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LEGAL PROTECTION OF TRADEMARKS IN UKRAINE IN THE CONTEXT OF EUROPEAN INTEGRATION: CURRENT STATE AND PROSPECTS

PROTEÇÃO JURÍDICA DAS MARCAS REGISTRADAS NA UCRÂNIA NO CONTEXTO DA INTEGRAÇÃO EUROPEIA: SITUAÇÃO ATUAL E PERSPECTIVAS

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Abstract

The study examines the ongoing reform of the Ukrainian trademark protection system in the context of the country's accelerated integration into the European Union (EU). The recent presentation of the draft Law of Ukraine "On Protection of Rights to Trademarks" has created an urgent need for a comprehensive and critical analysis of the most significant proposed changes to the national trademark framework, particularly in terms of their feasibility, institutional readiness, and potential risks for future law enforcement and legal certainty. The reform package introduces a number of fundamental changes, most notably the shift toward a trademark examination procedure modeled on the EU system, including the elimination of examination on relative grounds, the introduction of strict procedural timeframes, and the transfer of responsibility for monitoring conflicting rights from the national intellectual property office (UANIPIO) to trademark owners. In addition, the draft law proposes a complete overhaul of the mechanism for recognizing trademarks as well-known in Ukraine, replacing the existing administrative procedure with a new, less clearly defined model. While these changes are formally justified by the objective of harmonizing Ukrainian legislation with EU law, the study demonstrates that the full replication of the EUIPO framework is neither strictly required by relevant EU Regulations and Directives nor necessarily appropriate given Ukraine's historical, legal, and institutional context. The comparative analysis indicates that EU Member States themselves apply diverse approaches, suggesting that a more flexible and adaptive model could better serve Ukraine's needs. It is argued that the proposed elimination of examination on relative grounds and the reliance on opposition-based mechanisms may lead to a

Resumo

O estudo examina a reforma em curso do sistema ucraniano de proteção de marcas registradas no contexto da integração acelerada do país à União Europeia (UE). A recente apresentação do projeto de lei da Ucrânia "Sobre a Proteção dos Direitos de Marcas Registradas" criou uma necessidade urgente de uma análise abrangente e crítica das mudanças propostas mais significativas para o quadro nacional de marcas registradas, particularmente em termos de sua viabilidade, prontidão institucional e riscos potenciais para a futura aplicação da lei e segurança jurídica. O pacote de reformas introduz uma série de mudanças fundamentais, principalmente a transição para um procedimento de exame de marcas registradas modelado no sistema da UE, incluindo a eliminação do exame por razões relativas, a introdução de prazos processuais rigorosos e a transferência da responsabilidade pelo monitoramento de direitos conflitantes do escritório nacional de propriedade intelectual (UANIPIO) para os proprietários de marcas registradas. Além disso, o projeto de lei propõe uma revisão completa do mecanismo de reconhecimento de marcas notórias na Ucrânia, substituindo o procedimento administrativo existente por um novo modelo, menos claramente definido. Embora essas mudanças sejam formalmente justificadas pelo objetivo de harmonizar a legislação ucraniana com o direito da UE, o estudo demonstra que a replicação integral da estrutura do EUIPO não é estritamente exigida pelos Regulamentos e Diretivas relevantes da UE, nem necessariamente apropriada, dado o contexto histórico, jurídico e institucional da Ucrânia. A análise comparativa indica que os próprios Estados-Membros da UE aplicam abordagens diversas, sugerindo que um modelo mais flexível

significant increase in conflicting trademark registrations, thereby shifting the burden of rights protection onto applicants and proprietors. This, in turn, is likely to generate additional litigation, increase enforcement costs, and disproportionately affect smaller rights holders who may lack the resources for continuous trademark monitoring. At the same time, the UANIPIO may face considerable operational challenges in implementing rigid statutory deadlines and managing a growing volume of oppositions and related administrative procedures. Particular attention is paid to the reform of the well-known trademark recognition system. Although the intention to align with European practices appears justified, the abrupt abandonment of the existing structured administrative pathway without a sufficiently clear and predictable alternative may undermine legal certainty and weaken the level of protection currently afforded to trademark proprietors. The transition to any new model must therefore carefully safeguard previously acquired rights and ensure continuity in both national and cross-border enforcement. The study concludes that, despite the declared objective of harmonization, the proposed reforms risk introducing additional procedural complexity, legal uncertainty, and financial burdens rather than improving the efficiency of the trademark system. A more balanced and context-sensitive legislative approach is required – one that takes into account national institutional capacity, preserves effective elements of the current system, and incorporates EU standards in a flexible and pragmatic manner. Without such adjustments and adequate procedural safeguards, the reform may ultimately have a counterproductive effect on the development of Ukraine's trademark protection system.

