning of the European Trademark ecosystem.

Amendment 177
Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 106
Regulation (EC) No 207/2009
Artikel 136a (neu)

Text proposed by the Commission

Amendment

Artikel 136 a

Mediations- und Schiedszentrum

- 1. Die Agentur kann ein Mediations- und Schiedszentrum einrichten, das unabhängig von den Entscheidungsinstanzen ist, die in Artikel 130 aufgeführt werden. Das Zentrum soll in den Räumlichkeiten der Agentur verortet sein.**
- 2. Jede natürliche oder rechtliche Person kann die Dienste des Zentrums auf freiwilliger Basis nutzen, mit dem Ziel, Streitigkeiten, die unter diese Verordnung sowie Richtlinie fallen, einvernehmlich beizulegen.**
- 3. Die Agentur kann ein**

Schlichtungsverfahren auch aus eigener Initiative starten, um Parteien die Möglichkeit zu geben, zu einer einvernehmlichen Einigung zu gelangen.

4. Das Zentrum wird durch einen Direktor geleitet, der für die Tätigkeit des Zentrums verantwortlich ist.

5. Der Direktor wird durch den Verwaltungsrat ernannt.

6. Das Zentrum legt eine Mediations- und Schiedsordnung fest und stellt Regeln für die Arbeit des Zentrums auf. Die Mediations- und Schiedsordnung sowie die Regeln müssen durch den Verwaltungsrat bestätigt werden.

7. Das Zentrum stellt ein Verzeichnis der Mediatoren und Schiedsrichter auf, die die Parteien bei der Streitbeilegung unterstützen. Diese haben unabhängig zu sein und über relevante Kompetenzen und Erfahrungen verfügen. Das Verzeichnis bedarf der Zustimmung des Verwaltungsrates.

8. Jede Vereinbarung, die als Ergebnis von Mediation oder Schiedsverfahren getroffen wurde, ist für die Entscheidungsinstanzen der Agentur bindend.

Or. de

Amendment 178

Christian Engström

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 1 – paragraph 1 – point 108 a (new)

Regulation (EC) No 207/2009

Article 139 – paragraph 2

Text proposed by the Commission

Amendment

(108 a) In Article 139, paragraph 2 is

replaced by the following:

'The revenue and expenditure shown in the budget shall not show a deficit. Any surplus shall be integrated into the general budget of the European Union.'

Or. en

Amendment 179

Marielle Gallo

Proposal for a regulation

Article 1 – paragraph 1 – point 110

Regulation (EC) No 207/2009

Article 144 – paragraph 2

Text proposed by the Commission

2. The amounts of the fees referred to in paragraph 1 shall be fixed at such level as to ensure that the revenue in respect thereof is in principle sufficient for the budget of the Agency to be balanced while avoiding the accumulation of significant surpluses.

Without prejudice to Article 139(4), the Commission shall review the level of fees should a significant surplus become recurrent. If this review does not lead to a reduction or modification in the level of fees which has the effect of preventing the further accumulation of a significant surplus, the surplus accumulated after the review shall be transferred to the budget of the Union.

Amendment

2. The amounts of the fees referred to in paragraph 1 shall be fixed at such level as to ensure that the revenue in respect thereof is in principle sufficient for the budget of the Agency to be balanced while avoiding the accumulation of significant surpluses.

Or. en

Amendment 180

Tadeusz Zwiefka

Proposal for a regulation

Article 1 – paragraph 1 – point 111

Text proposed by the Commission

Amendment

(c) the details on the organisation of the Boards of Appeal, including the setting up and the role of the authority of the Boards of Appeal referred to in Article 135(3)(a), the composition of the enlarged Board and the rules on referrals to it as referred to in Article 135(4), and the conditions under which decisions shall be taken by a single member in accordance with Article 135(2) and (5);

deleted

Or. en

Amendment 181
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 111
Regulation (EC) No 207/2009
Article 144a – point d

Text proposed by the Commission

Amendment

(d) the system of fees and charges payable to the Agency in accordance with Article 144, including the amount of fees, the methods of payment, the currencies, the due date for fees and charges, the deemed date of payment and the consequences of lack of or late payment, and under- and overpayment, the services which may be free of charge, and the criteria under which the Executive Director may exercise the powers set out in Article 144(3) and (4).

deleted

Or. en

Amendment 182
Cecilia Wikström

Proposal for a regulation

Article 1 – point 113

Regulation (EC) No 207/2009

Article 147 – paragraph 5

Text proposed by the Commission

Amendment

***5. The international application shall
fulfil the formal conditions established in
accordance with Article 161a(a).*** ***deleted***

Or. en

Justification

This paragraph has no added legal value because it just refers to the content of delegated acts to be adopted in the future. This amendment corrects the problem of circular cross-references in the Commission's proposal. See also amendment to Article 161a(a).

Amendment 183
Cecilia Wikström

Proposal for a regulation

Article 1 – point 115

Regulation (EC) No 207/2009

Article 149 – second sentence

Text proposed by the Commission

Amendment

***'The request shall fulfil the formal
conditions established in accordance with
Article 161a(c).';*** ***deleted***

Or. en

Justification

This paragraph has no added legal value because it just refers to the content of delegated acts to be adopted in the future. This amendment corrects the problem of circular cross-references in the Commission's proposal. See also amendment to Article 161a(c).

