

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

The President

DECISION No EX-99-1 OF THE PRESIDENT OF THE OFFICE

of 12 January 1999

**laying down the compensation and fees granted to witnesses and experts
(amended by Decision of the President of the Office No EX-03-2 of 20 January 2003)**

THE PRESIDENT OF THE OFFICE FOR HARMONIZATION IN THE
INTERNAL MARKET (TRADE MARKS AND DESIGNS),

Having regard to Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (hereinafter referred to as 'the Implementing Regulation'), and in particular Rule 59 (4) thereof,

Having regard to Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community design, in particular Article 45 (4) thereof,

Whereas it is necessary to determine the amounts and advances for expenses to be paid to witnesses and experts, pursuant to paragraphs 1, 2 and 3 of Rule 59 of the Implementing Regulation (IR), when evidence is taken before the Office;

Whereas the procedure for reimbursing the amounts to be paid to witnesses and experts shall be conducted in accordance with the provisions of Regulation No CB-1-95 of the Budget Committee of the Office of 7 July 1995 laying down the financial provisions applicable to the Office (OJ OHIM 1996, 809) and of Regulation No CB-1-96 of the Budget Committee of the Office of 27 February 1996 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 7 July 1995 (OJ OHIM 1996, 881),

HAS ADOPTED THE FOLLOWING DECISION:

Article 1
Scope of application

This decision determines the amounts which experts or witnesses may claim

a) in proceedings concerning Community trade marks in accordance with Rule 59 (2), (3) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark;

b) in proceedings concerning Community designs in accordance with Article 45 (2), (3) of Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs.

Article 2

(deleted)

Article 3

Travel and subsistence expenses granted to witnesses and experts

1) The travel expenses of witnesses and experts for an outward and return journey shall be calculated on the basis of the shortest route between their place of residence or place of business and the place where the evidence is taken. These expenses shall amount to:

a) the cost of a first-class rail fare plus all the usual supplements:

- the cost of seat reservations and transport of necessary luggage,
- supplements for special fast trains,
- supplements for sleeping accommodation, where the journey includes not less than six hours of night travel between 22.00 and 07.00, in a double sleeper.

b) the cost of an economy class air fare where the total distance by rail exceeds 800 km or where the route includes a seacrossing;

Reimbursement shall under no circumstances exceed the expenses really incurred by the witness or expert and shall be subject to the presentation of the relevant tickets.

c) the cost of a first-class rail fare, excluding sleeping accommodation and all other supplements, where a witness or expert uses his own car. This shall be permitted provided that the use of this means of transport does not cause the period of time envisaged for hearing the opinions by experts or examining the witnesses to be prolonged.

2) The subsistence expenses of witnesses and experts shall amount to 141,30 euro per day.

Where the length of the visit requested is less than 24 hours, the abovementioned amount shall be reduced by 50 %.

Where the length of the visit requested is more than 24 hours, an additional amount shall be granted:

a) equal to the above-mentioned amount for each period of 24 hours;

b) equal to half of the above-mentioned amount for each period equal to or less than 12 hours;

c) equal to the above-mentioned amount for each period of more than 12 hours.

3) The length of the visit requested, within the meaning of this Article, includes both the time required for the taking of evidence and the return journey to and from the seat of the Office.

Article 4 **Compensation for loss of earnings granted to witnesses**

1) The compensation for loss of earnings granted to witnesses shall amount to 120.05 euro per day.

2) Where the total length of the visit requested of the witness is more than 24 hours, additional compensation of a sum equal to the abovementioned amount shall be payable for each further period of 24 hours or fraction thereof.

3) The length of the visit requested, within the meaning of this article, includes both the time required for the taking of evidence and the return journey to and from the seat of the Office.

Article 5 **Experts' fees**

1) The amount of the fees payable to experts shall be equal to an hourly rate of a maximum of 110.68 euro.

2) The Office shall conclude a contract for the drawing up of an expert report which shall specify the purpose of the expert opinion and the total amount of the fees payable to the expert.

Article 6 **Arrangements for reimbursement**

1) Where a witness or expert is summoned during proceedings before the Office, he shall receive, in addition to the summons, a travel order signed by the competent budget authorizing officer detailing the amounts allocated pursuant to the provisions set out in Article 3 and accompanied, where appropriate, by a form for requesting the payment of an advance for the expenses in question.

The form for requesting the payment of an advance must then be returned to the Office within the specified time limit.

2) The compensation for loss of earnings or the fees referred to in Articles 4 and 5 shall be paid to the witnesses or experts upon request.

The aforementioned payments, as well as the payment of any travel and subsistence expenses still owed, shall be effected once the witness or expert has fulfilled his duties.

3) This decision shall not be without prejudice to the Financial Regulation of the Office adopted pursuant to Article 138 of the Community Trade Mark Regulation.

Article 7
Entry into force

This decision shall enter into force on the day following its publication in the Official Journal of the Office.

Done at Alicante, 12 January 1999

Jean-Claude Combaldieu
President