Deutsches
Patent- und Markenamt

Information for Trade Mark Applicants

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This leaflet provides you with detailed information about filing an application for a national trade mark.

The official form W 7005 (in German) for the application of a trade mark including information on how to fill it in (in German) is available on our website.

1. Legal requirements

The legal requirements for the application of a trade mark result from

- the Trade Mark Act (*Markengesetz*)
- the Trade Mark Ordinance (*Markenverordnung*)
- the Ordinance of the German Patent and Trade Mark Office (DPMA) (*DPMA-Verordnung)*
- the Patent Costs Act (*Patentkostengesetz*)
- the Ordinance Concerning the Administrative Costs at the DPMA (*DPMA-Verwaltungskostenverordnung*)
- the Patent Costs Payment Ordinance (*Patentkostenzahlungsverordnung*)
- the Ordinance on Electronic Legal Transactions with the German Patent and Trade Mark Office (*Verordnung über den elektronischen Rechtsverkehr beim Deutschen Patent- und Markenamt*)

2. What is a trade mark?

As a rule, an (individual) trade mark identifies goods and/or services of an enterprise. Such signs are eligible for protection which are capable of distinguishing the goods and/or services of one enterprise from those of other enterprises. These can be, for example, words, letters, numbers, pictures, but also colours, holograms, multimedia signs and sounds.

2.1. How does trade mark protection arise?

Trade mark protection arises from registration of a trade mark applied for in the Register of the DPMA. Trade mark protection may also arise from the level of recognition acquired due to intensive use of a sign in trade or by its general reputation.

2.2. What is a certification mark?

A certification mark is a special trade mark category. The certification mark is a kind of quality label and, unlike an individual trade mark, it does not focus on the function of the trade mark as an indication of origin, but on the guarantee function. According to section 106a (1) of the Trade Mark Act, certification marks are marks that are capable of distinguishing goods and/or services which are certified from goods and services which are not certified. A certification mark must be described as such when the trade mark application is filed. It must be capable of distinguishing goods and services which are certified by the proprietor of the mark in respect of material, mode of manufacture, quality, accuracy or other characteristics of goods or performance of services, from goods and services which are not certified accordingly. The certifying character of the mark must result from the representation of the sign. In the mandatory regulations governing use of the trade mark, the trade mark proprietor must provide information – in particular on the guaranteed characteristics of the goods, the conditions of use and the testing and monitoring measures.

Consequently, only certification companies, not manufacturers/suppliers, can apply for a certification mark.

When applying for a certification mark, the requirements of sections 106a and the following of the Trade Mark Act must be observed.

2.3. What is a collective mark?

A collective mark is a sign that an association may use to gain protection for its members (enterprises). Unlike the classic trade mark, which distinguishes goods and/or services of a certain enterprise from those of other enterprises (individual mark), a collective mark is an indication of the origin of a product from a certain association. Only associations with legal personality or legal persons under public law but not natural persons can apply for a collective mark.

When filing an application for a collective mark, the provisions of sections 97 and the following of the Trade Mark Act – especially the requirement of a regulation governing the use of the trade mark (*Markensatzung*) containing the elements listed in Article 102 (2) of the Trade Mark Act – must be observed.

2.4. What types of trade marks are there?

In addition to the most frequent types of trade marks, the simple word marks, combined word/figurative marks and simple figurative marks (without word elements), there are three-dimensional marks, colour marks, sound marks, position marks, tracer marks, pattern marks, motion marks, multimedia marks, hologram marks and other types of marks.

Details concerning the types of trade marks

- **Word marks** are trade marks without any graphic or colour design consisting of elements that are part of the standard set of characters used by the DPMA and which the applicant wishes to register as word marks. Although their subject matter of protection covers only the chosen character string, it includes their representation in all the usual fonts in upper and lower case letters. Accordingly, the use of medial capitals chosen for a word mark must be

treated neutrally with regard to the subject matter and scope of protection, in the sense that they must neither confer nor prevent protection.

