

*Trade Mark Regulations of November 30, 1994**

(as last amended by the Third Amending Ordinance of December 21, 1998)**

TABLE OF CONTENTS

		<i>Section</i>
Part 1:	Scope of Application Trade Mark Procedures	1
Part 2:	Applications Form of Application	2
	Contents of the Application	3
	Application of Collective Marks	4
	Particulars Identifying the Applicant and his Representative	5
	Particulars Concerning the Form of the Trade Mark.....	6
	Word Marks	7
	Figurative Marks	8
	Three-Dimensional Marks	9
	Tracer Marks	10
	Sound Marks	11
	Other Forms of Trade Marks	12
	Models and Samples	13
	List of Goods and Services	14
	Publication of the Application.....	14a
Part 3:	Classification of Goods and Services Classification.....	15
	Amendment of the Classification	16
Part 4:	Register; Certificate; Publication Location and Form of the Register.....	17
	Contents of the Register	18
	Certificates	19
	Location and Form of the Publication.....	20
	Contents of the Publication of the Registration.....	21
Part 5:	Individual Procedures	
Chapter 1:	Procedures Preceding Registration File Number; Acknowledgement of Receipt	22
	Classification.....	23
	Reference to a Trade Mark Registered in the Country of Origin.....	24
	Postponement of Seniority when the Trade Mark has Acquired a Secondary Meaning within the Affected Trade Circles.....	25
Chapter 2:	Opposition Procedure Form of the Opposition	26
	Contents of the Opposition.....	27
	Joint Decision on Several Oppositions.....	28
	Suspension	29
	(Deleted)	30
Chapter 3:	Transfer of Rights and Other Rights Recordal of a Transfer of Rights	31
	Transfer in Part	32
	Recordal of Rights <i>in rem</i>	33
	Measures for Levy of Execution; Bankruptcy Proceedings	34
	Application <i>mutatis mutandis</i> to Trade Marks Filed	35
Chapter 4:	Division of Applications and Registrations Division of Applications	36

	Division of Registrations.....	37
Chapter 5:	Renewal	
	Renewal by Payment of Fees	38
	Request for Partial Renewal.....	39
	Calculation of the Time Limits	40
Chapter 6:	Surrender	
	Surrender.....	41
	Agreement of Third Parties	42
Chapter 7:	Cancellation	
	Cancellation on Grounds of Revocation.....	43
	Cancellation due to Absolute Grounds for Refusal	44
Chapter 8:	Corrections, Changes	
	Corrections	45
	Changes in the Name or Address	46
Chapter 9:	Inspection of Files	
	Competence	47
	Inspection.....	48
Chapter 10:	International Registrations	
	Request for International Registration under the Madrid Agreement	49
	Request for International Registration under the Protocol Relating to the Madrid Agreement.....	50
	Request for International Registration under the Madrid Agreement and the Protocol Relating to the Madrid Agreement	51
	Refusal of Protection.....	52
	Information on International Registrations	53
Part 6:	Procedure under the Council Regulation (EEC) No. 2081/92 of July 14, 1992, on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs	
	Application for Registration.....	54
	Examination of the Application	55
	Publication of the Application.....	56
	Inspection of Files.....	57
	Comments; Re-examination.....	58
	Decision on the Application.....	59
	Objections	60
	Objection Procedure.....	61
	Amendments of the Specification	62
Part 7:	General Provisions for Procedures	
Chapter 1:	Forms	
	Forms	63
Chapter 2:	Form of Requests and Communications	
	Originals.....	64
	Transmission by Telecopier	65
	Transmission by Telegram or Telex.....	66
	Forms in a Foreign Language.....	67
	Applications in a Foreign Language	68
	Documents in a Foreign Language.....	69
	Other Requirements for Requests and Communications	70
Chapter 3:	Decisions, Office Actions and Notifications by the Patent Office	
	Form of the Official Copies	71
	Service and Delivery not Subject to Formal Requirements	72
	Several Parties; Several Representatives.....	73
Chapter 4:	Time Limits, Decision on the Records	
	Time Limits.....	74
	Decision on the Records.....	75
Chapter 5:	Representation; Power of Attorney	
	Representation.....	76
	Power of Attorney.....	77

Part 8:	Final Provisions	
	Repeal of Legal Provisions	78
	Entry into Force	79
Annex:	Classification of Goods and Services	

PART 1 SCOPE OF APPLICATION

Trade Mark Procedures

1. For procedures before the Patent Office governed by the Trade Mark Law¹ (trade mark matters) the provisions of these Regulations shall apply in addition to the provisions of the Trade Mark Law and of the Order Concerning the German Patent and Trade Mark Office.

[Amended by the Third Amending Ordinance]

PART 2 APPLICATIONS

Form of Application

2.—(1) The application for the registration of a trade mark should be filed using the form issued by the Patent Office.

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

(3) A separate application shall be required for each trade mark.

Contents of the Application

3.—(1) The application shall contain:

1. particulars identifying the applicant and, if applicable, his representative under Section 5;
2. particulars concerning the form of the trade mark under Section 6 as well as a reproduction of the trade mark under Sections 7 to 12;
3. the list of goods and services under Section 14 in respect of which the trade mark is to be registered.

The provisions for according a date of filing under Section 33(1) and Section 32(2) of the Trade Mark Law shall not be affected.

(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 State 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.

The possibility of submitting the declaration of priority within a period of two months (Section 34(3) and Section 35(4) of the Trade Mark Law) shall not be affected.

Application of Collective Marks

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

*Particulars Identifying the Applicant
and his Representative*

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

1. where the applicant is a natural person, his first name and family name or, where the registration is to be for the applicant's company, the company name as recorded in the commercial register;
2. where the applicant is a legal person or a partnership, the name of this person or of this partnership; the customary abbreviation of the legal form may be used;
3. the address of the applicant (street, number of building, postal code, place).

(2) The application should indicate an address for service other than the address of the applicant, such as a P.O.B. address, as well as telephone numbers, existing connections for electronic data transmission such as telecopier or teleprinter.

