



Council of the  
European Union

Brussels, 4 December 2017  
(OR. en)

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**NOTE**

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From: Management Board of the European Union Intellectual Property Office  
signed by Ms Patricia GARCIA-ESCUDERO, Chairperson

On: 1 December 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: Proposal to the Council of the extension of the term of office of the  
President of the Boards of Appeal of the EUIPO

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Delegations will find in Annex I a letter addressed to the Council by the Management Board of the European Union Intellectual Property Office (EUIPO) concerning the proposal to the Council of the extension of the term of office of the President of the Boards of Appeal of the EUIPO.

Delegations will also find in Annex II the Summary of the Decisions taken by the Management Board, and in Annex III the evaluation report on the performance of the current President of the Boards of Appeal.

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MANAGEMENT BOARD  
The Chairperson

Alicante, 1 December 2017  
ICLAD/JN/MF/KB/mb\_40-17-en

Mr Jeppe Tranholm-Mikkelsen  
Secretary-General  
Council of the European Union  
Rue de la Loi 175  
B - 1048 Brussels

Dear Secretary-General

At its 4th meeting on 21 November 2017, the Management Board of the Office decided, in accordance with Article 166 of Regulation (EU) No 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, to propose to the Council the extension of the term of office of Mr Théophile Margellos as President of the Boards of Appeal of the EUIPO for one additional period of five years or until retirement age, as from 1 October 2018, after having confirmed the positive evaluation report of his performance during his first term of office.

I should therefore be grateful if you would include an item concerning the extension of the term of office of Mr Théophile Margellos as President of the Boards of Appeal of the EUIPO on the agenda for the next meeting of the Council. You will also find enclosed a copy of the summary of decisions taken by the Management Board of the Office at its 4<sup>th</sup> meeting, together with the report on the basis of which the above-mentioned decision was taken.

Translations of these documents into the other four languages of the EUIPO will be sent to you shortly.

Yours sincerely

Patricia García-Escudero  
Chairperson of the Management Board

**Enc.:** 1. Summary of decisions  
2. Evaluation Report on the performance of the current President of the Boards of Appeal, based on the outcome and results achieved by the Boards of Appeal during Mr Margellos' first term of office.

**Copy:** L. KARAMOUNTZOS, Council of the European Union

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MANAGEMENT BOARD

Alicante, 21 November 2017  
MB/17/S04/2.1/EN(O)

**4<sup>th</sup> Meeting of the Management Board  
of the European Union Intellectual Property Office**

**Alicante, 21 November 2017**

**Summary of the Decisions taken by the Management Board**

- MB-17-07 Unanimous adoption of the Agenda of the 4<sup>th</sup> meeting of the Management Board.
- MB-17-08 Unanimous approval of the Minutes of the 3<sup>rd</sup> meeting of the Management Board held on 6 June 2017.
- MB-17-09 Decision to submit to the Council of the European Union a proposal to extend the term of office of Mr Théophile Margellos as President of the Boards of Appeal for one additional period of five years or until retirement age, after having confirmed the positive evaluation report of his performance during his first term of office. The decision was taken by a majority of two-thirds of the Members.
- MB-17-10 Unanimous decision to extend the term of office of Ms Cinzia Negro as Member of the Boards of Appeal of the Office for a further five-year period, from 1 July 2018 to 31 June 2023, after having confirmed the positive evaluation report of her performance during her first term of office and after consulting the President of the Boards of Appeal.
- MB-17-11 Unanimous decision to launch the selection procedure for the post of Executive Director of the Office, vacant as from 1 July 2018, by publishing the vacancy notice as approved, in order to propose a list of a maximum of three candidates to the Council.
- MB-17-12 Unanimous decision to confirm the composition of the Preparatory Subcommittee of the Management Board for drawing up a list of candidates for the post of Executive Director of the Office as follows: the Chairperson of the Management Board, Ms Patricia García-Escudero, as Chairperson of the PSC (or, in case of her unavailability, the Deputy Chairperson of the Management Board, Ms Loredana Gulino), the Chairperson of the Budget Committee, Ms Anne Rejnhold Jørgensen (or, in case of her unavailability, the Deputy Chairperson of the Budget Committee, Mr Sandris Laganovskis), one representative from the European Commission appointed as member of the Management Board (or, in case of unavailability, one of the other representatives from the European Commission appointed to the Management Board), and the Deputy Executive Director, Mr Christian Archambeau (or, in case of his unavailability, the President of the Boards of Appeal, Mr Théophile

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Margellos).

