

**GERMANY**

**Trademark Regulations**

Trade Mark Ordinance of 11 May 2004

Amended on 12 December 2018

TABLE OF CONTENTS

Part 1 Scope of application

Section 1 Trade mark procedures

Part 2 Procedures preceding registration

Chapter 1 Applications

Section 2 Form of application

Section 3 Contents of the application

Section 4 Application of collective marks

Section 5 Information on the applicant and their representative

Section 6 Indication of the type of the trade mark

Section 6a Trademark description

Section 7 Word trademarks

Section 8 Figurative trademarks

Section 9 Three-dimensional marks

Section 10 Tracer marks

Section 10a Color trademarks

Section 11 Sound marks

Section 12 Other forms of trademarks

Section 13 Models and samples

Section 15 Foreign language applications, representations with non-Latin characters

Section 16 Foreign language documents

Section 17 Reference to a trade mark registered in the country of origin

Section 18 Postponing the decisive date for determining seniority of a trade mark that has acquired distinctiveness through use

Chapter 2 Classification of goods and services

Section 19 Classification

Section 20 List of goods and services

Section 21 Decision on the classification

Section 22 Amendment of the classification

Chapter 3 Publication of the application  
Section 23 Publications concerning application

Part 3 Register; certificate; publication  
Section 24 Location and form of the Register  
Section 25 Contents of the Register  
Section 26 Certificates  
Sections 27 Publications concerning entries in the register

Part 4 Individual procedures

Chapter 1 Opposition proceedings  
Section 29 Form of the opposition  
Section 30 Contents of the opposition  
Section 31 Joint decision on several oppositions  
Section 32 Suspension

Chapter 2 Partial transfer; division of applications and registrations  
Section 33 Transfer in part of a registered trade mark  
Section 34 Transfer of rights; rights in rem; insolvency proceedings and measures of levy of execution for applications  
Section 35 Division of applications  
Section 36 Division of registrations

Chapter 3 Renewal  
Section 37 Renewal by payment of fees  
Section 38 Request for partial renewal

Chapter 4 Surrender  
Section 39 Surrender  
Section 40 Agreement of third parties

Chapter 5 Cancellation  
Section 41 Cancellation on grounds of revocation  
Section 42 Cancellation due to absolute grounds for refusal

Part 5 International registrations  
Section 43 Requests and other communications in the procedure of international registration under the Madrid Agreement  
Section 44 Requests and other communications in the procedure of

international registration under the Protocol Relating to the Madrid Agreement

Section 45 Requests and other communications in the procedure of international registration under the Madrid Agreement and the Protocol Relating to the Madrid Agreement

Section 46 Refusal of protection

Part 6 Procedure under Council Regulation (EU) no. 510/2006

Chapter 1 Registration procedure

Section 47 Application for registration

Section 48 Publication of the application

Section 49 National objection

Chapter 2 Opposition proceedings under Section 131 of the Trade Mark Act

Section 50 Opposition

Section 51 Opposition proceedings

Chapter 3 Amendments to the specification; cancellation; inspection of files

Section 52 Amendments to the specification

Section 53 Request for cancellation

Section 54 Inspection of files

Part 7 Final provisions

Section 56 Transitional provision on occasion of the entry into force of this ordinance

Section 57 Transitional provision for future amendments

Section 58 Entry into force; abrogation

## **Part 1 Scope of application**

### **Section 1 Trade mark procedures**

(1) For procedures before the German Patent and Trade Mark Office governed by the Trade Mark Act (trade mark matters), the provisions of this ordinance shall apply in addition to the provisions of the Trade Mark Act and of the Ordinance Concerning the German Patent and Trade Mark Office.

(2) German industrial standards (DIN standards), referred to in this ordinance, have been published by Beuth-Verlag GmbH, Berlin and Cologne, and securely stored in an archive at the German Patent and Trade Mark Office.

## **Part 2 Procedures preceding registration**

### **Chapter 1 Applications**

#### **Section 2 Form of application**

(1) The application can be submitted in writing or electronically. For written applications, the form issued by the German Patent and Trademark Office shall be used. For electronic applications, the Ordinance on Electronic Legal Transactions at the German Patent and Trademark Office November 1, 2013, in its current version, shall apply.

(2) A separate application shall be required for each trade mark.

#### **Section 3 Contents of the application**

(1) The application shall contain:

1. particulars identifying the applicant and, if applicable, their representative under Section 5,
2. an indication of the type of the trademark under Section 6, a representation of the trademark under Sections 7 to 12 and, in the cases referred to in Section 6a(2), a description of the trademark and
3. the list of goods and services under Section 20 in respect of which the trade mark is to be registered.

(2) If the application

1. claims the priority of an earlier foreign application, a declaration to that effect shall be filed, indicating the date and the country of the said application;
2. claims an exhibition priority, a declaration to that effect shall be filed, indicating the date of the first display and the exhibition.

#### **Section 4 Application of collective marks**

If registration as a collective mark is requested, a declaration to that effect shall be submitted.

