



Ordinance Implementing the Trade Mark Act (Trade Mark Ordinance)¹

of 11 May 2004

(Federal Law Gazette² I, p. 872)

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¹ *Markenverordnung*

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Contents

Part 1 Scope of application	5
Section 1 Trade mark procedures	5
Part 2 Procedures preceding registration	5
Chapter 1 Applications	5
Section 2 Form of application	5
Section 3 Contents of the application	5
Section 4 Application of collective marks or certification marks	5
Section 5 Particulars identifying the applicant and their representative	5
Section 6 Particulars concerning the type of the trade mark	6
Section 6a Trade mark representation	6
Section 6b Trade mark description	6
Section 7 Word marks	6
Section 8 Figurative marks	6
Section 9 Three-dimensional marks	7
Section 10 Colour marks	7
Section 11 Sound marks	7
Section 12 Position marks, tracer marks, pattern marks, motion marks, multimedia marks, hologram marks	7
Section 12a Other types of trade marks	7
Section 13 Models and samples	8
Section 14 (repealed)	8
Section 15 Applications in a foreign language, representations in non-Latin characters	8
Section 16 Documents in a foreign language	8
Section 17 Reference to a trade mark registered in the country of origin	8
Section 18 Postponing the decisive date for determining seniority of a trade mark that has acquired distinctiveness through use	8
Chapter 2 Classification of goods and services	8
Section 19 Classification	8
Section 20 List of goods and services	9
Section 21 Decision on the classification	9
Section 22 (Repealed)	9
Chapter 3 Publication of the application	9
Section 23 Publications concerning the application	9

Part 3 Register; certificate; publication	10
Section 24 Location and form of the Register	10
Section 25 Contents of the Register	10
Section 26 Document, certificates	11
Section 27 Publications relating to registrations in the Register	11
Section 28 (repealed).....	11
Part 4 Individual procedures.....	11
Chapter 1 Opposition procedure	11
Section 29 Form of the opposition	11
Section 30 Contents of the opposition	12
Section 31 Joint decision on several oppositions	12
Section 32 Suspension	12
Chapter 2 Partial transfer; division of applications and registrations.....	12
Section 33 Transfer in part of a registered trade mark.....	12
Section 34 Transfer of rights; rights in rem; insolvency proceedings and measures of levy of execution for applications	12
Section 35 Division of applications	13
Section 36 Division of registrations	13
Chapter 3 Renewal	13
Section 37 Renewal by payment of fees.....	13
Section 38 Request for partial renewal	13
Chapter 4 Surrender.....	14
Section 39 Surrender	14
Section 40 Agreement of third parties	14
Chapter 5 Cancellation.....	14
Section 41 Revocation	14
Section 42 Invalidity due to absolute grounds for refusal and earlier rights.....	14
Chapter 6 Licence	15
Section 42a Registration of a licence.....	15
Section 42b Amendment or cancellation of a licence	15
Section 42c Declaration on the willingness to license or to sell/transfer a trade mark right	15

Part 5 International registrations	15
Section 43 Requests and other communications in the procedure of international registration under the Madrid Agreement	15
Section 44 Requests and other communications in the procedure of international registration under the Protocol Relating to the Madrid Agreement	15
Section 45 Requests and other communications in the procedure of international registration under the Madrid Agreement and the Protocol Relating to the Madrid Agreement	15
Section 46 Refusal of protection.....	15
Part 6 Procedure under Council Regulation (EU) no. 1151/2012	16
Chapter 1 Registration procedure.....	16
Section 47 Application for registration	16
Section 48 Publication of the application	16
Section 49 National opposition.....	16
Chapter 2 Intergovernmental opposition procedure under section 131 of the Trade Mark Act	16
Section 50 Opposition.....	16
Section 51 Opposition procedure	17
Chapter 3 Amendments to the specification; cancellation; inspection of files	17
Section 52 Amendments to the specification	17
Section 53 Request for cancellation	17
Section 54 Inspection of files	17
Section 55 (repealed).....	17
Part 7 Final provisions	17
Section 56 Transitional provision on occasion of the entry into force of this ordinance	17
Section 57 Transitional provision for future amendments	17
Section 58 Entry into force; abrogation.....	17

