



**EUIPO
Consultation Strategic Plan 2030 (période 2025 – 2030)**

**Contribution APRAM
16 février 2024**

Q1. How and for which purpose should the EUIPO make best use of new and emerging technologies, such as blockchain, AI (including generative AI), quantum computing, the metaverse etc., in light of best practices in industry and the public sector? Are there possible dangers or drawbacks that should be considered?

It is our understanding that new and emerging technologies become more and more inevitable and could be used to improve the effectiveness of EUIPO's operations - acting as EU's trademarks and designs office -, so this means for users formalities and procedures, such as trademarks first examinations, as well as to improve EUIPO's staff workload and processes. For example, the use of artificial intelligence (AI) to discern the similarities of products and services for trademarks is a positive development.

But the use of new technologies, and particularly AI, should never totally replace the human examination, critical review and brainstorming, and the final decision on a file or an application by EUIPO's examiners : for example, only an examiner can actually decide upon an application.

Indeed, we believe that it is of paramount importance to maintain human examination for the sake of:

- consistency in the objections and decisions;
- maintaining a high-level of expertise and skills for EUIPO's staff, that could be jeopardised by an extensive use of AI.

In light of this, we believe that for any new tool or project for example, it must first be submitted to a full ex ante and ex post, cost-benefit exercise (including maintenance, availability and sustainability costs), to be tested both prior to launch and on an ongoing basis, and be abandoned if proven to be of limited benefit.

Q2. What should the EUIPO do to ensure long-term financial sustainability while maintaining the quality of the services it provides (for example, improving planning and forecasting, exploring new revenue sources, streamlining operations)?

We believe that long-term financial sustainability can notably be fostered through regular review of ongoing projects, such as cooperation projects with foreign IP offices or entities, European cooperation projects, Knowledge exchange, etc.

Above all, it is of the utmost importance that physical meetings are not sacrificed in the pursuit of savings as they are instrumental in the continuous improvement and coherence of practices, and communication and exchanges amongst all relevant European IP stakeholders - including users' associations, SQAP exercises and focus groups.

Q3. How can the EUIPO ensure an agile and skilled workforce in view of technological developments, an anticipated wave of retirements in the coming 5 years, and the legislator assigning new tasks, such as those related to Geographical Indications?

An idea that we wanted to submit is may be to communicate more towards universities and teachers, national IP offices and all relevant actors in the IP field to raise awareness on the jobs and careers in the IP field offered by the EUIPO. This can also be done through ad hoc events in partnership with users and users' associations, such as APRAM, to present career paths within the EUIPO. Enhanced interactions between EUIPO's relevant staff and users and users' associations could also be a solution to smooth the implementation of developments.

We noticed that there are fewer French interlocutors than before at the EUIPO and we believe that this situation could be corrected to achieve the objective stated in the question and to ensure a fair distribution of representatives and points of contact from all of the EU Member States.

Q4. How could the EUIPO enhance and promote its work environment (including the physical environment) to better attract and retain knowledge and skills, to facilitate communication flows and productivity, and to improve staff engagement and satisfaction?

This question is linked to question 3 and we reiterate what we stated above, adding that the attraction and retention of talents, including the improvement of the EUIPO's physical work environment, should always be done within the limit of the Office's budget. Another source of solutions would surely be to consult the EUIPO's staff committee.

Q5. What are the most important improvements the EUIPO could make to enhance consistency, quality, timeliness, predictability, transparency, and accountability, within the existing legal and governance framework?

At APRAM, we believe that a great deal of work has already been done to ensure consistency, quality and predictability, notably through the SQAP exercises, the guidelines revision process, the Board of appeal focus groups, etc. - all are extremely useful exercises for us. All of these exercises where users and users' associations are involved contribute to the transparency and predictability of the EUIPO's decisions and are greatly appreciated as a way of expressing users and EUIPO views and discuss/understand different perspectives. Consistency in examination and decisions at all levels is essential. Focus must be on the Office's core tasks and improvements on quality (consistency) and timing (e.g.: faster decisions) would be appreciated to ensure predictability and legal certainty.

