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

of 11 May 2004

(Federal Law Gazette² I p. 872)

last amended by Article 1 of the ordinance of 2 June 2016 (Federal Law Gazette I p. 1354)

Table of contents

	Section 21	Decision on the classification
	Section 22	Amendment of the classification
		Chapter 3
		Publication of the application
Section 1	Trade mark procedures	
		Part 2
		Procedures preceding registration
		Chapter 1
		Applications
Section 2	Form of application	
Section 3	Contents of the application	
Section 4	Application of collective marks	
Section 5	Particulars identifying the applicant and their representative	
Section 6	Particulars concerning the type of the trade mark	
Section 6a	Mark description	
Section 7	Word marks	
Section 8	Figurative marks	
Section 9	Three-dimensional marks	
Section 10	Tracer marks	
Section 10a	Colour marks	
Section 11	Sound marks	
Section 12	Other types of trade marks	
Section 13	Models and samples	
Section 14	(repealed)	
Section 15	Applications in a foreign language, representations in non-Latin characters	
Section 16	Documents in a foreign language	
Section 17	Reference to a trade mark registered in the country of origin	
Section 18	Postponing the decisive date for determining seniority of a the trade mark that has acquired distinctiveness through use	
		Chapter 2
		Classification of goods and services
Section 19	Classification	
Section 20	List of goods and services	
		Part 3
		Register; certificate; publication
Section 24	Location and form of the Register	
Section 25	Contents of the Register	
Section 26	Certificates	
Section 27	Publications relating to registrations in the Register	
Section 28	(repealed)	
		Part 4
		Individual procedures
		Chapter 1
		Opposition procedure
Section 29	Form of the opposition	
Section 30	Contents of the opposition	
Section 31	Joint decision on several oppositions	
Section 32	Suspension	
		Chapter 2
		Transfer in part; division of applications and registrations
Section 33	Transfer in part of a registered trade mark	
Section 34	Transfer of rights; rights <i>in rem</i> ; insolvency proceedings and measures for levy of execution for applications	
Section 35	Division of applications	
Section 36	Division of registrations	
		Chapter 3
		Renewal
Section 37	Renewal by payment of fees	
Section 38	Request for partial renewal	

¹ Markenverordnung

² Bundesgesetzblatt (BGBl)

	Chapter 4	
	Surrender	
Section 39	Surrender	
Section 40	Agreement of third parties	
	Chapter 5	
	Cancellation	
Section 41	Cancellation on grounds of revocation	
Section 42	Cancellation due to absolute grounds for refusal	
	Part 5	
	International registrations	
Section 43	Requests and other communications in the procedure of international registration under the Madrid Agreement	
Section 44	Requests and other communications in the procedure of international registration under the Protocol Relating to the Madrid Agreement	
Section 45	Requests and other communications in the procedure of international registration under the Madrid Agreement and the Protocol Relating to the Madrid Agreement	
Section 46	Refusal of protection	
	Part 6	
	Procedure under the Council Regulation (EU) no. 1151/2012	
	Chapter 1	
	Registration procedure	
Section 47	Application for registration	
Section 48	Publication of the application	
Section 49	National opposition	
	Chapter 2	
	Intergovernmental opposition procedure under Section 131 of the Trade Mark Act	
Section 50	Opposition	
Section 51	Opposition procedure	
	Chapter 3	
	Amendments to the specification; cancellation; inspection of files	
Section 52	Amendments to the specification	
Section 53	Application for cancellation	
Section 54	Inspection of files	
Section 55	(repealed)	
	Part 7	
	Final provisions	
Section 56	Transitory provisions on occasion of the entry into force of this ordinance	
Section 57	Transitory regulation for future amendments	
Section 58	Entry into force; abrogation	

Part 1
Scope of application

Section 1

Trade mark procedures

(1) For procedures before the German Patent and Trade Mark Office governed by the Trade Mark Act (*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*) of 1 November 2013 (Federal Law Gazette I p. 3906), as amended, 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 mark description for the cases referred to in Section 6a(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

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

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 the first sentence 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 postal 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 *mutatis mutandis*. Where the German Patent and Trade Mark Office has allotted the number of a general power of attorney to the representative, this number should 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. 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 colour mark (Sec. 10a),

6. a sound mark (Sec. 11) or
7. other type of trade mark (Sec. 12).