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 (*Markengesetz*) (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 (DPMA Ordinance – *DPMA-Verordnung*).
- (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 may be filed in writing or electronically. The form issued by the German Patent and Trade Mark Office is to be used for an application filed in writing. The Ordinance on Electronic Legal Transactions with the German Patent and Trade Mark Office (*Verordnung über den elektronischen Rechtsverkehr beim Deutschen Patent- und Markenamt*) shall apply to electronic filing.
- (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. particulars concerning the type of the trade mark under section 6, a representation of the trade mark pursuant to sections 7 to 12 as well as a trade mark description for the cases referred to in section 6b (2), 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 or certification marks

- (1) If registration as a collective mark or a certification mark is requested, a declaration to that effect shall be submitted upon filing the application.
- (2) Paper-based regulations governing use of collective marks or certification marks shall be submitted without binding.
- (3) In the case of amendments of the regulations governing use of collective marks or certification marks, a current version of each regulations governing use shall be submitted.
- (4) Subsections (2) and (3) shall also apply to amendments of the regulations governing use taking place after registration.

Section 5
Particulars identifying
the applicant and their representative

- (1) The application shall contain the following particulars identifying the applicant:
 1. where the applicant is a natural person: given name and family name or, where the registration is to be for the applicant's company, the company name as recorded in the commercial register as well as the address of the residence or principal place of business (street, number of building, postal code, place);
 2. where the applicant is a legal person or a partnership:
 - a) name or company, legal form as well as address (street, number of building, postal code, place) of the principal place of business of the legal person or partnership; the customary abbreviation of the legal form may be used; if the legal person or partnership is registered in a register, the indications must correspond to the register entry;
 - b) in case of a partnership under the Civil Code (*Gesellschaft bürgerlichen Rechts*), also the name and address (street, number of building, postal code, place) of at least one partner entitled to act as representative.

If the applicant has their residence or principal place of business outside Germany, the address pursuant to sentence 1 shall also include the country in addition to the name of the town. Other particulars as to the district,

county or federal state in which the applicant has their residence or principal place of business or whose legal system they are subject to are voluntary.

- (2) In addition, the application may indicate a mailing address other than the address of the applicant, a post office box address as well as telephone numbers, fax numbers and e-mail addresses.
- (3) If the application is filed by several persons or partnerships, subsections (1) and (2) shall apply to all of the persons filing the application.
- (4) If a representative is appointed, subsections (1) and (2) concerning the particulars as to the representative shall apply accordingly. Where the German Patent and Trade Mark Office has allotted the number of a general power of attorney to the representative, this number is to be indicated additionally.

Section 6

Particulars concerning the type of the trade mark

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

1. word mark (section 7),
2. figurative mark (section 8),
3. three-dimensional mark (section 9),
4. colour mark (section 10),
5. sound mark (section 11),
6. position mark, tracer mark, pattern mark, motion mark, multimedia mark, hologram mark (section 12) or
7. other type of trade mark (section 12a).

Section 6a

Trade mark representation

- (1) The trade mark must be represented in a manner which satisfies the requirements of section 8 (1) of the Trade Mark Act. The representation may be filed on paper or on a data carrier. The data carrier must be readable by the German Patent and Trade Mark Office. The types of data carriers and formats which are readable at the German Patent and Trade Mark Office will be communicated on the website www.dpma.de. Where submission of several views is possible under this ordinance, all views must be contained in a single file. If the data carrier is not readable, the representation is deemed not to have been filed.
- (2) In the case of other types of trade marks which cannot be represented otherwise, a representation by text as the sole means of representation is possible if the text enables to determine the clear and precise subject matter of protection of the trade mark according to section 8 (1) of the Trade Mark Act. The text may contain up to 150 words, must consist of continuous text

and must not contain any graphical or other presentational features.

- (3) If the representation of a trade mark type is possible by various means, the applicant decides on the method of representation. If the same representation of the trade mark is filed on paper and on a data carrier, the representation on a data carrier is relevant for the subject matter of protection. In the cases referred to in sentence 2, the means of representation filed first is relevant for determining the filing date.

Section 6b

Trade mark description

- (1) For all types of trade marks except for word marks within the meaning of section 7, a trade mark description can be filed together with the trade mark application to explain the representation of the trade mark.
- (2) A trade mark description must be filed together with the trade mark application if it is only by this description that the subject matter of protection of the trade mark can be determined. This applies particularly to the types of trade marks pursuant to section 12 and other types of trade marks under section 12a.
- (3) The trade mark description must specifically define the trade mark's subject matter of protection in an objective way.
- (4) The trade mark description may contain up to 150 words and shall be filed on a separate sheet in the format 21 cm x 29.7 cm (A4). It must consist of continuous text and must not contain any graphical or other presentational features.