- MB-17-13 Unanimous decision taken to mandate the Preparatory Subcommittee to perform the preparatory work in support of the Management Board and propose a list of not less than 3 candidates for the post of Executive Director of the Office for consideration of the Management Board at its meeting of June 2018.
- MB-17-14 Unanimous Decision taken to invite representatives of the EUIPO Staff Committee to attend the meeting of the Management Board during discussions on matters not considered to be confidential.

cc.: Members of the Management Board



MANAGEMENT BOARD  
The Chairperson

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Alicante, 21 November 2017

**Subject:** Evaluation Report on the performance of the current President of the Boards of Appeal, based on the outcome and results achieved by the Boards of Appeal during Mr Margellos' first term of office.

## 1 Introduction

This document, which has been prepared by the Chairperson of the Management Board (MB) presents a high-level overview of the achievements of the Boards of Appeal under the leadership of their President between October 2013 and November 2017 in his first mandate, to allow the MB to evaluate whether his performance has been positive before considering a recommendation to extend his mandate under Article 166(2) EUTMR.

## 2 Background

The Council of the European Union appointed the current President of the Boards of Appeal on 9 July 2013 by Council Decision 2013/C 199/03. Following the decision of the Administrative Board of the Office, his term of office started on 1 October 2013.

In addition to his managerial or organisational functions, the current President of the Boards of Appeal serves as chairperson of the First (trade marks) and Third (designs) Boards of Appeal, and leads the Boards of Appeal Mediation Service.

Under the mandate of the current President, a number of initiatives have been undertaken that have contributed to reinforce the role of the Boards of Appeal as an appeal body that understands the needs of worldwide business. For instance, the establishment of an effective dispute resolution system, streamlined appeal processes providing users with consistent and predictable decision practice, as well as promoting and organising various successful IP conferences, such as the IP Mediation Conference in 2014 and the IP Case Law Conference in 2016, with the aim of sharing knowledge with the EUIPO's stakeholders.

In addition to ensuring the independence of the Boards, in compliance with the provisions of the EUTMR, the current President of the Boards of Appeal has also promoted and supported internal cooperation with other departments and units of the EUIPO in terms of technical advice and assistance.

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### 3 Boards of Appeal Activities between October 2013 and November 2017

#### a. Productivity

During the term of office of the current President of the Boards of Appeal, the number of appeals filed and the number of decisions taken have increased significantly in comparison with the previous period. The results for the current term of office can be seen in Table 1.

	2016	2015	2014	2013
Appeals filed	2 446	2 611	3 284	2 603
Decisions taken	2 884	2 911	2 783	2 568

Table 1

For 2017, the last reported figure for incoming appeals was 1 431 (Q2), and the total number of expected appeals is 2 914, according to the Work Programme.

Despite the high number of appeals filed each year, the Boards of Appeal has maintained a high level of productivity, which avoided any backlog during this period.

This high level of performance has been made possible by a managerial style based on motivation and empowerment of staff. Job profiles were mapped and organised to establish more accurate requirements, and a competency framework adjusted to the Office's appraisal system was implemented. In this context, the objectives of each staff member of the Boards were reviewed and clarified to incentivise maximum performance.

The 2016 Staff Satisfaction Survey yielded overall better results for the Boards of Appeal compared with the 2013 edition, with an improvement in 10 out of the 15 categories surveyed. A special mention should be made of categories such as sustainable engagement, working conditions and operating efficiency, which rendered a more favourable opinion. Globally, the Boards of Appeal followed opinion trends of the rest of the EUIPO's staff, which accounts for a very balanced approach to managing the resources allocated to the Boards.

#### b. Quality

It is important to stress that during the term of office of the current President, the Boards have not only achieved a high level of productivity, but at the same time have also improved quality by optimising timeliness and efficiency in operations.

During this period, the Boards have incessantly focused their attention on quality. In the users' perception, quality means dealing with appeals in a timely fashion and taking consistent and predictable decisions.

These efforts have culminated in a constantly high confirmation rate of the decision practice of the Boards by the General Court, as indicated in Table 2.

	2017	2016	2015	2014	2013
Confirmation Rate	83.6%	85.7%	82.2%	80.6%	86.6%

Table 2

In addition, the Boards of Appeal, in close cooperation with the Office, have maintained their ISO 9001 certification and all the appeal-related key performance indicators of the Balanced Scorecard have been in the zone of excellence in a sustained manner. This commitment has resulted in a higher efficiency in appeal processes via a rigorous analysis and improvement cycle.

#### c. Internal appeal process improvements

Since the beginning of his term of office, the President has focused on rationalising and simplifying the appeal work processes. A considerable number of processes before the Boards of Appeal have been streamlined, and instructions have been reviewed entirely in order to make the management of appeal files more efficient and consistent.