- **Combined word/figurative marks** are combinations of word elements and graphic, figurative elements and/or other design features as well as words with concretisation of a specific typeface and/or other typographic design beyond the mere character string (for example (strings of) Latin letters in a font other than Arial, (strings of) Latin letters with coloured letters or (strings of) Latin letters with medial capitals claimed as such, multi-line arrangement or widely spaced text using expanded s p a c i n g between the letters).
- **Figurative marks** are two-dimensional designs, such as images and graphic elements without components of word marks, as for example pictograms, symbols and illustrations of objects. Non-Latin characters, such as Chinese characters, constitute figurative marks too. Figurative marks can be applied for in colour or black and white.
- **Three-dimensional marks** are three-dimensional shapes and designs of any kind. They may be abstract from or coincide with the shape or packaging of the goods claimed. If you wish to apply for a three-dimensional mark, you may file up to six different views of the three-dimensional shape applied for. You must reproduce all the views on a sheet of paper or save them in a file in the case of electronic filing. The representation with all its views must comprehensively show the desired subject matter of protection.
- **Colour marks** are colours and colour combinations that are not linked to concrete representations or bounded by outlines of a shape. They must be distinguished from other merely coloured trade marks which are subject to the respective trade mark form. The subject matter of the abstract single colour mark is a single colour as such. Combinations of colours in the required abstract determined form are only possible if the composition of the colours is specified in a clearly defined form of appearance.
- **Sound marks** are marks consisting of perceptible sounds. In addition to musical sound marks, this also includes the words spoken or sung and purely noise-like sound patterns.
- The **position marks**' subject matter of protection is the way a sign (words, images, three-dimensional or other elements) is affixed to a product or part of a product at always the exact same position and in the same shape and size or relative size.
- **Tracer marks** are markers identifying origin alongside the length of goods which are sold by units of length and generally cut off for this purpose. Accordingly, tracer marks generally run parallel to the length of the marked product and typically consist, for example, of coloured selvedge areas, coloured stripes on hoses, glass rods/tubes or cables.
- **Pattern marks** are two-dimensional designs which are repeated over a surface in all directions. The shown item generally forms part of a pattern that spreads uniformly in all directions.
- **Motion marks** comprise a sequence of natural or artificial movements, for example a sequence of two- or three-dimensional images.
- **Multimedia marks** consist of a combination of (moving) image and/or three-dimensional elements and acoustic elements.
- **Hologram marks** are three-dimensional illustrations of objects on a two-dimensional surface giving the impression of depth. Both regularly show a shimmering silvery, rainbow-coloured surface.
- Trade marks which do not correspond to any of the types of trade marks expressly mentioned in the Trade Mark Ordinance may be registered as ***"other type of trade mark"***. This may include, for example, trade marks which are perceived with the sense of touch or the sense of smell as well as combinations of the other trade mark types.

3. How can the application be filed?

You can file trade mark applications either **electronically**

- online via our DPMAdirektWeb service (without signature),
- as registered user via our DPMAdirektPro software (with signature card) or
- on **paper using the forms for a national trade mark application**
  - in writing by post to

    Deutsches Patent- und Markenamt,
    80297 München, Germany (= central mailing address)

    Deutsches Patent- und Markenamt, Dienststelle Jena, 07738 Jena, Germany

    Deutsches Patent- und Markenamt, Informations- und Dienstleistungszentrum Berlin, 10958 Berlin, Germany
  - by telefax to +49 89 2195-2221 or
  - in person at the DPMA in Munich, at the Jena Sub-Office or at the Information and Service Centre in Berlin.

Likewise, some patent information centres accept trade mark applications and forward them to the DPMA in Munich.

3.1. Advantages and disadvantages of the different options of filing an application

a) Costs

Electronic filing of the application is less expensive. It costs 290 euros (application of a trade mark for up to three classes). A paper application costs 300 euros (application of a trade mark for up to three classes).

b) Support for filling in the form

In case of electronic trade mark applications without a signature card, you will be guided through the application process in a few steps and with helpful instructions. You will create the list of goods and/or services by means of a shopping basket, where only admissible terms (currently, approximately 74,000) from the harmonised database (eKDB) – are included sorted by topic. This helps avoid errors, which could lead to longer processing times.

For the application form on paper, helpful information in German on how to fill in the form is available on our website.

c) Processing time

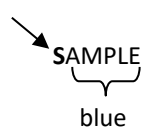
As a rule, electronically filed applications, particularly those filed via the DPMAdirektWeb service, can be processed faster. Thanks to the shopping basket, only admissible terms are included in the list of goods and/or services. Selecting generic terms (group titles) also helps to avoid unnecessarily detailed lists of goods and services. This reduces the examination effort and thus the processing time.

3.2. Important tips for filing a trade mark application by telefax

a) Application of trade marks in colour

If an application is filed by telefax, the representation of the trade mark (excluding simple word marks) is mostly of relatively poor quality. Furthermore, faxes received by the DPMA do not yet show colours. Both things often lead to time-consuming examination procedures and postponement of the filing date. If an application for trade marks in colour is filed **by fax in advance**, the applicant can obtain the receipt date of the fax as filing date only if the **allocation** of colours can be clearly identified on the fax. In order to meet the requirements, it is recommended to identify the colours with arrows on the graphic fax representation in addition to the indication of the colours when filing a trade mark in colour by fax in advance.

