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Ordinance Implementing the Trade Mark Law (Trade Mark Ordinance)

of 11 May 2004

(Federal Law Gazette¹ I p. 872)

last amended by Article 1 of the Ordinance of 15 October 2008 (Federal Law Gazette I p. 1995)

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¹ Bundesgesetzblatt (BGBl)

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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 Law (trade mark

matters) the provisions of this ordinance shall apply in addition to the provisions of the Trade Mark Law and of the Ordinance Concerning the German Patent and Trade Mark Office (DPMA Ordinance).

(2) German industrial standards (DIN), 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 for the registration of a trade mark shall be filed using the form issued by the German Patent and Trade Mark Office. Section 12 of the DPMA Ordinance shall apply to electronic filing. In cases under Sections 14 and 15, electronic filing shall be excluded.

(2) Trade mark applications may be filed in respect of goods and of services.

(3) 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, his representative under Section 5;
2. particulars concerning the type of the trade mark under Section 6 as well as a representation of the trade mark under Sections 7 to 12; 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

Particulars identifying the applicant and his representative

(1) The application shall contain the following particulars identifying the applicant:

1. where the applicant is a natural person, his first 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;

1) See footnote (Sec. 19)

2. where the applicant is a legal person or a partnership, the name of this legal person or of this partnership; the customary abbreviation of the legal form may be used. If the legal person or partnership is registered in a register, the name shall be indicated in a form corresponding to that of the register entry. In case of a partnership under the Civil Code, the name and address of at least one partner entitled to act as representative shall also be indicated;
3. the address of the applicant (street, number of building, postal code, town).

(2) The application may indicate a postal address other than the address of the applicant or P.O.B. address as well as telephone numbers and fax numbers.

(3) If the application is filed by several persons, subsections (1) and (2) shall apply to all of them.

(4) If the applicant has his domicile or seat outside Germany, the address under subsection (1) No. 3 shall also include the country in addition to the town. Furthermore, it is possible to indicate, if applicable, the district, county or federal state in which the applicant has his domicile or seat, or whose legal system he is subject to.

(5) If the German Patent and Trade Mark Office has allotted an applicant's number to the applicant under Section 16 of the DPMA Ordinance, this number should be indicated in the application.

(6) If a representative is appointed, subsections (1) and (2) concerning the indication of the name and the address of the representative shall apply *mutatis mutandis*. Where the German Patent and Trade Mark Office has allotted a representative's number or the number of a general power of attorney to the representative under Section 16 of the DPMA Ordinance, this number should be indicated.

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. 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 sound mark (Sec. 11); or,
6. other type of trade mark (Sec. 12).

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).

Section 8

Figurative marks

(1) If the applicant indicates that the trade mark is to be registered in the chosen graphical reproduction of a word mark within the meaning of Section 7, as a two-dimensional combined word and figurative mark, as a figurative mark or in colour, two identical two-dimensional

graphical representations of the trade mark shall be attached to the application. If the trade mark is to be registered in colour, the colours shall also 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, 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 colours.

(3) The sheets used for representations of trade marks shall not exceed A4 size. The area used for the representation (type area) shall not exceed 26.2 cm x 17 cm and shall be at least 8 cm x 8 cm. 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.

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

(5) The representation of the trade mark can additionally be filed on a data carrier. The data carrier shall be readable and shall not contain any viruses or other forms of malicious logic. Otherwise the data carrier cannot be used. The readable data carrier formats, accepted by the German Patent and Trade Mark Office, are published on the Internet at: www.dpma.de. Images shall be stored as single files in the root directory of an empty data carrier.

1. The following image formatting will be accepted:

image format		JPEG (*.jpg)
resolution	for wide format - width	minimum 945 pixels, maximum 1890 pixels
	for upright 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 his representative, if any; and
 - 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.

(6) The application may contain a description of the trade mark.

Section 9

Three-dimensional marks

(1) If the applicant indicates that the trade mark is to be registered as a three-dimensional mark, two identical two-dimensional graphical representations of the trade mark shall be attached to the application. The representations may contain up to six different views and shall be furnished on a paper sheet according to the format of Section 8(3). If the trade mark is to be registered in colour, the colours shall be specified in the application.

