

APOSTILLE

Info. Doc. No 2
Doc. préél. No 2

November / novembre 2017



COMPARATIVE SUMMARY OF DOCUMENTS GENERATED BY SUPRANATIONAL AND INTERGOVERNMENTAL ORGANISATIONS AND THEIR AUTHENTICATION PRACTICES

drawn up by the Permanent Bureau

Revised version of 30 November 2017

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APERÇU COMPARATIF DES ACTES ÉTABLIS PAR DES ORGANISATIONS SUPRANATIONALES ET INTERGOUVERNEMENTALES ET DES PRATIQUES EN MATIÈRE D'AUTHENTIFICATION

établi par le Bureau Permanent

Version révisée du 30 novembre 2017

(disponible en anglais uniquement)

Document for the attention of the Working Group on the Authentication of Documents generated by Supranational and Intergovernmental Organisations (meeting of December 2017)

Document à l'attention du Groupe de travail sur l'authentification des actes établis par des Organisations supranationales et intergouvernementales (réunion de décembre 2017)

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This document compiles the authentication practices of the following supranational and intergovernmental organisations, all of which have currently resorted to legalisation to authenticate their documents:

- A. European Patent Organisation (EPO)
- B. European Union Intellectual Property Office (EUIPO)
- C. World Intellectual Property Organization (WIPO)

Research was also conducted into the practices of other supranational and intergovernmental organisations. However, to the best of the knowledge of the Permanent Bureau, these organisations either do not issue documents that need to produce legal effects abroad,¹ or issue documents that produce legal effects abroad but in the context of which the issue of authentication does not arise.² For still other intergovernmental or supranational organisations, no specific information was available in relation to this topic on their respective websites.³

International and regional courts have also been examined, some of which have been contacted by the Permanent Bureau, but it would appear that no authentication requirements are needed for their judgments or opinions.⁴

A. EUROPEAN PATENT ORGANISATION (EPO)

Introduction
<p>An intergovernmental organisation that was established on 7 October 1977 on the basis of the European Patent Convention (EPC) signed in Munich in 1973. The Convention established a common legal system for the granting of patents for invention (Art. 1 EPC). The European Patent Organisation has the task to grant European patents and is comprised of two organs: the European Patent Office (EPO) and Administrative Council. Currently, 38 Contracting States are party to the EPC.</p> <p>The core activities of the EPO include the search and examination of patent applications and the grant of European patents, but also providing information about patents and training services.⁵ The EPO, of which the headquarters are located in Munich, Germany, also has a branch in The Hague, the Netherlands and sub-offices in Berlin (Germany) and Vienna (Austria), respectively.</p> <p>For more information, see the EPO website at < www.epo.org >.</p>

¹ International Chamber of Commerce, Interpol, Mercosur, Organization of American States (OAS), World Bank, and World Customs Organization.

² See international and regional courts below.

³ Asia-Pacific Economic Co-operation (APEC), Commonwealth Secretariat, Cooperation Council for the Arab States of the Gulf, East African Community, Organization for the Harmonization of Business Law in Africa (OHADA), and Organisation of Islamic Co-operation.

⁴ Caribbean Court of Justice, Central American Court of Justice, Court of Justice of the European Union, East African Court of Justice, European Court of Human Rights, International Court of Justice, International Criminal Court, and the Judicial Committee of the Privy Council.

⁵ See, "Services & activities", EPO, available at <https://www.epo.org/about-us/services-and-activities.html>, accessed 8 November 2017.

