OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET

(TRADE MARKS AND DESIGNS)

COOPERATION FUND PROGRAMME SUPPORT OFFICE

PROJECT BRIEF

CF1.2.9 – Common Tool on Similarity of Goods and Services

Version 2.0 – 31/10/2011

Project/Service	COOPERATION FUND - QMD		
Status	FINAL		
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Revision History

Version	Date	Author	Description
0.1	06/09/2010	DS	Creation of the Project Brief
0.2	17/09/2010	DS	New version based on comments of IB, SW, MR, national offices
0.3	23/09/2010	DS	New version based on comments of IB
0.4	11/10/2010	PSO	New version including approved cost estimates + harmonisation changes
0.5	11/10/2010	SW	Amendments following Gate 1; standardisation, EN check, plan, budget, ordering of text Some changes to resources section
1.0	02/12/2010	SD	Updated working group information
1.1	20/09/2011	DS	Updated Project Brief with all latest information
1.2	11/10/2011	DS	Updated Project Planning and Project Team overview
2.0	31/10/2011	KR	Project Brief Editing

Quality Criteria (to be used by reviewers)

Maths, consistency of figures Technical logic Presentation

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1.   Project Definition

1.1. Introduction

1.1.1.   About this document

This document has been produced to capture the scope, investment needed, dependencies on other projects and anticipated payback so that the constituent parts of the project, herein referred to as the "Project", can be prioritised, funded and authorised. This Project Brief will provide the basis for the Programme Manager of the Cooperation Fund to present the Project to the Cooperation Fund Management Board to approve and launch the Project.

An overview of the definitions, acronyms and abbreviations used in this Project Brief can be found under Annex 1.

1.1.2.   Background

The Common Tool on Similarity of Goods and Services is one of the projects of the Cooperation Fund. The OHIM Cooperation Fund (CF) was established in February 2010 to support further harmonization in TMs and designs, modernise national offices and enhance user-experience Europe-wide.

The CF Management Board received many project suggestions from national offices and user associations. These were carefully examined and used as the basis for establishing a list of 23 projects. These projects are one-off activities delivering clear benefits, with concrete outputs and clear start and end dates.

Suggestions were called under four headings or fields:

- Harmonization projects both including existing projects like TMview and new projects like Designview, a common examiner support tool and a **common tool for the classification of goods and services**;

- A suggested list of software packages (e-filing, e-opposition, e-cancellation, e-renewal and e-payment) to support national offices in providing easier access to trade mark and design protection;

- Information services comprising communication and training initiatives to help companies better understand the Community Trade Mark (CTM) and the Registered Community Design (RCD) systems;

- Activities to facilitate the enforcement of trade mark and design rights, helping the work of judges, customs and other relevant authorities.

This Project falls under Field 1.2, covering new harmonization projects. Following the 18 May 2010, the CF Management Board issued the following mandate to the Project Manager:

Common Tool on Similarity of Goods and Services	
Programme ID:	CF1.2.9
Expected start:	Underway
Timeline	2010 – 2013
Principles	Facilitating access to predictable information on assessment of similarity practices in a harmonised manner
Description	This project aims to create a searchable database of decisions from different trade mark offices, in order to simplify decision making processes, reduce research efforts and enable users to benefit from greater consistency in decisions. In the long run, the aim is to share a harmonised method for assessment similarity of G&S, predictable for both users and decision-makers.

Figure 1 - Project Mandate

Currently OHIM already uses a tool on similarity of goods and services: the "Goods and Services Similarity Tool" (herein referred to as the "OHIM G&S Similarity tool"). Further information on this tool can be found under Annex 3, including screenshots showing how the tool works. The technical and functional know-how and the lessons learnt of the OHIM in this respect have been a direct and valuable input to this Project. OHIM decided to create this tool even though there was already a tool available on the private market that gathers opposition decisions: DARTS IP. This is because the fundamental approach is different: the G&S Similarity tool is a pair based similarity assessment tool whilst DARTS IP is a collection of decisions. Each decision holds a comparison of lists of goods and services, and therefore does not give a straightforward answer to a new opposition.

1.2. The Challenge

In the past both the OHIM and the national offices often lacked transparency and consistency in their decision taking concerning oppositions. This was due to the inexistence of tools gathering prior or relevant decisions.

This has led to a situation where the predictability and legal certainty of an opposition decision is not always guaranteed.

As explained above, there are similarity tools available on the market / within OHIM but none of these tools cover the need identified in terms of assessing similarity of goods and services on a Europe-wide level.

The Cooperation Fund offers an opportunity to substantially advance these initial efforts, enabling offices to enhance predictability and legal certainty for opposition decisions through a pair-based similarity assessment tool, in which data is fed through the cooperation between national offices.

Internal stakeholder groups of the OHIM such as IP experts, OD, LAB, ID, ID-DSS have been involved and invited to give suggestions and /or criticisms on a common similarity tool.

National Offices have also been contacted (as explained under Annex 2) and several NOs have shown different levels of interest in this Project. Some discussions have taken place with them in order to ensure their expectations from this Project are covered as far as possible.

1.3. Objectives of the Project

1.3.1.   Project objectives in relation to the CF goals

The project objective is to improve both predictability and legal certainty (a separate chapter details the benefits further) and consists of 2 main concepts:

1. "Tool on Similarity of Goods and Services" refers to <u>a software platform that allows decisions on similarity of goods and services to be gathered and then made available for consultation by anyone at anytime.</u>

2. "Common" refers to cooperation between the European NOs. The idea is that they <u>share</u> the "Tool on Similarity of Goods and Services".

The given project objective illustrates that the Common Tool on Similarity of Goods and Services is fully aligned with the 3 Cooperation Fund goals.

CF goals	Project alignment	Comments
Modernizing and streamlining National Office systems along common lines to provide effective and efficient services	Very high	Many NOs do not have a systematic approach to comparisons for opposition reasons. Some of them use written manuals on the policies. This tool could supersede those manuals and provide a fully electronic alternative.
Encourage harmonization and use of EU TM systems and practices across the EU	Very high	The NOs will share one common software platform. Most of the database will be common, as they are based on European court decisions. Also the users will be able to easily spot the differences in practices between the NOs, which will enable harmonization where possible.
Assisting the competent authorities in the EU Member States to better promote and enforce trademark and design rights in their jurisdictions.	Very high	NOs will be able to increase the transparency and consistency of their opposition decisions. For the users this means the predictability and legal certainty will increase.

Table 1 - CF Goals alignment

This alignment will also be reflected under the expected benefits of this project, enlisted under Chapter 1.4.

1.3.2.   Vision of the Project

The vision of this Project is twofold, i.e. the short-term vision and the long-term vision. The long-term vision is the realisation of full harmonization between all EU NOs, by sharing one fully harmonized database, as described under Annex 4.

Due to a number of impediments, it has been decided to first follow a short-term vision for this Project, as an intermediary step on the way to the long-term vision. The short term vision entails the development of a common

similarity tool on the basis of the already available OHIM G&S Similarity tool, as further specified in the Project Approach under chapter 2.1.

1.4. Expected benefits

Each stakeholder group will have different business benefits from this Project:

National Offices:

- As the majority of the NOs does not have a dedicated tool for the similarity on goods and services they would improve their service to the industry and their representatives as follows:

    - Increase transparency on opposition decisions
    - Bring consistency in opposition decisions
    - Offer predictability and legal certainty to the industry
    - Facilitate the work of their examiners
    - Reduce development and maintenance costs, as the tool will be common to all offices

- The more relevant data a NO adds to the database, the more their effort will be recognised by the other NOs and the more they become a reference in opposition matters. This enables smaller Participating offices to profit from the expertise and resources of larger ones.

Industry and their representatives:

- Predictability and legal certainty
- Improved ease of use in opposition strategy
- Comparisons of differences between NO practices enabling feedback and suggestions to be made where they will be most useful.

All stakeholders:

The advantage of having a Common Tool is that the effort of recording decisions can be shared. Having a Common Tool offers new opportunities:

IP Offices could give indications as to which comparisons would be most useful (by adding pairs to their dataset). This would lead to higher quality content in the database and the search hit rate could be significantly improved.

IP Offices could actively work together on expanding the database. Each time an IP Office creates a new pair it will become available in the administrator module to others, who then have the option to take it into their database after assessment. This would lead to a better system and greater efficiency in decision-making.

The data entry of pairs will be reduced, as creating a pair in one language could provide the same pair in the other languages thanks to integration with ALISTA.

When an IP Office has not yet decided on the similarity of a pair, another IP Office might have already, which could give already an indication and facilitate the assessment.

The Common Tool on Similarity of Goods and Services is therefore well-placed to contribute to all the goals of the Cooperation Fund. See above Table 1 CF Goals alignment for summary.

2. Project plan

The project plan establishes the preliminary basis for managing the Project, including the project approach, the project team and stakeholders, the work description, the deliverables, planning (tools), time and cost estimates and tolerances, the project risks and dependencies as well as reporting, quality, communications and close-out management strategies.

