

**MINISTRY OF DEVELOPMENT  
AND COMPETIVENESS  
GENERAL SECRETARIAT  
FOR COMMERCE**

**PROCEEDINGS OF  
CONFERENCE**

*“Trade Marks & Anti – counterfeiting  
measures”*

WEDNESDAY, 18 JUNE 2014

# **MINISTRY OF DEVELOPMENT AND COMPETITIVENESS**

## **GENERAL SECRETARIAT FOR COMMERCE**

### **HELLENIC PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION**

**(1<sup>st</sup> semester of 2014)**

#### **Conference programme**

##### **“Trade Marks & Anti-counterfeiting Measures”**

- Speakers Registration

Welcome Speeches and Opening Remarks

- Mr. Stefanos Komninos – Secretary General for Commerce – Acting  
Chairperson

- Mr. Gerasimos Giakoumatos – Deputy Minister of Development and  
Competitiveness

- Trade marks' contribution in competitiveness and economic growth

The role of OHIM as a manager of intellectual property

Mr. Antonio Campinos – President of OHIM

#### **Session 1:**

### **EU TRADE MARK SYSTEM – LEGAL REFORM AND THE RECENT PERSPECTIVES**

**Moderator: Mr. Ioannis Chamilothis – Judge of Greek Supreme Court**

- Introduction, Mr. Ioannis Chamilothis – Judge of Greek Supreme Court

- The European Commission’s proposal regarding the legal reform on the EU trademark system

Mr. Pierre Delsaux, Deputy Director General for Dir B, C, D, E, Directorate General Internal Market and Services, European Commission

- PDO-PGI: Implications regarding the legal reform on the EU trademark system

Dr. Mihály Ficsor, Vice President of the Hungarian Intellectual Property Office (HIPO), Chairman of the Administrative Board of OHIM

- The impact of legal reform on the EU trademark system – Cooperation between OHIM & EU member states

- The case law of European Court of Justice on significant trademark legal issues

Mr. Georgios Arestis, Judge at the European Court of Justice

- Discussion (20 minutes)

- Coffee Break

### **Session 2:**

## **EFFECTIVE PROTECTION OF TRADEMARKS – ANTI CONTERFEITING MEASURES**

**Moderator: Mr. Stefanos Komninou – Secretary General for Commerce**

- Introduction, Mr. Stefanos Komninou – Secretary General of Commerce
- The role of the European Observatory on Infringements of Intellectual Property Rights – Trademarks Protection

Mr. Paul Maier, Director of the European Observatory on Infringements of Intellectual Property Rights

- Mediation for friendly settlement in trademark disputes

Mr. Theophilos Margellos, President of the Boards of Appeal, OHIM

- The US Government Approach to Industrial Relations Enforcement Efforts

Mr. Douglas Freeman, DHS/ICE Attaché, Department of Homeland Security, US Embassy

- Best Practices in Creating an Effective Enforcement Framework: The US Experience

Ms. Caridad Berdud, Attorney-Advisor, US Patent & Trademark Office (USPTO)

- The Role of SYKAP in Fighting Illegal Trade – Counterfeiting in Greece

Mr. Dimitrios Bouloukos, Executive Director of the Coordination Center against Illegal Trade (SYKAP)

- Discussion (20 minutes)
- Lunch

### **Session 3:**

#### **THE FEEDBACK OF TRADEMARK USERS ON EU TRADEMARK LEGAL REFORM AND THE ANTI-COUNTERFEITING MEASURES**

**Moderator: Mr. Constantine Michalos – President, Union of Hellenic Chambers of Commerce and Industry**

- Mr. Constantine Michalos – President, Union of Hellenic Chambers of Commerce and Industry
- The Impact of Legal Reform on the EU Trademark System in Global Trade

Mr. Etienne Sanz de Acedo, CEO, International Trademark Association

- The Impact of Legal Reform on the EU Trademark System in the Single Market

Ms. Diana Versteeg, Chair of the Marques Council

- The Impact of Legal Reform on the EU Trademark System: the Consumer View (Product Safety, Competition and Innovation)

Mr. James Waterworth, Vice President, Computer & Communications Industry Association (CCIA Europe)

- Discussion (20 minutes)

**CLOSING REMARKS**

- 1. Mr. Stefanos Komninou, Secretary General of Commerce
  - 2. Mr. Dimitrios Botis, Deputy Director for Legal Affairs (ICLAD), OHIM
- END OF THE EVENT

**WEDNESDAY, 18 JUNE 2014**

**MR. STEFANOS KOMNINOS:** Good morning, ladies and gentlemen. Mr. Giakoumatos, Mr. Campinos, it's a great honour and pleasure to welcome you to this conference on trademarks and anti-counterfeiting measures. I would like to thank all the participants in this conference, not only for responding to our invitation but also because they have been working hard all this time for our common goal, the protection of trademarks. This is why we have invited them to speak here today.

The enforcement of a trademark for you people working in the law might be an adventure, but for me, as a person of the Ministry of Development, this is a developmental policy. In the past there have been countries, even within Europe, which were tolerant to the infringement of intellectual property rights.

In Greece, however, the respect of trademarks is a one-way road. It's our only choice, because what we wish now is to produce products and provide services of high quality. In order to protect and safeguard these products and services, we have to have trademarks.

What is also very problematic for us lately is the fact that we have seen the reappearance of counterfeit products and imitations in the European Union. This might be the result of the crisis, because it has decreased the cost of production for products in Europe, but is also a threat and a challenge which has to be dealt with immediately.

So all over Europe the production of innovative products is equal to growth. And there are policies and choices that aim at the protection of this institution, either through the law or through procedures having to do with the registration and protection of trademarks and administrative burden.

And mediation is a new institution, which has been created in order to manage trademarks. We are trying to find a solution through friendly settlement of pending cases, through the mediator, a third person. This is a new institution which is going to help more the people dealing with trademarks and decrease administrative burden.

Then the efforts of OHIM for a full digitisation of the lifecycle of the trademark, right from the onset of the registration process until its deletion. The exchange of information between member states. We have the TMU. It's an impressive creation of OHIM, which proves that Europe can have such initiatives which become an example for the rest of the world.

So in 2012 the General Secretariat for Trade concluded a bilateral agreement with OHIM in order to have all this know-how transferred to it and have support for our own databases and electronic files. And at the same time we are trying to find support for the fight against illicit trade.

This cooperation with OHIM has allowed us to create technological tools to the benefit of enterprises and consumers, and we are now ready to begin the online registration of trademarks, and very soon you will have an announcement by the Minister for this new development.

In this framework we will continue to work with OHIM for other projects. And at this point I would like to deeply thank Mr. Campinos for the great support that he has shown to Greece. And this is not only because he is a Portuguese and because he is also based in southern Europe, in Spain, and thus understands the problems of a southern country such as Greece, but also because he is deeply European. And we would like to thank him for that.

**SPEAKER:** We will say something about football later.

**MR. STEFANOS KOMNINOS:** So in this spirit we have undertaken the Greek presidency of the Council, and in this context we had a very difficult package of legislation in the relevant committee of the Council, where we tried to find compromises after intense discussions between the member states in the Commission and with OHIM.

So our main concern as presidency was to move forward with these discussions and find a solution, a compromise solution.

So our proposal actually has given approval to the OHIM scheme of operation, and we have spoken of a platform which will allow the financing of the cooperation between OHIM and national offices. So the surplus of OHIM will be used in order to enforce national offices in the field of trademarks.

Another great issue that has remained open is the transit controls. Here we have many member states which have concerns, and there are contrasting views, contradictory views, on whether we should move on with this option.

We in Greece fervently support this type of controls. We believe that we should have general controls. We should not exclude transit areas. We should have global controls.

On the other hand, we should know that Greece has become a transit hub of global, let's say, importance. We have many consignments which do not go through Gibraltar but stop in Piraeus and find their way in the markets in a cheaper and more practical manner.

This means that our country will be even more burdened by the implementation of this mandatory control in transit areas.

However, we are the ones who continue to support this type of control, and this is why we have proposed a compromise solution. We would like to have two coordinating centres, one hub in southern Europe and one in northern Europe, which will manage the main issues having to do with the entrance of products in Europe.

These hubs will coordinate the actions of control mechanisms in the various countries, but they will also support financially and technically these actions.

We are certain, and we hope that OHIM will contribute to this initiative by supporting it financially, and we believe that even the countries which are now opponents to transit controls will finally agree.

The initiatives we have taken at the European level are also accompanied by national initiatives; the Minister will speak about them shortly.

What we have managed to do in the last years was to simplify the procedures for trademarks. We have reduced management costs, and we have allowed, sometimes to the detriment of lawyers, we have allowed entrepreneurs to come to us themselves and apply for a trademark.

We have also had a series of interventions in order to fight illicit trade. Our main success was the way we dealt with the problem of seizure and delayed destruction of counterfeit products. There were some delays in that, and we have managed to simplify the procedures by copying some European policies that we liked.

Ladies and gentlemen, I hope that I have created some questions in your minds, which will be answered during this conference. And in this way our fight for the protection of trademarks will be made more effective.

Now I would like to call the new Deputy Minister of Development and Competitiveness, Mr. Giakoumatos, to take the floor. He might be new in this position, but he is an old member of his party and he knows things.

**MR. G. GIAKOUMATOS:** Dear Mr. Campinos, in my turn I would like to thank you all for being kind enough to come here in order to discuss this very important issue. We all know that the protection of intellectual property rights, and especially trademarks, is a major issue for us, for the new political leadership of the Ministry, but also for society as a whole.

Trademarks are a sensitive issue. You understand what would have happened if the various communities wouldn't have created, let's say, the

numbering of streets. What would have happened? There will be chaos. The same goes for enterprises. We have to have trademarks in order to allow enterprises to grow.

So trademarks are a very sensitive and complex issue, and this is also complex for all the financial units which are involved in the management, exploitation and protection of trademarks.

Proprietors of trademarks are commercial, and not only commercial, enterprises, which are important poles in the society and the economy of a country. And they need security provided by a comprehensive system for a quick, affordable and simple registration procedure for their trademarks. In this way they will be able to communicate with their consumers.

Very shortly we will have an electronic, let's say, way of registering trademarks. And trademark registration, which is the means whereby enterprises actually have roots in the market and can communicate with the consumer is something that enterprises can now have, enterprises which until now have been hesitant in the registering of trademarks because of the complexity of the procedure.

However, the protection of trademarks is not only an issue for the trader. It is also an issue that has to do with consumers and their associations, for their own protection.

This is why the state is obliged to have informed consumers, who will be active supporters of our task. They will know the importance of this apparently innocent action of buying a counterfeit product or an imitation. It is very important.

The consumer associations have to raise awareness, so that consumers know what are the damaging, let's say, repercussions of buying products which do not bear a trademark.

On a global basis we should also know that tacit acceptance of this phenomenon actually does not encourage entrepreneurs to invest in innovation and take the risk of innovation.

So we are allowed to be exposed to all those “attractive” products, which might in the end be to the detriment of our health, the health of our consumers and their children, our children.

So this is an issue of principle. It’s the principle of respecting intellectual property, but not only property. Also ideas, innovation and entrepreneurship.

So the Ministry of Development is supporting enterprises and consumers, but also the law enforcing mechanism, which will have to fight, sometimes by risking their lives, in order to fight illicit trade.

Our contribution also has to do with the coordination of co-competent authorities, because a lack of coordination might actually lead to abolishing all those efforts which have begun with the best intentions. So this is a very serious bet for us. And I am certain that I can speak on behalf of all of us in saying that we will make every possible effort in order to come closer to winning this bet.

The Greek presidency coincided with the revision of the registration and the recast of the directive for trademarks. And we have made every effort possible in order to move forward with this procedure.

Although these two legal acts were created in different points of time, their revision, their recast was made necessary in order for us to have a package that will regulate in a coherent and consistent way the law of trademarks at a Community and national level, in order to have a more effective and easily accessible environment for enterprises.

So the Greek presidency presented to the Council three compromising proposals for the regulation and the directive, which were dealing with a series of issues having to do with the coexistence and complementarity of national systems and the Community system.

So the working party actually gave rise to important issues, such as the issue of controls in transit zones, controls for counterfeit products. This is a great issue, as the General Secretary said.

So OHIM, governance in OHIM, the financing of cooperation products, the use of OHIM’s surpluses and the amount of Community trademark fees were the main issues.

So the two texts that the presidency has submitted are dealing with a majority of technical issues and some of the policies. And most of them have found the consent of member states, while financing and our compromise proposal on that is a basis for fruitful discussion.

Now, coming to the end of our presidency, we will not stop in our efforts to find a compromise solution in the two remaining issues, transit and financing.

Thank you very much for the efforts you have undertaken until now, and we will continue in the same tone in the future. Thank you very much.

**MR. A. CAMPINOS:** Good morning, everybody. Dear Minister, dear Secretary General, dear Chair of the Administrative Board, dear Deputy Director General of DG Internal Market, dear Presidents of Boards – I mean there are so many individuals I have to stop naming you. If not, I am going to spend all my ten minutes in greeting you, but ladies and gentlemen, a very good morning.

I will start by not delivering my speech. It’s rather my developing three or four ideas, and that’s when it becomes a little bit worrying.

The first is to tell you that I have two wishes. The first wish follows an incredible acceleration of the base of cooperation between OHIM and the Greek government, under the leadership of Stefanos Komninos, and I really mean it. In the past three years, the things that we have achieved together, we and both the office responsible for patents and design and the office responsible for trademarks, has been unbelievable, unbelievable. The number of implementations of the cooperation fund projects developed together between OHIM and member states is amazing.

So my first wish is that we change the post of Secretary General to Permanent Secretary; I don’t know if this is feasible.

The second now is going to be even a little bit more sensitive than the first one, so Minister, apologies. The second one is that I still wait for the day that I will enter in the IP office in Greece. So we still have trademarks on the left or on the right – you choose – and patents and design on the left or on the right – you choose. But we still do not have an IP office, a single intellectual property office in Greece. And I think that the time has come to – again, I will repeat that every time you invite me, so stop inviting me.

But I think that really Greece deserves to have a single intellectual property office, a modern, self-funded, with its own surplus, office that delivers a high-quality service not only to the Greek industry but to the industry worldwide.

And why? For a simple reason, that we keep on talking about law, regulations, directives, and I think that sometimes we lose the essential part of the story. And the essential part of the story, Minister, is that companies, industry that uses IPR in an intensive manner, whether we talk about patent design, trademarks, copyrights or geographical indications, they do account for almost 40% of European GDP, 39%, to be more precise. And the Greek numbers are very close to these numbers.

Those industries, those companies account for 35% of all employment in the European Union. Thirty-five per cent of all the jobs, existing jobs in the European Union and 35%, or mostly 35%, of all jobs existing in Greece come from those companies that use these rights in an intensive manner.

And 90% of all trade of the European Union abroad is generated by these industries. So I think, like lawyers say – and I’ve got very good lawyers in front of me – I rest my case.

Now, from our perspective what has to be done? I mean simple, and at the same time very complicated things that you need to do. You need, from the administration perspective, you need to deliver a high-quality service in protecting these IP rights to industry and to your citizens. And that’s very simple words, but it’s very complicated to do.

So it means that you need to be timely in the decisions that you render. You need to be consistent in the decisions that you render. And by bringing timeliness and consistency, you become what industry loves – and we have a representative of the US Chamber of Commerce. You become predictable.

And when you become predictable, it means that you produce massive savings to industry that then can invest in things that matter, which is to say in generating more income and generating more jobs.

We are doing that at OHIM, but of course we know that we don't do this alone, because we operate in a two-tier system, whereby OHIM is accompanied with national offices.

So this consistency, this predictability, these efforts as regards to quality have been brought in a holistic manner into the frame of the European Trademark and Design Network. The European Trademark and Design Network combines today Europe, not only OHIM but all the national offices that deliver IP rights in the national perspective.

This is done basically through two programmes. The first one is the convergence programme that aims at bringing, as much as we can, the interpretation of all our laws, which are under the infrastructure of a common directive, into a much more consistent interpretation, and that is in dawning five areas today, and two new areas in the design, and this again bringing convergence in the practice and interpretation of law, in the design law and trademark law, is very important to industry.

So it's not only about changing the law, because many times we change the law and through the efforts pursued by the Commission and the member states and the Parliament, and then the next thing when the law is to be applied, interpreted, it is interpreted and applied divergently.

So a big, big challenge for all of us here, and those who couldn't come, will be the day that the directive will be approved, even before member states start transposing the national law, that we sit together, I think for the first

time in history – I mean if we might do that – and we explain to each other how we intend to transpose the law, in order to ensure that this transposition is as converged as possible.

And this will be, I think, in premiere in Europe – Pierre Delsaux is saying it’s not the premiere – so maybe in deuxieme, or third.

But in any case the way I’ve seen the transposition of directives, from my perspective, not always this has ensured the convergence that we need. But in any case, besides the convergence of practice we have a cooperation fund, a cooperation fund that has 19 projects, so you mentioned one. But there are many other projects. All these projects have been implemented 270 times in member states, so there are 270 operational tools that have life through Internet in all member states, and I think this is a major achievement.

This has been done with 50 million of what is called – but I am trying to find the new name; I was discussing this morning with the chair of the Administrative Board. The surplus – we need to change the name of the surplus, I mean this is, I think, the wrong approach. We have no surplus actually in OHIM; we have a margin of manoeuvre. So a margin of manoeuvre, so we should not spend that much time in figuring out how we are going to use this margin of manoeuvre, but because we are doing it presently all together in a frame of the European Trademark and Design Network.

So the life cycle of trademarks, designs until registrations is important, matters to industry, matters to jobs, matters to creation of GDP and matters to trade. But also the enforcement side of protection of the trademark and design and patents other IP rights are important.

And there we have been very active through the Observatory. We have Paul Maier, the Director of the Observatory, present with us today, and I think it’s fair to say that since the transfer of the Observatory to OHIM some work has been; some progress has been achieved.

This study that I just mentioned is of course a co-study – let me mention OHIM and EPO; let’s not forget it – with the assistance of the Commission and OECD, and even the American government.

But now we have launched also a second study, the IP Perception Study, that allows us to understand what the citizens think about intellectual property and enforcement, an important study, where we see that everybody says that yes, yes, IP rights are important to innovation, yes, IP rights are important to trade and to commerce. But when it come to their pockets, then it starts things to look a little bit differently, and people start to find excuses all to buy counterfeited goods or to go for illegal downloading.

Why? Because either it’s too costly or because it’s not legally assessable, and I think we should look at these questions of assessability that are very important, or even as an act of protest against those big multinationals.

So what are we doing now? We are moving it to the second phase of this big IPR intensive industry study that I have said, to try to understand more than on a macro level, at the micro level how things really go. Within some industrial clusters to understand what is the behaviour of companies that use IPR in an intensive manner, compared to those companies that do not use IPR in an intensive manner. Do they generate more income? Do they pay better the salaries?

And where is the proportion of small and medium-sized that really uses IPR rights? I mean is IPR rights only used by multinationals, or do the SMEs use IPR rights to create jobs and growth? And we have here I think the president of the association that represents the small and medium-sized companies of Greece.

And most probably I think the findings will be interesting, but we will need to wait for a few more months to get the results.