Example:



b) Application for word marks

Word marks are trade marks which, pursuant to section 7 of the Trade Mark Ordinance, can be typed or printed using the DPMA's standard font and which the applicant wishes to register as a word mark. Since word marks neither have a graphic design nor colours, filing a word mark only by fax is possible.

3.3. Series of applications

Please note that a separate application must be filed for **each** trade mark.

If you wish to apply for more than one trade mark in one postal item (series of applications), please completely fill in the form *Vorblatt zu einer Serie von Anmeldungen* (W 7002 –in German).

The following cases constitute a series of applications:

- All applications have the same applicant and the same proposal for a leading class.
- A request for accelerated processing has been filed for all applications or for none of the applications.
- For each application, a separate application form (W 7005 – in German) has been filed and field (10) of the application form indicates the total number of (individual) applications as well as the number of the respective application.
- All applications have been transmitted to the DPMA in one postal item or fax.

Even only two applications can be a series of applications.

4. Minimum requirements of a trade mark application

The first step to use the options of registered trade mark protection offered by trade mark law is the formally correct and complete application in due time.

The **application must** contain the following information:

- information allowing to identify the applicant,
- a representation of the trade mark as well as information about the type of trade mark and
- a list of goods and/or services for which registration is sought.

4.1. Who can be applicant of a trade mark?

The **applicant** may be a natural person, a legal person or a partnership with legal personality (section 7 of the Trade Mark Act).

4.2. Which information about the applicant is required?

- The information on the applicant must comprise the **name** and **address**.
- Where the trade mark is to be registered for a company, the trade name of the company as registered in the commercial register as well as the legal form must be provided.
- If an applicant is registered as legal person in a register, the name and the address of the seat **must** be indicated the same way as in the register entry.
- If the application is to be filed for more than one person, the names and addresses of residence of all individuals must be given.
- For non-registered associations, the name and address of a member of the association entitled to act as representative as well as the name of the association must be indicated.
- A non-registered partnership under the Civil Code (*Gesellschaft bürgerlichen Rechts* [GbR]) can be registered in the Trade Mark Register if the name and address of at least one partner entitled to act as representative are indicated, section 5 (1) number 2b of the Trade Mark Ordinance.
- If the application for registration is for a limited liability company in formation (*Gesellschaft mit beschränkter Haftung in Gründung* [GmbH i. G.]), an uncertified copy of the company agreement must be attached. Please note that, after registration in the commercial register, the transfer of the trade mark applied for or registered to the limited liability company must be requested. A certified extract of the commercial register must be attached to the request for transfer (W 7616 –in German).

4.3. What do you have to take into consideration when submitting the trade mark representation?

At any rate, your application must contain the representation of the trade mark, which basically cannot be changed at a later date anymore, and indicate the claimed type of trade mark as well as exactly specify the represented subject matter of protection. Otherwise, the application is not effective or, under certain circumstances, does not establish a filing date for determining the priority of the trade mark.

a) Word marks

In case of word marks (section 7 of the Trade Mark Ordinance), the trade mark representation must be reproduced using common characters. The permitted letters, numbers or other characters are published on our website.

b) Non-word marks

For all other trade marks, a representation of the trade mark must be attached to the application. For electronic applications, please use the admissible file formats and pay particular attention to the specifications for JPEG files, including image size (min. 945 pixels in width or height and max. 2835x2010 pixels) and image resolution (min. 96 dpi). **Important: The trade mark representation must meet the specified requirements for image size and resolution without the frame resulting from a white background.**

For paper applications, please use annex form W 7005.1 (in German) and print the representation of the trade mark onto it or insert it into the form.

Please note that the ® symbol should not be included in the trade mark representation with the application because, under certain circumstances, refusal due to deceptiveness pursuant to section 8 (2) number 4 of the Trade Mark Act is possible.

If the representation is not able to sufficiently represent the subject matter of protection of the trade mark (for example in case of trade marks in colour, position marks and motion marks), the trade mark application must be accompanied by a description of the trade mark (annex form W 7005.2 – in German).

For the format of the representation, the following formal requirements must be met for a paper-based trade mark application:

- The sheet used for the representations of the mark must not exceed DIN A4 size (height: 29.7 cm, width: 21 cm).
- The space for representation of the trade mark (type area) must not exceed 26.2 cm x 17 cm.
- The minimum size of the trade mark representation must be 8 cm in width or 8 cm in height (section 8 (3) of the Trade Mark Ordinance).
- The sheets may be printed on one side only.
- Distance from the top and left margin must be at least 2.5 cm.
- Please write “top” or “bottom” on each representation to indicate the correct position of the trade mark, if it is not obvious.

