

CHALLENGES IN THE ADMINISTRATIVE PROCEDURE OF TRADEMARK REGISTRATION AT THE WORLD INTELLECTUAL PROPERTY ORGANISATION

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Abstract: *Intellectual property protection in an age of information in the cloud is a dynamic challenge for law and market. Business people are more engaged in the knowledge-based economies where intangible goods prevail and the intellectual property rights rules. Nowadays, not just the resulted goods and/or services are legally protected from other similar and/or identical subsequent ones, but also domain names. The study emphasizes the legal steps which must be followed in the international procedure of trademark registration. The trademark was used either as business identifier or virtual advertisement, but currently it become the domain itself. Information flow is global and without spatial boundaries the protection of goods and/or services and domain name has to be internationally recognized. Intellectual property surrounds us in approximately everything we do, and we are surrounded by the results of human creativity and invention and almost all are registered trademarks. The article is a quest for understanding international trademarks and intellectual property protection in the digital age.*

Keywords: *“copy culture”, intellectual property rights, international protection, compensation actions.*

1. INTRODUCTION

Innovation and technology undisputedly improve goods, services or processes created and offered to the market and society. Many innovations changed or created new markets, and brought changes in society, the environment, and in law. Technology patents registered at the European Union (EU) countries level is increasing, and the research and development EU programmes certainly contribute to this increase. According to World Intellectual Property Organization (WIPO) statistical report¹, after 6 years of decrease (2011-1599 applications), patents in Romania recorded an increase in 2017 with 14% compared with last year (1255 applications). Regarding the industrial design and the trademark Romania did not register the same trend as it was for the patents: the first one increased with 41% since last year, and the last one with only 7%. Overall, Romania in 2017 was on the rise in all areas, but it created only 3% of all registrations of Germany and 7% of France. The Romanian level is way back to the West

¹ WIPO statistical country profile – Romania, available at https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=RO, (accessed on January 30, 2018).

countries, and under the EU average. As we noticed, the difference between developed and developing economies in the EU is significant. Because intellectual property rights foster creativity in high technology, strengthening its protection is a priority for the developed nations.

Intellectual property rights are policies that assign and protect the rights to earn income from innovative and creative activities. They influence the profitability of industrial research and the rewards to creative activity and most of the times their protection may come with high expenses and low availability. Even if developing countries prefer a low level of protection the doctrine should contribute to the mainstreaming of a culture of intellectual property rights protection. In this long-term commitment public administration institutions can contribute with facilitating mechanisms and reliable information.

For these reasons, we consider that a short review of the applicants' challenges raised by the WIPO administrative procedure is an important step forward to increase awareness among future Romanian developers and/or designers of goods, services and domains.

The study highlights step by step the application procedure in relation with registration of trademarks and content in order to avoid the common registered pitfalls. Through this we will try to demonstrate the hypotheses of the research: firstly that in the WIPO's procedure on the international protection of intellectual property the "heavy part" is in the hands of the national offices; and secondly that a new culture of protection of intellectual property rights is needed, a culture of compensation and community oriented. The study uses as research methods literature and rules review, accompanied by the procedural and cases examinations.

Intellectual property has two main branches: (a) industrial property-covering inventions, trademarks, industrial design, and protection against unfair competition, including protection of trade secrets; and (b) copyrights-which concern literary, musical, artistic, photographic, and cinematographic works (Subhash, 1996, p. 9). From the above mentioned ones, we consecrated the study to the trademarks. A trademark may serve as quality index and is a word, symbol, or device that identifies the source of goods. In the sale of services similar rights may be acquired as marks. In international regulation the registration of goods and services may vary, some allow service trademarks others not. Trademark/mark laws prevent others of creating a good or service with a confusingly similar characteristics, hence it should be registered in every country in which protection is desired for the entire life of it. Besides trademark/mark, copyright, mask work, trade secret are also protected by international regulations, more precisely by the treaties, and all of them fall under the jurisdiction of WIPO.