Section 7

Word marks

If the applicant indicates that the trade mark is to be registered in block letters that are generally used at the German Patent and Trade Mark Office, the trade mark shall be reproduced in the usual characters in the application (letters, numerals or other characters). The usual characters, accepted by the German Patent and Trade Mark Office, are published on the Internet at www.dpma.de (in German).

Section 8

Figurative marks

- (1) If the applicant indicates that the trade mark is to be registered as a combined word and figurative mark or as a pure figurative mark, a graphical representation of the trade mark shall be attached to the application. If the trade mark is to be registered in black and white, the graphical representation shall be filed in black and white. If the trade mark is to be registered in colour, the graphical representation shall be filed in colour and the colours shall be specified in the application.

- (2) The representation of the trade mark shall be reproduced on paper in a durable manner and shall be of such colour and shape that the elements of the trade mark appear distinctly in all the details. The representations shall not be pasted over and shall be free from deletions and coverings in other than durable colours.
- (3) The form issued by the German Patent and Trade Mark Office is to be used for the representation of the trade mark, onto which the representation of the trade mark is to be printed or glued. The representation of the trade mark must not be smaller than 8 cm in width or 8 cm in height. The field for the representation of the trade mark may only contain the representation of the trade mark and the indications pursuant to subsection (5). Any other explanatory text, explanatory designations, symbols or dimensions must not be contained in the representation field.
- (4) If the form pursuant to subsection (3) is not used for the representation of the trade mark, a sheet in the format 21 cm x 29.7 cm (A4) must be used. The area used for the representation (type area) shall not exceed 26.2 cm x 17 cm and shall be at least 8 cm in width and 8 cm in height. The sheets shall be printed on one side only. On the top and left side of each page, a minimum margin of 2.5 cm shall be left.
- (5) The correct position of the trade mark, in so far as it is not self-evident, shall be indicated by adding the word "*oben*" (top), above the image, leaving enough space in between.
- (6) Section 6a shall remain unaffected.

Section 9 Three-dimensional marks

- (1) If the applicant indicates that the trade mark is to be registered as a three-dimensional mark, a representation of the trade mark satisfying the requirements of section 8 (1) of the Trade Mark Act shall be attached to the application. If the trade mark is to be registered in black and white, the representation shall be filed in black and white. If the trade mark is to be registered in colour, the representation shall be filed in colour and the colours shall be specified in the application.
- (2) If a graphical representation is attached to the application, the representation may contain up to six different views and shall be furnished on a paper sheet according to the format of section 8 (3) or (4).
- (3) Where the graphical representation is produced by means of an outline drawing, it shall be executed in 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 (6) shall apply accordingly in other respects.

Section 10 Colour marks

- (1) If the applicant indicates that the trade mark is to be registered as a colour mark, a sample of the colour shall be attached to the application of a unicolour abstract colour trade mark. The colour shall be indicated with the code of an internationally recognised colour coding system.
- (2) For an abstract colour mark consisting of multiple colours, the application must contain the systematic arrangement in which the concerned colours are connected in a defined and consistent way in addition to the requirements pursuant to subsection (1).
- (3) For the form of the representation of the sample of the colour, section 8 (2) to (6) shall apply accordingly in other respects.

Section 11 Sound marks

- (1) If the applicant indicates that the trade mark is to be registered as a sound mark, a representation on a data carrier or a graphical representation of the sound mark shall be attached to the application.
- (2) The graphical representation shall be executed by a customary musical notation.
- (3) For the form of the representation, section 8 (2) to (6) shall apply accordingly.

Section 12 Position marks, tracer marks, pattern marks, motion marks, multimedia marks, hologram marks

- (1) If the applicant indicates that the trade mark is to be registered as position mark, tracer mark, pattern mark, motion mark, multimedia mark or hologram mark, a representation of the trade mark satisfying the requirements of section 8 (1) of the Trade Mark Act shall be attached to the application.
- (2) For the form of the representation, the provisions of sections 8 to 11 shall apply accordingly.