(3) If the application is filed by several persons, subsections (1) and (2) shall apply to all of them. The first sentence shall also apply to partnerships under the Civil Code.

(4) If the applicant has his domicile or seat abroad, subsections (1) to (3) shall apply *mutatis mutandis*. For the address under subsection (1), No. 3, the State shall also be indicated in addition to the place. Furthermore, it is possible to indicate, if applicable, the district, province or federal state in which the applicant has his domicile or seat, or whose legal system he is subject to.

(5) If the Patent Office has allotted an applicant's number to the applicant, this number should be indicated in the application.

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

*Particulars Concerning
the Form of the Trade Mark*

6. The application shall indicate whether the trade mark is to be entered in the Register as

1. a word mark (Section 7);
2. a figurative mark (Section 8);
3. a three-dimensional mark (Section 9);

4. a tracer mark (Section 10);
5. a sound mark (Section 11); or,
6. another form of a trade mark (Section 12).

Word Marks

7. If the applicant indicates that the trade mark is to be registered in block letters that are generally used at the Patent Office, the trade mark shall be reproduced in the usual characters in the application (letters, numerals or other signs).

Figurative Marks

8.—(1) If the applicant indicates that the trade mark is to be registered in the chosen graphical reproduction of a word mark within the meaning of Section 7, as a two-dimensional combined word and figurative mark, as a figurative mark or in color, four identical two-dimensional graphical representations of the trade mark shall be attached to the application. If the trade mark is to be registered in color, the colors shall also be specified in the application.

(2) The representation of the trade mark shall be reproduced on paper in a durable manner, and shall be of such color and shape that the elements of the trade mark appear distinctly in all their details, the size being of a maximum width of 9 cm even if represented in black and white. The representations shall not be pasted over and shall be free from deletions and coverings in other than durable colors.

(3) The sheets used for representations of trade marks shall not exceed DIN [*Deutsche Industrie Norm* (German format)] A4 (height 29.7 cm, width 21 cm). The area used for the representation (type area) shall not exceed 26.2 cm x 17 cm. The sheets shall be printed on one side only. From the left side margin a minimum free space of 2.5 cm shall be left.

(4) The correct position of the trade mark, insofar as it is not self-evident, shall be indicated by adding the word “top” on each representation.

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

Three-Dimensional Marks

9.—(1) If the applicant indicates that the trade mark is to be registered as a three-dimensional mark, four identical two-dimensional graphical representations of the trade mark shall be attached to the application. Reproductions of a maximum of six different views of the trade mark may be filed. If the trade mark is to be registered in color, the colors shall be specified in the application.

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

(3) Where the trade mark is represented by graphic outline drawing, the reproduction shall be executed in uniformly black and well defined lines without blurs. It may contain hatchings and shadings to represent three-dimensional details.

(4) For the form of the representation Section 8(2) to (4) shall apply *mutatis mutandis*.

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

Tracer Marks

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

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

Sound Marks

11.—(1) If the applicant indicates that the trade mark is to be registered as a sound mark, four identical two-dimensional graphical representations of the trade mark shall be attached to the application.

(2) Sound marks shall be represented by a customary musical notation or, if this is not possible due to the nature of the mark, by a sonogram. For the form of the representation Section 8(2) to (4) shall apply *mutatis mutandis*.

(3) The applicant shall file a sound reproduction of the mark.

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

(5) The President of the Patent Office shall determine the form of the representation by sonogram and the data carriers to be used for sound reproduction as well as the formatting, scanning frequency, resolution and playback time.

Other Forms of Trade Marks

12.—(1) If the applicant indicates that the trade mark is to be registered as another form of a trade mark, four identical two-dimensional graphical representations of the trade mark shall be attached to the application. If the trade mark is to be registered in color, the colors shall be specified in the application.

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

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

Models and Samples

13. No models or samples of objects provided with 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.

List of Goods and Services

14.—(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 (Section 15).

(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 15(2) should be used. As for the rest, terms generally used in the course of the business should be used to the extent possible.

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

Publication of the Application

14a.—(1) The publication of the application of a trade mark, which has been accorded a date of filing (Section 33(1) of the Trade Mark Law) shall comprise the following information:

1. the file number of the application;
2. the date of receipt of the application;
3. particulars as to the trade mark;
4. particulars as to a foreign priority (Section 34 of the Trade Mark Law), exhibition priority (Section 35 of the Trade Mark Law), claimed by the applicant, or as to the seniority claimed under Article 35 of the Council Regulation (EC) No. 40/94 of 20 December 1993 on the Community Trade Mark (Official Journal of the European Communities (OJ EC) No. L 11 p. 1)²;
5. the name and the domicile or seat of the applicant;
6. where a representative has been appointed, the name and the domicile or seat of the representative;
7. the address for service, also indicating the person accepting service;
8. the leading class and other classes, if any, of the list of goods and services.

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

[Added by the Second Amending Ordinance]

PART 3
CLASSIFICATION
OF GOODS AND SERVICES

Classification

15.—(1) The classification of goods and services shall be determined by the Classification of Goods and Services annexed to these Regulations³.

(2) In addition, the “Alphabetical List of Goods and Services under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks⁴” may be used for the classification.

Amendment of the Classification

16.—(1) Where the Classification has been amended between the date of the registration of a trade mark and the date when the renewal of the period of protection becomes effective, the classification of the goods and services shall be amended *ex officio* when the period of protection is renewed. In this case, the classification may also be adapted any time upon request by the proprietor.

(2) Where the amendment of the classification affects the amount of the fees payable for the renewal of the period of protection, the additional class fees shall be paid within the time limits under Section 47(3) of the Trade Mark Law without the surcharge stated in Section 47(3), fourth sentence, of the Trade Mark Law for late payment.

PART 4
REGISTER; CERTIFICATE; PUBLICATION

Location and Form of the Register

17.—(1) The Register shall be kept at the Patent Office.

(2) The Register may be kept in the form of an electronic data base.