Keywords: Intellectual Property. Industrial Property. Protection of Rights. Administrative Procedure. Monitoring of Conflicting Rights. Trademark Protection. Trademark Registration. European Integration.

e adaptável poderia atender melhor às necessidades da Ucrânia. Argumenta-se que a proposta de eliminação do exame com base em critérios relativos e a dependência de mecanismos baseados em oposição podem levar a um aumento significativo de registros de marcas conflitantes, transferindo, assim, o ônus da proteção de direitos para os requerentes e titulares. Isso, por sua vez, provavelmente gerará litígios adicionais, aumentará os custos de execução e afetará desproporcionalmente os titulares de direitos menores, que podem não ter recursos para o monitoramento contínuo de marcas. Ao mesmo tempo, o UANIPIO pode enfrentar desafios operacionais consideráveis na implementação de prazos legais rígidos e na gestão de um volume crescente de oposições e procedimentos administrativos relacionados. Dá-se especial atenção à reforma do conhecido sistema de reconhecimento de marcas. Embora a intenção de alinhamento com as práticas europeias pareça justificada, o abandono abrupto do atual processo administrativo estruturado, sem uma alternativa suficientemente clara e previsível, pode comprometer a segurança jurídica e enfraquecer o nível de proteção atualmente concedido aos proprietários de marcas registradas. A transição para qualquer novo modelo deve, portanto, salvaguardar cuidadosamente os direitos adquiridos anteriormente e garantir a continuidade na aplicação da lei tanto em âmbito nacional quanto transfronteiriço. O estudo conclui que, apesar do objetivo declarado de harmonização, as reformas propostas correm o risco de introduzir complexidade processual adicional, incerteza jurídica e encargos financeiros, em vez de melhorar a eficiência do sistema de marcas registradas. É necessária uma abordagem legislativa mais equilibrada e sensível ao contexto – uma que leve em consideração a capacidade institucional nacional, preserve os elementos eficazes do sistema atual e incorpore os padrões da UE de forma flexível e pragmática. Sem esses ajustes e salvaguardas processuais adequadas, a reforma pode, em última análise, ter um efeito contraproducente no desenvolvimento do sistema de proteção de marcas registradas da Ucrânia.

Palavras-chave: *Propriedade Intelectual. Propriedade Industrial. Proteção de Direitos. Procedimento Administrativo. Monitoramento de Direitos Conflitantes. Proteção de Marcas Registradas. Registro de Marcas Registradas. Integração Europeia.*

1 INTRODUCTION

Almost immediately after declaring its long-awaited independence in 1991, Ukraine embarked on a steady course towards integration into the EU. The first document to state Ukraine's commitment to closer ties with the European community became the Resolution of the Verkhovna Rada of Ukraine No. 3360-XII "On the Main Directions of Ukraine's Foreign Policy" (1993), which declared that "the long-term goal of Ukraine's foreign policy is membership in the European Communities, as well as other Western European or pan-European structures […]" (*Resolution No. 3360-XII, 1993*).

In order to establish and maintain stable relations with the European Communities, Ukraine soon concluded an Agreement on Partnership and Cooperation between Ukraine and the European Communities and their Member States, which came into force on March 1, 1998. Article 51 of the Agreement emphasized the importance of approximating the existing and future legislation of Ukraine to that of the Community and required Ukraine to take measures to ensure that its legislation would gradually be brought into compliance with Community law. As a result, Ukraine identified 16 priority areas for subsequent legislative adaptation, including intellectual property (Pronevych, 2024, p. 394). The most notable and specific commitments in the field of intellectual property included gradually improving the national intellectual property system to ensure, within five years of the Agreement's entry into force, a level of protection comparable to that of the EU, and acceding to a number of multilateral intellectual property conventions to which Member States of the EU are parties or which are effectively applied in those States.

By the end of this five-year plan, Ukraine adopted the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which prompted a significant amendment to the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" (Trademark Law) (*On protection of rights to marks for goods and services:* Law of Ukraine, 1993). Specifically, for the first time, a provision on protection of well-known trademarks was incorporated into the legislation, fostering the proper development of both legislation and practice in this area in Ukraine (Savenko, 2024, p. 148).

Following a decade of turbulence and political uncertainty, another major milestone in Ukraine's European integration was the signing of the Association Agreement between the EU and its Member States, of the One Part, and Ukraine, of the

Other Part. However, the significance of this document was primarily political, demonstrating Ukraine's renewed commitment to aligning its legislation with EU standards in the hope of eventual membership. Although, for the first time for the documents of this type, it included a chapter on intellectual property with a subdivision dedicated specifically to trademarks, it lacked legal clarity: the Agreement did not specify EU acts to be incorporated into the Ukrainian legislation, did not set any legislative approximation timelines, lacked commitments to approximate the Ukrainian legislation with the existing and future EU acts, or provide mechanisms for adapting the respective provisions to the Ukrainian legislation (Kapitsa, 2022, p. 289).