Section 12a Other types of trade marks

- (1) If the applicant applies for a trade mark which is not covered by the types of trade marks listed in sections 7 to 12, the trade mark may be registered as other type of trade mark. A representation of the trade mark satisfying the requirements of section 8 (1) of the Trade Mark Act shall be attached to the application. Under the conditions of section 6a (2), the representation may also be made by text.
- (2) For the form of the representation, the provisions of sections 8 to 11 shall apply accordingly in other respects.

Section 13
Models and samples

No models or samples of products bearing the trade mark or no models or samples of the trade mark itself shall be attached to the application.

Section 14
(repealed)

Section 15
Applications in a foreign language,
representations in non-Latin characters

- (1) Applications filed in a foreign language shall be accorded a date of filing under section 33 (1) of the Trade Mark Act if the requirements under section 32 (2) of the Trade Mark Act are met.
- (2) If the representation of the trade mark contains non-Latin characters, a German translation, a transliteration and a transcription of the non-Latin trade mark text shall be attached. The German Patent and Trade Mark Office may request from the applicant, setting an appropriate time limit, that the translation, the transliteration and the transcription be authenticated by a lawyer or a patent attorney or made by a sworn translator.
- (3) A German translation of the other foreign-language contents of the application, particularly of the list of goods and services, shall be filed within three months from the receipt of the application by the German Patent Office and Trade Mark Office, in derogation of subsection (2). The German Patent and Trade Mark Office may request from the applicant, setting an appropriate time limit, that the translation be authenticated by a lawyer or a patent attorney or made by a sworn translator.
- (4) Where the translation under subsection (3) sentence 1 is not filed in due time, the application shall be deemed to have been withdrawn. Where the translation, the transliteration or the transcription under subsection (2) sentence 2 or subsection (3) sentence 2 is not filed in due time, the application shall be refused.
- (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
Documents in a foreign language

- (1) German translations of documents in a foreign language shall be authenticated by a lawyer or patent attorney or made by a sworn translator.
- (2) German translations of foreign-language priority documents and copies of earlier applications (section 34 (3) sentence 2 of the Trade Mark Act) shall be subsequently filed only upon request by the German Patent and Trade Mark Office. The

German Patent and Trade Mark Office shall set an appropriate time limit for the subsequent filing.

- (3) German translations of other documents
 1. not considered documents of the application and
 2. filed in English, French, Italian or Spanish
 shall be subsequently filed only upon request by the German Patent and Trade Mark Office. The German Patent and Trade Mark Office shall set an appropriate time limit for the subsequent filing.
- (4) If other documents not considered documents of the application are filed in other languages than those listed in subsection (3) sentence 1 no. 2, translations into German shall be subsequently filed within one month from the receipt of the documents.
- (5) If the translation within the meaning of subsections (2) to (4) is filed after the expiry of the time limit, the foreign-language document shall be deemed to have been received at the date of receipt of the translation. If no translation is filed, the foreign-language document shall be deemed to have not 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, published by the German Patent and Trade Mark Office in the Federal Gazette (*Bundesanzeiger*), in conformity with the system of classification established by the Geneva Act of 13 May 1977 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 (the Nice Classification) (Federal Law Gazette 1981 II, p. 358, 359).

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 pursuant to section 19.
- (2) The goods and services for which the protection of the trade mark is sought shall be identified by the applicant with sufficient clarity and precision to enable the competent authorities and the public, on that sole basis, to determine the extent of the protection sought.
- (3) For the indications under subsection (2), the general indications included in the class headings of the Nice Classification or other general terms may be used, provided that they are clear and precise.
- (4) The goods and services shall be arranged in classes in the order of the classification.
- (5) The use of general terms shall include all the goods or services clearly covered by the literal meaning of the term.
- (6) The list of goods and services shall be in font size 11 and 1.5 line spacing when the application is filed in writing.