Section 6a

Mark description

(1) For all types of trade marks except for word marks within the meaning of Section 7, a description can be filed together with the trade mark application to explain the two-dimensional graphical representation of the trade mark.

(2) A mark description must be filed together with the trade mark application if it is not possible to sufficiently represent the subject matter of protection solely by way of two-dimensional graphical representation. This shall particularly apply to other types of trade marks pursuant to Section 12.

(3) The mark description may contain up to 100 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. The mark description must specifically define the trade mark's subject matter of protection in an objective way.

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.

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 figurative mark, a two-dimensional 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 should 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, 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.

(6) The representation of the trade mark can be filed on a data carrier instead of the requirements of subsections (2) to (5). The data carrier shall be readable and shall not contain any viruses or other forms of malicious logic. If the data carrier does not meet these requirements, the representation shall be deemed not to have been filed. The readable data carrier formats, accepted by the German Patent and Trade Mark Office, are published on the Internet at www.dpma.de. The image shall be stored as a file in the root directory of an empty data carrier.

1. The following image formatting will be accepted:

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

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

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

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

Marking must not impair the readability of the data carrier.

(7) If, simultaneously, the representation of the trade mark is filed on paper and on a data carrier meeting the requirements of subsection (6), the representation of the trade mark on the data carrier shall be, as a rule, the representation of the trade mark relevant for the subject matter of protection.

Section 9

Three-dimensional marks

(1) If the applicant indicates that the trade mark is to be registered as a three-dimensional mark, a two-dimensional 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 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). Where the representation of the trade mark is filed instead on a data carrier, all views shall be represented in one image file.

(3) Where the trade mark is represented by graphical outline drawing, the reproduction 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 (7) shall apply *mutatis mutandis* in other respects. Where the representation of the trade mark is additionally filed on a data carrier, all views shall be represented in one image file.

Section 10

Tracer marks

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

Section 10a

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 an abstract unicolour 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 (7) shall apply *mutatis mutandis*.

Section 11

Sound marks

(1) If the applicant indicates that the trade mark is to be registered as a sound mark, a two-dimensional graphical representation 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 graphical representation, Section 8(2) to (4) shall apply *mutatis mutandis* in other respects.

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

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

1. The sound representation shall be stored in the root directory of an empty data carrier. Admissible file formats are WAVE format (*.wav) and MP3 format (*.mp3). The minimum scanning frequency shall be 44.1 kHz, the minimum resolution shall be 16 bits. Packed and compressed files shall not be admissible.
2. In other respects, Section 8(6), second to fourth sentence and fifth sentence, no. 2, shall apply *mutatis mutandis*.

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, a two-dimensional 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) For the form of the representation, the provisions of Sections 8 to 11 shall apply *mutatis mutandis*.

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

(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), first sentence, 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), second sentence, or subsection (3), second sentence, 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 (Sec. 34(3), second sentence, 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), first sentence, 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*).

Section 20

List of goods and services

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

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

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

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

Amendment of the classification

(1) Where the classification of the goods and services is amended in the time after the date of the filing and before the expiry of the duration 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 duration of protection of the trade mark.

(2) For trade marks filed before 1 June 2004 whose goods and services are not yet arranged in classes, the German Patent and Trade Mark Office may arrange the goods and services in classes *ex officio*.

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 (Sec. 34 Trade Mark Act), exhibition priority (Sec. 35 Trade Mark Act), claimed by the applicant, or as to the seniority claimed under Article 35 of the Council Regulation (EC) no. 207/2009 of 26 February 2009 on the European Union trade mark (EC) (OJ L 78, 24.3.2009, p. 1), amended by Regulation (EU) 2015/2424 (OJ L 341, 24.12.2015, 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 (Sec. 6(2) Patent Costs Act [*Patentkostengesetz*] or due to the fact that it failed to satisfy the minimum requirements for according a date of filing (Sec. 36(2), first sentence, in conjunction with Sec. 36(1) no. 1, Sec. 33(1) Trade Mark Act), a corresponding indication,
4. in case of closed multiple applications, a corresponding indication.