Nevertheless, the prolific changes continued to be slowly but steadily introduced into the Ukrainian legislation to bring it closer to EU standards:

- trademark cancellation due to non-use became available if a trademark was not used for a continuous period of five years after its registration (instead of the previously applicable three-year period);
- the list of absolute and relative grounds for refusal has been expanded and reworked;
- the grounds for invalidating a trademark certificate were also expanded;
- the general wordings of the articles of the Trademark Law were updated in line with the EU acts.

Accordingly, by the late 2010s Ukraine already had a fairly established and "battle-tested" system of trademark protection, which was regulatorily close to that of the EU, but procedurally distinct.

Everything started to change drastically when, on June 23, 2022, the European Council granted Ukraine the status of an EU candidate. On the one hand, this decision opened up new prospects for Ukraine and truly became a historic decision, but in turn, it imposed new obligations on the state related to the adaptation of Ukrainian legislation to EU norms and standards (Parkhomenko *et al*., 2024, p. 186). Combined with the reorganization of the National Intellectual Property Office and the appointment of a new director, this led to a new wave of reforms in the intellectual property field, including trademarks. As a result, a new edition of the "Rules for filing and submitting a trademark application, application for international trademark registration and conducting

examinations of trademark application and international trademark registration extending to Ukraine" (Trademark Rules) were introduced in the second half of 2024, marking the first significant procedural amendments since 2011. Although provoking discussions among the practitioners, the changes were not overly unexpected or difficult to adapt to.

However, on May 14, 2025, the recently established Ukrainian National Office for Intellectual Property and Innovations (UANIPIO) held a joint professional discussion with the Ministry of Economy of Ukraine on implementing Directive (EU) No. 2015/2436 of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks into national legislation and ensuring enforcement of Regulation (EU) No. 2017/1001 of the European Parliament and of the Council on the European Union trade mark. During the discussion a brief overview of the intended new Trademark Law was presented, demonstrating the UANIPIO's intentions to completely overhaul the established trademark examination procedure by essentially adopting the model in place for EU trademarks. Although the new Trademark Law is currently in its early stages of development, its presentation was met with reactions of the IP practitioners and professionals ranging from cautious to downright pessimistic.

The purpose of this study was to provide the first in-depth analysis of the most significant proposed changes in terms of their expediency and applicability within Ukraine's current legal climate, as well as to highlight the main potential risks from a practical perspective. The significance of this study for the global scientific and professional community lies in several factors. First, amid the present global political climate, where Ukraine attracts a lot of attention, it offers a convenient guide to understanding the current state of Ukraine's trademark protection system and the inevitable changes driven by its obligations to the EU on the path to membership. Second, this research provides a detailed comparison of the trademark protection systems of various EU states, examining their differences and underlying reasons. Third, it offers a comprehensive critique of how the blind "copy-paste" of foreign laws and procedures without adaptation to organically established local realities may prove counterproductive and destructive in the long run.

Unfortunately, Ukraine's challenges on its path to the EU membership, especially issues related to approximating local legislation in the field of intellectual property and trademarks in particular, have not been the primary focus of foreign legal scholars, whose

research predominantly centers around broader topics of EU trademark legislation or that of individual Member States. In this regard, it is important to highlight M. Senftleben's in-depth critique of the existing imbalance in treatment of the right to intellectual property and related, or competitive, fundamental rights in CJEU case-law (Senftleben, 2024, p. 1480), V. Bonomo and P. Magnani's research into the legal uncertainty at the EU level on the issue of enforcing prior rights in situations of unauthorized use of a registered trademark by third parties' in a non-distinctive way (i.e. for purposes other than identifying and distinguishing the goods or services) (Bonomo & Magnani, 2022, p. 688), R. Limongelli and L. Sposini's overview of the general principles of EU law and the Europeanisation of national laws from a theoretical standpoint (Limongelli & Sposini, 2025, p. 3056), and other great works published in recent years by scholars and professionals worldwide.

This study, therefore, aimed to help fill this scientific lacuna by shedding light on Ukraine's ongoing efforts to align its trademark legislation with the EU standards and the practical implications of some of the proposed amendments.

2 LITERATURE REVIEW

In Ukrainian legal scholarship, issues related to the adaptation of national legislation to European Union (EU) law, particularly in the field of intellectual property and trademark protection, have been extensively examined within the broader context of administrative and economic reforms. O. Pronevych (2024) conceptualizes legislative approximation as a strategic component of European integration, emphasizing the systemic and institutional challenges of aligning domestic legal frameworks with the acquis communautaire. This perspective is complemented by the work of D. Savenko (2024), who analyzes the historical evolution of trademark protection in Ukraine, highlighting the gradual incorporation of international standards and the increasing role of administrative procedures in safeguarding intellectual property rights.

Further doctrinal insights are provided by Y. Kapitsa (2022), who explores the complexities of approximating third countries' intellectual property legislation to EU law through association agreements, underlining both the legal ambiguities and the practical limitations of such processes. The implementation dimension is examined by N.