And finally, to round the circle – and then there are so many other things, but Paul will say them, that the Observatory is doing – I think that the time has come to have a look into the dark side, which is to say we have quantified

the positive aspects linked to IP in terms of IPR contribution to growth, trade and employment.

But infringement, what today represent as regards to the European economy? What do they represent? What is the value of the overall amount of infringements to IPR rights in Europe?

I remember that the OECD published a study called 2008 that said, if my memory is correct, that annually infringements worldwide cost 250 billions to the economy. But since 2008 we have no other studies, and probably this figure has grown. Probably, I said, because we don't know.

And we don't have any figures for Europe. Right, Paul? So within the European Union we still do not know what is the cost of infringements, whilst we legislate around enforcement.

So I think that we have to come back to basics sometimes, and the basics is try to assess the value of infringements to the economy. And that's what we are trying to do, very hard to do.

Of course we can't do this alone. We have to do this with the OECD, but we are trying to quantify what is the volume of counterfeiting. What it does represent in terms of non-growth generated.

And I don't know if you heard about a recent – in the newspapers there were things. No, I won't say them, because that would bring me to some impolite words. But let's say that Eurostat is trying to harmonise the way member states calculate the underground economy. And I'll stay there.

But in any case how many jobs are not created? Why is the percent of growth not generated? What is the percentage of income that the government do not perceive into taxes over salaries, because the jobs are not legal, also security taxes, because again the jobs are not legal?

And how much do you, sir, pay more in terms of taxes per year because he doesn't collect the money that he should be collecting? And what is the cost that every one of you here is paying to make the IP enforcement infrastructure operational on a daily basis?

The judges seated here, we pay them; they do enforcement. The custom authorities, we pay them; they do enforcement. The police authorities, we pay them; they do enforcement.

So what is the cost that the citizens pay to maintain this infrastructure that is there to fight against counterfeiting, to fight against infringements?

So that would be, I would say, the third study that would complete the trilogy, and I think this is very important for our political masters to know what we are really talking about.

Of course everything can be criticised. Any study can be criticised, and most probably our studies are and will be criticised in the future. But one thing I can tell you: They will be criticised on the basis of a methodology that will be transparently put forward and will represent always two-thirds of our studies.

So the only thing that we will be fighting is not that people come and say we have a better methodology than you, so we can better assess those phenomena. Please do. Please bring your methodology. We will use it if it's better than ours.

The thing that we will strive to do is that if, with the data that we have, you use the methodology that we have proposed, you must come to the same results that we came to. And that's the only thing that we will strive in the years to come to ensure.

I have been very long. I will just thank you again for having organised this conference. Thank you, Minister, to have accepted to come. And ladies and gentlemen, now it's time for the specialists to speak. Thank you.

**MR. G. GIAKOUMATOS:** Thank you on that. I would like to tell Mr. Campinos that he played football today in the way Germany played with Portugal. But he was Germany and I was Portugal.

You should understand that I am only for five days in this post. And of course this is a very important issue and there will be meetings. We will fully cooperate in this respect.

You should not forget, however, that Greeks are very smart and inventive and we have a long history. Why am I saying this? Because there is only one reason: illicit trade. It's a European and global threat. We fully agree on that.

We know that police and law enforcing authorities cannot solve the problem alone, because illicit trade is like a multi-headed Hydra. You cut one head and two new heads spring out.

Why do people buy a shoe which is imitation? Because they don't have money. So shouldn't we look at imitations and counterfeiting from a different point of view? How can we control that? Not by policing measures. By Community measures, which will allow us to deal with this threat.

Thank you very much. Next time we will have a more fair match.

**MR. I. CHAMILOTHORIS:** I would like to ask you to have a seat. Take your seats, please, because we are running behind schedule, so start with the first session.

I would like to thank the Greek presidency and especially the Ministry of Development and OHIM, the Office for Harmonisation in the Internal Market, for the honour to allow me to chair this session of this conference, which will actually make us wiser as regards the operation of trademarks in the European Union.

We all know that a trademark is a distinctive mark which is a means of communication between the producer, the trader and the consumer. Through trademarks we promote sales and free competition.

We should also remember that trademarks are a guarantee which is of interest not only for the companies but also for the consumer. Of course trademarks have to do with the principle of territoriality. This principle of territoriality actually created the Community mark initially with Regulation 40 of 1994, then the 2009 Regulation, which actually led us to have a Community mark all over Europe which will function in parallel to national trademarks.

You know that there is a system for judiciary protection of national trademarks and Community trademarks through the Community trademark courts, which are provided for in the regulation. These courts are based in the different member states, and they deal with the cases having to do with trademarks. In Greece we have two such courts, one in Athens and one in Thessaloniki.

So the harmonisation is there, but we still have problems, especially at a legal level, not so much at an enforcement level.

This is what will also arise from this session. Today we have here Mr. Pierre Delsaux, who is Deputy Director General for the Directorate General for the Internal Market and Services of the European Commission; he will speak about the European Commission’s proposal regarding the legal reform on the EU trademark system.

**MR. P. DELSAUX:** Thank you very much, ladies and gentlemen. Thank you very much for having invited me at this conference organised by the EU presidency.

I don't want to say it because I want to be nice with the Greek presidency, but I must say it has been a success in many, in many situations. And I must say that the results achieved by the Greek presidency are quite outstanding.

I know it's a current context for the male population. What is really important now is the World Cup. But let's be honest: What has been done and what has been achieved through the EU presidency by the Greek government is really impressive. And again I don't say it because I want to be nice with you.

So I would like to articulate my presentation around three questions, and some of them have already been mentioned of course in the previous presentation, but I believe it's important maybe to dwell a little bit on them and to insist a little bit on them.

The first issue is why is IP important at the EU level for all of us? Second part: Why do we have a trademark proposal on the table? And the third

part of my presentation: Where do we go from now on? What is the future? What are we going to do with this proposal?

The first aspect: Why is IP important at the EU level? I am not going to repeat what has been said in the previous session. It's clear that IP is important for the number of jobs which are created, for the number of workers who can find a way to work because of IP.

We need to be honest with ourselves. We don't have natural resources. If you dig a hole outside of this building, very likely you will find an archaeological site, but no gold, no gas, no petrol, nothing at all. So we don't have natural resources.

We have only one strength, which is our big market, 500 million people, and our capacity to innovate. We need innovation in Europe, everywhere, in all of Europe. Without innovation, we will not be able to face competition with the rest of the world. Let's be clear on this.

So innovation is key, and to have innovation you need also to have IP. That's exactly the reasoning that we are following at the EU level.

Now, we need also to be very honest. If I ask someone, “Are you against innovation?” no one will say no. “Are you against IP?” probably no one will say no. But we need this statement to become a reality. It's not always the case.

Let me give you very concrete examples. European patent. If you don't follow this file, you might have the feeling that the EU patent has been agreed, because we already said two years ago we have an agreement on the European patent. Is it a reality now? Is it possible for you to file a European patent? No.

We say that it should have been a reality for the European election. But it's not. Why? Simply because we are still discussing many modalities on how to implement the EU patent. We are still in the process of ratification in many member states. And so today only three member states have ratified the EU patent.

It means that the EU patent, which is important for all companies in Europe, will not become a reality before, at best, 2015-2016. I don't know.

Can we really leave so much time before a political decision and this political decision to become a reality, knowing that it's important for everybody?

And again, if I look at the EU patent, sometimes you can convince people that it's important. IP. I don't know if you have followed this, but at the margins of the EU election in Denmark there was a referendum on the ratification of the patent. And the EU election in Denmark was rather euro-sceptical, so most people, a lot of parties, were basically against EU. But there was a large majority to ratify the EU patent. So it was possible to convince people that it's important. But again, it needs to become a reality.

What are we doing also at the EU level to protect IP? We have trade secrets. Trade secrets – we have put the proposal on the table, which has been negotiated by this presidency, and we have already an agreement within the Council on the text, and I believe it will be possible to get an agreement with the Parliament very soon.

Trade secrets are important, because not everybody is capable to develop a patent or is willing to get a patent. So affording, having real protection for trade secrets in Europe is important for many companies, and we will be able to achieve it. So that's a positive result.

But if I look at copyright – and that's important – copyright, we are working on the issue of copyright. But copyright is important not only because of itself, but because of the mentality and the consequences on the mentality. You know, I have children. If I have to convince them not to do illegal downloading, it's very complicated. And I'm sure many of you – I don't dare to ask the question: Who has never done an illegal downloading of something which is protected by copyright? Maybe one or two, good people. Most people have done it.

And the debate on copyright is important why? Because if people have the feeling that you can download something which is illegal for copyright,

how are you convinced that protecting trademark is important? Are you convincing people that protecting patents is important?

So it's not something which is so neutral. If you allow illegal downloading for copyright, then you basically give the message that IP is not important and doesn't need to be protected.

So that's why we are working also on the copyright issue. We know that copyright needs to be adapted. We need that an evolution has to take place. But we are working on a white paper which should be adopted before the summer, to try to address this issue of copyright and what to do with copyright.

Enforcement – it has been mentioned on several occasions. Enforcement is a key factor, of course. And again we are working on two policy documents, actually, which will be adopted in two or three weeks' time, on an enforcement action plan at EU level and also with respect to the external world.

You know, I know when we talk about protecting trademark people have the feeling that of course counterfeited product, why do you need to protect Gucci anyway? As the Minister said, people don't have the money to buy the real Gucci. The real problem with counterfeited products is the fact that many of those products are not necessarily high-value products. These are products which you buy on a regular basis, all of us. And you have safety issues when it concerns for instance drugs, when it concerns some elements which are fundamental spare parts for airplanes, spare parts for cars.

This is a kind of counterfeited products which are not so obvious, but which are really important if we don't do anything. So we really want to create a real action plan against counterfeited products in Europe.

And you know, of course we need better cooperation between the police forces; we need better cooperation with all stakeholders. But also let me give you very concrete examples.

Why are the payment services like Mastercard, Visa accepting that the credit cards are being used on illegal sites? Why don't we ask them simply to stop the possibility for these illegal sites to use their services? They have done it

in the US. Why not in Europe? So is the kind of practical ideas on which we need to look.

But enforcement and counterfeiting products are important not only for the high-value products but for all products. And that’s something we need to keep in our mind, and that’s why we consider it’s important.

Now trademarks. And I move to the second part of my presentation, which is our proposals. We didn’t want a revolution with our proposal. We didn’t want to change a system which was functioning and was a success, because let’s not forget the European trademark, Community trademark, is a success. The number of trademarks which have been filed at the European level is quite impressive. And if we talk about margin of manoeuvres, surpluses, whatever we call them, it’s simply because at the basis it’s a success; it has been a great achievement.

So we didn’t want to change, we didn’t want to fundamentally change this great achievement. What we wanted to do with our proposal was basically modernise the text, streamline certain procedures, make sure that the directive is more in line with the regulation. So to some extent to take benefit of the positive aspect of the regulation in the directive. And of course we needed also to adapt the legal framework to the Lisbon Treaty and to the changes introduced by the Lisbon Treaty.

So to be very honest with you, when we put this proposal on the table we had the feeling it would be an easy ride, you know? Just a few months’ negotiations, and then it will be done and we would have an agreement, and today we would not be talking about the Commission proposal being discussed by the Parliament and by the Council, but we would be talking about a text adopted at the EU level. It’s not the case.

It’s not the case because people focus a lot on some technical issues, and I am not saying that they are not important. And people focus also on some more political issues, which are really important, I agree.

Again, if you look at the text itself, I have the feeling that what we have proposed and introduced are not fundamental changes. These are improvements, and again we are open to discuss these improvements, but these are not fundamental changes.

And that brings me to my third part, my third aspect of my presentation. We really have the feeling that now it's time to conclude. We have all the elements on the table. We know all the technical issues; we need now to focus on the political aspects. And for that we need to conclude the political discussion quite quickly.

What are those political aspects? It has already been mentioned: Goods in transit. Do we do something to fight for products which are counterfeited products which simply go in transit through one member state to outside of Europe? Do we do something?

Again it's a political issue. Either we say yes or we say no. And if we say yes, we have to agree on what we do. It's not, to be very honest, nuclear science. It does not require three months of discussion. The issue is on the table. Now we need to have the courage to take a position on this issue.

Second issue, fundamental issue. Issue of financing – you know, what should be the fees being paid? What should be the budget and what do we do with the margins of manoeuvres?

Again we have a legal framework. We cannot do everything, because there are some legal limits at the EU level. But the issue is clear. And now it's a question of having the courage to decide on what we do with this financing issue.

For the rest, if you look at all the other issues I don't believe we are so far away. I mean we might have some differences. We might have some difficulties, but we are not that far away.

Let's not also forget one thing. The Parliament has already voted on this proposal, but because it's a new Parliament, formally speaking, they are not obliged to accept their former position. So legally speaking, the Parliament could

decide. I am not saying they will do it, but they could decide either we mandate our first vote, or we go for a new vote.

We don't want this situation, because of course if the Parliament goes for a new vote on this proposal it will even more create difficulties. But of course it might be tempted to do it. Why? Simply because the Council is not moving fast enough, and they might be tempted to say if the Council is not moving, we might want to put pressure on the Council.

So our message to the current presidency, because you are still in charge in spite of the World Cup, our message to the current presidency and certainly also to the next presidency: Let's try to conclude this very quickly. Let's try to conclude this by the end of this year, at the latest.

Because otherwise, to come back – and that will be my conclusion – we cannot continue to claim everywhere innovation is important, IP is important, we need better protection and so on, if we are not able to deliver.

And again, let's never forget something. When a text is adopted at the EU level, it takes many years before it becomes a reality for the citizens and for the companies, because you have publication process, transposition process, and then effective application. It takes many years.

So even if a text is adopted at the end of this year, it will not become a reality for you before some time in the future.

So we have no time. In the current crisis – because the crisis is still there – in the current crisis and stays with the rest of the world, we cannot lose time. So my message to all of you, to all of those in charge, is let's deliver now. We have all the elements on the table. And let's not continue to claim that IP is important, without giving us the means to say it's really important on the ground. Thank you very much.

**MR. I. CHAMILOTHORIS:** I would like to thank Mr. Delsaux for his excellent intervention, which was very much to the point. Nobody can contradict the position that the European Union cannot be based on natural resources, that it does not possess our intellectual tools and innovation, our force. How can we

promote this innovation through intellectual property, copyright and trademarks?  
This is the question.

We were informed about the proposal of the European Commission, which does not bring substantial changes; it only makes some functional improvements. So we should not waste any more time, and we should not disregard the fact that there are political issues hidden behind this discussion, such as transit.

And it should also be noted that we should implement what is voted in the European Union, because this is a problem for the European Union, not only in this field. In general we can see that we cannot effectively implement Community regulations.

Thank you very much, Mr. Delsaux. I now give the floor to Mr. Mihály Ficsor, Vice President of the Hungarian Intellectual Property Office and Chairman of the Administrative Board of OHIM. He will speak about the implications regarding the legal reform on the EU trademark system. Mr. Ficsor, you have the floor.

**MR. M. FICSOR:** Thank you, Mr. Chairman. Καλημέρα. Excellencies, ladies and gentlemen, dear colleagues, first of all let me thank the Hellenic presidency for having invited me to speak here today at this excellent conference.

So ladies and gentlemen, at the cradle of European civilisation, let me start by referring to the basic concepts of another ancient culture, namely that of China. I will do so in an attempt to describe the relationship between trademarks and geographical indications, by using a metaphor.

In Chinese philosophy, yin and yang are concepts used to describe how apparently opposite or contrary elements are actually complementary, interconnected and interdependent. Many dualities in the natural world, such as light and dark, high and low, fire and water, male and female, the sun and the moon, are thought of as physical manifestations of the duality of yin and yang.

However, yin and yang are also regarded as complementary rather than opposing forces that interact to form a dynamic system in which the whole is greater than the assembled parts.

In my presentation I shall try and demonstrate that the yin of geographical indications can live together with the yang of trademarks in a mutually complementary relationship, in spite of the apparently conflicting characteristics of these IP titles.

I am also going to show you that geographical indications and trademarks can together form a dynamic system in which entrepreneurs are able to find a deep, particular combination of these rights that suits their business needs best.

The ongoing legislative reform of the EU’s trademark system does certainly present a golden opportunity to lay down provisions ensuring an optimal relationship between GIs and trademarks, at least on the trademark law side of this special coin.

The Hellenic presidency can only be congratulated on having seized this opportunity in a most efficient manner. The latest compromise versions of the EU Trademark Regulation and the Trademark Directive do indeed represent a significant step in the right direction in this context too.

In addition, on the global scene a parallel activity has been undertaken in the World Intellectual Property Organisation, aiming at the review of the Lisbon system, namely the system established under the Lisbon Agreement for the Protection of Appellation of Origins and their international registration.

That review has also reached its final and decisive stage, as the Lisbon Union Assembly has recently decided to convene a diplomatic conference for revision of that agreement, and that conference is scheduled to take place next year.

There are of course a number of links and interactions between these parallel review processes, and I intend to highlight some of them later on.

Ladies and gentlemen, there are a number of obvious differences between GIs and trademarks. It is a commonplace that the yin of GIs is characterised by tradition, while the yang of trademarks may also relate to new products and services. GIs belong to a community; they constitute a collective entitlement, while trademarks are entirely private rights serving to distinguish the goods or services of one undertaking from those of another undertaking. And thus they are of a more private or individual nature.

GIs only relate to products, while trademarks can be registered and used for services as well. There seems to be no real limit to the number of trademarks that can possibly be registered and used, while geographical indications, by definition, can never become numerous.

Geographical names as such may not be registered as trademarks, where they are descriptive or misleading. On the other hand, it is normally geographical names that can constitute GIs.

Nevertheless there is, or at least there can be, a grey zone between these two categories, as collective and/or certification marks may be, and sometimes are, used for protecting signs or indications designating the geographical origin of goods or services.

In fact, as we all know, there is a specific school of legal thought according to which it is trademark legislation that can best protect GIs, in particular through certification marks.

Furthermore, beneficiaries of GI protection may opt, and they do opt, to register trademarks containing as an element of the geographical indication itself.

Let me, however, elaborate a little further on some of the less obvious differences. Unlike in the fields of patents and trademarks, where the concepts of protection are practically the same in all countries of the world, there is no such uniform approach to the protection of geographical indications.

At the national or regional level those indications are protected under a wide range of different principles, through different legal means. In the

different jurisdictions these vary from sui generis protection to protection under trademark law, unfair competition or passing off. The conclusion of the TRIPS Agreement has not really changed this varied scenery.

This variety of concepts is inevitably reflected in the applicable terminology. In this context one is indeed confronted with a Tower of Babel. The Paris Convention and the Madrid Agreement use the term ‘indication of source,’ while the Lisbon Agreement relates to ‘appellations of origin’. The TRIPS Agreement uses and defines the expression ‘geographical indication,’ while, to complicate matters further, at least in Europe, EU legislation has established its own terminology, too.

But for the sake of simplicity, let me just use the term ‘geographical indication,’ unless the use of a more specific term is called for.

Another major difference between GIs and trademarks is that GIs lack a truly global registration system. Compared to other global protection systems, membership of the Lisbon agreement is still very limited. It has the narrowest geographical coverage of all the WIPO instruments, under which IP services are provided. The Lisbon Union currently only comprises 28 members, while for instance the membership of the Madrid system numbers more than 90.