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
(Repealed)

Chapter 3
Publication of the application

Section 23
Publications concerning the 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 (section 34 of the Trade Mark Act), exhibition priority (section 35 of the Trade Mark Act), claimed by the applicant, or as to the seniority claimed under Article 35 of the Council Regulation (EC) no. 207/2009 of 26 February 2009 on the Community trade mark (EC) (OJ L 78, 24 March 2009, p. 1), amended by Regulation (EU) 2015/2424 (OJ L 341, 24 December 2015, p. 21),
 5. the name, the legal form where appropriate, the residence or principal place of business of the applicant,
 6. where a representative has been appointed, the name and the principal place of business of the representative,
 7. the address indicating the addressee, as well as
 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 entered 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 (section 6 (2) of the Patent Costs Act [*Patentkostengesetz*]) or due to the fact that it failed to satisfy the minimum requirements for according a date of filing (section 36 (2) sentence 1 in conjunction with section 36 (1) no. 1, section 33 (1) of the 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 register number of the trade mark,
2. the file number of the application, if it is not identical with the register 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. a description of the trade mark, if any,
7. for trade marks registered by proving that they acquired distinctiveness through use (section 8 (3) of the 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 6quinquies of the Paris Convention, an indication to this effect,
9. if applicable, the indication that the trade mark is a collective mark or a certification mark,
10. in case of a trade mark the seniority of which has been claimed under Article 34 or 35 of Council Regulation (EC) no. 207/2009 of 26 February 2009 on the Community trade mark (OJ L 78 of 24 March 2009, p. 1), amended by the Regulation (EU) 2015/2424 (OJ L 341 of 24 December 2015, p. 21) for a European Union 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 revocation or invalidity,
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) of the Trade Mark Act,
13. the date, the country and the file number of the foreign priority claimed by the proprietor of the trade mark (section 34 of the Trade Mark Act),
14. particulars as to an exhibition priority claimed by the proprietor of the trade mark (section 35 of the Trade Mark Act),
15. the name, the legal form where appropriate and the residence or principal place of business of the proprietor of the trade mark; for a partnership under the Civil Code, also the name and the residence of the designated partner entitled to act as representative,
16. if a representative has been appointed, the name and the principal place of business of the representative,
17. the address indicating the addressee,
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,
- 20a. the beginning and the end of the grace period for non-use pursuant to sections 26 and 43 (1) of the Trade Mark Act,
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) particulars on the opposing sign on which the opposition is based,
 - c) the opposition status,
 - d) the date of the conclusion of the opposition proceedings,
 - e) where the trade mark has been cancelled in full, an indication to this effect,
 - f) where the trade mark has been cancelled in part, the goods and services to which the cancellation refers,
23. the renewal of the duration of protection,
24. where a third person has filed an application for revocation or for a declaration of invalidity of the registered trade mark or brought an action for revocation or for a declaration of invalidity of a registered trade mark:
 - a) in case of an application for revocation or for a declaration of invalidity pursuant to sections 49 to 51 of the Trade Mark Act, an indication to this effect,
 - b) in the case of an action for revocation or for a declaration of invalidity of a registered trade mark, the date on which the action is brought,
 - c) in case of an application for revocation or for a declaration of invalidity pursuant to sections 49 to 51 of the Trade Mark Act, the conclusion of the revocation or invalidity proceedings,
 - d) in the case of an action for revocation or for a declaration of invalidity of a registered trade mark, the outcome of the proceedings and the date when the decision has become final,
 - e) in the case of a complete revocation or declaration of invalidity or cancellation of the trade mark, an indication to this effect, stating the grounds for revocation or invalidity,

- f) in the case of a partial revocation or declaration of invalidity and cancellation of the trade mark, an indication to this effect, stating the grounds for revocation or invalidity, and the goods and services to which the cancellation refers,
- 25. where invalidity proceedings are initiated *ex officio*:
 - a) where the trade mark has been declared invalid and cancelled in full, an indication to this effect, stating the grounds for invalidity,
 - b) where the trade mark has been declared invalid and cancelled in part, an indication to this effect, stating the grounds for invalidity, 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 grounds 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 (*Stammeintragung*), a reference to the register 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 register number of the parent registration,
- 31. the date and number of the international registration (sections 110, 122 (2) of the 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* (section 29 of the Trade Mark Act),
- 34a. particulars as to licences, including the name, the legal form and the address of the residence or principal place of business of the licensee,
- 34b. declarations about the willingness to grant licences or to sell/transfer the trade mark right,
- 34c. particulars on the regulations governing use of collective marks or certification marks,

- 35. particulars of measures of levy of execution (section 29 (1) no. 2 of the Trade Mark Act) and involvement of the trade mark in insolvency proceedings (section 29 (3) of the Trade Mark Act),
- 36. amendments of the particulars indicated in nos. 15, 16 and 17,
- 37. corrections of registrations in the Register (section 45 (1) of the Trade Mark Act).