Parkhomenko, V. Hnatovskyi *et al*. (2024), who focus on the mechanisms of incorporating EU norms into Ukrainian legislation and the institutional capacity required to ensure effective enforcement. In addition, K. Kostenko (2021) provides a detailed analysis of the concept of well-known trademarks, comparing national and international approaches and emphasizing their significance for broader brand protection strategies.

The international academic discourse further enriches this field of research. M. Senftleben (2024) critically evaluates the growing constitutionalization of EU intellectual property law, particularly in the context of balancing fundamental rights, while V. Bonomo and P. Magnani (2022) address the issue of legal uncertainty in the application of the "function theory" of trademarks in the case law of the Court of Justice of the European Union. Emerging challenges related to digitalization and new technologies are explored by R. Limongelli and L. Sposini (2025), who analyze intellectual property protection in the metaverse environment. At the same time, B. Herz and M. Meier (2019) provide an economic and institutional perspective on the impact of EU trademark systems on the harmonization of national intellectual property regimes.

Despite the breadth of existing research, relatively little attention has been devoted to the practical implications of recent and proposed reforms of the Ukrainian trademark system, particularly in light of institutional constraints and administrative capacity. This study seeks to bridge this gap by combining doctrinal analysis with a critical assessment of current legislative initiatives and their potential impact on the effectiveness of trademark protection in Ukraine.

3 RESEARCH METHODOLOGY

The methodological framework of this study is based on an interdisciplinary approach combining elements of administrative law, intellectual property law, and comparative legal analysis to assess the ongoing reform of the trademark protection system in Ukraine. The research applies general scientific methods, including analysis and synthesis to systematize legislative developments and scholarly positions, as well as induction and deduction to identify key trends and predict potential outcomes of the proposed reforms.

A comparative-legal method is employed to examine the differences and

similarities between the Ukrainian trademark system and those of EU Member States, with particular emphasis on procedural aspects of trademark examination and opposition mechanisms. This method enables the identification of best practices and the assessment of their suitability for implementation within the Ukrainian legal and institutional context. The formal-dogmatic method is used to interpret the provisions of national legislation, EU directives and regulations, as well as relevant international agreements in the field of intellectual property.

The empirical basis of the study includes an analysis of draft legislative acts, existing нормативно-правових актів України, official materials and presentations of the Ukrainian National Office for Intellectual Property and Innovations (UANIPIO), as well as selected examples of administrative and judicial practice. In addition, elements of institutional analysis are applied to evaluate the operational capacity of the UANIPIO and the potential impact of procedural changes on stakeholders, including applicants, trademark proprietors, and legal practitioners.

The research also incorporates elements of risk analysis to assess the possible legal and economic consequences of the proposed reforms, including increased litigation, administrative burden, and risks to legal certainty. The study is conducted in accordance with academic standards of objectivity and reliability, relying exclusively on open-access sources and ensuring the reproducibility and transparency of its findings.

4 DISCUSSION

4.1 Ukraine's current trademark examination procedure

In order to have a complete understanding of the upcoming new Trademark Law and the proposed amendments to the respective procedure, their scope and potential consequences thereof, it is important to analyze the current state of the trademark examination procedure. The procedure consists of three distinct stages that follow the filing of an application:

- formal examination, during which the filing date is established and the application is examined for compliance with formal requirements;

- substantive examination, during which examination on absolute and relative grounds for refusal is conducted as part of a single stage;
- the registration stage, which follows the substantive examination and requires the applicant to pay the necessary fees for the publication and issuance of the certificate.

It should be noted that no specific timeframes are established in the Trademark Law or the Trademark Rules for any of the stages outlined above. As such, only applicants are bound by strict deadlines for their respective actions, while examiners retain a certain degree of discretion. This approach accounts for the considerable workload that examiners face on a daily basis. Essentially, only the sub-stages related to the establishment of the filing date and registration provide a degree of legal certainty, as the necessary actions on the part of the UANIPIO are usually competed within 1 month.

Table 1 summarizes the structure of the current trademark examination procedure currently in place in Ukraine in more detail.

Table 1

Overview of Ukraine's current trademark examination procedure

Stage	**Formal examination**		**Substantive examination**		**Registration**
	Establishment of the filing date and publication for opposition purposes	Examination for compliance with formal requirements and filing of oppositions	Examination on absolute grounds for refusal	Examination on relative grounds for refusal	
Stage specifics	Publication of the application requires that the official filing fee be paid in full and a minimum set of documents (such as application form containing applicant's personal information, trademark image and a list of goods and services) be submitted	Application is examined for its compliance with formal requirements (compliance of the applied list of goods/services with the requirements of the law; completeness and correctness of the application materials) Oppositions are filed and examined as to their admissibility for further proceedings etc.)	Application is examined on absolute and relative grounds of refusal and the oppositions (if any) are reviewed to determine whether any grounds for refusal of the trademark registration exist		If the examiner issues a decision on registration of the trademark following its substantive examination, the applicant is required to pay an official fee and state duty for the certificate to be issued and the respective information be published in the official bulletin
Timeframe for each sub-stage	up to 1 month (up to 3 months in case of deficiencies)	6-9 months	up to 12 months		