It is, however, to be noted that nine states have acceded to the Lisbon Agreement since 2000, making up almost one-third of the current Lisbon membership. All of them are developing countries, and quite a few are located in the Balkans. This shows a slightly growing interest in the system, and also that developing countries are starting to realise its potential for protecting their traditional values.

It is also worth mentioning that 13 European states, not necessarily all of them EU member states, are partners to the Lisbon Agreement, which represents half of the current membership.

In addition, European countries hold a sweeping majority of international registrations. All the top six countries are from Europe. This testifies to the vital interest our continent in this particular IP field.

In terms of membership, an obvious drawback of the current Lisbon system is that, unlike under the Madrid Protocol or the Geneva Act of the Hague Agreement, intergovernmental organisations cannot become contracting parties.

In this context, there is however a specific TRIPs-related precursor to the review of the Lisbon system, and this is the establishment of a multilateral register under Article 23.4 of the TRIPs Agreement.

In order to comply with that negotiating mandate, work began as early as in 1997 within the Council for TRIPs in WTO. However, since then no agreement has been reached in WTO on the establishment of the multilateral register.

This has almost inevitably brought WIPO back onto the scene, especially in view of its widely recognised experience in running global IP registers.

Now let me turn to some of the most interesting aspects of the somewhat troubled relationship between GIs and trademarks. The first question to be examined is whether trademarks, in particular collective and/or certification marks, can constitute a means for protecting geographical indications.

At the level of global instruments, this option seems to be entirely permitted. The relevant TRIPs of regions are generally understood to allow WTO members to implement them through not only sui generis regimes but also trademark legislation.

In addition, even the current Lisbon system seems neutral to the way its member countries provide protection for appellations of origin.

However, in response to the obvious need to further clarify this aspect, the draft revised Lisbon agreement would make it even clearer that each contracting party would be free to choose the type of legislation under which it establishes the protection required by the Agreement. This means that those contracting parties would be able to comply with the requirements of the Agreement on the basis of their trademark law, too.

In that regard, the latest presidency compromised versions of the EU Trademark Regulation and the Trademark Directive contain a somewhat mixed, but not necessarily inconsistent, picture. Why signs consisting exclusively of designations of geographical region cannot be registered as normal or ordinary trademarks under either legal instrument, the situation seems a bit more complex in respect of certification and collective marks.

As things now stand under the Regulation, EU certification marks would not be allowed to certify the geographical origin of goods. However, the Directive would not prevent member states from providing for that possibility.

Moreover, while signs consisting exclusively of designations of geographical origin could not be registered under the Regulation as EU certification marks, the Directive would contain an optional provision in that regard.

The end result is that, while at the EU level the sui generis system for protecting GIs would prevail, at the level of the member states' national legislation the option of using certification marks for this purpose would remain open under certain terms and conditions.

The next issue to be considered is that of the possible conflicts between GIs and trademarks. There are cases where a GI cannot be protected because of an earlier trademark. And there are cases where a trademark cannot be registered and cannot be used because of a GI. In addition, there are cases where these rights coexist alongside each other.

At the global level, the revised Lisbon Agreement would confirm the current practice under that system and clearly provide that an earlier trademark could and should serve as a basis for refusing the effects of an international legislation. This is going to be further strengthened by the requirement that each contracting party would have to provide a reasonable opportunity for, among others, owners of prior trademarks to request the competent authority to notify a refuser on the basis of that trademark.

In addition, in those cases where such refusal is not notified, the draft revised agreement would provide a safeguard for prior trademark rights. It is exactly the definition of those circumstances that has been fiercely debated thus far, and that is still a source of major controversies.

Last but not least, the draft agreement would provide for coexistence, and thus safeguard prior trademark rights, even in those cases where, subsequent to a refusal based on such an earlier trademark, the refusal is withdrawn. The question whether all these cases of coexistence constitute a permitted exception to trademark rights, especially in a TRIPs context, is the focus of the ongoing debate.

Naturally the report of the WTO’s panel on the EU’s foodstuff regulations is often referred to in these discussions.

And this leads us to the current version of the EU foodstuffs or quality schemes regulation. Under that regulation, a name proposed for registration as a designation of origin or geographical indication shall not be registered where, in the light of the trademark’s reputation and renown and the length of time it has been used, registration of that name would be liable to mislead the consumer as to the true identity of the product.

Well, this means that not all earlier trademarks and not under any circumstances may prevent the legislation of a later designation of origin or GI.

However, in the case of the legislation of a later PD or PGI, earlier trademark rights are safeguarded, and such trademarks may continue to be used under the coexistence provision of that regulation.

The other way this kind of conflict may occur is where a GI may be involved against the legislation and/or use of a trademark. In that respect, the draft revised Lisbon Agreement is quite clear. The protection of registered appellations of origin could be invoked against the legislation or validity of a later conflicting trademark.

Now, looking into the pipeline of the EU’s trademark legislation, this is what we can find there. Under both proposals, it will constitute an absolute

ground for refusal and invalidity, if a trademark is excluded from legislation pursuant to legislation or international agreements protecting designations of origin and geographical indications.

The legislation in question may be Union or national legislation, and the international agreements in question can be those to which either the Union or the member state concerned is party.

Moreover, under specific circumstances beneficiaries of GI protection would also be able to file oppositions against the legislation of later trademarks. The reference in these provisions to national legislation appears justified, as the EU’s GI legislation only covers certain products, certain product categories, namely agricultural products and foodstuffs, wines and spirits, as if in the EU GIs could only relate to products that we can eat or drink.

And this is exactly the aspect that might make the EU’s future accession to the revised Lisbon Agreement somewhat problematic.

And this is one of the basic goals of the revision process, to provide for the possibility of the EU’s accession to the Lisbon system.

However, the EU’s accession would raise a number of complicated questions – and I am running out of time, so I will not address all these complicated questions. Let me just indicate that, in terms of the EU’s membership in the new Lisbon system the situation is going to be quite awkward. The EU would not have full competence with respect to all product categories, while concerning some of them it would have such exclusive competence that would prevent its member states from operating their own national protection systems.

And this is something that is unprecedented under any previous registration systems in WIPO.

Well, I suppose by now I might have conveyed something of the flavour of the complexities of the relationship between trademarks and GIs. I am confident that, in spite of the various differences and the possible areas of conflict, both these IP tools can be used in a complementary manner, for the

benefit of European producers and other entrepreneurs, as well as consumers, and can efficiently contribute to growth, competitiveness and the preservation of traditions and local cultures.

The ongoing reform of the EU’s trademark legislation, as well as the revision of WIPO’s Lisbon system, could and, in my view, should create the optimal legal framework for that.

I say ευχαριστώ πολύ.

**MR. I. CHAMILOTHORIS:** Thank you very much, Mr. Ficsor, for your intervention, which was very informative. You have even mentioned Chinese philosophy, yin and yang, and you have shown us how we have the coexistence of GIs and TMs. There are similarities and differences, important ones.

We have heard about the different approaches, and he concluded that the European Union should accede to the Lisbon Agreement, which is a difficult endeavour but has to be done. Thank you very much, Mr. Ficsor.

The next speaker is Mr. Dimitrios Botis, Deputy Director for Legal Affairs in ICLAD, Alicante. He will speak about the impact of legal reform on the EU trademark system, the cooperation between OHIM and member states of the EU. Mr. Botis, you have the floor.

**MR. D. BOTIS:** Thank you very much. Ladies and gentlemen, good morning. First of all allow me to thank the organisers for their invitation to participate on behalf of OHIM in this meeting of the Hellenic presidency.

Today I will try to give you the best view of the initiatives, the cooperation initiatives, of our office. And I will focus more specifically on cooperation with the Greek authorities. Then I will try to evaluate the effect of legal revision proposals in this field. So my presentation will describe the cooperation between our office and national authorities.

There is a specific reason for that. As the Chairman said before, it is not only the legal framework that is important and the quality of legal rules, but we should also see how this legislation is implemented.

So allow me to start with the main strategic goal of our office, which is depicted in our five-year programme for the years 2011-2015. We want to create, with the participation of member states and the support of the European Commission, a modern network of European trademarks and industrial designs, which will be supported by a continuous, close and bilateral cooperation between the participating bodies.

Our office places emphasis on cooperation and convergence, not by chance. As you can see by our title, our mission is not only to register marks and designs, but also to promote harmonisation. The choice of the Community legislator to create a two-level protection system where the Community mark will complement national marks actually imposes a harmonised interpretation of protection rules and convergence of administrative practices, in order to have better protection mechanisms.

In this network the cooperation fund plays an important role, which aims at creating common electronic tools and infrastructure. And on the other hand, we have a convergence programme, which wants to harmonise administrative and legal practices. These two tasks began as unofficial, informal initiatives of the office, which is responsible for their financing and coordination, but very soon they became very dynamic, and now, four years later, they are one of the most important modernisation tools in Europe, as regards industrial property.

The effort of the office is better understood if we think that we have, fully or partially employed who work there, 314 people on a part-time or full-time basis, which come from 25 national authorities and 11 users' associations, while at the same time we have the contribution of the European Commission, the World Organisation of Industrial Intellectual Property and the European Patent Office. The budget is EUR50 million, and these phases will be completed in 2015.

The actions of the cooperation fund include 23 different tools and are divided in five categories. The five categories are as follows:

We have Internet search databases for the availability and priority of marks and designs.

We have electronic systems for applications, registrations and support of the procedures. They are trying to facilitate the enterprises which are trying to search whether the trademark is available.

Then we have some other programmes that have to do with electronic databases of jurisprudence of national and European authorities and courts.

We also have interactive learning and education tools, which address not only jurists, but also students and anybody who would like to learn more about the practices of offices and the jurisprudence of courts.

And finally we have electronic systems for the support of law enforcement authorities in their fight against counterfeiting and piracy. Our colleague Paul Maier will speak about the activities of the Observatory, and you will learn more about this issue.

Now, how does this cooperation fund work in practice? The architecture of this fund is very simple. As I said, there are 23 tools which have been developed mainly by the office, and each member state and national protection authority can participate in the development of any of the tools it thinks are good for their needs.

Until now we have programmed 386 implementations all over Europe, and 260 of them have already been completed. You can see the different projects on the slide, and the green bar shows the progress of implementation in each country.

Now let's have a flavour of the most important systems of the programme. The most advanced system is called TMU. It's an Internet platform for the search and research of information, which connects the registers of 35 registration authorities all over the world. It includes more than 23 million marks and is available in 27 languages. You can enter the database of the Japanese,

the American or the German office, and draw information which is automatically translated into Greek. It is online, and it is available 24 hours a day for free.

Then we have the designs view, which is the tool for industrial designs.

Another important tool is the so-called TM-plus. It is a harmonised electronic basis, which includes acceptable terms for the designation of products and services and provides information to users regarding whether the terminology they wish to use is acceptable in one or more of the connected authorities. It is a multilingual tool which is very useful for the users, because the practices of different authorities in Europe and all over the world are different, as the European Court of Justice has placed emphasis on the proper designation of applied products, goods and services, in order to avoid monopolies.

Taxonomy is another tool, which is a system for the electronic classification of goods and services in accordance with the Nice Convention, which allows the applicant to pinpoint and select the products and services he wishes, without having special knowledge. It is a simplified system, which classifies goods and services in such a way as to allow even the most ignorant applicants to enter the system and find the goods that actually fit their activities. And it is available already since the 1<sup>st</sup> of July 2013.

Let's now look at the cooperation of our office with the Greek authorities. The Greek authorities have been actively participating in the programmes of the fund for a long time, and the General Secretariat for Trade has said that it wants to participate in 16 products, and OBI in 13.

Until 2013 we have completed the implementation of 17 systems in total, which include the tools I described, TMU and TM-plus, but also other tools in the field of learning, execution and harmonisation of quality standards. We have a gateway, which is a platform for access to the European system of signs, and others.

What do we still have to implement? What is it that we still have to implement? Until the end of 2015, we want to have completed the

implementation of another 12 important tools, which have to do with applications, changes in vocation systems, which actually change the whole environment and allow Greek authorities to control all these procedures in an electronic way. And OHIM has been the pilot office for that.

Let's now move on to the convergence programme, which aims at implementing common interpretation rules, on the basis of the jurisprudence of the European Court of Justice. We have 100 people working in our office, and 26 national protection authorities which work for this programme, as well as 9 users' associations and the WIPO.

Until now we have expanded the programme to seven areas: harmonisation of Nice classification rules, protection in terms of goods and services, grants of refusal for the registration of trademarks, protection of colourful presentations, common rules of interpretation, and common rules of representation.

Until now we have had various problems, because of logistics. However, we need to continue this huge effort, which will become viable in the long term. However, we have to have a specific legal framework and financing.

We also have to have a harmonised procedural framework and aligned provisions which will support common practices and tools, in order to increase the use and transparency of the system.

This is where the proposal of the Commission focuses, with a recast of the Directive for Trademarks and the revision of the regulation on CTM.

Article 123.b actually revises the competencies of OHIM and includes the promotion of convergence in the field of practices and tools, and it also speaks about the cooperation of the office with the various administrative bodies, authorities, organisations and services of industrial property.

New Article 123.c includes enumeration of the various cooperation fields, and this cooperation is expected to be interpreted in programmes which will be decided jointly by the national bodies which participate according to the

needs. And there is a specific financing mechanism which can reach up to 10% of the OHIM budget.

According to these provisions of the regulation, member states have to make sure that their offices cooperate with the charter and with OHIM, in order to promote the convergence of practices and infrastructure in the examination and registration of trademarks.

Finally, there is the provision for a new harmonised procedural framework in the directive. The first directive for marks only harmonised legal remedies, let's say, and not procedures. Then we wanted to have alignment of this new procedural framework with the procedures before the OHIM provided for in the new regulation, and finally we want to make sure that the new rules in the directive and the regulation are equal. And we don't have many optional implementation choices.

In this way, the new legal framework will allow to have procedural, let's say, tools in the member states, which will be supported by the electronic systems.

So in conclusion, as regards the future of the European Network of Signs and Designs, are positive. First of all, it is true, it is obvious that the enforcement and expansion of this network are the main goals of this revision.

The new provisions provide for a specific legal framework for cooperation and make sure that we have a stable and viable financing.

Then we also have harmonisation of procedural and substantive rules.

And finally the main goal of the initiatives is to modernise the administrative framework, to make it more friendly to the users, and enforce transparency and security of transactions.

In conclusion, I would like to thank the Greek presidency and especially Mr. Komninou, Ms. Lioffi, Ms. Georgopoulou, for their active role in the promotion of our work and the drafting of three compromise drafts for the new

regulation, and their mediation as regards disagreements between member states in the issues that are still pending.

Finally, I would like to invite you to visit our website. Thank you very much.

**MR. I. CHAMILOTHORIS:** Thank you very much, Mr. Botis, for this very informative presentation. This network actually aims at harmonising procedures. We have a cooperation fund, a convergence programme, industrial property law. He spoke about the importance of new Articles 123.b and 123.c. He also mentioned some other points which I am not going to dwell upon. He was very informative.

Now I give the floor to Mr. Georgios Arestis, Judge at the European Court of Justice. He is going to speak about significant trademark legal issues. Mr. Arestis, you have the floor.

**MR. G. ARESTIS:** Ladies and gentlemen, good morning. I would like to thank in my turn the organisers of this important conference on intellectual property. I would like to thank the Greek presidency for allowing me to represent in this conference the European Court of Justice.

I was called to speak about the case law of the European Court of Justice, ECJ, as regards the European trademark law. Of course I only have 20 minutes, so it wouldn't be possible to speak about all important decisions; this is why I have made a selection.

As you know, the European system of trademarks consists of the Directive on Trademarks and the Regulation on Trademarks, which created a uniform right which extends to all member states. The provisions in both pieces of legislation are identical as regards the main protection principles and the extent of the rights which are obtained by registration at national and Community level.

The case law is the result of appeals before the general court by OHIM, and consists of appeals on points of law and references on the basis of

Articles 267 of TFEU and the national courts for infringement of national and Community marks.

When the decisions have to do with the interpretation of parallel substantive provisions, they are valid both for the national and the Community marks, no matter whether they come from decisions after referral or not.

In terms of introduction, I would like to underline some basic principles, which show the philosophy of the European Union. The general prosecutor Spooner actually sums up all those principles in a help case, which is still pending. He said that the object of the system for the protection of marks is to provide fair competition by enhancing transparency in the market, and is characterised by some fundamental principles on which the protection of specific intellectual property right are based. So innovation and creativity are actually the main point.

This point also explains the reason why we protect some other rights which derive from registered marks. It is well known that according to Article 4 of the Regulation the object to be registered has to have three specific characteristics.

It has to be assigned a sign. It has to have graphical representability. And thirdly, it has to be distinctive of the goods and services of an enterprise vis-à-vis other goods and services of other enterprises. So Article 2 of the Directive is more or less identical.

The above characteristics were affirmed by the resolution of the Court in the Dyson case in January 2007, which had to do with the registration of signs as marks which had to do with a transparent container of collection of dust in a vacuum cleaner. The Court actually said that Article 2 of the Directive lists some points which can be registered as marks, but the list is not exhaustive, and it affirmed that older case law speaks about signs which cannot be perceived by vision, such as sounds and odours. And they are not excluded from being registered.

Finally, it concluded that the registration of the mark that was being applied for had to do with all the designs of a transparent container, which is not a sign if it is not clearly specified in the sense that it cannot have multiple forms. So it is not a mark in the sense of the provisions of Article 2 of the Directive.

So it is a precondition to have a mark that would not confuse the products of two different enterprises. So this application can be revoked by the proprietor of an earlier mark.

The Court actually examined the way the risk of confusion was examined in the Nestle case in September 2007. We had the word Quicky, and the company appealed because it claimed that there was risk for confusion between the marks Quickies and Quick. The Alicante office justified the respondent and Nestle appealed before the general court, and this court, the court of OHIM, actually rejected the appeal. Nestle appealed once again against this decision, and the court actually abolished the decision of the Court of First Instance, because it said that this court did not take into account the visual similarity of the marks at issue. So when we have a verbal element and representation, an image, sometimes the similarity of the verbal element can be enough in order to support this.

The court referred the case to the general court for revision, because there was this risk of confusion, which should be globally examined, because we have similarities in visual terms and in terms of concepts and sounds.

As I have already said in the previous case, the holder of an earlier mark can revoke the registration of the new mark if he proves that the latter is identical to its own and is not distinctive, does not have a distinctive character.

However, we can have recourse to the provisions of Article 15 of the Regulation, and the applicants can claim that the proprietor has not used the sign for a period of five years in a row. If this claim is accepted, the new mark can be registered, despite its similarity to the earlier one. According to Article 43 of the Regulation, the holder of the earlier right has to prove that he has been using the mark for these five years.

So the court examined the issues having to do with the interpretation of these provisions in the case *Ponte Finanziaria SpA* and issued a decision in 2007: 2007 was full of important decisions of the ECJ.