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

Part 3

Register; certificate; publication

Section 24

Location and form of the Register

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

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

Section 25

Contents of the Register

The following shall be recorded in the Register:

1. the registration number of the trade mark,
2. the file number of the application, if it is not identical with the registration number,
3. the representation of the trade mark,
4. the indication of the type of the trade mark,
5. for trade marks registered in colour, an indication to this effect and the specification of the colours,
6. a description of the trade mark, if any,
7. for trade marks registered by proving that they acquired distinctiveness through use (Sec. 8(3) Trade Mark Act), an indication to this effect,
8. for trade marks that have been registered on the basis of a trade mark registration in the country of origin under Article 6*quinquies* of the Paris Convention, an indication to this effect,

9. if applicable, the indication that the trade mark is a collective mark,
10. in case of a trade mark the seniority of which has been claimed under Article 34 or 35 of Council Regulation (EC) no. 207/2009 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 cancellation,
11. the date of filing of the trade mark,
12. if applicable, the date decisive for determining the seniority of a trade mark under Section 37(2) Trade Mark Act,
13. the date, the country and the file number of the foreign priority claimed by the proprietor of the trade mark (Sec. 34 Trade Mark Act),
14. particulars as to an exhibition priority claimed by the proprietor of the trade mark (Sec. 35 Trade Mark Act),
15. the name, 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,
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 proceedings,
 - 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 duration of protection,
24. where a third person has filed a request for cancellation of the registered trade mark or brought an action for cancellation:
 - a) in case of a request for cancellation pursuant to Section 50 of the Trade Mark Act, an indication to this effect,
 - b) the conclusion of the cancellation proceedings pursuant to Section 50 of the Trade Mark Act,
 - c) where the trade mark has been cancelled in full, an indication to this effect, stating the ground for cancellation,
 - d) where the trade mark has been cancelled in part, an indication to this effect, stating the ground for cancellation, and the goods and services to which the cancellation refers,
25. where cancellation proceedings are initiated *ex officio*:
 - a) where the trade mark has been cancelled in full, an indication to this effect, stating the ground for cancellation,
 - b) where the trade mark has been cancelled in part, an indication to this effect, stating the ground for cancellation, and the goods and services to which the cancellation refers,
26. where a trade mark is cancelled in full or in part due to the corresponding declaration of the proprietor of the trade mark, in particular the renewal in part of the trade mark or a revocation in part, an indication to this effect, stating the ground for cancellation, and, if the trade mark has been cancelled in part, the list of the goods and services relevant after the cancellation has been carried out,
27. particulars as to the action for the grant of registration under Section 44 of the Trade Mark Act, if these have been communicated to the German Patent and Trade Mark Office,
28. the date of receipt of a declaration of division,
29. in the parent registration (*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 (Secs. 110, 122 (2) Trade Mark Act),
32. the assignment of the trade mark together with particulars as to the successor in title and, if applicable, their representative pursuant to nos. 15, 16 and 17,
33. in case of an assignment of the trade mark for some of the goods and services, additionally the particulars indicated in nos. 29 and 30,
34. particulars as to rights *in rem* (Sec. 29 Trade Mark Act),
35. particulars of measures of levy of execution (Sec. 29(1) no. 2 Trade Mark Act) and involvement of the trade mark in insolvency proceedings (Sec. 29(3) Trade Mark Act),
36. amendments of the particulars indicated in nos. 15, 16 and 17,
37. corrections of registrations in the Register (Sec. 45(1) Trade Mark Act).

Section 26

Certificates

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

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 no. 31.

(4) The first publication of a trade mark registration shall be accompanied by a note referring to the possibility to oppose the trade mark (Sec. 42 Trade Mark Act). 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.

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 or commercial designation on the basis of which notice of opposition is given (earlier sign) to the registration of a trade mark. Oppositions may be combined in one notice of opposition, if based on several earlier signs of the same opponent.