Efforts have also been made to align decision practices of the different Boards by creating the Knowledge Circle Appeal Processes and also through his chairmanship of the Presidium of the Boards of Appeal, in which the current President of the Boards has put forward proposals allowing the Presidium to decide on improved procedures for the allocation of cases to members and Boards and their follow-up. As a result of these actions, by aligning practices, the appeal proceedings became more predictable for users and easier to handle for the Registry.

Significant efficiency gains have also been obtained through the creation of the new Knowledge, Information and Support Service, which took over all activities and tasks not strictly related to the management of appeal files from the Registry of the Boards of Appeal (e.g. IT tools maintenance, documentation, quality assurance and performance supervision). Consequently, the Registry can now devote all its resources to its main mission, namely to supporting appeal proceedings. Further efficiency gains have been obtained by restructuring the Registry itself.

#### d. Use of IT tools

Within Line of Action 3 of the SP2020, 'Foster an effective and secure digital environment', the Boards actively participated in implementing the Office's strategy of extending and enhancing the use of e-business tools.

In 2016, the front office project for e-filing of appeals was initiated and the eAppeal tool went live in April 2017. It is a major step forward, which has significantly improved user experience by, inter alia, reducing the amount of deficiencies. In a very short time, the eAppeal tool is expected to account for approximately 80 % of all appeals filed.

As the next step, the efforts of the Boards, supported by the Office, are now focused on the creation of a new appeal back office tool, which will replace the existing one (BoA Single Tool). This new tool will further increase the efficiency and consistency of operations. This forward-looking perspective, with a view to constantly improving both output and quality by

investing effort in the newest technologies and with the dedication to e-business, also accounts for the commitment of the current President of the Boards to the sustainability of the Boards in the future.

**e. Consistency and coherence assurance project**

With the approval of the Executive Director, the Boards of Appeal have recently launched an important project in cooperation with ICLAD. This project specifically aims to maintain the coherence and consistency of case-law from the Boards of Appeal, to identify case-law trends and create synergies with other Office initiatives, such as the Knowledge Circles, where members of the Boards participate as observers.

**f. Active case management system**

The continuous commitment of the President of the Boards of Appeal to provide users with effective dispute resolution led to the creation of an active case management system at the Boards. Single member decisions, expedited appeal proceedings, mediation and conciliation are the tools that have been created in order to best address users' needs.

The systematic use of single member decisions in *ex parte* cases resulted in more flexible and quicker decision-making. Expedited appeal proceedings have recently been introduced by the Presidium of the Boards of Appeal, following the proposal of their President in order to meet the demands for fast decisions in specific circumstances from users and EUTM/RCD courts.

The Mediation Service of the Boards of Appeal has also been reinforced, settled and further developed. There are currently 20 highly skilled mediators who are continuously trained available for users. To date, 28 mediation processes have taken place, addressing and solving highly complex cases, which involved parallel disputes, with the success rate reaching 70%.

**g. Cross-departmental cooperation**

As an integral part of the Office, the Boards of Appeal actively support and embrace the Office's vision and strategic goals expressed in the SP2015 and SP2020, by participating in the many different activities.

The legal assistants of the Boards of Appeal support the Litigation Unit of the Office and act as agents before the General Court and the Court of Justice. In addition, members of staff from the Boards provide the Litigation Unit with administrative support, by preparing the administrative appeal files to be sent to the General Court, by managing the French translations to be sent to the Court and by updating their status in the Office IT tools.

Members and legal assistants of the Boards of Appeal participate in all the Office's Knowledge Circles. In that regard, the Boards participate in the open and cyclical revision of Office practices carried out by these Knowledge Circles. This participation is aimed to improve the consistency, predictability and quality of the Office's practice, bringing together principles and trends derived from the case-law of the General Court and the Court of Justice and the case-law of the Boards of Appeal. Two Knowledge Circles, the KC Academy and the KC Appeal Processes, are led by Boards of Appeal staff.



In addition, the Boards strongly support the many different activities of the Academy by providing speakers for conferences, seminars, webinars and training sessions organised by or with it.

The Boards are also heavily involved in the past and current EPSO competitions and other Office selection procedures. In addition, the Boards have always actively participated, when necessary, in meetings with user associations, liaison meetings and other institutional events.

Moreover, the Boards have given strong support to the Pan-European Seal by receiving and educating a number of trainees each year.

During the term of office of the President of the Boards of Appeal, the Boards have dedicated significant resources to this cross-departmental cooperation, in the true spirit of a collaborative organisation.

#### **h. Knowledge sharing**

For the first time, under the mandate of the President of the Boards of Appeal, the Boards launched an initiative to organise important conferences targeting users and IP professionals: the IP Mediation Conference in 2014; the IP Mediation Open Day in 2015; the IP Case Law Conference in 2016 and the IP Case Law Laboratory in 2017. In addition, the Boards started to offer local users two *tertulias* (round-table gatherings) per year on the activities and case-law of the Boards of Appeal.