Timeframe for each stage	up to 12 months		3 months + up to 1 month

Source**:** compiled by the author based on the provisions of the Trademark Law, the Trademark Rules and personal professional experience

4.2 A new trademark examination procedure

According to UANIPIO's presentation, the new Trademark Law seeks to implement the provisions of Directive (EU) No. 2015/2436 into national legislation and ensure enforcement of Regulation (EU) No. 2017/1001. A completely new model for trademark examination is therefore proposed, largely duplicating the system applied to EU trademarks. Key novelties include the introduction of fixed timeframes for each stage of examination and the elimination of examination on relative grounds for refusal. Additionally, it is proposed that publication of the applications take place only after all the examinations have been completed by the UANIPIO. Finally, applicants will now only have two months, instead of three, to pay the state duty and the official fee for publication of the certificate.

Table 2 provides a summarized overview of the trademark examination procedure proposed by the UANIPIO.

Table 2

Overview of Ukraine's trademark examination procedure, as per proposed amendments

<table>
<tr><td rowspan="2">Stage</td><td colspan="2">Formal examination</td><td>Examination on absolute grounds for refusal</td><td>Publication for opposition purposes</td><td>Registration</td></tr>
<tr><td>establishment of the filing date</td><td>examination on compliance with formal requirements</td><td>-//-</td><td>-//-</td><td></td></tr>
<tr><td>Timeframe for each sub-stage</td><td>5 business days (fixed)</td><td>unspecified</td><td rowspan="2">2 months (fixed)</td><td rowspan="2">3 months (fixed)</td><td rowspan="2">2 months + 1 month</td></tr>
<tr><td>Timeframe for each stage</td><td colspan="2">2 months (fixed)</td></tr>
</table>

Source: compiled by the author based on the UANIPIO's presentation of the new draft Trademark Law

Despite the ambitious nature of the intended changes, a number of potential issues related to the implementation of the new examination procedure can already be identified.

One of the most significant changes is the fact that the UANIPIO is expected to no longer conduct examination on relative grounds, thereby leaving the owners of the earlier rights responsible for routinely monitoring monthly bulletins and the publicly available database for potential infringements and filing oppositions if necessary. Although this may seem like a harmless new legal mechanism, already established in many jurisdictions, it also represents a massive shift in the system of safeguarding prior trademark rights in Ukraine. Unfortunately, the vast majority of national applicants and owners, whether individuals or legal entities, and many foreign ones do not actively engage in opposition proceedings whatsoever, meaning they do not monitor the public database and, especially, the regularly published bulletins. Therefore, the UANIPIO, through its designated examiners, bears a burden of protecting the prior rights of such "passive" owners at the initial, pre-trial stage by examining new applications on relative grounds and issuing provisional refusals when conflicts are detected. If examination on relative grounds is simply abolished without any form of replacement or without establishing a special "watch service" that would notify the owners of prior rights of identical or similar intellectual property objects filed, the number of registrations infringing on such prior rights are likely to increase. Consequently, if any infringing applications proceed to registration, the only way for prior rights holders to protect their rights would be to initiate invalidation actions in court, which is a lengthy and costly procedure under current Ukrainian conditions.

Second, it not entirely clear whether there is an intention to align the opposition proceedings to the model applied to EU trademarks. The current procedure allows the owner of prior rights to file an opposition against the trademark they find infringing within three months after its publication, and the applicant then has the option to either respond to the opposition within two months of its receipt or wait for the UANIPIO to review it during the substantive examination stage and only respond to the provisional refusal, if issued. Such approach is procedurally economical, as it encourages both parties to present well-reasoned and concise arguments right away without prolonged exchanges. Adopting the EU model would require the UANIPIO to act as a full-fledged intermediary between the parties, managing the lengthy opposition proceedings, which would necessitate significant human and, therefore, financial resources.

Another potential issue arises from the fact that the new Trademark Law is expected to introduce fixed timeframes for each stage of the examination procedure carried by the UANIPIO. This approach does not take into account the considerable workload of the responsible examiners. At present, both the formal and the substantive examinations take no less than six months due to a large number of incoming applications and the relatively small circle of professionals handling them within the UANIPIO.

Consequently, it is unclear how setting fixed timeframes would help accelerate the examination process. It also seems likely that the examiners will be required to inform the applicants if examinations are delayed beyond the statutory deadlines. In such cases, their workload would only increase, as each applicant would have to be notified of the delay taking place, only elevating the demand for human and financial resources.