Contents of the Register

18. 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 reproduction of the trade mark;
4. the indication of the form of the trade mark, if it is a three-dimensional mark, a tracer mark, a sound mark or another form of a trade mark;
5. for trade marks registered in color, an indication to this effect and the specification of the colors;
6. a reference to the description kept with the files;
7. for trade marks registered due to proven secondary meaning (Section 8(3) of the Trade Mark Law), an indication to this effect;
8. for trade marks that have been registered on the basis of a trade mark registration in the country of origin under Article 6quinquies of the Paris Convention for the Protection of Industrial Property⁵, an indication to this effect;
9. if applicable, the indication that the trade mark is a collective mark;
10. in case of a trade mark the seniority of which has been claimed under Article 34 or 35 of the Council Regulation (EC) No. 40/94 of 20 December 1993 on the Community Trade Mark (OJ EC No. L11 p.1) for a trade mark applied for or registered, the corresponding indication and, in case of cancellation of the trade mark, a statement specifying the grounds for cancellation;
[amended by the Second Amending Ordinance]
11. (deleted by the Second Amending Ordinance);
12. the date of filing of the trade mark;
13. if applicable, the day decisive for the determination of the seniority of a trade mark under Section 37(2) of the Trade Mark Law;

14. the date, the State and the file number of the foreign priority claimed by the proprietor of the trade mark (Section 34 of the Trade Mark Law);
15. particulars as to an exhibition priority claimed by the proprietor of the trade mark (Section 35 of the Trade Mark Law);
16. the name and domicile or seat of the proprietor of the trade mark;
[amended by the Second Amending Ordinance]
17. if a representative is appointed, the name and the seat of the representative;
[amended by the Second Amending Ordinance]
18. the address for service, also indicating the person accepting service;
[amended by the Second Amending Ordinance]
19. the list of goods and services, indicating the leading class and the other classes;
20. the date of registration in the Register;
21. the date of publication of the registration;
22. if after the expiry of the period for opposition, no notice of opposition to the registration of the trade mark has been given, an indication to this effect;
23. if notice of opposition has been given:
 - (a) an indication to this effect;
[amended by the Second Amending Ordinance]
 - (b) the date of the conclusion of the opposition proceedings;
[amended by the Second Amending Ordinance]
 - (c) where the trade mark has been cancelled in full, an indication to this effect;
[amended by the Second Amending Ordinance]
 - (d) where the trade mark has been cancelled in part, the goods and services to which the cancellation refers;
[amended by the Second Amending Ordinance]
24. the renewal of the period of protection;
25. where a third person has filed a request for cancellation of the registered trade mark:
 - (a) in case of a request for cancellation pursuant to Section 50 of the Trade Mark Law, an indication to this effect;
[amended by the Second Amending Ordinance]
 - (b) in case of a request for cancellation pursuant to Section 50 of the Trade Mark Law, the conclusion of the cancellation procedure;
[amended by the Second Amending Ordinance]
 - (c) where the trade mark has been cancelled in full, an indication to this effect;
[amended by the Second Amending Ordinance]
 - (d) where the trade mark has been cancelled in part, the goods and services to which the cancellation refers;
[amended by the Second Amending Ordinance]
26. where a cancellation procedure is instituted *ex officio*
 - (a) where the trade mark has been cancelled in full, an indication to this effect;
[amended by the Second Amending Ordinance]
 - (b) where the trade mark has been cancelled in part, the goods and services to which the cancellation refers;
[amended by the Second Amending Ordinance]
27. where a trade mark is cancelled in full or in part due to the corresponding declaration of the proprietor of the trade mark, in particular the renewal in part of the trade mark or a revocation in part, an indication to this effect, specifying the grounds for cancellation, and, if the trade mark has been cancelled in part, the list of the goods and services relevant after the cancellation has been carried out;
[amended by the Second Amending Ordinance]
28. particulars as to the action for the grant of registration under Section 44 of the Trade Mark Law, if these have been communicated to the Patent Office;
29. the date of receipt of a declaration of division;

30. in the parent registration (*Stammeintragung*) a reference to the registration number of the registration divided due to the declaration of division;
31. in the registration divided due to the declaration of division an indication to this effect and the registration number of the parent registration;
32. the date and number of the international registration (Sections 110 and 122(2) of the Trade Mark Law);
33. the assignment of the trade mark together with particulars as to the successor in title and, if applicable, his representative pursuant to Nos. 16, 17 and 18;
34. in case of an assignment of the trade mark for some of the goods and services, additionally the particulars as to Nos. 30 and 31;
35. particulars as to rights *in rem* (Section 29 of the Trade Mark Law);
36. particulars as to the levy of execution (Section 29(1), No. 2, of the Trade Mark Law) and bankruptcy proceedings (Section 29(3) of the Trade Mark Law);
37. amendments of the particulars indicated in Nos. 16, 17 and 18;
38. corrections of registrations in the Register (Section 45(1) of the Trade Mark Law).

Certificates

19.—(1) The proprietor of a trade mark shall receive a document certifying the registration of a trade mark in the Register under Section 41 of the Trade Mark Law.

(2) The proprietor of a trade mark shall also receive a certificate on the indications recorded in the Register, except where he has explicitly renounced it.

Location and Form of the Publication

20.—(1) Indications on the registered trade mark will be published in the Trade Mark Journal issued by the Patent Office.

(2) The Patent Office may additionally provide the publication in another form, particularly on data carriers.

Contents of the Publication of the Registration

[Amended by the Second Amending Ordinance]

21.—(1) The publication of the registration comprises all indications recorded in the Register, except for those specified in Section 18, Nos. 21 and 32. Trade mark registrations in color shall be published in color.

[Amended by the Second Amending Ordinance]

(2) The first publication of trade mark registrations shall be accompanied by a note referring to the possibility of opposition (Section 42 of the Trade Mark Law). The repetition of this note is required 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 sentences.

(3) In case of a cancellation in part, the registration of the trade mark as such may be published again.

[Amended by the Second Amending Ordinance]

PART 5
INDIVIDUAL PROCEDURES

Chapter 1
Procedures Preceding Registration

File Number; Acknowledgement of Receipt

22.—(1) The Patent Office shall note on the application the date of receipt and the file number of the application.

