INTA Comments on draft EUIPO Strategic Plan (SP) 2025

Introduction

The International Trademark Association (INTA) appreciates and thanks the Office for the opportunity to provide input on the first phase of the consultation on the draft Strategic Plan (SP) 2025. This is particularly important as INTA firmly believes that EUIPO plays a pivotal role in supporting the use of intellectual property, namely trademark and design rights, as a tool to achieve and enhance innovation, spur economic growth, promote the creation of jobs and boost competitiveness in the EU.

We enjoy the close cooperation that our Association has built with EUIPO since its inception (then OHIM). INTA wishes to continue fostering our constructive and collaborative relationship with the Office. Moreover, we are keen to keep on providing support to ensure that the Office is well-trained and equipped to provide a state-of-the-art registration system, procedures which, in turn will lead to decisions that are efficient, consistent, predictable and cost-efficient, for the benefit of our members.

We appreciate the Office’s openness and willingness to hear users by providing them with the opportunity to participate and provide input in numerous projects and activities of significant importance. In this context, we highly appreciate and find it very useful to be a permanent observer at EUIPO's Management Board and Budget Committee (MBBC). Indeed, we trust that that current system of users’ participation at the MBBC has been helpful to ensure that EUIPO continues to stay close to its users’ needs, especially at the strategic and management levels, and hope that this will continue. Including user associations in the decision-making process of the Office has been key to making EUIPO a success story in the public service it provides to its vast and diverse community of users.

As overall remarks to the draft SP, we believe that the SP should make reference to the EU Better Regulation agenda insofar as it is meant to achieve transparent and consistent decision-making processes, involving those affected by such decisions. It is crucial that the Office’s policies, decisions and modus operandi closely follow those principles.

We expect the SP to be detailed and have action points, measurable targets and a precise timeline. The text now under consultation is very general and fails to emphasize two fundamental underpinnings of the Office, notably the relevance of users within the Office’s strategy and its focus on trademarks and designs. We remain committed to provide comments on the other phases of the consultation on the SP.

INTA has six main recommendations:

1. The SP should clearly affirm that users are at the heart of EUIPO’s strategy and should be structured accordingly.

2. Reassurance should be provided that the Office will focus on its core task of registering and administering trademarks and designs.

3. Delivering quality services for trademark and designs users should be a priority.

4. The SP should clarify that the Office will embrace technology while remaining human.
5. Users should be consulted on the strategic directions for the Observatory up to 2025. The SP should therefore address the Observatory, clearly distinguishing its role and competences from those of EUIPO.

6. Preserving the collegial approach of the Observatory and the quality of its network is essential.

These recommendations and the detailed comments below are based on INTA’s analysis of the direction of the draft SP 2025. In parallel, we provide input on the draft SP’s three Strategic Drivers, by filling in the appropriate fields in the web form.

1. Users should be at the heart of the Office’s strategy.

The Office’s success will continue to derive from its capacity to stay close to the needs of users and to respond accordingly. Involving and consulting users as frequently and in as many instances as possible is essential to ensure that EUIPO excels at its tasks.

We are convinced that, since its creation, the Office has been increasingly attentive to users’ needs. Nevertheless, we believe that the draft SP consultation does not provide assurance that users will keep on being at the center of the Office’s priorities. We therefore suggest that EUIPO should clearly affirm that it will continue to be a user-driven office and that the SP should be structured accordingly. In particular, “Customer Centric IP Services” should be the SP’s first, rather than second, Strategic Driver. Let us explain.

Users are seldom referred to in the draft SP drivers. Even in the (second) Strategic Driver which apparently focuses on the services provided to users, the term “user” seems to be mostly replaced by “customer”. We recommend that the word “user” be the one consistently used as it more accurately reflects the fact that the Office provides a public service to the broad diversity of private stakeholders that contributes and therefore benefits and uses the Office’s systems, tools and procedures.

Since the Office offers a public service, including user associations in all its processes, especially decision-making and management, is part of its success story. In this regard, having granted observer status at the MBBC to user associations is fully consistent with the Office’s decision to be a user-oriented office. It is the most efficient and safest way to ensure that the Office’s work and strategy also reflect and address users’ key concerns. Therefore, as detailed in previous correspondence between the Office and User Associations, we believe that it is essential to keep User Associations as observers in the MBBC.