2. THE ENHANCED ROLE OF WORLD INTELLECTUAL PROPERTY ORGANISATION IN TRADEMARK AND COPYRIGHT PROTECTION

WIPO and national agencies for intellectual property protection role is increasing when we witness the "copy culture" which infringe any boundary between private and public or commercial and non-commercial. Adults and youths from around the world

have admitted that internet is used more for downloading and sharing copyrighted material (Karaganis and Renkema, 2013), but worryingly is that the age of downloaders decreased to 11-12 year olds (Kemp, 2013). Users' behaviour is not altered by the copyright law and by its enforcement; new legal and administrative mechanisms are needed. The role of administrative authorities must be changed from control to prevention, from punitive sanctions to compensative actions. Moreover, for the judicial systems another issue is brought forward by global and multijurisdictional nature of the copyright law and of the protection of goods/services. Internet challenges, the determination and identification of the responsible person for violation of copyrights laws require enforcement mechanisms at the local branches of international institutions or at the national offices. This copyright protection wheel is not just for state actors, but also for local, civil society and even private actors, for the entire community (Reed, 2013, p. 362), and the internet introduced new dynamics.

An international key agent of change is World Intellectual Property Organization. WIPO is a specialized agency of the United Nations established in 1967 by Convention, which was signed at Stockholm on July 14, and amended on September 28, 1979. It administers international treaties that concern intellectual property, including the rights relating to (a) trademarks, (b) literary, artistic and scientific works, (c) performances of performing artists, phonograms, and broadcasts, (d) inventions in all fields of human endeavor, (e) scientific discoveries, (f) industrial designs, (g) service marks, and commercial names and designations, (h) protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artist fields². After almost 50 years of existence 191 states hold membership in WIPO (UN-193MS). WIPO facilitates international agreements and is more a policymaking body without binding decisions and punitive sanctions. The solving mechanisms used by WIPO are mediation and arbitration.

The Madrid System provides a process for obtaining and maintaining trademark protection in multiple jurisdictions. It is a legal and policy cross-national solution for the protection of signs under which the goods and services are sold. The intellectual property rights protection is not new, because according to Kapitzke (2006, p. 432) it constitutes the revamping of late medieval guild laws. Nowadays, there is little evidence that the use of trademarks guarantees quality, as WIPO sustains (2018, p. 8) because they do more a product differentiation and promotion.

Three millennia ago, Indian and Chinese artisans signed their goods before they sold them outside their premises. In the Roman Empire, over 1000 different pottery marks were used to distinguish different craftsmen. In Europe, during the Middle Ages, guild markings were in common use to identify goods and crafts in commerce. These days, consumers everywhere rely on trademarks to assure that the goods they buy meet their individual desires and are of a quality that they can trust (Mossinghoff & Oman, 1997, 107). Therefore, a strong and effective trademark protection is necessary.

A trademark is defined by WIPO as "a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by

² According to art. 2 (viii) of the WIPO Convention.

intellectual property rights”³. In other words, a trademark is an indicator of source that allows consumers to take decisions efficiently on the market (Osei-Tutu, 2017, p. 214). The sign may consist of words, letters, numerals, drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or color shades used as distinguishing features – the possibilities being almost limitless according to WIPO.

The protection of trademarks was first stated in the Paris Convention for the Protection of Industrial Property (March 20, 1883, revised), which stipulates at article 6 (1) that “The conditions for the filing and registration of trademarks shall be determined in each country of the Union (i.e. country to which the Convention applies) by its domestic legislation”, therefore the registration of trademarks was at national level.

Later on, the possibility to register a trademark was extended internationally by the Madrid Agreement concerning the international registration of trademarks of April 14, 1891 (the Madrid Agreement) and by the Protocol of the Madrid Agreement of June 27, 1989 (the Madrid Protocol or the Protocol), conveniently referred to as the Madrid System.

After the creation of the European Union, another possibility for the trademark’s registration has appeared through the Council Regulation (EC) no.40/04 on the Community trademark, repealed consequently, and now made possible by the Regulation (EU) 2017/1001, which states the trademark registration, on the territory of all member states of the European Union through a single application.

3. ADMINISTRATIVE REGISTRATION PROCEDURE OF TRADEMARKS AT WORLD INTELLECTUAL PROPERTY ORGANISATION

The registration process is the important key to trademark rights protection. In principle, only a registered trademark will provide exclusive rights. Registration will provide legal certainty and will reinforce the position of the right holder, in case of litigation (Sangsuvan, 2013, p.271). In order to acquire legal protection, a trademark must be registered to the competent authorities of the territory where the protection is desired, and is very important to take into consideration that the protection is granted on the principle of “first come, first served”. Any person, either natural or legal, may register a trademark.