(2) The Patent Office shall transmit without delay an acknowledgement of receipt to the applicant, specifying the filed trade mark and indicating the file number of the application as well as the date of receipt of the application.

Classification

23.—(1) If the goods and services in the application are not classified correctly, the Patent Office shall decide on the classification.

(2) The Patent Office shall determine the class of the classification on which the application is focused as the leading class. Insofar, it shall not be bound by an applicant's indication of the leading class. The Patent Office shall take into account a leading class indicated by the applicant in respect of the payment of fees.

*Reference to a Trade Mark Registered
in the Country of Origin*

24.—(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.

*Postponement of Seniority
when the Trade Mark has Acquired
a Secondary Meaning
within the Affected Trade Circles*

25. If it is found during examination that the prerequisites for postponement of seniority within the meaning of Section 37(2) of the Trade Mark Law are met, the Patent Office shall inform the applicant accordingly. The day decisive for determining seniority shall be entered in the application files. In other respects, the date of filing within the meaning of Section 33(1) of the Trade Mark Law shall not be affected.

Chapter 2 **Opposition Procedure**

Form of the Opposition

26.—(1) A separate opposition shall be required for each trade mark on the basis of which notice of opposition is given to registration of a trade mark (opposed trade mark). Oppositions may be combined in one notice of opposition, if based on several opposed trade marks of the same opponent.

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

Contents of the Opposition

27.—(1) The opposition shall contain indications allowing the identification of the trade mark challenged and the opposed trade mark as well as the opponent.

(2) The opposition should include:

1. the registration number of the trade mark whose registration is opposed;
2. the registration number of the registered opposed trade mark or the file number of the filed opposed trade mark;
3. in the cases under Section 42(2), Nos. 2 and 3, of the Trade Mark Law, the reproduction and the designation of the nature of the opposed trade mark;
4. where the opposed trade mark is an international registration, the registration number of the opposed trade mark and, in the case of international registrations opposed which were registered with effect in the Federal Republic of Germany as well as the German Democratic Republic before October 3, 1990, a declaration on which part of the country the opposition is based;
5. the name and the address of the proprietor of the opposed trade mark;
6. where the opposition is lodged by a person not entered in the Register, the name and the address of the opponent as well as the date when the request for recordal of the transfer of rights has been filed;
7. if the opponent has appointed a representative, the name and the address of the representative;
8. the name of the proprietor of the trade mark whose registration is opposed to;
9. the reproduction of the opposed trade mark in the form in which it was registered or filed;
10. the goods and services in respect of which the opposed trade mark has been registered or filed; only such goods and services shall be indicated on which the opposition is based;
11. the goods and services for which the trade mark whose registration is opposed has been registered; only such goods and services shall be indicated which are the subject-matter of opposition.

Joint Decision on Several Oppositions

28.—(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).

Suspension

29.—(1) Except for the cases stated in Section 43(3) of the Trade Mark Law, the Patent Office may also, where appropriate, suspend an opposition procedure.

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

30. (deleted by the Second Amending Ordinance)

Chapter 3 Transfer of Rights and Other Rights

Recordal of a Transfer of Rights

31.—(1) The request for recordal of the transfer of a right based on the registration of a trade mark under Section 27(3) of the Trade Mark Law should be filed using the form issued by the Patent Office.

(2) The request shall indicate:

1. the registration number of the trade mark;
2. indications corresponding to those under Section 5 concerning the successor in title;
3. where the successor in title has appointed a representative, the name and the address of the representative.

(3) To establish evidence of the transfer of rights it shall be sufficient:

1. that the request is signed by the registered proprietor or his representative as well as by the successor in title or his representative; or,
2. that, where the successor in title files the request,
 - (a) a declaration signed by the registered proprietor or his representative is attached to the request, stating that he agrees to the recordal of the successor in title; or
 - (b) documents are attached to the request, showing the succession in title, as for example a transfer contract or a declaration on the transfer, if the respective documents are signed by the registered proprietor or his representative and by the successor in title or his representative.

(4) For declarations stated in subsection (3), No. 2, the forms issued by the Patent Office should be used. For transfer contracts stated in subsection (3), No. 2(b), the form issued by the Patent Office may also be used.

(5) In the cases under subsection (3), authentication of the declaration or signatures is not required.

(6) In the cases under subsection (3), the Patent Office may require further evidence only where well-founded doubts about the transfer of rights have arisen.

(7) The evidence of the transfer of rights in a way other than stated under subsection (3), shall not be affected.

(8) The request for recordal of a transfer may be jointly filed for several trade marks, if the registered proprietor and the successor in title are identical for all trade marks concerned.

Transfer in Part

32.—(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 transfer of rights shall indicate the goods and services to which the transfer of rights refers to.

(2) In other respects, Section 37(1) to (5) and (7) shall apply *mutatis mutandis* subject to the proviso that the time limit for filing documents prescribed in subsection (5) shall not be applicable.

[Amended by the Second Amending Ordinance]

(3) and (4) (deleted by the Second Amending Ordinance)

Recordal of Rights in rem

33.—(1) The request for recordal of a pledge or another right *in rem* to the right based on the registration of a trade mark under Section 29(2) of the Trade Mark Law should be filed using the form issued by the Patent Office.

(2) Section 31(2) to (8) shall apply *mutatis mutandis*.

Measures for Levy of Execution; Bankruptcy Proceedings

34.—(1) The request for recordal of a measure for levy of execution under Section 29(2) of the Trade Mark Law may be filed by the proprietor of the registered trade mark or by the person levying execution. The required evidence shall be attached to the request.

(2) The required evidence shall be attached to the request for recordal of bankruptcy proceedings under Section 29(3) of the Trade Mark Law.

Application mutatis mutandis to Trade Marks Filed

35.—(1) Sections 31 to 34 shall apply *mutatis mutandis* to filed trade marks. A joint request under Section 31(8) may also be filed for filed and registered trade marks.

(2) The transfer of rights, right *in rem*, levy of execution or bankruptcy proceedings shall be entered in the files.