We commend the Office for involving users in its projects and initiatives and hope that this continues to be the case. INTA continues to be a strong supporter and is actively participating and contributing to different initiatives. INTA highly values its participation in many European Cooperation Projects (ECP) working groups as well as in the Stakeholder Quality Assurance Panels (SQAP). For all such activities with an impact to users, timely and effective consultation, participation of user associations and feedback from the Office is essential.

In this respect, we have noted improvements regarding the opportunities to provide input to the Office as well as its responsiveness. We have verified this, particularly, as regards the distribution of presentations in advance of some meetings and communication of the Office’s feedback after we provide input on European Cooperation Projects. Nevertheless, we invite the Office to find new ways to increase and improve users’ involvement and to do so consistently. We also suggest the Office
to be more mindful of the very nature of the User Associations, which requires time to consult their members, before providing input and endorsing any project.

Interactive and constructive meetings, backed by prior consultation with members, and appropriate communication tools need to be developed. This means that documents/projects where users’ endorsement is requested at meetings should be shared with reasonable time in advance of the meeting. Notably when projects are discussed for the first time at a meeting, often the presentations do not provide enough information for User Associations to formulate a position that is truly reflective of their membership’s concerns. Time is needed to properly discuss the information provided by the Office at the meeting with the membership before forming a final position. **It is important that the quality of the consultation prevails over the rush to proceed quickly with a project.**

We also note a focus on national offices and on cooperation with different public stakeholders such as EPO, WIPO and the European Commission. While we appreciate the Office’s engagement with and support to national offices and cooperation with regional and national organizations, we recommend a stronger focus of the Strategic Plan on the Office’s service to and relation with users, including the planned activities and projects involving users.

As concerns the different categories of the Office’s users, we also note a strong focus on SMEs and, to some extent, EU businesses. While INTA fully agrees that SMEs are a vital part of the European economy and should be supported, large companies and multinationals are equally important to the Office. Likewise, the focus on fostering EU businesses does not take into account that the Office funds derive from a global community of trademark and design owners. Therefore, while we agree that the SP targets SMEs and includes tailored initiatives for such important stakeholders, we recommend that the SP clarifies that **all businesses will continue benefitting fully of the EUIPO’s projects and support, regardless of their size.**

Similarly, we fully acknowledge the importance of EU Businesses for the EU economy and agree that they are referred to in particular in the SP. Nevertheless, considering that the Office’s funds derive from its global community of trademark and design owners, we suggest that it be clarified in the SP that the **EUIPO will continue to promote the interests of all users regardless of their geographical provenance.**

2. **EUIPO’s core task of registering and administering EUTMs and RCDs should be mentioned and emphasized in the SP2025.**

The Office’s focus should be on providing an efficient and user friendly trademark and designs registration system, taking into account the limited resources of the Office, its legal framework and the reality that trademarks and design users represent the Office’s main contributors and prominent stakeholders. Priority should be given to the registration and administration of EUTMs and RCDs. All other activities should be considered secondary and undertaken only insofar as the main task is in no way compromised or undervalued.

Nevertheless, we note with concern that no reference is made to trademarks and/or designs in the draft SP drivers. In fact, the opening paragraph of the draft SP which states its “overall objective”, refers to “IP protection”. The term “IP” is used in many other contexts such as “IP Stakeholders”, “IP rights”, “IP System”, “IP protection, management and enforcement” with no distinction between different IPRs and without specifically referring to trademarks and designs.

We are also concerned that, under Strategic Driver 2, it is asked if “there are any new tasks or services that the Office could undertake to increase its added value to the EU and its citizens”. As
mentioned above, considering that the Office provides a public service, that its role and tasks are framed by law and its limited budget, we recommend that any expansion of tasks is considered cautiously. Moreover, we note that EUIPO does not explain in the draft SP how such “new tasks and services” would be funded. In this respect, we caution that EUTM and RCD generated funds should not be diverted to unrelated tasks. Fees paid by the Office’s trademark and design users should be dedicated to EUIPO’s core services of registering and administering these rights. An “equitable” funding by stakeholders dealing with other forms of IP rights and non-core services and projects needs to be considered, especially as EUIPO seems to intend to focus on IP protection/all IPRs.