2.1. Project approach

2.1.1. Overall approach

The project approach is to provide the EU national offices with a common software platform that allows them to create and maintain their own database on Similarity of Goods and Services. Each NO has full control over its own database, and would be able to consult the other available databases from the other NOs.

Having a common platform will eliminate the development and maintenance costs for each individual NO and favour the cooperation between them. They will share the same software platform physically in order to avoid set-up costs for each individual NO.

The core of each individual NO database embedded in the software platform is a pair. A pair is understood as:

- A contested good or service description and its Nice class
- An earlier right good or service description and its Nice class
- The degree of similarity
- The (objective) criteria and reasoning for that degree of similarity
- The main, recent and most relevant decision that contains that pair. Not all pairs need to have this, as they can be office practice without having a previous decision related to them. Apart from the main decision there can optionally be a history of other decisions, for further consultation.
- Optionally some offices requested to further store relevant documentation for the examiners.

One of the major challenges is for the national offices to feed their database. This work requires IP expert resources. Fortunately, there are several possibilities on how to perform this work:

1. Each NO will inherit the content from the OHIM G&S Similarity Tool. The NO can then decide to take over the similarity assessments of the OHIM or to completely or partly do the assessment themselves.

2. Pairs can be deducted from previous court decisions. For this aim e.g. the DARTS IP tool could provide valuable input.

To fully profit from the tool, offices would be asked to sign up to:

- **Common objective criteria**

    The evaluation of the similarity of goods and services takes place based on objective criteria. The same set of criteria will be used for all comparisons. In the OHIM G&S Similarity Tool the following criteria are used: nature, purpose, methods of use, complementary goods/services, goods/services in competition, distribution channels, end user, producer, other.

The common objective criteria used by the OHIM should be used by the new tool since the OHIM is the only provider of a pair based similarity assessment tool, and provides a solid basis.

- **Common similarity degrees**

The tool will apply a uniform similarity degree scale based on that used by the OHIM G&S Similarity Tool following scales are used: dissimilar, low degree of similarity, similar, high degree of similarity, identical.

- **Harmonized goods and services**

The goods and services in the comparisons are limited to the harmonized ones between the NOs. This means that ALISTA (CF1.1.3) would be a direct input to the Common Tool on Similarity of Goods and Services.

This also opens the door to a whole new range of possibilities, since ALISTA disposes of translations for all harmonized goods and services. This entails the following advantages:

- the end user could be immediately provided with all information in all languages.

- the likelihood of a smooth transition when a new Nice classification comes into place, as that new Nice classification could be directly propagated from ALISTA into the Common Tool on Similarity of Goods and Services.

- the NOs could easily compare and see the similarity assessment results of the other NOs

2.1.2.   Project scope and exclusions

The following are included in the scope:

- Definition of the data model
- Definition of the search engine mechanism
- Definition of data migration interface(s)
- Definition of the anonymous user interface
- Definition of the administrator interface
- Usability study on both anonymous user interface and administrator interface
- Integration with other systems such as e.g. ALISTA
- Development of a Prototype
- Implementation of the chosen solution
- Data migration(s),e.g. from the G&S similarity tool
- Infrastructure and hosting at OHIM

The following are out of scope:

- Integration with back-end tools at the NOs.
- Web services at NOs to access web service at OHIM for retrieving information directly from a database

2.1.3.   Constraints

The Project will be facing a number of constraints, as detailed below:

- **Time restrictions:** In principle there are no hard time constraints, as there are no legal obligations involved under the Project.

- **Resources restrictions:** Success of the Project has a direct dependence to the resources that are made available. In particular the availability of resources within the NOs will be a key to the success of this Project.

- **Outcome restrictions:** The integration with ALISTA leads to a clear dependency and therefore also the corresponding team should be consulted through regular meetings.

- **Security constraints:** The information handled in the retrieval module is public. The information handled in the administrator module should be restricted to the administrators only. The information of the administrator module is not confidential but it is crucial that no-one beside the administrators enter to manipulate the data. This is because decisions will be taken based on the data that is in this tool.

2.2. Project team and stakeholders organisation

In order to carry out these activities, intensive interaction and coordination with the NOs is needed to gather different ideas, approaches, experiences, requirements, constraints and preferences. Besides the intensive participation of the NOs, the Project will also involve the participation of a Project Manager, Project Lead, OHIM Coordinator of the NOs, OHIM IP and OD department experts, the PSO, and the CF Procurement team.
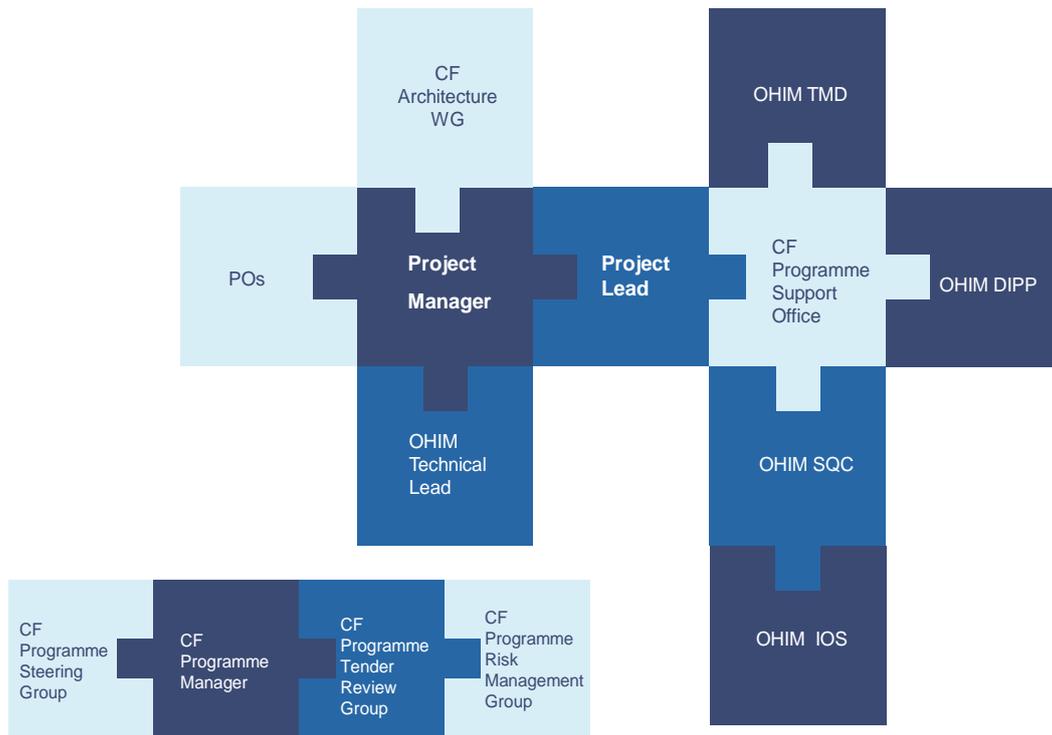
Figure 2 - Overview of the Project Team

2.2.1. Roles and responsibilities

The 3 tables below summarise the **key roles** involved in the Project as well as their main responsibilities within OHIM, the Cooperation Fund and the external provider, which will be contracted for the development of the Common Tool on Similarity of Goods and Services.

Roles	Responsibilities
Project Manager (PM)	The PM revises the management of the lifecycle of the Project and the quality of its products delivered within the specified constraints of time and cost. The PM revises plans, monitors and reports on the Project together with the PL and reports to the Programme Manager. The PM is responsible for presenting the Project at the gate review process.
Project Lead (PL)	The PL is authorised to lead the Project on a day-to-day basis on behalf of the CF Management Board within the constraints laid down by the Board. The PL is responsible for the management of the lifecycle of the Project and the quality of its products delivered within the specified constraints of time and cost. The PL plans, monitors and reports on the Project to the Programme Manager.

Roles	Responsibilities
	The PL produces Project management documentation. The PL acts as a central point of communication.

Technical Lead	The OHIM Technical Lead is responsible for assisting the Project Lead in providing any technical clarifications.
	
	The OHIM Technical Lead is the bridge between the business requirements and the technical requirements, and is responsible for identifying any interdependency.
	
	The OHIM Technical Lead develops and operates a Project management environment that allows the effective co-ordination of Project activities
	
	The OHIM Technical Lead assumes responsibility for establishing the mechanisms and controls, so as to ensure that the Project is managed effectively. He develops the Project plans, controls the execution of the Project, and monitors the progress according to the plan. On a monthly basis, the OHIM Technical Lead performs the following tasks:
	
	    ▪ ensure that the Project meets its stated objectives;
	
	    ▪ manage the OHIM expectations;
	
	    ▪ control Project plans;
	
	    ▪ measure progress against milestones.

