

SEPTEMBER 2009 EU cooperation fund starts to take shape

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At a meeting in November, EU member states will debate OHIM proposals on the establishment of a cooperation fund to be used to improve trade mark systems in Europe. James Nurton answers your questions about what the fund is and how it will work

What is the cooperation fund?

The cooperation fund is a one-off initiative to use part of the surplus generated by Community trade marks to improve trade mark systems throughout the 27 EU member states.



How much money is at stake?

OHIM's surplus recently stood at about €300 million, and was growing thanks to more applications, greater efficiencies and tighter management of costs (though the rate of growth in the surplus may have slowed recently as applications have fallen). Member states agreed last year to further reduce CTM application fees as the first step in cutting the surplus. In addition, OHIM will retain some money as a contingency fund. That leaves \$50 million that will be put into the cooperation fund to develop the trade mark system in Europe.

What will the money be spent on?

In a nine-page note circulated to Administrative Board members in June, OHIM set out the mission, principles, governance and approach for the fund. The note said that it will be used for projects related to the harmonisation and protection, promotion and enforcement of trade marks and designs, and that the allocation of funds should be driven by the optimal contribution to users' priorities. A group of five users' organisations (AIM, BusinessEurope, ECTA, INTA and MARQUES) published a response saying that they support "the overall missions and principles" outlined by OHIM, and in particular the principle that money should not be diverted to purposes unrelated to trade marks.

Specifically, the fund is expected to be used to finance IT and database projects, possibly training and seminars and maybe publicity about IP rights. Priorities for users include more electronic filing, using standardised formats, and harmonisation of registration practices. However, there are some contentious issues that remain to be resolved. One is the inclusion of "enforcement" in OHIM's aims: most national offices do not have a role in enforcement, and there is discussion over whether surplus money from trade mark applications should or could be paid to the courts or agencies such as Customs. Another issue is that the fund envisages designs as part of its brief. Although OHIM also handles the registration of Community designs, its surplus largely derives from trade mark applications, and some argue that it should therefore be spent only on trade mark-related projects. "We recognise that improvements in the functioning of the office systems may also have indirect benefits for designs but trust that the focus of the Cooperation Fund will be on trade marks, not designs," the users' groups said in their statement.

How will the money be allocated?

OHIM is setting up a management board, which will advise the president on identifying projects and allocating spending. Consulting firm Gartner has been appointed to advise and assist the board.

Who will sit on the Board?

OHIM is believed to have contacted potential board members during the summer, and the names are likely to be announced later this month. OHIM has specified that the members should represent trade mark users, but not come from specific groups. The Board, which is likely to have about five members, will probably include a mix of IP specialists and Commission appointees. The chair of the Administrative Board will be an observer.

Is the cooperation fund a long-term solution?

No. The Commission's aim in the long term is that national offices will receive a share of the renewal fees for Community trade marks (as they do for European patents). However, making this change requires an amendment to the Fees Regulation, which will take time. Both the Fees Regulation and the CTM Regulation are likely to be amended once the European Commission has completed its study into the trade mark system in Europe, which is expected to be early next year.

What happens next?

The board, assisted by Gartner, will come up with an indicative work programme to submit to OHIM's Administrative Board, which is made up of representatives of EU member states, at its meeting in November. Once the proposals have been discussed and if they are approved, the fund will move on to the next stage, which will see specific projects being identified and costed. Tove Graulund of MARQUES told *Managing IP* the priority for the fund should be to start with "the most important things" within the budget: "We believe that projects should be very specific, defined, concrete and able to be controlled financially."