#### **Section 5 Information on the applicant and their representative**

(1) The application must contain the following information about the applicant:

1. if the applicant is a natural person: First names and surnames

or, if the registration is to be made under the applicant's company name, the company name as entered in the commercial register, as well as the address of the residence or place of business (street, house number, postcode, town),

2. if the applicant is a legal entity or a partnership:

a) Name or company name, legal form as well as address (street, house number, postcode, town) of the registered office of the legal entity or partnership; the designation of the legal form may be abbreviated in the usual manner; if the legal entity or partnership is entered in a register, the information must correspond with the entry in the register;

b) in the case of a partnership under civil law, additionally the name and address (street, house number, postcode, town) of at least one partner authorized to represent the company. If the applicant has their domicile or registered office abroad, the state must also be indicated in addition to the place name when indicating the address pursuant to sentence 1. Additional information regarding the county, province, or the state in which the applicant resides, is located, or is subject to the jurisdiction of, are voluntary entries.

(2) In the application, a postal address that differs from the applicant's address, a P.O. Box address as well as telephone numbers, fax numbers and e-mail addresses may also be provided.

(3) If the application is submitted by several persons or partnerships, paragraphs 1 and 2 shall apply to all submitting persons or partnerships.

(4) If a representative has been appointed, paragraphs 1 and 2 shall apply mutatis mutandis with regard to the information concerning the representative. If the German Patent and Trademark Office has assigned a number of a general power of attorney to the representative, this number should also be indicated.

#### **Section 6 Indication of the type of the trade mark**

The application shall indicate whether the trade mark is to be entered in the Register as

1. a word mark (Sec. 7),
2. a figurative mark (Sec. 8),
3. a three-dimensional mark (Sec. 9),

4. a tracer mark (Sec. 10),
5. a color mark (Sec. 10a),
6. a sound mark (Sec. 11) or
7. other type of trade mark (Sec. 12).

#### **Section 6a Trademark description**

(1) For all forms of trademark except word trademarks within the meaning of Section 7, a description may be filed with the trademark application to explain the two-dimensional graphic representation of the trademark.

(2) A trademark description must be submitted with the trademark application, if the subject of the trademark cannot be satisfactorily represented solely by the two-dimensional graphic representation. This shall apply in particular to other forms of trademarks pursuant to Section 12.

(3) The trademark description may contain up to 100 words and must be submitted on a separate sheet in the format 21 × 29.7 centimeters (DIN-A4). It must consist of continuous text and must not contain any graphic or design elements. The trademark description must specify the subject of the trademark objectively.

#### **Section 7 Word trademarks**

If the applicant indicates that the trademark is to be registered in the usual typeface used by the German Patent and Trademark Office, the trademark must be reproduced in the application in usual characters (letters, numbers or other symbols). The list of characters commonly used at the German Patent and Trademark Office is available on the website [www.dpma.de](http://www.dpma.de).

#### **Section 8 Figurative trademarks**

(1) If the applicant indicates that the trademark is to be registered as a word-figurative trademark or a figurative trademark, the application must be accompanied by a two-dimensional graphic representation of the trademark. If the trademark is to be registered in black and white, the graphic representation must be submitted in black and white. If the trademark is to be registered in color, the graphic representation must be submitted in color and

the colors must be designated in the application.

(2) The representation of the trade mark shall be reproduced on paper in a durable manner, and shall be of such color and shape that the elements of the trade mark appear distinctly in all the details, even if reduced to a size of 8 cm (for height and for width), if represented in black and white. The representations shall not be pasted over and shall be free from deletions and coverings in other than durable colors.

(3) The form issued by the German Patent and Trademark Office, on which the representation of the trademark shall be printed or pasted, shall be used for the representation of the trademark. The representation of the trademark must not be smaller than 8 centimeters in width or 8 centimeters in height. The space reserved for the representation of the trademark may only contain the representation of the trademark and the indications referred to in paragraph 5. Other explanatory text, explanatory labels, symbols, or dimensions may not be included in the space for the representation of the trademark.

(4) If the form outlined under paragraph 3 is not used for the representation of the trademark, a sheet of 21 × 29.7 centimeters (DIN-A4) format must be used. The area used for the representation (print space) must not be larger than 26.2 × 17 centimeters and not smaller than 8 centimeters in width or 8 centimeters in height. The sheet may only be printed on one side. A margin of at least 2.5 centimeters must be maintained from the top and left margins of each sheet.

(5) The correct position of the trade mark, insofar as it is not self-evident, shall be indicated on each representation by adding the word "top", above the image, leaving enough space in between.

(6) The representation of the trademark may be submitted on a data carrier as an alternative to the requirements of paragraphs 2 to 5. The data carrier must be readable and must not contain viruses or other harmful programs. If the data carrier does not meet these requirements, the representation shall be deemed not to have been submitted.

The list of data carrier formats which can be read at the



German Patent and Trademark Office is available on the website [www.dpma.de](http://www.dpma.de). The representation is to be stored as a file on the root directory of an empty data carrier.

1. The following image formatting will be accepted:

image format		JPEG (*.jpg)
resolution	for landscape format - width	minimum 945 pixels, maximum 1890 pixels
	for portrait format - height	minimum 945 pixels, maximum 1890 pixels
colour space		sRGB
colour depth	colour	24 bpp
	black and white	8 bpp
	gray scales	8 bpp

The file shall not exceed 1 MB in size. The German Patent and Trade Mark Office will not process any packed and compressed files.

