

Applying for a German Mark

April 2010

Prerequisites for Protectability

In the case of mark applications 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 investigated 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. A prior protective right must be claimed by its owner. The German Patent and Trade Mark Office do not themselves check for relative grounds for refusal of protection.

The Purpose of Marks

Marks are registered for specified products or services in order to associate the source thereof with a particular business establishment.

Costs and Time Line for Obtaining a German Mark

Time		<i>All costs are net costs</i>
Years	Months	
		A similarity search carried out in addition to an identity search prior to using the mark and applying for registration thereof reduces the risk of infringing an existing right or of being opposed by a third party. Such a search and evaluation thereof should be conducted by a patent attorney. Cost factor: approx. 300 to 600 €, or more for graphical marks and/or for more extensive or more complicated cases..
	0	Power of Attorney, identity search, 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*: 820 € for not more than three classes of goods and services, 175 € for each additional class.
about 2 - 3		Registration, if the German Patent and Trade Mark Office have no objections, otherwise an Official 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 as maintained in the Examiner's Action. Costs are determined by work done.
	?	Registration
? + about 1		Publication of the registration. From now on there is a 3 months' opposition period for claiming prior marks . If an opposition is lodged, it will be investigated to ascertain whether the prior registration claimed does in fact conflict with the current registration which will then be defended in the opposition proceedings. The costs will depend on the work done.
5		The mark must have been used not later than 5 years following 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.)
10		A mark can be renewed every 10 years by the payment of relevant fees (1.350 €* for up to 3 classes of goods; 410 €* for each additional class). If no renewal payment is made, the mark will expire.

**Office fees included*