Alternatively, you can file the trade mark representation on an electronic data carrier. The file formats allowed for the individual types of trade marks, as well as special requirements regarding size, resolution, standards, etcetera, are specified in the information on the readable types of data carriers at the DPMA and the formats for the representation of trade marks (section 6a of the Trade Mark Ordinance).

c) Special provisions with regard to three-dimensional marks

If you want to apply for a three-dimensional mark you may file up to six different views of the three-dimensional shape applied for. You must reproduce all views on a sheet of paper or, in the case of electronic filing, save them in a file. The representation with all its views must comprehensively reproduce the desired subject matter of protection.

d) Special provisions with regard to sound marks

The representation of sound marks is possible as mp3 file on a data carrier or indirectly through a paper-based two-dimensional graphic representation or as JPEG on a data carrier. The indirect graphic representation must be made using standard musical notation, that is a stave divided into bars and containing a clef, notes and rests and, if appropriate, key signatures.

e) Special provisions with regard to trade marks containing non-Latin characters

If a trade mark contains non-Latin characters (for example Arabic, Chinese, Greek or Cyrillic characters), a German translation, a transliteration and a transcription of the non-Latin characters must be submitted. A field is available for this purpose in the application form (W 7005 – in German) or the annex form (W 7005.3 – in German).

f) Special provisions with regard to trade marks with transparent elements

If your trade mark is meant to contain transparent elements, it must be filed as a so-called "other trade mark". To represent the transparent elements in a clear and precise way, the background of the transparent elements needs to provide a suitable contrast, or the elements' outlines need to be depicted as dotted lines. In addition, please also submit a trade mark description of the content, indicating that the highlighted elements are supposed to be transparent and that the contrasting background/the dotted line are not part of the trade mark representation.

Apart from these provisions, Articles 8 to 11 of the Trade Mark Ordinance apply for the form of representation (section 12a (2) of the Trade Mark Ordinance).

g) What do you have to take into consideration if you want a trade mark to be registered in colour?

If the applicant wishes a colour registration, the trade mark representation must be filed in colour. In that case, you must indicate the colours of the trade mark by giving the respective general names of the colours (for example red, green, yellow). Using only a colour classification system with RAL, Pantone or HKS colour codes is not sufficient. However, it can be used in addition to the names of the colours.

4.4. List of goods and/or services

Trade marks are not registered for general use, but always for specific goods and services. These determine the subject matter of protection. This is why the list of goods and/or services is an important element of the trade mark application, which would be incomplete without such a list. Please precisely name the goods and/or services for which the trade mark applied for is intended to be used.

Errors occurring when preparing the list of goods and/or services by far make up the most frequent reason for longer processing times of trade mark applications. In order to avoid this additional work and to be able to register trade marks faster, we offer a range of support with the preparation of lists.

You will find general information on the internationally harmonised classification on our website. Terms allowed for the preparation of a list are available in the harmonised database (eKDB database). If terms from the eKDB database are used in the application, we can register the trade marks immediately – if there are no legal grounds for refusal.

The electronic applications DPMAdirektWeb and DPMAdirektPro contain a shopping basket function with the eKDB's terms for goods and services, which are also displayed sorted by topic. This allows you to easily search for specific groups of goods and services by topic and create a comprehensive list of goods and services with a few general terms to specify your trade mark's subject matter of protection – instead of using many single terms for goods and services.

HELPFUL TIP: If the trade mark is meant to apply to many different goods or services, consider using comprehensive general terms from the list of goods and services. This creates a clear scope of protection for the trade mark, which in turn shortens the duration of processing the application's examination.

If you want to submit the application on paper, please note: All goods and/or services are divided into a total of 45 classes under the Nice Classification. The list of goods and/or services must be filed **in grouped form**. This means that the goods/services must be separately listed for each class and the classes must be given in ascending numerical order.

Example:	class 3:	cosmetics, cosmetic bath additives
	class 5:	pharmaceutical products; medical preparations for dental purposes
	class 44:	hygienic and beauty care for human beings and animals

The amount of the fee payable for the application depends on the number of classes claimed.

4.5. Willingness to license or sell

You can already declare at the time of filing the application that you are willing to issue licenses and/or to sell your trade mark. This declaration is non-binding and can be revoked at any time in writing vis-a-vis the German Patent and Trade Mark Office.

Your declaration will be published in DPMAregister.