2. The following details shall be indicated (printed or in block capitals) on the surface of the data carrier:

- a) the name of the applicant,
- b) the trade mark, if possible,
- c) the representative, if appointed,
- d) the contact details (address, telephone number, e-mail address),
- e) the internal reference number of the applicant or of their representative, if any,
- f) the date of filing of the trade mark application of which the data carrier is part.

Marking must not impair the readability of the data carrier. The German Patent and Trade Mark Office will not process any labelled data carriers.

(7) If the representation of the trademark on paper and on a data carrier complying with the requirements of paragraph 6 are submitted simultaneously, the representation of the trademark on the data carrier shall in principle be the relevant representation of the trademark for the subject of protection.

### **Section 9 Three-dimensional marks**

(1) If the applicant indicates that the trademark is to be registered as a three-dimensional trademark, the application shall be accompanied by a two-dimensional graphic representation of the trademark. If the trademark is to be registered in black and

white, the graphic representation must be submitted in black and white. If the trademark is to be registered in color, the graphic representation must be submitted in color and the colors must be designated in the application.

(2) The representation may contain up to six different views and shall be submitted on one sheet of paper in accordance with the format of Section 8(3) or (4). Alternatively, if the representation of the trademark is submitted on a data carrier, all views must be represented in one image file.

(3) Where the trade mark is represented by graphical outline drawing, the reproduction shall be executed in uniformly black and well-defined lines without blurs. It may contain hatchings and shadings to represent three-dimensional details.

(4) For the form of the representation, Section 8 (2) to (7) shall apply mutatis mutandis. Where the representation of the trade mark is additionally filed on a data carrier, all views shall be represented in one image file.

#### **Section 10 Tracer marks**

If the applicant indicates that the trade mark is to be registered as a tracer mark, Section 9(1) to (4) shall apply mutatis mutandis.

#### **Section 10a Color trademarks**

(1) If the applicant indicates that the trademark is to be registered as a color trademark, the application for an abstract single-color trademark shall be accompanied by a color sample. The color shall be designated by a number from an internationally recognized color classification system.

(2) In the case of an abstract color trademark consisting of several colors, in addition to the requirements under paragraph 1 the application must contain the systematic arrangement in which the colors concerned are linked in a fixed and consistent manner.

(3) Section 8(2) to (7) shall apply mutatis mutandis to the form the of representation of the color sample.

### **Section 11 Sound marks**

(1) If the applicant indicates that the trade mark is to be registered as a sound mark, two-dimensional graphical representations of the trade mark shall be attached to the application.

(2) Sound marks shall be represented by a customary musical notation. For the form of the representation, Section 8 (2) to (4) shall apply mutatis mutandis.

(3) The applicant shall file a sound representation of the mark on a data carrier. For each sound mark, one data carrier only shall be submitted.

(4) The following standards shall be applicable to the data carrier to be submitted pursuant to subsection (3):

1. The sound representation shall be stored in the root directory of an empty data carrier. Admissible file formats are WAVE format (\*.wav) and MP3 format (\*.mp3). The minimum scanning frequency shall be 44.1 kHz, the minimum resolution shall be 16 bits. Packed and compressed files are not permissible.

2. In all other respects, Section 8 (6) sentences 2 to 4 and sentence 5(2) shall apply mutatis mutandis.

### **Section 12 Other forms of trademarks**

(1) If the applicant indicates that the trademark is to be registered as another form of trademark, the application shall be accompanied by a two-dimensional graphic representation of the trademark. If the trademark is to be registered in black and white, the graphic representation must be submitted in black and white. If the trademark is to be registered in color, the graphic representation must be submitted in color and the colors must be designated in the application.

(2) For the form of the representation, the regulations in Sections 8 to 11 shall apply mutatis mutandis.

### **Section 13 Models and samples**

No models or samples of products bearing the trademark or, in the cases of Sections 9, 10 and 12, no models or samples of the trade mark itself shall be attached to the application. Section 11(3)

shall not be affected.

**Section 15 Foreign language applications, representations with non-Latin characters**

(1) Applications submitted in a foreign language shall be given a submission date under Section 33(1) German Trademark Law, provided that the requirements of Section 32(2) German Trademark Law are met.

(2) If the representation of the trademark contains non-Latin characters, a German translation, a transliteration and a transcription of the non-Latin trademark text must be included. The German Patent and Trademark Office may request, setting a reasonable deadline, that the applicant has the translation, transliteration and transcription certified by a lawyer or patent attorney or prepared by a publicly appointed translator.

(3) Notwithstanding paragraph 2, a German translation of the other foreign language contents of the application, in particular of the list of goods and services, shall be submitted to the German Patent and Trade Mark Office within three months of the date of receipt of the application. The German Patent and Trademark Office may request, setting a reasonable deadline, that the applicant have the translation certified by a lawyer or patent attorney or prepared by a publicly appointed translator.

(4) If the translation referred to in paragraph (3) first sentence is not submitted in due time, the application shall be deemed to be withdrawn. If the translation, transliteration or transcription referred to in paragraph (2) second sentence, or paragraph (3) second sentence is not submitted in due time, the application shall be rejected.

(5) The examination of the application and all other procedures before the German Patent and Trade Mark Office shall be based on the German translation.

**Section 16 Foreign language documents**

(1) German translations of foreign language documents must be certified by a lawyer or patent attorney or prepared by a publicly appointed translator.