*Ponte Finanziaria*, the claimant, tried to oppose the registration of a mark, having recourse to Article 8 of the Regulation about earlier marks. Before OHIM and the general court and ECJ, they claimed for such a number of marks of the claimant the use was not proven. So ECJ interpreted the term as substantive use of the mark as follows: “This mark is substantively used when it is used according to its basic operation, which is the guarantee of the identity of the origin of products and services which were registered in order to find and preserve the possibility of selling those goods and services and excluding the symbolic use, which aims at preserving the rights conferred by the mark.

When we speak about this substantive character of use, we have to take into consideration all those conditions which actually prove the grounds of a commercial exploitation.

And as to the claimant’s claims, it was also mentioned that the defensive character of marks which are defined in the national law are compatible with the protection system of Community rights. However, ECJ had a negative view on that, saying that it was not proven that this was a mark of defensive character.

Article 7 of the Regulation mentions a series of reasons for refusal of grounds. A great part of the decisions of ECJ deals with this issue, especially having to do with the colour and shape of a good. According to the provisions of this Article, in combination with those of Article 4, we can have marks which can be registered unless they don’t have a distinctive character or if they are descriptive of a good or services.

Of course, according to Article 7, paragraph 3, it is possible to register a mark despite this lack of distinctive character of its shape or colour, if this distinctive character is conferred by its use.

However, we come back to this rule of exclusion of registration because we have cases where the distinctiveness of the mark consists exclusively of the shape, which is the result of the nature of the product, the shape of the product which needs to have a technical result, and the shape of the product which needs to contribute to these technical results.

We have the Philips case issued in 2002, which actually dealt with this term, the shape which is needed in order to achieve a technical result.

So technical solutions and operational characteristics of the product are the ones that were examined, and the decision was confirmed and extended by the Lego case in September 2010. I will give you some information about this important decision. The object of this dispute was a very small three-dimensional block which is sold as a toy.

The term ‘exclusive in the framework are not accepted for registration the marks which are consisting exclusively of’ is fulfilled when all substantive characteristics of the shape have to do with its technical function. So the non-existence of substantive characteristics without a technical function is useless.

So when the shape is important, is needed for the attainment of the technical results it does not mean that the shape at issue has to be the only one that makes this result possible.

So even if the same technical result cannot be achieved by different solutions, this does not mean that the registration of this shape as a mark would allow the enterprises to use these technical solutions it incorporates.

Then according to Article 71e.2, we cannot apply this rule when the application has to do with the shape that plays an important role to a non-functional, non-substantive element.

The risk of availability of the technical solution does not exist when the competitive enterprises can have recourse to alternative shapes. I should underline that in the way the court showed that one of the aims of this provision was to impede the extension of patent rights which had expired in the case of

Lego. The above two decisions have to do with element 2 of sub-paragraph e of paragraph 1 of Article 7.

Point 3 was more problematic. It has to do with the exclusion of registration of a shape which gives substantial value to the goods. We can protect an industrial design, but we have the risk of having a de facto extension of the patent rights, which should expire.

The court was called to interpret this provision of the directive in the Benetton case. The decision was issued in 2007. The dispute had to do with the registration of a trademark in Benelux having to do with a specific type of sutures and holes on jeans/trousers. Benetton claimed that the earlier mark should be declared invalid because of the value that was given to the good with this specific arrangement.

The court did not interpret this phrase, but said that the problems that have to do with the fact that the shape grants specific value to the good cannot be surmounted by the acquisition of a distinctive character at a later stage.

In the Bang & Olufsen case we had a dispute about a very specific design. The general court, with its decision in 2010, said that the fact that we have a substantive value of a good does not exclude the possibility of having other characteristics of the good, such as the characteristics of a headphone, to assign substantial value to a product.

So it is not important that the consumer takes into consideration also other characteristics of the same product.

General Prosecutor Spooner, in his opinions in 2014, in the Hoch decision, said something important. The questions in front of the court concern the possibility of registration of a three dimensional sign of a child chair known as Tripp Trapp. Among the refusal grounds was the claim that this was a sign made exclusively of the shape that gives substantial value to the product.

At point 80 of his proposals, Spooner mentions: “I believe that the refusal or invalidity grounds of Article 3, paragraph 1.e, a third case of the

Directive, has the objective of excluding the creation of a monopoly on the external characteristics of the product, which do not have a technical or operational use but at the same time increase to a significant degree the attractiveness of a product and influence to a great extent the consumer’s preferences.”

And in point 94 he says that, “Under these considerations I believe that the notion as said that they give substantial value to the product means the shape, whose aesthetic characteristics are crucial for the purchasing value of this product, while at the same time they constitute one of the reasons that lead the consumers to buy this product. This interpretation does not exclude the possibility that this product may have some other significant for the consumer characteristics.”

Ladies and gentlemen, I am concluding this brief intervention with two general remarks.

First, that a large number of judgements are issued on a yearly basis by the two courts, two jurisdictions of the European Union, on trademarks. In the recent years there are more than one hundred judgements per year in the two courts. Moreover, they are judgements issued on the basis of appeals in front of the OHIM, and less on appeals on points of law. One could say that this is an indication of the success of the European trademark on the basis of the regulation.

My second remark is that through the case law we can see a trend for the expansion of the operation of the trademark, its extension beyond its main function, which is the commercial origin of the product, such as the fame and repute of the product, the channels of communication or publicity.

And whereas this at the beginning concerned only luxury products, gradually it seems to be covering every kind of protective trademark.

The judgement on the Interflora case of the 22<sup>nd</sup> of September 2011 is indicative of this trend in the court’s case law. And it further highlights the

importance of the trademark in the world of the economy and commerce. Thank you very much for your attention.

**MR. I. CHAMILOTHORIS:** We would like to thank very much Judge Arestis for this tour of the case law on very sensitive issues that he was able to present to us, from cases that were judged by the European Court.

The Nestle case was very interesting and the visual similarity in the case of Ponte Finanziaria, or also the cases of Philips and Lego, in which cases we had to do with the three-dimensional little brick in the case of Lego. He talked to us about Benetton, shape that confers substantial value and distinctive power.

As Mr. Arestis said, there is a large number of appeals, and this is an indication of the success of the Community trademark.

On the other hand, this means an excessive burden for the European Court of Justice, which must be tackled, but it is unquestionable that this is a success sign for the Community trademark.

Now we have some time for questions and discussion. The audience will have the floor, if you have any question or intervention to make.

I wouldn't like to refer to this pending case, for which Mr. Arestis is the rapporteur. I would only like to ask if you have identified some permanent characteristics having to do with the distinctive power, or each case is different and has its particularities. This is the question.

**MR. G. ARESTIS:** Are you asking about the Tripp Trapp little chair, or more generally?

**MR. I. CHAMILOTHORIS:** In general.

**MR. G. ARESTIS:** Well, this is one of the most difficult issues that the Court of Justice is called upon to decide, when the question is about three-dimensional shapes.

And what I could add in order to highlight the dimensions of the problem, in the case of this little chair, let me tell you that the problem arising includes many other issues. This was not the only problem, the one I mentioned.

The Court has to decide about many other issues at the same time. so I cannot give you a direct answer to your question.

**MR. I. CHAMILOTHORIS:** Thank you. It is understandable.

**MR. T. KOMNINOS:** A question to Mr. Delsaux. Since this discussion has to do with the legislative developments at the European level, Mr. Delsaux, why do you think we are running so late in concluding about the new directive and the new regulation on trademarks? It can't be only bureaucracy or technical differences. Obviously there are some other reasons that have to do with commercial strategies or the economic strategies, financial strategies of member states.

So if we all agree that our common objective is the enforcement of the Community trademark, is this understood in the same way all over Europe? Thank you.

**MR. P. DELSAUX:** Thank you very much. I am really impressed by Mr. Komninos. Not only is he giving speeches, chairing, but he is also asking questions. I mean that's really a one-man show, but that's not negative at all.

On the reasons why we don't have an agreement on the trademark, I believe, as you said implicitly in your question, we have different reasons.

First of all, it's true that when you put on the table a legal text concerning topics on which lawyers have returned thousands of pages, for lawyers it's very tempting to spend time to negotiate from a technical... I'm a lawyer myself, so I fully understand it. I mean it's tempting for lawyers to spend long hours discussing about one word in the text and another word in the text and so on. So that's certainly one element.

The second element: As you said, we touch indirectly to the question of financing, because there is a fundamental question in these proposals: Who will get, at the end of the day, the money stemming from the surpluses or whatever we call it, from OHIM?

And of course it's always a difficult issue, because we all live in a crisis; I mean all member states, most of them at least, are in the crisis. And of

course the question of distribution of money is always something which is very complicated.

And the third aspect is trademarks are perceived as something important, but it's also true that this proposal was perceived not necessarily as a major change. And to some extent it was given high priority by the Greek presidency, but maybe for some of the member states it's not always so obvious for them.

And to be very honest, I am not sure that in all countries, in all member states, all the ministers are fully aware of the importance of this proposal.

It's not true for Greece, as I said and I really mean it, I mean that you have put a lot of effort on this.

So probably there is not enough political awareness on the importance of this proposal, because it was perceived simply as an improvement of a text which exists.

And so if you combine all these elements, the fact that for lawyers it's a legal playground, you have a question of subsidies and money which is always very difficult to resolve. And the lack of political awareness in some member states – it's why probably it has taken so much delay.

But again, thanks to the efforts of the Greek presidency, I really believe we have now solved all the technical issues. Basically all the elements are on the table for the technical issues. It's really now a question of addressing the political issues, which are not so many, and where the answers are on the table; it's just a question of choosing which answer.

And so I am quite optimistic that the work you have done will lead to something positive soon.

**MR. I. CHAMILOTHORIS:** Thank you, Mr. Delsaux. Any other questions from the audience, please? I don't see any other questions. We are running a little bit late, according to our agenda. There is a 40 minutes' break now. I would suggest that

we limit the break to 20 or 30 minutes, and then we go on with the next session chaired by Mr. Komninos. Thank you very much.

### **BREAK**

**MR. T. KOMNINOS:** Good morning once again. Let’s start with the next session. We are going to speak about trademarks. The first part had to do with their registration, but the most important thing is control and legal management of trademarks, because without this the first part of registration has no meaning.

We have here some distinguished guests who will discuss with us the practices, the experience and the problems that arise as regards management of controls. And we are going to hear some ideas about how to become more effective.

Let me not speak more. Allow me to proceed with the interventions, but this time I would like to have a more open discussion. This is why I would ask the speakers to hold their appetite for later, because we have some pressing questions in this respect.

For instance, do we have any data about how much it costs, as Mr. Campinos said in the morning, how much it costs to have counterfeit products in our economy?

Secondly, have we realised how much the illegal, counterfeit products is a practice in certain countries and governments? So there the fight against these products, these goods, has to be not only an issue of law enforcement but also of diplomatic relations.

With this word, I would like to give the floor to Mr. Maier, thank him for being here and listen to his speech.

**MR. P. MAIER:** Thank you very much, Secretary General. Ladies and gentlemen, it’s a pleasure to be with you... (microphone problems) ...to make the speeches lively we should either speak in Greek or sing. I do not speak Greek,

and my singing is miserable, so I will actually disobey my president and I will make my speech in English. But Theophilos will speak in Greek, so we will save the honour here at this panel. Thank you very much indeed.

Ladies and gentlemen, I will speak about the European Observatory on Infringement of Intellectual Property Rights, which is a creation of the European Commission five years ago. At that time it used to be called the European Observatory against Piracy and Counterfeiting. It was created because it was felt that in order to be efficient in the fight against counterfeiting and piracy and infringements of intellectual property rights in general, one should bring together the private sector and the public sector. One should pool together all the forces that work for the implementation and the enforcement of intellectual property rights.

Now, the European Commission was saluted for the initiative, except that you may know – and I know that you know very well indeed – that public money is very scarce lately and the Commission had a good idea but not really the means to implement it.

And this is why it was decided to transfer, through Regulation 386 of 2012, the European Observatory to the OHIM. Why the OHIM? Because OHIM of course is the registration office for trademarks and designs, has extensive knowledge and staff who know about intellectual property rights, and because we have this headroom financially that allows us to do a certain number of things. So this is why the Observatory was taken over.

And what are the main tasks of the European Observatory? Well, actually, summarising, I would say there are four types of activities that we have.

First, making studies. Because indeed, as you say, Mr. Secretary General, we need to have precise figures; we need to know what we are actually talking about. And I will give you a few details about what we do, OK?

We can no longer live with data that are provided by those interests who produce them of course in their best interests and under their angle. We need objective data. That’s the first thing.

The second thing is we need to further help enforcement authorities of all kinds – customs, police, prosecutors, for as much as they intervene in this respect. We have to help them in being more efficient, and this is why a certain number of tools are necessary.

We need – and it was said very clearly this morning by Mr. Delsaux and by others – to raise the awareness of the importance to respect intellectual property rights.

Last but not least, intellectual property is a very complex matter, and therefore we must of course also train the people who are in charge of enforcement, to put them in a position to actually be capable of doing their work.

Now, the Observatory, as I said, is bringing together the public and the private sector, yes. Actually the Observatory is a network which brings together even more people. The member states are represented. We presently have 54 European and international associations and federations of industry, rights holders, trade unions of musicians, of artists. We also have six associations that represent what we call civil society. The European Union Bureau for Consumers, for example, is one of them. The European Digital Rights Initiative is another one.

The idea is that everybody who has an interest in the protection of intellectual property rights in Europe should be allowed to sit around the table at the Observatory and make its opinion known.

And this is exactly what we do. We listen to all those who want to speak to us, and we actually actively invite people to join us.

Of course we have a lot of institutional relations as well within the European Union, the European Commission. There you have the list of, actually only some of the directorates general we deal with – DG Markt; DG Taxud, that’s, for those who don’t know, customs; DG Trade, external relations, enterprise, the anti-fraud unit. All these different services have to do, in one way or another, with intellectual property rights or their enforcement, and they are all very welcome to participate in our meetings, and they do, to a large extent.

The European Parliament also immediately showed great interest. Actually you must know that the regulation I mentioned before was adopted by a very strong majority in the European Parliament, close to 500 votes in favour and very few against and a few abstentions. So the European Parliament from the beginning was politically behind the initiative, and that is very important. And they designed 10 MEPs to represent the various parties in the Observatory.

Last but not least, enforcement and intellectual property of course have been dealt with quite extensively already at the international level. And one of the goals and one of tasks that is put on the Observatory is to actually actively coordinate between all this. And we have regular coordination meetings with Eurojust, Europol, the European Patent Office, the World Intellectual Property Organisation, Interpol, the World Customs Organisation, and I should add to these now also the OECD, which works with us more and more.

So as I said, indeed we make a number of studies and the most famous one is the one on IP-intensive industries. The fact that again this morning the figures were mentioned, and not only by Antonio Campinos but by Mr. Delsaux and by others, the fact that in major political speeches lately these figures are mentioned means how important they are.

It is indeed important for us to show that intellectual property bears considerable weight in the European economy. And as you can see, the figures are impressive. Twenty-six per cent of all our jobs are directly generated, actually 35% if you take the indirect jobs, 39% of GDP.

I would like to underline one figure that was not mentioned this morning, which is the wage premium. Intellectual property-intensive industries not only generate a lot of work, but the work usually is much better paid than in other sectors of industry or the economy in general. The premium is 40%. So actually our middle classes, our future, our future growth is there. It's better paid jobs. And last but not least, of course, 90% of our exports are there.

I want to show this. I don't want to go into further detail on the study, but just for you to have an idea. Some people think that some industries use only patents, others only trademarks or only designs. Not at all. This figure

shows the overlap of the use of intellectual property rights by industries in general. And actually most of the industries that use intellectual property intensively use it under different aspects.

The first and most used right of course is trademarks, because in an open economy like ours, you don't go to the market without identifying and individualising your product.

But having good products is not good enough. If you want to be competitive, it has to be a good design as well. And this is why design is used so much in the European Union. If you have an invention, either you are protected by a trade secret or you must patent it. And many of the industries do that.

And what this shows actually is that the various aspects of intellectual property rights all have their importance in the economy.

Now we are going to go forward, and Antonio Campinos already indicated that, because the second phase of the study will allow us to show really within the intensive sectors individual companies, compare them, see whether the ones who really use a lot of intellectual property pay better than the others, whether small and medium-sized enterprises also use intellectual property. They do. Less than the bigger ones, but they do. And it's very important for their economic out-turn as well.

So we are looking at the very sophisticated data presently to try and find out the real figures behind this.

Quantification of infringement. We have little time, so I will not go into details, but yes, we need to know, as Antonio said this morning, how much the states actually have to spend on additional customs officers, police officers, judges. How much money does not come into the coffers of our states because of course counterfeiting is an illegal activity, and if you smuggle things in, you don't go to taxes to pay VAT on them.

An awful lot of money is lost that way. We have to try to determine how much it is. And this is our role here.

Industry loses a lot. Industry has to go to usually reasonably well-paid lawyers to get defended in front of judges, OK? And of course all this bears also on their margins, and we will try to determine all this.

Perceptions study. Europeans believe in innovation, they believe in intellectual property, but, as Antonio said, when it comes to their own portfolio or their own money, they tend to be a little more restrictive.

Well, 96% of Europeans think that intellectual property is important for innovation and creativity, OK? However, up to 49% are ready to say that they could buy counterfeit products, as an act of protest against the economy in general or big enterprises. There is a lot of work ahead, and it was said very clearly this morning as well. Not only the public authorities, obviously the businesses have to integrate this dimension to make sure that the way they market their product will actually respond to the market itself and to the needs of the consumers. OK? Only 11% of Europeans think that intellectual property is important for them.

Just a word on downloading, because I cannot do without that. Up to 57% of the young people in Europe find it normal to download illegally. They want things; they want things immediately, and they don't care whether it's legal or not. They are ready to use it, as they can.

Enforcement databases. I said we are creating instruments also to help enforcement authorities to go further and be more efficient. What is this enforcement database? Well, actually it is the bringing together of the information of the rights holders on the one side, and customs, police, eventually public prosecutors later on, on the other.

These rights holders can fill out the application for action, which is what European law allows you to do. You can write to customs and say, “I want my rights to be protected. I know that counterfeits will be important for that particular origin. Please stop them.”

So it's the official act of asking for the intervention of customs. You can do this through this database, on the basis of a link to our own databases,

which is the real register of trademarks and designs in Europe, what we call Trademark EU. And you can add additional elements for the customs authorities or the police to distinguish the right from the wrong product.

We have finalised the pilot phase at this stage, and we have more than 80 companies working already with us. And so this instrument in the future will become absolutely essential. It will help fight more efficiently against counterfeiting.

The other one is the Assist database. As I said, again we need figures; we need to follow very clearly how much seizures exist, OK? How much the value is of the products that are seized? Customs do a very good job at that. For a decade now, European customs and internationally have been gathering all the information of seized counterfeit goods at the frontiers of the European Union.

But we do not have these figures from police authorities, for example, in most of the member states.

So this database is testing to first standardise the way things are imported, and make sure that we get all the figures together. And we hope that we will have the figures from Greece available as well.

Training, enforcement. As I said, we are working a lot with enforcement authorities, to make sure that they get the best possible training. And to do that we work very closely with Eurojust, Europol and Interpol, and of course the European Commission.