A trademark may be registered as follows:

- at national level, at the national intellectual property office – the protection shall be secured only on the territory of that state;
- at European Union level, at European Union Intellectual Property Office (EUIPO) – the protection shall be secured on the territory of all member states of the European Union through a single application;
- at international level, at WIPO – the protection shall be secured on the territory of the selected state/states through a single application.

³ WIPO, What is a trademark?, https://www.wipo.int/trademarks/en/#accordion__collapse__01 (accessed on January 15, 2018).

Furthermore, the legal effects of trademark registration are territorially, meaning that the registration of a trademark in one country does not cover other countries, and so registration procedure must be followed in each country where the good and/or service are/is predicted to be commercialized. As we previously mentioned, the international registration of the trademarks at WIPO is established by the Madrid System. The Madrid Agreement and the Madrid Protocol are independent, parallel treaties, with separate, but overlapping membership. Therefore, there will be two groups of members of the Madrid System: (i) states and organizations parties only to the Madrid Protocol and (ii) states parties to both the Madrid Agreement and the Protocol⁴.

The advantage of registering an international trademark consists in one action instead of one hundred and three actions. Therefore, instead of doing things of one hundred and three times around the world, WIPO allows the applicant to do it once, internationally (Harris, 2014, p.13), through one application, in one language and by paying one fee. This is instead of separated applications at the trademark offices of various member countries in different languages and separated fee at each trademark office. By fill in an international application under the Madrid System can save the applicant's time and money compared to the individual trademark application in each country where the trademark is sought to be registered (Sangsuwan, 2013, p.275). However, after the submission of the application for international registration, the procedures for trademarks' registration are basically governed by national and regional rules and regulations of trademarks offices⁵, so the trademark must comply with the rules of each country were registration is sought (Sangsuwan, 2013, p.273).

In order to better present the procedure at WIPO we addressed one question for each step that an applicant should follow for the trademark registration. The questions' review of the procedure is used in order to provide an easy way of understanding of all the steps, processes that an applicant must go through for international trademark protection.

Step 1: Who should use the Madrid System?

The Madrid System of international registration of trademarks may be used only by a natural person or a legal entity that (i) has a real and effective industrial or commercial establishment in, or (ii) is domiciled in, or (iii) is a national of, a country which is party to the Madrid Agreement or to the Madrid Protocol, or (iv) which has such an establishment in, or is domiciled in, the territory of an intergovernmental organization which is a party of the Protocol, or is a national of a member state of such an organization⁶. Therefore, if the applicant accomplishes one of the above conditions the international registration of a trademark is possible, otherwise not.

Step 2: Which trademark is subject to an international registration?

⁴ Today, all states party to the Madrid Agreement are also party to the Madrid Protocol, according to status of WIPO available on January 15, 2019 https://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf (accessed on January 15, 2018).

⁵ WIPO, Industrial Property Statistics Glossary, <https://www.wipo.int/ipstats/en/statistics/glossary.html> (accessed on January 15, 2018).

⁶ According to art. 1 (2) of the Madrid Agreement and to art. 2 (1) of the Madrid Protocol.

In order to be able to access the Madrid System, the interested person has to have either an already registered trademark to the intellectual property office of a country which is party to the Madrid Agreement or to the Madrid Protocol (Office of origin), either an application for the registration of a trademark in the Office of origin. In this situation, a Swiss company, which registered or sent an application for an European Union trademark and does not have a real and effective industrial or commercial establishment in an EU member state is not entitled to file an international application through the EUIPO⁷.

Step 3: Which are the necessary processes for registration, according to the Madrid Protocol⁸?

The creative process – is ideal to create the image of the trademark in order to reflect the characteristics of the good/service. The trademark must be original, unique and memorable. It must not be composed, for example⁹:

- of elements devoid of any distinctive character – such as “Peter Pan”, “Cinderella” for books. However, “Peter Pan”, “Cinderella” etc. are capable to be registered as trademarks for paint, clothing, pencils, any other goods and/or services which are not related to books¹⁰;
- exclusively of signs or indications which may serve to designate the quality (e.g. “light”, “extra”, “fresh”¹¹), quantity (e.g. “one litre” for drinks, “100 gram” for chocolate bars¹²), intended purpose (e.g. “slim belly” for fitness training apparatus¹³), value (e.g. “cheap”, “more for your money”¹⁴), geographical origin;
- exclusively of signs or indications which have become customary in the current language (e.g. a white “P” on a blue background for parking places¹⁵);
- of elements that may deceive the public, for instance as to the nature, quality or geographical origin of the goods or services (e.g. “Lactofree” for lactose goods¹⁶).