Section 26 Document, 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. Non-graphical representations and regulations governing use of a trade mark are replaced by a reference to the trade mark register.

Section 27 Publications relating to registrations in the Register

- (1) Registrations in the Register pursuant to section 25 shall be published in regularly published summaries of the German Patent and Trade Mark Office.
- (2) The publication can be made in electronic form.
- (3) The publication of the registration shall comprise all details recorded in the register, except for those specified in section 25 nos. 20a, 22 (b) and (c), no. 24 (b) and (d), nos. 31 and 34a to 34c.
- (4) The first publication of a trade mark registration shall be accompanied by a note referring to the possibility to oppose the trade mark (section 42 of the Trade Mark Act). That note shall be repeated if the registered trade mark is republished due to considerable deficiencies in the first publication. The note can be made jointly for all trade marks published under the sentences 1 and 2.

Section 28 (repealed)

Part 4 Individual procedures

Chapter 1 Opposition procedure

Section 29 Form of the opposition

- (1) A separate opposition shall be required for each trade mark, commercial designation, protected designation of origin or geographical indication on the basis of which notice of opposition is given (opposing sign) to the registration of a trade mark. If all opposing signs belong to the same proprietor, this only constitutes one opposition.

- (2) The opposition is to 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 opposing sign as well as the opponent. If the opposing 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 is to include the following information, in so far as it is not already required for determining the identity according to subsection (1):
1. the register number of the trade mark whose registration is opposed to,
 2. the register number of the registered opposing trade mark or the file number of the opposing trade mark applied for or the reference number of the protected designation of origin or the geographical indication,
 3. the representation and the designation of the type of the opposing sign,
 4. where the opposing trade mark is an international registration, the register number of the opposing trade mark and, in the case of opposing international registrations of marks 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 opposing 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

Joint decisions may be taken on several oppositions.

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 revocation or invalidity proceedings are 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 for the recordal 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) In other respects, section 36 (1) to (4) and (6) shall 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, rights *in rem*, measures of levy of execution or insolvency 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 the recording of a 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 accordingly.

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 is to 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 is to 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 register 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 register 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 is to be filed using the form issued by the German Patent and Trade Mark Office.
- (2) The request shall indicate:
 1. the register 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 consent, required under section 48 (2) of the Trade Mark Act, of a proprietor, entered in the Register of a right to the trade mark, the submission of a declaration of consent signed by this person or by their representative shall be sufficient. Authentication of the declaration or the signature shall not be required. Consent may also be proved in another way.

Chapter 5 Cancellation

Section 41 Revocation

- (1) The application for revocation of a trade mark under section 53 (1) of the Trade Mark Act is to be filed using the form issued by the German Patent and Trade Mark Office.
- (2) The application shall indicate:
 1. the register number of the trade mark for which revocation is requested,
 2. the name and the address of the person filing the application,

3. where the person filing the application has appointed a representative, the name and the address of the representative,
4. where revocation of the trade mark is requested for some of the goods and services only, either the goods and services for which a declaration of invalidity is requested or the goods and services for which a declaration of invalidity is not requested,
5. the grounds for revocation under section 49 of the Trade Mark Act.

Section 42 Invalidity due to absolute grounds for refusal and earlier rights

- (1) Section 41 of this ordinance shall apply accordingly to the application for a declaration of invalidity due to absolute grounds for refusal and earlier rights under section 53 (1) of the Trade Mark Act.
- (2) In addition to the information under section 41 (2), the following information must be provided:
 1. in the case of an application for a declaration of invalidity due to earlier rights pursuant to section 53 (1) of the Trade Mark Act: information identifying the earlier right, and
 2. in the case of an application under section 53 (3) of the Trade Mark Act: information identifying the proprietor of the earlier right.