Regarding accountability, we would respectfully suggest to consider a clearer communication regarding the role of the EUIPO, meaning that while the Office does offer very useful services to protect IP rights, it does not replace legal IP counsels and attorneys. This should be made clear to the EUIPO's various audiences, through may be disclaimers on the website or other means. This is especially true regarding the SME fund where vouchers for trademarks/designs applications and IP rights registrations can seem too easy at first sight and induce a large number of applications, without having considered if this is the right strategy and if the SMEs in question will use those rights to their full extent, be able to protect them and enforce them in the long run. If those questions are not addressed at the very beginning of the process, we believe this system could prove to be counter-productive as unexpected legal challenges can

emerge for SMEs after application/registration and dissuade SMEs from considering IP as a useful tool for their business.

We would also like to respectfully propose that more consideration is given to the views and suggestions expressed by users. Indeed, consultation phases can give the impression that they are conducted for "symbolic" reasons/ for form, without taking users' feedback fully into consideration.

On more specific points:

- It remains extremely difficult to protect non-traditional trademarks (e.g. movement, position or 3D marks) through an EU TM. We believe that more flexibility from the EUIPO is needed when examining those trademarks to ensure that they are registered: these marks are extremely useful to fight against counterfeiting and they usually aim at protecting what counterfeiters copy the most. On this, we noted that the severity in the assessment of those marks undermines the value of intellectual property in general, i.e. leading to a decrease of trust in the value of IP rights, and is detrimental to businesses.

- Provisions regarding applications to claim seniority remain unclear : during the last revision of the EUTM regulation, the effects and scope of applications to claim seniority should have been clarified. Those claims aim at simplifying trademarks portfolio and avoid the renewal of national or international rights that duplicate EU TMs. Yet, effects of seniority claims, their concrete acknowledgement by national IP offices and WIPO, and the legal certainty of this system are not entirely clear. This is especially true when the national trademark or the relevant part of the international trademark is not renewed and then the corresponding EU TM lapses for one reason or another. In this case, the national or international trademark should be considered valid again but there is currently no certainty on this and practicalities are not clearly defined.

Legal texts should be clarified on this point or, at least, cooperation with national offices and WIPO should be implemented to agree on the practicalities, ensure that national or international discontinued trademarks are back in effect if the EU TM ceases to exist, and that third-parties are adequately informed at all stages that previous rights can be invoked against them.

Q6. In which areas should the EUIPO improve the quality of its products and services?

Considering all that is already mentioned in our answer to question 5, we would like to add that the new EUIPO website is clear but it does not seem comprehensive, particularly regarding all of what the EUIPO is doing : we fear that a "normal user" (i.e.: not an IP professional) might not get the grasp of the full range of EUIPO's activities and services.

On more technical points, the limitation of 20Mo for uploading files/evidence seems outdated and needs to be increased, also given the geographical scope of the EU TM (more evidence can be required hence more volume needs to be uploaded). For appeal proceedings, we also noted that, compared to other procedures, less information is available : the same level of detail and clarity of information available online should be applied across the board to all proceedings.

Q7. How could the EUIPO make the IP system more accessible and useful to SMEs (for example, IP audits, more agile procedures, access to advice)?

Easy access to legal advice is a good option for SME and a first approach could be to list on the EUIPO's website the relevant national users associations for SME to seek advice in the relevant country.

Q8. What other changes should the EUIPO implement to make the system more user-friendly?

An important aspect regarding changes is not only consulting users (and giving them the appropriate time to respond) but also integrating their perspective and, when possible, implementing their requests. We have noted that the projects or actions designated as "users wishes" are most of the time the priorities of the EUIPO and national offices.

The EUIPO already offer easy-to-use services and we would like to warn against making the Office's tools too simplistic.

Q9. Should the EUIPO undertake actions to make the IP system more inclusive, for example to achieve a better gender and geographical balance among applicants for IP rights and among IP professionals, and if so, which actions would you suggest?