(2) German translations of priority documents in foreign languages and copies of earlier applications (Section 34(3) (2) German Trademark Law) shall be submitted only upon request of the German Patent and Trademark Office. The German Patent and Trademark Office shall set a reasonable deadline for the subsequent submission.

(3) German translations of other documents which

1. are not part of the application documents and
2. which have been submitted in English, French, Italian or Spanish shall be submitted only upon request of the German Patent and Trademark Office. The German Patent and Trademark Office shall set a reasonable deadline for the subsequent submission.

(4) If other documents which are not part of the documents of the application are submitted in languages other than those listed in paragraph 3(1) (2), translations into German shall be submitted within one month after receipt of the documents.

(5) If the translation referred to in paragraphs 2 to 4 is submitted after the deadline, the foreign language document shall be deemed to have been received at the time of receipt of the translation. If no translation is submitted, the foreign language document shall be deemed not to have been received.

**Section 17 Reference to a trade mark registered in the country of origin**

(1) If an applicant makes reference to a trade mark registered in the country of origin under Article 6 quinquies of the Paris Convention, a declaration to this effect may still be filed after the application.

(2) The applicant shall furnish a certificate on the registration in the country of origin issued by the competent authority.

**Section 18 Postponing the decisive date for determining seniority of a trade mark that has acquired distinctiveness through use**

If it is found during examination that the prerequisites for postponing the decisive date for determining seniority within the

meaning of Section 37(2) of the Trade Mark Act are met, the German Patent and Trade Mark Office shall inform the applicant accordingly. The day decisive for determining seniority shall be entered in the application files. In other respects, the date of filing within the meaning of Section 33(1) of the Trade Mark Act shall not be affected.

## **Chapter 2 Classification of goods and services**

### **Section 19 Classification**

The classification of goods and services shall be determined by the respective applicable version of the classification and the alphabetical lists of goods and services.

### **Section 20 List of goods and services**

(1) The goods and services shall be designated in such a way as to permit classification of the individual goods or services in a class of the classification (Sec. 19).

(2) To the extent possible and provided there is no need for explanation, the designations of the classification and the terms of the alphabetical list indicated in Section 19 should be used. As for the rest, terms generally used in the course of the business should be used to the extent possible.

(3) The goods and services shall be arranged in classes in the order of the classification.

(4) The list of goods and services shall be in font size 11 and 1.5 line spacing.

### **Section 21 Decision on the classification**

(1) If the goods and services in the application are not classified correctly, the German Patent and Trade Mark Office shall decide on the classification.

(2) The class of the classification on which the application focuses shall be chosen by the German Patent and Trade Mark Office as the leading class. In this respect, it is not bound by the leading class indicated by the applicant. With regard to the fee payment, the German Patent and Trade Mark Office shall take the leading class

indicated by the applicant into account.

### **Section 22 Amendment of the classification**

(1) Where the classification of the goods and services is amended in the time after the date of the filing and before the expiry of the period of protection of the trade mark, the classification shall be adapted any time upon request by the proprietor. It shall be adapted *ex officio*, at the latest, upon the renewal of the period of protection of the trademark.

(2) In the case of trademarks applied for before June 1, 2004, the goods and services of which have not yet been arranged according to class, the German Patent and Trademark Office may *ex officio* arrange the goods and services according to class.

## **Chapter 3 Publication of the application**

### **Section 23 Publications concerning application**

(1) The publication of the application of a trade mark shall comprise the following information:

1. the file number of the application,
2. the date of receipt of the application,
3. particulars as to the trade mark,
4. particulars as to a foreign priority (Sec. 34 Trade Mark Act), exhibition priority (Sec. 35 Trade Mark Act), claimed by the applicant, or as to the seniority claimed under Article 35 of the Regulation (EU) no. 207/2009 of 26 February 2009 on the European Union trade mark that has been amended by Regulation (EU) 2015/2424.
5. the name and, if applicable, the legal form, domicile or registered office of the applicant,
6. where a representative has been appointed, the name and the domicile or seat of the representative,
7. the address with details of the recipient,
8. the leading class and other classes, if any, of the list of goods and services.

(2) If a trade mark applied for is not recorded in the Register, the publication shall additionally comprise the following information:

1. in case of a full or partial refusal of a trade mark applied for, a respective indication specifying the reason for refusal and the goods and services as well as the classes to which the refusal

refers,

2. in case of a full or partial withdrawal of a trade mark application, a respective indication specifying the goods and services as well as the classes to which the withdrawal refers,
3. where an application is deemed to have been withdrawn due to non-payment of the fee (Sec. 6(2) Patent Costs Act ) or due to the fact that it failed to satisfy the minimum requirements for according a date of filing (Sec. 36(2), first sentence, in conjunction with Sec. 36(1) no. 1, Sec. 33(1) Trade Mark Act), a corresponding indication,
4. in case of closed multiple applications, a corresponding indication.

(3) The publication may also be made in electronic form.



### **Part 3 Register; certificate; publication**

#### **Section 24 Location and form of the Register**

(1) The Register shall be kept at the German Patent and Trade Mark Office.

(2) Since 1 August 1999, the Register has been kept in the form of an electronic database.