Type of Documents	Legal Framework	Authentication / Legalisation
<p>European Patent</p> <p>(Related documents, e.g. copies of patent specifications or applications)</p>	<p>The <i>European Patent Convention</i> (EPC) established a centralised European procedure for the granting of “European patents” (Art. 2(1)) on the basis of a single application, in addition to creating a uniform body of substantive patent law.</p> <p>The grant of a European patent may be requested for one or more of the Contracting States (Art. 3 EPC). In each of the Contracting States for which they are granted, European Patents have, in general, the effect of and are subject to the same conditions as a national patent granted by that State (Art. 2(2) EPC).</p> <p>The system is based on the attainment of a central grant decision from EPO, binding on all of the 38 Contracting Parties.</p>	<p>The branch of the EPO in The Hague deals with the authentication of priority documents (<i>i.e.</i>, a certified copy of the previous patent application),⁶ and the headquarters of the EPO in Munich deals with the authentication of all other documents (patent specifications, certificates and official documents which are in patent application files). This split of competences within the EPO exists mainly for historical reasons. Priority documents issued by the EPO may need to be authenticated if an applicant claims the priority of a first filing before the EPO in relation to his / her subsequently filed patent application. In such cases, the procedure for the authentication of these documents is currently as follows:</p> <ul style="list-style-type: none"> • An authorised person of the EPO signs the priority document; • The applicant (or his representative), must appear in person before the first instance court of The Hague (<i>Rechtbank Den Haag</i>) for authentication; • The certificate issued by the court must then be authenticated by the Ministry of Foreign Affairs of the Netherlands; • Finally, that certificate must be authenticated by the embassy of the country where the authentication is required. <p>By contrast, in Germany, the EPO has resorted to entering into informal relationships with consulates and embassies locally to streamline the process of authentication of the other documents.</p>
<p>Unitary Patent</p>	<p>The EU “Unitary Patent” was established by two EU regulations,⁷ essentially designed to give a patent protection in up to 26 EU Member States. As such, instead of validating a granted European patent in different States, a European patent holder will have the option to obtain, via a single, additional post-</p>	<p>At the time of writing, no information about further authentication of documents in relation to the Unitary Patent was available, as the system is not yet in operation (expected 2018).</p>

⁶ For more information on priority documents, see “Guidelines for examination”, EPO, available at https://www.epo.org/law-practice/legal-texts/html/guidelines/e/f_vi_3_3.htm, accessed 8 November 2017.

⁷ [Regulation \(EU\) No 1257/2012](#) of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection; [Council Regulation \(EU\) No 1260/2012](#) of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

	grant procedure, a Unitary Patent ensuring protection in up to 26 EU Member States (Croatia and Spain are currently excluded), which will thus coexist with national patents and the traditional European patent. ⁸	
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MORE INFORMATION

- [The Guide for applicants: "How to get a European patent"](#)
- [Unitary Patent and Unified Patent Court: State of Play](#)

⁸ See "Unitary patent", EPO, available at: <https://www.epo.org/law-practice/unitary/unitary-patent.html>, accessed 8 November 2017.

B. EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE (EUIPO)

Introduction		
<p>The European Union Intellectual Property Office (previously the Office for Harmonisation in the Internal Market (OHIM) until March 2016), is an European Union (EU) agency seated in Alicante, Spain, which was established in 1994 and is responsible for the registration of the EU trade mark and the registered Community design. These provide, via a single registration, exclusive rights for protection in all EU Member States of trade marks and designs.</p> <p>For more information, see the EUIPO website < https://euipo.europa.eu/ohimportal/en >.</p>		
Type of Documents	Legal Framework	Authentication / Legalisation
<p>Trade marks and/or designs</p> <ul style="list-style-type: none"> • Certified copies of applications • Certificates of registration or related documents • Certified extracts of the Register of EU trade marks and designs • Any other document issued by EUIPO (e.g. database extracts, decisions, non IP-related documents) 	<p>The EU trade mark (EUTM) and Registered Community Design (RCD) grant exclusive rights in all current and future Member States of the EU by one single registration. Once an EUTM or RCD application is registered, a certificate of registration is issued to the holder.</p> <p>The EUIPO issues certified copies of the applications and certified extracts from the relevant register, amongst other documents, pursuant to Article 111(7) and Article 114(7) Commission Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark and of Articles 74(4) and (5) of Commission Regulation (EC) No 2245/2002 implementing the Council Regulation on Community Designs.</p>	<p>A number of third countries, which are outside the European Union, require that EUIPO documents be authenticated or legalised in order to be admitted, in particular if they serve as the basis for a priority claim before the national offices of those countries or as grounds for any kind of claim before their authorities.</p> <p>On 19 September 2000, the European Commission adopted a procedure, published in the Official Journal of the European Union, authorising the Head of the Representation of the European Commission in Spain to authenticate the signature of documents issued by EUIPO.⁹ There are two ways to apply for authentication:¹⁰</p>
		<p><i>If the applicant does not already have a certified copy:</i></p> <p>At the EUIPO:</p> <p>1A. On the application form, the applicant indicates whether the signatures need to be legalised and for which country;</p>

⁹ See, "EUIPO: Quick information guide on legalisation of signatures", European Commission, available at: https://ec.europa.eu/spain/services/euipo/english_es, accessed 8 November 2017.

