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Modernisation of the IPR System in the Russian Federation P4M-IP

**Gap Analysis of the EU and Russian
approaches to appeal procedures.
Recommendations and proposals for an
approximation of the current systems**



Project Component Number: C4

Activity Cluster:

Key Activity Code:

Title: Gap analysis, Recommendations

Beneficiary/ies: MANAGEMENT AND STAFF ROSPATENT

Subject(s): Comparison of Russian and EU approaches to Appeal Procedures (based on a common survey answered by both parties) and Recommendations Report

Proposed Location(s): OHIM, Spain

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SUMMARY

This document proposes a gap analysis of the differences between Russian and EU approaches to appeal procedures (based on a common questionnaire answered by both parties) and Recommendations and proposals for modernisation of the current Russian system and approximation with that of the EU.

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The contents of this document do not necessarily reflect the position or opinion of the European Union.

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I. Introduction

Objectives and tasks of Component 4

The present Gap Analysis and Recommendations has been carried out in the framework of the Modernisation of the Intellectual Property Rights (IPR) System in the Russian Federation project (P4M-IP), funded by the European Union (EU). The Office for Harmonization in the Internal Market and the Federal Service for Intellectual Property of the Russian Federation (ROSPATENT), team up in the P4M-IP project with the purpose of facilitating the modernisation of specific areas of the IPR sector in Russia, as well as to increase the integration and approximation of the EU and Russian systems, to help overcome the territoriality of IPRs.

The Gap Analysis and Recommendations are delivered in the context of component C.4 (“Appeals Procedures”) of the project which main objective is to contribute to the “Modernisation and Alignment of Appeal Procedures for Trademarks and Designs”. The component contains three activities:

C 4.1. Comparison of the EU and Russian approaches to appeal procedures (Gap analysis).

C 4.2. Recommendations and proposals for approximation of the current systems.

C 4.3. Seminar/Roundtable with stakeholders to discuss the Analysis with Recommendations and some comments and conclusions with interested parties (Programmed for 4 December 2015 in Moscow).

II. Comparison of the EU and Russian approaches to appeal procedures (C 4.1. “Gap analysis”)

II.1. Content

This document contains the Comparison of the EU and Russian approaches to appeal procedures (C4.1. “Gap analysis”). It consists of two Sections:

- An edited text based on the replies to the “Common Questionnaire” elaborated and responded by both parties. The Questionnaire covers the main organizational issues in the appeal instances within both institutions, procedural and substantial aspects of the appeal procedures for trademarks and designs as well as the possible alternative dispute resolution procedures in this field that can be carried out before the both offices.
- A Comparative Table drawn up on the basis of the Common Questionnaire. In this Table the main similarities and differences between Russian and EU appellate systems for trademarks and designs have been identified and characterized. As an intermediate result, some commentaries and proposals have been included into this Table.

II.2. Structure, methods and scope of analysis

The methodology chosen for the C 4.1. “Gap Analysis” is that of a synoptic legal comparison, allowing to provide analytical comments and conclusions.

C 4.1. is to be understood as a first step, completed by the other two activities C 4.2. and C 4.3. described above.

The information which comes under the scope of the present analysis has been provided by OHIM and ROPSATENT. It includes “General” information on the main features and statistics of both appeals systems, to more specific legal and

administrative aspects related with the procedures such as legal basis and entitlement; the form of the proceedings (*ex parte* or *inter-partes*); rules for representation; time limits; rules governing fees; legal (“suspensive”) effect of an appeal; revision (or not) of first instance decisions as a consequence of the BoA decisions etc. In addition, “special” ADR procedures are covered, specifically in the case of OHIM BoA which offers a Mediation Service for *inter-partes* proceedings.

The gap study covers a series of legal acts and administrative regulations which were used as a basis of the comparison and analysis. They are particularized in the relevant parts of the Questionnaire and the Comparison Table for each system.

In general, the principal legal texts that govern the organization and work of the appeal instances of ROSPATENT and OHIM fall under the scope of the Analysis. These are the relevant provisions of the Civil Code of the Russian Federation; the Rules of filing objections and applications and their consideration by the Chamber of Patent Disputes as approved by Order No 56 of 22 April 2003 of the Federal Service for Intellectual Property (Rospatent); Rospatent Order No 32 of 22 February 2008, on activities carried out by the panels of the Chamber of Patent Disputes, on one side, and relevant articles of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark; Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ EC No L 3 of 5.1.2002, p. 1) amended by Council Regulation No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs; Commission Regulation (EC) No 216/96 of 5 February 1996, as amended by Regulation (EC) No 2082/2004, laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs); Decision No 2013-3 of the Presidium of the Boards of Appeal of 5 July 2013 on the amicable settlement of disputes, on the other.

II.3. The Common Questionnaire on Appeals in OHIM and ROSPATENT

Introduction

The Common Questionnaire has been elaborated and responded by both parties - Chamber of Patent Disputes (FIPS/Rospatent) (CoPD FIPS) and Boards of Appeal (OHIM) (BoA OHIM). Uniform questions were discussed and proposed by the expert groups of ROSPATENT and OHIM Boards of Appeals in order to cover to the fullest extent possible the aspects related to the appellate proceedings carried out in both institutions that are of special interest of the project partners.

All the questions prepared were categorized into three subgroups:

1. the General Questions dealing with the issues related to organization of work in the appeal instances within both institutions, the independency and the structure of the of the appeal instances, the general overview of the procedures carried out by the BoA and CoPD, their position within the hierarchical system of dispute resolution and some statistical data.
2. the Appeal Procedure presenting the structural and detailed overview of the appeal procedure for trademarks and designs in both BoA and CoPD, including procedural and substantial aspects.
3. the Other Procedures: Mediation characterizing some alternative dispute resolution proceedings, in particular the main procedural and substantial aspects of mediation carried out before BoA OHIM, as well as some statistical data.

The questionnaire has been responded by both institutions (for ROSPATENT in Russian and for OHIM in English). Then it has been edited and translated in order to have consolidated versions both in Russian and English.

The consolidated versions have constituted the basis for the “Comparison Table” (see the next section of the Gap Analysis), which was prepared and edited by OHIM and submitted for comments to ROSPATENT. A series of Recommendations were also included.

1. GENERAL QUESTIONS

1.1 What is the legal status of the appeals instance?	
Is it an independent or ‘stand-alone’ organisation or is it integrated in the departmental structure of the organisation?	
CoPD FIPS	BoA OHIM
The Chamber of Patent Disputes (‘CoPD’) is an organisational department of the Federal Institute of Industrial Property (‘FIPS’)*.	As regards decision-making, members of the Boards of Appeal are independent and are not bound by any instructions either from the administration of the Office or national authorities or any other third parties (Article 136 CTMR). However, the Boards of Appeal are within the administrative structure of the Office. Nevertheless, the President of the Boards has managerial and organisational powers to organise the work of the Boards, implement Office administrative decisions, allocate cases, and forecast expenditure requirements (see Article 136(1) CTMR and Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ L 28, 6.2.1996, p. 11) amended by Commission Regulation (EC) No 2082/2004 of 6 December 2004 (OJ L 360, 7.12.2004, p. 8) (‘RoPBOA’).
1.2 Level of intervention	
CoPD FIPS	BoA OHIM
Appeals instance CoPD FIPS performs a review of the legality of a decision taken at the examination stage after its entry into force.	Board performs a review of the legality and expediency of a decision taken by the Office once the decision has been taken, signed and notified to the parties by Office 1 st instance (i.e. decisions of the examiners, opposition decisions, cancellation decisions (trade marks) and invalidity decisions (designs)).

* The Federal Institute of Industrial Property (FIPS) is incorporated in the structure of the Federal Service for Intellectual Property (Rospatent), which performs functions and powers of the founder of FIPS. **The main responsibilities** of FIPS are carrying out preparatory work for the implementation of Rospatent legal actions related to the legal protection and the protection of the results following from intellectual activity and means of individualisation: inventions, utility models, industrial designs, trade marks, service marks, appellation of origin of goods, computer programs, databases and topographies of integral circuits, as well as acquiring and using scientific knowledge for scientific and technical support for examination of intellectual property results and means of individualisation.

1.3 Where is it located?

CoPD FIPS	BoA OHIM
CoPD is located in Moscow, Russia.	OHIM's headquarters are located in Alicante, Spain. OHIM also has a branch office in Brussels.

1.4 What is the organisational structure of the appeals instance?

Describe and provide — if possible — an organigram. Please specify whether the composition of structural subdivisions (especially the boards) is fixed and do they specialise (e.g. some subdivisions/boards deal with *ex parte* proceedings, some of them *inter partes*).

CoPD FIPS	BoA OHIM
<p>Organizational structure of the Chamber of Patent Disputes (CoPD)</p> <p>CoPD consists of 4 divisions:</p> <ul style="list-style-type: none"> Division of legal representation (Division 30, Head of Division: G.V. 	<p>BOARDS OF APPEAL</p> <p>There is no specialisation in terms of the types of cases dealt with by each of the ordinary Boards (First to Fifth Boards). All the Boards deal with both <i>ex parte</i> and <i>inter partes</i> cases. There is one exception as regards the Third</p>

<p>Razumova);</p> <ul style="list-style-type: none"> • CoPD Division of the means of individualisation (Division 33, Head of Division: S.V. Talyansky); • CoPD Division of the patent law objects (Division 63, Head of Division: I.D. Igumnova); • Section of organisational support of CoPD activity (Division 100, Head of Section: I.G. Ostashenko). <p>Head of Department, ‘the Chamber of Patent Disputes’: N.V. Lozhkina.</p> <p>Oppositions and applications filed at CoPD should be examined on a collective basis (minimum of 3 persons) regardless of the type of dispute (<i>ex parte</i> or <i>inter partes</i>) (paragraph 4.1, CoPD Rules)¹.</p>	<p>Board, which only deals with design cases and is composed of members taken from other Boards. Other than this, case allocation to the individual Boards is based on various factors, such as languages spoken, equal numbers of cases allocated, etc. According to Article 1(a) RoPBOA, the Grand Board comprises nine members, including the President of the Boards of Appeal, who chairs it, the chairpersons of the Boards, the rapporteur designated prior to referral to the Grand Board, if applicable, and members drawn in rotation from a list comprising the names of all members of the Boards of Appeal other than the President of the Boards of Appeal and the chairpersons of the Boards. Cases are referred to that Board if justified by the legal difficulty or importance of the case or by special circumstances, for example, if Boards of Appeal have issued diverging decisions on a point of law raised by that case (See Article 1(b) RoPBOA).</p>
<p>1.5 What is the legal basis that governs the organisation and work of the appeals instance?</p>	
<p style="text-align: center;">CoPD FIPS</p> <p>CoPD carries out its activities in accordance with the Constitution of the Russian Federation, international agreements of which Russia is a member, federal laws, decrees and orders of the President of the Russian Federation, resolutions and orders of the government of the Russian Federation, regulations on the Federal service for intellectual property, patents and trade marks, the Rules of the Chamber of Patent Disputes, approved by Rospatent Order No 56 of 22 April 2003, with changes and amendments (‘CoPD Rules’) insofar as it does not conflict with the provisions of the Civil Code of the Russian Federation (‘the Code’), the Charter of the FIPS, and other regulatory legal acts (paragraph 2 of the Regulations on the panel of the CoPD²).</p> <p>The composition and the organisational structure of CoPD is regulated by</p>	<p style="text-align: center;">BoA OHIM</p> <p>The Boards of Appeal are governed by Article 136 CTMR in conjunction with Commission Regulation (EC) No 216/96 of 5 February 1996, as amended by Regulation (EC) No 2082/2004, laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (‘RoPBoA’) as well as Presidium decisions.</p> <p>According to Article 1 RoPBoA, the Presidium is responsible for the rules and organisation of the Boards of Appeal, including the allocation of members to the specific Boards and specifying rules for allocating cases to the Boards. It is composed of the President of the Boards of Appeal, who chairs it, as well as the chairpersons of the Boards and members elected for each calendar year by all the members of the Boards (excluding the President</p>

¹ Rules of filing objections and applications and their consideration by the Chamber of Patent Disputes as approved by Order No 56 of 22 April 2003 of the Federal Service for Intellectual Property (Rospatent).