Furthermore, although not directly related to the adoption of the EU trademark examination model, it is worth noting that the introduction of a new Trademark Law will inevitably necessitate a series of amendments to a number of local laws and regulations, creating another wave of uncertainty in law enforcement on the part of IP professionals, applicants, rights owners and the UANIPIO itself for the unforeseeable future. This will also require significant legislative efforts and considerable human and financial resources to implement these changes, including amendments to legal acts that were only adopted or revised as recently as a year ago, such as the Trademark Rules.

4.3 Practices of EU Member States

It is important to note that in terms of trademark examination procedure Intellectual Property Offices (IPOs) of various states that are part of the EU conduct substantive examination on both absolute and relative grounds, while providing for a right to file oppositions to interested third parties. As Herz B. and Mejer M. correctly note, EU trademark registration procedure was introduced in the mid 1990-s in addition to national systems as a complementary mechanism, rather than their substitute (Herz & Meier, 2019, p. 1855). As such, Directive (EU) No. 2015/2436 and Regulation (EU) No. 2017/1001 recognize that the EU trademark registration procedure is an alternative to the protection of trademarks at the national level of the Member States and the Union law relating to

trademarks does not replace the laws of the Member States on trademarks but rather lays down general principles, leaving the Member States free to establish more specific rules.

Some EU Member States that currently deviate from the trademark examination model applied to EU trademarks include Cyprus, Ireland, Finland, Sweden and Portugal. Accordingly, the countries that examine applications on both absolute and relative grounds follow rather similar registration procedures, differing in minor details. The only exception is Portugal, where, under the Industrial Property Code (2019), the substantive examination is conducted strictly after the expiry of the opposition period. Consequently, substantive examination is clearly distinct from the formal examination stage and, in this regard, separate from the opposition proceedings as well. Furthermore, Portugal provides for a rather prolonged period for paying the registration fee, which is 6 months from the publication on registration.

Table 3 provides a breakdown of trademark registration procedures applied in Cyprus, Ireland, Finland and Sweden.

Table 3

Overview of the trademark examination procedures in Cyprus, Ireland, Finland and Sweden

<table>
<tr><th>Country</th><th colspan="2">Formal examination / Substantive examination</th><th>Publication for opposition purposes</th><th>Registration</th></tr>
<tr><td rowspan="5">Cyprus</td><td colspan="2" rowspan="5">Conducted in quick succession
Substantive examination consists of examination on absolute and relative grounds
No specific timeframes are provided (examiner’s discretion)</td><td>2 months for the opponent to file an opposition (fixed)</td><td rowspan="5">Trademark is entered into the trademark register following the examination/opposition proceedings
(no separate registration fees are provided)</td></tr>
<tr><td>2 months for the applicant to file a counter-statement (fixed)</td></tr>
<tr><td>Both the opponent and the applicant are then allowed another round of statements</td></tr>
<tr><td>1 months for the applicant to file final piece of evidence in response (fixed)</td></tr>
<tr><td>*Cooling-off period of 2 months (non-extendible)</td></tr>
<tr><td></td><td colspan="2"></td><td>3 months for the opponent to file an opposition (fixed)</td><td></td></tr>
</table>

Ireland	Examination on whether the application meets "the requirements for registration" (covering relative and absolute grounds for refusal) is conducted No specific timeframes are provided (examiner's discretion)	3 months for the applicant to file a counter-statement (fixed) Both the opponent and the applicant are then allowed another round of statements 2 months for the applicant to file final piece of evidence in response (fixed) *Stay (cooling-off) period of up to 12 months overall	Registration fees are paid within 2 months after the examiner's request
Finland	Conducted in quick succession Substantive examination consists of examination on absolute and relative grounds No specific timeframes are provided (examiner's discretion)	2 months for the third party to file an opposition (fixed) 2 months for the applicant to file a response (fixed) Both the opponent and the applicant are allowed two further rounds of statements *Cooling-off period of up to 12 months overall	Trademark is entered into the trademark register following the examination/opposition proceedings (no separate registration fees are provided)
Sweden	Conducted in quick succession Substantive examination consists of examination on absolute and relative grounds No specific timeframes are provided (examiner's discretion)	3 months for the third party to file an opposition (fixed) The applicant has the right to respond (timeframe set by the examiner) Opposition proceedings last until the arguments of the parties are exhausted *Cooling-off period of 2 months up to 24 months overall	Trademark is entered into the trademark register following the examination/opposition proceedings (no separate registration fees are provided)

Source: compiled by the author based on the provisions of the Trade Marks Law of Cyprus No. 63 (I) (2020), Trade Marks Act of the Republic of Ireland (1996) and Trade Marks Rules of the Republic of Ireland No. S.I. No. 199 (1996), Trademarks Act of Finland No. 544/2019, Trademark Act of Sweden No. 2010:1877 (2010) and Trademark Regulation of Sweden No. 2011:594 (2011).