IP expert	The OHIM IP expert will provide general support and knowledge at the initial stages of the Project. In addition he will be responsible for the content of the OHIM database content (further filing)
OD IP expert	The OHIM OD expert will provide general support and knowledge at the initial stages of the Project. In addition he will assist the OHIM IP expert by providing content for the OHIM database content (further filling)
NO IP experts	The National Office IP expert will provide general support and knowledge throughout the whole Project. The National Office IP expert is responsible for the requirements of the tool to cover the needs of his NO In addition the National Office IP expert is responsible for the content (fill-up) of the database of his NO
SQC Coordinator	The OHIM SQC Coordinator is responsible for coordinating the Software Quality Control of the Project.
SQC	The OHIM SQC is responsible for the installation in test environment and the SAT The OHIM SQC creates the PRF in order to promote the software packages once the final UAT is OK
Installation expert	The OHIM Installation expert is responsible for installing the Software Package in production environment once the PRF has been submitted by OHIM SQC Coordinator
Usability expert	The Usability expert is responsible for performing the necessary tests in terms of usability of the tool to be developed.

Roles	Responsibilities
CF Architecture working group	The CF Architecture workgroup is responsible for the creation of the technical architecture/orientation document. Once submitted to the provider the CF Architecture workgroup should provide clarifications where needed.
CF Programme Support Office	The PSO supports the Programme Manager and Project Managers. It aids those involved in the Project by provision of technical and administrative capacity, and quality assurance.
Procurement team	This team will be responsible for all the legal and administrative activities related to the procurement.

Table 2 - Roles and responsibilities within OHIM

Apart from the main roles in the Project, there will also be **other parties and stakeholders** involved in the Project:

Roles	Responsibilities
CF Programme Steering Group	Ensuring that all internal OHIM issues are addressed by the Programme Manager.
CF Programme Manager	The Programme Manager is responsible to the CF Steering Group for the operations of the CF, overall planning, and leading the development and implementation of the Project portfolio.
CF Programme Tender Review Group	Supporting the OHIM procurement team, they will assure that tendering procedures across the CF are carried out efficiently, consistently and in accordance with best practice.
CF Programme Risk Management Group	Established to: ▪ recognise possible risk factors and identify related risks ▪ assess the potential impact of these risks for the programme ▪ select the adequate risk response and implement action plans ▪ monitor the status of the risks and keep stakeholders informed They will be in close contact with the Project Manager, Project Lead and the PSO in order to identify and register any new risk that could arise along the duration of the Project.

Table 3 - Roles and responsibilities within the Cooperation Fund

Development will be outsourced to an external provider, which will need to provide the following **external resources** for the Project:

Roles	Responsibilities
Development Senior Analyst	The Development Senior Analyst ensures that the delivered system meets the OHIM requirements. He also gets involved in translating the analysis into the specification of the software to be implemented.
Development Web Developer	The development Web Developer includes the development of the integration services and the writing, maintaining & testing of all programs which reflect the specifications based on the requirements.

Table 4 - Roles and responsibilities within the external provider

2.2.2. Assignments and commitment during the Project

Role	Who	Commitment in man days (detailed further below)
Project Manager	Inge Buffolo	45 man days: 23 man days in 2011 22 man days in 2012
Project Lead	Dennis Scheirs	142 man days: 47 man days in 2011 95 man days in 2012
OHIM Technical Lead	Gerrit Schutte	66 man days: 33 man days in 2011 33 man days in 2012
SQC Coordinator	Xavier Xheunement or assistant	16 man days 1 man days in 2011 15 man days in 2012
Installation expert	(TBD before 01/2012)	10 man days 10 man days in 2012
IP expert	Cynthia Den Dekker	61 man days 31 man days in 2011 30 man days in 2012
OD IP expert	Katarzyna Zajfert	34 man days 17 man days in 2011 17 man days in 2012
National Office IP experts (Working Group)	See Annex 5	174 man days: 78 +36 man days in 2011 60 man days in 2012
Usability expert	(TBD before 03/2012)	12 man days 0 man days in 2011 12 man days in 2012
Procurement team	Lilian Fraysse	32 man days 10 man days in 2011 22 man days in 2012
Development Team : 1 senior web developer 1 junior web developer 1 senior analyst programmer	TBD	660 man days 90 man days in 2011 570 man days in 2012
Project Support	Anita Thomas	210 man days 66 man days in 2011 144 man days in 2012
SQC	TBD	165 man days in 2012

Table 5 - Overview commitment in man days per profile (during Project)

2.2.3. Assignments and commitment after the Project (Further filling of the DB and integration of the National Offices)

Role	Who	Commitment
Project Manager	Inge Buffolo	1 % of her time
Project Lead	Dennis Scheirs	5 % of his time
OHIM Project Support	(TBD before 08/2012)	5% of his time
OHIM IP expert	Cynthia Den Dekker	50% of her time (work on content)
OHIM OD IP expert	Katarzyna Zajfert	50% of her time (work on content)
National Office IP experts	(TBD before 01/2012)	50% of his time (work on content)

Table 6 - Overview commitment in percentages per profile (after Project)

2.2.4. Recruitment

Recruitment of additional resources will be required on the following levels:

■ **National Offices and User Associations**

Experts from NOs and UAs will be carefully selected among those interested to participate.

It needs to be underlined that the NOs that are willing to participate should realise this Project might have an end on the IT aspect of it, but the maintenance of the database is a never-ending task. Therefore they should also foresee resources that should work on the content also after the tool goes live.

■ **External provider**

Different profiles of external experts will be required for this Project, including:

– Development Senior Analyst
– Development Web Developer

2.3. Work description

Under this chapter the work to be done under the Project is first broken down into high-level tasks and activities, with a specification of the roles involved and the estimated man days per profile.

2.3.1. Tasks and activities

A preliminary overview of the tasks and activities follows below, followed by a table indicating the estimated effort per profile for each task or activity. These tasks and activities, as well as their planning are further elaborated in the Project Time Plan under Chapter 2.5.

- **Working Group creation**: in this phase, stakeholders will be contacted and invited to participate. The terms and conditions will be communicated (e.g. profiles required, degree of commitment, etc.) and members of the working groups selected.

- **Kick off meeting**: this initial meeting enables the project approach to be explained in detail, including time plan, tasks, resources, communication strategies, deadlines and other possible constraints.

- **Analysis:** in this phase the requirements (business and technical) are specified through an incremental and iterative process involving all team members.

- **Procurement:** a request for offer is sent to the external provider. This is followed by a clarification round, where any doubts the provider might have are solved.

- **Prototype:** the team will build a prototype. This prototype should be used as a model of what the "Software Package" should look like.

- **Development:** In this phase the external provider develops the tool and periodically reports to the OHIM Project Manager. Also any exception is handled by the Project Manager.

- **First and Second iteration:** In each iteration round the provider sends the Software Package that then undergoes a testing round. Bugs are gathered and fixed.

- **Deployment:** A series of project documentation and the software package needs to be validated and accepted before the software package can be promoted to production.

- **Database migration:** Once the software is deployed and in production, the collected data can be uploaded into the database. After that all participating IP Offices can process the data and assess for similarity.

2.3.2. Major Deliverables and acceptance criteria

The following list shows the expected deliverables:

1. Usability report
2. A working prototype to test the main functionalities of both the anonymous user interface and the administrator interface / workflow
3. Application package in production
4. Integration with other systems in production
5. Data migration(s)

Following are the acceptance criteria of those major deliverables:

- Prototype Acceptance Test OK
- FAT (=Factory Acceptance Test) OK
- SAT (=Site Acceptance Test) OK
- UAT (=User Acceptance Test) OK
- ROLL OUT OK
- 1 month in production OK

An OK can be achieved if the corresponding test plan is executed correctly. This test plan is a direct outcome from the Software Requirement Specification (functional requirements) and the Technical Orientation/Architecture Document (technical requirements).

2.4. Project planning tools

MS-Project and MS-Excel will be used as appropriate. For broader Project management and reporting, the Project Manager will make use of the Clarity tool.

2.5. Project time plan

The total duration of the Project is estimated at **25 months**.