¹⁰ See, "Authentication or legislation of certified copies", EUIPO, available at <https://euipo.europa.eu/ohimportal/en/authentication-or-legalisation-of-certified-copies>, accessed 8 November 2017.

		<p>2A. The EUIPO sends the documents directly to the Representation of the European Commission in Spain to arrange for authentication.</p>	<p><i>inter alia</i>, the country for which the legalisation is sought;</p> <p>2B. The Head of the Representation (or Deputy) authenticates the signature.</p>
		<p>3. Once the signatures are authenticated, legalisation is generally carried out by the embassy or consulate in Spain of the third country concerned, pursuant to the regular procedures.</p> <p>4. The EUIPO recommends that applicants contact the embassy or consulate in Spain of the country concerned to clarify the procedures that need to be carried out, bearing in mind that procedures may vary from country by country. Before accepting such documents, many countries also require an additional subsequent legalisation by the Spanish Ministry of Foreign Affairs.¹¹</p>	

MORE INFORMATION

- [EUIPO – who we are](#)
- [EUIPO: Quick information guide on legalisation of signatures](#)
- [EUIPO – Authentication or legislation of certified copies](#)

¹¹ See the “EUIPO: Quick information guide on legalisation of signatures”, *supra* note 9. On this website, the European Commission further clarifies that “[y]ou should note that the signature of the Head of the European Commission Representation in Madrid, and that of their deputy, have been deposited at the Spanish embassies, irrespective of whether or not the countries in question require legalisation of certified documents. We therefore advise you to contact those embassies if you are not sure about the procedure to follow.”

C. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Introduction		
<p>WIPO was established in 1967 as an agency of the United Nations to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all. With 191 Member States, it is the preeminent global forum for intellectual property services, policy, information and co-operation. The services provided by WIPO simplify and reduce the cost of making individual applications or filings in all the countries in which protection is sought for a given IP right.¹²</p> <p>For more information, see the WIPO website < http://www.wipo.int >.</p>		
Type of Documents	Legal Framework	Authentication / Legalisation
<p>Trade marks</p> <ul style="list-style-type: none"> Detailed / Simple extracts Attestation Copies of Registration / Renewal Certificates 	<p>The <i>Madrid System</i> for the International Registration of Marks allows the registration of trade marks in multiple countries by filing a single application to seek protection in up to 116 countries. The <i>Madrid System</i> is established by two treaties: the Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol Agreement, and is administered by the International Bureau of WIPO, responsible for maintaining the International Register and publishing the WIPO Gazette of International Marks.</p> <p>While the Agreement and the Protocol are independent treaties, they apply in parallel and have overlapping memberships. The Protocol has overcome some of the shortcomings identified in the Agreement.¹³</p> <p>Together, the States party to the Agreement and/or the Protocol and organisations party to the Protocol are referred collectively as Contracting Parties, together constituting the Madrid Union.</p>	<p>It is important to note that extracts of the International Register required for use in Contracting Parties of the <i>Madrid System</i> are exempt from legalisation requirements, pursuant to Article 5ter of the <i>Madrid Agreement</i>.</p> <p>However upon request, WIPO can arrange for the legalisation of extracts from the International Register for production in non-Contracting Parties of the Madrid System.¹⁵</p> <p>The legalisation procedure is the following:</p> <ul style="list-style-type: none"> An official stamp/signature is issued, certifying the validity of the information requested. The extract (simple or detailed) will be certified, affixed with the WIPO seal and signed by the Director of Operations Division, Madrid Registry, Brands and Design Sector or, if necessary, another authorised person;

¹² See, "Inside WIPO", WIPO, available at <http://www.wipo.int/about-wipo/en/>, accessed 8 November 2017.