4.6. Checklist for filing your electronic trade mark application

- ☐ If you are applying as a legal person or as a partnership with legal personality registered in a register, have you indicated the company name and company address as registered in the register?
- ☐ Have you selected the correct trade mark form for your trade mark?
- ☐ Did you upload the trade mark representation correctly according to the formal requirements? Please especially make sure that your trade mark representation is big enough and that you submit it **without a white background** and the resulting white frame.
- ☐ If you want to submit a colour mark or a combined word/figure mark, did you indicate **all** colours contained in the representation with the general names of the colours?

4.7. Checklist for filing your (non-electronic) trade mark application

- ☐ Have you used and completely filled in our official application form W 7005 (in German)?
- ☐ Is the applicant of the trade mark clearly identifiable?
- ☐ Is the type of trade mark unambiguous and was the trade mark correctly represented?
- ☐ Does your list of goods and/or services correspond to the internationally harmonised classification? To check if it does, please use the eKDB database.

4.8. Acceleration of the application

We will process your application particularly fast if the following requirements are met:

- You file the application electronically, in particular via DPMAdirektWeb, and transfer the fees that are automatically calculated as soon as possible after submitting your application, indicating the corresponding file number, which is generated at the time of filing, as well as the fee number.
- When filing the application, you submit a "SEPA Core Direct Debit Mandate" form together with a "Specification of the purpose of use of the mandate" form for the application fees. Please use the forms (A 9530.1 and A 9532.1) provided on our website and note the provided information about the SEPA scheme.
- You prepare the list of goods and/or services by using the harmonised database (eKDB), choose general terms or group titles and avoid unnecessarily detailed lists of goods and services.
- You file a **request for accelerated examination** (section 38 of the Trade Mark Act). Such request is made in order to expedite the decision on the requirements of registration (sections 36 and 37 of the Trade Mark Act). Its aim is to ensure that a trade mark is registered within a period of six months if it complies with all registration requirements. Registration of the trade mark within this period is important, for instance, if the applicant intends to have this trade mark registered internationally and claim the priority of the German trade mark. An additional fee of 200 euros must be paid for the accelerated examination.

5. How much does a trade mark application cost?

For a trade mark application, an **application fee including the class fees for up to three classes** must be paid. If the trade mark is applied for goods and/or services covered by more than three classes of the classification of goods and services, **a class fee must also be paid for the fourth and each additional class**. These fees are due at the time of filing the application. The payment cannot be deferred or waived. The amount of the fees will be communicated to the applicant together with the acknowledgement of receipt. There will be no further requests for payment of the fees listed in the acknowledgement.

(1) Application procedure including the class fee for up to three classes

for a trade mark (section 32 of the Trade Mark Act) for electronic filing	290 euros
for a trade mark (section 32 of the Trade Mark Act) for filing on paper	300 euros
for a collective mark (section 97 of the Trade Mark Act)	900 euros
for a certification mark (section 106a of the Trade Mark Act)	900 euros

(2) Additional class fee at the time of filing the application

for a trade mark for each additional class (section 32 of the Trade Mark Act)	100 euros

for a collective mark and a certification mark for each additional class (sections 97, 106a of the Trade Mark Act)	150 euros

(3) Fee for the request for accelerated examination under section 38 of the Trade Mark Act

Accelerated examination of application (section 38 of the Trade Mark Act)	200 euros

If the full amount of the application fee is not paid within three months from filing the application, the application will be deemed to have been withdrawn (section 6 (1) and (2) of the Patent Costs Act [*Patentkostengesetz*]). The payment period stipulated by law runs irrespective of the receipt of an acknowledgement of receipt!

Important: Payment must be received within three months from filing the application at the latest!

Payment instructions

Please indicate the file number, the applicant's name and the fee number for all payments in legible letters.

The payment of the fee is determined according to the Patent Costs Payment Ordinance *(Patentkosten-zahlungsverordnung).*

According to it, fees may be paid

a) **by credit transfer or by (cash) deposit** at a national or foreign financial institution

Beneficiary:

Bundeskasse

IBAN: DE84 7000 0000 0070 0010 54

BIC (SWIFT-Code): MARKDEF1700

Address of the bank:

Bundesbankfiliale München

Leopoldstraße 234

80807 München, Germany

or

b) **by submitting a valid SEPA Core Direct Debit Mandate together with the specifications of the purpose.**

Please use the forms (A 9530.1 and A 9532.1) provided on our website and note the provided information about the SEPA scheme.