Some other Member States of the EU employ a system where, instead of conducting an ex-officio examination on relative grounds of refusal and issuing a provisional refusal if a conflict with prior rights is detected, they perform dedicated searches and notify the owners of prior rights of potentially conflicting designations, either free of charge or for a fee. It is then up to these owners to decide whether to oppose

the applications or not. For instance, Sections 60 to 61/A of the Act XI of 1997 on the Protection of Trade Marks and Geographical Indications provide insight into Hungary's system: once a trademark passes a substantive examination on the absolute grounds for refusal, the Hungarian IPO carries out a search for earlier rights and prepares a search report, which is then sent to the applicant. Fifteen days after the search report has been sent to the applicant, the application is published for opposition purposes. At the same time, the holder of the prior rights may request the Hungarian IPO to notify him, by sending him a copy of the search report, of the later trade mark application in the search report of which his earlier right was indicated. This request is subject to a special fee. A similar legal mechanism is applied by the European Union Intellectual Property Office (EUIPO) under article 43 of Regulation (EU) No. 2017/1001, though free of charge. Conversely, the Act on Industrial Property of June 30, 2000, does not obligate the Patent Office of the Republic of Poland to conduct an ex-officio examination on relative grounds or inform the proprietors of earlier rights of potentially conflicting applications, leaving the monitoring of infringements and protection of prior rights completely to their respective owners.

4.4 Understanding Ukraine's approach

It seems from the UANIPIO's presentation of the new Trademark Law that the latter adopted the most convenient approach from the legislative standpoint towards aligning the national legislation with EU trademark law in terms of examination procedure – by copying the existing mechanisms in all their major and minor details. It is quite evident that the practices of foreign IPOs were not particularly taken into consideration, either deliberately or due to a lack of comprehensive analysis. In this regard, these "head-to-toe" procedural changes appear as a manifestation of Ukraine's inferiority complex or an attempt to gain favour with the EU. However, it must be noted that they are rather unnecessary, as the current procedure is already approximated in principle to the respective EU legislation and has proven effective across years. The only major issue remains the excessive duration of the registration process, which may take up to two years from the filing date (compared to 6-9 months in most EU jurisdictions), caused by the significant workload of the examiners, which is disproportionate to their

number within the Office. Eliminating the ex-officio examination on relative grounds and setting strict timelines for the UANIPIO, while potentially creating a watch service likely administered by the same examiners, seems unlikely to address this problem.

4.5 A new approach to recognizing trademarks as well-known in Ukraine

It is widely recognized that well-known trademarks constitute a unique exception to the general rule of territoriality of trademarks, intended to prevent unfair competition by third parties seeking to exploit the reputation of a well-known trademark by quickly registering it in a particular jurisdiction in respect of goods or services for which it was not protected yet (Kostenko, 2021, p. 28). Well-known status of the trademark enables the owner to effectively safeguard their rights against third parties' later similar signs across all 45 classes of goods and services, irrespective of whether these are similar or related to those for which a well-known trademark is protected and used. This provides the owner with a great degree of flexibility in terms of protecting their brand and helps prevent instances of public deception.

The current Trademark Law provides that a trademark can be recognized as well-known in Ukraine through a separate administrative procedure offered by the Chamber of Appeals of the UANIPIO or in court. Once recognized as well-known, such a trademark is added to the UANIPIO's database, which grants it a quasi - "erga omnes" protection in a sense that its well-known status is acknowledged by the UANIPIO and is taken into consideration during examination of subsequent applications for potential conflicts. Accordingly, the proprietor can effectively oppose conflicting applications based on the well-known trademark as well. This provides a high degree of protection and considerable flexibility in enforcing the rights during opposition or invalidation proceedings. However, the new Trademark Law proposes to completely abolish this approach by eliminating the possibility of recognizing trademarks as well-known through the Chamber of Appeals or in court. Instead, it is intended that the well-known character of the trademark is confirmed exclusively in "inter partes" proceedings, meaning that the trademark's well-known status applies only to the parties of the dispute and is not binding on third parties.

It must be noted that although the stated purpose of adopting the new Trademark Law is to implement the provisions of Directive (EU) No. 2015/2436 into national legislation and to ensure enforcement of Regulation (EU) No. 2017/1001, neither of these documents explicitly require the Member States to adopt any particular approach in this regard. At the same time, none of the EU Member States currently provide a separate administrative procedure for recognizing trademarks as well-known, nor does such a mechanism exist on the EU level. Consequently, the status of a trademark as well-known or a mark with a reputation (which are distinct yet closely related concepts), must be substantiated during the opposition or invalidation proceedings through appropriate evidence.

While there seems to be no inherent issue with implementing this mechanism into Ukrainian legislation, several aspects raise a degree of caution and uncertainty.