In this context of expansion of tasks, in Strategic Driver 2 the Office seems to suggest the intention to include “dispute resolution services” within its tasks. While INTA strongly supports the promotion of mediation, it has some reservations concerning the creation of a EUIPO Mediation Center as a foreseen by Article 170 of the EU Trade Mark Regulation. The potential creation of such a center should be carefully pondered, to avoid any bureaucratic and complex layer, which would take away the flexibility that mediation attempts to offers. In that sense, we recommend that the list of mediators referred to in Article 170 (12) expressly includes mediators that are not EUIPO employees. We further recommend that the EUIPO Mediation Center is presented as an alternative, and not the only route for mediation on EUTM and RCD cases. The SP should foresee further exchanges on the expansion of the tasks of the Office to include mediation services, not only on its necessity but also on its pragmatic and user-friendly implementation.

3. Delivering quality services for trademark and design users should be a priority.

The consultation begins by stating the “overall objective of the EUIPO Strategic Plan 2025” which is “to ensure that the Office delivers Added Value and Growth (…)”. INTA recommends that the Office primarily focuses on delivering consistent, predictable and cost-efficient registration of trademarks and designs, ensuring quality in its decisions and services provided to users. This is the primary and fundamental role of EUIPO which, combined with strong IPR laws and enforcement, will contribute to add value to the economy, growth and job creation. Therefore, we believe delivering quality services to its users should be the first pillar of the SP.

Quality also relates to the quality of information provided to users, on the EUIPO’s website or by its staff. Direct access to examiners should be encouraged and the key user program should be expanded to include more users.

Further, accurately and effectively assessing quality is essential. For this purpose, INTA encourages the use of “real-time” surveys as user satisfaction indicators, prior-testing by stakeholders and additional ways to encourage feedback from users.

4. A technology-driven and modern Office should remain human.

INTA commends the Office for embracing technologies “while holding firmly to the principles of accountability, transparency, ethical behaviour, responsibility, team work and collaboration”. It is INTA’s strong wish that, in the coming years, EUIPO continues in its quest to becoming a more modern, forward-thinking, and transparent office, delivering a high-quality service to its trademark and design users, and thriving to remain close to their needs.

Nevertheless, we urge the Office to carefully approach “increased automation” which the draft SP mentions the future is likely to bring. While INTA welcomes a modern, technology-savvy Office, able to provide cutting-edge services to its users, this should be balanced with a human
element that ensures that decisions are taken by individuals able to judge on a case-by-case basis and taking into account all the relevant circumstances. Indeed, machines cannot replace examiners and while time and cost efficiency are important they must not jeopardize quality and fairness of decisions. EUIPO must ensure efficient, timely and high quality services to users. The use of technologies should not compromise the achievement of these goals. Moreover, the Guidelines should be used as a document providing direction rather than a rule to follow automatically. Whenever a decision needs to be taken discussion among examiners should be encouraged.

It is also important that Office allows users to test any new features and tools before their implementation.

5. The SP should more clearly and individually address the initiatives planned on international cooperation.

The Strategic Plan consultation does not distinguish between activities related to international cooperation and convergence programs. Cooperation with international players such as WIPO is mentioned in the same context of convergence of tools and practices (Strategic Driver 1). INTA continues to support the development of the European Trademark and Design Network (now European Union IP Network) as a platform for cooperation and a means to support convergence of practices for trademarks and designs within Europe and beyond.

Likewise, EUIPO’s engagement in the TM5 and ID5 projects and its sharing of TMView and TMClass as well as its efforts on the implementation of the IP Key projects are welcome and should be further expanded. We support the Office’s efforts to network and develop ties with other institutions, authorities and associations dealing with IP. The focus, however, of any international activity should remain on trademarks and designs and within the limits of the Office’s financial and human resources.