² Rospatent Order No 32 of 22 February 2008, on activities carried out by the panels of the Chamber of Patent Disputes.

internal acts of FIPS.	and the chairpersons of the Boards of Appeal).
1.6 Appointment of senior appeal staff	
CoPD FIPS	BoA OHIM
The Head of the Chamber of Patent Disputes and CoPD FIPS staff members are appointed by orders of the Director of Rospatent. The list of employees involved in participation in consideration of cases is formed from other staff members from different Rospatent/FIPS departments and shall be approved by Rospatent Order.	<p>The President of Boards of Appeal and the Chairpersons of the individual Boards are appointed by the EU Council of Ministers following the proposal of the Administrative Boards of OHIM after publication of an open vacancy notice.</p> <p>The Members of the Boards of Appeal are appointed by the Administrative Board of OHIM after publication of an open vacancy notice.</p>
1.7 What is the language of correspondence in the appeals instance?	
CoPD FIPS	BoA OHIM
The language of correspondence at CoPD is Russian.	OHIM's Boards of Appeal work in all 23 official languages of the European Union.
1.8 How many people work for the appeals instance? Please indicate the total headcount and number of experts who are entitled to pass judgments.	
CoPD FIPS	BoA OHIM
<p>The total headcount of CoPD is 66 staff members.</p> <p>There are 24 experts among them who are entitled to pass judgments (concerning all industrial property: inventions, utility models, industrial designs, trade marks, appellations of origin), the other staff members deal with legal representation of Rospatent and FIPS in courts and with technical support for CoPD.</p> <p>In addition, according to the list of experts approved by Rospatent Order No 32 of 22 February 2008, some other staff members from different Rospatent/FIPS departments can be called upon to take part in deciding on a case.</p>	Within the Boards of Appeal, there are 18 members who take decisions (including three chairpersons). Each member is supported by a legal assistant, who helps draft decisions, as well as by a secretary.

1.9 What are the procedures that the appeals instance deals with (e.g. appeals, mediation, invalidation, cancellation, etc.)?

CoPD FIPS	BoA OHIM
<p>CoPD examines the following applications and objections (paragraph 1.6 CoPD Rules):</p> <ul style="list-style-type: none"> • appeals against decisions refusing the grant of a patent or decisions to grant a patent for an invention, utility model or industrial design; • appeals against decisions on recognition of an application for an invention, utility model or industrial design withdrawn; • objections against granting a patent for an invention, utility model or industrial design; • objections against the effect within the territory of the Russian Federation of prior inventors' certificates or patents of the USSR for an invention, certificate or patent of the USSR for an industrial design, Eurasian patent for an invention issued under the Eurasian Patent Convention of 9 September 1994; • appeals against decisions made on the results of formal examination of an application for a trade mark or service mark ('trade mark'), registration and granting the right to use an appellation of origin of goods or granting the right to use an appellation of origin of goods already registered, on refusal to admit an application for examination; • appeals against the decisions of examination of a claimed sign on the application for trade mark registration, the registration and granting the right to use an appellation of place of origin of goods or granting a right to use registered appellation of origin of goods and the decision on granting or refusal to grant protection made in accordance with the Madrid Agreement Concerning the International Registration of Marks (as amended on September 28, 1979) or the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (adopted at Madrid on June 27, 1989); • appeals against the decision on recognition of an application for a trade 	<p>According to Article 58 CTMR and Article 55 CDR, an appeal lies from decisions of the examiners (<i>ex parte</i> absolute grounds trade mark and designs examination), opposition divisions (<i>inter partes</i> opposition cases in trade mark matters), administration of trade marks and legal divisions (<i>ex parte</i> recording of transfers, licences, <i>in rem</i> rights and bankruptcies, etc. in the Community Trade Mark or Design Register), cancellation divisions (<i>inter partes</i> revocation and invalidity cases in trade mark matters) and the invalidity division (<i>inter partes</i> relative grounds decisions on invalidity in designs).</p> <p>OHIM's mediation service is currently located within the Boards of Appeal. All mediators must be OHIM staff. However, not all mediators of this service are Boards of Appeal staff, some are from other OHIM departments.</p>

<p>mark, application for registration and granting the right to use an appellation of origin of goods or granting the right to use an appellation of origin of goods already registered withdrawn;</p> <ul style="list-style-type: none"> • objections to the granting of legal protection to a trade mark, appellation of origin of goods, issuance of the certificate for the right to use the appellation of origin of goods, against the effect in the territory of the Russian Federation of a trade mark, service mark registered in the USSR, and against the grant of protection of international registration of a mark within the territory of the Russian Federation; • objections against the granting of legal protection to a trade mark in the name of an agent or representative of the person who is the holder of the exclusive right to this trade mark in one of the States parties to the Paris Convention for the Protection of Industrial Property of 20 March 1883; • applications for recognition of a trade mark as well-known in the Russian Federation; • applications for early termination of legal protection of a trade mark in the case of conversion of a registered trade mark in the designation that has come into general use as a designation of goods of a certain kind; • applications for termination of legal protection of an appellation of origin of goods and validity of the certificate for the right to use the appellation of origin of goods or termination of validity of the certificate for the right to use the appellation of origin of goods; • objections to the granting of legal protection of a well-known trade mark in the Russian Federation. 	
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**1.10 How many judgements on average does the appeals instance render per year:
appeals decisions (on TMs and Designs) and decisions made in other proceedings?**

CoPD FIPS	BoA OHIM																																																																																																																																																																																																																																																							
CoPD renders approximately 1 200 decisions on trade marks per year (900 on appeals) and on industrial designs — about 20 decisions per year (half of this number is accounted for by decisions on appeals).	<table><tr><th colspan="13">MONTHLY SUMMARY</th></tr><tr><th></th><th>Apr-15</th><th>2015</th><th>2014</th><th>2013</th><th>2012</th><th>2011</th><th>2010</th><th>2009</th><th>2008</th><th>2007</th><th>2006</th><th>2005-97</th></tr><tr><td>Appeals Filed</td><td>214</td><td>859</td><td>3284</td><td>2602</td><td>2339</td><td>2622</td><td>2570</td><td>1588</td><td>1815</td><td>1952</td><td>1659</td><td>7862</td></tr><tr><td>Decisions</td><td>235</td><td>862</td><td>2783</td><td>2568</td><td>2513</td><td>2166</td><td>1787</td><td>1848</td><td>1866</td><td>1776</td><td>1657</td><td>5740</td></tr><tr><td>Appeals Closed</td><td>240</td><td>876</td><td>2855</td><td>2587</td><td>2547</td><td>2202</td><td>1801</td><td>1864</td><td>1890</td><td>1800</td><td>1675</td><td>6315</td></tr><tr><td>Appeals Pending</td><td></td><td>2813</td><td>2833</td><td>2361</td><td>2352</td><td>2573</td><td>2157</td><td>1372</td><td>1618</td><td>1670</td><td>1531</td><td>1547</td></tr><tr><td>of which ready for decision</td><td></td><td>1061</td><td>954</td><td>861</td><td>1080</td><td>804</td><td>533</td><td>472</td><td>672</td><td>632</td><td>621</td><td></td></tr><tr><td>- filed in 2004-1999</td><td></td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>6</td><td>9</td><td>17</td><td>43</td><td>255</td></tr><tr><td>- filed in 2005</td><td></td><td>7</td><td>7</td><td>7</td><td>7</td><td>7</td><td>11</td><td>12</td><td>27</td><td>78</td><td>284</td><td>1202</td></tr><tr><td>- filed in 2006</td><td></td><td>8</td><td>8</td><td>8</td><td>8</td><td>8</td><td>12</td><td>26</td><td>49</td><td>216</td><td>1204</td><td></td></tr><tr><td>- filed in 2007</td><td></td><td>7</td><td>7</td><td>7</td><td>7</td><td>9</td><td>17</td><td>32</td><td>262</td><td>1359</td><td></td><td></td></tr><tr><td>- filed in 2008</td><td></td><td>3</td><td>3</td><td>4</td><td>5</td><td>10</td><td>25</td><td>186</td><td>1271</td><td></td><td></td><td></td></tr><tr><td>- filed in 2009</td><td></td><td>3</td><td>3</td><td>3</td><td>6</td><td>30</td><td>126</td><td>1110</td><td></td><td></td><td></td><td></td></tr><tr><td>- filed in 2010</td><td></td><td>2</td><td>3</td><td>25</td><td>48</td><td>347</td><td>1965</td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>- filed in 2011</td><td></td><td>24</td><td>31</td><td>66</td><td>428</td><td>2161</td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>- filed in 2012</td><td></td><td>55</td><td>66</td><td>268</td><td>1842</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>- filed in 2013</td><td></td><td>137</td><td>250</td><td>1974</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>- filed in 2014</td><td></td><td>1724</td><td>2454</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>- filed in 2015</td><td></td><td>842</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>	MONTHLY SUMMARY														Apr-15	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005-97	Appeals Filed	214	859	3284	2602	2339	2622	2570	1588	1815	1952	1659	7862	Decisions	235	862	2783	2568	2513	2166	1787	1848	1866	1776	1657	5740	Appeals Closed	240	876	2855	2587	2547	2202	1801	1864	1890	1800	1675	6315	Appeals Pending		2813	2833	2361	2352	2573	2157	1372	1618	1670	1531	1547	of which ready for decision		1061	954	861	1080	804	533	472	672	632	621		- filed in 2004-1999		1	1	1	1	1	1	6	9	17	43	255	- filed in 2005		7	7	7	7	7	11	12	27	78	284	1202	- filed in 2006		8	8	8	8	8	12	26	49	216	1204		- filed in 2007		7	7	7	7	9	17	32	262	1359			- filed in 2008		3	3	4	5	10	25	186	1271				- filed in 2009		3	3	3	6	30	126	1110					- filed in 2010		2	3	25	48	347	1965						- filed in 2011		24	31	66	428	2161							- filed in 2012		55	66	268	1842								- filed in 2013		137	250	1974									- filed in 2014		1724	2454										- filed in 2015		842										
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1.11 Are the decisions of the appeals instance controlled by the Office?

Is it possible for the Office to express its disagreement with an appeals instance decision? If so, in what form and what are the consequences?

CoPD FIPS	BoA OHIM
A decision of CoPD should be approved by the Director of Rospatent and comes into force from the date of its approval. If a decision of CoPD is not approved, the Director of Rospatent should send an opposition or application for re-examination of the case by another college/panel of CoPD (paragraph 6.3 CoPD Rules).	The members of the Boards of Appeal work independently (see Article 136 CTMR), which means that OHIM cannot instruct the Boards. Its decisions are solely based on the relevant regulations, as interpreted by case-law from the Court of Justice of the European Union and the General Court of the European Union. Existing decisions of the Boards can also be taken into account but are not binding. According to Article 65(1) CTMR, decisions of

	the Boards of Appeal can only be appealed by the parties before the General Court within two months of notification of the contested decision ³ . When an appeal is lodged, OHIM becomes a party to the Court proceedings and almost invariably defends the decision of the Board of Appeal. However, in very exceptional circumstances, OHIM may decide not to defend the decision of the Board before the General Court. The judgments of the General Court can, on a point of law, be subsequently appealed before the Court of Justice by either the parties or OHIM.
1.12 What are the authorities/effects of the appeals instance decisions? Enforceable? Binding for first instance? If so, to what extent?	
CoPD FIPS	BoA OHIM
<p>Rospatent decisions made after examining oppositions and appeals at the hearings in CoPD have a constitutive effect. The protection of industrial property objects is granted or terminated on the basis of those decisions.</p> <p>Rospatent decision made by the results of consideration of an objection/application by the Chamber for patent disputes may be challenged in a judicial proceeding in the Court for Intellectual Rights.</p>	<p>Decisions of the Boards of Appeal only affect the Community Trade Mark and Design Registers. Neither OHIM nor its Boards of Appeal provide injunctive relief or rule on infringement matters. These are dealt with by specially designated courts in each EU Member State ('Community Trade Mark and Design Courts').</p> <p>Boards of Appeal decisions are binding on the first instance of the Office. They are only enforceable by national authorities as regards the award of costs.</p> <p>According to Article 58 CTMR and Article 55 CDR, where an appeal is filed against a decision of the first instance of the Office within two months from the notification of that decision, the appeal has suspensive effect and consequently the first instance decision is not final.</p>

³ Article 65 CTMR (mirrored by Article 61 CDR) foresees that:

1. Actions may be brought before the Court of Justice against decisions of the Boards of Appeal on appeals.
2. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application or misuse of power.
3. The Court of Justice has jurisdiction to annul or to alter the contested decision.
4. The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.
5. The action shall be brought before the Court of Justice within two months of the date of notification of the decision of the Board of Appeal.
6. The Office shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

1.13 What is the procedure for challenging appeals instance decisions?

Which court is competent and on what grounds can the appeals instance decision be challenged?