We typically bring together enforcement authorities around the table on a particular theme. The last one in March was Counterfeiting in the Sports Industry and Illegal Streaming. We invited of course also the Brazilian authorities to do that. We have here American friends with us. We systematically invite the IPR Center from the US administration to join us in all the events that we have.

And that allows everybody around the table first to hear from the private sector what their problems are in the particular sector, and second, to exchange experiences among themselves on how they reacted to this and how

efficient they eventually were in the fight against counterfeiting. And we will of course continue to do this.

Our academy does even more training. We do also a lot of training, or I would say seminars for judges. Last year more than 250 judges were invited to Alicante. We have three to four sessions a year where judges come and sit together. The first half day is dedicated normally to outside interventions, like customs authorities; our friends from the US came to make a presentation last week.

And then afterwards the judges return to their own table, where they work together, and they talk freely about things. Obviously, judges are independent; we are not trying to influence them. What we want to make sure is that a judge from Lithuania knows to a large extent how a judge from Italy solved the same type of case. And if he has a doubt, he can pick up the phone and call his colleague.

Because the more than 600 judges that we have had in Alicante over the last years have become a real network of specialised judges in intellectual property, and we want to continue this.

I am running a bit late, so I think I will stop my presentation here. What we will do for the future is continue to work on this, make sure our studies are there, make sure the training is as deep and as detailed and as best possible quality for all enforcement authorities.

And of course awareness campaigns is our next challenge. We are working already on how to approach the youngsters in Europe, because obviously they are the main problem at this stage. Thank you very much indeed, ladies and gentlemen.

**MR. T. KOMNINOS:** I would like to thank Paul Maier for his presentation. I have understood that a trademark and its fate have to do with how much the consumer understands it and how much he respects it.

So we have to invest in knowledge and awareness. OHIM and the Observatory actually are successful in this task. Of course this is only the

beginning. They are using tools such as TMU, but from now on they will also have a network of cooperation between law enforcement networks.

Now I give the floor to Theophilos Margellos, a Greek European. I don't know what he likes more, having swimming in Alicante or in Greece. But anyway in Alicante he does many things. He represents the Trademark Institution from his new position as President of Boards of Appeal. Mr. Margellos.

**MR. T. MARGELLOS:** I don't think we can find these crystal-clear waters of Greek islands anywhere in the world very easily. This is why I am not used in swimming in Alicante. I usually wait for the summer to come to Greece and enjoy the Greek waters.

I don't know if it was a coincidence or on purpose that I succeed Paul Maier in the agenda. This is a custom for us; it has become a custom.

So before starting my presentation, I would like to thank the Greek presidency and the Ministry of Development, and personally Mr. Komninos, the General Secretary. Mr. Campinos actually promoted him before in the previous session. I would like to thank him for the invitation and for organising this conference.

I would also like to congratulate the Greek presidency for its achievements and its work, not only in the field of the revision of European legislation on trademarks, on trade secrets, etc. and on industrial property, but also for its achievements in other fields of European activities.

You heard Mr. Maier. He spoke about the Observatory. I will speak about mediation. What is the relationship between the Observatory and mediation? We could say that for someone to be a good mediator he needs at least to have the capacity to observe and to learn from observation. Mediation is already governed by the European law, and we have the Directive of the 21<sup>st</sup> of May of 2008, and two or more parties actually voluntarily try to achieve an extrajudicial settlement of their dispute, an out-of-court settlement.

This out-of-court settlement of disputes, the resolution of disputes, was chosen by the Commission as a tool to improve and simplify access to

justice. This Directive was transposed to the Greek law by Law 3898, and we now have a legislative framework for mediation in Greece as well.

It is true that mediation is at the centre of interest, not only for business but for national and European bodies which manage justice. And this because we have some difficulties in the resolution of disputes in courts.

We have Greece as our closest example; we are most familiar with Greece and the problems we have here. And in Greece the whole dispute resolution procedure is very time-consuming. And this is why it has become very complex as well.

And you know that this procedure is also insecure, because we don't know the result. It is not easy to prove the amount of loss in cases of counterfeiting of marks or industrial property rights.

Furthermore, court proceedings cost a lot, and this cost actually sometimes prohibits enterprises from having recourse to courts. If I remember well, recent statistics have shown that criminal courts in Greece have queues, have a whole load of one million cases which are still pending, and most of them have to do with counterfeiting of marks and industrial property rights. We have 300,000-350,000 claims filed on an annual basis in Greece.

At the same time procedures such as injunction actually are brought to the court after four or five months, and of course this does not allow judges to devote the appropriate time and attention to the cases they undertake to resolve on.

This is a similar problem that other countries in Europe also have. Trade disputes and disputes on industrial property rights and trademarks have similar problems all over Europe.

So an alternative has been presented for the settlement of this type of disputes, which can bring some oxygen to this suffocating situation in the field of justice.

It is a procedure that can allow the parties to quickly exit these problems, even in cases of obvious, flagrant, let's say, infringement of

trademarks. Out-of-court settlements can be very useful because we avoid injunction, filing of claims, filing of evidence, a whole procedure, which is very time-consuming.

So we prefer to have a procedure which actually immediately satisfies the rights of the claimant, let's say, and actually allows the parties in conflict, allows the respondent to withdraw. It's a way to avoid the problems that we have with in-court settlement, which may allow a respondent to withdraw his products from the market and become a proprietor at a later stage.

The whole procedure in amicable settlement is 30 days long, and the action that has to be taken in order to complete, let's say an in-court settlement of a dispute is more or less here in Greece an average of 36-40 actions. In mediation we only have 6-8 actions that have to take place in order to settle the dispute. In Greece in general people are reluctant to implement mediation law.

This is also the case in other countries. However, I believe, I firmly believe that it is to the benefit of all parties, of all stakeholders, traders and justice, to give an opportunity to mediation. Enterprises have an incentive to resolve their disputes in this way, because they avoid the great administrative load of an in-court settlement. They avoid the risk to have the court resolution annulled by an appeal. And they avoid all of these things that could harm their repute.

Finally, they are allowed to give trade solutions to their problems, and not legal solutions. So mediation can bring new dynamics in the field and revive, let's say, good relations between the parties.

These beneficial effects of mediation actually led the World Intellectual Property Organisation to set up in 1984 a Centre for Arbitration and Mediation, which actually specialises in dispute settlement regarding trademarks, patents and designs, etc.

This is what actually led the person sitting next to me, Mr. Paul Maier, and me working in the Board of Appeals, because you should know that

Paul Maier was also President of the Board of Appeals, and I succeeded him in this position when he went to the Observatory. So this is what led us to believe that we can help enterprises, because through mediation enterprises can have another tool in their hands.

So this led us in the Board of Appeals to introduce this new option, that is mediation, for the users of European trademarks and designs.

Furthermore, I was convinced of the usefulness of this tool for out-of-court settlement, and European legislation actually introduced this option at an international level with a new centre which will be based in Ljubljana and Lisbon.

The World Bank and other similar organisations and agencies use amicable settlement as let's say a criterion to positively mark the performance of the business sector in a country.

Taking into consideration all these positive elements of mediation, I believe that we should propose that further measures should be taken in terms of promoting mediation in trade disputes and disputes on industrial property rights in Greece as well.

There is a study by the European Parliament which was presented in January 2014, and they propose mandatory mediation in a certain category of cases, such as disputes having to do with industrial property rights, with the opportunity of course to withdraw from this procedure, because this has to remain an optional way, let's say, of resolving differences, of settling a dispute.

There is also another advantage, let's say. Amicable settlement can be used either from the parties on their own initiative, or can be proposed by the court, and the Greek actually allows the courts to call upon the parties to use mediation in order to settle their dispute. At the same time, the executability of out of court settlement is supported by a procedure which entails the filing of the elements of the resolution of the mediation, the agreements that result from this mediation, with the court. As from the time when this agreement is filed, the settlement becomes executable.

Finally, allow me to make a remark as regards the last Council of Justice and Home Affairs of the Greek Presidency. First of all, I would like to congratulate the Greek Presidency. During this Council, we had the adoption of the second scheme for digital justice, which actually fulfils the targets of the European Union and allows the use of out of court proceedings, especially mediation in cross-border disputes, through digital communication. This allows enterprises to have better access to mediation via electronic means. This can promote the use of out of court settlement and thus the protection and cooperation for the protection of industrial property rights and trademarks.

And with this, I would like to conclude my intervention. Thank you very much.

**MODERATOR:** Thank you very much, Mr Margellos. You spoke Greek and you did not sing, but you have managed to open up new paths, to show us a different approach, mediation which is more mature in other fields and has now come to conquer, slowly but steadily, intellectual property rights.

We have heard about WIPO and OHIM; we have heard about the two centres that are being created. When is this mechanism going to be ready? Well, this is not a question that goes to me. It goes to the member-states and the working parties, which are actually preparing at the moment the European Court for Patent and the framework of operation of this court.

Now, let's move to the other side of the Atlantic and we have here a representative of the US. The US has played an active role in the management of trademarks, especially because we have had businesses with very heavy trademarks in the US, trademarks which are globally well-known and the US has right from the beginning, and Mr Douglas Freeman will explain that, has right from the beginning been pioneer in the protection of trademarks, and this in a very discreet way. It is high in their diplomatic agenda as an issue.

So, Mr Freeman is here with us today and he is going to speak about the way a big country like the US sees the management of trademarks, but he will also speak about the international environment within which he is active. Mister Freeman, you have the floor.

**D. FREEMAN:** Thank you very much, Mr Komninos. Καλησπέρα, ευχαριστώ. Unfortunately that represents two of the 25 words I currently know in Greek, so I will have to make the rest of the presentation in English.

Once again, my name is Doug Freeman. I am the Attaché for Homeland Security Investigations, part of US Immigration and Customs Enforcement, under the US Department of Homeland Security, and I am here based locally at the US Embassy in Athens.

As I indicated and probably most of you are wondering who is Homeland Security Investigations, basically we are the enforcement arm or more specifically the investigator arm of US Immigration and Customs Enforcement. As you can see, based on our name, Customs, we are focused on all matters pertaining to contraband and human smuggling as it crosses the border. We are one of seven major agencies under the US Department of Homeland Security. We are also the largest, the leading investigative agency for homeland security.

More specifically, we are an agency of 7,000 special agents dedicated to enforcing all types of counter-smuggling measures, whether it be counterfeit products, money, narcotics, people, weapons, child pornography, these all fit into our realm of investigations. We are comprised of the former investigative arms of the US Customs Service and the US Immigration Service. We came into being in 2003, but we were designated for formation following the attacks of 9/11. In terms of our office structure, we have 205 domestic offices throughout the United States, along with 75 foreign offices in 48 nations.

This slide here represents our layout geographically in the US. Of the 7,000 special agents, approximately 6,700 are based domestically. Everywhere there is a red star represents a special agent in charge office. As indicated by the title, we are special agents just like FBI, just like Secret Service or DEA. Our mission is outwardly focused to external borders and anything that crosses it. So if you look at the map, it gives you a quick indication of where our focus is. That's a district with a red star, so you can see like in certain areas like New York or Miami in the southeastern operations, or San Diego on the

southwest border, or how Texas is divided into three parts that shows that our focus is on goods and people and contraband, as it crosses into the US.

Internationally, there are 67 attaché offices like the one we have here in Athens. There is also an additional eight four assigned to our US Defense Department commands. For our office here in Athens we cover Greece, Cyprus, Turkey, Bulgaria and Albania. Our focus runs the range of our investigative areas and with IPR in particular counterfeit cigarettes being one of the most significant.

In terms of our legal authorities, our Agency, Human Security Investigations, carries one of the broadest spectrums of investigator fields. This goes back to the customs and the immigration side. Just running down the list, you can see at the top the list includes money laundering, bulk cash smuggling, narcotics smuggling and trafficking, commercial trade fraud, export enforcement, weapons smuggling, anti-gang enforcement, which pertains more to the US side with illegal immigrants who are gang members, human rights violations, cybercrimes, human smuggling and trafficking, immigration document fraud and other enforcements.

For the focus of this conversation I am looking at the key investigative areas of commercial trade fraud and intellectual property rights. To understand a little more specifically, though we are not the uniformed presence at the border, whether it be an airport, a seaport or a land border, we are the detectives. Anything that is seized at that border is turned over to us for further investigation. We handle all elements of the investigation; we interface with all aspects of the prosecution. I realize my predecessors here were talking about areas of mediation, maybe policy and other legal means; we represent the frontline enforcement aspect of it.

Specifically in terms of intellectual property rights, HSI or Homeland Security Investigations has established the national intellectual property right standard, our IPR Standard. This was established in 2008 in Washington DC and is a composite of 17 other US Federal agencies, along with representation from Interpol, Europol, Canadian Customs and Mexican Customs. The focus of this

includes intellectual property rights, but also commercial fraud. In addition, one of the primary aspects of the IPR Standard is global outreach.

Here, as I mentioned, HSI maintains the IPR Coordination Centre in Washington DC. This was founded in 2008 and it's comprised of approximately 21 federal international agencies that we described. This includes Homeland Security Investigations, FBI, Federal Bureau of Investigations, US Customs and Border Protection, which by the way is the uniformed frontline presence on our borders, US Patent Attorney, our Patent and Trademark office with my counterpart Cari, also US Department of Commerce, various other agencies. The goals of this Centre are partnerships with industry, partnerships with law enforcement and education.

These are some common perceptions of counterfeit. We all know these. They could be street vendors selling counterfeit CDs, apparel, shoes, watches, but the realities are more like this. The realities include pharmaceuticals, maybe safety equipment such as airbags, or even when we get into electronic equipment. Myself, personally prior to Greece I was stationed in Buenos Aires, Argentina, for three years, from 2007 to 2010. One of our primary investigative operations down there was focused in the tri-border area of Paraguay. There we were examining gray market and counterfeit merchandise being transferred through Miami from China into South America. The recipients of these products were often banned businesses, meaning they were basically banned with doing private commercial business with the United States. These were Lebanese owned businesses in Paraguay and they were also connecting the Shia Lebanese zone with clear linkages to Hezbollah.

So this represents a little anecdote about IPR violations can mean. They can mean obviously a loss of revenue to business and an infringement an authorities, but they can also be a clear funding mechanism for criminal entities and organizations.

Here in Greece, this represents a reality as well, as probably many of you can tell me in further depth. The counterfeit cigarette smuggling organizations represent a regional problem maybe even more specifically a

global issue. We are currently working with Greek authorities and also authorities of other European nations, such as the United Kingdom, to address this and share are data, share our investigator resources, to target the organizational structures. We are all about intercepting the cargos on the border, but we all realize the true way to dismantle any organization is removing its command in control and that is essentially how we operate with IPR smuggling groups.

I would like to now briefly show you a brief promotional commercial that HSI has produced along with the IPR Centre on counterfeit merchandise. Probably at this time, sorry about sometimes technical difficulties have a way of ending a presentation and this is going to be the case, but I am available later on for questions.

Thank you again for your opportunity to discuss this. You want me to go through these too? Okay. Thank you for your indulgence and I apologize for the difficulties. As I indicated, one of our major issues of enforcement is also internet-based. We look at how IPR is submitted via the web commerce as well. One of the mechanisms we have developed is called operation in our sites, which is focused on addressing the sale of counterfeit products from music, from pharmaceuticals, from electronics and also health and safety. There is a website there available, [usiprcenter@dhs.gov](mailto:usiprcenter@dhs.gov); this provides a means for any related questions, if you there is ever an issue that impacts country or business, we remain very eager to assist.

When it comes to websites, one of the areas the IPR Centre has been addressing has to do with products and how they are marketed on the website. Take a quick look and see if you can identify which one of the Rosetta Stone websites is counterfeit and which one is genuine. It is pretty hard to tell - I couldn't tell. The next slide shows you, the one on the right is indeed the counterfeit and the one on the left is the real one. If you notice down with the website names, that's a little bit of an indication that maybe what is going on in terms of how, who is marketing the product. There is one more example that has to do with headphones. Again, quick question: genuine or counterfeit? There again that shows you which ones are indeed the counterfeit products.

This banner represents information regarding if a website has been seized, if information has been declared counterfeit. This has been done in conjunction with Homeland Security Investigations and our US Department of Justice under the IPR Centre. Moving on, last part, I really kind of already addressed this, our goal with the IPR Centre and HSI is global outreach. Down at the bottom are statistics for FY2013 showing we have conducted 333 events, reaching out to over 16,000 participants, much like venues like this.

Again, the main part to take away from here is our international training. Here locally I remain always available, working in conjunction with the Economic Section at the US Embassy to provide specialized training, more in depth training in what we can do for support. We are also always available for any investigative leads that come our way. I had the opportunity to meet a couple of close contacts of our office that are already in attendance in this office, both with the Greek government and with private industry. This in a way illustrates our overall commitment to the issue and who we want to cooperate with.

Lastly, as we all know, as we say in the US I am speaking to the choir; piracy is not a victimless crime. And for more information on how digital theft harms our economy, please take down that website, [www.iprcenter.gov](http://www.iprcenter.gov).

And that indeed concludes it. Thank you very much.

**MODERATOR:** Thank you, Mr Freeman. It was a little bit of a problem this technical part of your presentation, but actually we have realized how important it is in the US to fight counterfeit products.

Now, I give the floor to Caridad Berdut. In this way we can have a full picture of the situation in the US and we don't plenty of time at our disposal. You have the floor.

**C. BERDUT:** Thank you very much. Unfortunately, I do not speak Greek; I can speak Spanish to you, if you think it's more entertaining, but no Greek, unfortunately.

So first of all I would like to say thank you to the Greek Presidency and to the Ministry for inviting me to speak to you today. And I decided to focus

on the topic “Creating an effective enforcement framework - The US experience”. After all, what’s the point of obtaining a trademark or obtaining a patent or a copyright, if then when it’s infringed there is no recourse? So you can’t have a protection without the ability to enforce that right.

And so we all recognize that intellectual property rights are private rights. It is up to the IP holder to protect that right through civil recourse. But we can’t forget that it also has implications to the consumer. This morning, I decided to walk around the hotel. As I said, I don’t speak Greek, I don’t understand the Greek alphabet, but I came upon this poster and it was of course in Greek. I looked at it and for thirty seconds I didn’t know what it was advertising. But then I looked at it and I recognized the bottle, I recognized the label. It was an advertisement for Heineken beer. I don’t need to speak Greek to understand that it was an advertisement for Heineken beer. Why? Because Heineken has trademarked its bottle, has trademarked the layout of its label. That allows me to recognize Heineken beer, no matter where I am in the world. I can be anywhere in the world and look at a Coke bottle and not have to read the label to realize it is Coca-Cola. The shape of the bottle, which is trademarked, tells me that that’s Coca-Cola. And as a consumer that tells me what I am buying. The quality of the good I am buying and what I am getting for my money.

So even though IPR rights are private rights and the bulk of the protection and enforcement falls on the right holder, it still has a public sector implication to it. And especially when you are talking about infringement on commercial scale, then enforcement by the public sector comes in and of course enforcement involves prosecutors, judges, customs and police officers.