First, how should the status of trademarks already recognized or to be recognized as well-known prior to the entry into force of the new Trademark Law be confirmed going forward? This is particularly relevant for trademarks that were recognized as well-known in Ukraine many years or even decades ago. Would it be acceptable to rely on the respective decisions of the Chamber of Appeals and the evidence presented in the respective proceedings, and would such evidence be considered sufficient by the UANIPIO and the EUIPO? Alternatively, would the proprietors or owners of such trademarks be required to provide new evidence demonstrating that their trademarks remain well-known in Ukraine as of a particular date? While referencing decisions of the Chamber of Appeals is generally sufficient in opposition proceedings under current legislation, this will likely no longer be the case once the new Trademark Law enters into force. Accordingly, at the very least, this may pose a significant inconvenience for the respective rights holders, who will have to prepare completely new sets of evidence for upcoming opposition or invalidation proceedings.

The aforementioned questions and concerns have been repeatedly raised by many major national producers who own one or, more often, multiple trademarks recently recognized as well-known in Ukraine, and have been presented before representatives of the UANIPIO on numerous professional occasions. The primary concern was whether the substantial funds invested in this procedure were spent in vain, considering the sharp change in approach. The answers provided were not direct, but it seems that the general

consensus is that all evidence collected and submitted during proceedings for recognizing a trademark as well-known in Ukraine can be used during opposition or invalidation proceedings once the new Trademark Law enters into force. At the same time, there remains a degree of subjectivity on the part of each designated examiner in assessing whether the submitted evidence is sufficient to establish the well-known character of a trademark in each individual case. Furthermore, depending on the date as of which the trademark holder seeks recognition of their trademark as well-known in each proceeding (particularly if that date post-dates its recognition as well-known by the Chamber of Appeals) the holder will inevitably be required to provide more recent evidence demonstrating that the trademark has maintained its well-known status since that recognition. Accordingly, another set of substantial human and financial resources will need to be directed toward collecting updated information and evidence, and the patent attorney will need to rewrite the submission rather than use the previous template, resulting in considerably higher costs for the holder.

More broadly, such a drastic shift in approach may also be viewed as negative for the UANIPIO itself, considering the abolition of the procedure for recognizing a trademark as well-known in Ukraine, which is currently subject to an official fee of 24,000 UAH (appr. 475 EUR), which is the highest fee provided for under the applicable Order. On the other hand, as recognition of well-known trademarks will be carried out in each separate case by the UA PTO, one can only imagine how much more effort will be required from examiners to review the submitted materials and evidence and to manage the entire process. In view of this, it seems like a significant operational strain for the UA PTO as well as an added burden for rights holders moving forward.

Second, according to the EU legislation and established case-law, well-known trademarks that are not registered in the relevant territory cannot be protected against unrelated classes and dissimilar goods or services (Trade mark Guidelines). In contrast, the current Trademark Law of Ukraine does not foresee such a limitation and provides well-known trademarks with a full scope of protection. Consequently, it is quite probable that the trademarks recognized as well-known locally but lacking prior registration may face significant difficulties and limitations in enforcement at the EU level. According to the Trade mark Guidelines, well-known trademarks can enjoy enhanced protection against dissimilar goods and services, if the relevant national law grants such a scope of

protection. In such cases, provisions of the article 8(4) of the Regulation (EU) No. 2017/1001 governing non-registered trademarks can be invoked during opposition or invalidation proceedings. However, enforcing rights under this article is generally more challenging and complex than in cases involving trademarks with reputation and the respective provisions.

5 CONCLUSIONS

The proposed reforms to Ukraine's trademark protection system represent a substantial recalibration of long-standing procedures, undertaken with the stated aim of aligning national legislation with EU standards. However, as evidenced by the comparative analysis above, the new model appears to replicate the EUIPO framework without fully accounting for the practical realities of the Ukrainian IP environment, the existing capacity constraints of the UANIPIO, or the diverse approaches implemented by individual EU Member States. The elimination of examination on relative grounds, the introduction of fixed timeframes, and the shift in responsibility for rights monitoring from the UANIPIO to trademark owners collectively signal a paradigm change that may, in practice, generate more procedural complexity rather than reduce it.

Specifically, the anticipated rise in conflicting registrations and subsequent litigation risks imposing significant financial and procedural burdens on rights holders, especially those unaware of the need for systematic monitoring. At the same time, the UANIPIO itself is likely to face substantial operational challenges, both in adapting to the rigid statutory deadlines and in addressing the increased administrative workload associated with opposition management and applicant notifications.

Furthermore, the proposed overhaul of the well-known trademark recognition mechanism may inadvertently weaken an important tool for brand protection, undermining the certainty and flexibility currently offered to proprietors under the existing system. Abolishing a structured administrative pathway without introducing an effective and predictable alternative risks creating an enforcement vacuum, leaving both applicants and examiners without clear guidance.

Overall, these changes underscore the need for a more nuanced, balanced and context-sensitive legislative approach – one that draws on comparative EU practices

without adopting them mechanically and one that strengthens, rather than burdens, the national trademark system. Unless carefully reconsidered and supplemented with adequate procedural safeguards, the reforms may fall short of their intended harmonizing effect and instead contribute to legal uncertainty, increased costs, and additional strain on both trademark owners and the UANIPIO in the years to come.

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