(3) 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 levy of execution existing at the time of registration or bankruptcy proceedings pending at the time of registration shall also be recorded in the Register.

(4) Where the transfer of rights based on the application of a trade mark affects some of the registered goods and services only, for which the trade mark has been filed, the request for transfer in part shall indicate those goods and services to which the transfer of rights relates. In other respects, Section 36(1) to (5) and (7) shall apply *mutatis mutandis* subject to the proviso that the time limit for filing documents prescribed in subsection (5) shall not be applicable.

[Amended by the Second Amending Ordinance]

Chapter 4 **Division of Applications** **and Registrations**

Division of Applications

36.—(1) A filed trade mark may be divided into two or more applications under Section 40(1) of the Trade Mark Law. For each divided part a separate declaration of division shall be required. The declaration of division should be filed using the form issued by the Patent 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 additions in such a way as to avoid any overlapping of the lists of goods and services.

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

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

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

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

Division of Registrations

37.—(1) A registered trade mark may be divided into two or more registrations under Section 46(1) of the Trade Mark Law. For each divided part a separate declaration of division shall be filed. The declaration of division should be filed using the form issued by the Patent 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 additions in such a way as to avoid any overlapping of the lists of goods and services.

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

(5) Where the original registration contains a reproduction of the trade mark under Sections 8 to 12, four additional identical two-dimensional graphical representations of the trade mark shall be filed within a period of three months under Section 46(3), third sentence, of the Trade Mark Law; for sound marks a sound reproduction of the mark shall be additionally filed under Section 11(3).

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

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

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

Chapter 5 Renewal

Renewal by Payment of Fees

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

(2) In case of renewal by payment of fees the appointment of a domestic representative under Section 96 of the Trade Mark Law shall not be required.

Request for Partial Renewal

39.—(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.

[Amended by the Second Amending Ordinance]

Calculation of the Time Limits

40. For the calculation of time limits under Section 47(1), (3), (4), (5) and (6) of the Trade Mark Law, the period of protection shall expire on the last day of a month, respectively, and the period of six months under Section 47(3), fourth sentence, of the Trade Mark Law shall also expire on the last day of a month, respectively.

Chapter 6 Surrender

Surrender

41.—(1) The request for cancellation of a trade mark in full or in part under Section 48(1) of the Trade Mark Law should be filed using the form issued by the Patent 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.
[amended by the Second Amending Ordinance]
- (3) (deleted by the Second Amending Ordinance)

Agreement of Third Parties

42. For the agreement, required under Section 48(2) of the Trade Mark Law, of a proprietor of a right to the trade mark recorded in the Register, the submission of a declaration of agreement signed by this person or by his representative shall be sufficient. Authentication of the declaration or the signature shall not be required. Evidence of the agreement in another way than stated in the first sentence shall not be affected.

**Chapter 7
Cancellation**

Cancellation on Grounds of Revocation

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

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

*Cancellation due
to Absolute Grounds for Refusal*

44. Section 43 shall apply *mutatis mutandis* to requests for cancellation due to absolute grounds for refusal under Section 54(1) of the Trade Mark Law.

**Chapter 8
Corrections, Changes**

Corrections

45.—(1) The request for the correction of errors under Section 45(1) of the Trade Mark Law should be filed using the form issued by the Patent Office.

(2) The request shall indicate:

1. the registration number of the trade mark;
2. the name and the address of the proprietor of the trade mark;
3. where the proprietor of the trade mark has appointed a representative, the name and the address of the representative;
4. the identification of the error to be corrected;
5. the correction to be recorded.

(3) Where several trade mark registrations of the same proprietor contain the same error, one request for the correction of that error may be filed jointly for all registrations.

(4) Subsections(1) to (3) shall apply *mutatis mutandis* to requests for the correction of errors in publications under Section 45(2) of the Trade Mark Law.

(5) Subsections (1) to (3) shall apply *mutatis mutandis* to requests for the correction of errors in applications under Section 39(2) of the Trade Mark Law. In the case specified in subsection (3) a joint request may also be filed for the corrections of errors in registrations and applications.

Changes in the Name or Address

46.—(1) The request for recordal of a change in the name or the address of the proprietor of a registered trade mark should be filed using the form issued by the Patent Office.

(2) The request shall indicate:

1. the registration number of the trade mark;
2. the name and the address of the proprietor of the trade mark in the form recorded in the Register;
3. the name and the address in the new form to be recorded in the Register;
4. where the proprietor of the trade mark has appointed a representative, the name and the address of the representative.

(3) Where the change in the name or the address concerns several registrations of trade marks of the same proprietor one request for recordal of the change may be jointly filed for all registrations.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to requests for the recordal of the change in the name or the address of a representative or the proprietor of a right registered under Section 29 of the Trade Mark Law.

(5) Subsections (1) to (4) shall apply *mutatis mutandis* to requests for the change in the name or the address in the files of trade mark applications. In the case specified in subsection (3) a joint request may also be filed for the change in the names or the addresses with respect to registrations and applications.

Chapter 9 Inspection of Files

Competence

47. The Trade Mark Section in charge of the registration procedure shall decide on the request for the inspection of application files. If the registration procedure is concluded the Trade Mark Division shall decide on the request.

Inspection

48.—(1) With respect to the inspection of files of applications and registered trade marks, the inspection of the original or a copy of the files shall be granted.

(2) The inspection of the original of the files shall be granted only within the office building of the Patent Office.

(3) The inspection of files shall be granted upon request by furnishing copies of the entire files or parts thereof. Certified copies shall be issued upon request.

Chapter 10 International Registrations

Request for International Registration under the Madrid Agreement

49.—(1) The request for the international registration of a trade mark recorded in the Register under Article 3 of the Madrid Agreement Concerning the International Registration of Marks⁶ should be filed with the Patent Office using the form issued by the International Bureau of the World Intellectual Property Organization.

(2) The translation of the list of goods and services required under Section 108(3) of the Trade Mark Law shall be filed in French.

Request for International Registration under the Protocol Relating to the Madrid Agreement

50.—(1) Section 49 shall apply *mutatis mutandis* to the request for international registration of a trade mark filed with the Patent Office or recorded in the Register under Article 3 of the Protocol Relating to the Madrid Agreement⁷.

