

Cooperation with the European Union Intellectual Property Office and the EUIPO Academy: A New Challenge

Nicoleta Mirela Năstasie outlines the opportunities available for working with the EUIPO



NICOLETA MIRELA NĂSTASIE
Former Judge,
Bucharest Tribunal

Intellectual property assets exist in many companies in financial distress and often have significant values, being a complex class asset. When properly valued, protected, and fully exploited, they can become a determining factor in saving or selling the business as a going concern.

If a company faces insolvency, it is the role of the insolvency practitioner to consider the assets of the company to maximise the return for creditors. The commercial uncertainty resulting from the lack of uniform treatment of intellectual property rights, in the event of cross-border restructuring or insolvency, is not attractive to investors or potential contractual counterparties to intellectual property licenses.

Given that the UNCITRAL Model Law and the EIR Recast do not provide tools to harmonize the treatment of intellectual property rights, certainty simply cannot be achieved and the full potential of exploitation and protection of intellectual property will not be realized. Daily exposure to these challenging tasks requires to develop professionally in the field of intellectual property law, to acquire knowledge, skills, and experience in related matters, which are vital to a successful career.

The European Union Intellectual Property Office (EUIPO)

The **EUIPO** is the body responsible for managing the EU trademarks and registered Community designs, managing the interactions between EU institutions, national and regional IP offices of the EU Member States and users' associations. It is the EU basis for the protection of relevant IP rights, for the owner exclusive right to use or sell, promote or to negotiate licences or other cooperation agreements. EUIPO cooperation mechanisms bring together EU IP offices, user associations and EUIPO staff in working groups which meet on a regular basis.

The **EUIPO Academy** is the centre for learning, promoting career-long development and knowledge sharing with its partners of the European Union, organising different activities on an annual basis, such as conferences held at the premises in Alicante, or webinars, which are addressed not only to the EUIPO's staff and national offices, but also to professionals and law students alike.

The **PES Professional Traineeship Programme** is a comprehensive traineeship programme that bridges academia and the labour market in different fields (IP, law, finance, business, engineering) to promote and

disseminate intellectual property information. It offers an extensive catalogue of IP training materials, providing professional input to academic education, and helping young graduates improve their professional qualifications.

The **PES Talent Bank** is a new initiative bringing together interested EU and international organisations, academic institutions, law firms and companies offering top quality traineeships and/or job opportunities with former Pan-European Seal trainees in their field of expertise (IP, finance, IT, consultancy, fashion, automotive, etc.).

The Benefits for INSOL Europe Members of Cooperation with EUIPO

National approaches to insolvency or restructuring proceedings in terms of the treatment of intellectual property rights have been unpredictable and inconsistent. Decisions addressing intellectual property rights in cross-border proceedings and recognition of foreign insolvency proceedings may differ in their approaches to the treatment of intellectual property rights. Some challenges are related to the diversity between judicial systems in the application of legal rules and case outcomes or differences



The EUIPO is the body responsible for managing the EU trademark and registered Community design



and duplication of cases at national level.

Fragmented litigation and legal uncertainty have implications on the development of intellectual property law in general, but also on other market participants and on how restructuring proceedings and their management can be organised by practitioners and analysed by courts. Multiple trademark litigations could be a disincentive for international companies to own trademark assets and to exploit them internationally, especially for small and medium-sized companies whose budgets are usually limited. The situation becomes critical in the case of companies in financial difficulty or groups of companies. Overcoming these uncertainties has been and still is one of the objectives of international insolvency field, at legislative, doctrinal, and judicial levels.

I propose cooperation with EUIPO and EUIPO Academy as a response to INSOL Europe's strategies, i.e., to lead the study, evaluation and development of restructuring and insolvency law, techniques, and practice in Europe; to disseminate technical and topical information on restructuring and insolvency and the exchange of professional experience; and to promote the technical and professional training of members, their staff, and others.