#### **Section 25 Contents of the Register**

The following shall be recorded in the Register:

1. the registration number of the trade mark,
2. the file number of the application, if it is not identical with the registration number,
3. the representation of the trade mark,
4. the indication of the type of the trade mark,
5. for trade marks registered in colour, an indication to this effect and the specification of the colours,
6. if applicable, a description of the trade mark,
7. for trade marks registered by proving that they acquired distinctiveness through use (Sec. 8(3) Trade Mark Act), an indication to this effect,
8. for trade marks that have been registered on the basis of a trade mark registration in the country of origin under Article 6 quinquies of the Paris Convention, an indication to this effect,
9. if applicable, the indication that the trade mark is a collective mark,
10. in case of a trade mark the seniority of which has been claimed under Article 34 or 35 of the Regulation (EU) no. 207/2009 for a EU trade mark applied for or registered, the indication of the respective file number and, in case of cancellation of the trade mark, a statement specifying the grounds for cancellation,
11. the date of filing of the trade mark,
12. if applicable, the date decisive for determining the seniority of a trade mark under Section 37(2) Trade Mark Act,
13. the date, the country and the file number of the foreign priority claimed by the proprietor of the trademark (Sec. 34 Trade Mark Act),
14. particulars as to an exhibition priority claimed by the proprietor of the trade mark (Sec. 35 Trade Mark Act),
15. the name, if applicable, the legal form and domicile or

registered office of the proprietor of the trade mark; for a partnership under the Civil Code, the name and the domicile of the designated partner entitled to act as representative,

16. if a representative has been appointed, the name and the seat of the representative,
17. the address with details of the recipient,
18. the list of goods and services, indicating the leading class and the other classes, arranged into groups,
19. the date of registration in the Register,
20. the date of publication of the registration,
21. if, after expiry of the opposition period, no notice of opposition to the registration of the trade mark has been given, an indication to this effect,
22. if notice of opposition has been given:
  - a) an indication to this effect,
  - b) the date of the conclusion of the opposition procedure,
  - c) where the trade mark has been cancelled in full, an indication to this effect,
  - d) where the trade mark has been cancelled in part, the goods and services to which the cancellation refers,
23. the renewal of the period of protection,
24. where a third person has filed a request for cancellation of the registered trade mark or brought an action for cancellation:
  - a) in case of a request for cancellation pursuant to Section 50 of the Trade Mark Act, an indication to this effect,
  - b) the conclusion of the cancellation procedure pursuant to Section 50 of the Trade Mark Act,
  - c) where the trade mark has been cancelled in full, an indication to this effect, stating the ground for cancellation,
  - d) where the trade mark has been cancelled in part, an indication to this effect, stating the ground for cancellation, and the goods and services to which the cancellation refers,
25. where a cancellation procedure is instituted ex officio
  - a) where the trade mark has been cancelled in full, an indication to this effect, stating the ground for cancellation,
  - b) where the trade mark has been cancelled in part, an indication to this effect, stating the ground for cancellation, and the goods and services to which the cancellation refers,
26. where a trade mark is cancelled in full or in part due to the corresponding declaration of the proprietor of the trade mark, in particular the renewal in part of the trade mark or a revocation in

part, an indication to this effect, stating the ground for cancellation, and, if the trade mark has been cancelled in part, the list of the goods and services relevant after the cancellation has been carried out,

27. particulars as to the action for the grant of registration under Section 44 of the Trade Mark Act, if these have been communicated to the German Patent and Trade Mark Office,

28. the date of receipt of a declaration of division,

29. in the parent registration, a reference to the registration number of the registration divided due to the declaration of division,

30. in the registration divided due to the declaration of division, an indication to this effect and the registration number of the parent registration,

31. the date and number of the international registration (Sec. 110, 122 (2) Trade Mark Act),

32. the assignment of the trade mark together with particulars as to the successor in title and, if applicable, their representative pursuant to nos. 15, 16 and 17,

33. in case of an assignment of the trade mark for some of the goods and services, additionally the particulars indicated in nos. 29 and 30,

34. particulars as to rights in rem (Sec. 29 Trade Mark Act),

35. particulars of measures of levy of execution (Sec. 29(1) no. 2 Trade Mark Act) and involvement of the trade mark in insolvency proceedings (Sec. 29(3) Trade Mark Act),

36. amendments of the particulars indicated in nos. 15, 16 and 17,

37. corrections of registrations in the Register (Sec. 45(1) Trade Mark Act).

### **Section 26 Certificates**

In addition to a document certifying the registration of a trade mark in the Register under Section 25 of the DPMA Ordinance, the proprietor of a trade mark shall receive a certificate on the details recorded in the Register, except where they have explicitly renounced it.

### **Sections 27 Publications concerning entries in the register**

(1) Entries in the register pursuant to Section 25 shall be published by the German Patent and Trademark Office in regularly published overviews.

(2) This publication may be in electronic form.

(3) The publication of the entry shall include all information entered in the register, except for the information referred to in Section 25(31).

(4) The first publication of a registered trademark shall be accompanied by a notice of the possibility of opposition (Section 42 German Trademark Law). This notice shall be repeated if the registered trademark is republished due to significant shortcomings in the initial publication. The notice may be made jointly for all trademarks published in accordance with sentences 1 and 2.