(2) The translation of the list of goods and services required under Section 120(3) or Section 108(3) of the Trade Mark Law shall be filed either in French or English at the choice of the applicant.

*Request for International Registration
under the Madrid Agreement
and the Protocol Relating
to the Madrid Agreement*

51.—(1) Section 49 shall apply *mutatis mutandis* to the request for international registration of a trade mark recorded in the Register under Article 3 of the Madrid Agreement as well as under Article 3 of the Protocol Relating to the Madrid Agreement.

(2) The translation of the list of goods and services required under Section 120(3) or Section 108(3) of the Trade Mark Law shall be filed either in French or English at the choice of the applicant.

Refusal of Protection

52.—(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 at four months from the date on which notification of refusal was dispatched by the International Bureau of the World Intellectual Property Organization.

(2) Where the refusal of protection has become final because the proprietor of the international registration has failed to appoint a representative in Germany, an objection to or an appeal from the refusal shall be filed with the Patent Office within one further month after the time limit of four months under subsection (1) from the date on which the notification of refusal was dispatched by the International Bureau of the World Intellectual Property Organization. Instructions about the proprietor's right to appeal shall be attached to the refusal. Section 61(2) of the Trade Mark Law shall apply *mutatis mutandis*.

Information on International Registrations

53.—(1) No register shall be kept for international registrations for which protection has been extended to the territory of the Federal Republic of Germany.

(2) Information on international registrations for which protection has been extended to the territory of the Federal Republic of Germany shall be given on the basis of the data collection kept at the Patent Office.

PART 6
PROCEDURE UNDER
THE COUNCIL REGULATION
(EEC) NO. 2081/92 OF JULY 14, 1992,
ON THE PROTECTION OF GEOGRAPHICAL
INDICATIONS AND DESIGNATIONS
OF ORIGIN FOR AGRICULTURAL
PRODUCTS AND FOODSTUFFS⁸

Application for Registration

54.—(1) The application for registration of a geographical indication or a designation of origin under the Regulation (EEC) No. 2081/92 should be filed using the form issued by the Patent Office.

(2) The application shall indicate:

1. the name and the address of the applicant within the meaning of Article 5.1 of the Regulation (EEC) No. 2081/92;
2. where a representative has been appointed, the name and the address of the representative;
3. the geographical indication or the designation of origin for which registration is requested;
4. the specification with the indications required under Article 4 of the Regulation (EEC) No. 2081/92.

Examination of the Application

55.—(1) When examining the application the Patent Office shall seek comments from the interested public bodies, including the Federal Ministries of Food, Agriculture and Forestry and of Health as well as of the interested business associations, organizations and institutions.

(2) If it results from the application or the examination that the geographical indication or the designation of origin is identical to a designation which designates also a geographical region situated in another Member State, the Patent Office shall directly inform the competent authority in that Member State, and give it the opportunity to comment.

Publication of the Application

56.—(1) If it results from the examination of the application that the geographical indication or designation of origin complies with the requirements of the Regulation (EEC) No. 2081/92 and with its implementing provisions, the Patent Office shall publish the application in the Trade Mark Journal and shall furthermore inform the business associations, organizations and institutions concerned.

(2) The publication shall indicate:

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 geographical indication or designation of origin;
4. the essential contents of the specification.

(3) The publication shall indicate the possibility of filing a comment under Section 58.

Inspection of Files

57.—(1) Upon request and if a legitimate interest is proved to the satisfaction of the Patent Office, it shall grant the inspection of files of geographical indications and designations of origin filed for registration.

(2) After the publication under Section 56 the inspection of the files shall be granted upon request.

Comments; Re-examination

58.—(1) Within three months from the publication of the application in compliance with Section 56 any person may file comments with the Patent Office on the protectability of the geographical indication or designation of origin which is the subject-matter of the application.

(2) If comments have been filed, the Patent Office shall re-examine the application, taking these comments into consideration.

Decision on the Application

59.—(1) If no comments have been filed under Section 58(1), or if it results from the re-examination under Section 58(2) that the application complies with the requirements of the Regulation (EEC) No. 2081/92 and with its implementing provisions, the Patent Office shall decide on this matter and transmit the original of the files to the Federal Ministry of Justice.

(2) The decision made under subsection (1) shall be communicated to the applicant.

Objections

60.—(1) Objections under Article 7.3 of the Regulation (EEC) No. 2081/92 shall be filed with the Patent Office within four months from the publication in the OJ EC in compliance with Article 6.2 of the Regulation (EEC) No. 2081/92. The objection shall be deemed to have been received in time only if the objection fee has been paid before the expiry of the time limit of the first sentence. Reinstatement in the time limits for filing the objection and for paying the fee shall not be admissible.

(2) The objection shall indicate:

1. the name and the address of the objecting party;
2. the geographical indication or designation of origin the registration of which is objected to;
3. circumstances proving the legitimate interest of the objecting party.

(3) The objection shall be substantiated within the time limit for objection. The objection may only be based on

1. the fact that the requirements for a designation of origin or geographical indication are not complied with within the meaning of Article 2 of the Regulation (EEC) No. 2081/92;

2. the fact that the registration of the proposed designation would be detrimental to the existence of a wholly or partly identical designation or a trade mark or to the existence of products lawfully on the market on July 24, 1992, or
3. the fact that the designation whose registration has been applied for is a generic term; sufficient information to this effect shall be given.

Objection Procedure

61.—(1) After the expiry of the time limit under Section 60(1), the Patent Office shall immediately inform the Federal Ministry of Justice of the objections received and transmit the originals of the objection and of the remaining documents on file.

(2) Within the procedure under Article 7.5 of the Regulation (EEC) No. 2081/92 the Patent Office shall provide an opportunity for the competent authority of the Member State having filed an objection under Article 7.1 of the Regulation (EEC) No. 2081/92 and for the objecting party under Article 7.3 of the Regulation (EEC) No. 2081/92 as well as for the applicant to comment.