⊟ **STARTING UP**	270d	Fri 25/09/09	Fri 22/10/10	
PID Approval by PSO (GATE 1)	0d	Fri 25/09/09	Fri 25/09/09	
PID Approval by CF Management Committe	0d	Fri 22/10/10	Fri 22/10/10	2
⊟ **INITIATING**	63d	Fri 22/10/10	Fri 28/01/11	
Working group creation	50d	Fri 22/10/10	Tue 11/01/11	3
Creates Project Management Information &	1d	Wed 12/01/11	Wed 12/01/11	5
Kick Off Meeting	2d	Thu 27/01/11	Fri 28/01/11	
⊟ **MANAGING A STAGE**	778d	Mon 19/10/09	Mon 05/11/12	
⊞ **Analysis phase**	199d	Mon 31/01/11	Thu 03/11/11	
⊞ **Procurement**	44d	Thu 01/09/11	Tue 01/11/11	
⊞ **Development**	674d	Mon 19/10/09	Tue 12/06/12	
⊞ **First iteration**	126d	Fri 09/09/11	Fri 02/03/12	
⊞ **Database migration**	60d	Mon 05/03/12	Fri 25/05/12	
⊞ **Deployment Anonymous User**	25d	Mon 28/05/12	Fri 29/06/12	
⊞ **Second iteration**	65d	Mon 02/07/12	Fri 28/09/12	
⊞ **Deployment Administrator module**	25d	Mon 01/10/12	Fri 02/11/12	
⊞ **Managing Product Delivery**	1d	Mon 05/11/12	Mon 05/11/12	
⊞ **CLOSING**	5d	Tue 06/11/12	Mon 12/11/12	

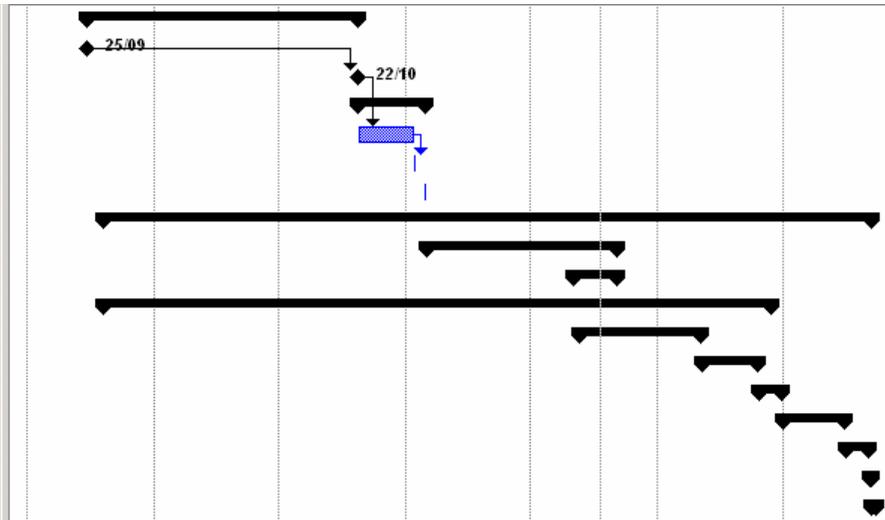Figure 3 - Project time plan

2.6. Project cost estimates

The overall revised estimated cost for this project over 25 months is **EUR 1.153.714**.

COST CATEGORY	PROJECT BRIEF OCT / DEC 2010	PROJECT BRIEF OCT 2011
Integration	125.000	
IT Project Costs	324.000	396.600
Non-IT Project Costs	302.230	655.663
Management Reserve	74.902	101.451
Grand Total	**826.132**	**1.153.714**

COST CATEGORY	PROJECT BRIEF OCT / DEC 2010	PROJECT BRIEF OCT 2011
Integration	**125.000**	
Set-up Costs	**125.000**	
2012	125.000	
IT Project Costs	**324.000**	**396.600**
Development	**224.000**	**266.200**
2011		36.300
2012	224.000	229.900
Project Support		**50.400**
2011		15.600
2012		34.800
IT Services	**65.000**	**70.000**
2012	65.000	70.000
Hardware & Software	**35.000**	**10.000**
2011	35.000	
2012		10.000
Non-IT Project Costs	**302.230**	**655.663**
Meetings	**51.338**	**34.524**
2011	24.318	24.318
2012	27.020	10.206
Studies & Consulting	**107.800**	**104.960**
2011	52.500	31.960
2012	55.300	73.000
Translation	**85.680**	**477.744**
2011	85.680	
2012		477.744
Working Group	**57.412**	**38.435**
2011	9.912	13.435
2012	47.500	25.000
Management Reserve	**74.902**	**101.451**
Grand Total	**826.132**	**1.153.714**

Hereinafter some additional information is provided regarding specific cost categories for this Project.

IT Project Costs

Development EUR 266.200

The **"Development"** of the Common Tool on Similarity of Goods and Services will be done with external resources, and supervised by OHIM.

The Common Tool on Goods and Services will use the OHIM G&S Similarity Tool as a basis, but will add following complexity:

- ALISTA: Whereas in the previous version the Goods and Services were just plain text, in the Common Tool they will in fact be the Goods and Services that are sitting in ALISTA. This adds another complexity layer. The database model will have to be revised.

- Browser compliance. Whereas the previous version was only compliant with IE, the Common Tool will have to be compliant with IE, Firefox, Chrome, Safari and HTML5 (for PDAs)

- Administrator module high availability. Whereas in the previous version the administrator module was only accessed by a couple of persons, now it will have to be accessed by a couple of persons per NO. This might have its implications on the architecture.

- In the previous version a pair only had 1 set of (OHIM) attributes. Now each NO will have its set of attributes.. This also has a big effect on the user interface, as it will have to be redesigned.

- The administrator module will have to be redesigned, as now more information will be shown. NOs will also like to see other offices´ decisions. This might increase the complexity of the administrator module and also its interface might have to be redesigned.

- ALISTA has linguistic methods at its disposal, which could also be transferred to the Common Tool, as to improve the hit rate.

Development costs are estimated to be **EUR 266.200** for the team of 3 developers working with a workload of 660 man days. 90 man days are planned to be consumed in **2011 (EUR 36.300),** the remaining 570 days will be consumed in **2012 (EUR 229.900).**

Due to the higher number of stakeholders, the testing phase is foreseen to take more time and effort.

IT Services **EUR 70.000**

- Software Quality Control (25% of Development Effort) 165 days
- Installation 10 days

<u>Project Support</u> **EUR 50.400**

> 2011 : 66 days
> 2012 : 144 days

<u>Hardware & Software</u> **EUR 10.000**

Based on experience gained in similar projects similar projects (ALISTA, AceReport, G&S Similarity Tool, TM View, etc.) a project hardware cost of **EUR 10.000 in 2012** has been taken into account in the Project cost estimation.

Software licences originally budgeted for **EUR 25.000** are no longer needed.

Non-IT Project Costs

<u>Studies & Consulting</u> **EUR 96.560**

- Project Lead 142 days

   > 2011 : 47 days
   > 2012 : 95 days

<u>Usability</u> **EUR 8.400**

Usability tests will be done based on the prototype of the administrator module and the retrieval module (unlike in the G&S Similarity tool Project). As both interfaces, especially the administrator module will change quite a lot it is very likely that the user screens or even the database structure.

The usability tests in 2012 are estimated to take 12 man-days of a Usability Expert, including:

- 5 days for preparation
- 4 days on site
- 3 days for analysis

<u>Working Group</u> **EUR 38.434,88**

9 participants were selected for the Similarity Working Group (5 NOs and 2 UAs).

Participants from the same NO share the maximum number of working days.

For budgeting purposes, the Working Group effort is estimated at a daily rate of 500 EUR.

Effective daily rates and maximum number of working days per participant are outlined in the CF Agreements with each NO and project budget is adjusted accordingly.

2011: 13 days * 5 NO participants = EUR 13.434,88 (includes extra days allocated in 2011 as per Amendment to CF Agreements)
2012: 10 days * 5 NO participants = EUR 25.000

<u>Meetings</u> **EUR 34.524**

In line with Decision of the President ADM – 09-33 rev 2, travel reimbursement costs have been estimated as follows:
-   Travel EUR 700
-   Accommodation flat rate EUR 125 / night
-   Allowance EUR 92 EUR for full day, EUR 46 for half-day (when travelling to and from meeting destination)

Estimated cost for a 2-day meeting 1.351 EUR per participant.
Estimated cost for a 1-day meeting 1.134 EUR per participant.

> **Working Group Meetings**
> Similarity Working Group 9 participants.
> 2011 : 2 * 2-day meeting * 9 participants = EUR 24.318
> 2012 : 1 * 1-day meeting * 9 participants = EUR 10.206

<u>Translation</u> **EUR 477.744**

Original translation budget shifts to 2012

Based on experience in similar projects (ALISTA, AceReport, G&S Similarity Tool, TM View), several Project documents need to be translated.

Following translation activities are envisaged:

1.   Help file translation (estimated average of 35 pages)

2.   Labels (estimated average of 5 pages)

3.   Tutorials (estimated average of 2 pages)

2011 : 42 pages * (22 + 2 new languages) * 85 EUR per page (CDT cost in 2010) EUR 85.680

Revised budget

2012 : 42 pages * (22 + 2 new languages) * 93 EUR per page (CDT cost in 2011) **EUR 93.744**

Furthermore, and this is the biggest change in cost compared to previous budget estimates, 3.200 terms will have to be translated in order to have the translations for content that forms part of the internal tool in OHIM, so that it can be exported and re-used in CF Similarity. This has a cost of **EUR 384.000** in 2012.