CoPD FIPS	BoA OHIM
<p>Rospatent decisions adopted on the results of oppositions and appeals examination at CoPD can be challenged before the court, as this is provided for by law (Article 1248 of RF Civil Code*).</p> <p>In accordance with Russian legislation, the abovementioned decisions of Rospatent can be challenged before the Court for Intellectual Rights, which is a specialised arbitration court (Article 33, paragraph 4.2, Part I of the Arbitration Procedural Code of the Russian Federation).</p> <p>The decisions of the Court for Intellectual Rights , adopted by the court of first instance, may be challenged in cassation before the Presidium of the Court for Intellectual Rights. Decrees of the Presidium of the Court for Intellectual Rights may be challenged in cassation before the Supreme Court of the Russian Federation.</p> <p>The ground for challenging and reversal of decisions of Rospatent in court may be a violation of substantive and procedural law by the public authority.</p>	<p>See answer to question 1.9.</p>

* Article 1248. Disputes Connected with the Enforcement of Intellectual Rights:

1. Disputes connected with the enforcement of infringed or contested intellectual rights shall be considered and resolved by a court (paragraph 1 of Article 11).
2. In cases provided by the present Code, enforcement of intellectual property rights as concerns filing and processing of applications to grant the patents for inventions, utility models, industrial designs, selection attainments, trade marks, service marks, and appellations of origin, official registration of these results of intellectual activity and means of individualisation, the grant of the appropriate right-establishing documents, the contesting of granting legal protection for these results and means, or its termination shall be made under administrative procedure (paragraph 2 of Article 11) correspondingly by the federal executive authority for intellectual property and by the federal executive authority for selection attainments, and in cases provided for by Articles 1401–1406 of the present Code, by the federal executive authority body authorised by the Government of the Russian Federation (paragraph 2 of Article 1401). The decisions of these authorities shall enter into force on the date of their adoption. They may be contested in a court following the procedure established by the law.
3. The procedures for consideration and resolution of disputes, as specified in paragraph 2 of the present Article, for the federal executive authority for intellectual property, as well as for the federal executive authority for selection attainments shall be adopted correspondingly by the federal executive authority responsible for normative and legal regulation in the area of intellectual property and by the federal executive authority responsible for normative and legal regulation in the area of agriculture. The procedures for consideration and resolution of disputes connected with secret inventions as specified in paragraph 2 of the present Article shall be adopted by the authorised body (paragraph 2 of Article 1401).

1.14 How many of the appeals instance decisions are challenged in courts of superior jurisdiction on average?																	
CoPD FIPS				BoA OHIM													
On average, 17 % of the decisions on trade marks and 30 % of the decisions on patents are appealed in CoPD. According to the data from 2013 to 2014, 261 decisions of Rospatent per year were challenged judicially on average.				ACTIONS BROUGHT BEFORE GC (CJ) (at 01/04/2015)													
						2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004-03
				<input type="checkbox"/> ex parte		22(2)	93(6)	52(5)	35(2)	41(9)	48(15)	42(6)	56(8)	55(5)	47(4)	30(5)	44(6)
				<input type="checkbox"/> inter partes		58(10)	188(27)	239(33)	187(39)	169(33)	140(22)	165(23)	138(16)	110(9)	95(14)	68(11)	165(8)
1.15 Is there any database for appeals instance decisions? Who may access the content of a decision?																	
CoPD FIPS				BoA OHIM													
The decisions of CoPD are published on the FIPS web page http://www.fips.ru/SiteDocs/pps_search.htm and are freely available.				All decisions of the Boards of Appeal can be found in the eSearch Case Law database: https://oami.europa.eu/eSearchCLW/ .													
1.16 What method of correspondence is normally used?																	
CoPD FIPS				BoA OHIM													
Postal communication is the general method of correspondence. Upon the applicant's request in <i>ex parte</i> procedures (objections to decisions), it is possible to communicate electronically via the applicant's 'My Account'.				Currently, the most frequent means of communication with the Boards of Appeal is fax communication. Having said this, the Boards of Appeal are currently developing a new IT tool that would allow users not only to file the notice of appeal electronically but also to communicate fully with the Boards of Appeal by electronic means.													

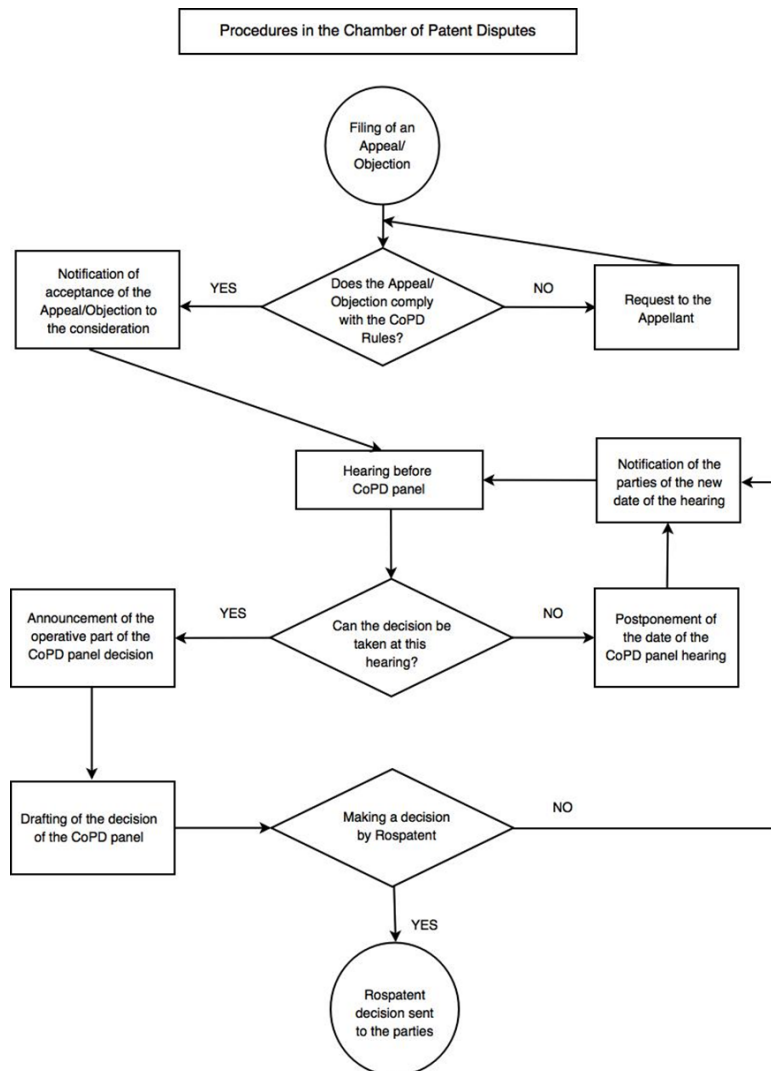
2. APPEAL PROCEDURE

2.1 What is the legal basis for appeals?	
CoPD FIPS	BoA OHIM
<p>The legal basis for the procedure of consideration of objections at CoPD is established in the provisions of Article 1248 of the Code, according to which in the cases specified by the Code, the protection of intellectual property rights related to filing and consideration of applications for the grant of patents for inventions, utility models, industrial designs, selection attainments, trade marks, service marks and appellations of origin of goods, with the state registration of these results of intellectual activity and means of individualisation, with the issuance of the corresponding title documents, with challenging the provision of protection for these results and means or its termination, should be exercised by administrative means.</p> <p>The procedure for consideration of objections in CoPD is governed by the CoPD Rules and by Rospatent Order No 32 of 22 February 2008, on activities carried out by the panels of the Chamber of Patent Disputes.</p>	<p>Articles 58–65 CTMR, Articles 55–61 CDR.</p>
2.2 What decisions are subject to an appeal before the appeals instance?	
CoPD FIPS	BoA OHIM
<p>In accordance with Articles 1387, 1390 and 1391 of the Code, CoPD is in charge of considering objections to the decisions on the grant of a patent for an invention, utility model or industrial design, to the decisions on refusal to issue such patents and to the decisions on recognition of an application for an invention, utility model or industrial design as withdrawn.</p> <p>In accordance with Articles 1500 and 1528 of the Code, CoPD considers objections to the decisions on refusal of acceptance for examination of an application for a trade mark, appellation of origin of goods for consideration, to the decisions on the state registration of a trade mark, appellation of origin of goods and granting the exclusive right to an appellation of origin of goods, to the decisions on refusal to register a trade mark, appellation of origin of</p>	<p>See answer to question 1.7.</p>

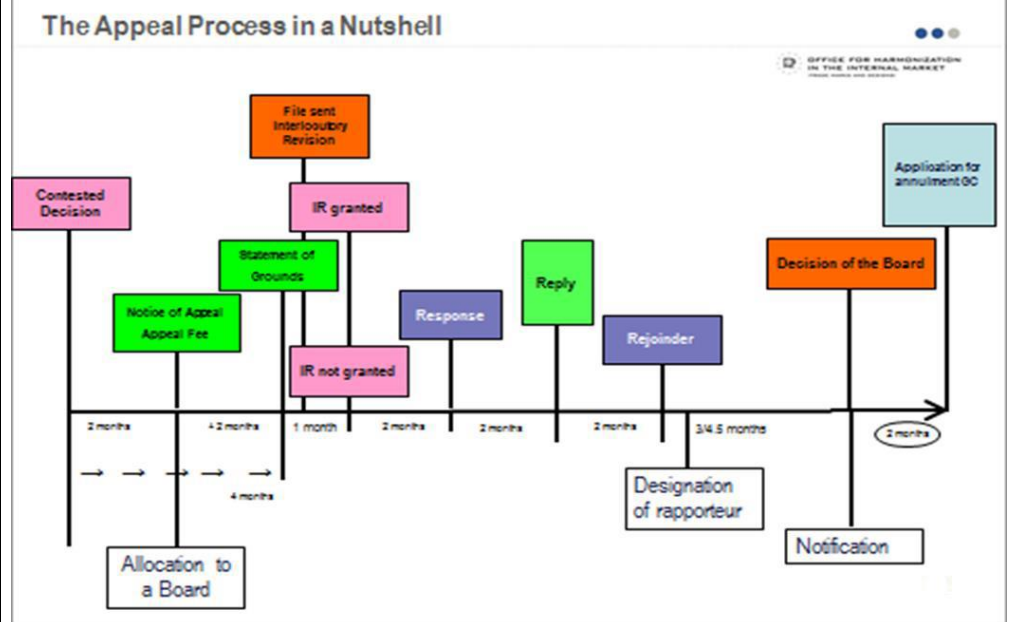
<p>goods and granting the exclusive right to an appellation of origin of goods, to the decisions on recognition of an application for a trade mark, appellation of origin of goods as withdrawn.</p> <p>In addition, under the law in force, CoPD considers the disputes on annulment of the grant of legal protection to a trade mark, appellation of origin of goods and the exclusive right to such appellation of origin, and in the cases established by law, disputes on invalidation of a patent for invention, utility model or industrial design (Part I of CoPD Rules).</p>	
<p>2.3 Are the appeals <i>ex parte</i> or <i>inter-partes</i> proceedings? Please describe the procedures for each case.</p>	
<p>CoPD FIPS</p>	<p>BoA OHIM</p>
<p>The procedure for considering objections in CoPD is <i>ex parte</i> proceedings in cases of objections filed by a person who submitted the respective application (applicant) against Rospatent's decision adopted on the results of the formal examination or substantive examination of an application.</p> <p>In cases of challenges by third parties to the issuing of a patent for invention, utility model or industrial design, challenging the grant of legal protection to a trade mark, appellation of origin of goods, the procedure for consideration of objections at CoPD is <i>inter partes</i> proceedings.</p> <p>For the above cases, a uniform procedure for the consideration of objections and applications/appeals filed with CoPD has been established and provided for by CoPD Rules.</p> <p>However, it is obvious that in cases of considering objections to the decisions of Rospatent, adopted on the results of a formal examination or substantive examination, the relevant provisions of the CoPD Rules relating to the challenging of the registered trade mark, etc., for example, concerning the speeches of the right holder of a trade mark, the procedure for amending a trade mark, etc. will not be applied.</p>	<p>See answers to questions 1.7 and 2.4.</p>

2.4 Please provide a flow diagram(s) of the procedures where the appeals instance intervenes.

CoPD FIPS



BoA OHIM



2.5 Who is entitled to appeal?	
CoPD FIPS	BoA OHIM
<p>In accordance with paragraph 2.1 CoPD Rules:</p> <ul style="list-style-type: none"> • objections under paragraphs 1.1–1.2, 1.5–1.7 of CoPD Rules should be filed by the person that has applied for the grant of a patent for an invention, utility model, industrial design, for trade mark registration, registration and granting of the right to use an appellation of origin of goods or granting a right to use registered appellation of origin of goods. • objection against grant of patent for an industrial design should be filed by any person (paragraph 2 of article 1398 of the Code), objection against provision of legal protection to a trademark shall be filed by an interested person (paragraph 2 of article 1513 of the Code). • objections under paragraph 1.9 of CoPD Rules should be submitted by an interested holder of the exclusive right to a trade mark in one of the States parties to the Paris Convention for the Protection of Industrial Property. • applications provided for in paragraph 1.10 of CoPD Rules should be filed by persons who consider their trade mark well-known. • application for early termination of legal protection of a trademark in case of its conversion into a designation that has come into general use as a designation of goods of a certain kind, shall be submitted by an interested person. 	<p>According to Article 59 CTMR and Article 56 CDR, any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.</p>
2.6 What are the rules for representatives? Is representation obligatory? Who can be a representative?	
CoPD FIPS	BoA OHIM
<p>In accordance with article 1247 of the Code:</p> <p>1. The proceedings with the federal executive authority for intellectual property shall be exercised by the applicant, the rightholder, another person personally or through a patent attorney, registered in this federal authority or</p>	<p>According to Article 92 CTMR,</p> <p>‘1. Subject to the provisions of paragraph 2, no person shall be compelled to be represented before the Office.</p> <p>2. Without prejudice to paragraph 3, second sentence, natural or legal</p>