¹³ See, C.M. Eckhartt, "Is There Still a Need for the 1891 Madrid Agreement – or Is It Outdated?", *Intellectual Property Magazine*, INTA, 2007, pp. 22-26, available at <http://www.inta.org/Programs/MeetingPortals/2011IndiaForum/Documents/CM/GeneralSessionVI/Article2.pdf>, accessed 8 November 2017.

¹⁵ See, "Extracts from the International Register" and "Need to Legalize an Extract? Ask WIPO!", WIPO, available at <http://www.wipo.int/madrid/en/extracts/index.html> and http://www.wipo.int/madrid/en/news/2017/news_0004.html, respectively, accessed 8 November 2017.

	<p>The registration of a mark in the International Register produces, in the Contracting Parties designated by the applicant, the effect of getting the protection of the mark in each Party as if the mark had been the subject of an application for registration filed directly with the Office of that Contracting Party. An international registration is therefore equivalent to a bundle of national registrations.</p> <p>Where the international application complies with the applicable requirements, the mark is recorded in the International Register and published in the Gazette. The International Bureau notifies each Contracting Party in which protection has been requested.¹⁴</p>	<ul style="list-style-type: none"> • Once signed and sealed, the original extract is deposited with the Geneva State Chancellery where the signature will be authenticated; • The document will then be delivered to the relevant Consulate/Embassy of the non-Contracting Party for legalisation. <p>It should be noted that it is currently not possible to legalise extracts for some countries.</p> <p>The fees relating to the certification and legalisation of WIPO extracts as follows:</p> <p>75 Swiss francs for WIPO fees + 33 Swiss francs for Geneva State Chancellery fees + legalisation fees of the non-Contracting Parties/countries (which vary from 30 to 1,000 Swiss francs per extract).</p>
<p>Designs</p> <ul style="list-style-type: none"> • Copies • Extracts 	<p>The <i>Hague System</i> for the International Registration of Industrial Designs provides a solution for registering up to 100 designs in over 66 territories by filing a single international application. This system is administered by the International Bureau of WIPO, which maintains the International Register and publishes the International Designs Bulletin.</p> <p>The Hague System is based on the <i>Hague Agreement Concerning the International Registration of Industrial Designs</i>, which is constituted by two acts: The Hague Act of November 28, 1960 and Geneva Act of July 2, 1999 (both supplemented by Common Regulations and Administrative Instructions). Both Acts are autonomous and independent of each other, so that a potential Contracting Party may decide to become a party to either one of the Acts or both. In the context of the <i>Hague Agreement</i>, the expression "Contracting Party" includes any State or</p>	<p>Copies (certified or non-certified) and/or extracts can be obtained by sending a request to the Extracts Unit of the International Designs Registry.²⁰</p> <p>At the time of writing, no provisions or practices about legalisation to present such extracts related to designs in countries that are not party to the <i>Hague Agreement</i> were available were found.</p>

¹⁴ See, WIPO, *The Madrid System for the International Registration of Marks*, 2016, available at http://www.wipo.int/edocs/pubdocs/en/wipo_pub_418_2016.pdf, accessed 8 November 2017.

²⁰ See, "Frequently Asked Questions: Hague System", WIPO, available at <http://www.wipo.int/hague/en/faqs.html>, accessed 8 November 2017.