The following date will be **deemed to be the payment date** under section 2 of the Patent Costs Payment Ordinance:

Payment method	Payment date
• **for credit transfer**	➔ the date when the amount is credited to the account of *Bundeskasse* for the DPMA
• **for (cash) deposit**	➔ the date of deposit

! **Important information about cash deposits:**

Based on the accounting data, *Bundeskasse* for the DPMA cannot see whether an amount was credited by credit transfer or by cash deposit. If you have paid fees by cash deposit, please submit the **deposit receipt** issued by the financial institution **without delay** to the DPMA so that the date of deposit will be deemed the payment date.

- **for the SEPA Core Direct Debit Scheme**

  ➔ date of receipt of a valid SEPA mandate form together with a form specifying the purpose of use covering the costs; for costs becoming due in the future, the due date, provided your account will be debited to the credit of *Bundeskasse* for the DPMA.

! **Important information about the transmission of a SEPA mandate form by telefax:**

If you transmit the "SEPA Core Direct Debit Mandate" form by telefax, please submit the original within a **period of one month** from receipt of the telefax. Otherwise, the date of receipt of the original will be deemed to be the payment date.

The **application fee and any class fees** for the national trade mark registration are application fees which will be forfeited upon filing the request and payment irrespective of the outcome of the trade mark registration procedure. **This means that the application fees will not be refunded, for example, in case of withdrawal of the trade mark application.** The same applies to national fees due for an application of an international mark or for a subsequent designation of an international registration.

6. What happens after the application?

In case of electronic filing you will immediately receive an official file number; in case of a paper-based application, you will receive an acknowledgement of receipt containing the official file number. Since the essential application data are recorded in the internal data processing system, your application will become publicly available in the electronic register **DPMAregister**.

Trade mark applications which would obviously be contrary to *ordre public* or morality will not be published.

After receipt of the fees, which must be received by the DPMA within a period of three months from filing the request, the DPMA will examine whether the application meets the formal requirements and whether there are absolute grounds for refusal of a trade mark registration (sections 36 and 37 of the Trade Mark Act).

If the formal requirements of the application are met and if there are no absolute grounds for refusal, the trade mark will be registered. You will then receive the certificate of registration together with the register extract. The registration of the trade mark will be published in the official electronic Trade Mark Journal (*Markenblatt*).

Please note:

During the application procedure, there will be no examination as to whether a trade mark cannot be registered because it conflicts with earlier trade marks or other signs by third parties.

In case of opposition or cancellation proceedings due to earlier rights, the trade mark may be cancelled.

7. Absolute grounds for refusal

A trade mark can only be registered if there are no absolute grounds for refusal. Absolute grounds for refusal are, for example:

- lack of distinctiveness,
- descriptive terms that should be kept freely available for general use,
- emblem of state included in a trade mark,
- offence against morality or *ordre public*.

Excluded from protection are thus, for example, signs which are devoid of any distinctive character or which only describe the claimed goods and/or services (for example the word “apple” for “fruits”).

In such cases, registration **cannot** be claimed even if the trade mark was registered in the Trade Mark Register in an identical or a similar form before. The decision is taken in each individual case solely based on the law.

If, during the examination of your application, it is found that there are grounds for refusal, you will receive a written communication regarding the deficiencies. If the office’s concerns cannot be resolved following the examination of your comment, a decision will be taken to refuse the application (where applicable, in part). If the ground for refusal persists despite the comment made by the applicant, a decision to reject the application will be issued by a civil servant of the higher intermediate service or of the higher service or a comparable employee as examiner – depending on the allocation of duties.

8. Special motion (*Erinnerung*) or appeal (*Beschwerde*)

You can have the decision reviewed in an (official) special motion (*Erinnerung*) or in (judicial) appeal proceedings (*Beschwerdeverfahren*) subject to costs.

If a civil servant of the higher service has taken the decision, an **appeal** against the decision can be lodged with the Federal Patent Court. If a civil servant of the higher intermediate service or a comparable employee has taken the decision, a **special motion or** an **appeal** against the decision can be lodged. In contrast to the appeal before the Federal Patent Court, a decision on the special motion is taken by a civil servant of the higher service as legal examiner. An appeal against this decision may be lodged with the Federal Patent Court.

The **period** for lodging a special motion or an appeal is **one month** from the date of receipt of the decision.

It is possible to lodge the special motion or the appeal subsequently in electronic form via DPMAdirektPro. Please note the detailed requirements provided on our website.

It is **not sufficient** to transmit a notice of appeal via e-mail to the DPMA. If the **requirements are not met**, the appeal is **not legally effective**.

A fee must be paid for both the special motion (150 euros) and the appeal (200 euros). The fee must be paid separately for each party that lodged a special motion or appeal. If multiple people have filed the trade mark application together and lodge the special motion or appeal together, they are considered to be one party and only need to pay the fee for the special motion or appeal once.