6. Comments on the European Observatory on IPR Infringements.

While surprisingly the public consultation on the EUIPO Strategic Plan 2025 does not mention the Observatory, INTA would like to raise the below points:

Role, Tasks and activities of the Observatory

INTA is pleased to have participated as a stakeholder of the Observatory since its inception. Our Association benefits from being an active contributor in all five of the current Observatory’s Working Groups as well as having experts in 5 out of 6 Expert Groups. In that sense, we would like to reiterate, once again, our support to the Observatory’s work as well as commend their interaction with key users, based on a pragmatic and business-oriented approach over the years. We hope that this work, interaction and approach will continue to be pursued in the years to come and within the period of the EUIPO 2025 Strategic plan.

A clearer and better division between the roles, competences and attributions of EUIPO and the Observatory

As mentioned in several previous comments, INTA would like to stress that, oftentimes, there appears to be a blurred line between EUIPO and the European Observatory in terms of role, responsibilities and tasks which can create confusion for our members and all stakeholders, whereas the Observatory has its own Regulation (EU) No 386/2012 and objectives.
For example, the projects currently relating to ‘international cooperation’ seem to fall under both EUIPO and the Observatory’s remit with no clear distinction as to their respective roles and competences in the matter. A similar example can be found with regards the ‘authentic cities’ project: while aimed at raising awareness on counterfeiting issues, it does not fall anymore under the Observatory’s remit but under the EUIPO’s ECP5.

Notably, we appreciate that the draft SP2025 includes in its overall objective to make IP protection “more enforceable”. However, it should be clarified in the SP that, according to the relevant legal framework, it is the Observatory that is tasked with promoting and ensuring enforcement of IPRs.

EUIPO and the Observatory should make an effort to consistently and clearly distinguish between their respective roles, competences, tasks and projects, including in all their communications and events, and not use reference to one as an alternative to reference to the other.

**Focus on trademarks and designs-related infringements**

While INTA recognizes that the Observatory focuses on IPR infringements, the Observatory is currently handling various and multiple activities in that matter, as attested by the Work Programme 2019. INTA notices that more and more is done on patents, copyrights and geographical indications, resulting in less activities on designs and trademarks.

Therefore, INTA urges the Observatory to do more on trademark and designs-related infringements. Moreover, where trademark infringements are concerned, only counterfeiting is mentioned in the draft SP2025 (Strategic Driver 1). The fight against counterfeiting remains a key priority for INTA’s membership. Nevertheless, we recommend that it be clarified that it is part of the (Observatory’s) strategy to address all kinds of trademark and design infringements and not only counterfeiting.

**Retaining the collegial approach of the Observatory**

INTA understands the Observatory’s willingness to improve its efficiency and the resulting new structure of WGs and EGs proposed in the Observatory’s 2019 Work Plan. First of all, INTA is pleased to have been allowed to retain its participation in all remaining 4 WGs as well as having experts present in 5 of the 6 newly created Expert Groups.

As the new structure of EGs has yet to be implemented, INTA would like to stress the need to ensure access to information and documents as of utmost importance for our membership. Since INTA understands that the experts selected will “represent themselves and not a particular organization or institution”, INTA insists that timely information and possibility to provide input “in a timely and effective manner – to any ongoing and new project” is essential if the Observatory is to retain its collegial approach, which has made it a success story so far. This should not prevent the effectiveness and efficiency of the EGs nor is it intended to delay the work, but rather to allow the Observatory to make the most of its network and its capabilities.

**Communication and Dissemination of the Observatory’s work**

INTA has already stressed in previous comments that INTA’s members appreciate the extensive studies of the Observatory and has been suggesting in several instances that they receive greater promotion and publicity. In that regard, INTA commends the Observatory for creating a new Expert Group focused on outreach and dissemination of studies.
Moreover, although the Observatory relies on its network to circulate the information, INTA believes that it should also allocate sufficient resources to the promotion of its thought-leadership pieces. The ‘Observatory Outreach’ Expert Group should support the development and implementation of a comprehensive strategy for disseminating this information to a wider audience.

This Expert Group could also consider utilizing some further return on investment metrics to determine the influence of these studies. Finally, it could also be involved to consider the promotion and dissemination of a study before its publication.

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INTA stands ready to support the Office in its efforts towards finalizing and implementing the SP2025. We hope you will find these comments useful. Should you wish to further discuss any of the points we have raised or additional issues, please contact Hélène Nicora, Chief Representative Officer- Europe at hnicora@inta.org or Carolina Oliveira, Policy Officer-Europe at coliveira@inta.org.