

COMPANIES AND INTELLECTUAL  
PROPERTY REGISTRATION OFFICE

a member of the dti group

## NOTICE

### CIPRO OFFICE GUIDELINES WITH REGARD TO THE LODGING OF NON-TRADITIONAL TRADE MARKS

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#### 1. PURPOSE

The purposes of this document is to amend the existing office guidelines in relation to the examination of trade marks, by the addition of procedures on dealing with non-traditional trade marks.

This document will provide guidelines with regard to requirements for lodging applications for non-traditional trade marks. For purposes of examination of non-traditional trade marks in order to determine registrability, further requirements such as, for example, evidence of use may be set by the Registrar.

#### 2. DISCUSSION

##### a. Three-dimensional marks

- a single view of the representation of a three-dimensional mark will be accepted, provided it is possible to determine the three-dimensional nature from the single view
- the trade mark as advertised must correspond with the trade mark as depicted in the application form, i.e. all views as originally submitted must be published

##### b. Colour marks

- the representation should consist of a sample of colour(s) on paper or in electronic format (which sample will constitute an addition to the subject matter of the trade mark)
- the application should contain an indication of the recognized international colour codes
- a written description of how the colour is applied to the goods or used in relation to the services must accompany the application

##### c. Holograms

- with regard to representation, either a single or multiple views will be acceptable, provided it is possible to determine the holographic nature of the mark from the view/s as submitted
- a description explaining the holographic effect of the mark must accompany the application

##### d. Motion/Multimedia marks

- with regard to representation, a series of still images of the mark will be required
- a detailed written description explaining the movement of the mark will be required
- the chronological order of the images should be specified by including the sequence in the written description
- an electronic file in analog or digital format, together with a written description outlining the nature of the mark and describing the movement may be required for purposes of examination of the applications

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#### e. Position marks

- position marks will be treated as figurative marks
- a clear description of what constitutes the mark that protection is sought for will need to accompany the application

#### f. Gesture marks

- gesture marks will be treated as the subject of the other type of mark it represents, for example a motion or figurative mark
- the representation of such a mark could consist of a single picture when the mark is treated as a figurative mark, or several frames depicting the gesture if the mark is considered a motion mark
- a written description explaining the gesture may also be required for purposes of examination of the applications

#### g. Sound marks

- with regard to representation, it will be required that the mark be reflected in a musical notation on a stave
- a written description of the mark will be required
- an analog or digital recording of the mark will be required

#### h. Olfactory (smell/scent) marks

- with regard to representation, at the least a written description of the mark will be required
- any other conditions as may be required for purposes of examination of the mark, eg specimen of the mark, may be required by the office
- the "Sieckmann criteria" will be applicable in relation to marks of this nature – it must be clear, precise, self-contained, easily accessible, intelligible, durable and objective

#### i. Taste marks

- with regard to representation, an indication of the type of mark will be required
- a written description depicting the characteristics of the taste will be required

#### j. Texture marks

- with regard to representation, an indication or statement concerning the type of mark will be required
- a detailed written description of the mark will be required
- a representation/sample of the surface must accompany the application