<p>through another representative.</p> <p>2. Citizens permanently residing out of the territory of the Russian Federation and foreign legal entities shall exercise proceedings with the federal executive authority for intellectual property through patent attorneys, registered by this federal authority, unless otherwise provided for by an international treaty of the Russian Federation.</p> <p>If an applicant, a rightholder, or another person exercise proceedings with the federal executive authority for intellectual property personally or through a representative not registered by the this federal authority as a patent attorney, they shall be committed at the request of the this federal authority to communicate the address within the territory of the Russian Federation for correspondence.</p> <p>The terms of reference of a patent attorney or another representative shall be confirmed by a power of attorney.</p> <p>3. The citizen of the Russian Federation permanently residing within its territory may be registered as a patent attorney. Other requirements for a patent attorney, the procedure for his certification and registration as well as his legal powers to exercise the proceedings on the legal protection of the results of intellectual activity and means of individualization shall be specified by the law.</p>	<p>persons not having either their domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community must be represented before the Office in accordance with Article 93(1) in all proceedings established by this Regulation, other than in filing an application for a Community trade mark; the Implementing Regulation may permit other exceptions.</p> <p>3. Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment in the Community may be represented before the Office by an employee. An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the Community.</p> <p>4. The Implementing Regulation shall specify whether and under what conditions an employee must file with the Office a signed authorisation for insertion on the file.’</p> <p>The conditions of who can be a representative before OHIM are laid down in Article 93 CTMR.</p> <p>The CDR contains identical provisions.</p>
<p align="center">2.7 Form of appeal (written/in electronic form/via fax/by mail).</p>	
<p align="center">CoPD FIPS</p> <p>Objections shall be made in any form and must be submitted in typewritten form (paragraph 2.2 CoPD Rules).</p> <p>Objections can be filed directly with Rospatent or sent by post. Filing of objections electronically or by fax is not available.</p>	<p align="center">BoA OHIM</p> <p>According to Article 60 CTMR, the notice of appeal must be filed in writing at the Office. This can be done via mail, fax or e-communication.</p>
<p align="center">2.8 What requirements should an appeal meet to be allowed to proceed?</p>	
<p align="center">CoPD FIPS</p> <p>In accordance with Part II of CoPD Rules:</p>	<p align="center">BoA OHIM</p> <p>It must be admissible fulfilling the requirements of Rule 48 CTMIR:</p>

<p>Objections may be made in any form and must be submitted in typewritten form.</p> <p>Objections and all attachments should be submitted in Russian or another language.</p> <p>If the objection and the attachments are submitted in another language, they should be accompanied by their translation into Russian, signed by the person who filed the objection or statement, or his or her patent attorney.</p> <p>Objections or a statement must be signed by the person (or persons) who filed the objection or statement, or his or her representative. On behalf of the legal entity, the objection shall be signed by the head of the organisation or another person authorised to do so in the prescribed manner, with the indication of his or her position, and the signature must be affixed by the seal of the legal entity. The name and initials of the signatory should also appear.</p> <p>The objection shall specify the number of the application for the grant of a patent for an invention, utility model, industrial design, application for a trade mark registration or application for registration and/or granting the right to use an appellation of origin of goods and/or the number of the related patent, certificate or international registration of a mark.</p> <p>The objection or statement shall also contain: the surname, name and patronymic (if any) of the individual or the name of the legal person submitting the objection or statement; the place of residence of the individual or the place of business of the legal entity, including the official name of the country, as well as the telephone number, telex number, fax number (if any); address for correspondence, the name or title of the addressee, which must satisfy the usual requirements for swift postal delivery, telephone, telex and fax number (if available).</p> <p>The fee shall be paid within 2 months from the date of sending of the notifying document. The document certifying payment of the prescribed fee may be attached to the objection on the initiative of the person who filled thereof.</p> <p>The objection must contain the rationale for the illegality of the appealed</p>	<p>(1) The notice of appeal shall contain:</p> <ul style="list-style-type: none"> (a) the name and address of the appellant in accordance with Rule 1(1)(b); (b) where the appellant has appointed a representative, the name and the business address of the representative in accordance with Rule 1(1)(e); (c) a statement identifying the decision which is contested and the extent to which amendment or cancellation of the decision is requested. <p>(2) The notice of appeal shall be filed in the language of the proceedings in which the decision subject to the appeal was taken.</p> <p>The appeal fee must have been paid within the two months appeal period (Article 60 CTMR).</p>
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<p>decision, of the denial to reconsider the decision, the recognition of the application as withdrawn, the illegality of the grant of the patent, certificate or the granting of legal protection.</p> <p>Objections or statements must relate to one application for the grant of a patent, or an application for trade mark registration, registration and/or granting the right to use an appellation of origin of goods, or to a single protected object — an invention, utility model, industrial design, trade mark or appellation of origin of goods.</p> <p>The objection with attached documents must be filed in duplicate.</p>	
<p align="center">2.9 What are the time limits for filing an appeal and can they be extended?</p>	
<p align="center">CoPD FIPS</p>	<p align="center">BoA OHIM</p>
<p>Rospatent's decision on the grant of a patent, refusal to grant a patent for an invention or recognition of the invention application withdrawn may be challenged by the applicant within seven months from the date of sending to the applicant the relevant decision or the copies of the materials opposed to the application and specified in the decision on refusal to grant a patent requested from the specified federal executive authority, provided that the applicant requested the copies of these materials within three months from the date of sending of the decision taken on the application for the invention (Article 1387 of the Code).</p> <p>This time limit may be restored, provided that the applicant indicates a valid reason by virtue of which he failed to observe the prescribed period. A request for restoration of the missed deadline may be filed by the applicant within twelve months from the date of expiry of the time limit (Article 1389 of the Code).</p> <p>The decisions of Rospatent on refusal to accept a trade mark application for examination, on the state registration of a trade mark, on refusal to register a trade mark and on recognition of an application for trade mark as withdrawn may be appealed by the applicant within four months from the date of sending the relevant decision or the copies of the materials opposed to the application requested from the specified federal executive authority to the</p>	<p>According to Article 60 CTMR, the notice of appeal must be filed in writing at the Office within two months of the date of notification of the decision appealed from. The notice shall be deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.</p> <p>These deadlines cannot be extended.</p>

<p>applicant, provided that the applicant requested the copies of these materials within two months from the date of sending the relevant decision (Article 1500 of the Code).</p> <p>This time limit missed by the applicant may be restored upon the petition of the applicant filed within six months from the date of expiry of that period, provided that the applicant indicates a valid reason by virtue of which the applicant failed to observe the prescribed period (Article 1501 of the Code).</p> <p>Decisions of Rospatent on refusal to accept an application for an appellation of origin of goods for examination, on the recognition of such application as withdrawn, and the decisions taken on the results of examination of the claimed designation may be appealed by the applicant within four months from the date of sending of the relevant decision.</p> <p>This time limit missed by the applicant may be restored upon the petition of the applicant filed within six months from the date of expiry of that period, provided that the applicant indicates a valid reason for failing to observe the prescribed period (Article 1528 of the Code).</p>	
<p>2.10 Must all the documents be filed at the same time as filing an appeal or is it possible to submit additional documents at a later stage?</p>	
<p style="text-align: center;">CoPD FIPS</p> <p>The provisions of paragraph 2.5 of CoPD Rules establish that the subsequent submission of additional materials to the objection is possible. However, if an objection was filed against the grant of a patent for an invention, utility model or industrial design, against the granting of legal protection to a trade mark, appellation of origin of goods, issuance of the certificate for the right to use the appellation of origin of goods, it is only possible to submit additional materials that do not change the grounds for the objection raised in order to prove the basis for the recognition of a patent, certificate and/or the granting of legal protection invalid in whole or in part.</p> <p>Additional materials will be considered as changing the abovementioned motives if they consist of a statement about a violation of requirements of patentability of an invention, utility model, industrial design trade marks, appellation of origin of goods other than those in the objection, or contain the</p>	<p style="text-align: center;">BoA OHIM</p> <p>In principle, all facts, arguments and evidence must be submitted with the statement of grounds of appeal. However, the Boards have discretion over admitting additional facts, arguments and evidence that are not submitted within the relevant time period (Article 76(2) CTMR; Article 63(2) CDR), and this is generally done where the late evidence is additional to what has already been submitted within the deadline. Where new facts or evidence come to light during the proceedings that were not available before, this may also justify such facts and evidence being admitted at a later stage.</p>

sources of information missing in the objection except for those that are in public dictionaries and reference works. These materials can be filed as a separate objection.	
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2.11 What are the fees and costs related to appeals procedures? Who is liable for payment? Can they be refunded?

CoPD FIPS	BoA OHIM
<p>The Regulations on patents and other fees⁴ establish the following fees for the filing and consideration of an objection in CoPD:</p> <p>The decision on the results of consideration of objections to a decision on refusal to accept a trade mark application for examination or recognition of an application as withdrawn — RUB 4 900.</p> <p>The decision on the results of consideration of objections to a decision adopted on the results of examination of the claimed designation on the application for registration of a trade mark — RUB 8 250.</p> <p>The decision on the results of consideration of objections against the granting of legal protection to a trade mark — RUB 13 500.</p> <p>The decision on the results of consideration of objections against the granting of legal protection to a trade mark well-known in the Russian Federation — RUB 20 250.</p> <p>The decision on the results of consideration of objections to a decision on refusal to accept an application for an appellation of origin of goods for examination or recognition of the application as withdrawn — RUB 4 900.</p> <p>The decision on the results of consideration of objections to a decision adopted on the results of examination of the claimed designation of the application for an appellation of origin — RUB 8 250.</p> <p>The decision on the results of consideration of objections to the granting of legal protection to an appellation of origin of goods or the provision of exclusive right to an earlier registered appellation of origin of goods — RUB 13 500.</p> <p>The decision on the results of consideration of objections to the decision to</p>	<p>The appeal fee is EUR 800 and must be paid by the appellant. If the appeal fee is not paid, the appeal is considered not to have been filed and the appeal proceedings will not start. Since there is deemed to be no appeal, any appeal fee paid must be reimbursed.</p>

⁴ Order of the Government of Russia No 941 of 10 December 2008 (amended by Order No 781 of 15 September 2011, Order No 1023 of 14 November 2013), approving the regulations on patent and other fees for the performance of legally significant acts related to patents, utility models, industrial designs, the state registration of trade marks and service marks, state registration and the grant of an exclusive right in an appellation of origin, and also to the state registration of the transfer of exclusive rights to other persons and agreements on the disposal of these rights.

<p>grant or refuse to grant a patent for invention, utility model, industrial design, certificate for utility model — RUB 2 450.</p> <p>The decision on the results of consideration of objections against the decision on recognition of an application for an invention, utility model, industrial design as withdrawn — RUB 400.</p> <p>The decision on the results of consideration of objections to the grant of a patent for an invention, utility model, industrial design, certificate for utility model, as well as against validity within the territory of the Russian Federation of USSR title documents for inventions, industrial designs (for each violation of the requirements stipulated by the legislation of the Russian Federation) — RUB 3 250.</p> <p>The payment of the duty must be made by legal and natural persons, in accordance with the established procedure applied for performing legally significant acts, or by persons acting on their behalf.</p> <p>Paid fees are fully or partially refundable in accordance with paragraph 6 of the Regulations on fees in the following cases:</p> <ul style="list-style-type: none"> • the payment of a fee in excess of the prescribed amount; • the denial of the person who paid the duty, from the commission of the legally significant act before applying for the commission of such act; • the lack of the grounds for the commission of the legally significant act, for the commission of which the fee is paid. <p>Each party participating in the consideration of objections before CoPD, shall bear the costs associated with the dispute (fees, costs for representative, travel expenses, etc.). The legislation does not provide for the reimbursement of the expenses of the parties, regardless of the outcome of the dispute.</p>	
<p align="center">2.12 Does the filing of an appeal have suspensive effect?</p>	
<p align="center">CoPD FIPS</p>	<p align="center">BoA OHIM</p>
<p>Submission and consideration of objections before CoPD do not have suspensive effect.</p>	<p>See answer to question 1.10.</p>