Management Reserve

10% for cost from 2012 onwards = EUR 101.451

2.7. Risk analysis

This preliminary risk matrix is specific to the Project and lists possible areas of risks. It is complementary to the "Cooperation Fund Programme Risk Matrix":

In the following table:

   a.   P is the **probability** of the risk occurring, rated: 1 (low), 2 (medium) or 3 (high).

b. I is the **impact** of the risk on the project, rated: 1 (low), 2 (medium) or 3 (high).

c. P*I product measures **how a given risk can affect the project**, rated according to the table below:

P \ I	1 (Low)	2 (Medium)	3 (High)
1 (Low)	1	2	3
2 (Medium)	2	4	6
3 (High)	3	6	9

Risk	Risk Symptoms	Area	P	I	P*I	Owner	Action
Lack of access to Court Opposition Decisions	Some NOs currently do not treat oppositions, but leave it to the courts.	Barrier	H	H	9	Project Manager	**Mitigate** Collaboration with DARTS could be investigated in order to gather the court decisions.
Implementation Issues / Delays	Most NOs currently have no such tool and are therefore not used to working this way. Currently they have manuals at their disposal, or they consult specialised web pages for information. As a result NOs will have to change way of working as soon as tool is available.	Change of practice	H	L	3	Project Manager	**Accept** It should be rather easy to convince those offices, as actually the tool allows working more efficient.
Continuous harmonization cannot be Guaranteed	If it cannot be ensured that all persons involved in assessing the similarity of goods and services (continue to) use the same objective criteria and similarity degrees to reach their decision, further harmonization in the future would be very difficult to obtain.	Database content	H	H	9	Project Manager	**Mitigate** Agree and follow from the very start of the Project (1) objective decision criteria and basic decision rules and guidelines. Manuals or other documents should only be taken into consideration when they are fully based on those same criteria, rules and guidelines.

Risk	Risk Symptoms	Area	P	I	P*I	Owner	Action
Late joiners disagree with Project specifications	Not all NOs can/will step into the Project at the same time. This might be a problem as some decisions (e.g. possible similarity degrees, criteria etc.) have to be taken from the very beginning though, as otherwise the Project cannot get started. New joiners might want to re-open decisions that already have been taken and agreed upon by the earlier participants.	Barrier	H	H	9	Project Manager	**Mitigate** Provide possibility for all NOs to give their input from the beginning. Formal agreement should be reached as early as possible.
No full / harmonized implementation of the Tool	Some NOs will make the compliance of the decisions with the Common Tool on Similarity of Goods and Services compulsory whilst others might consider it no more than being a guidance instrument. Offices that consider the Tool compulsory could be reluctant to insert controversial comparisons that could introduce inconsistencies in the tool whereas the others might be in favour, since for them it has no real consequences.	Database content	H	L	3	Project Manager	**Accept** As each NO has full control over its own database this will not cause issues.

Risk	Risk Symptoms	Area	P	I	P*I	Owner	Action
Disagreement on assessment criteria for broad spectrum goods and services	The very base of the Common Tool on Similarity of Goods and Services is a comparison of 2 goods or services. Some are very clearly defined as they are very particular; others cover a very broad spectrum. When comparing 2 "broad" goods and services their similarity assessment can get quite complicated and might cause discussions within NO. As each NO has full control over its own database it is quite unlikely that problems will arise for the project.	Database content	H	L	3	Project Manager	**Mitigate** Avoid discussions by splitting up broad spectrum goods and services each time a discussion arises for this reason. E.g. fungus could be split up into fungus (not pharmaceutical) and fungus (pharmaceutical). If discussion still continues the general principle should be that e.g. general understanding should always overrule particular cases.
Disagreement on assessment criteria for complimentary goods and services	The definition of complementary goods and services is not standardized. For some complementary means that the use of 1 is necessary for the use of the other (e.g. pipe and tobacco). Other have a broader notion and when they say complementary they mean they are normally used together (e.g. bread and butter). Again, as each NO has full control over its own database, it is quite unlikely that problems will arise for the project.	Data-base content	H	L	3	Project Manager	**Mitigate** Agree on clear definition between all participating NOs at the very early beginning of the Project.

Risk	Risk Symptoms	Area	P	I	P*I	Owner	Action
Lack of resource availability	Success of the Project has a direct dependence on the resources that are made available, both for the Project team as for the resources from the National offices.	Resources	H	H	9	Project Manager	**Mitigate** Get clear agreements with all parties on the number of resources that should be made available in order to guarantee the size and quality of the Project.
Change in project management	A change of director responsible for the Project at the participating NO. The new one responsible might not support the Project.	Political	M	H	6	Project Manager	**Mitigate** NOs need to express formally their support to the Project in the long term as soon as possible.
Project Instability due to change in project team members		Resources	H	M	6	Project manager	**Mitigate** Get the commitment of the resources of the Project in a long term.
Bad communication within Project	Language barriers	Resources	H	L	3	Project manager	**Mitigate** Require a good level of English of each team member.

Table 7 - Project risk matrix

2.8. Key dependencies

A number of key dependencies can be identified with other projects under the Cooperation Fund or OHIM in general, i.e.:

- IT Architecture Project (CF2.13)

There is a dependency with Project CF 2.13, as this Project contains the procurement of a software development company.

- OHIM G&S Similarity Tool

There is an interdependency between the Project and the existing OHIM G&S Similarity Tool as the latter could be considered as the predecessor of the Common Tool on Similarity of Goods and Services.

Data migration(s) will transfer the content of the G&S Similarity Tool to the Common Tool on Goods and Services Similarity.

- ALISTA Project (CF1.1.3)

CF similarity will be based on the harmonised classification terms, which are consolidated in ALISTA.

There is a very strong interdependency between both projects.

2.9. Project plan and schedule reporting procedure

As set out in the Programme Operating Rules agreed by all internal parties involved in the CF:

- The Project Manager will report to the PSO

- Project Managers create, maintain and update the following minimal documents for their projects:

    - A **risk register** and, if appropriate, the suggested contingency plans.

    - **Project plan** and **schedule** (including breakdown tasks, costs, time and resources). It will include tracking information (actual and planned) in a visual manner.

    - **A stakeholder engagement and communications plan**

- The documents will be reported upon using a standard template (according to Programme Operating Rules)

- The documents shall be kept as light as possible but the PM retains the authority to define their content and set the reporting schedule. Initially a meeting with the PSO will be set up on a fortnightly basis.

- Project Managers are responsible for preparing the content for a Gate Review. PSO will support them in the process.

As well as the Project Manager-PSO interactions, the PSO will also hold independent **monthly meetings** with the Risk Group and the Tender Review Group respectively. In each meeting the PSO will report them on the status of the Project and will bring up any topic under their fieldwork that needs either further discussion or their validation.

Task	Recurrence	Assigned role	Responsibilities
Regular reporting	Monthly; updates **weekly** via Clarity tool	Project Lead	Monthly reporting to the PSO: Project plan, risk register and communications plan
Gate review management	Undefined	Project Manager / Project lead	Documentation for the Gate Review process
Reporting to Risk Group	Every 6 weeks	PSO	Update on the latest status and issues to discuss
Reporting to Tender Review Group	Regularly	PSO	Update on the latest status and issues to discuss

Task	Recurrence	Assigned role	Responsibilities
Reporting to Programme Steering Group	Monthly	Programme Manager	Update on the latest status and issues to discuss

Table 8 - Reporting Task and Responsibility Matrix

2.10. Quality Management and quality expectations

The Common Tool on Similarity of Goods and Services will always be available on the Internet for any interested party. This means the application should be of high quality and strictly compliant to the requirements. This should be especially the case with the requirements for the anonymous user /administrator interface as usability tests will be done exactly in order to make sure it is made user friendly.

The collaborative, peer-review nature of this part of the Project makes the achievement of quality relatively straightforward; use of wiki-based tools enables errors to be quickly detected by other users, and corrections made by one to be seen by all. Verification of quality is carried out by periodic requests for review to the NOs, and ultimately by the validation process at Participating Offices.

2.10.1.   Quality Activities in the development lifecycle

The quality activities of the development of the software will follow a standard approach by a specialized contractor, independent of the contractor employed to implement the software. The overall process is illustrated here:
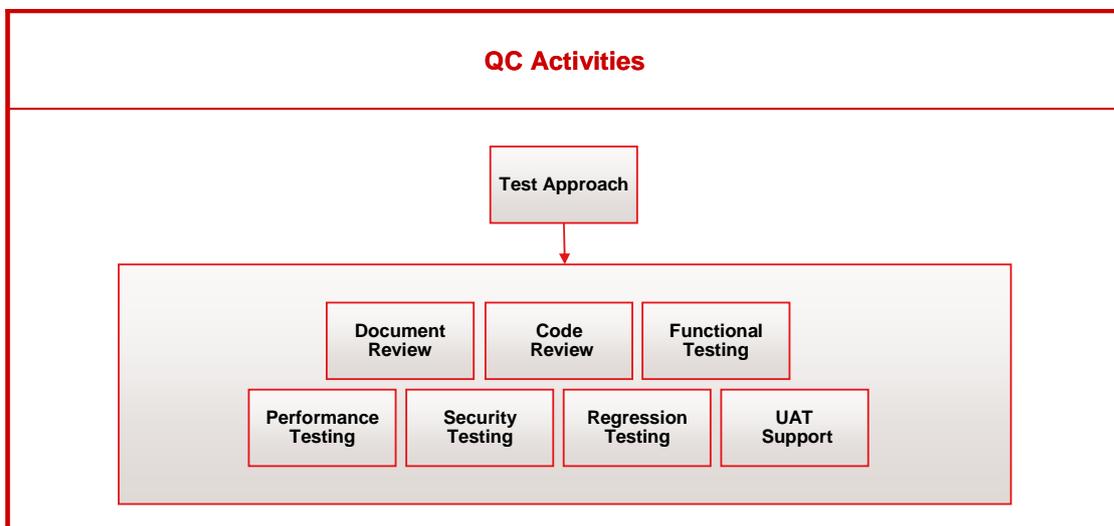
Figure 4 - Quality Control Activities

The basic test approach is defined at the beginning of the Project and it consists of the production of a software test approach, where the specific scope of the software quality control activities will be defined. For the definition of this scope, stakeholders are consulted and ultimately, the Project Manager will receive a "Test Approach Document" specific for the Project.