⁷ EUIPO, Guidelines for examination of European Union trademarks. Part M. International marks, October 2017, p. 8, https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/trade_marks_practice_manual/WP_2_2017/Part-M/01-part_m_international_marks/TC/part_m_international_marks_tc_en.pdf (accessed on 28 of December 2018).

⁸ Having in regard that all states which are members to the Madrid Agreement are also members to the Madrid Protocol, the present section will only analyze the provisions of the Madrid Protocol, being the only one which is applicable.

⁹ These examples apply for all types of trademarks (national, European, international).

¹⁰ EUIPO, „Guidelines for examination of European Union trademarks. Part B. Examination. Section 4. Absolute Grounds for refusal. Chapter 3 Non-distinctive trademark, p. 5 https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/trade_marks_practice_manual/WP_2_2017/Part-B/04-part_b_examination_section_4_absolute_grounds_for_refusal/part_B_examination_section_4_chapter_3/TC/part_B_examination_section_4_chapter_3_Non-Distinctive_tm_tc_en.pdf (accessed on 28 of December 2018).

¹¹ Idem, Chapter 4 Descriptive trademarks, p. 5.

¹² Idem.

¹³ Idem, p. 6.

¹⁴ Idem.

¹⁵ Idem, Chapter 5 Customary signs or indications, p. 3.

¹⁶ Idem, Chapter 8 Deceptive trademarks, p. 4.

The research process – involves the screening of the chosen sign to become trademark with the already registered trademarks and with the prior applications of third-parties for a trademark. This step is very important because it helps applicant to find out if there are any identical and/or similar registered trademarks or in the process of evaluation, because in this case, the owners of the prior registered trademarks and/or of the prior trademarks' application may oppose to the registration of the subsequent trademark, and therefore it will be rejected to registration by the competent authorities. Not only the registration could be rejected, but also the money invested on marketing will be lost and the created trademark could not be used. For example, it is better to avoid the situation in which it was Hardihood Brewery, which after four years had to change its name just a day before its launch, or Sol Kitchen (coffee and juice bar) was sued for trademark infringement after its owners already spent \$10,000 on marketing. These examples show the importance of properly conducted trademark searches and the high costs involved in combating infringements. (Reading 2018, p.29) According to SAEGIS on SERION, in 2018 were over 67 million active trademarks. Therefore, the research process is much more important than ever (Reading 2018, p.29).

Ideally, the research for identical and/or similar trademarks is better to be performed across all jurisdictions where the business is currently done, as well as on potential new areas.

This step is not compulsory, but it is a good practice to follow it because it could save time and money in case there are already identical and/or similar prior trademarks whose owners may oppose to the registration of the later trademark. For instance, if the research step is not followed, the applicant may be in the situation in which it asks for registration of an identical or similar trademark with an earlier trademark, as it was in the case of:

- Vega vs. Daniela Vega – the signs being found similar and the goods and services identical, therefore the trademark Daniela Vega being rejected to registration;¹⁷
- Gaim vs. Gaim – both signs being word trademarks – they were found identical and the subsequent registered trademark Gaim was cancelled from registration¹⁸.

The identification of the country where the international trademark will be registered¹⁹ must be one of the member states of the Madrid System²⁰. It is important to know that in the case of the United States of America for the trademarks which are on the list for international registration, a different declaration²¹ is required. The declaration has

¹⁷ EUIPO, Opposition Division, Opposition no. B 3 029 843, Decision of 06.02.2018.

¹⁸ EUIPO, Cancellation Division, Cancellation no. 15 247 C (Invalidity), Decision of 23.01.2018.

¹⁹ It is important to know that the fees that are going to be paid to the WIPO for the international registration will be based also on the number of designated states.

²⁰ In the present, there are 103 member states of the Madrid Protocol and 55 of the Madrid Agreement and all member states to the Madrid Agreement are also members of the Madrid Protocol.

²¹ WIPO, Madrid Protocol concerning the international registration of marks. International registrations containing a designation of the United States of America, Information notice no. 16/2010, https://www.wipo.int/edocs/madrdocs/en/2010/madrid_2010_16.pdf (accessed on January 15, 2019) and according to the forms MM2E https://www.wipo.int/export/sites/www/madrid/en/forms/docs/form_mm2

to state among others the bona fide intention to use the trademark on those territories, and that no other person, firm, corporation, association, or other legal entity has the right to use it, either in its identical form thereof or in such near resemblance thereto so it may cause confusion, or mistake, or it deceives.