2.13. Can challenged decisions be sent back to the departments of the Office for revision?	
CoPD FIPS	BoA OHIM
<p>The current legislation does not provide for the possibility of returning contested decisions to the relevant departments/experts (who took these decisions) for review.</p> <p>However, in cases of cancellation of a decision on recognition of an application as withdrawn the application materials are forwarded to the appropriate department/expert for examination (paragraph 5.1. CoPD Rules).</p>	<p>Revision of decisions in <i>ex parte</i> cases: According Article 61(1) CTMR: ‘If the party which has lodged the appeal is the sole party to the procedure, and if the department whose decision is contested considers the appeal to be admissible and well founded, the department shall rectify its decision.</p> <p>If the decision is not rectified within one month after receipt of the statement of grounds, the appeal shall be remitted to the Board of Appeal without delay, and without comment as to its merit.’</p> <p>Revision of decisions in <i>inter parte</i> cases: According Article 62 CTMR: ‘1. Where the party which has lodged the appeal is opposed by another party and if the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision.</p> <p>2. The decision may be rectified only if the department whose decision is contested notifies the other party of its intention to rectify it, and that party accepts it within two months of the date on which it received the notification.</p> <p>3. If, within two months of receiving the notification referred to in paragraph 2, the other party does not accept that the contested decision is to be rectified and makes a declaration to that effect or does not make any declaration within the period laid down, the appeal shall be remitted to the Board of Appeal without delay, and without comment as to its merit.’</p> <p>4. However, if the department whose decision is contested does not consider the appeal to be admissible and well founded within one month after receipt of the statement of grounds, it shall, instead of taking the measures provided for in paragraphs 2 and 3, remit the appeal to the Board of Appeal without delay, and without comment as to its merit.’</p> <p>Please note that the Legal Reform foresees the abolition of interlocutory reversion for <i>inter partes</i> cases.</p>

2.14 At the hearing is there a possibility to make an amendment to a sign (design) which has been applied for registration/ to a registered trade mark (design)/to a list of goods and services?	
CoPD FIPS	BoA OHIM
<p>In accordance with paragraph 4.10 of CoPD Rules:</p> <p>In the course of the proceedings for consideration of an objection provided for in paragraphs 1.6 and 1.8 of CoPD Rules, a CoPD panel has the right to propose to the person who filed the application for registration of a trade mark, registration of an appellation of origin of goods and/or the right to use registered appellation of origin of goods, to introduce clarifications into the application materials, if these clarifications will eliminate the reasons that served as the sole basis for the decision of refusal for registration of a trade mark, and their addition enables registration of a trade mark, or if without these clarifications the granting of legal protection to a trade mark must be recognised as completely invalid, but if such clarifications were introduced the granting of legal protection to a trade mark might be invalidated in part.</p> <p>These clarifications must conform to the changes that are allowed in the course of consideration of an application for registration of a trade mark, service mark, appellation of origin of goods and granting the right to use the appellation of origin of goods, as well as the applications for granting the right to use a registered appellation of origin of goods, and are provided for by rules on the drafting, filing and examination of an application for registration of a trade mark and service mark and the rules on drafting, filing and examination of an application for registration and granting the right to use an appellation of origin and the application for granting the right to use registered appellation of origin of goods in effect on the date of filing.</p>	<p>The amendment of a CTM application is only possible under very strict circumstances according to Article 43(2) CTMR.</p> <p>‘In other respects, a Community trade mark application may be amended, upon request of the applicant, only by correcting the name and address of the applicant, errors of wording or of copying, or obvious mistakes, provided that such correction does not substantially change the trade mark or extend the list of goods or services. Where the amendments affect the representation of the trade mark or the list of goods or services and are made after publication of the application, the trade mark application shall be published as amended.’</p> <p>The list of goods and services can always be restricted following Article 43(1) CTMR.</p>
2.15 Is the appeals instance authorised to change the grounds for refusal set out by an expert in a challenged decision?	
CoPD FIPS	BoA OHIM
<p>In accordance with paragraph 4.8. of CoPD Rules</p> <p>When considering the objections under paragraphs 1.1, 1.3, 1.5 - 1.8 of the</p>	<p>Yes. Where the Board wishes to raise new absolute grounds of refusal on appeal, it must send the appellant a communication setting out the new</p>

<p>present Rules, CoPD panel is limited to the materials of the information search, as specified in the report of examination.</p> <p>In case of submission by any person involved in the consideration of such an objection or a member of the CoPD panel information from dictionary-reference books and/or specify additional circumstances that were not considered in the decisions of the examination, this information and additional circumstances can be taken into account when making decisions. In this case, the person filed the application for a patent for an invention, a utility model, an industrial design, application for trademark registration or application for registration and/or granting the right to use an appellation of origin of goods, patent holder, the holder of the exclusive right to a trademark, the holder of the certificate for right to use appellation of place of origin of the goods or his representative must become familiar with this information and/or circumstances and should be given the opportunity to present their arguments.</p> <p>In case a more thorough study of the newly presented sources of information or additional circumstances is needed, the hearing of CoPD panel can be adjourned.</p>	<p>ground(s) and giving the appellant a time limit within which to respond, before rendering its decision. Failure to do this will be considered a violation of the right to be heard.</p>
<p>2.16 Is the appeals instance authorised to check the authenticity or falsification of evidence and documents submitted by the participants of the proceedings? What kind of actions can the appeals instance take if a participant of the proceedings alleges falsification of evidence?</p>	
<p style="text-align: center;">CoPD FIPS</p> <p>The competence of Rospatent and CoPD does not include any check of authenticity/falsification of evidence. In this regard, the documents that have all the necessary details and requisites are accepted and taken into account when considering objections before CoPD.</p> <p>Authentication/falsification of such evidence can be obtained by a subsequent challenge to the decision of Rospatent in court or in the manner prescribed by law upon application of an interested person to appropriate law enforcement authorities.</p>	<p style="text-align: center;">BoA OHIM</p> <p>There is no obligation on parties to notarise documents adduced as evidence. Documents from independent sources (e.g. audited accounts) are looked on more favourably than documents drawn up by the party itself or its employees (e.g. witness statements). All pieces of evidence are examined to check whether they contain obvious inconsistencies with other evidence or arguments that have been made. In principle, both in <i>inter partes</i> and <i>ex parte</i> proceedings, the Board looks at the source of the document and then considers the credibility of the matters it purports to attest to.</p> <p>Where falsification is alleged in <i>inter partes</i> proceedings, the same procedure</p>

	as described above is followed. If the Board has serious doubts about the veracity of a document, it may only be disregarded where concrete evidence of falsehood exists. However, apart from this the Board has no powers to ‘punish’ a party. It is always open to one of the parties proposing that the Board of Appeal proceedings be suspended while the veracity of a crucial document (e.g. transfer of trade mark agreement) is ruled upon by the competent national court.
2.17 How does the appeals instance decide in cases of submitting new additional documents or grounds when a document of title is challenged (in <i>inter partes</i> proceedings)?	
CoPD FIPS	BoA OHIM
As has been already indicated in paragraph 2.10 in cases of submission of additional materials in the procedure of challenging a document of title (in <i>inter partes</i> procedures), only those supplementary materials that do not alter motives of originally filed objections will be considered. Additional materials that contain new evidence (except public dictionaries and reference works) or new grounds for the recognition of the granting of legal protection to a trade mark as invalid may be submitted as a separate objection.	There is no specific scenario for document titles being challenged. However, the basic guidelines for the exercise of the Board’s discretion to admit additional evidence (see answer to question 2.10 above) is whether the admission of such evidence is likely to affect the outcome of the case, whether — on balancing the interests of the parties — the stage of the proceedings at which the additional evidence is submitted speaks in favour of admitting it and any other relevant circumstances. Thus, the fact that the veracity of a document is challenged may well constitute circumstances in which it would be fair and reasonable to admit additional evidence proving the matters contained in that challenged document.
2.18 How are hearings scheduled before the appeals instance and how are they conducted?	
CoPD FIPS	BoA OHIM
This issue is regulated by Parts III and IV of CoPD Rules. If the objection submitted to CoPD meets the conditions of its filing, the person who filed the objection will be notified not later than one month from the date of the receipt of the objection by CoPD about the acceptance of the objection to consideration, with indication of the date of the hearing of the CoPD panel for the consideration of objections. In certain cases, a copy of the objection together with the notification of	According to Article 77(3) CTMR, oral proceedings, including delivery of the decision, shall be public before the Cancellation Division and the Boards of Appeal, insofar as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings. However, the Boards of Appeal have only organised two oral hearings until

<p>acceptance of the case for examination will be sent to the owner of the exclusive right to an invention, utility model, industrial design, trade mark or the holder of the certificate for the right to use an appellation of origin of goods ('the right holder') with a proposal to provide his or her statement/opinion to CoPD and to the person who filed the objection before the date of the hearing. Where necessary, CoPD has the right to invite the person (examiner) who took the decision on the results of examination.</p> <p>Consideration of objections will be carried out on a collective basis at the CoPD panel hearing. The panel is formed by at least 3 members, including the chairperson and the person responsible for the consideration appointed by the head of CoPD.</p> <p>Consideration of objections is carried out on the basis of the unchanged composition of the CoPD panel. If one of the members of the panel is replaced during the course of the proceedings, the examination of the case must start again.</p> <p>The hearings of the CoPD panels are held in the conference rooms.</p> <p>The chairperson opens the hearing and presents the panel members and persons participating in the consideration of objections or statement/appeal. The chairperson guides the proceedings.</p> <p>Consideration of the merits of the objection starts with the report of the chairperson or one of the members of the CoPD panel.</p> <p>After this, the procedure of consideration is carried out, as a rule, in the following sequence:</p> <ul style="list-style-type: none"> • a speech by the person who filed the objection and/or his or her representative, including a patent attorney; • a speech by the right holder and/or his or her representative, including a patent attorney; • a speech by the person (examiner) who took the decision on the results of examination; • replies from the persons participating at the hearing to the questions of 	<p>now.</p>
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<p>the members of the CoPD panel;</p> <ul style="list-style-type: none"> • additional information to previous statements made by persons participating in the proceedings. <p>The decision of the CoPD panel is based on the results of a closed meeting following the consideration of objections on the merits. The decision will be taken by a simple majority of votes of the members of the CoPD panel. If the votes are equal, the vote of the chairperson at the hearing of the CoPD panel is decisive.</p> <p>The operative part of the decision of the CoPD panel is announced by the chairperson.</p>	
<p align="center">2.19 Can the date and time of appeal hearings be changed at the request of the parties to the case?</p>	
<p align="center">CoPD FIPS</p>	<p align="center">BoA OHIM</p>
<p>The date of the hearing of a panel of CoPD may be postponed at the initiative of the CoPD (paragraph 4.3 of CoPD Rules), or at the written request of a person participating in the hearing, due to the need to ensure full and fair consideration of the case.</p>	<p>Yes.</p>
<p align="center">2.20 Are there any time limitations?</p>	
<p align="center">CoPD FIPS</p>	<p align="center">BoA OHIM</p>
<p>The time periods of the hearings are not limited by any regulatory legal acts.</p>	<p>Only two cases have been heard by means of oral hearing in the 19 years that the Boards of Appeal have been in operation; it is the Board itself that determines when the appeal decision is deliberated and written. However, the Board undertakes to take 80 % of all <i>inter partes</i> decisions within eight months of the file being ready for decision and 100 % of <i>ex parte</i> decisions within the same time frame. Parties before the Boards may ask for suspensions and extensions of deadlines, typically when they are negotiating a settlement. Appeal proceedings will be automatically suspended where the parties agree to submit their dispute to mediation.</p>

2.21 Do special rules apply concerning making video and audio recordings at the hearings? Who can make these recordings?	
CoPD FIPS	BoA OHIM
<p>This issue is regulated by Rospatent Order No 107 of 18 September 2012, on video recordings of the hearings of the CoPD panels.</p> <p>Recording equipment at the hearings of the CoPD panels can only be used with the consent of the CoPD panel members and all persons participating in the consideration of objections or statements/appeals.</p> <p>When considering objections related to secret inventions, the use of recording equipment is not allowed.</p>	The Boards of Appeal can decide to record an oral hearing.
2.22 Where do the hearings take place?	
CoPD FIPS	BoA OHIM
The hearings of the CoPD panels are held in the meeting rooms at the location of Rospatent (paragraph 4.5 of CoPD Rules).	At OHIM's headquarters in Alicante, Spain.
2.23 Who takes part in the appeal proceedings/hearings?	
How does the appeals instance decide on participation of the parties to the case in the hearings?	
CoPD FIPS	BoA OHIM
<p>A person who filed the objection and/or his or her representative, the owner of the disputed intellectual property object and/or his or her representative participate in the proceedings at the hearings of the CoPD panel.</p> <p>These persons will be notified compulsorily about the consideration of objections at CoPD and can participate personally in the proceedings at the hearing. If necessary, the person (expert) who made the decision on the results of examination (paragraph 4.3 of CoPD Rules) may also participate in the hearing.</p>	The members of the competent Boards, the Registrar, the parties and their representatives.
2.24 What are the time limits for preparing a decision and sending it to the parties to a case?	
CoPD FIPS	BoA OHIM