The following activities will always be present in every Project, and executed by the specialized contractor:

- Document review of the requirements in order to establish <u>acceptance criteria</u> before starting the implementation phase.

- Elaboration of a test plan and test design

- Validation of key Project documents: The purpose of the document verification for an application is early detection of errors in documentation, in order to increase the quality of the product in the next phases of development.

- Check of continuous build and automatic deployment

- Static and Dynamic testing

- Use of incidents tracking tool

- Code review: The aim of the code review is to determine the quality of the software developed, and to compare the quality between different applications.

- Stress and performance analysis: The aim of performance testing is to verify that the applications going to production operate according to their defined response times, and are able to handle the load they are required to handle.

- Security testing: The aim of security testing is to verify that the applications going to production operate according to its security requirements and to any security standards set for the software.

The following are also needed, but may be carried out by users instead of a specialized team

- **UAT support**

  The objective of UAT support is to provide technical and functional support to acceptance testing.

- **Functional testing**

  The aim of functional testing is to verify that the applications going to Production operate according to its functional requirements.

In order to improve the transparency, the specialized software quality control provider will report findings both to the Project Manager and the OHIM's Head of Quality Assurance Sector in the IT Department.

2.11. Communications and knowledge management

2.11.1.   National office interactions

The communication and interactions between the Project members and the national offices will take place through:

- **Periodic conferences** (telephone, video, in person, etc.) are expected between all involved Project members. Regular Project updates will be sent to workgroup members.

- **Continuous contacts** by the use of various tools described in the chapter below

2.11.2. Tools

Apart from using general **e-mail** for official communications, **collaborative tools** have proven very successful in past OHIM projects involving significant coordination of effort among Participating Offices. A quick assessment of the available and most widely extended collaborative tools in the market (e.g. Google Docs, wiki software…) reveals MediaWiki to be among the most powerful and appropriate tools for this type of Project. MediaWiki's simplicity, web-based operation and free-of-charge approach, allows participants in different locations to easily exchange ideas in an organised and efficient way.

To sum up, different types of tools will be used during the Project, namely:

- **E-mail**: will be used in initial communications during the Project and in formal communications to keep all the national offices updated (even if they do not actively participate), and in reporting to the Cooperation Fund PSO.

- **MediaWiki**: once the Project has been launched, all the participants should, as far as possible, keep all the communications and documentation inside a wiki. To the extent possible this must be ShareIPwiki. This will help to maintain all the information related to the Project stored in a unique and central repository and fully accessible by every participant in the Project

- **Skype**: will be used throughout the whole Project as an easy tool to hold telephone conferences with different parties in different locations without having the need of a heavy infrastructure.

- **Videoconference:** will be used throughout the whole Project as an easy tool to hold conferences with different parties whenever it is needed or beneficiary to have a close contact, as if all participants were physically present in the same room.

2.12. Closing-out strategy

Once the main deliverables have been completed and accepted, all relevant payments made, and the sustainability requirements identified, the Project Manager will present the Project's results to the Management Board, which will identify main lessons learned at the programme level, direct the Programme Manager accordingly and close out the Project.

Once the Project is closed the IT department will take over the maintenance of the IT system which will entail a yearly maintenance cost of about 7% of the software costs (around EUR 14.000).

Note that once the Project is closed out the long term objectives will not have been achieved yet. In a first instance the data that has already been entered by OHIM will serve as a reference to all participating NOs. It is expected that a large part of that data will actually be inherited "as is" by the NOs, as e.g. the European Decisions are common.

At this point the NOs will start using this tool and thus also expand the database content with fresh similarity policies. All NOs will be able to see the similarity policies of the other NOs. They will also be able to inherit them, as they are or after editing.

This interaction is expected to have as an effect that the majority of the datasets of the different NOs will be common.

As all the data will be available together in one common platform it will be easy to extract what is common and where the NOs have a different similarity policy. This task will even be simplified if all goods and services are restricted to the goods and services or the harmonized database, as they will be all linked throughout the languages.

In subsequent exercises the harmonized and different parts of the database can thus be identified and then investigated for further possible further harmonization. This should allow us to slowly but surely go into the direction of a fully harmonized database, or at least get as close to that as possible.

3. ANNEXES

3.1. ANNEX 1 - Definitions, Acronyms and Abbreviations Table

Definition	Description
IP	Intelectual Property
OD	OHIM Operations Department
LAB	OHIM Lab (Department where new concepts and ideas are validated by testing new solutions in a small time and cost scale)
ID	OHIM Infrastructure Department
ID-DSS	OHIM Infrastructure Department – Development Support Team
NO	National Office
SQC	OHIM Software Quality Control
ALISTA	Alicante STAndard. This is the new classification and translation database that will hold the harmonized goods and services, linguistic recognition and a taxonomy of the goods and services.
PSO	Programme Support Office

Table 9 - Overview Definitions, Acronyms and Abbreviations used in Project Brief

3.2. ANNEX 2 - Overview of Interest of National Offices

National Offices were contacted and several national offices have shown different levels of interest in this Project. Some discussions have taken place with them in order to ensure their expectations from this Project are covered as far as possible.

Their input has been reflected in this Project brief, and was taken into account in the definition of the main Project objectives. Each office interested in the Project was contacted while creating this Project brief document, with the request to answer a questionnaire. The answers of the NOs are listed below.

Following were the questions of the questionnaire:

1.   Is your Office legally bound to court decisions?
2.   Would the Common Tool on Similarity of Goods and Services be of compulsory use to your examiners, or would it rather be a guidance tool?
3.   Do you already have a similar tool in place? Or do you use (paper) manuals? If so, would the content need to be migrated to the Common Tool on Similarity of Goods and Services?
4.   Do you have more ideas on how to supply the database with content?
5.   What is your idea on the integration with harmonized G&S database? (This would mean translations could be provided instantly.)
6.   Do you foresee the need to be able to access the Common Tool on Similarity of Goods and Services Database directly from another tool of your National Office? Would another tool need to directly and automatically request and retrieve a comparison on the similarity of goods and services?

The following table shows extracts from each office answer justifying their interest in this Project and summarizes the main points out of each extract.

Office	Extract of the questionnaire answers	Interest
Austria	1. No 2. It will be a guidance tool. 3. The APO does not have a similar tool. Also a (paper) manual is not available. The examiners of the Austrian Patent Office use relevant literature available on internet 4. No 5. We believe that the integration of the terms of the harmonized G&S database would be a good idea. The software for the Common Tool on Similarity should only accept the input of terms of the harmonized G&S database. The input of non harmonized terms should not be accepted. 6. At the moment we would not see a need for such access by a software tool of our Office. But we believe that it would be useful if the database would have a (standardised) interface to provide other software tools an access to the G&S database (if such access will be needed at a later stage).	Very interested, would like to get informed on further development in the Project. They will study DARTS IP to compare
Benelux	1. In the framework of opposition proceedings, the Benelux Office for Intellectual Property (hereafter "BOIP") is not – as such – bound by court decisions of national judges, but shall however need to execute rulings made by the courts of	Interested, but it is not amongst the priorities

Office	Extract of the questionnaire answers	Interest
	appeal regarding opposition decisions taken by BOIP.	
	2. Compulsory	
	3. BOIP does not have such a tool in place yet, but keeps track of comparisons in Word and Excel-files and uses external tools, such as DARTS IP. Ideally, these results should be introduced into the Tool to avoid having to check two different systems.	
	4. Decisions of National Offices and relevant national and European case law (possibly based on the content of the DARTS-IP database)	
	5. Ideally, integration would be beneficial to the instant usability of the Tool. In this respect, we suppose that the tool would be built in full convergence with Euroclass. We are wondering however whether this could have an impact on resources at BOIP and impede the quick input of content.	
	6. At the moment, the tools utilized by lawyers who draft opposition decisions at BOIP do not need necessarily to communicate with the Common Tool.	
Bulgaria	1. Yes, Court decisions are obligatory for Bulgarian Patent Office (BPO), which is administrative authority.	Open to further discussion, but no decision taken yet
	2. Not sure	
	3. No similar tool	
	4. This question must be resolved in the future, when we have enough information about the content of databases. The tool assumes that some web services will be available in the back office of the different Patent offices and they will be modifying the assessments according to their practice. This presupposes the necessity for every member office to provide access to their database that must be upgraded.	
	5. Consider that the correct language harmonization will be key for success of the Project	
	6. On 10th of March 2011, a new national law on marks will be in force, and then the whole examination system will change to opposition system, which will be very closely related with the one OHIM already has. In this connection, probably our search system (Acsepto v. 7.0.6.7) for examiners that allows cumulated searching in the following data source: national trademark database; ROMARIN and CTM ONLINE database and "6 ter. EXPRESS" can need access to database of Common tool on Similarity of Goods and services	
Czech Republic	1. Yes	Yes, they want to join the Project straight away
	2. It will be a guidance tool.	
	3. We do not have a similar tool in place.	
	4. No	
	5. The language harmonization will be a great surplus for the Project	