We think that inclusiveness is closely linked to the promotion of the IP system: if IP is promoted, then more various profiles in terms of gender and geography will be interested. Therefore, we think that the promotion of IP is of the utmost importance and first, towards the EU Member States. We often realise that national governments, administrations, etc. do not fully grasp the different concepts of intellectual property and why it is important to protect IP for their economy, local know-how, culture, etc. Education and raising awareness towards these important stakeholders are the most important actions we would suggest, also given the fact that if decision-makers have a good knowledge of IP and why it is important, this can lead to more concrete actions at national and European levels, in particular towards the objectives expressed in the question. This can of course be achieved with the relevant stakeholders, like national IP offices and users associations.

Q10. How could the EUIPO help start-ups and SMEs capitalise on their IP, for example by using it to access financing or by monetising it in other ways (for example, licensing)?

We believe that education and training could be a solution, and also redirect start-ups and SME's towards their national relevant associations. But we think that it is not the EUIPO's role to offer commercial business recommendations or to hire staff to do so.

Q11. What new evidence-based research on key areas of IP should the EUIPO carry out (for example, copyright infringement, IP and climate change, diversity)?

Evidence-based research on IP and climate change is a good idea as IP can be a useful tool to develop concrete innovations to fight against climate-change.

Other areas of key importance for evidence-based research remains infringements of IP rights, and particularly counterfeiting on/by online platforms, for example impacts of the DSA (positively or negatively) regarding the management of IP infringements by online platforms/actors.

Q12. How could the EUIPO best reach consumers, especially young people, to raise their awareness of the impact and value of IP rights (for example, social media, educational institutions, events, etc.)?

Social media can be a good option, especially towards young generations, and we believe that raising awareness in high-schools and secondary schools can also be beneficial, either directly or by funding national associations to do so.

It would also be positive to amplify the Observatory's work and actions in EU Member states through communication campaigns or use/relay of these actions by national IP offices and relevant administrations - the latter could build upon the Observatory's work to materialise the Observatory's recommendations for example.

Q13. What support should the EUIPO provide to the enforcement community and to the private sector (also considering the move towards digital enforcement) to ensure the best possible enforcement of IP rights?

Enforcement is of crucial importance as IP rights are of limited value without the ability to enforce them. Support to the enforcement community is therefore of the utmost importance and close attention must be paid to the needs and realities of, on one hand, customs, police and prosecutors, and on the other hand, right holders, that must be properly consulted and their expertise taken into account, to find concrete and practical solutions workable for all the actors.

The Office could also launch projects bringing more efficiency in online IP enforcement and encouraging accountability and transparency from online platforms and other actors involved in online IP infringements, with the involvement of all concerned stakeholders.

Regarding court decisions/proceedings related to IP infringements, the EUIPO could also launch a project directed to IP rightsholders on how to prove an infringement before the judges (especially before the EU General court), best practices and loopholes to avoid, in a didactic approach.

Q14. The EUIPO cooperates with national and regional IP offices in the EU and beyond. In which areas should this cooperation be intensified, and how should it do this (for example, work sharing, shared IT, staff exchanges)?

Staff exchanges and work sharing are excellent ideas and could also be beneficial for the EUIPO's influence in Member States in terms of careers.

Q15. With which of its existing partners should the EUIPO intensify its cooperation, in which areas and with which objective(s)? In addition, which additional cooperation partners should the EUIPO seek out (such as EU bodies and institutions, EU and non-EU IP offices, international organisations, Member States, business sector stakeholders, the SME/start-up ecosystem, etc.)?

The existing cooperation with WIPO, Europol, OLAF, the OECD and EPO should be maintained, along with the national IP offices of course, and if it is not the case, we believe that the EUIPO could advise/act towards the relevant directorate-general within the European Commission when relevant legislations and proposals are considered, as a way of expressing the concerns of the IP community, especially on IP enforcement subjects.

Q16. Which of the following strategic goals do you consider most important? Could you please rank them all, from top to bottom?

Your Ranking

1. Build trust and respect for IP
2. Improve access to the IP system and promote the use of IP rights
3. Enhance the value of IP products and services
4. Optimise operational efficiency and effectiveness
5. Ensure long-term sustainability of the EUIPN

We thank the EUIPO for this opportunity to provide comments in view of the next Strategic Plan and we would be happy to discuss it further with the Office if needed.