(2) For the reproduction, photographs in the form of positive paper copies or graphical outline drawings shall be used, by which the mark to be shown is durably represented, and which admit of photo offset, micro-filming including microfilm prints with sharply defined contours as well as electronic image storage reproduction.

(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 (5) 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.

(5) The application may contain a description of the trade mark.

Section 10

Tracer marks

(1) 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*.

(2) The application may contain a description of the trade mark together with indications as to the type of the tracer.

Section 11

Sound marks

(1) If the applicant indicates that the trade mark is to be registered as a sound mark, two identical 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 (5) shall apply *mutatis mutandis*.

(3) The applicant shall file a sound representation of the mark on a data carrier.

(4) The application may contain a description of the trade mark.

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

1. The readable data carrier formats, accepted by the German Patent and Trade Mark Office, are published on the Internet at: www.dpma.de. 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. 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 his representative, if any; and
- 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. Labels must not be used.

3. The data carrier shall be readable and shall be free of viruses or other forms of malicious logic. If the data carrier is not readable, the sound representation is deemed not to have been filed.

4. For each sound mark, one data carrier only shall be submitted.

Section 12

Other types of trade marks

(1) If the applicant indicates that the trade mark is to be registered as other type of trade mark, two identical two-dimensional graphical representations of the trade mark shall be attached to the application. If the trade mark is to be registered in colour, the colours shall be specified in the application.

(2) For the form of the representation Section 8(2) to (5), Section 9(1) to (3) and (4), second sentence, as well as Section 11(2), first sentence, (3) and (5) shall apply *mutatis mutandis*.

(3) The application may contain a description of the trade mark.

Section 13

Models and samples

No models or samples of products bearing the trade mark 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 14

Forms in a foreign language

For filing applications and requests, the applicant may use the forms issued by the German Patent and Trade Mark Office or identical forms (Sec. 9(1), third sentence of the DPMA Ordinance), or forms in a foreign language completed in German, if the latter comply with international standards. The German Patent and Trade Mark Office may require further explanations, in case of doubt as to the contents of individual indications in the foreign language form. The provisions for according a date of filing shall not be affected by these subsequent requirements.

Section 15

Applications in a foreign language

(1) Applications filed in a foreign language shall be accorded a date of filing under Section 33(1) of the Trade Mark Law, if the requirements under Section 32(2) of the Trade Mark Law are met.

(2) Within one month from the receipt of the application by the German Patent Office and Trade Mark Office, a German translation of the foreign language contents of the application, particularly of the list of goods and services, shall be filed. The translation shall be authenticated by an attorney-at-law or patent attorney or made by a sworn translator.

(3) The translation of the list of goods and services shall be deemed to have been received at the date of filing accorded under Section 33(1) of the Trade Mark Law. Where the translation under subsection (2) is not filed within the said time limit the application shall be deemed not to have been filed. If the translation is filed after the expiry of the time limit, but before the establishment of the facts under the second sentence, the processing of the application shall be continued. Where the translation concerns the list of goods and services, the date of receipt of the translation shall be accorded as the date of filing of the application.

(4) 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) The German Patent and Trade Mark Office may consider the following documents in a foreign language:

1. priority documents;
2. documents concerning the trade mark registered in the country of origin;
3. documents for furnishing prima facie evidence or proving facts;
4. comments and certifications by third parties;
5. expert opinions;
6. references from publications.

(2) Where the foreign language document is not in English, French, Italian or Spanish, a translation authenticated by an attorney-at-law or a patent attorney or made by sworn translator shall be filed within one month from the receipt of the document. If the translation is not filed within this time limit, the document shall be deemed not to have been received. If the translation is filed after the expiry of the said time limit, the document shall be deemed to have been received at the date of receipt of the translation.

(3) Where the foreign language document is in English, French, Italian or Spanish, the German Patent and Trade Mark Office may require that a translation be furnished. The German Patent and Trade Mark Office may require that the translation be authenticated by an attorney-at-law or a patent attorney or made by a sworn translator. If the translation is not filed in time, the document shall be deemed not to have been received. If the translation is filed after the expiry of the said time limit, the document shall be deemed to have been received at the date of receipt of the translation.

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 Law 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 Law shall not be affected.

Chapter 2

Classification of goods and services

Section 19

Classification

(1) The classification of goods and services shall be determined by the classification of goods and services contained in annex 1* to this ordinance.

