

**REGISTER NUMBER:** 630**NOTIFICATION FOR PRIOR CHECKING**

Date of submission: 05/11/2010

Case number: 2010-869

Institution: OHIM

Legal basis: article 27-5 of the regulation CE 45/2001<sup>(1)</sup>*(1) OJ L 8, 12.01.2001***INFORMATION TO BE GIVEN** <sup>(2)</sup>*(2) Please attach all necessary backup documents*

1/ Name and address of the controller

Vincent O'Reilly  
Department for IP Policy (DIPP)  
Office for Harmonization in the Internal Market  
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E 03008 Alicante

2/ Organisational parts of the institution or body entrusted with the processing of personal data

Department for IP Policy (DIPP)

### 3/ Name of the processing

Quality Management System, Quality Checks (ex-post quality check of TM decisions (EPQC))

#### Description of the processing

In the framework of the system of managing the quality of the decisions of the first instance in the TM registration process, there is a regular extraction of a statistically representative (at the level of the Office and its services) sample of files produced by examiners. Their decisions in four fields (classification, absolute grounds (AG decisions, either positive or negative), opposition and cancellation) are checked by a set of experts (the Ex-Post Quality Checks Group for absolute grounds, opposition and cancellation decisions and the Classification experts Group for classification. For practical purposes they will both be referred hereinafter as EPQCG), under the responsibility of DIPP. The composition of the EPQCG is decided by DIPP's director and can include temporarily assigned examiners. The decisions to be checked, extracted randomly from the production databases, are distributed between the members of the EPQCG (the rapporteurs) who individually analyze the decision in the light of Office's practices as described mainly in the Manual

Mistakes can be of different categories depending the type of decision but they are mainly split in errors of format, errors of content and errors of outcome. Within each one of them, a second level of classification of mistakes is also defined. The criteria for establishing what is a mistake are public: [http://oami.europa.eu/ows/rw/resource/documents/QPLUS/serviceCharter/qualitychecklist\\_en.pdf](http://oami.europa.eu/ows/rw/resource/documents/QPLUS/serviceCharter/qualitychecklist_en.pdf)

In case the rapporteur detects a possible error an e-mail is first sent to the EPQCG explaining why the decision should be marked as a mistake and the file is brought to a plenary meeting of the EPQCG where, if unanimity, the possible mistake becomes a definitive mistake. If not, the file is declared as not mistaken. The results are spread in different ways:

- (a) The rapporteur sends an e-mail to the examiner and his/her head of service (HoS) where the mistake is explained. Examiner is expected to elaborate on the reasons for having made the mistake as well as on the measures to be taken to avoid the mistake to be repeated in the future.
- (b) Examiners and their HoS are also informed when in the file checked no mistake has been detected.
- (c) The system foresees as well to publish the benchmark good decisions (with the name of its drafter)
- (d) Information about the files sampled for EPQC and anonymous information about errors made is kept in a data base of ex-post quality checks.
- (e) Aggregated figures of errors are quarterly published in OHIM's web site: [http://oami.europa.eu/ows/rw/resource/documents/QPLUS/serviceCharter/2010/qualityofdecisions\\_2010\\_es.pdf](http://oami.europa.eu/ows/rw/resource/documents/QPLUS/serviceCharter/2010/qualityofdecisions_2010_es.pdf)
- (f) On a quarterly basis an analysis of all the errors is done and a report with all the errors (anonymous) is published. See in Annex the Process Card.

### 4/ Purpose or purposes of the processing

The purpose of the processing operations is twofold:

- Measure and make public the level of quality of TM first instance decisions
- Obtain feed back information about the reasons of the mistakes, their frequency, distribution, pattern, etc, in order to decide the measures for improvement

Marginally, the information contained in the e-mails received by the HoS (see (a) & (b) above), both in terms of volumes and content, is used as an additional indicator by the HoS for evaluating the quality of the outcome of examiners. The rest of the indicators which are used by HoS to evaluate the quality of the outcome of the examiners are, in particular:

1. the quality of the draft decisions that HoS revise
2. the complaints of users that arrived to the Complaints Unit
3. the revocation (i) of examiners' decisions
4. the information coming from Info Centre about particular problems or good treatments of a file
5. the feed back from the training units in Quality Matters service when the examiner has been trained and coached in that service
6. the feed back from the Legal Advisers in Quality Matters service when the examiner's decisions have been revised by that service.

- (i) Revocation is a formal procedure in TM processes where a mistake done in the managing of the file or in a decision is corrected

5/ Description of the category or categories of data subjects

OHIM's examiners of the first instance teams taking decisions in classification, AG, opposition or cancellation

6/ Description of the data or categories of data

*(including, if applicable, special categories of data (article 10) and/or origin of data)*

The data concerned by the EPQC are:

1. In the EPQC data base (called UQCT)

- the identification of the file concerned
- the type of the decision analyzed (classification, AG, opposition, cancellation)
- the date when the extraction point has been reached
- the date of the extraction
- the organizational service where the decision was taken
- the outcome of the evaluation of the decision (correct/mistake)
- if mistaken, the type of mistake, in two levels, as described above
- backups of e-mails content (see point (a) under "description") as well as the error descriptions used as a basis for the e-mails

2. The EPQC DB does not contain therefore personal data. However, it is to be noticed that the ID of the file concerned, if crossed with the DB of production (EM++), allows identifying the examiner who made the decision. This summary of the data by service and individual, built ad-hoc in principle once a year by crossing this DB with the TM Production DB, contains the data referred to above plus the name of the examiner.