The application for registration of the trademark at national level, in a member state of the Madrid System – applicant has to follow the registration procedure of that national state (Basic application), but it is not necessary to wait for the entire procedure to finish. It is sufficient to have only the trademark application for registration in order to move forward with the registration at international level²². Also, the applicant could already have a registered trademark at national level, in a member state of the Madrid System. The application for registration of the trademark at international level in front of the Office of origin – the application for the registration of the trademark at international level must be submitted to the Office of origin (i.e. the office where the national application was filed/the trademark is already registered)²³. Prior to submitting the application for the international registration of the trademark, it is verified if the applicant:

- is a national of the country where the Office of origin is situated or
- is domiciled or has a real and effective industrial or commercial establishment in the country where the Office of origin is situated.

The application must contain: (i) the state whose office is the Office of origin; (ii) the name, address, telephone, fax, e-mail of the applicant; (iii) the preferred language of correspondence; (iv) the identification details of the applicant; (v) the identification details of the representative, if the case; (vi) the details of the basic application or basic registration; (vii) the reproduction of the trademark; (viii) other details of the trademark (e.g. type, description, verbal elements); (ix) the goods and/or services in respect to which protection of the mark is claimed and also, if possible, the corresponding class or classes according to the Classification established by the Nice Agreement concerning the international classification of goods and services for the purposes of the registration of marks²⁴; (x) the colours or the combination of colours claimed, if the case²⁵; (xi) the states where the applicant wishes to register its international trademark (Designated states)²⁶; and (xii) the certification fee. If the requirements mentioned-above are met, the Office of origin will certify the application and transmit it to WIPO.

Step 4. What WIPO does with the application?

.pdf (accessed on January 15, 2018) and MM18E https://www.wipo.int/export/sites/www/madrid/en/forms/docs/form_mm18.pdf (accessed on January 15, 2018).

²² According to art. 2 of the Madrid Protocol. However, if the application at national level will be rejected to registration, the international registration will also be rejected.

²³ The application is not transmitted directly to WIPO, because it will not be taken into consideration.

²⁴ According to art. 3 (2) of the Madrid Protocol.

²⁵ According to art. 3 (3) of the Madrid Protocol and it must be taken into consideration that the international application may relate only to goods and/or services covered by the Basic application or Basic registration.

²⁶ It should consider that the fees for the international registration of the trademark will depend on (i) the number of states where the trademark will be registered, (ii) the number of classes according to Nice Agreement, (iii) the type of the trademark – colour or black.

Analyze the application in order to verify if all the legal requirements are met – if WIPO considers that there is an irregularity (e.g. with respect to the classification of goods and/or services; with respect to the indication of the goods and/or services; with respect to the declaration of intention to use the trademark) it will communicate this fact both to the Office of origin and to the applicant (WIPO, 2018)²⁷ in order to amend it, in the time specified by WIPO, otherwise, the application is rejected.

Register the international application - After receiving the application from the Office of origin and if there are no irregularities to be remedied or the irregularities have been amended, according to art.3 (4) of the Madrid Protocol, the WIPO shall register immediately the trademark. The registration will be either (i) with the date on which the international application was received in the Office of origin, if the WIPO receives the application within two months from that date, or (ii) with the date on which the international application was received by WIPO if it does not receive the application within two months from the date of application to the Office of origin. Notifies the office(s) of the Designated state(s) and the applicant –WIPO notifies the international registration without delay to the office(s) of the Designated state(s) and send a registration certificate to the applicant.

The role of WIPO ends with the publication of the international application in the WIPO Gazette of international trademarks – in each Designated state, the trademark owners with trademarks already registered in those states, have a legal period to oppose to international trademarks similar and/or identical with their earlier trademarks designated those states. For example, in Romania, the opposition period is of two months after the publication of the international trademark, and at EUIPO the opposition period is of three months as of the publication of the international trademark.

Step. 5 What is the role of the office(s) of the Designated state(s)²⁸ within the WIPO procedure?