	<p>intergovernmental organisation that is party to the 1999 Act and/or the 1960 Act.¹⁶</p> <p>The <i>Hague Agreement</i> procedure allows applicants to register an industrial design by filing a single application with the International Bureau of WIPO, enabling design owners to protect their designs with minimum formalities in multiple countries or regions. Therefore, owners are relieved of the need to make a separate national application in each of the Contracting Parties in which the design owners seek protection, thus avoiding arising from procedures and languages which differ from one State to another.¹⁷</p> <p>The <i>Hague Agreement</i> also simplifies the management of an industrial design registration, since it is possible to record subsequent changes and to renew the international registration through a single procedural step.¹⁸</p> <p>Where the International Bureau finds that the international application conforms to the applicable requirements, it registers the industrial design in the International Register and sends a certificate to the holder.¹⁹</p>	
<p>Patents</p> <ul style="list-style-type: none"> • Copies 	<p>The <i>International Patent System</i> is based on the Patent Cooperation Treaty, established a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services.²¹</p> <p>The <i>Patent Cooperation Treaty</i> facilitates the obtaining of protection for inventions where such protection is sought in any or all of the 152 Contracting States. It provides for the filing of one patent application (“the international application”), with</p>	<p>Actual patents, once granted remain the remit of the national authorities concerned, therefore the Apostille Convention may apply to these documents (see Art. 1(2)(b) and para. 190 of the Apostille Handbook).</p> <p>WIPO does not grant patents <i>per se</i>.</p> <p>With respect to copies of the international applications filed under the <i>Patent Cooperation Treaty</i> and other related documents kept by WIPO, authorised versions are all published in the publicly-</p>

¹⁶ See, “Hague Guide for users”, WIPO, available at http://www.wipo.int/export/sites/www/hague/en/guide/pdf/hague_guide.pdf, accessed 8 November 2017.

¹⁷ See, WIPO, *The Hague System for the International Registration of Industrial Designs*, 2017, available at http://www.wipo.int/edocs/pubdocs/en/designs/911/wipo_pub_911.pdf, accessed 8 November 2017.

¹⁸ See, “Summary of the Hague Agreement Concerning the International Registration of Industrial Designs (1925)”, WIPO, available at http://www.wipo.int/treaties/en/registration/hague/summary_hague.html, accessed 8 November 2017.

¹⁹ See, *The Hague System*, *supra* note 17.

²¹ See, “PCT – The International Patent System”, WIPO, available at <http://www.wipo.int/pct/en/>, accessed 8 November 2017.

	<p>simultaneous effect in several States, instead of filing several separate national and/or regional patent applications.²²</p> <p>However, the <i>Patent Cooperation Treaty</i> does not eliminate the need to pursue the application (once made at the international level), at the national or regional level because patents remain territorial rights.²³ As a result, WIPO does not actually grant patents per se; the decision to grant or refuse a patent remains the purview of the relevant national or regional patent office. It does, however, facilitate such follow-up in respect of the procedures carried out on all international applications during the international phase of processing.²⁴</p> <p>The International Bureau of WIPO administers and facilitates the international patent protection under the <i>International Patent System</i>,²⁵ receiving and storing all application documents (of international application phase), performing a formality examination, and publishing the international application on the online patent search database "PATENTSCOPE".²⁶</p>	<p>accessible, free online "PATENTSCOPE" database. As such, no provisions or practices about legalisation of such documents were available.</p>
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MORE INFORMATION

- [Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol](#)
- [Hague Guide for Users](#)
- [The Patent Cooperation Treaty Applicant's Guide](#)
- [Frequently Asked Questions about the Patent Cooperation Treaty \(PCT\)](#)

²² In addition to designations of Contracting States for the purposes of obtaining national patents and similar titles, an international application includes designations for regional patents in respect of States party to any of the following regional patent treaties: the *Harare Protocol on Patents and Industrial Designs within the framework of the African Regional Intellectual Property Organization* (ARIPO), the *Eurasian Patent Convention*, the *European Patent Convention* (EPC), and the *Bangui Agreement on the creation of an African Intellectual Property Organization* (OAPI).

²³ In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region (see, "Frequently Asked Questions: Patents", WIPO, available at http://www.wipo.int/patents/en/faq_patents.html, accessed 8 November 2017).

²⁴ See, WIPO, *PCT Applicant's Guide - International Phase*, <http://www.wipo.int/pct/guide/en/gdvol1/pdf/gdvol1.pdf>, accessed 8 November 2017.

²⁵ *Ibid.*

²⁶ "27) What is the role of WIPO in the PCT?", WIPO, available at <http://www.wipo.int/pct/en/faqs/faqs.html>; WIPO, *PATENTSCOPE: The User's Guide*, update July 2015, available at http://www.wipo.int/edocs/pubdocs/en/patents/434/wipo_pub_1434_08.pdf, both accessed 8 November 2017.