So, IP crime is not a victimless crime. Why is that so? Because as it was mentioned around here it has healthcare implications. If you are dealing with counterfeit airbags, you may think that a counterfeit airbag does not have a health implication, but guess what? It does. If you buy an airbag does not deploy, you could be killed or you could be severely injured. There’s a health implication there. Or worse yet, which we have seen at the IPR Centre, counterfeit airbags can actually blow up, explode in the driver’s face. So, there too is a health

implication. And when people get injured that also has public sector implications, because of the healthcare that will be required by the people who are injured by the counterfeit product.

So, as Doug mentioned, he mentioned about the Hezbollah and the tri-border, which by the way the tri-border is Argentina, Brazil and Paraguay, that's what we call the tri-border area. In the US we have found that linking counterfeit crimes or IP crimes to terrorism has the most effect to bringing public awareness, because most people do think that IP crimes are victimless crimes. After all, you know, Microsoft is not going to miss a couple of hundred dollars if I download a pirated copy of the Microsoft software. They will make the money up somewhere else. They don't think about what's behind that pirated copy of the software; human trafficking, money laundering, commercial fraud, all the other crimes that are attached to that infringing activity.

And of course there is also a perception that infringement you are talking about Gucci purses or Louis Vuitton luggage. And that's not the case. In the US right now there's a focus on counterfeit goods getting into the supply chain of the Defence Department. You wouldn't think that the Defence Department, the Air-Force, the Navy or the Army has to worry about counterfeit. Well, they do. Counterfeit ball bearings are a big issue for the military. If ball bearings are not manufactured to precise measurements and specifications, they can affect the flight of an airplane or the operation of a gun. So it goes beyond just the perception of luxury goods; it's everywhere. And as the list shows, in Africa counterfeit fertilizers are a big issue, because farmers buy the fertilizer to fertilize their crops and of course the product doesn't work as expected. Well that costs the farmer money, because his crops are killed by the drought or by insects, the farmer loses money. So as I said, there is a whole range of goods.

So, what has the US government approach been to IP enforcement? It's based on three categories: trade policy, training and technical assistance, and US law enforcement action. There's a continued shift in business models adopted by counterfeiters which presents a greater challenge to criminal and civil enforcement and so we have to adjust our enforcement efforts based on

what we see happening in the market. Directed consumer trafficking as a result of the continued growth of the internet-based sales represents a marked shift from the traditional distribution chain approach, so for instance there's been a lot of mention about in transit merchandise and that's certainly an issue of concern in the United States, but also equally important is small consignments. We find that whereas before counterfeit goods would come in manufactured already, you had the finished good; we find that parts are coming now in small consignments and they are assembled in the United States and that way they avoid detection.

So we have taken an integrated system, because they are all interrelated, civil enforcement, criminal enforcement and border enforcement. You can't have one without the other or if you put all your efforts in one you create a loophole in the other. So you have to have an integrated approach. Civil litigation of course is designed to provide relief to the right holder, whereas criminal prosecution is focused on deterrence and rehabilitating the infringer or the criminal, and administrative or border measures to a certain extent are focused on deterrence, stopping the infringing goods before they enter the commerce of the country.

As Doug mentioned, the IRP Centre has over 20 partner agencies. Just to give you an example of all the different agencies that are involved in IP enforcement in the United States, the Food and Drug Administration, the Department of Agricultural, the Treasury Department, specifically the Bureau of Alcohol, Tobacco and Firearms, the United States Postal Service of postal inspectors, because stuff comes in through the regular mail too and so they have to work with ICE and with the FBI on IP cases too, and the Patent and Trademark Office has no enforcement authority whatsoever. Our stake in this game is policy. The United States Patent and Trademark Office is the agency that is statutorily authorized to advise the President and the administration on all IP related issues, and that includes enforcement. So my interest on IP enforcement is from the policy perspective.

So in the United States, federal IP crimes are focused on copyright and trademark violations. We only have one criminal patent law in the United

States and that's simply if you take a product and you put a false patent number on it that's a criminal violation, so patent cases are rarely criminally prosecuted. There will be a prosecutor for other issues, for instance if you have a pharmaceutical product that's counterfeit, it will be prosecuted because of the FDA violations, not because it violates a patent. So the focus in the United States is trademark and counterfeiting.

What we have found is that an effective criminal framework should include deterrent penalties, because otherwise paying fines just becomes the cost of doing business for the infringer. If all he has to do is pay some money to get out of jail free, so to speak, that's just built into the cost of producing the counterfeit good. So it's a combination of jail time and deterrent fines. Also, having seizure and forfeiture of assets and machinery used to produce the infringing good. It's not just taking the counterfeit goods; it's also taking the money that was derived from the infringing activity, so they don't have access to those funds anymore and also if it's counterfeit Polo shirts, taking the sewing machines, so that they can't then take those sewing machines and move them to another warehouse and start production all over again. So having the authority to seize and forfeit not just the infringing goods but also the machinery and the assets is very important.

And the third component is ex officio authority. Having the police have ex officio authority, as well as the prosecutors, is an essential component. Why? Because if they are in a warehouse looking for counterfeit Chanel bags, let's say, but they see counterfeit Nike sneakers, they should be able to seize that merchandise also, not have to stop their activity to then get a complaint from the Nike trademark owner before they can proceed. That's inefficient. And when they are doing a raid and they see other goods that appear counterfeit, they should have the ex officio authority to seize those goods. It's a more efficient process.

In the United States we have specialized prosecutors, we have specialized investigators, as Doug mentioned, but we don't have specialized courts. IP infringing cases are tried all throughout our federal court system and also we don't have specialized criminal judges. A judge can be trying a civil

patent infringement case one day and a criminal trademark infringement the next day, so we don't have specialized courts.

And then, finally, internal cooperation or coordination is very important. So, for instance, in the United States we have the Intellectual Property Enforcement Coordinator. That's a coordinator that's appointed by the Whitehouse, by the President, whose job is to oversee coordination between other different law enforcement agencies. The IPAC does not set policy for those agencies nor do they dictate the work that is done by that agency. The IPAC's job is simply to coordinate. For instance, this morning someone mentioned payment processors and mentioned that the United States has dealt with the issue of payment processors. We've done that through what we call voluntary best practices. The US government does not impose on payment processors how they should conduct their business. Instead what the IPAC did was bring together the different parties, the payment processors, the IP right holders, and encouraged that they discuss and come to a voluntary best practice together, and then it's adopted by the private parties. So the government doesn't tell them what the best practice is; that is developed by the individuals. It's simply that the government facilitates the discussion.

So, in a civil system it's remedies; the remedy should be adequate to compensate for the injury, and also the question of seizure, once again, seizure of the infringing goods as well as the machinery and recovering the cost of litigation.

So let's get to border enforcement. In transit merchandise was mentioned a couple of times this morning and without getting into the internal discussion that you all are having on in transit merchandise, I did want to say that the question with in transit merchandise is not only that you can't have a weakness in your enforcement framework. You can't say that you are going to enforce import and exports and not in transit, because then you are creating a weakness, a weak link in your chain, which then makes it more attractive for people to move counterfeit merchandise through your country or your customs zones. But also, there's a question of diversion. Just because merchandise is

brought in in transit doesn't mean it's exported out of the country. It can be diverted, once it is brought in it can be diverted to anywhere, even stay within the country; so you can't just look at in transit by itself, you have to look at the big picture of border enforcement.

Now, in the United States our customs inspectors at the borders have ex officio authority. They can determine infringement on their own. They do not need to go to the right holder. And that is done through what we call the customs recordation database. When a trademark owner registers his trademark with the PTO, then he goes and records his trademark with customs. And in that recordation he tells customs who are his authorized licensees, countries of manufacture, what ports are used, so that when an inspector is at the border at the port and sees some shipment that looks suspicious, he can go into the customs recordation database and pull up that information. So, if the port of Miami is not one of the ports that the right holder has said that he normally imports through, that raises a red flag for the inspector and tells him he might want to look further into the authenticity of the shipment.

Once he makes that decision, he can make the decision about infringement himself. And when the infringement determination is made by the inspector, the merchandise is seized and it runs its administrative course and customs decision can then be appealed to the Court of International Trade. But ex officio authority for customs is also very important, because it also doesn't stop the movement of goods. The inspector doesn't have to stop those goods and go seek out the right holder for information on whether those goods are authentic or not. The decision can be made right there and then by the inspector.

So these are some steps that the US Customs and Border Protection has taken to affect our border enforcement. United States has 396 points of entry, customs ports. Obviously they can't examine everything that comes in through the ports. That is done through targeting and risk management and analysis. They analyse and they target which shipments they want to inspect, because after all they don't want to hold up shipments at the port

indefinitely, so through risk analysis and targeting is where they can decide which shipments they are going to inspect.

And the United States Customs also has authority to impose administrative penalties for trademark infringement. That’s aside from any criminal penalties that may be imposed by the Department of Justice. Customs itself has administrative penalties authority.

And then, finally, I will conclude with other important components and that’s transparency. Government transparency creates trust between the government and the public and also it helps raise consumer awareness. If you publicize what you are doing with respect to IP infringement that raises the awareness of the consumer that “Hey, this is not a victimless crime, there are other issues that are tied here and that there may be health and safety implications to the product I am buying.” So transparency is very important.

And I will stop here.

**MODERATOR:** Thank you. Thank you very much. This was a whole new brave world for us. We have seen some successful examples of internal controls and border controls, so we will have the opportunity later on during the questions to analyse these examples in more detail.

I can see my colleague here, who was impressed by the US example. The Greek authority for the crime against economic crime will take your example.

Now, we have Mr Bouloukos here. Mister Bouloukos is Executive Director of the Coordination Centre; he is from Argolida, from Laconia, so he will be very laconic in his speech.

**D. BOULOUKOS:** Thank you very much. I would like to apologize in advance if I speak more than I was allocated. I would like to thank the Ministry for including me in this Conference, because I have the opportunity to present the newly founded centre for the fight against illicit trade and the protection of intellectual property rights, the so-called SYKAP.

We have many efforts carried out at national, European and international level. And this shows how big the problem is, especially in the single market. You have seen that in the course of time the European market has developed into a common, single internal market, which is constantly deepened and enriched, and in this market we have goods, citizens and services which can circulate freely.

Since 1980, imitation and counterfeiting and piracy of intellectual goods is an issue in economically developed countries. It has taken very big dimensions, because it represents 5% to 7% of global trade, it deprives the European Union from 100,000 jobs on yearly basis, it is a problem for national economies because many billion euros are lost, and it creates confusions as regards the risks to the consumers. It is, let's say, the main expression of illegal trade and it is now proven that brand names which are often the victim of imitations and counterfeiting are the ones that suffer most.

Today, with the globalization of economy, with the free circulation of a multitude of consumer goods, there is a pressing need to distinguish products, so companies more often try to register their trademark. Unfortunately, in our times the protection of trademarks, despite the efforts of holders of rights and national authorities, is not always successful in this very open market. However, this is the reality of today. In order to deal with this reality, we have to accept that this phenomenon will happen no matter what, because, you know, when a product becomes recognizable there are always those consumers who want to have it because of its reputability and there are always those who imitate it in order to gain profit.

I believe that there are four axes on which we have to focus in order to fight this phenomenon. First of all, the legal framework at national and Community level. Secondly, we should have a coordinated action by the services, the agencies that enforce law. Then, we have to supervise the market. This has to be done by the private sector as well. And finally, the public has to be informed and aware of the problem.

Starting with the first axis, I can say that it goes without saying that we need a serious and updated institutional framework which will provide effective tools for the protection of intellectual property. You know that the European Union has already created two important tools, the Coordination Office and the Patent Office, but it has to continue committing itself and has to do that more decisively in order to encourage collective action against infringements.

Implementing actions do not only have to have a legal character; they should also be actions for the benefit of transparency or actions that improve cooperation between producing enterprises and national authorities.

In Greece we had the first comprehensive, let's say, effort to protect intellectual rights, which took place in 1920, when law 2387 was adopted for the first time. And in 2012, we had law 4072 which replaced law 2239 of 1994 for the protection of trademarks.

There are many efforts by the Ministry of Development, which took priority. Fifteen days ago, we had a new law, 4264, which regulates trade activities outside shops, which is very important, an important tool against illicit trade. This new law has codified and has included in its text all those provisions that embody recent changes. The most important change is the fact that sanctions have become stricter for imitations.

In 2011, we had an effort by the Ministry which was very important, because it was the first time that we had the opportunity to instantly destroy goods belonging to somebody who is either not a licensee or does not have the supporting documents that prove if the products are genuine or not. This new regulation actually allowed more flexibility to the controllers. It safeguards their rights and expands the scope of controls. We can go to open-air markets. Apart however from open-air markets and stock houses and shops, we also have other areas which can be controlled. However, the most important thing is that law enforcement authorities against illicit trade have been expanded and we have for the first time an institution protecting IP rights and we have a similar procedure as the one provided for by regulation 1483 of 2003.

At the same time, we have an ex officio procedure for the protection of IP rights. So, those products which are suspected to be imitations or counterfeit products according to this regulation have to follow a specific procedure and it has to be ascertained whether finally they are infringements of IP holder rights. So, the legal framework in our country is very powerful.

The second axis of focus is the coordination of authorities and the role of SYKAP, the coordination Centre against illegal trade. This Centre was established by a law in 2010, but started function in 2012. We have members of all stakeholders in the Centre, but we have the General Secretariat of Trade being the executive director of the Centre and myself. It's a much targeted effort. It does not breach the independence of the stakeholders, of the authorities involved, and it has a very important role to play. It coordinates competent authorities, it manages and uses the information that is provided to it, it provides guidelines to the authorities, it designs, plans actions at a local and national level, and cooperates with the market representatives. At the same time, there is a telephone line for complaints.

One of the main priorities of SYKAP was to improve the effectiveness of controls, by re-establishing teams of controllers who would go to the regions and perform controls, and activate the new control authorities that have been established.

Then we have a third axis, which is very important, because it allows competent authorities to have the appropriate information that will lead to the proper preventive and suppressive measures. The role of the proprietor is important and controls cannot be completed without his contribution. These actions are initiatives of the private sectors, however we don't have so many initiatives as compared to the extent of this phenomenon, but such initiatives have to be protected and this is why we are doing our best to protect this action.

Now, we have the fourth axis, the consumers. Consumers as I said before are the fourth axis in the fight against illicit trade. They have to be informed constantly and in targeted way. We have to show to them that many things are affected by illicit trade, such as economy, jobs, security and safety of

consumers. There are health risks that arise. All these things will allow consumers to be more aware of the problem and change their attitude. In this way, the phenomenon will not be socially legitimized and it will be limited.

SYKAP has an important role to play, because it strengthens the contribution of the public sector. It allows trade bodies to cooperate with trademark holders, in order to fight illicit trade, and it plans actions at a national and cross-border level. The effort is faced with many problems, but is successful, and you can see the results which are quite telling. We will continue our efforts in this direction. This is an indicative table, showing our efforts. It shows the numbers in 2013 and 2014 and proves my case.

Ladies and gentlemen, in summary I would like to say that it is important for all of us to realize the need to react to this wave of counterfeit products and follow a single strategy and jointly deal with the problem. This cooperation at European level is self-evident, and the same goes for the agreements regarding the protection of intellectual property rights. However, as global competition becomes more and more intensive, the European economy has to deal with these challenges very quickly and decisively, and protect its interests in cooperation with global organizations.

Finally, I would like to say that this Conference can be a springboard for joint action for providing information and raising awareness and for recognizing the contribution of intellectual property rights’ creators. Thank you very much. I believe I was brief.

**MODERATOR:** Yes, you were very laconic and I don’t have to sum up for you, you did it yourself. I would like to thank the speakers. Now we are open to questions. I can see a lady. Yes, Mrs Georgopoulou. However, she is off the microphone.

**Mrs GEORGOPOULOU:** I have two questions. One of them goes to Mrs Berdud, who is here to represent the US Patent and Trademark Office, and the other one goes to Mr Margellos.

I saw that you don't have specialized courts for industrial property in the US. Is that right?

**C. BERDUT:** We don't for enforcement. We do for contesting the validity of the patent, but not for the enforcement. So for the granting there is specialized court, but not for the enforcement.

**Mrs GEORGOPOULOU:** If I am not mistaken, the WIPO, which is based in Geneva, told us that there was a proposal by the US to have specialized courts for counterfeiting and at this point I would like to say that the regulation for the Community trademarks, which is in force nowadays, has provided for such specialized courts all over the EU. And based on that, we have established some competent services in the Court of Appeals of Athens and Thessaloniki.

All conferences should give us food for thought and today we have many judges here in this Conference, so allow me to congratulate OHIM for their initiative that has been running since 2006 and actually runs at least six seminars for the judges serving in those specialized courts.

As regards the Ministry for Development and the Trademark Division, I could say that we are doing our best to send the invitation to the judges at the soonest possible. So, based on that I would like to say that it is important to think about the fact that those courts should be staffed with judges who are serving there for a long period of time, because otherwise they won't be able to use the experience and education and training they gain from those seminars. Maybe the Ministry for Development should intervene and cooperate with the Ministry of Justice in that respect.

Now, as to Mr Margellos, my personal experience as a lawyer at the Trademark Division and as an attorney at law in general I have seen that trade disputes have to be dealt with very quickly. We cannot allow such disputes to become obsolete. So the benefit of mediation will be huge for enterprises and Mr Margellos is not only the President of Court of Appeal, but he is also the coordinator of the mediation office of OHIM and they have very recently had a very successful conference about mediation. So I would like him to tell us from what he knows what are the measures that member-states should take in order

to respond to the requirements of the Directive and the respective law that Greece has passed, so as to make mediation more effective in Greece.

**MODERATOR:** Well, let’s have some brief answers. Mrs Georgopoulou was not so brief; I would ask any other person who has a question to be briefer than Mrs Georgopoulou. So let’s listen to the answer by Mr Margellos.

**T. MARGELLOS:** Thank you very much for your questions. Mrs Georgopoulou, from your experience as a lawyer and from your experience with mediation you know very well that the acceptance and use of this tool, this out of court settlement, is not easy. It’s not an easy thing, because it does not only have to do with the creation of the appropriate legal framework. It has to do with attitudes and mentalities, how we perceive out of court settlement.

It is true that all lawyers and judges actually spontaneously try to resolve their differences, their disputes, through the courts, in court. And we are always convinced that we will win. So, it is a matter of attitude more than everything.

Then, in my presentation I also mentioned a survey by the European Parliament. This survey proposes certain measures, among which a type of mandatory mediation. In what sense? In the sense that before, let’s say, even initiating in-court proceedings, the parties should be obliged not as to the effects, the results, but as to the procedure they should be obliged to go through mediation. Of course they should have an opt-out opportunity, option let’s say. These are some of the measures that we could adopt and if you read the law, and I am sure that you have read it, the court has the option, let’s say, to call upon the parties, right at the beginning of the proceedings so to try to resolve their dispute through out of court settlement.

Once again, it is a matter of attitude. And I am saying this, because sometimes mediation is considered by some people as an admittance of the fact that the case that one has is not so strong.

**MODERATOR:** I believe, Mrs Georgopoulou, that your question was answered. The other question was a rhetorical question, a diplomatic question.