## **Part 4 Individual procedures**

### **Chapter 1 Opposition proceedings**

#### **Section 29 Form of the opposition**

(1) A separate opposition shall be required for each trade mark or commercial designation on the basis of which notice of opposition is given (earlier sign) to the registration of a trade mark.

Oppositions may be combined in one notice of opposition, if based on several earlier signs of the same opponent.

(2) The opposition should be filed using the form issued by the German Patent and Trade Mark Office.

#### **Section 30 Contents of the opposition**

(1) The opposition shall contain information allowing to identify the challenged sign and the earlier sign as well as the opponent. If the earlier sign was neither filed for registration nor registered, the type, representation, form, date relevant for priority, subject matter and the holder of the sign right invoked shall be indicated to identify the sign.

(2) The opposition should include the following information, insofar as it is not already required for determining the identity according to paragraph 1:

1. the registration number of the trade mark whose registration is opposed to,
2. the registration number of the registered earlier trademark or the file number of the earlier trade mark applied for,
3. the representation and the designation of the form of the earlier sign,
4. where the earlier trade mark is an international registration, the registration number of the earlier trade mark and, in the case of earlier international registrations which were registered with effect in the Federal Republic of Germany as well as the German Democratic Republic before 3 October 1990, a declaration on which part of the country the opposition is based,
5. the name and the address of the proprietor of the earlier sign,
6. where the opposition is based on a trade mark registered or applied for and is lodged by a person not recorded as applicant in the application files or not registered as proprietor in the

Register, the name and the address of the opponent as well as the date when the request for recording or registering the transfer of rights has been filed,

7. if the opponent has appointed a representative, the name and the address of the representative,

8. the name of the proprietor of the trade mark whose registration is opposed to,

9. the goods and services on which the opposition is based,

10. the goods and services against which the opposition is directed.

### **Section 31 Joint decision on several oppositions**

(1) Joint decision should be taken, where appropriate, on several oppositions lodged by the same opponent.

(2) Joint decisions may also be taken on several oppositions in cases other than stated in subsection (1).

### **Section 32 Suspension**

(1) Except for the cases stated in Section 43(3) of the Trade Mark Act, the German Patent and Trade Mark Office may also, where appropriate, suspend opposition proceedings.

(2) Suspension shall be a possibility to be considered in particular where the opposition would presumably be allowed and the opposition is based on a trade mark applied for or where a procedure for the cancellation of the earlier trade mark is pending before the German Patent and Trade Mark Office.

## **Chapter 2 Partial transfer; division of applications and registrations**

### **Section 33 Transfer in part of a registered trade mark**

(1) Where the transfer of rights based on the registration of a trade mark affects some of the registered goods and services only, the request of the transfer of rights under Section 28 of the DPMA Ordinance shall indicate the goods and services to which the transfer of rights relates.

(2) Otherwise, Section 36(1) to (4) and (6) apply accordingly.

**Section 34 Transfer of rights; rights in rem; insolvency proceedings and measures of levy of execution for applications**

(1) The transfer of rights, right in rem, foreclosure measures or bankruptcy proceedings shall be entered in the files of the application.

(2) In the case of the transfers of rights, only the person being proprietor of the trade mark at the time of registration shall be recorded in the Register. A right in rem existing at the time of registration, a measure of levy of execution existing at that time or insolvency proceedings pending at the time of registration shall also be recorded in the Register.

(3) Where the transfer of a right based on the application of a trade mark affects some of the goods and services only, for which the trade mark has been applied for, the request for transfer in part shall indicate those goods and services to which the transfer of rights relates. In other respects, Section 35(1) to (4) and (6) shall apply mutatis mutandis.

**Section 35 Division of applications**

(1) A trade mark applied for may be divided into two or more applications under Section 40(1) of the Trade Mark Act. For each divided part, a separate declaration of division shall be required. The declaration of division should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The declaration of division shall indicate the goods and services to be included in the divisional application.

(3) The list of goods and services of the remaining parent application and the list of goods and services of the divisional application shall be identical to the list of goods and services of the original application at the time when the declaration of division was received. Where the division concerns goods and services falling under a generic term, the generic term shall be used in the parent application as well as in the divisional application and be restricted by appropriate additional information in such a way as to avoid any overlapping of the lists of goods and services.

(4) The German Patent and Trade Mark Office shall prepare a complete copy of the files of the original application. This copy together with the declaration of the division shall become a component of the files of the divisional application. A new file number shall be allotted to the divisional application. A copy of the declaration of division shall be included in the files of the parent application.

(5) A representative of the applicant appointed for the original application shall be deemed to be also the applicant's representative for the divisional application. Presentation of a new power of attorney shall not be required.

(6) Requests filed in respect of the original application shall continue to apply for the divisional application.

### **Section 36 Division of registrations**

(1) A registered trade mark may be divided into two or more registrations under Section 46(1) of the Trade Mark Act. For each divided part, a separate declaration of division shall be filed. The declaration of division should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The declaration of division shall indicate the goods and services to be included in the divisional registration.

(3) The list of goods and services of the remaining parent registration and the list of goods and services of the divisional registration shall be identical to the list of goods and services of the original registration at the time when the declaration of division was received. Where the division concerns goods and services falling under a generic term, the generic term shall be used in the parent registration as well as in the divisional registration and be restricted by appropriate additional information in such a way as to avoid any overlapping of the lists of goods and services.