Office	Extract of the questionnaire answers	Interest
	6. No	
Denmark	1. Yes 2. It will be a guidance tool. 3. We do not have a similar tool in place. But we have other tools in place, such as a database on opposition decisions, which allows for free-text searches, as well as our electronic guidelines that include all our decisions dated after April 2009, which is also searchable. 4. The database should not only encompass decisions, which OHIM considers to be in conformity with an OHIM "harmonized" practice. To be a truly valuable tool the database should also include other decisions, such as all court decisions dealing with similarity of goods and services, and if possible also decisions made by Offices 5. Integration of the G&S database for the purpose of translation would be desirable. However, the content of the G&S database should not limit the scope of the Common Tool on Similarity of Goods and Services, as decisions on similarity of goods and services that are not (yet) included in the G&S database should also be available in the search tool. 6. No	Yes, they want to join the Project straight away
Finland	1. No 2. Guidance 3. We have "paper lists" consisting of same goods (which have been transferred to another Nice class, as we do not reclassify) and similar goods in other classes and we would need to migrate the content. 4. No 5. It is the only way to get information from countries operating with languages we do not have knowledge of. 6. Could be more user friendly but would not be essential.	Could be interest by 2nd half of 2011
France	No answer	
Germany	7. No 8. The Tool would be of compulsory use to our examiners. It would be necessary though, to also have information about other court decisions in the tool, so the progress of law won't stop. 9. We're in contact to the Federal Patent Court of Germany. They've got a small database with pairs of goods and services, which are taken from their court decisions plus decisions of the Federal Court of Justice of Germany and the European Court of Justice. Neither they nor we in the German Patent Office have created own pairs of similar goods or services, so I think, all of the pairs in	Want to be in the working group

Office	Extract of the questionnaire answers	Interest
	the database are already part of Darts IP. 10. Perhaps we could create a kind of workflow inside each national database, so the examiners, who have to decide on the similarity of goods or services can write the pair into the database and ask for a leading decision. The database would grow at the same time as the examiners already use it. 11. I've no idea why we shouldn't use it! All the work we've done for the translations can perfectly be used for this intention! 12. No, we've no need to access the tool to another tool in our Office.	
Hungary	No answer	
Ireland	1. If a court decides a matter that the Office is a party to, then we are legally bound to accept that decision. 2. Guidance 3. We do not have any such tool, nor do we use manuals. Therefore the question of migration does not arise. 4. We would hope to use the database of another National Office (e.g. the UK) as a starting point. 5. This would mean translations could be provided instantly. 6. If we were to become involved in the Project I would foresee such a need.	Cannot join in the short to medium term
Italy	No answer	
Lithuania	1. Yes, our Office is legally bound to court decisions. Moreover, our Appeals Division rules out the decisions *inter alia* on relative grounds, which can be thereafter appealed at court. Our Office is not involved in inspection of relative grounds anyhow else – relative grounds are examined only at Appeals Division and/or at the court. Accordingly, G&S database may be important for our Office only as it concerns our Appeals Division proceedings or, alternatively, as a tool to assist the court in trademark proceedings. 2. guidance 3. No such tool 4. No 5. It would be useful and more convenient to reach practice of other Offices. 6. No	Interested, but due to resource issues, not possible to join straight away
Malta	No answer	
Portugal	1. In terms of the appeals on our decisions Yes; In terms of jurisprudence No 2. It would depend of the particular decisions supporting the similarity of particular Good or Service, i.e. based in our national law we are only bound to the court decisions in terms of the appeals on our decisions.	Wants to participate right away

Office	Extract of the questionnaire answers	Interest
	3. Our Examination manual does not have concrete examples of similarity of Goods and Services, although it describes precisely how the Examiner should assess the similarity of Goods and Services in terms of their purpose, nature, sales and distribution routes, complementation of G&S, etc. 4. We consider that the decisions from the Portuguese Court for IP, from the INPI internal Appeal procedure and from the IP arbitration centre "ARBITRARE" should be part of the content of the database. 5. We currently are already part of the HARMONIZATION Project, so we are favourable to it. 6. The possibility of integrating our Goods and Services data access tool with the G&S similarity database should be analysed.	
Romania	No answer	
Slovak Republic	1. Yes 2. Guidance in the first step 3. We have a simple table database created in Microsoft Excel 4. No 5. The ultimate goal is the integration with harmonized G&S database. Certainly, this goal can only be reached in a single language regime (EN) and common nomenclature of the decisions. The translations of pairs from the given G&S database is not an issue, but translations of the decisions in question might be demanding. 6. N/a	Yes, but there are technical and resource restrictions
Slovenia	No answer	
Spain	7. Yes 8. Guidance 9. No 10. With resolutions of the national offices 11. should be studied 12. n/a	Not clear
UK	1. No, but would follow a decision unless there were reasons not to. 2. Most likely compulsory. 3. We have a paper tool that is reflected in the search matrix of our computer-based trade marks search system. -> possible content for DB 4. no 5. It would be difficult to create and maintain, and given the "interdependency" requirement in assessing a likelihood of confusion we see little benefit from such	After further assessment

Office	Extract of the questionnaire answers	Interest
	a system. 6. n/a	

Table 10 - Overview National Offices' interest

3.3. ANNEX 3 - G&S Similarity Tool

In this annex the Goods and Services Similarity Tool is explained with some screenshots.

3.3.1.   Search page

The search page is the main page of the system. It consists of four parts:

- ▪ Search criteria

- ▪ Results table

- ▪ No comparison available table

- ▪ Selected results table

Figure 5 - Print screen 1 search page

3.3.2.   Search criteria

The search criteria are on top of the search page. Note that the Goods and Services and the Nice class in all examples below are purely illustrative.

It is also possible to search for multiple expressions at once, by separating them with semi-columns. In this case the search is in fact split into multiple requests. In the result table the different result groups will be visually marked.
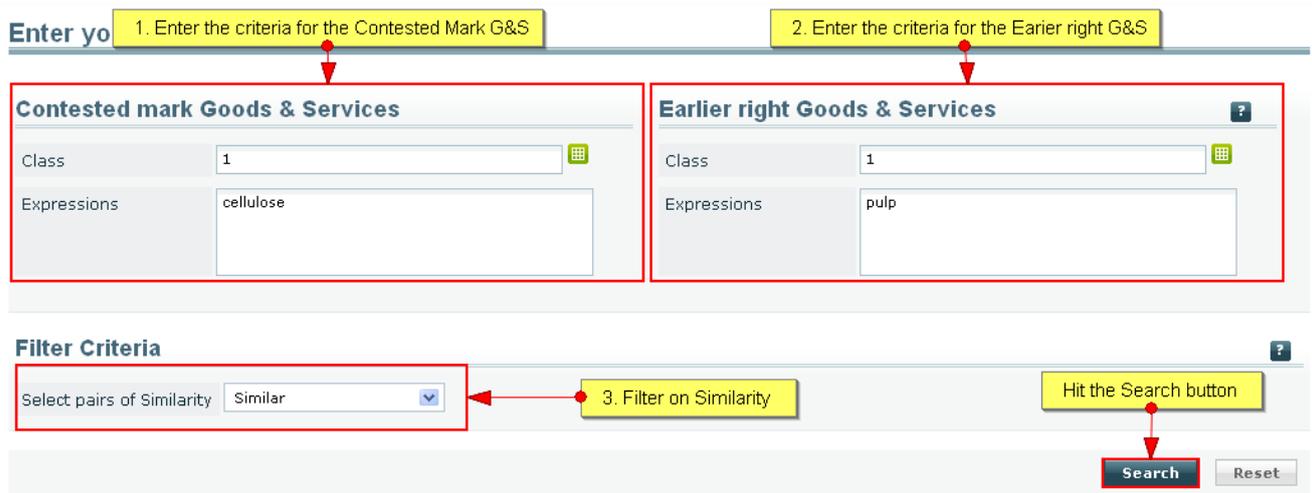
Figure 6 - Print screen 2 search page

After launching the search the result table is expanded and populated with the pairs matching the query.

The keywords that were searched for are highlighted.