Amendment 184
Cecilia Wikström

Proposal for a regulation

Article 1 – point 117

Regulation (EC) No 207/2009

Article 154 a

Text proposed by the Commission

Where an international registration is based on a basic application or basic registration relating to a collective mark, certification mark or guarantee mark, ***the Agency shall comply with the procedures provided for in accordance with Article 161a(f).'***

Amendment

Where an international registration is based on a basic application or basic registration relating to a collective mark, certification mark or guarantee mark, ***the international registration designating the European Union shall be dealt with as a European Union collective mark. The holder of the international registration shall submit the regulations governing use of the mark as provided for in Article 67 directly to the Agency within a period of two months from the date on which the International Bureau notifies the international registration to the Agency.***

Or. en

Justification

The procedures with regard to such international registrations should not entirely be left to delegated acts, but some basic rules should be established directly in the basic act. It is suggested to take over some of the rules established in Rule 121 of Regulation (EC) No 2868/95. This amendment furthermore corrects the problem of circular cross-references in the Commission's proposal.

Amendment 185
Cecilia Wikström

Proposal for a regulation

Article 1 – point 120

Regulation (EC) No 207/2009

Article 158 c

Text proposed by the Commission

The Agency shall transmit requests to

Amendment

The Agency shall transmit requests to

register a change in ownership, a license or a restriction of the holder's right of disposal, the amendment or cancellation of a license or the removal of a restriction of the holder's right of disposal which have been filed with it to the International Bureau *in the cases specified in accordance with Article 161a(h)*.';

register a change in ownership, a license or a restriction of the holder's right of disposal, the amendment or cancellation of a license or the removal of a restriction of the holder's right of disposal which have been filed with it to the International Bureau.';

Or. en

Justification

Article 161a(h) does not specify cases, but the modalities of the transmission of the request.

Amendment 186
Cecilia Wikström

Proposal for a regulation
Article 1 – point 122
Regulation (EC) No 207/2009
Article 161 a – point a

Text proposed by the Commission

(a) the formal conditions of an international application *referred to in Article 147(5)*, the procedure for the examination of the international application pursuant to Article 147(6) and the modalities of forwarding the international application to the International Bureau pursuant to Article 147(4);

Amendment

(a) the formal conditions of an international application, the procedure for the examination of the international application pursuant to Article 147(6) and the modalities of forwarding the international application to the International Bureau pursuant to Article 147(4);

Or. en

Justification

This amendment corrects the problem of circular cross-references in the Commission's proposal. See also amendment to Article 147(5).

Amendment 187
Cecilia Wikström

Proposal for a regulation

Article 1 – point 122

Regulation (EC) No 207/2009

Article 161 a – point c

Text proposed by the Commission

(c) the formal conditions of a request for territorial extension *as referred to in Article 149(2)*, the procedure for the examination of those conditions and the modalities of forwarding the request for territorial extension to the International Bureau;

Amendment

(c) the formal conditions of a request for territorial extension, the procedure for the examination of those conditions and the modalities of forwarding the request for territorial extension to the International Bureau;

Or. en

Justification

This amendment corrects the problem of circular cross-references in the Commission's proposal. See also amendment to Article 149, second sentence.

Amendment 188

Cecilia Wikström

Proposal for a regulation

Article 1 – point 122

Regulation (EC) No 207/2009

Article 161 a – point k

Text proposed by the Commission

(k) the modalities of communications between the Agency and the International Bureau, including the communications to be made pursuant to Articles *147(4)*, 148a, 153(2) and 158c.';

Amendment

(k) the modalities of communications between the Agency and the International Bureau, including the communications to be made pursuant to Articles 148a, 153(2) and 158c.';

Or. en

Justification

There is no "communication to be made" pursuant to Article 147(4).

Amendment 189
Bernhard Rapkay

Proposal for a regulation
Article 1 – paragraph 1 – point 125
Regulation (EC) No 207/2009
Article 163 – paragraph 5

Text proposed by the Commission

5. Ein delegierter Rechtsakt, der gemäß den Artikeln 24a, 35a, 45a, 49a, 57a, 65a, 74a, 74k, 93a, 114a, 144a und 161a erlassen worden ist, tritt nur in Kraft, wenn weder das Europäische Parlament noch der Rat innerhalb von **zwei** Monaten nach Übermittlung des Rechtsakts Einwände erhoben haben oder wenn vor Ablauf dieser Frist sowohl das Europäische Parlament als auch der Rat der Kommission mitgeteilt haben, dass sie keine Einwände erheben werden. Dieser Zeitraum wird auf Veranlassung des Europäischen Parlaments oder des Rats um zwei Monate verlängert.

Amendment

5. Ein delegierter Rechtsakt, der gemäß den Artikeln 24a, 35a, 45a, 49a, 57a, 65a, 74a, 74k, 93a, 114a, 144a und 161a erlassen worden ist, tritt nur in Kraft, wenn weder das Europäische Parlament noch der Rat innerhalb von **vier** Monaten nach Übermittlung des Rechtsakts Einwände erhoben haben oder wenn vor Ablauf dieser Frist sowohl das Europäische Parlament als auch der Rat der Kommission mitgeteilt haben, dass sie keine Einwände erheben werden. Dieser Zeitraum wird auf Veranlassung des Europäischen Parlaments oder des Rats um zwei Monate verlängert.

Or. de