(4) The German Patent and Trade Mark Office shall prepare a complete copy of the files of the original registration. This copy together with the declaration of division shall become an element of the files of the divisional registration. A new file number shall be allotted to the divisional registration. A copy of the declaration



of division shall be included in the files of the parent registration.

(5) A representative of the applicant appointed for the original registration shall be deemed to be also the applicant's representative for the divisional registration. Presentation of a new power of attorney shall not be required.

(6) Requests filed in respect of the original registration shall continue to apply for the divisional registration.

(7) Where opposition has been lodged to the registration of the trade mark for which division has been declared under Section 46 of the Trade Mark Act, the German Patent and Trade Mark Office shall invite the opponent to file a declaration indicating the parts of the original registration to which opposition is lodged. The proprietor of the registered trade mark may also furnish on their own initiative a corresponding declaration of the opponent. If no such declaration is filed, the declaration of division shall be rejected as inadmissible.

### **Chapter 3 Renewal**

#### **Section 37 Renewal by payment of fees**

When paying the renewal fees under Section 47(3) of the Trade Mark Act, the registration number and the name of the proprietor of the trade mark as well as the purpose of the payment shall be indicated.

#### **Section 38 Request for partial renewal**

(1) If the period of protection is to be renewed for some of the goods and services only for which the trade mark is registered, the applicant may file a corresponding request.

(2) The request shall indicate:

1. the registration number of the trade mark in respect of which the period of protection is to be renewed,
2. the name and the address of the proprietor of the trade mark,
3. if a representative has been appointed, the name and the address of the representative,
4. the goods and services for which the period of protection is to be renewed.

## **Chapter 4 Surrender**

### **Section 39 Surrender**

(1) The request for cancellation of a trade mark in full or in part under Section 48(1) of the Trade Mark Act should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The request shall indicate:

1. the registration number of the trade mark to be cancelled in full or in part,
2. the name and the address of the proprietor of the trade mark,
3. where a representative has been appointed, the name and the address of the representative,
4. where the trade mark is to be cancelled in part, either the goods and services to be cancelled or the goods and services for which the trade mark shall not be cancelled.

### **Section 40 Agreement of third parties**

For the agreement, required under Section 48(2) of the Trade Mark Act, of a proprietor of a right to the trade mark recorded in the Register, the submission of a declaration of agreement signed by this person or by their representative shall be sufficient. Authentication of the declaration or the signature shall not be required. Agreement may also be proved in another way.

## **Chapter 5 Cancellation**

### **Section 41 Cancellation on grounds of revocation**

(1) The request for cancellation of a trade mark on grounds of revocation under Section 53(1) of the Trade Mark Act should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The request shall indicate:

1. the registration number of the trade mark for which cancellation is requested,
2. the name and the address of the person filing the request,
3. where the person filing the request has appointed a representative, the name and the address of the representative,
4. where the cancellation of the trade mark is requested for some of the goods and services only, either the goods and services for which

cancellation is requested or the goods and services for which cancellation is not requested,  
5. the grounds for cancellation under Section 49 of the Trade Mark Act.

**Section 42 Cancellation due to absolute grounds for refusal**

Section 41 shall apply mutatis mutandis to requests for cancellation due to absolute grounds for refusal under Section 54(1) of the Trade Mark Act.

## **Part 5 International registrations**

### **Section 43 Requests and other communications in the procedure of international registration under the Madrid Agreement**

For requests and other communications in the procedure of international registration of a trade mark recorded in the Register of the German Patent and Trade Mark Office under Article 3 of the Madrid Agreement, the official forms issued by the International Bureau of the World Intellectual Property Organization shall be used.

### **Section 44 Requests and other communications in the procedure of international registration under the Protocol Relating to the Madrid Agreement**

For requests and other communications in the procedure of international registration of a trade mark filed with the German Patent and Trade Mark Office or recorded in the Register under Article 3 of the Protocol Relating to the Madrid Agreement, the official forms issued by the International Bureau of the World Intellectual Property Organization shall be used.

### **Section 45 Requests and other communications in the procedure of international registration under the Madrid Agreement and the Protocol Relating to the Madrid Agreement**

For requests and other communications in the procedure of international registration of a trade mark recorded in the Register of the German Patent and Trade Mark Office under Article 3 of the Madrid Agreement and under Article 3 of the Protocol Relating to the Madrid Agreement, the official forms issued by the International Bureau of the World Intellectual Property Organization shall be used.

### **Section 46 Refusal of protection**

(1) Where protection is, in full or in part, refused to an international registration the protection of which has been extended to the territory of the Federal Republic of Germany under Article 3 ter of the Madrid Agreement or under Article 3 ter of the Protocol Relating to the Madrid Agreement, and where this refusal is communicated to the International Bureau of the World Intellectual Property Organization to be transmitted to the proprietor of the international registration, the time limit for appointing are

representative in Germany shall, to avoid final refusal, be fixed to four months from the date on which notification of refusal was dispatched by the International Bureau of the World Intellectual Property Organization.

(2) Where the refusal of protection has become final because the proprietor of the international registration has failed to appoint a representative in Germany, an objection to or an appeal from the refusal shall be filed with the German Patent and Trade Mark Office within one further month after the time limit under subsection (1). Instructions about the proprietor's right to appeal shall be attached to the refusal. Section 61(2) of the Trade Mark Act shall apply mutatis mutandis.