All these events were aimed at strengthening the European IP System for the benefit of users, and they were very successful and highly appreciated by the IP Community.

#### **4 Performance of the President of the Boards of Appeal and his Main Achievements**

The activities previously mentioned and their results demonstrate the excellent performance of the President of the Boards of Appeal, together with the chairpersons, members and staff of the Boards, and show his capacity to lead and manage the Boards of Appeals with the aim of obtaining the highest standards in terms of production and quality.

The results achieved so far demonstrate the President's ability to organise the Boards of Appeal operations successfully and to attain optimal service standards by applying up-to-date and sound managerial techniques.

The results also highlight his understanding of a modern public service environment and his commitment to serving the interests of users by increasing the EUIPO appeal system's accessibility, transparency, consistency and predictability.

During the past few years, the current President has contributed to the transformation of the Boards of Appeal into an instance with a user-oriented vision, thus offering the highest standards of appeal dispute resolution.

The President has made this transformation possible by introducing for the first time ever an active case management system, which endeavours to offer the parties involved in appeal litigation the most suitable mechanism for finding a cost-effective, global and rapid solution to their conflict. This involves, inter alia, the rapporteur analysing the case file from the users' perspective and putting forward a range of dispute resolution options.

This transformation has also been made possible by leading chairpersons, members and other staff towards attaining the goal of creating a vibrant, efficient and creative appeal body.

In terms of quality of appeal processes, users now benefit from a faster and more predictable service when conducting appeal proceedings. Pendency times have been reduced. Consistency and coherence of appeal decisions have been increased as the results of the Balanced Score Card demonstrate. The impact of these improvements has also been confirmed by the last User Satisfaction Survey carried out during this period, which clearly shows the high level of overall satisfaction with the performance of the Boards of Appeal.

**Please indicate your overall level of satisfaction with the service received from the Office's Boards of Appeal:**

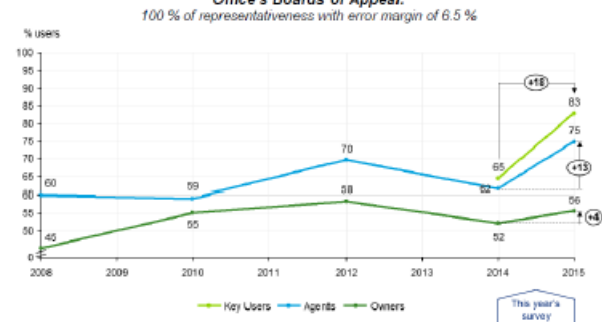


Figure 25 — Progression of satisfaction with Appeals (2008-2015) per segment

Moreover, in close collaboration with the Executive Director of the Office, the President of the Boards of Appeal has shown his determination to be fully involved in the activities of the Office and to support the European Union Intellectual Property Network in a dynamic way for the benefit of users, and to strengthen cooperation with the National Offices.

Under the leadership of the President of the Boards of Appeal, the Boards have developed a vision of becoming an essential contributor to a centre of IP excellence and to put in place an appeal body that understands the needs of worldwide business and that fully embraces the EUIPO Strategic Plan 2020, in particular the investment in developing e-business for the benefit of users of the system.

Within this vision, the President of the Boards of Appeal has put in place a successful, effective dispute resolution system and streamlined appeal processes, providing users with consistent and predictable decision practice.

He initiated the necessary reforms of the Boards of Appeal, supported by the Executive

Director, focusing on more streamlined proceedings, including the restructuring of the Registry to make it more effective and the creation of the Knowledge Information and Support Service that gives support to the Boards and the Registry.

## 5 Conclusion

During the term of office of the President of the Boards of Appeal and under his leadership, the Boards of Appeal have contributed significantly to the development of the case-law on European Union trade marks and Community designs.

Since 2013, the Boards of Appeal have coped with an increased number of appeals filed and closed while improving timeliness, quality, predictability and other aspects of user satisfaction.

Today, users benefit from swift and improved services when filing appeals or conducting appeal proceedings before the EUIPO. Pendency times have been reduced, predictability and consistency of appeal decisions have improved and the quality metrics, for instance, the confirmation rate of the General Court, have constantly been maintained at high levels.

All the activities and results shown above are closely linked with the President's strategic vision, leadership, managerial skills and personal dedication. They show the President's ability to plan, organise and inspire the staff of the Boards of Appeals.

Likewise, the excellent collaboration of the Boards of Appeal with their internal and external stakeholders owes a great deal to the President's capacity to forge constructive relationships based on mutual respect and assistance with a view to reaching common understandings and goals.