3. In the e-mail to examiners and HoS:

- the identification of the file concerned
- if mistaken:
  - o the detailed description of the mistake
  - o the text in the reference documents justifying to consider a mistake
  - o an invitation to reply to the rapporteur and the HoS with the reasons for the mistake and the measures suggested to avoid its repetition.
- if not mistaken
- o standard text informing the examiner that the file did not contain mistake

7/ Information to be given to data subjects

In September 2009 there was a note (annexed) where examiners were informed about the details of the EPQC system and that the results of EPQC would be an additional indicator for their HoS of the quality of their outcome. The note was explained by the director of DIPP in meetings with all examiners in TMD.

At the beginning of each appraisal exercise, in the framework of the compulsory meetings between director of TMD and its staff, TMD's director recalls the indicators on the basis of which the quality of the outcome of examiners is evaluated by HoS.

8/ Procedures to grant rights of data subjects

*(rights of access, to rectify, to block, to erase, to object)*

- To have Access

Examiners' e-mails, where all information is contained, are kept in their own e-mail folders. The EPQC DB does not contain personal data. The summary of the data by individual reflects and summarizes the info received by the examiners in each e-mail.

- To Rectify

Examiners have the possibility of contesting the decision of the EPQCG, by replying to the e-mail, through their HoS. The EPQCG may re-evaluate the pertinence of the arguments and remove the mistake from the DB

- To Block

No. Data are production data

- To Erase

No. Data are production data

- To Object

No. Data are production data

9/ Automated / Manual processing operation

Automated

10/ Storage media of data

1. The EPQC database is stored centrally under the control of ITD
2. The summary of the data by service and individual is kept in a central repository in X driver to which just the members of TMD's Central Team, the director and the HoS have access.
3. E-mails follow the normal lifecycle of e-mails (depending on the habits of senders and receivers)

11/ Legal basis and lawfulness of the processing operation

Article 5(a) of Regulation 45/2001 ("processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof [...]")

Legal instrument: CTM Regulation as far as it defines the obligation for examiners to take correct decisions

12/ The recipients or categories of recipient to whom the data might be disclosed

1. To the EPQC DB:

- the members of EPQCG
- one expert in statistics (sampling, etc) from Quality Management Department
- two experts from ITD (database administrators)

2. To the summary of the data by service and individual:

- director and HoS of production services
- the members of Central Team Unit of the TM department, responsible for preparing the data for the TMD hierarchy

3. To the e-mails:

- content and addressees: the rapporteur and the other members of EPQCG, each examiner and eventual co-signers concerned, their HoS
- just content (anonymous and without the ID of the file): the report containing all mistakes is distributed to the whole production services

13/ retention policy of (categories of) personal data.

1. The EPQC DB contains for the time being data since 2007. Since no personal data are stored there and this DB is the source of aggregated, anonymous data for quality results purpose, no limit for storage is foreseen.

2. The summary of the data by service and individual is to be eliminated at the end of the lifecycle of the appraisal exercises (2 years after the end of the appraisal period).

3. The e-mails sent and received are eliminated by each individual following their own practices of managing their e-mail inbox. No general instruction has been given on what to do about these e-mails but in any case it is logic that they are maintained during the lifecycle of the appraisal exercises.

13 a/ time limits for blocking and erasure of the different categories of data  
(on justified legitimate request from the data subject)

*(Please, specify the time limits for every category, if applicable)*

14/ Historical, statistical or scientific purposes

*If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,*

15/ Proposed transfers of data to third countries or international organisations

No

16/ The processing operation presents specific risk which justifies prior checking (*please describe*):

AS FORESEEN IN:

- Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

17/ Comments

Two annexes included in the email with the notification:

1. Process card
2. Communication to the examiners of adjustments in the EPQC in september 2009

The present notification is the result of changes undertaken in the processing operations of checking quality of decisions made by examiners (ex post quality checks). Prior notification of ex post quality checks of TM decisions, which is in our record of personal data processings, dated January 2007, didn't contemplate a tool to check the quality of the work of individuals and therefore the information was not used in appraisals of examiners. The most significant change occurred in the last year regarding personal data, according to the communication to TMD staff (annex 2), in the evolution of the quality check system (ex post) of TM decisions is that the system is going to be used to evaluate the quality of the work of the examiners and hence it will be taken into account in the annual appraisal exercise.

In complement to ex post checks, ex ante quality checks of decisions made by examiners before they become final are performed (see EDPS case 2008-437).

PLACE AND DATE:

Alicante, 5 November 2010

DATA PROTECTION OFFICER:

Ignacio de MEDRANO CABALLERO

INSTITUTION OR BODY:

OHIM  
Office for Harmonization in the Internal Market