After the Designated state receives WIPO's notification regarding the international registration, it will proceed to its examination according to their national rules and regulations²⁹, the duration of examination differs from state to state. For example, the office of Romania will examine ex-officio the international trademark from the perspective of absolute grounds of refusal or invalidity (e.g. signs which are devoid of distinctive character, signs which are contrary to public policy or to accepted principles of morality) and if the trademark accomplishes all the conditions for registration, it will be registered. If within two months from the trademark publication no person/entity will formulate opposition to the trademark registration, based on a relative ground of refusal

²⁷ WIPO, Guide to the international registration of marks under the Madrid Agreement and the Madrid Protocol, Geneva 2018, para. 09.01 <https://www.wipo.int/export/sites/www/madrid/en/guide/guide.pdf> (latest access January, 15, 2018).

²⁸ All communications and notices from the office of the Designated state shall be sent to the applicant through the WIPO, the WIPO receives the communications and notices from the office of the Designated state and sends them to the applicant.

²⁹ These rules and regulations differ from state to state, but regarding the member states of the European Union there are harmonized rules and regulations by the Directive (EU) 2015/2436 of the European Parliament and of the Council to approximate the laws of the Member States relating to trademarks.

(e.g. prior right - prior identical and/or similar trademark or prior identical and/or similar application) the trademark remain valid. At this step the applicant should consider that there are states, like Serbia, where other parties cannot formulate opposition to the trademark registration, because the office examines ex-officio also the relative grounds of refusal.

In regard of the absolute grounds of refusal, at European Union word trademark “Divino” was rejected at registration, it was considered to be composed of generic words that could lead to the conclusion that the sign is devoid of distinctive character because it informs the consumers that the goods applied for are of an excellent quality, beautiful design and/or perfect, flawless fabrication³⁰. In respect to the relative grounds of refusal, the European Union figurative trademark no.16806655 “Jiu Tu” was rejected to registration following the opposition of the owner of the earlier trademark “YouTube”³¹. If the trademark is definitively refused at registration by the office of a Designated state³², regardless of the ground (i.e. absolute or relative), the trademark is not considered to have protection on the territory of that state and the applicant is not allowed to start using it or must cease to use it on that territory. According to art. 4(1)(a) of the Madrid Protocol, the protection of the trademark in each Designated state shall be the same as if the trademark had been deposited and registered directly with the office of that Designated state. After the first international registration, the applicant may subsequently extend its international registration to other member states of the Madrid System by following the same procedure described above. According to art.6 (1) and art.7 (1) of the Madrid Protocol, the period of validity of the international trademark is for ten years, with the possibility of renewal for further periods of ten years.

4. CONCLUSION

The international registration of a trademark is much easier, less time-consuming and less expensive for the applicants who want to register their trademarks in multiple countries. However, the simple application for registration of an international trademark does not mean that the trademark will be registered in all states designated by the applicant, the registration for each state follows the national procedure of those states and the applicant must monitor the registration procedure for each state through the notifications received from WIPO. This article analysed the generic procedure of the intellectual property protection at the World Intellectual Property Organization. In particular, the study focused on the phases that an applicant must pass over in order to obtain an international trademark protection.

Findings revealed that WIPO’s moves depend, to a large extent, of those processes established at the level of the Designated state. Each decision of the applicant corresponds to a process or decision of the office of Origin state, office of Designated

³⁰ EUIPO, the Boards of Appeal, Case R 2521/2017-1.

³¹ EUIPO, Opposition Division, Opposition no. B 2 954 728, Decision of 30.01.2018.

³² Usually, following a notice of refusal on absolute grounds or a notice of opposition on relative grounds, the applicant has the possibility to file a defense and indicate the grounds for which its trademark should be registered.

state, and in the end of WIPO. The article mirrors for the professional community and also for the newcomer in the field the procedural and administrative arrangements to which they should reflect on before they start an application at WIPO. As we mentioned before the culture of compensation instead of the one of punishment is desirable and will probably have a significant impact in this field. Significant incentives have been already promoted without the state or international organizations implications, see in this respect the BBC Creative Archive, the Public Knowledge Project, and the Electronic Frontier in United States and Australia (Kapitzke, 2006, pp.440-1). This study considered two hypotheses and both of them were proved to be true. Moreover, they helped us to be aware of the fact that international property rights protection in the age of cloud computing and within a society with a great “copy culture” the national states’ offices must adopt a more proactive role in this area. WIPO deconcentrated administrative procedural system does not favour a community approach, based on incentives and not punishments for treaties’ violation. Nowadays, intellectual property protection, nowadays, is needed more than ever, and the role of WIPO in this new endeavour is not negligible.

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