<p>General terms of the proceedings in CoPD are not specified by legal acts (except for application for recognition of a trademark as well-known trademark in the Russian Federation), in fact in 2015 the term of proceedings in respect of trademarks amounted to 7.5 months.</p> <p>The drafting and adoption of decisions of Rospatent on the results of consideration of objections before CoPD, as well as sending them to the parties to the case must be carried out within two months from the date of announcement of the operative part of the decision of the CoPD panel (paragraph 6.1 of CoPD Rules).</p>	<p>Internal ISO 9001 sets a deadline of 8 months from the moment the Board receives the file from the Registry of the Boards of Appeal.</p>
<p>2.25 Can the appeals instance judgments be appealed and if so, where?</p>	
CoPD FIPS	BoA OHIM
See answer to question 1.11.	See answer to question 1.9.
<p>2.26 To what extent can courts of superior jurisdiction check the lawfulness of the appeals instance decisions: do they review the merits of the case or verify the formal requirements? Is it possible to submit new evidence and arguments to court, which were not submitted to the appeals instance before?</p>	
CoPD FIPS	BoA OHIM
<p>When considering cases challenging Rospatent's decisions, the court in judicial session examines the contested decision or its particular provisions and establishes their conformity with a law or another normative legal act, as well as establishing the presence of Rospatent's authority to adopt the relevant decision.</p> <p>In the course of checking the contested decision of Rospatent, the court, as a rule, is not limited to the verification of the following by Rospatent of the decision-making procedure and compliance with formal requirements for the content of the decision, but carries out a full review of the merits.</p> <p>In this regard, the court, as a rule, in the procedure of challenging Rospatent's decisions will accept and take into account new evidence that has not been subject to review in Rospatent. However, a new statement of grounds for invalidation of the provision of legal protection for a trade mark</p>	<p>See answer to question 1.9.</p>

in the procedure of challenging the decisions of Rospatent in court is not allowed.	
<p align="center">2.27 What are the authorities/effects of the superior courts' decisions?</p> <p align="center">Are the courts empowered to reverse the appeals instance decisions or oblige the appeals instance to re-examine a case, and in which cases?</p>	
CoPD FIPS	BoA OHIM
<p>The court, having found that a contested decision of Rospatent does not conform to law or another legal act and violates the rights and legitimate interests of the applicant, declares the decision of Rospatent invalid in whole or in part.</p> <p>In the operative part of the judgment, the court may stipulate the obligation of Rospatent to eliminate the violations of rights and legitimate interests of the applicant. In such a case, the court may lay Rospatent under obligation to take appropriate constitutive actions to eliminate the violation, and if necessary (for example, in cases of cancellation of a decision in connection with a material breach of the procedure of its enactment) to reconsider the objection (which was the basis for the adoption by Rospatent of the decision challenged in court), taking into account the decision of the court.</p> <p>If during the consideration of cases on disputing decisions of Rospatent's refusal to invalidate the patent, or the granting of legal protection to a trade mark established the grounds for such recognition, the court, given the specific facts and circumstances, will also have the right to oblige Rospatent to cancel a patent or trade mark registration.</p>	See answer to question 1.9.
<p align="center">2.28 At the hearing is it possible for the parties to the case to settle a dispute amicably?</p>	
CoPD FIPS	BoA OHIM
<p>In the course of considering objections before CoPD in <i>inter partes</i> proceedings, the parties are not deprived of the opportunity to negotiate a peaceful settlement independently (outside CoPD procedures), including through mediation.</p> <p>In this case, the person who filed the objection may withdraw the objection at</p>	Yes.

any stage of its consideration at the hearing of the CoPD panel prior to the announcement of the operative part of the judgment of the CoPD panel. In this case, the proceedings on the objection will be terminated.	
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3. OTHER PROCEDURES: Mediation

CoPD FIPS	BoA OHIM
<p>It is beyond the competence and functions of Rospatent and FIPS to carry out alternative dispute resolution procedures, including mediation, and also to assist the parties in undertaking procedures of this kind.</p> <p>Therefore, in the framework of the administrative adjudication of disputes in Rospatent and in the course of procedures carried out in CoPD when considering appeals and objections, there is no possibility for mediation procedure, neither with the assistance of Rospatent and CoPD staff members nor without their taking part in it. Moreover, there are no guidance or explanatory documents concerning mediation procedure published on Rospatent's web page in this respect.</p> <p>At the same time, and as was mentioned in paragraph 2.28, in the course of consideration of an appeal at CoPD in <i>inter partes</i> procedures, the parties to a dispute are not deprived of the possibility of negotiating a peaceful settlement of the dispute by themselves, inter alia, through a mediation procedure.</p> <p>In such cases an appellant has the right to withdraw his or her appeal at any stage of its consideration of the merits during the CoPD panel session prior to the announcement of the operative part of the decision of the CoPD panel. In this case, the appeal proceedings should be</p>	<p>3.1 What is the legal basis for mediation procedures?</p> <p>The legal basis is Article 42(4) CTMR for Community trade marks and Article 57(4) CDR for Community designs in combination with Decision No 2013-3 of the Presidium of the Boards of Appeal of 5 July 2013 on the amicable settlement of disputes ('Decision on Mediation') and Decision No EX-11-04 of the President of the Office of 1 August 2011 concerning the administration charges related to Mediation.</p>
	<p>3.2 In what kind of cases can mediation be offered to settle a dispute?</p> <p>In <i>ex parte</i> cases, that is to say, absolute grounds examination, mediation cannot be offered considering that OHIM is defending public interests. Mediation can be offered in any <i>inter partes</i> case pending before the Boards of Appeals.</p>
	<p>3.3 Who can be a mediator?</p> <p>Mediators in OHIM's Mediation Service are all OHIM staff. OHIM does not maintain a list of external mediators as WIPO does.</p>
	<p>3.4 Who is entitled to make an offer for mediation?</p> <p>Mediation can be requested by both parties via a joint mediation request.</p> <p>In addition, each party to <i>inter partes</i> proceedings may unilaterally request mediation. Where OHIM receives a unilateral mediation request, it is forwarded to the other party giving a deadline to confirm whether the other party agrees to mediation or not. Members of OHIM's mediation service follow up by calling the other party offering information and assistance to enable them to decide on the mediation. The answer received is forwarded to the party who has already requested mediation.</p> <p>Finally, the Rapporteur of an appeal file may suggest mediation to the parties once he has studied the file and considers the case suitable for mediation. This suggestion is not binding on the parties and they can refuse it.</p>
	<p>3.5 Form of request for mediation (written/in electronic form/oral statement, etc.)</p> <p>The request for mediation must be in writing. OHIM provides a form for a joint mediation request on its mediation website, available in the five OHIM languages (ES, DE, EN, FR and IT). Parties are not</p>

<p>terminated.</p> <p>It should also be noted that in the Russian Federation, relations connected with the application of mediation procedures are subject to Federal Law No 193-FZ of 27 July 2010, on alternative dispute resolution procedures with the participation of an intermediary (mediation procedure).</p> <p>This law was adopted in order to create legal conditions for the application of alternative dispute resolution procedures with the participation of an intermediary — mediator (mediation procedure), promotion of development of business partnerships and the formation of business practice ethics, harmonisation of social relations in the Russian Federation.</p> <p>The abovementioned law regulates the relations connected with the application of mediation procedures to disputes arising from civil matters, including those related to undertaking business and other economic activities, as well as to disputes arising from labour and family relations.</p>	<p>obliged to use this form and can request mediation by a normal letter.</p> <p>The electronic filing of a mediation request is not yet possible.</p> <p>3.6 What requirements should a request for mediation meet to be allowed to proceed?</p> <p>The mediation request must indicate the appeal file number, the name of the parties and must contain a request for mediation.</p> <p>3.7 What are the fees and costs related to mediation?</p> <p>In order to be able to request mediation, the case must be pending before the Boards of Appeal, that is to say, an admissible appeal must have been filed that includes the payment of the appeal fee (EUR 800). Any potential mediation is covered by this appeal fee and no extra mediation fee has to be paid by the parties.</p> <p>This, however, is different when the mediation does not take place in Alicante, Spain and the parties request that the mediation be held in Brussels, Belgium, at OHIM's branch office. In this case, the parties have to pay an administrative fee of EUR 750 before the commencement of the mediation according to Decision No EX-11-04 of the President of the Office of 1 August 2011 concerning the administration charges related to Mediation.</p> <p>3.8 What disputes are not suitable for mediation?</p> <p>Mediation should not apply to rights and obligations on which the parties are not free to decide themselves under the relevant applicable law (recital 10 of the Mediation Directive 2008/52/EC).</p> <p>Where trade mark disputes concern the distinctiveness of the mark.</p> <p>Where the disputes are <i>ex parte</i> in general.</p> <p>Where invalidation proceedings address absolute grounds.</p> <p>3.9 What are the time limits for filing request for mediation?</p> <p>No fixed time limits for filing a mediation request exist. However, an admissible appeal must have been filed at the Boards of Appeal before mediation can be requested. Also, once a decision has been taken by the Boards of Appeal, currently no mediation can be requested.</p> <p>In this context, it must be taken into account that a request for mediation may be filed after the filing of an appeal and before the submission of the statement of grounds. However, the appeal cannot be suspended before filing the statement of grounds.</p>
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3.10 Who is going to draft the agreement?

The drafting of the settlement agreement is the full responsibility of the parties and their lawyers. Depending on the timing of the mediation day, the parties and their lawyers may draft a formal settlement agreement that would then be signed by all parties, but not by the OHIM mediator. The OHIM mediator does not actively participate in the drafting of that settlement agreement at the mediation meeting, but may assist the parties when the drafting is deadlocked.

In most cases, however, instead of a formal settlement agreement, a heads of agreement document is drafted at the mediation meeting defining precisely each party's obligations. This document is drafted by the parties and their lawyers and, if needed, with the assistance of the OHIM mediator. After the mediation meeting, the parties and their lawyers translate the heads of agreement into a formal settlement agreement which is signed by the parties. The OHIM mediator does not participate in the drafting of the formal settlement agreement, nor does he or she sign it.

3.11 How are mediation hearings scheduled before BoA and how are they conducted?

Mediation is by no means an unstructured process. On the contrary, mediation proceedings always follow a precisely defined structure. Mediators refer to the various stages of mediation, which normally take place in a fixed sequence, as set out below.

(1) The OHIM mediator contacts the parties

Once the mediator has been appointed, he or she contacts the parties without delay and invites the parties and their representatives to a mediation meeting. The attending parties must guarantee that they have the necessary authorisation to settle the dispute. As mentioned above, the venue for the mediation meeting, in principle, is either Alicante or Brussels.

Mediation is always conducted in the language of the appeal proceedings, unless otherwise agreed by the parties and the mediator. If required or desired, parties can avail themselves of translators or interpreters at their own expense.

Before the first mediation meeting, the parties must sign an agreement on mediation which includes clauses guaranteeing that their representatives taking part in the mediation process are authorised to negotiate an amicable settlement and that all discussions held will be confidential. This mediation agreement is sent to the parties when they request mediation, and they are required to sign it before the start of the mediation proceedings. It should not be confused with the agreement that is concluded between the parties following successful mediation to settle their dispute.

(2) First stage

In the first stage, the parties attend a mediation meeting with the mediator, who briefs the parties on the principles of mediation and the procedure.

(3) Second stage

In the second stage, the parties have the opportunity to inform each other and the mediator of all the relevant facts underlying their trade mark or other dispute and of their respective legal positions. It is the task of the mediator to ensure that each party is able to present its point of view to the other openly and in an intimate atmosphere. In some cases, it is already apparent at this stage that the only reason why a particular dispute has arisen and/or escalated is that the parties have misunderstood each other and/or have had no opportunity to discuss their respective views in a confidential setting.

On completion of this stage, the dispute may be broken down into various subject areas, which form the agenda for the next stage. In a dispute concerning Community trade marks like the one depicted above, for example, the following would be a typical breakdown: 1. business cooperation, 2. trade marks, 3. opposition proceedings, etc.

(4) Third stage

The purpose of this next phase, the third stage, is to clarify the interests of each party that have determined and underlie their respective positions. To illustrate this distinction briefly without specific reference to trade marks, a position is the attitude a person has decided to adopt, reflected in the person's intention to initiate opposition proceedings. That intention is his or her position. The person's interests are the factors that have motivated him or her to adopt a position and initiate, for example, opposition proceedings.

The reason why it is so important to understand this distinction is that it explains the peculiarity of mediation compared with conventional procedures, particularly opposition, cancellation, appeal and court proceedings. As a rule, in opposition, cancellation, appeal or court proceedings, legal positions are set forth and defended by both parties, and the aim is to reconcile them, though without sufficient prior identification of the parties' true interests, particularly their business interests.

It is pertinent to point out at this juncture that there are undoubtedly many instances of negotiations between lawyers and oral proceedings in court in which the interests of the parties are carefully analysed and reconciled.

In the third stage, then, the mediator is called upon to use particular methods of communication and

questioning with a view to identifying the interests of each party in each of the subject areas under examination. In this process, the interests and positions of each party are defined in relation to one another. The completion of this analysis represents a great step forward for both parties, enabling them to move on to the next stage of the mediation process.