Are there any other questions? I can see that you are hungry, but before going to lunch, allow me to thank some people. I would like to thank Mrs Betsa, who was the soul of this Conference right from the inception of the idea and until the last moment. We also have Mrs Karathanassi, Mrs Trakada, Mrs Economaki, Mrs Petropoulea, Mrs Karavagi, Mrs Ava, Mrs Kolovou, Mrs Nassou and the Director of my office, Effie Ioannou. All of these women, I can see now that these were all women, have actually worked very hard for the success of this Conference, and Mrs Georgopoulou, I would like also to mention the very competent team that negotiated in Brussels on behalf of the Greek Presidency, Mr Panagiotopoulos, Mrs Lioffi and Mrs Thassou. They were the people who are actually to thank for the achievements of the Greek Presidency.

So, with this, I believe that you are now ready to have lunch.

**(Lunch Break)**

**SESSION 3:**

**THE FEEDBACK OF TRADE MARKS USERS ON EU TRADEMARK LEGAL REFORM AND THE ANTI-COUNTERFEITING MEASURES**

**MODERATOR (C. MICHALOS):** Ladies and gentlemen, good afternoon. This is the 3<sup>rd</sup> Session of this Conference held under the Hellenic Presidency of the European Union, entitled “Trademarks and anti-counterfeiting measures”. This 3<sup>rd</sup> Session concerns the feedback of trademark users on EU trademark legal reform and the anti-counterfeiting measures.

We have three excellent speakers and we start straightaway with Mr Sanz de Acedo, who is the CEO of the International Trademark Association. Mr Acedo, the floor is yours.

**S. DE ACEDO:** Thank you very much. Very good afternoon, ladies and gentlemen.

I would like to start this short presentation with we tend to say -and I am a Mediterranean myself, because I am a Spaniard- and we tend to say that ladies are normally late, and I have to say that this is absolutely wrong. I mean the first to be in the room this afternoon were all ladies, so ladies, congratulation for that and thank you very much.

Now, let's be a little more serious. I would like to also start thanking the Greek Presidency for an amazing job during its presidency and I would certainly like to thank Mr Komninou, the Secretary General of Commerce, for all the efforts that are been put in place in Greece in terms of the achievements of the Office, but also in setting this Conference at the end of the Greek Presidency.

Now, let me perhaps before entering into the subject matter, which is of course the changes in the regulation, both the Directive and the regulation, let me perhaps introduce INTA. The International Trademark Association is the biggest worldwide brand owners' association, working for the advancement of trademarks, but certainly working as well in favour of consumer protection and in terms of fair commerce. And that's something that we think is extremely important.

We have 6,600 organizations that are members of our Association, which means around 30,000 individuals all over the world, and we have members of our Association with 190 different countries.

Now, why is it important for us to talk about the changes in the regulation and the Directive, the so-called package? Well, first of all because I think we all agree that trademarks are extremely important. We heard this morning that the impact of trademarks on employment within the European Union, the direct impact is around 21% and we also heard that contribution to GDP is around 39%. But also we have to think that the changes in the package are extremely important, because it is the first time we have such a change after 20 years, and the next time we will be reviewing that regulation might be in 20 years' time, so certainly we need to look seriously into this kind of things and we need a trademark system which is easy, which is quick, which is affordable,

which has flawless administrative burden and finally that brings legal certainty to corporations, be it big corporations or SMEs.

And last but not least, and this could be the conclusion of what I am going to say today, we need to add value to the citizens. And this is valid for companies, it's valid for politicians, and it is valid for IP professionals as well. And the only way to achieve that in the field we are discussing today is as Pierre Delsaux mentioned this morning having finally a text, where we all agree. Because if we don't have such a text, we might end with a new discussion at the level of the Parliament and the amount of time, energy and money spent by all of us will have been kind of useless.

So let me perhaps concentrate on three main issues. The first one would be governance, cooperation and finance. The second one is going to be about enforcement measures and the third one is going to be about harmonization. And I promise to be quick.

In terms of governance of OHIM, certainly the regulation is proposing some major changes. As INTA we will not make comments to such changes, but what I would certainly like to say is that what works well does not need to change and perhaps I spent 15 years at OHIM and that's why I am saying that, but I can tell you it's an extremely efficient office. And it's probably the most successful EU agency we have had so far. So if it has been so successful, is there real need for major changes? Probably not.

And the second issue is that we need to make sure that users are involved in the decision-making process. Another thing which is very important in terms of governance is that we should not lose focus, and that means that the main task of OHIM should be first the registration of trademarks and designs. Now, in terms of the surplus, is it a margin of manoeuvre, is it a surplus? Well, certainly the important thing is that we should avoid further accumulation of money and more important we should make sure that this money remains within trademarks and within designs, because this is where it comes from.

In order to do that and in terms of cooperation, the cooperation fund has proven to be a very successful model. We need to continue that approach in

having an institutionalized cooperation mechanism. It should be in the form of brands and it should certainly have control mechanisms.

And finally, if we have to talk about fees, we certainly as a brand owners' association agree and welcome the change from three classes to one-class fee, there's no doubt about it; but at the same time, we would perhaps like or we would surely like to see a decrease in the renewal fee. It honestly doesn't make sense today that in some cases renewal is even more expensive than the filing of a Community trademark.

So this is about governance, cooperation and finance. Let's move into the second chapter. And this is about enforcement issues. Well, here we see I think great improvements. The fact that proprietor acts are considering trademark infringement is certainly to be welcome; it's an improvement within the regulation. The fact as well that the Commission proposal has included small consignments is a positive outcome. As you know, there is a discussion there with the Parliament and then with the Council into what needs to be included within small consignments, but it's already a good thing that we have that in the regulation.

Certainly the work that has been done by the Parliament and the Council in terms of deleting the origin function issue within the double identity cases is something that is to be welcome. And then of course we have the big issue, which is goods in transit. And that's the major issue. And here, I have to say that INTA and I suppose all brand owners' associations strongly support the Commission proposal. A proposal that has been somehow followed and endorsed by the Parliament and a proposal that today remains discussed at the level of the Council. And I have to say as a representative of a brand owners' association that we are concerned by the fact that member-states do not agree on that. And as you know there is a group of member-states that are favouring the Commission proposal and we have another group of member-states who is willing to come back to the NOKIA case. And let me perhaps, talking about the NOKIA case, quote judge Kitchin in his conclusion. *“I recognize that this result is not satisfactory. I can only hope it provokes a review of the adequacy of the*

*measures available to combat the international trade in fake goods by preventing their transshipment through member-states.”*

If we were to follow the NOKIA case, it means that counterfeited goods would only be seized if there were suspicions that these goods would come back to the European Union. And that basically means a shift in the burden of proof and it means that the owner of such goods would have to demonstrate that these goods are not entering the European Union. That is extremely easy for organized crime. Is that a good solution? Certainly not. And by the way, we should not forget that the European Union is taken as a reference worldwide, and the decision we will be taking here in terms of the regulation might impact changes in the regulation in China, in the Asian countries, in Latin America, etc. So we need to make sure we take the right decision.

Now, final chapter, so that I remain in time; it's about harmonization. And the issue about harmonization has two sides, harmonization of substantive law and harmonization in terms of procedures. In terms of harmonization of substantive law, INTA certainly welcomes the elimination of the graphical representation requirement, and that means that we will ease the registration of non-traditional trademarks, but aside of that, we have seen some recent changes within the proposal that concern us, and I am particularly referring to the limitation of trademark rights.

The fact that we are inserting the use of trademarks in the course of trade for proprietor purpose is risky business. We might have as well on the side of the Parliament some wrong codification of some cases that could bring us to international extortion and we don't think this is really very good. We are also seeing the addition of new absolute grounds for refusal that remain unclear. We see a restriction of bad faith and finally, we would be seeing the introduction of third parties' opposition in absolute grounds. Is this really the way we want to move forward? Is this really the modernization of our system? We are not convinced about that.

Now, in terms of harmonization of procedures, the ex officio examination of relative grounds as you know takes place in some jurisdictions

and doesn't take place in other jurisdictions. Certainly INTA is supporting the Commission's proposal in the sense of deleting that. And again, the important thing is that we make sure that we have a harmonized system all over the European Union, at the Community trademark level, but also at national level, because the important thing is that the user experience should be the same, and that's in the benefit not only of the big corporations, but particularly in the benefit of SMEs and individuals who do not have such a big budget to protect their trademark rights all over the European Union.

In terms of classification, this is certainly a big issue and again we are very favourable to the “means what it says” approach. As you know there is an issue here in terms of giving some time to trademark owners that were not under the “means what it says” to adopt classification of their goods and services. This apparently would be deleted from the final regulation and we think that would be a shame, because there is need for that, again, of legal certainty.

And finally, in terms of procedures, we think it's extremely positive to introduce invalidity and revocation procedures at an administrative stage of proceedings. As a final issue of procedural matters, you know that there is that issue about delegated acts versus implementing acts. We are concerned about that. First, is there need for this, and second what would be the consequences of that? So what happens with those elements that have not been included within the concept of implementing acts? Again, that would create some kind of legal uncertainty.

So, all in all, I think what we are aiming at is a more harmonized, a more pragmatic, a more modern and a more secure trademark system. And that not only for consumers/citizens, but also for brand owners. And that means that the money of trademarks and designs should remain within the trademarks and designs industry; it means that we should have very clear rules and very strong rules in terms of goods in transit, and finally we should have simple and harmonized substantive and procedural rules that apply all over the European Union.

Thank you very much.

**MODERATOR:** Thank you very much, Mr Acedo. And we move on to the impact of legal reform on an EU trade system in the single market, and Ms Diana Versteeg has the floor, please.

**D. VERSTEEG:** Thank you very much. I have a presentation. Good afternoon everyone and thank you all for coming back from lunch, a nice Greek lunch. As everyone else speaking here today, I would like to thank the Greek Presidency, the Ministry of Development and Competitiveness for organizing this event and for allowing me to say a few words on behalf of the brand owners in Europe. And I especially would like to thank the translators, because you are almost the only ones that have been with us all day, so thank you for that.

It's my honour and pleasure to speak to you here today. I don't speak Greek and I only sing in my car or under the shower, so please bear with me. I do get very-very passionate about topics like the EU reform and counterfeit, so I could be Greek in that respect. Many of you may already be familiar with MARQUES, but for those of you who haven't heard about our association, I will briefly introduce it.

MARQUES is a European Association. We are not the biggest one, but we are European, representing the interest of brand owners. We were founded 30 years ago by brand owners as a not for profit organization. Like INTA we have various teams. We have an anti-counterfeit and parallel treaty, a geographical indications team, trademark law and practice team, designs team, and so on. We also have task forces who participate actively and heavily in the current EU reform and a recently established anti-fraud network of OHIM. OHIM keeps us very busy. And although I am here to represent MARQUES, I strongly believe in joint efforts, so we try to cooperate and find mutual ground whenever possible and as much as possible with our sister associations, the BMM from the Benelux, GRUR from Germany, ITMA from the UK, APRAM from France and of course INTA. I think we have a very good relationship, in particular with your team in Brussels, and that's very nice.

MARQUES deals with a variety of IP rights, designs, trademarks, geographical indications, but the focus is on brands. We have members from 80

different countries, but we primarily focus on developments in Europe. It has been highlighted already many times before here today, but I am going to say it again and again, because I think it is important to repeat it that the IP Contribution Study shows that we have a very IPR intensive industry in Europe. Not only that, almost 90%, that's almost 100% of our trade from Europe with the rest of the world is directly linked to IPR. And with IPR like it was already said we do not only talk about big companies, the majority of that industry is formed by SMEs.

Now, all originating from big companies or SMEs, there is not one single product or service that has not been subject to branding or some other form of IP protection, and without exception all these companies rely heavily on their IP. No matter their sales figures, in the end we all want the same. And I would like to quote Paul Polman, who is the CEO of UNILEVER, who spoke last week at the IP Enforcement Summit in London, in the end we all want people to trust our brand. I would like to create my own quote and say that we all want people to trust the IP protection in Europe.

A little bit more about brand owners, because it has not been highlighted too much today. Many brands evolve over the years as you can see in this slide, so we need cost effective ways of protecting a renewed identity. We need to know what exactly is offered by a registration and what is not. So then we will know when to file additional applications when we need to spend extra money and how to file that.

Furthermore, it is in the DNA of all companies and creative people to constantly want to fine-tune their ideas, to build upon them. This constant stream of innovation, it has been said before over and over and I am sorry to being so repetitive compared to all the other speakers, but innovation requires a flexible system, and especially for those who do not have an in-house department. I work for a big company with an in-house department, we have over 100 IP professionals in our company, but I am thinking about smaller companies and start-up companies. It is crucial for them that innovation is not hindered by complicated laws and all these different systems that have too many varieties.

If we want a strong European system, we need to get rid of systems which coexist but which are too different from each other, which force us to spend a lot of money, a lot of time, a lot of resources, before we even get to the stage of getting something protected. So as brand owners what do we need? Well, first of all, we would like to have a choice. A choice between the CTM system, the national systems and the Madrid system, not to forget, but made possible with the same procedures, the same criteria. So yes, we encourage harmonization. However, the basic rule should be that harmonization is in the interest of brand owners, the users of the system. Harmonization towards the north has no meaning and is pointless when all users have indicated that they wish to head south. There are many examples I can give, but I will skip them. I will just give an example of good harmonization, for example the implementation of the harmonized database of goods and services.

So harmonization is important, as long as it is in the interest of users, aside of that clarity, clear definitions, what can be protected and how to get there. We are very pleased within MARQUES with the continued review of the OHIM examination guidelines. It is a good example of something that can really become a success when everybody works together. But after you have obtained your rights, then what? So we need strong support from the law and from the policymakers in protecting our investments and the trust we have built upon towards our clients.

And finally, we need to know to the best extent possible what to expect when we end up in a conflict or even worse when we end up in court. To quote OHIM who spoke this morning, President Campinos, we need quality, timeliness, consistency and predictability.

Now, today we talk about trademarks mostly, but the importance of other IP rights should of course not be underestimated. Especially designs as you can see are becoming increasingly important in the European Union. So, everything that I am saying here today and I think that everybody has said here today about trademarks or brands, the importance of having clear laws,

procedures and guidelines, equally applies to designs and other intellectual property rights.

So far my introduction, I will highlight in more detail some of the issues within the EU for reform, that we think are very important or at least very interesting. I will try to go through as quickly as possible.

There are so many changes going on, I will highlight only a few and maybe skip a few. Terminology: We are very pleased, and with “we” I mean actually me, in my company, that Community Trademark has been replaced by European Union Trademark. It sounds like a little detail, but no marketer in my company understands what Community means, let alone the acronym CTM, when I send them a portfolio or review. We are not in favour of OHIM’s name being changed, because we believe it’s a very distinctive trademark by now and why should we change a name when it’s working very well, especially that I am told that it will cost about 4 million just to change the name from OHIM to any other name. So I don’t think that’s a good spend of money. And thank goodness, we are happy that the President is still the President and we don’t have to call him Executive Director.

As for governance, in the first proposals it was mentioned to have an executive board. Well we are very pleased within MARQUES that that has been deleted. As Etienne already said, if it isn’t broken, why fix it? We think OHIM and the administrative board and budget committee work really well, so we are very happy that that remains unchanged.

We strongly support the EU observatory, the anti-fraud network and many other good initiatives, such as the OHIM IP academy, but as brand owners we also are a bit concerned. We think that we should all keep a focus on the core activities of OHIM. To be honest within MARQUES we currently do not see the added value of the mediation centre at the level of the Court of Appeal. It is also my understanding that so far there has been very little use of the mediation services and maybe that will change in the future, I don’t know. And personally I am very much in favour of settling a matter amicably whenever I can, preferably even before we arrive at the Court of Appeal. But I doubt whether I will ever sit

around the table in a mediation session with a counterfeiter who is part of organized crime.

As for the cooperation between OHIM and the national offices, the current reforms of the regulation and Directive are used to promote cooperation between OHIM and the national trademark offices. Not just on a voluntary basis, but a compulsory cooperation framework, which will provide for mandatory access to tools to assist the offices in their capacity building, and we are pleased within MARQUES that this leads to concerted practices and practical measures, just like having the same software tools everywhere.

Etienne already touched upon it and I am going to repeat it again. For many user associations the financial aspects of the EU reform are probably the most controversial topics, aside from the goods in transit, I will get to that. And support might not be a correct term. I don't think margin to manoeuvre is an ideal description either, so maybe I already told Campinos that we should call it the IP protection fund, but he will give it some thought. A lot of the cooperation work is to be financed by the OHIM budget and this funding should take the form of grants, which grants should not exceed 10% of OHIM's annual budget.

Now, as user Association, we feel that to a large extent this is our money we are talking about and that money should be spend in a way that directly benefits the IP world. What makes it controversial in our mind is that we have no influence whatsoever on what happens with that money. And the latest proposal that I have seen from June 6<sup>th</sup> adds to the 10% spend on cooperation products with the national offices another 10% of the yearly revenue of OHIM to be redistributed to the member-states. This latest proposal contains a list of checks and balances to ensure this money that will go to the member-states is used for the purpose of assisting the national offices, but this control mechanism leaves no rule for the user associations, which is rather frustrating to say the least.

In our view, we went from talking about how to spend the surplus and in our view the surplus is a special situation. It's the result of a very well and effectively run association like OHIM, but now we are talking about spending

another 10% of OHIM’s revenue, which is a recurring and permanent spend. It may become a fixed part of European trademark law and it may even apply regardless there is still surplus or not. So, the last word about this has not been spoken and I appreciate that today is neither the time nor the place to have a strong debate about money, and most of the highly placed people have left anyway, so I will leave it at this.

Absolute grounds and relative grounds. For the absolute grounds we highly supported the proposal to maintain the examination of national applications to include only languages which were understood by the consumers of that certain country. We were actually quite disappointed to see that this wording has been removed from the Presidency’s compromise proposals and we would like to see it reinstated. We don’t know what will happen with that.

For relative grounds we keep pushing for it, we are not sure whether we will be successful, but we would really like all national offices to abolish their ex officio examination on relative grounds. We are not against it being offered as a service, but from personal experience I can say it’s a dreadful thing, in my daily life as IP counsel it leads to a lot of administrative burden. To give you an example, we are crowded against ourselves almost daily, so it forces us to pay a local agent who will forward to the national officers the paper drill proving that the legal entity who is the registered owner of the sited mark, the trademark, is actually one of our affiliated or daughter companies. Or we have to conduct expensive investigations to find out that the sited mark has not been in use for at least ten years. And it’s even more annoying that this problem exists in one country, but not in the next.

For administrative opposition and cancelation we very much like these proposals, very much. Any measure that can solve matters without having to go to court is by nature a very positive development; so maybe the mediation centre in the end will prove to be an effective tool.

And last but not least, the goods in transit. What can I say about it that has not already been said? I cannot begin to explain how important this provision will become in the fight against counterfeit. And I am very-very pleased

that Greece has shown true leadership in the right direction. The current draft text referred to as Option One is of course our dream scenario. We would not be in favour of adding in escape clause for the importer, if he would be able to show that the destination of the goods is outside the European Union. Let's face it. If you are capable of setting up a criminal organization dealing with counterfeit products, complete factories, complete supply chains, then you are equally good in producing fake documents. I am also told it is quite easy to change the destination of goods back and forth as you please. And what do we do when the final destination is not known? Some goods are placed in transit a multiple times and I really think we should not give away the protection of IP within Europe and I also fully agree with Mr Delsaux of the European Commission; we need a decision and we need to take it fast.