(2) In addition, the alphabetical lists of goods and services (annexes 2* and 3* to this ordinance) should preferably be used for classification.

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(1)).

(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(2) 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 should 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. Insofar as it is annexed to the application, two copies of that list shall be submitted.

* The annexes 1 to 3 to the Trade Mark Ordinance correspond to the contents of the international classification for goods and services for the purposes of the registration of marks, 9th edition.

It can be obtained from the website of the German Patent and Trade Mark Office: <http://www.dpma.de/english/service/classifications/index.html>.

The printed version can be purchased from Carl Heymanns Verlag GmbH, 50926 Köln, Germany, ISBN-13: 978-3-452-26569-2 and ISBN-10: 3-452-26569-2.

Furthermore, the terms of goods and services and the corresponding classes can be searched at <http://www.dpma.de/service/klaskifikationen/nizzaklassifikation/suche/suchen.html> (in German).

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. Insofar 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

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 trade mark.

Chapter 3

Publication of the application

Section 23

Publications concerning application

(1) The publication of the application of a trade mark, which has been accorded a date of filing (Sec. 33(1) Trade Mark Law) 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 Law), exhibition priority (Sec. 35 Trade Mark Law), claimed by the applicant, or as to the seniority claimed under Article 35 of the Council Regulation on the Community Trade Mark (EC) No. 40/94 of 20 December 1993 (OJ EC 1994 No. L 11 p. 1);
5. the name and the domicile or seat of the applicant;
6. where a representative has been appointed, the name and the domicile or seat of the representative;
7. the address for service, also indicating the person accepting service; and
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 Law) 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 Law), 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. a description of the trade mark kept in the files;
7. for trade marks registered by proving that they acquired distinctiveness through use (Sec. 8(3) of the Trade Mark Law), 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 Council Regulation on the Community Trade Mark (EC) No. 40/94 of 20 December 1993 (OJ EC 1994 No. L 11 p. 1) for a Community 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 day decisive for determining the seniority of a trade mark under Section 37(2) of the Trade Mark Law;
13. the date, the country and the file number of the foreign priority claimed by the proprietor of the trade mark (Sec. 34 of the Trade Mark Law);
14. particulars as to an exhibition priority claimed by the proprietor of the trade mark (Sec. 35 of the Trade Mark Law);

15. the name and domicile or seat 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 for service, also indicating the person accepting service;
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 Law, an indication to this effect;
 - b) the conclusion of the cancellation procedure pursuant to Section 50 of the Trade Mark Law;
 - 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, specifying 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 Law, 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 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 (Sections 110, 122 (2) of the Trade Mark Law);
32. the assignment of the trade mark together with particulars as to the successor in title and, if applicable, his 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 of the Trade Mark Law);
35. particulars of measures of levy of execution (Sec. 29(1) No. 2 of the Trade Mark Law) and involvement of the trade mark in insolvency proceedings (Sec. 29(3) of the Trade Mark Law);
36. amendments of the particulars indicated in Nos. 15, 16 and 17;
37. corrections of registrations in the Register (Sec. 45(1) of the Trade Mark Law).

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 he has explicitly renounced it.

Section 27

Location and form of the publication

(1) Details on the registered trade mark will be published in the Trade Mark Journal issued by the German Patent and Trade Mark Office.

(2) The publication can be made in electronic form.

Section 28

Contents of the publication of the registration

(1) The publication of the registration comprises all details recorded in the Register, except for those specified in Section 25 Nos. 20 and 31. Trade mark registrations in colour shall be published in colour.

(2) The first publication of trade mark registrations shall be accompanied by a note referring to the possibility to oppose the trade mark (Sec. 42 of the Trade Mark Law). That note shall be repeated if the 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 first and second sentence.

(3) In case of a cancellation in part, the registration of the trade mark may be re-published in total.

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 on the basis of which notice of opposition is given (earlier trade mark) to the registration of a trade mark. Oppositions may be combined in one notice of opposition, if based on several earlier trade marks 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 trade mark and the earlier trade mark as well as the opponent.