(3) The Patent Office shall inform the Federal Ministry of Justice on the result of the procedure under Article 7.5 of the Regulation (EEC) No. 2081/92 and transmit the original of the files.

Amendments of the Specification

62. Requests for the amendment of the specification shall be filed with the Patent Office. Section 54(2) and Sections 55 to 61 shall apply *mutatis mutandis* to the further procedures.

PART 7 GENERAL PROVISIONS FOR PROCEDURES

Chapter 1 Forms

Forms

63.—(1) The Patent Office shall issue the forms provided for in these Regulations. Instead of these forms, copies of these forms or forms with the same contents and a comparable size may be used, as for example, forms produced or processed by means of electronic data processing.

(2) Forms should be filled in in such a manner as to allow electronic capturing and processing.

Chapter 2 Form of Requests and Communications

Originals

64.—(1) Originals of requests and communications shall be signed before filing.

(2) Durable, non-transparent paper in DIN A4 format shall be used for the documents. The writing shall be easily legible and indelible. The minimum free space to be left from the left side margin shall be 2.5 cm. The sheets of a document shall be continuously numbered and stapled together.

Transmission by Telecopier

65.—(1) The signed original may also be transmitted by telecopier.

(2) The Patent Office may require the repetition of the transmission by telecopier or the furnishing of the original if it has well-founded doubts as to the completeness of the transmission or the conformity of the original with the transmitted telecopy, or if the quality of the reproduction does not meet the requirements of the Patent Office.

(3) Invitations by the Patent Office under subsection (2) do not affect a date of filing accorded or time limits observed as a result of the receipt by telecopier.

Transmission by Telegram or Telex

66.—(1) Requests and communications may also be transmitted by telegram, telex or similar forms of data transmission. In these cases, the indication of the name shall replace the signature.

(2) Where the request or the communication in the cases of subsection (1) concerns a notification that cannot be reproduced by telegram, telex or other forms of data transmission, as for example, the reproduction of a trade mark or of annexes, these notifications shall be filed at a later date in the original or by transmission via telecopier.

(3) Section 65(2) shall apply *mutatis mutandis*. The provisions for according a date of filing shall not be affected.

Forms in a Foreign Language

67.—(1) For filing applications, the applicant may use the forms issued by the Patent Office, identical forms (Section 63(1), second sentence) as well as forms in a foreign language completed in German, if the latter comply with international standards, and if they correspond to the German forms with regard to form and contents. The Patent Office may require further explanations, in case of doubt as to the contents of individual indications in the foreign language form. These subsequent requirements shall not affect the according of a date of filing under Section 33(1) of the Trade Mark Law.

(2) Subsection (1) shall apply *mutatis mutandis* to other procedures, for which forms issued by the Patent Office are provided for in these Regulations.

Applications in a Foreign Language

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

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

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

(4) The examination of the application and all other procedures before the Patent Office shall be based on the German translation.

Documents in a Foreign Language

69.—(1) The Patent Office may consider the following documents in a foreign language:

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

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

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

Other Requirements for Requests and Communications

70.—(1) After the file number has been communicated it shall be indicated on all requests and communications. All elements of a consignment addressed to the Patent Office shall indicate which request or communication they relate to.

(2) Requests and communications concerning several cases shall be filed in the required number of copies. The application of the provisions on the combining of several oppositions in one notice of opposition (Section 26(1), second sentence) and on joint requests for recordal or entry of transfers of rights (Section 31(8)), on corrections (Section 45(3)) and on changes in names and addresses (Section 46(3)) shall not be affected.

(3) Where authenticated documents must be filed, a copy authenticated by an attorney-at-law or a patent attorney may be filed instead of a certification by a notary public.

(4) Where several persons are parties to the procedure before the Patent Office, all documents shall be accompanied by copies for the other parties to the procedure. If a party concerned does not fulfil this obligation, the Patent Office may decide whether it produces the required number of copies at the expense of the party concerned or whether it invites him to file the copies at a later date.

Chapter 3 **Decisions, Office Actions and** **Notifications by the Patent Office**

Form of the Official Copies

71.—(1) The official copies of the decisions, office actions and other notifications shall contain in the head line the indication “German Patent and Trade Mark Office” and at the end the designation of the Trade Mark Section or Trade Mark Division.

[Amended by the Second Amending Ordinance]

(2) Official copies shall contain the name and the occupational title of the signatory. They shall be signed by the person executing them; official copies containing the reproduction of the name of the person executing them as well as the official stamp of the Patent Office shall be equally valid.

(3) Office actions and other notifications shall either bear the signature or the reproduction of the name of the authorized signatory or the official stamp of the Patent Office.

[Amended by the Second Amending Ordinance]

Service and Delivery *not Subject to Formal Requirements*

72.—(1) Insofar as service is governed by a legal provision or an office order, it shall be determined by Section 94 of the Trade Mark Law.

(2) In the other cases office actions and other notifications by the Patent Office shall be delivered without formal requirements.

(3) Transmission by telecopier, telex and other forms of data transmission shall also be deemed to be a delivery not subject to formal requirements.

Several Parties; Several Representatives

73.—(1) If several persons are joint parties to the procedure without having a common representative, the person shall be indicated who is to be the person authorized to accept service and the authorized receiving agent for all parties to the procedure. If no such indication is given, the person first mentioned shall be deemed to be the person authorized to accept service and the authorized receiving agent.

(2) Where a party to the procedure has appointed several representatives the representative shall be indicated who is to be the person authorized to accept service and the authorized receiving agent. If no such indication is given, the representative first mentioned shall be deemed to be the person authorized to accept service and the authorized receiving agent.

(3) Subsection (2) shall apply *mutatis mutandis* where several persons who are joint parties to the procedure have appointed several representatives as common representatives.

(4) Subsections (2) and (3) shall not apply if an association of representatives has been appointed for representation. In this case, the indication of the name of the association shall be sufficient. Where such an association has several addresses, the applicable address shall be indicated. If no such indication is given, the address first mentioned shall be the applicable address.