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

Section 30

Contents of the opposition

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

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

1. the registration number of the trade mark whose registration is opposed to,
2. the registration number of the registered earlier trade mark or the file number of the earlier trade mark applied for,
3. the representation and the designation of the form of the earlier sign,
4. where the earlier trade mark is an international registration, the registration number of the earlier trade mark and, in the case of earlier international registrations which were registered with effect in the Federal Republic of Germany as well as the German Democratic Republic before 3 October 1990, a declaration on which part of the country the opposition is based,

5. the name and the address of the proprietor of the earlier sign,
6. where the opposition is based on a trade mark registered or applied for and is lodged by a person not recorded as applicant in the application files or not registered as proprietor in the Register, the name and the address of the opponent as well as the date when the request for recording or registering the transfer of rights has been filed,
7. if the opponent has appointed a representative, the name and the address of the representative,
8. the name of the proprietor of the trade mark whose registration is opposed to,
9. the goods and services on which the opposition is based,
10. the goods and services against which the opposition is directed.

Section 31

Joint decision on several oppositions

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

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

Section 32

Suspension

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

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

Chapter 2

Partial transfer; division of applications and registrations

Section 33

Transfer in part of a registered trade mark

(1) Where the transfer of rights based on the registration of a trade mark affects some of the registered goods and services only, the request 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 *mutatis mutandis*.

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 *mutatis mutandis*.

Section 35

Division of applications

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

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

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

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

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

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

Section 36

Division of registrations

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

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

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

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

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

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

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

Chapter 3 Renewal

Section 37

Renewal by payment of fees

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

Section 38

Request for partial renewal

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

(2) The request shall indicate:

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

Chapter 4

Surrender

Section 39

Surrender

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

(2) The request shall indicate:

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

Section 40

Agreement of third parties

For the 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

Cancellation on grounds of revocation

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

(2) The request shall indicate:

1. the registration number of the trade mark for which cancellation is requested,
2. the name and the address of the person filing the request,
3. where the person filing the request has appointed a representative, the name and the address of the representative,
4. where the cancellation of the trade mark is requested for some of the goods and services only, either the goods and services for which cancellation is requested or the goods and services for which cancellation is not requested,
5. the grounds for cancellation under Section 49 of the Trade Mark Act.

Section 42

Cancellation due to absolute grounds for refusal

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

Part 5

International registrations

Section 43

Requests and other communications in the procedure of international registration under the Madrid Agreement

For requests and other communications in the procedure of international registration of a trade mark 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 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, a special motion (*Erinnerung*) or an appeal from the refusal shall be filed with the German Patent and Trade Mark Office within one further month after the time limit under subsection (1). Instructions about the proprietor's right to appeal shall be attached to the refusal. Section 61(2) of the Trade Mark Act shall apply *mutatis mutandis*.

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

Chapter 1
Registration procedure

Section 47

Application for registration

(1) The application for registration of a geographical indication or a designation of origin under Article 49 of 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 (Sec. 130(4) Trade Mark Act) shall indicate at least:

1. the name and the address of the applicant,
2. where a representative has been appointed, the name and the address of the representative,
3. the name to be protected as a geographical indication or designation of origin,
4. the type of agricultural product or foodstuff,
5. the specification under Article 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 should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The opposition shall indicate:

1. the geographical indication or designation of origin the registration of which is opposed to,
2. the 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 should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The opposition shall indicate:

1. the geographical indication or designation of origin the registration of which is opposed to,
2. the 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 undue 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 should be filed using the form issued by the German Patent and Trade Mark Office.

(2) The application shall indicate:

1. the registered geographical indication or designation of origin,
2. the name and address of the applicant,
3. the legal form, size and composition of the applicant group,
4. where a representative has been appointed, the name and the address of the representative,

5. circumstances proving the legitimate interest of the applicant,
6. the categories of the specification to which the amendments relate,
7. the requested amendments and a statement of reasons for the amendments.

(3) In other respects, Sections 48 to 51 shall apply *mutatis mutandis* to applications under Article 53(2), first sentence, 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 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 (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.