

## Applying for a German Mark

April 2018

Marks are signs for characterizing products or services on the market in order to associate them with a particular business establishment and to provide the registered products and services with a certain image. Such signs may comprise words, graphical elements, or a combination of both. A mark application serves to provide federal protection of quality and advertising efforts.

### Prerequisites for Protectability

It is necessary to distinguish between *absolute* and *relative* grounds for the refusal of protection:

**Absolute grounds for the refusal of protection** apply to a mark which is unsuitable as a reference to a business establishment, for example because it should be reserved for describing goods or services or for some other purpose. Such absolute grounds for refusal of protection are examined by the German Patent and Trade Mark Office prior to registration.

**Relative grounds for the refusal of protection** are prior protective rights which conflict with the application. A prior right conflicts with a mark application when there is risk of the proposed mark for goods or services being confused, in the relevant fields of business, with the existing registered mark for protected goods or services due to the fact that said marks are identical or similar. These grounds for refusal of protection are not examined prior to registration, but must be asserted (by opposition) following registration.

### Costs and Time Line for Obtaining a German Mark

Time		All costs are net costs
Years	Months	
		A <b>search</b> carried out prior to using the mark or applying for registration thereof reduces the risk of infringing an existing right or of being opposed by a third party. Cost factor <b>similarity search: approx. 300 to 700 €</b> for up to 3 classes, or more for graphical marks and/or for more extensive or more complicated cases.
	0	Consultation, taking over representation, and filing of the application with a formulated index of goods and services as classified by the official classes of goods and services. Cost factor (online-filing <sup>*)</sup> : <b>810 €</b> for not more than three classes of goods and services, 175 € for each additional class.
	about 1 - 3	Registration, if the German Patent and Trade Mark Office has no objections, otherwise an Office Action will be issued. The latter must be replied to in a Response, which will include a revision of the index of goods and services and/or legal argumentation with regard to alleged absolute grounds for refusal of protection. Costs are determined by work done.
		<b>Publication</b> of the registration about 4 weeks afterwards. From now on there is a <b>3 months' opposition period for claiming prior rights</b> . On elapse of the opposition deadline without an opposition being lodged we charge a further <b>300 €</b> for <b>continuing representation</b> (file keeping, dealing with general enquiries concerning the mark) including monitoring of the renewal deadline at the end of 10 years.
		If an opposition is lodged, the likelihood of confusion will be investigated. If the mark is defended in opposition proceedings, costs will depend on the work done.
	6	<b>Deadline for foreign applications</b> with priority of the German mark. Foreign applications after this time limit are still possible but will get the actual filing date as priority.
	5	The mark must have been used within 5 years from date of registration, as otherwise it can be cancelled at the request of a third party for those products and services for which the mark has not been used. (Cancellation may also be requested when the mark is not used throughout any subsequent block of 5 years.) On expiration of the 5-year grace period, trade acceptance of the mark with respect to infringers or more recent marks is only possible within the scope of a legally accepted use.
	10	A mark can be renewed every 10 years by the payment of relevant fees (1,350 € <sup>*)</sup> for up to 3 classes of goods; 410 € <sup>*)</sup> for each additional class). If no renewal payment is made, the mark will expire.

<sup>\*)</sup> Office fees included