In terms of the type and number of people who may benefit of cooperation, EUIPO programmes are relevant to insolvency practitioners, lawyers and accountants, members of the judiciary, businesses in financial distress, creditors, and investors in business with cross border businesses dealing with trademark rights and assets. They will increase knowledge of legal frameworks relating to cross-border restructuring proceedings in which trademarks can play a role, exchange information on best practises, guidelines in intellectual property useful for restructuring and insolvency.



Possible forms of cooperation relevant to EUIPO and INSOL Europe

INSOL Europe and EUIPO may increase their encouragement for cooperation and collaboration between academics, national offices and authorities, and members of the judiciary. Joint research, joint activities, exchange of knowledge and experience, development of common standards can provide some alternatives for a fair balance between the individual private interests of IP right holders and the public interest for a fair and secure competitive environment for the exercise of IP rights.

The first aspect that may be addressed is to inform INSOL Europe members, specialists and practitioners working in international companies, law firms, consultancy, various organizations and state institutions and universities, about the PES Talent Bank, to connect and offer traineeship and job opportunities.

In addition, the cooperation may bring valuable practical information that insolvency practitioners need to know when dealing with IP assets and can establish a high-level network between the IP Offices and INSOL Europe members. INSOL

Europe and EUIPO can establish different forms of cooperation, such as organising events addressing IP awareness and education, including conferences, lectures, workshops, seminars, and job fairs.

When trying to look at the European organisational system for intellectual property law we also should have in mind the expectations of a stakeholder in a small or medium sized company, facing all the financial, economic, technical, and other challenges and difficulties, as well as wishing to protect its investments and use IP tools and mechanisms to that end. In this respect, the issues related to enforcement and trademarks protection for SMEs and medium-sized companies in financial difficulties and restructuring proceedings are significant for practice. They involve deep examination of how tools and practices provided by the EUIPO, together with the evolution of international standards for the enforcement of the IP rights, can be used to increase the value of assets when companies are in financial difficulty and to improve cross-border restructuring. Some of the key themes to be addressed are:

- the international intellectual property framework and its relevance to cross-border



EUIPO programmes will increase knowledge of legal frameworks relating to cross-border restructuring proceedings in which trademarks can play a role





Cooperation with the EUIPO represents an opportunity to collaborate with highly qualified and experienced professionals



- restructuring,
- registration of intellectual property rights,
 - the relation between costs and value for protecting intellectual property rights, in particular trademarks, and how to keep the balance between maximisation of value and the interests of the parties,
 - disclosure and legal exclusivity, but also contractual arrangements for the exploitation and protection of trademarks; and
 - enforcement of intellectual property rights, intellectual property litigation, infringement actions and other remedies.

I strongly believe in the need for the creation and development of a network for intellectual property and insolvency law experts and the significant role of INSOL Europe and the EUIPO in working together to this end. In this way some practical questions can receive answers.

Some of them are as follows.

How is the EUIPO connected to the real needs of the global business community and rapid technological change?

How to bring the intellectual property protection mechanisms offered by the EUIPO closer to small and medium-sized enterprises in the EU? Should EU practitioners and the judiciary specialised in insolvency law play a more active role from this perspective?

I hope that some of these questions are on the minds of INSOL Europe's members and EUIPO representatives. Specialisation in narrow areas of law, high technical training in different niches of law and a creative, practical attitude in their current work, are possible answers.

Conclusions

Given the challenges described or touched upon here, cooperation with the EUIPO represents an

opportunity to collaborate with highly qualified and experienced professionals, to participate in projects and initiatives that can have a real impact on the world of insolvency and the digital market.

The success of future initiatives depends on the involvement of stakeholders, including practitioners, academics, and judiciary, in raising awareness and using best practises in intellectual property law litigation. Engaging in ongoing dissemination of knowledge and information on how to improve cross-border restructuring mechanisms when trademark assets are involved, through enhanced judicial and practitioner networks provided by INSOL Europe and EUIPO events and mechanisms, can develop interprofessional cooperation. ■



**INSOL
EUROPE**

*Date for
your Diary!*

**Annual Congress
12-15 October 2023
Amsterdam, The Netherlands**