(5) Fourth stage

In the fourth phase, on the basis of the identified and analysed interests, the parties engage autonomously in a brainstorming session, albeit with the assistance of the mediator, with a view to compiling a list of potential solutions.

(6) Fifth stage

In this final stage, the solution selected by the parties is incorporated into a legally binding agreement, which is signed by the parties and the mediator.

End of the mediation process

Ideally, OHIM mediation proceedings are concluded with an agreement resolving the parties' trade mark dispute once and for all. OHIM refers to this as a settlement agreement but does not assume any liability for its content, legality or enforceability. OHIM, moreover, does not act as a depository for the signed settlement agreement⁵. The subject of the agreement will be the withdrawal or limitation of a Community trade mark registration, an opposition or an appeal, and the agreement will specify all other agreed arrangements, such as future cooperative ventures, the assignment of costs, etc.

Once a mediation procedure has been successfully completed, the mediator informs the competent Board of Appeal of the outcome of the mediation. If the subject of the settlement agreement is the withdrawal of a Community trade mark registration, of an opposition, of a request for a declaration of invalidity or for revocation or of an appeal or the renunciation of a Community trade mark, the withdrawal or renunciation should be declared in writing to the Board of Appeal. The Board of Appeal then takes a formal decision on the conclusion of the appeal proceedings.

If, in spite of the mediator's assistance, the parties cannot achieve an amicable settlement, the mediator may call an end to the process at any time. Because of the voluntary nature of the procedure, each party is also free to terminate the mediation proceedings unilaterally at any time.

⁵ It should, however, be noted that, in cases where the settlement agreement contains a licensing arrangement, the licence may and should be entered in the Register of Community Trade Marks in accordance with Article 22 CTMR. If the settlement agreement contains an arrangement whereby the Community trade mark is to be transferred to a new proprietor, this should also be entered in the Register as prescribed by Article 17 CTMR. The same applies to any agreed rights *in rem*, which may be registered on the basis of Article 19 CTMR.

	<p>If mediation should fail, the mediator informs the Board of Appeal, which then resumes the appeal proceedings without delay. Where time limits were suspended for the duration of the mediation process, the countdown continues from the date of resumption of appeal proceedings by the Board of Appeal. It does not start again from scratch.</p>
	<p>3.11 Where do the mediation hearings take place? Either in Alicante, Spain, at OHIM's headquarters or in Brussels, Belgium, at OHIM's branch office.</p>
	<p>3.12 Who are the participants in mediation? Participants in mediation are the OHIM mediator and co-mediator, the parties and their lawyers. OHIM strongly encourages parties to send not only legal representatives of their company but also CEOs with full power to settle the dispute.</p>
	<p>3.13 What are the time limits for preparing decision and sending it to parties to a case? The OHIM Mediator does not take a decision.</p>
	<p>3.14 Can be the mediation judgments challenged and where? The OHIM Mediator does not take a decision or judgment. The parties with the assistance of the OHIM mediator find a friendly settlement and sign a settlement agreement. This agreement is a private contract between the parties and any problems which may arise at a later stage must be solved in accordance with international private law.</p>
	<p>3.15 Are rules, codes of conduct etc. published on your web page? If so, please provide a link to the publication All relevant documents (decision on mediation, rules on mediation, instructions to parties, mediation agreement, etc. can be found here: https://oami.europa.eu/ohimportal/en/mediation</p>

3.16 How many mediation proceedings on average are carried out by BoA? How many mediation proceedings on average are settled with amicable agreement of parties to a case?

		2013	2014	2015	Total
Mediations concluded	a) with settlement	1	4	--	5
	b) without settlement	--	1	--	1
Pending mediations		--	--	6	5
Total no. of mediations		1	5	6	12

**Unilateral mediation requests (requests by one party)
and mediations suggested by Rapporteur not accepted by one or both parties**

	2013	2014	2015	Total
Unilateral mediation requests not accepted by other party	2	7	4	9
Mediation suggested by Rapporteur not accepted by both parties / one party	6	6	3	14
Total no. of unaccepted mediations	8	13	7	28

II.4. Comparative Table with commentaries and proposals

II.4.1. Introduction

The synoptic legal Analysis of Russian and European legislation and practice on appeal procedures for trademarks and designs, outlining the main similarities and differences in the two IP systems, has been drawn up on the basis of the Common Questionnaire.

Having examined the Common Questionnaire and the legal documents related to the area of dispute resolution the OHIM experts identified the most relevant similarities and gaps or differences between Russian and EU appellate systems for trademarks and designs and in order to facilitate the analysis of these features categorized them into 4 groups:

- “Organizational structure and independence of the appeal instance, Organizing of work, technical issues”;
- “Use of IT, ways of correspondence and availability of information to public”;
- “Appeal procedure”
- “Alternative dispute resolution”

Thus, the Analysis is presented in the form of comparative table containing the columns “Similarities”, “Differences” and “Commentaries and Proposals”. The first two columns consist of concise description of the analysed aspects of the dispute resolution before BoA and CoPD, and the latter provides the preliminary commentaries and recommendations for changes of the Russian system.

II.4.2. BoA and CoPD: Similarities and Differences (Comparative Analysis)

Scope of analysis / Analysed features			Commentaries and proposals
1. Organizational structure and independence Organizing of work, technical issues			
	Similarities	Differencies	
1.1.	Both BoA and CoPD are special departments within the organizational structure of the OHIM and FIPS respectively.	CoPD doesn't have Presidium and there are no special provisions in Russian legislation concerning the Grand Board	Given the fact that according to applicable legal regulation FIPS performs only preparatory work for implementation by Rospatent which finally makes decisions on the consideration of objections. Since the structural approaches are different, no recommendation is made.
1.2.			In order to effectively manage the workflow especially in trade marks where the number of cases is high, a Registry for the CoPD could be an idea to consider. In that regard, it could also be considered the creation of process cards and internal working instructions in order to Streamline processes and increase procedural transparency and predictability. Following the express request during the seminar of 4/12/2015 OHIM BoA will send to Rospatent/FIPS their appeal Registry process cards and working instructions.
1.3.	The Head of CoPD as well as the President of BoA has managerial and organizational powers to organise the work of the CoPD Divisions, allocate cases, implement Office administrative	The composition and the organizational structure of CoPD is regulated by internal acts of FIPS (not by CoPD itself or by Presidium as in the case of BoA)	The relation between Rospatent and FIPS/CoPD is framed by the current Russian legislation. Therefore, no proposals can be formulated insofar as the rules concerning composition and

	acts.		organizational structure of CoPD are concerned. However, at this stage of the study, it could be envisaged to discuss the advantages and disadvantages of regulation of such issues by external normative documents.
1.4.		A decision of CoPD should be approved by the Director of Rospatent and comes into force from the date of its approval. If a decision of CoPD is not approved, the Director of Rospatent should send an opposition or application for re-examination of the case by another college/panel of CoPD	In order to make the proceedings and work of CoPD more effective, it could be considered to motivate the refusal of Director General of Rospatent of signing a decision prepared by CoPD explaining the reasons of that refusal. Such a practice would allow the CoPD to take a second decision on basis of the explanations given by Rospatent.
1.5.		Division of legal representation of FIPS is a part of CoPD and some staff members from other departments (including those from Legal representation) can be called upon to take part in deciding on a case whereas the Litigation Service is a part of another department of OHIM and its staff members don't take part in the proceedings before the BoA.	
1.6.	There is specialization of panels in terms of the types of industrial properties: 3 rd Board of Appeal deals with design cases and all others with TMs, in CoPD there are Divisions of the means of individualization (staff members of which compose panels dealing with TM disputes) and Division of the patent law objects	There are no fixed panels in CoPD and chairpersons. For each case to be considered by the CoPD a new panel should be formed (it must consist of not less than 3 persons and composed of CoPD staff members, in addition some other staff members from different Rospatent/FIPS departments from the list of	Consider Single-Member Decisions for by establishing a list of criteria of allocation of cases to a Single-Member. Such criteria may be the following: <ul style="list-style-type: none"> - Decisions on formalities (deficiencies leading to an admissibility, fees not paid), - Confirmation of withdrawals, limitations,

	<p>(experts consider cases on designs, among others).</p> <p>Decisions of CoPD and BoA must be drafted by the staff members of CoPD and BoA respectively</p> <p>For some reasons (e.g. relations with parties to a case, conflict of interests, etc.) members of a panel can be replaced by some other member of boards.</p>	<p>experts approved by Rospatent Order No 32 of 22 February 2008 can be called upon to take part in the proceedings and they can also be chairpersons, or a members of a panel or just perform certain task in the course of the proceedings) and approved by the Head of CoPD.</p>	<ul style="list-style-type: none"> - Decisions on costs, - Simple absolute ground cases , - Cases which do not present any legal difficulty because identical issues have been already decided definitively by the competent Court, - When there is actually no dispute because e.g. the applicant submits a letter of consent, according to the written comments of the Association of European Businesses.
1.7.	<p>The decisions of BoA and CoPD are not final and can be challenged before the court (full review of the merits</p>	<p>The time limits for appealing BoA and CoPD decisions are different as well as special procedural rules and depend on the judicial system in RF and EU.</p>	<p>No comments on this item. The approach applicable to CoPD is different than the one applicable to OHIM BoA.</p>
1.8.	<p>The decisions of BoA and CoPD have constitutive effect and affect the TM and Design Registers.</p> <p>They are binding for the first instance at the office.</p> <p>Both BoA and CopD don't deal with infringement matters (this should be settled by the courts)</p>	<p>CoPD can only affirm, change or annul decisions of Rospatent departments and doesn't deal with any matter related to compensations and costs. These cases should be brought to the court, so CoPD decisions are not enforceable directly, they can serve as a basis for the actions before the court.</p>	<p>As commented during the seminar, it could be useful to discuss whether enhancing authority of previous decisions would allow dismissing new identical filings as inadmissible instead of entering again into the same substantial examination of the merits. Such a solution is based on the assumption that parties, IP rights and facts of the case are identical. This is e.g. not the case when the factual situation changes, e.g. when claim and new of evidence of acquired distinctiveness is submitted. In order to illustrate the present comment, reference is made as agreed in the seminar: the Grand Boards decision R1649/2011-G of OHIM's Boards of Appeal</p> <p>Another option to deal with this situation would</p>

			be to order the party re-filing an identical IP right to bear the costs.
2. Use of IT, ways of correspondence and availability of information to public			
	Similarities	Differencies	
2.1.	<p>In both offices the level of use of electronic means for communication in the proceedings before the appeal instances is low.</p> <p>In both offices there is a tendency to develop and promote the use of electronic means of communication in appeal procedures (e.g. this is expressed clearly in The Order of the Federal service for intellectual property N 92 of 29 June 2015 "About Integrated strategy of Informatization of the Federal service for intellectual property for 2015-2020" (in Russian), as well as the intention to make as much relevant information on applications and registered IP rights as possible available to the public, develop the databases and electronic tools (for example for checking the similarity of goods and services), etc.)</p>	<p>In case of BoA the most frequent means of communication is fax communication and currently it is possible to file electronically only the notice of appeal, while in CoPD it is postal communication and upon the applicant's request in <i>ex parte</i> procedures (objections to decisions of Rospatent departments), it is possible to communicate electronically via the applicant's 'My Account'.</p>	<p>Following the discussion at the seminar, we would like to recommend to consider to extend the possibility of electronic communication via My Account to the inter proceedings of CoPD. This possibility is currently limited to ex parte proceedings. It would also be useful and user friendly to create the possibility of electronic interactions with parties, e.g. through a special internet platform, in respect of cases handled by the CoPD.</p>
2.2.	<p>Both CoPD and BoA decision can be found on the webpages of the Offices in special case law databases</p>	<p>In eSearch Case Law database (OHIM) all decisions of all instances (examination, opposition, cancellation, decisions of BoA, national courts and GC/CJEU), while there is no database where the decisions of FIPS/Rospatent examination instances can be found. Only CoPD decisions are available to the public. The decisions of Arbitration courts (commercial disputes courts) including decisions of the Court for Intellectual Rights,</p>	<p>Consider unifying databases and extending them in order to include all IP decisions taken in IP matters and make them publicly accessible.</p>

		can be found here http://kad.arbitr.ru/ (database of Arbitration courts)	
3. Appeal procedure			
	Similarities	Differences	
3.1.		<p>As in Russia the procedure of TM and design examination is different from that in the EU (e.g. for TMs there is no opposition proceedings, designs are under patent law) in Ru legislation it is not expressed clearly what proceedings (and appeals) are <i>ex parte</i> or <i>inter partes</i>.</p> <p>But in fact each of the objections listed in the Civil Code and the Rules of CoPD (see Question 1.7 of the Questionnaire) can be subsumed under one of these categories of the proceedings. As it is explained in Question 2.3. of the Questionnaire, objections against Rospatent examination department can be <i>ex parte</i> or <i>inter partes</i> (depending on involvement of third parties, e.g. objections against decisions of formal examination, or decisions of substantive examination based only on absolute grounds are <i>ex parte</i> proceedings; decisions of examination when relative grounds have been raised are <i>inter partes</i> proceedings).</p> <p>But for both types of proceedings a uniform procedure for the consideration of objections and applications/appeals filed with CoPD has been established and provided for by CoPD Rules.</p>	<p>It is suggested to consider examining relative grounds only in cases when a third party has raised such ground before Rospatent/FIPS. In that regard, OHIMs opposition system could be a source of inspiration.</p> <p>It is also suggested to consider extending the competence of Rospatent/FIPS to post registration proceedings, such as revocation and invalidity actions, provided this is possible according to Russian legislation.</p>