If not, Europe is giving away its most valuable assets. We do not have gas, we do not have oil. We do not have gold in the ground or diamonds or whatever. And the statement “we respect intellectual property” should become a reality. Or like Mrs Berdud said earlier in the afternoon, if we do not look at goods in transit, we create an enormous weakness in our system, and we need to have a holistic approach if you look at border protection.

Aside from the goods in transit, another very welcome initiative is the establishment of the European Observatory. Criminal organizations are networked and so should we. With the Observatory I believe the time has come to set the standard once and for all. And a lot has been said already and not only today but also last week at the IP Enforcement Summit in London about observatories, so I will not repeat it all here. I am pleased to learn that by the end of this year, around 100 companies will have started to use the enforcement database and I also look forward to the research study quantifying the economic damage of counterfeit.

Like President Campinos said, we pay customs, we pay judges. We pay police, not to mention lawyers. I prefer that money to be spent by them, but on other crimes that are already bad enough in themselves. So good anti-counterfeiting laws is one thing, having an official body like the EU Observatory

representing all stakeholders in their fight against counterfeit, I think they are only part of the equation. Another crucial part is raising awareness.

And I really think after listening to many speakers at the IP Enforcement Summit and again today, raising awareness may prove to be the key to solve many of the issues. Now, small and medium enterprises and enforcement officers they can be trained, although we need specific training for SMEs, because they do not have the capacity to organize themselves and attend all these IP conferences. More important, how about people who actually buy or use counterfeit? The perception study shows that many think that IP crime is a victimless crime. So how do we change that mind-set? The reasons are cost, legal accessibility, civil disobedience or protest. How do we change this? And I guess it should not be about pointing the finger, patronizing the public about the importance of IP, especially with younger people that will have the opposite effect. If you address them talking as a lawyer or as an economist to explain how important IP is for innovation and jobs and public health, they will think not only you are after your own interests, and more important they will think you are an extremely boring person and their attention will be close to zero.

I believe consumers and young people in particular should be addressed in their own language by communication specialists. Not lawyers, not economists, or worse, and excuse me for saying this, politicians who are preaching to the converted or who are talking to the wrong audience altogether, despite their good intentions.

Again, I think it would have more impact if we let a small start-up company explain the importance of seeing their innovation protected than listening to a giant company talking about their loss of profit. In general, I think we should move away from the discussion about cost. If you cannot buy Louis Vuitton, buy a genuine b-brand. I do that and I am happy all the same. We should get into everybody's head that IP crime is not a standalone crime. It directly finances terrorism, human trafficking and other horrible crimes. Drugs go hand in hand with fake DVDs and I would just like to say wake up, everyone. It's no longer about fake handbags and fake watches. It's about fake cancer drugs; it's

about fake airbags, fake blood, fake water, fake everything. It impacts everybody, not just brand owners.

It's now time to talk to the right audience and I represent a brand owner, I actually represent many brand owners as my chairmanship of MARQUES, but I am also consumer and I need to be able to trust the products that I buy, that I drive in, that I wear, that I eat, that I use, and so does my two-year-old daughter, when she grows up. And I appreciate it. For me it is easy to speak of what we should do and it's never about the plan, it's about the execution. And I really think that's where the Observatory comes in. So it's no brainer that MARQUES is fully supportive of the Observatory.

I also learnt last week about the cooperation agreement between OHIM and Europol and the recently signed memorandum of understanding between OHIM and the World's Customs Organization. And I am really happy to see that some important steps are being taken.

To conclude, I really like this Greek proverb. Now, I am not comparing the people who work in the European institutions with a bunch of old men, but the idea is that whatever is established now, during this Conference, in the offices of OHIM, in the national offices, this year and in the years to come will have a great effect on the future of Europe. And President Campinos said it last week. If we bring all the experts together, we all become students again. And I liked that very much; I think it's a good thing. We should learn from each other and at the same time not reinvent the wheel.

A lot of good things are being done at the moment by a lot of good people and I think we should keep this in mind, but we should also keep the momentum. Thank you very much.

**MODERATOR:** Thank you very much, Diana, for a very interesting contribution which will normally spark off a number of argumentative discussion points concerning the issues which you raised and the main cause of the effect.

I would like now to close with our third contributor, Mr James Waterworth, who is the Vice President of the Computer and Communications

Industry Association, who will be looking at the issue from the consumer point of view, as far as product safety, competition and innovation is concerned.

I have to apologize that I have to attend a meeting with the task force, Mr Reichenbach, so I will be leaving during the speech which will be made, but I am informed by the organizers that because of lack of time there will not be any closing remarks, so after the end of Mr Waterworth’s contribution, if there are any questions, otherwise we will be closing up.

You have the floor. Thank you very much.

**J. WATERWORTH:** Good afternoon, everybody. I am going to first of all explain who we are and clarify a slight confusion on the program. As the Chairman said, I am James Waterworth and I represent a trade association called the Computer and Communications Industry Association, and contrary to what it says on the program we are not a consumer group, so we are not representing consumers. Rather we represent internet companies, but they are consumer-facing internet companies.

So much of what I am going to try to explain is about many of the new forms of interactions that consumers have with brands and trademarks over the internet, so that’s going to be the focus.

Couple of quick words about our Association: We were founded in 1972 in Washington DC. We now have offices in Brussels and Washington DC. Many of the brands that you will know and possibly are users of are companies such as Yahoo, E-bay, Facebook, Google, Allegro, Microsoft, British Telecom, Samsung, those kinds of companies, so that gives you an idea of who I am representing.

So I am going to talk first of all about a bit of context about trademarks in the internet era. Secondly, a couple of key points for us with regard to the on-going legislative reform and then a couple of points on food for thought, things which I think are going to be issues for the coming years.

So, why the context, first of all? Well, what we discovered is, just over a year ago when we started going around to meet people dealing with this

trademark reform, is we were going to meetings and people would say, “Why are you here? What do trademarks got to do with the internet? Why do internet companies care?” And we started explaining, meeting after meeting, what the relevance was for the digital economy and people starting saying, “Thank you for coming to explain this. We understand now.” So that’s why I am going to give you a little bit of context.

So, firstly, the second bullet point here. Five of the most popular luxury brands on Facebook in 2012 were the following brands there: Burberry, Louis Vuitton, Dior, Gucci, Chanel. In other words, the point I am getting at is that there is a very considerable new form of interaction going on between brands and consumers, but it's taking place over internet platforms, many of which are our members. And some of these figures that come from research show how important that online interaction is for consumers, whether purchases of luxury goods or normal goods.

One other interesting piece of research is this point about researched online-purchased offline. And there is a common perception sometimes that e-commerce is eating the world, which is actually not quite accurate, because this figure suggests that in 2010 consumers in the 20 richest countries in the world purchased 1.3 trillion US dollars of goods offline that they had researched previously online. And actually this represents more than the entirety of all e-commerce. So the internet is a very important research mechanism by which consumers discover and compare brands and their products.

What's also interesting is how brands are using the internet. Some of the case studies illustrate not just consumer interaction, but things like product development. You have probably all heard stories, here is one, in the United Kingdom the chocolate maker Cadbury had in the 1980s come up with a product called “The Wispa”, which in the early 2000s it is continued. Now, using social media, Cadbury was able to discover that there was a significant customer base out there who would like to continue to be able to buy the Wispa, so having engaged with fans of the Wispa they reintroduced this product in 2007 and

continued to engage with consumers about the evolution of that product and indeed about developing and perfecting new products.

Also, of course, marketing; a very common technique. This is a much smaller example of a traditional Bavarian clothing manufacturer that uses again Facebook to market its new collections and designs to consumers in a very low-cost way. And then of course there are some examples which are quite painful. Those of you who have been following the Football World Cup may have seen one of the brand communication disasters of the last couple of days, which was the US airline Delta Airlines, who twitted on Twitter the picture that you see here, following the victory of the United States football team over the Ghana football team, the giraffe apparently representing Ghana and there are no giraffes in Ghana, and the Twitter community became very hostile to Delta Airline’s mistake, and so this will be a problem for their brand and for their image, which I hope they will attempt to remedy.

Various facts about the percentage of wealthy consumers who either wish to have greater brand interaction on the internet or who do search for information about luxury goods. 92% according to one IPSA survey of luxury consumers use the internet to search for information before buying a product. This graphic, I’m not sure if it is very clear on your screens, so I will just explain it, illustrates one of the more important changes in consumer and indeed industry behaviour with the advent of the internet, which is that once upon a time much there was a transaction, a company selling to consumers was a bit of a broadcast. I am broadcasting to you now, it’s one of many. What happens of course on the internet is consumers not only go and research across multiple platforms about the products and services they want to consume, about the brands themselves. They also of course read the criticisms or comments or reviews of other consumers who become informers of a particular purchase.

So, given that context, the question is what does the ongoing legislative reform that the European Union is undertaking mean for digital economy, the digital economy and indeed of course the fact that the whole economy is increasingly becoming more and more digital. And indeed I was

intrigued about your comment that the last reform was 20 years ago, because most of the companies that I represent didn't exist 20 years ago.

So, the key points I am going to explain, firstly balancing trademark protection and freedom of expression, and secondly being focused on consumers, delivering for consumers. So, a balanced regime, what do we mean by a balanced regime? Well, in our opinion the core primary function of a trademark should be to guarantee for the consumer the origin of a product. In other words, that it comes from a particular manufacturer and that it is genuine. Increasingly, however, there is the ability with the internet for consumers to interact in new ways with brands, by comparing them, shopping around, criticizing, commenting, parading and of course engaging in artistic expression.

One of the key issues for us, therefore, is the discussion of the double identity rule as first proposed by the European Commission, and indeed we find it to be helpful that the focus is primarily on the commercial origin of the product that avoids consumer confusion and guarantees safety for example. But because of the fact that the internet offers these enhanced possibilities for citizens, consumers, users that interact with the trademark, our concern is that we want to ensure there continues to be enhanced competition. So, trademarks allow people to search for particular marks, to compare particular marks, and that is good for competition and good for consumer choice.

It also allows consumers to find genuine products which have been placed on the market for resale, second-hand goods, and we would wish that and we find that a socially and economically useful activity which we would wish to be secured. And then there are also of course the situations of parody, artistic expression and criticism.

So, some examples of why we are concerned about this. Parody. Greenpeace, an NGO, had parodied a number of years ago the logo of Arriva, the French nuclear facilities company, which resulted in Arriva seeking an injunction and six years of litigation, which Greenpeace won, so they were entitled to, because of the use of the trademark that they were making to that use. Interesting one of the comments that Etienne made was about parodies with

regard to commercial use and that’s not something that we are seeking. We are not seeking something like situations where parodies become relevant for commercial use.

Criticism. There is also a case again from France of an individual who produced a website which was critical of the Paris Metro System, the RATP, and was used for reporting problems and malfunctions on the network and this individual. And then comparative advertisement, a very important function for consumers to compare. There is jurisprudence from O2 versus Hutchison, two mobile telephony companies from the United Kingdom, where because there is a comparative advertising directive, it was clear that Hutchison’s behaviour was admissible, but our concern would have been that without that trademark law, might have got in the way of that comparison being made.

And then, we have a new interesting situation on the internet, which is that once upon a time it was clear who was the professional and who was the consumer. That division becomes increasingly confused on the internet, where you have for example bloggers who may undertake activities which are initially amateur, non-professional, and may over time deliberately or not deliberately become remunerated activities through for example advertising. And of course a blogger or a small trader is not a lawyer, so it would be very difficult for them to understand exactly which uses of a trademark are or are not permitted.

So, solutions to that, supporting first of all the European Commission’s proposal to limit double identity to the origin function and secondly supporting the European Parliament’s proposals to limit or to place limitations to trademarks to guarantee freedom of expression and commerce. One of the reasons why I think this is important is we have seen from a number of areas of policy over the last at least ten years an increasing clash, and I think the last commentary was very interesting about how to inform consumers of why intellectual property is important. We have seen in a number of areas of intellectual property a clash between established industries asserting their intellectual property rights, and consumers feeling constrained or potentially

attacked. And I think it is extremely important that we avoid any unnecessary citizens-industry clash over IP.

Secondly, consumers, trademarks, 21<sup>st</sup> century trade. 21<sup>st</sup> century trade you won't be surprised to learn I am thinking about the internet and consumers expect instant gratification. That's not always possible, but they expect it and they expect to be able to access branded goods online. One of the key discussions in this trademark review for us relates to small consignments and there are effectively three scenarios under discussion. The original European Commission proposal where trademark owners are able to prevent genuine goods, not counterfeit goods, genuine goods being imported to the European Union when there are small consignments by consumers on the basis that they have not been placed in the European market. There is then the European Parliament's revision, which revises that and only allows trademark owners to take action against small consignments coming to the EU when they are counterfeit. In other words, if you are buying genuine products, then you are allowed to buy genuine products.

And thirdly then we have the Council situation and maybe we can forgive the Council by saying that they are part the way through their work, but currently there is a confusion in the Council document, if I am kind. There is a recital which protects consumers and suggests that they are allowed to import small consignments to the European Union, but the substantive provisions allow trademark owners to act against infringing goods and infringing goods could be counterfeit goods or they could be goods where the trademark right has not been exhausted and they have not been placed on the European Union market.

So it is not clear which way the Council is minded to go. Clearly our opinion is that they should go in the same direction as the European Parliament, which is the solution, allowing consumers to buy small consignments of genuine goods from outside the European Union, which would of course make us similar in practice to, for example, the United States, one of our largest trading partners, where similar practices rules are in place.

So, finally, just for food for thought, I was just comparing our situation with regard to the United States. Many of you will be aware that the EU is engaged in discussions with the United States about a free trade agreement, called TTIP, and a lot of that is about regulatory convergence and you will also have noticed, if you are following TTIP, that TTIP is coming under considerable attack from civil society, whether consumer groups, certain activists and particularly in certain countries like in Germany. And we are very strongly of the opinion that it would be wise for policymakers to ensure that the benefits of trade are not just obvious to big companies, which has typically been what the trading system is for.

Particularly because of the internet, we now have the ability to shape a trading system which is beneficial to consumers and, very importantly, to small businesses. And this is one of the opportunities that we have here, with regard to e-commerce, which is allowing converging the regulative regimes in the United States and the European Union, so that European consumers would be able to buy for example from the United States.

Secondly on the same point, trade is not just for multinationals but for citizens and small businesses. Thirdly, and this is not a trademark law question, it's rather one of competition law, but important to many of the same communities. You may have followed the investigations of the German Competition Authority into the use of selective distribution agreements by a number of brand owners, and the German Competition Authority has published its opinion on the practices of Asics, a sportswear company and we know of a number of brand owners who have used provisions in their distribution agreements to prevent goods being sold over the internet. We assume to avoid price competition between merchants who are offering cross-border shipments, for example, where most retail is local. And online sales restrictions is something that the German authorities have acted upon and we have certainly been asking and will continue to ask the European authorities to be acting upon, and I suspect it to be a major issue for the coming years.

Thank you very much.

**MODERATOR:** Thank you very much for this detailed analysis of the effects of institutional reform on the system of trademarks in the European Union. From the point of view of consumers, who have to face practical problems of counterfeit products and who have to be protected, especially nowadays, when electronic trade is so much present and controls are quite difficult.

Now, I would like to ask the audience to put questions and then, Mr Botis and Mrs Georgopoulou can come here to make the closing remarks. Thank you very much. No questions, so everything is clear, thank you very much. Now, I would like to ask Mr Botis to make the closing remarks.

**D. BOTIS:** Thank you, but the host, Mrs Georgopoulou has the floor now, and she will be the first to make the closing remarks.

**Mrs GEORGOPOULOU:** Ladies and gentlemen, I should confess that I am touched by the fact that my colleagues serving in the field of trademarks from different points of view and from different positions are here.

We have among us judges from the Community and national trademark laws, because in Greece we have the same courts for Community trademarks and national trademarks, their counterfeiting; we have chambers, which represent enterprises and the protection of trademarks aims at protecting the intangible assets of enterprises. We also have representatives of national offices, which have been serving in this field in their own countries and who are also represented in the Board of Directors of the Community Office and I believe that with this I have included everybody. No, I have forgotten lawyers, who are also important factors in justice, especially those who are experts in trademark law and who know all the problems that exist in practice in order to preserve this intangible right which is called “intellectual property and trademark”.

I will not say much, because I was not prepared for these closing remarks, but our General Secretary had to go and I am replacing him. I believe that any conference is successful if it gives food for thought as regards the issue of its concern. So in this sense, we were successful in this Conference. And actually this Conference has come at a time when our six months of our Presidency are coming to an end. All these issues were the subject offered for

discussions and the surveys resulted in the draft regulation and Directive were the result of the genuine participation of the experts in the Council, but also of the observations made by the users associations.

I believe that our future will be one of security; more security for IP holders and more harmonization in the European Union. The new legislative framework has upgraded the role of OHIM and by extension the role of national offices. OHIM, through a series of tools, reinforces the role of national offices, which are there to serve users. At the same time, it offers electronic tools for enterprises which want to protect their trademarks from counterfeiting.

The court practices that were mentioned here by other national offices showed once again the food for thought. We should consider how we can adopt the similar measures at a national level. You all know that no matter how good legislation is, when it is not effectively implemented it cannot serve its purpose. And all the things that we have heard, among which a good intervention by Mr Ficsor about the combination of GIs and TMs and how much we should respect their specificities and particularities, and another intervention by Mr Margellos, who spoke about mediation.

Mediation is another field where we can all become active, not only as judges, because now with the harmonization of the Directive the judges can become mediators, but also as lawyers, because we actually represent our principles resolving our disputes in a quicker and more affordable manner.

If I have not mentioned something, I apologize. Another thing that is also full of hope for the future is this cooperation between the European Trademark Office and national offices in the member-states of the EU as regards industrial copyrights. This cooperation has many levels and will be to the benefit of enterprises, because this is our main concern. And apart from this and as the trademark law was created in order to serve enterprises, but results also in the protection of consumers, we should all know that when we protect the trademarks we actually protect the consumers themselves, because trademarks are the lighthouse of consumers in the market.

**D. BOTIS:** Thank you very much, Nota, for these final conclusions and the overview of what we have heard today. You have facilitated my task. I have only two words to say, a couple of words for this Conference.

We have heard the views of politicians, administrative officers, law enforcement officers and from Greece and abroad. We had with us users who testified their views as regards the reform of the legislative framework, and all this at a crucial moment. I will borrow something that my friend Etienne has said, that we will probably not have the opportunity to be revisit this legislative framework for the next 20 years, so it is a great opportunity for us to do our best in order to serve the field we represent.

This is a period which is very hard, because exclusive rights have been very much contested and especially copyright, those acting in the field of copyright know that, and we all know that public opinion is sceptical as regards the protection of industrial property rights, so it is important to have modern legislation and modern arguments that will allow us to have a socially acceptable legislative framework.

I believe that this meeting was another step towards this direction. Maybe not a very bold one, the boldest step will be the one that we will see in the legislative text, maybe, however all the points that we have raised today are important and all those participating in the process have actually spoken for a good legislative result and good legislative texts.

Thank you very much.

**END OF CONFERENCE**