All details (the person who took the decision; the legal remedy available; time limit, form and fee of the legal remedy) are included in the instruction on legal remedies annexed to the decision to refuse the application.

If a decision on the special motion is not taken within a period of six months, it is possible to make a request for decision. If no decision is taken within a period of two months from the receipt of the request, an appeal against the decision contested by the special motion may be directly lodged with the Federal Patent Court.

For appeal proceedings before the Federal Patent Court, it is possible to request legal aid (section 81a of the Trade Mark Act).

9. Effects and term of protection

Registration of your trade mark in the German Trade Mark Register will give you trade mark protection in the whole territory of the Federal Republic of Germany. The duration of protection starts on the day when the trade mark application is filed and ends after ten years upon expiry of the day which corresponds to the filing date of the application. In contrast to the other industrial property rights, the ten-year trade mark protection can be renewed an unlimited number of times, subject to a fee. You can also seek renewal only for a part of the goods and/or services and thus may save renewal fees if you abandon no longer needed classes. Form W 7412 (in German) to request renewal and change the scope of protection is available on our website.

Renewal is effected by paying a renewal fee and, if renewal is intended to apply to goods or services covering more than three classes, class fees. The request for renewal must be filed within a period of six months before the expiry of the duration of protection or within a grace period of six months after the expiry of the duration of protection. Accordingly, the renewal fees and, if applicable, class fees for the following term of protection are due six months before the expiry of the duration of protection. If the renewal fee and, if applicable, class fees are paid only after the expiry of the duration of protection, a surcharge must be paid in addition to the renewal fee within the six-month grace period.

10. What can you do with a registered trade mark?

Upon registration of your trade mark in the register of the DPMA, you obtain the exclusive right to decide how the trade mark is used for the protected goods and services. It gives you the right to prohibit others from using a sign, as a trade mark, that is identical or confusingly similar to your trade mark.

The registration of your trade mark in the Trade Mark Register makes it easier to enforce your legal claims to the trade mark. The registration certificate and register extract are proof that you are entitled to the registered trade mark. The trade mark registration gives you a means to take action against any unauthorised person who infringes your rights.

In case of wilful or negligent infringement of your trade mark rights, you can seek injunctive relief or may be entitled to damages. In addition, you can have unlawfully marked objects seized by customs authorities when they are imported or exported – or also demand the destruction of unlawfully marked goods.

11. Opposition

As a rule, registration of your trade mark is a registered right that may be cancelled under certain conditions. If your newly registered trade mark is identical or similar to other, earlier applications, trade marks, commercial designations or protected geographical indications/ designations of origin, their proprietors/beneficiaries may lodge **opposition** against the registration. Of course, the same applies vice versa: If your trade mark right is infringed by a newly registered trade mark, you may lodge opposition against it. In case of successful opposition, the trade mark will be cancelled in full or only for a part of the goods and/or services. Form W 7202 (in German) to be used for lodging a notice of opposition against registration of a trade mark and its annexes W 7202.1 and W 7202.2 (both in German) are available on our website.

Opposition proceedings

A written notice of opposition must be filed *within a period of three months* following publication of the registration. The opposition fee of 250 euros must also be paid within this period. This fee covers an opposition with respect to one opposing sign. If an opposition is based on multiple earlier opposing signs of the *same proprietor*, an additional fee of 50 euros must be paid for each additional opposing sign. If the proprietors are not identical, this means that there are several oppositions and 250 euros must be paid for each. A decision on the opposition will be taken during opposition proceedings. If one or several notices of opposition are received, the DPMA informs the proprietor of the challenged trade mark. The proprietor has the opportunity to make a comment. After both the opposing party and the proprietor of the challenged trade mark had the opportunity to make comments, a decision on the opposition is taken by a civil servant of the higher intermediate service or a comparable employee or by a civil servant of the higher service – depending on the allocation of duties.

Opposition may be based on identity of trade marks, likelihood of confusion and reputation of an earlier trade mark (section 9 (1) numbers 1 to 3, section 14 (2) numbers 1 to 3 and section 15 (2) and (3) of the Trade Mark Act, respectively).

By far the most notices of opposition are based on likelihood of confusion. As a rule, such opposition will be upheld and the later trade mark will be cancelled if there is a risk that the circles addressed by the goods and/or services may confuse the signs due to identity or similarity of the opposed sign with the registered trade mark and identity or similarity of the goods and/or services covered by both signs or proximity of trade. If there is no risk, the opposition will be refused.