## **Part 6 Procedure under Council Regulation (EU) no. 1151/2012**

### **Chapter 1 Registration procedure**

#### **Section 47 Application for registration**

(1) The application for registration of a geographical indication or a designation of origin under Article 49 of Regulation (EU) No. 1151/2012 of the European Parliament and of the Council of November 21, 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1), in their respective applicable version, must be submitted using the form issued by the German Patent and Trademark Office.

(2) The application shall indicate:

1. the name and the address of the applicant,
2. the legal form, size and composition of the applicant group,
3. where a representative has been appointed, the name and the address of the representative,
4. the name to be protected as a geographical indication or designation of origin,
5. the type of agricultural product or foodstuff,
6. the specification under Article 7(1) of the Regulation(EU) no. 1151/2012 according to the form.

#### **Section 48 Publication of the application**

(1) The publication of the application in the Trade Mark Journal (Sec. 130(4) Trade Mark Act) shall indicate at least:

1. the name and the address of the applicant,
2. where a representative has been appointed, the name and the address of the representative,
3. the name to be protected as a geographical indication or designation of origin,
4. the type of agricultural product or foodstuff,
5. the specification under Article 4(2) of the Regulation (EU) no. 510/2006.

(2) The publication shall refer to the possibility of filing an objection under Section 130(4) of the Trade Mark Act in conjunction with Article 49(3) of the Regulation (EU) no. 1151/2012.

### **Section 49 National objection**

(1) The objection under Section 130(4) of the Trade Mark Act in conjunction with Article 49(3) of the Regulation (EU) no. 1151/2012 should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The objection shall indicate:

1. the geographical indication or designation of origin the registration of which is objected to,
2. the name and the address of the objecting party,
3. where a representative has been appointed, the name and the address of the representative,
4. circumstances proving the legitimate interest of the objecting party,
5. the grounds on which the objection is based.

### **Chapter 2 Intergovernmental Opposition proceedings under Section 131 of the Trade Mark Act**

#### **Section 50 Opposition**

(1) The opposition under Section 131 of the Trade Mark Act in conjunction with Article 51(1) second subparagraph of the Regulation (EU) no. 1151/2012 should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The opposition shall indicate:

1. the geographical indication or designation of origin the registration of which is opposed to,
2. the EU number and the date of publication in the Official Journal of the European Union,
3. the name and the address of the opposing party,
4. where a representative has been appointed, the name and the address of the representative,
5. circumstances proving the legitimate interest of the opposing party.

(3) The objection must be justified within two months of submission. The grounds on which the objection is based, referred to in Article 10(1) of Regulation (EU) No. 1151/2012, shall be stated.

### **Section 51 Opposition procedure**

Immediately after expiration of the opposition period, the German Patent and Trademark Office shall inform the German Federal Ministry of Justice and Consumer Protection about the oppositions received by sending the oppositions together with the required documents to it. Grounds for objection submitted subsequently shall be forwarded without delay.

## **Chapter 3 Amendments to the specification; cancellation; inspection of files**

### **Section 52 Amendments to the specification**

(1) The application for amendment of the specification pursuant to Article 9 of the Regulation (EU) no. 510/2006 should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The application shall indicate:

1. the registered geographical indication or designation of origin,
2. the name and address of the applicant,
3. the legal form, size and composition of the applicant group,
4. where a representative has been appointed, the name and the address of the representative,
5. circumstances proving the legitimate interest of the applicant,
6. the categories of the specification to which the amendments relate,
7. the requested amendments and a statement of reasons for the amendments.

(3) For the rest, Article 53(2) Clause 1 of Regulation (EU) No. 1151/2012, Sections 48 to 51 also apply accordingly.

### **Section 53 Request for cancellation**

(1) The request for cancellation of a registered geographical indication or designation of origin under Article 54(1) of the Regulation (EU) no. 1151/2012 should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The request shall contain:

1. the geographical indication or the designation of origin, which is to be cancelled,
2. the name and address of the person filing the request,



3. where a representative has been appointed, the name and address of the representative,
4. circumstances proving the legitimate interest of the person filing the request,
5. reasons for cancellation.

**Section 54 Inspection of files**

The German Patent and Trade Mark Office shall grant the inspection of files in proceedings pursuant to the Regulation (EU) no. 1151/2012.

## **Part 7 Final provisions**

### **Section 56 Transitional provision on occasion of the entry into force of this ordinance**

For trade mark applications filed before the entry into force of this ordinance, the provisions of the Trade Mark Ordinance of 30 November 1994 (Federal Law Gazette I p. 3555), last amended by the ordinance of 1 September 2003 (Federal Law Gazette I p. 1701), shall apply.

### **Section 57 Transitional provision for future amendments**

For trade mark applications filed before the entry into force of amendments to this ordinance, the provisions of this ordinance in the version applicable until that date shall apply.

### **Section 58 Entry into force; abrogation**

This ordinance shall enter into force on 1 June 2004. At the same date, the Trade Mark Regulations of 30 November 1994 (Federal Law Gazette I p. 3555), last amended by the ordinance of 1 September 2003 (Federal Law Gazette I p. 1701), shall be abrogated.