(2) The opposition should include:

1. the registration number of the trade mark whose registration is opposed to;
2. the registration number of the registered earlier trade mark or the file number of the earlier trade mark applied for;
3. in the cases under Section 42(2) Nos. 2 and 3 of the Trade Mark Law, the representation and the designation of the type of the earlier trade mark;
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 trade mark;
6. where the opposition is lodged by a person not entered in the Register, the name and the address of the opponent as well as the date when the request for recordal of 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 representation of the earlier trade mark in the form in which it was registered or applied for;
10. the goods and services on which the opposition is based;
11. 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 Law, the German Patent and Trade Mark Office may also, where appropriate, suspend an opposition procedure.

(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 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 (5) and (7) shall apply *mutatis mutandis* subject to the proviso that the time limit for filing documents prescribed in subsection (5) shall not be applicable.

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, measure 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 transfer in part shall indicate those goods and services to which the transfer of rights relates. In other respects, Section 35(1) to (5) and (7) shall apply *mutatis mutandis* subject to the proviso that the time limit for filing documents prescribed in subsection (5) shall not be applicable.

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 Law. 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) Where the original application contains a representation of the trade mark under Sections 8 to 12, four additional identical two-dimensional graphical representations of the trade mark shall be filed within a period of three months under Section 40(2), second sentence of the Trade Mark Law; for sound marks a sound reproduction of the mark shall be additionally filed under Section 11(3).

(6) 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.

(7) 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 Law. 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) Where the original registration contains a representation of the trade mark under Sections 8 to 12, four additional identical two-dimensional graphical

representations of the trade mark shall be filed within a period of three months under Section 46(3), second sentence of the Trade Mark Law; for sound marks a sound reproduction of the mark shall be additionally filed under Section 11(3).

(6) 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.

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

(8) 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 Law, 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 his 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 Law 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 Law 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 Law, 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 his 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 Law 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 Law.

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 Law.

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 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, 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 Law shall apply *mutatis mutandis*.

Part 6

Procedure under Council Regulation (EC) No. 510/2006 of 20 March 2006, on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs

Chapter 1 Registration procedure

Section 47

Application for registration

(1) The application for registration of a geographical indication or a designation of origin under the Council Regulation (EC) No. 510/2006 of 20 March 2006 on the

Protection of Geographical Indications and Designations of Origin (OJ EU No. L 93 p. 12) 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 within the meaning of Article 5(1) of the Regulation (EC) No. 510/2006;
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 4(2) of the Regulation (EC) No. 510/2006 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 Law) 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 (EC) No. 510/2006.

(2) The publication shall refer to the possibility of filing an objection under Section 130(4) of the Trade Mark Law in conjunction with Article 5(5) of the Regulation (EC) No. 510/2006.

Section 49

National objection

(1) The objection under Section 130(4) of the Trade Mark Law in conjunction with Article 5(5) of the Regulation (EC) No. 510/2006 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 pursuant to Article 5(5) in conjunction with Article 7(3) of the Regulation (EC) No. 510/2006 on which the objection is based.

Chapter 2

Objection procedure

under Section 131 Trade Mark Law

Section 50

Objection

(1) The objection under Section 131 Trade Mark Law in conjunction with Article 7(2) of the Regulation (EC) No. 510/2006 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 EC number and the date of publication in the Official Journal of the European Union;
3. the name and the address of the objecting party;
4. where a representative has been appointed, the name and the address of the representative;
5. circumstances proving the legitimate interest of the objecting party.

(3) The objection shall state the grounds on which it is based within the objection period. The grounds under Article 7(3) of the Regulation (EC) No. 510/2006, on which the objection is based, shall be indicated.

Section 51

Objection procedure

After expiry of the objection period, the German Patent and Trade Mark Office shall inform the Federal Ministry of Justice, without delay, on the objections received by transmitting the objections together with the necessary documents.

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 (EC) 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 within the meaning of Article 9(1) of the Regulation (EC) No. 510/2006;
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, Sections 48 to 51 shall apply *mutatis mutandis* to applications under Article 9(2), first sentence, of the Regulation (EC) No. 510/2006.

Section 53

Request for cancellation

(1) The request for cancellation of a registered geographical indication or designation of origin under Article 12(2) of the Regulation (EC) No. 510/2006 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 procedures pursuant to the Regulation (EC) No. 510/2006.

Section 55

(deleted)

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 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 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.