Figure 7 - Print screen 1 results page

Figure 8 - Print screen 2 results page

The pair information that is displayed in the columns is a default, but this can be configured by the user by clicking on the "Select columns" button on the top left. This way you get the complete list of available information and the user can make a selection. Columns that are selected can also be changed by order by dragging-dropping the column.

Figure 9 - Print screen 3 results page

3.3.4. No comparison available table

If no results are fetched for one or more pairs that were searched for, they will appear in the No comparison available table.

#	Contested mark class	Contested mark expression	Earlier right class	Earlier right expression
1	2	doves	25	comma
2	29	doves	25	comma
3	2	doves	25	alpha
4	29	doves	25	alpha
5	2	polyester	25	comma
6	29	polyester	25	comma
7	2	polyester	25	alpha
8	29	polyester	25	alpha

No comparison available (8)

Figure 10 - Print screen 4 results page

3.4. ANNEX 4 – Long term vision of the Project

As explained in the Project Brief, the vision of this Project is twofold, i.e. the short-term vision and the long-term vision. The long-term vision is the realisation of harmonization between all EU national offices, by sharing one fully harmonized database.

In order to come to such a unique harmonized database the NOs will first have to meet the following assumptions:

- **Compulsory**

    The harmonized database will only be able to fully comply with the Project Objectives (predictability and legal certainty) when the users can rely on its compulsory character. This means that the National Offices would need to follow the decisions that are in the database.

    There is also another reason why the database should be compulsory to all participating offices: When populating a harmonized database all participating NOs need to agree on the proposals having the same condition. In case the database would merely be a guideline for one NO and on the other hand compulsory to another NO the second NO would be far more prudent in order not to enter inconsistent pairs. This would lead to unbalanced discussions.

- **Transparency and consistency**

    The harmonized database should be transparent and consistent. This could be achieved by following methodology

    – **Objective criteria**

    The evaluation of the similarity of goods and services has to be done based on objective criteria. The same set of criteria is to be used for all comparisons.

    It should be considered to give a weight to each criterion. When evaluating a comparison the resulting sum of all fulfilled criteria would be compared with a range of thresholds, determining the degree of similarity of the pair (e.g. 0 = dissimilar, 1 = low degree of similarity, 2-3= similar, 4-6 = high degree of similarity, >6 = identical).

    – **Voting mechanism**

    The evaluation of pairs should be straightforward and transparent. This means a fixed set of rules should be defined up front, leaving no opportunities for endless discussions.

    – **English as a working language**

    NOs serve audiences with a wide range of native languages. Each language and culture has its peculiarities.

    This Project is to provide a common platform, for which the noise caused by these different backgrounds should be kept to a minimum. Therefore the working language in the Common Tool on Similarity of Goods and Services should be strictly limited to English.

    – **Harmonized goods and services**

It is to be expected that if no constraints are set to what goods and services could be considered in the comparisons, discussions could arise not as to what similarity exists between goods and services, but as to whether these goods and services are valid altogether.

Therefore it would be strongly recommended to limit the acceptable goods and services in the comparisons to the harmonized ones between the NOs. This means that CF Project 1.1.3 – Completion of a common database on classification of goods and services (herein referred to as "ALISTA") would be a direct input to the Common Tool on Similarity of Goods and Services, constituting a clear dependency between both projects (cf. Chapter 2.10).

- **Consolidate the base**

  Typically not all NOs would join in on the Project at the same time. The NOs that first join in on the Project would need to take decisions on pair similarity or even on the Project approach (e.g. used scale of similarities, the objective criteria,etc.). Whenever a new NO joins in at a later stage it should start from this consolidated base and accept it as it is, as otherwise all efforts would have to be redone whenever a new NO joins in.

Taking into account the above, this long term vision can however not be the immediate goal of this Project, as:

- Some of the NOs are currently strictly bound by their national legal requirements or court decisions. This would prohibit them from following the common approach in all cases. And as described before, the harmonized database should also be compulsory in order to be successful.

  Some of the NOs also have other arguments against a compulsory use of this database. They consider that obliging the examiners to only take decisions that are in accordance with a predefined degree of similarity as is defined by the tool is in contrary to good administrative practice, as this practice does not allow examiners to make their assessment of the similarity on the merits of the case before them.

  Furthermore, if examiners are not supposed to deviate from the Common Tool on Similarity of Goods and Services and take concrete facts into account, when deciding a case, the realities in the case will not be considered properly. This means that the parties would have to appeal the decision in order to have a proper assessment of the facts of the case.

- Only once the Project is finished all the tools will be at hand to try to achieve the long term objectives. A large part of the databases will be common e.g. the European Decisions. An interaction will be created between the NOs, enabling the identification in subsequent exercises of the harmonized and non-harmonized parts of the database and then the investigation for possible further harmonization. This should allow us to slowly but steadily go into the direction of a fully harmonized database, or at least get as close to that as possible.

Due to these impediments, it has been decided to first follow a short-term vision for this Project, as an intermediary step on the way to the long-term vision. The short term vision entails the development of a common similarity tool on the basis of the already available OHIM G&S Similarity tool, as further specified in the Project Approach under chapter 2.1.
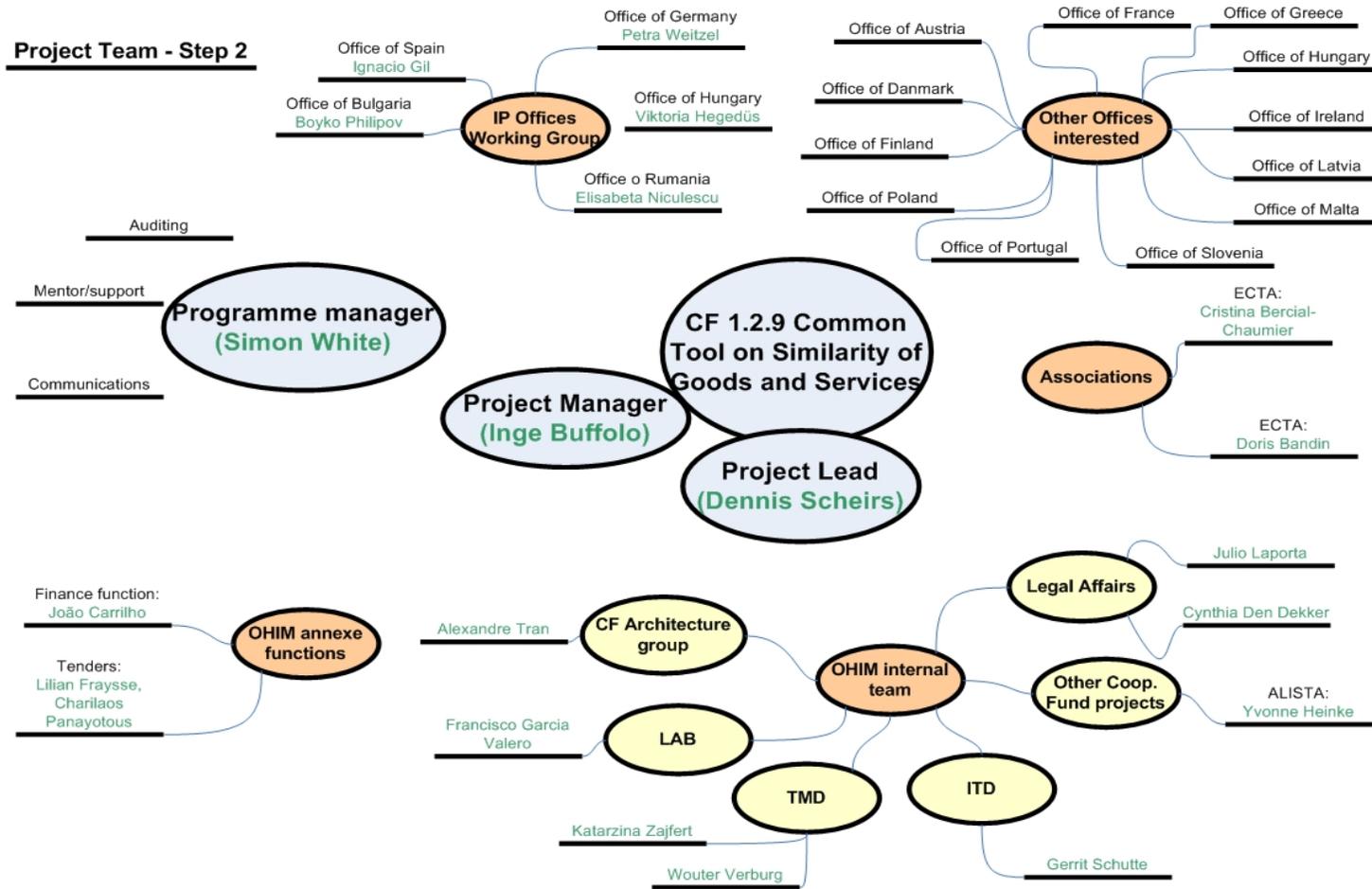
3.5. ANNEX 5 – Project team overview

Figure 11 - Project team