A special motion (*Erinnerung*) or an appeal (*Beschwerde*) may be filed against the decision taken on the opposition.

In order to avoid the risk to the largest extent possible that your trade mark is cancelled in opposition proceedings, you should conduct a search on whether identical or similar trade marks have been registered already before filing the application. You can conduct such a search by using the DPMA's DPMAregister search system via the internet or at the DPMA's search room in Munich, at the Information and Service Centre in Berlin or at one of the patent information centres. You can also enlist search support by a lawyer or patent attorney or private providers of services. We also recommend searching for identical or similar earlier trade marks acquired by use as well as commercial designations by conducting a general (internet) search and using the "GIview" database of the European Union Intellectual Property Office (https://tmdn.org/giview) to search for identical or similar protected geographical indications/designations of origin, since such trade marks cannot be searched in DPMAregister.

12. Cancellation of the registration of a trade mark in the register

Full or partial cancellation of a trade mark registration from the register may be based on different reasons:

– Surrender

  As proprietor of a registered trade mark, you can surrender the trade mark as a whole or individual goods or services (section 48 of the Trade Mark Act). Form W 7437 (in German) to be used for full/partial cancellation of the registration of a trade mark due to surrender is available on our website.

– Non-renewal

  Registration of a trade mark will be cancelled from the register after expiry of the ten-year term of protection unless its term of protection is extended by another ten years by payment of a renewal fee (section 47 of the Trade Mark Act).

– Opposition, revocation and cancellation proceedings

  Cancellation can also be based on a third-party request. A third party may request cancellation of the registration of a trade mark within the framework of opposition proceedings due to revocation of the trade mark (sections 49 and 53 of the Trade Mark Act) or due to invalidity of the trade mark because of absolute grounds for refusal (sections 50 and 53 of the Trade Mark Act) or earlier rights (sections 51 and 53 of the Trade Mark Act). The trade mark proprietor is party to these proceedings, which are subject to a fee.

– However, cancellation may also be the result of court proceedings before ordinary courts concluded with binding effect. During such proceedings, a third party may also claim revocation because the trade mark was not used or the trade mark infringes existing earlier rights (sections 49, 51 and 55 of the Trade Mark Act).

Forms W 7412 (request for full/partial renewal of a trade mark), W 7202 (opposition), W 7440 (application for full/partial revocation and cancellation), W 7442 (application for a declaration of full/partial invalidity and cancellation due to absolute grounds for refusal), W 7642 (application for a declaration of full/partial invalidity and cancellation because of the existence of earlier rights) (all in German) are available on our website.

13. General remarks

At any time during the procedure before the DPMA, the application may be withdrawn and the list of goods and/or services contained in the application may be limited.

It is also possible to declare the division of the filed or registered trade mark.

Likewise, foreign-language applications may be submitted. Section 15 of the Trade Mark Ordinance contains detailed provisions.

14. Misleading requests for payment

The DPMA warns against – partially misleading – offers, requests for payment and invoices relating to IP applications and renewal of IP rights from private companies unrelated to the DPMA.

These companies offer services against payment including the publication or registration of IP rights in **non-official registers** (see below under **IP applications**) or the **renewal of IP rights** at the DPMA (see below under **Renewal of IP rights**).

Often, such letters cannot be identified as offers at first sight – in many cases, this becomes only obvious by carefully reading the small print or the terms and conditions that are sometimes printed on the back. Some communications resemble the communications and forms of the DPMA or other authorities. An even greater likelihood of confusion is caused by the official-sounding names and logos of the companies that look like state emblems.

You should therefore always carefully read communications containing requests for payment related to IP rights. If you are not sure whether the communications are really from the DPMA, please contact your lawyer or patent attorney or the DPMA. In case of questions regarding unsolicited mail you have received or to inform us about a company that might be sending misleading requests for payment and that should be mentioned on the DPMA website, please do not hesitate to contact us.

Such approaches per se do not have any legal effect; they do not create any obligation to pay the issuer.

IP applications

Please note that an IP right may only be obtained by filing an application with the DPMA or with another IP authority.

Official fees charged in connection with an IP right in a procedure before the DPMA must be paid exclusively to the account indicated by the DPMA. The fees are listed in the information leaflet concerning costs, fees and expenses. (Form A 9510.1).

The DPMA will not charge any additional fees for the publication of an IP right in the register.

Renewal of IP rights

IP rights can be renewed by timely payment of the respective renewal fee to the account of the DPMA. The renewal fees are listed in the information leaflet concerning costs, fees and expenses (Form A 9510.1).

Further information about misleading requests for payment and a list of enterprises which are not commissioned by the DPMA are available on our website.