In the case of earlier rights which have not been applied for or registered, at least the category, the representation, the type, the decisive date for determining seniority, the subject matter and the proprietor must be indicated.
- (3) For the application for a declaration of invalidity due to earlier rights under section 53 (1) of the Trade Mark Act, the facts and evidence on which it relies must additionally be indicated.
- (4) Unless already required to identify the earlier right pursuant to subsection (2) sentence 1 no. 1 or to identify the proprietor pursuant to subsection (2) sentence 1 no. 2, all applications must indicate:
 1. the register number of a registered earlier trade mark, the file number of an earlier trade mark applied for or the reference number of the protected designation of origin or geographical indication,
 2. information proving that the person filing the application, who is not the proprietor of the earlier right under section 53 (3) of the Trade Mark Act, is entitled to assert that right in invalidity proceedings,
 3. The representation and the designation of the type of the earlier right,
 4. where the earlier right is an international registration of a mark, its register number and, in the case of international registrations of

earlier marks registered before 3 October 1990 with effect in both the Federal Republic of Germany and the German Democratic Republic, the statement on which of those registrations the application is based,

5. the name and address of the proprietor of the earlier right.

Chapter 6 Licence

Section 42a Registration of a licence

- (1) The request for registration of the grant of a licence under section 30 (6) sentence 1 of the Trade Mark Act is to be filed using the form provided by the German Patent and Trade Mark Office.
- (2) The request shall indicate:
 1. the register number of the trade mark to be covered by the licence,
 2. the name of the proprietor of the trade mark,
 3. details of the licensee in accordance with section 5,
 4. indication whether it is an exclusive licence or a simple licence,
 5. indication whether it is a sub-licence of the licensee recorded in the register,
 6. information on the time or geographical limitations or limitations of the scope; if the licence has been limited to only some of the goods and services, the goods and services for which the licence has been granted.
- (3) The consent of the trade mark proprietor or licensee required under section 30 (6) of the Trade Mark Act must be given in writing.

Section 42b Amendment or cancellation of a licence

The request for amendment or cancellation of a licence recorded pursuant to section 30 (6) of the Trade Mark Act must contain the register number of the trade mark and the designation of the licence which is to be amended or cancelled.

Section 42c Declaration on the willingness to license or to sell/transfer a trade mark right

- (1) The applicant or the trade mark proprietor recorded in the register may make a written declaration to the German Patent and Trade Mark Office of their non-binding willingness to grant licences or to sell/transfer the trade mark right. The declaration will be entered in the register.
- (2) The declaration of willingness to grant licences is not admissible as long as an entry about the grant

of an exclusive licence has been recorded in the register or a request for the registration of such an entry has been received by the German Patent and Trade Mark Office.

- (3) Declarations under subsection (1) may any time be withdrawn in writing vis-à-vis the German Patent and Trade Mark Office.

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 entered 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 entered 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 entered 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 3ter of the Madrid Agreement or under Article 3ter 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 a 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, a special motion (*Erinnerung*) or an appeal from the refusal shall be lodged with the German Patent and Trade Mark Office within one further month after the time limit under subsection (1). Instructions on appellate remedies appeal shall be attached to the refusal. Section 61 (2) of the Trade Mark Act shall apply accordingly.

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 the Regulation (EU) no. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ EU no. L 343 of 14 December 2012 p. 1) in the respective applicable version shall be filed using the form issued by the German Patent and Trade Mark 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 (section 130 (4) of the 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 7 (1) of the Regulation (EU) no. 1151/2012.

- (2) The publication shall refer to the possibility of filing an opposition 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 opposition

- (1) The opposition under section 130 (4) of the Trade Mark Act in conjunction with Article 49 (3) of the Regulation (EU) no. 1151/2012 is to 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 name and the address of the opposing party,
 3. where a representative has been appointed, the name and the address of the representative,
 4. circumstances proving the legitimate interest of the opposing party,
 5. the grounds on which the opposition is based.

Chapter 2

Intergovernmental opposition procedure 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) subsection 1 of the Regulation (EU) no. 1151/2012 is to 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 EC 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 opposition shall be reasoned within two months after filing. The grounds under Article 10 (1) of the Regulation (EU) no. 1151/2012 on which the opposition is based shall be indicated.

Section 51
Opposition procedure

After expiry of the opposition period, the German Patent and Trade Mark Office shall inform the Federal Ministry of Justice and Consumer Protection, without delay, on the oppositions received by transmitting the oppositions together with the necessary documents. The reasoned statement of opposition submitted subsequently will 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 to the specification pursuant to Article 53 of the Regulation (EU) no. 1151/2012 is to 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) In other respects, sections 48 to 51 shall apply accordingly to applications under Article 53 (2) sentence 1 of the Regulation (EU) no. 1151/2012.

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 is to 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 procedures pursuant to the Regulation (EU) no. 1151/2012.

Section 55
(repealed)

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 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 be abrogated.