Chapter 4
Time Limits, Decision on the Records

Time Limits

74.—(1) The time limits fixed by the Patent Office or granted upon request shall as a rule amount to one month where the persons concerned have a domicile, a seat or an establishment in Germany and as a rule two months for persons with a domicile, a seat or an establishment abroad. The Patent Office may fix or grant a shorter or longer time limit where this is justified by the circumstances.

(2) The time limit may be extended up to twice the normal time limit under subsection (1) if sufficient reasons are given.

(3) Further extensions of time limits shall only be granted if *prima-facie* evidence of a legitimate interest is furnished. In procedures with several parties *prima-facie* evidence of the agreement of the other parties shall be furnished.

Decision on the Records

75.—(1) Decisions on the records on unsupported requests or objections may be made in *ex-parte* proceedings after the expiry of a period of one month after receipt, if, in the request or the objection, no subsequent statement of reasons has been announced, or a

subsequent statement of reasons has been announced without a request for the grant of a time limit under Section 74.

(2) Decisions on the records on unsupported requests, oppositions or objections may be made in multilateral proceedings, if, in the request, the opposition or the objection, no subsequent statement of reasons has been announced or a subsequent statement of reasons has been announced without a request for the grant of a time limit under Section 74, and if the other party to the proceedings does not give a comment within the time limit under Section 74(1), or if he announces subsequent comments without a request for the grant of a time limit under Section 74. If the request, opposition or objection is rejected, the decision shall be made without waiting for the comments of the other parties to the proceedings.

Chapter 5 **Representation; Power of Attorney**

Representation

76.—(1) A party to the procedure may at any stage of the procedure appoint a representative. The requirement for appointing a representative in Germany under Section 96 of the Trade Mark Law shall not be affected.

(2) The appointment of an association of representatives shall be deemed to relate to all representatives working in the association unless individual persons working in the association are explicitly designated as representatives.

(3) The safeguard of interests of a party to the procedure by an employee of this party shall not be an appointment within the meaning of subsection (1). The Patent Office shall not examine the employee's title to act for the party to the procedure.

Power of Attorney

77.—(1) Representatives, insofar as they are not merely authorized to accept service or notifications, shall submit to the Patent Office a power of attorney signed by the authorizing party. Authentication of the power of attorney or of the signature shall not be required.

(2) The power of attorney may relate to several applications, several registered trade marks or several procedures. The power of attorney may, as a "general power of attorney", include authorization for the representation in all trade mark matters. In the cases stated in the first and second sentences, only one copy of the power of attorney shall be required.

(3) A power of attorney shall state persons having the capacity to sue and be sued, and shall indicate their civil names. It shall be permissible to authorize an association of representatives indicating the name of this association.

(4) Absence of the power of attorney may be asserted at any stage of the procedure. The Patent Office shall consider *ex officio* the absence of the power of attorney or deficiencies thereof unless a member of the Chamber of Lawyers, a patent attorney, a permit holder or, in the cases of Section 155 of the Order Concerning Patent Attorneys (*Patentanwaltsordnung*), a patent practitioner (*Patentassessor*) acts as a representative.

PART 8
FINAL PROVISIONS

Repeal of Legal Provisions

78. The following provisions shall be repealed:

1. the Regulations for Trade mark and Service Mark Applications of April 9, 1979⁹ (*Bundesgesetzblatt* (BGBl.) I p. 570) last amended by the Order of October 13, 1992¹⁰ (BGBl. I p. 1764);
2. the provisions concerning the form of oppositions in the registration procedure for trade marks in the adjusted version published in the BGBl. III, classification number 423-1-2, amended by the Order of April 20, 1967 (*Bundesanzeiger* No. 117 of June 28, 1967);
3. the provisions concerning the application of tracers of February 5, 1940 (Bl.f.PMZ, 1940, p. 32) as well as the supplement to the provisions concerning the application of tracers of April 22, 1942 (Bl.f.PMZ, 1942, p. 68);
4. the provision concerning the establishment of the register for collective marks in the adjusted version, published in the BGBl. III, classification number 423-1-4.

Entry into Force

79. Sections 54 to 77 shall enter into force on December 7, 1994. In all other respects, these Regulations shall enter into force on January 1, 1995.

ANNEX
CLASSIFICATION OF GOODS
AND SERVICES

...¹¹

[Class 7: amended by the First Amending Ordinance; Class 29: amended by the First Amending Ordinance]

* *German title:* **Verordnung zur Ausführung des Markengesetzes vom 30. November 1994.**

** Text of November 30, 1994, amended by the First Amending Ordinance of December 3, 1996 (entry into force January 1, 1997), by the Second Amending Ordinance of July 1, 1998 (entry into force July 7, 1998) and by the Third Amending Ordinance of December 21, 1998 (entry into force December 29, 1998).

Entry into force (of last amending Ordinance): December 29, 1998.

Source: Communication from the German Authorities.

Note: Text established by the International Bureau of WIPO on the basis of the consolidated German text and the English translation of this consolidation communicated by the German authorities.

¹ See *Industrial Property Laws and Treaties*, GERMANY—Text 3-001 (*Editor's note*).

² See *Industrial Property Laws and Treaties*, REGIONAL LAWS—Text 3-003 (*Editor's note*).

³ Not reproduced here (see subsection (2) below and note 4) (*Editor's note*).

⁴ For the text of the Agreement, see *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES—Text 3-001; for the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification), see WIPO publication No. 500(EF) (*Editor's note*).

⁵ See *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES—Text 1-016 (*Editor's note*).

⁶ See *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES—Text 3-004 (*Editor's note*).

⁷ See *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES—Text 3-007 (*Editor's note*).

⁸ See *Industrial Property Laws and Treaties*, REGIONAL LAWS—Text 5-001 (*Editor's note*).

⁹ *Blatt für Patent-, Muster-, und Zeichenwesen* (Bl.f.PMZ) [Patents, Marks and Industrial Designs Gazette] 1979, p. 194 *et seq.* (*Editor's note*).

¹⁰ Bl.f.PMZ, 1992, p. 482 (*Editor's note*).

¹¹ See notes 3 and 4 (*Editor's note*).