3.2.		The rules related to the persons entitled to appeal are more detailed in CoPD	
3.3.	In general the parties to the proceedings can act personally or through their authorised representatives (including their employees, patent attorneys). In both offices there are special rules concerning representation of those persons whose domicile or place of business is located outside the EU or Russia respectively: in this case these persons must be presented by patent attorneys (some exceptions may be provided by legislation)	There is no such provision in Ru legislation as “An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the Community” (see Question 2.6 of the Questionnaire)	
3.4.		There is no notice of appeal and statement of grounds in Russia, an appellant should file an appeal with additional documents within the prescribed time	
3.5.	The documents (appeal/notice of appeal, etc.) should be submitted in written form	Objections can be filed directly with Rospatent or sent by post. Filing of objections electronically or by fax is not available.	
3.6.		There are different rules for time limits for filing an appeal with BoA and CoPD. In Russia there is no single time limit: 1. for TMs (and appellations of origin) it's four months from the date of sending the decision; 2. for designs it's seven months from the date of sending the decision These time limits can be extended (restored	Consider shorten and make uniform appeal time limit with the aim of having only one appeal time limit (2 or 4 months) and by do so, speeding up proceedings and at the same guarantee greater legal security.

		upon the appellant's request) – see in details in Question 2.9 of the Questionnaire	
3.7.	Payment of an appeal fee is one of the requirements for admission of the appeal for consideration	The fees for different types of objections filing with CoPD are different, there is no single appeal fee	Consider creating current accounts for key users which would allow to immediately debit the amount of the appeal fee from that account; this accounts are to be held by the relevant Russian financial public authorities and eventually, if allowed by Russian legislation, Rospatent/FIPS Fees paid from these accounts would go into the state budget as provided for by Russian legislation.
3.8.	The applicant should provide the copies of the documents and their translation to the language of correspondence and proceedings	The rules for the language of correspondence and proceedings in BoA and CoPD are different due to objective reasons (BoA works in 23 official languages and CoPD works in the only official language of RF – Russian)	Not relevant as Rospatant/FIPS only deal with the Russian language.
3.9.	In both offices submission of additional documents upon the expiry of the prescribed time limits is possible, there is no strict prohibition. In general both BoA and CoPD in appeal proceedings are limited by the case files (facts, evidence and arguments provided by the parties). Additional materials changing the grounds for the objection are not allowed and can be submitted as a separate objection		

3.10.		<p>Paragraph 4.4 of CoPD Rules provides that CoPD, having found that there are several objections involving the same parties, or multiple objections of the same entity or different entities that belong to the same protected object - industrial design, trademark, under consideration before CoPD, has the right to schedule the consideration of these objections or applications for the same oral hearing with the consent of all parties. In this case the decision is made for each case separately.</p> <p>Unlike the possibility to schedule the consideration of these objections or applications for the same oral hearing as provided for by CoPD Rules, in BoA OHIM the implementation of the joint procedures for the appeal proceedings (joinder of appeals) is allowed, namely in those cases where the parties to the dispute are the same, and the subjects of the dispute are closely related; these separate appeals may all be consolidated into one and one joint decision should be made.</p>	<p>In fact CoPD joins oral hearings in appeal proceedings when the parties are the same and subject matter as well, but after that prepares separate decisions for each case.</p> <p>It would be recommendable in cases of joint hearings one joint decision.</p> <p>It has to be noted following comments received that, according to OHIM BoA practice, the joining of cases has no impact on the appeal fees which have to be paid for each case. There is no impact neither for BoA statistics since the statistics count the solved cases not the decisions taken.</p>
3.11.		Submission and consideration of objections before CoPD do not have suspensive effect	
3.12.		Unlike the procedure of revision of decisions by OHIM departments in Rospatent it's not possible to return contested decisions to the relevant departments/experts (who took these decisions) for review. The expert can only	

		<p>participate at the oral hearing and express his or her opinion (not obligatory). But of course in case of cancellation of a decision on recognition of an application as withdrawn the application materials are forwarded to the appropriate department/expert for examination</p>	
3.13.	In both offices it is not prohibited to change the list of goods and services (but it's allowed to limit it, not to extend) in the course of appeal proceedings	<p>The rules concerning the possibility to amend a sign (or design) applied for registration seem to be a bit stricter in BoA. As in the course of examination of an application in Rospatent it is allowed to make some amendments to the signs applied for registration provided that such amendments do not change substantially the trade mark, for instance upon applicant's request and with special fee the colour of some elements of the sign can be changed (e.g. the colour of red cross can be changed for a black or some other, some non-dominant not distinctive elements can be removed) – but in each case it is on examiners' discretion</p>	
3.14.	In both BoA and CoPD their members are authorised to change the grounds for refusal set out by an expert in a challenged decision.		In cases OHIM BoA is changing the ground of refusal of the contested decision and invoking a new absolute ground, a communication is sent to the party in order to respect its right to be heard.
3.15.	Both CoPD and BoA are not authorised to check the authenticity or falsification of evidence and documents submitted by the parties. Where falsification is alleged upon		

	the request of an interested person some special procedures for checking authenticity of the documents can be launched by competent national authorities. No “punishment” for the parties.		
3.16.	In general in both BoA and CoPD consideration of appeals should be oral proceedings. The hearings take place at headquarters of the offices (in Moscow and Alicante respectively). No time limits for the hearings provided by any legal act. Recording of an oral hearing is on discretion of BoA/CoPD	In practice in CoPD all the appeal cases are examined at oral hearings (it depends on the parties if they participate at the hearing or not, in some cases they don’t appear at the hearing for some reasons or can request for rescheduling the date of the hearing). See the question 2.18 of the Questionnaire The decision of CoPD panel must be drafted and sent to the parties to the case within two months from the date of announcement of the operative part of the decision of the CoPD panel	In order to facilitate participation of parties at oral hearings and allow the smooth organisation of oral hearings, it could be envisaged to allow remote participation at the oral hearing through videoconference. This has the advantage to facilitate access to the hearings for parties from distant regions of the Russian Federation and abroad. It should be also taken into account as recommendation the possibility suggested by the Association of European Businesses of taking decisions on the basis of only written proceedings (i.e. without oral hearings) if all parties expressly to agree to such proceedings.
3.17.		In Russian legislation there are no rules providing a possibility to offer any fast track appeal process before CoPD	Consider the possibility to introduce fast track process.
4. Alternative dispute resolution			
	Similarities	Differencies	
4.1.	In RF ADR can be used for dispute resolution alongside with jurisdictional ways of settling disputes (judicial and administrative). In RF there are special Federal laws creating	There is neither Mediation service in FIPS/Rospatent nor special regulations on Mediation procedure in CoPD and it is beyond the competence and functions of	Consider offering Effective Dispute Resolution (EDR) by means of alternative resolution methods, conciliation and mediation through active case management. This could also be offered in context

	<p>legal framework for applying different types of ADR: Federal law №193-FZ of 27 July 2010 on the Alternative Dispute Resolution with the Participation of an Intermediary (Mediation Procedure) (in English); the Federal Law No 102-FZ dated 24 July 2002 “On arbitral tribunals in the Russian Federation” (exists only in Russian) which regulates domestic arbitration, i.e. internal commercial disputes without any foreign elements (includes Article 6.1. Application of mediation procedure to a dispute, that is under consideration before an arbitral tribunal); Law of the Russian Federation N 5338-1 of 7 July 1993 on International Commercial Arbitration (in English) which regulates international commercial arbitration, i.e. disputes with a foreign element such as when parties are located in different countries or when foreign substantive law is to be applied</p>	<p>Rospatent and FIPS to carry out alternative dispute resolution procedures, including mediation, and also to assist the parties in undertaking procedures of this kind.</p>	<p>of an oral hearing before CoPD. We understand that these issues are currently under discussion in Rospatent following the Federal Laws creating legal framework for applying ADR. The offering of mediation services may take different forms like the creation of a mediation centre or of an in-house department offering ADR services. Training of Rospant/FIPS/CoPD would be necessary as well as the establishment of the legal administrative legal framework by setting up clear mediation rules, instructions to mediators and rules of conducts for mediators.</p>
4.2.	<p>In the course of the appeal procedure (<i>inter partes</i>) prior to the announcement of the board’s decision it is possible for the parties to settle their dispute amicably</p>	<p>No request for mediation (or other ADR) can be filed by the parties with CoPD (as well as no proposal for ADR can be made to the parties by a member of CoPD). If the parties wish to change appeal procedure for mediation (or other ADR) an appellant has only the right to withdraw his or her appeal at any stage of its consideration of the merits during the CoPD panel session prior to the announcement of the operative part of the decision of the CoPD panel. In this case, the appeal proceedings should be terminated</p>	<p>Consider offering suspension of appeal proceedings when ADR is requested or parties are negotiating externally.</p>

		(but in case of appeals against Rospatent decisions the appeal can be withdrawn and filed again more than once within the period for appeal).	
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III. Recommendations and proposals for approximation of the current appeals systems (C 4.2.)

As regards the organisational structure and due to the fact that FIPS only performs preparatory work for implementation by Rospatent, the one responsible for making the final decision on the consideration of objections, it is noted that the structural approaches between OHIM and FIPS differ significantly. As a result, no recommendation is made at that level.

In order to efficiently manage all administrative matters relating to appeals, the creation of a Registry for the CoPD could be an interesting improvement idea. In addition, streamlining processes and increasing procedural transparency could be achieved by the creation of appeal process cards and internal working instructions. As requested during the seminar of 4/12/2015, BoA will send to Rospatent/FIPS their appeal Registry process cards and working instructions.

Bearing in mind that the relation between Rospatent and FIPS/CoPD is regulated by the current Russian legislation, adoption of the basic rules of CoPD is not possible by means of external normative documents. Nevertheless, advantages and disadvantages of such an approach are likely to be discussed.

In light of the fact that the Director of Rospatent has to approve each decision of CoPD and has the right to refuse signing a decision, a possible mechanism preventing delay of proceedings would be to invite the Director to motivate his decision by elaborating the reasons for a refusal. This would allow CoPD to take into consideration these reasons before delivering a second decision.

The adoption of Single-Member Decisions for certain specific cases could be seen as another means for enhancing efficiency. Such cases might include among other things decisions on formalities (deficiencies leading to admissibility, fees not paid); confirmation of withdrawals and limitations; decisions on costs; simple absolute grounds cases or cases not presenting any particular difficulty because identical issues have already been previously decided by the competent court.

It is recommended to assess whether enhancing the authority of certain previous decisions would indeed result in dismissing new identical filings as

inadmissible. Alternatively, it is suggested to adopt an approach whereby the party re-filing would bear the costs.

It could also be considered to extend the use of electronic communication via My Account to *inter partes* proceedings of CoPD. Moreover, incorporating into the database all decisions on IP matters and making them electronically accessible to the public is another recommendation.

Considering the appeal procedure, a suggestion is to limit consideration of relative grounds only to a situation when a third party has raised such a ground before Rospatent/FIPS. Moreover, provided that the Russian legislation allows it, another proposition is to expand competences of Rospatent/FIPS to now cover post registration proceedings such as revocation and invalidity actions.

With regard to payments, the creating of current accounts for key users, held by the relevant public financial authority or, if allowed by Russian legislation, Rospatent/FIPS itself, would also be interesting to offer to users. This would facilitate payment of fees in compliance with the Russian legislation.

Where parties are the same and subject matter is closely related, CoPD already joins oral hearings. Instead of preparing separate decisions, a possibility for one joint decision as a result of such hearing should also be considered.

Further possible proposal is to follow BoA's practice and to enable CoPD to change a ground of refusal of the contested decision by evoking a new absolute ground. However, before deciding on the new ground, the new objection should be communicated by CoPD to the party following its right to be heard.

Another interesting option facilitating the participation of parties at oral hearings is the introduction of hearings through videoconference as well as the fast track process.

Offering conciliation and/or mediation is recommended as another means of effective conflict resolution and it is also appropriate for oral hearings before CoPD. Considering that these issues are already under discussion in Rospatent following Federal laws, it is noted that the creation of a mediation centre or an in-house department offering ADR services is another viable suggestion. For such a project to succeed, training of staff would be necessary, as well as establishing of

an administrative framework through clear mediation rules, instructions to mediators and rules of conduct for mediators. Finally, suspension of appeal proceedings is put forward as an option when alternative dispute resolution is requested or parties negotiate externally.