

Intellectual Property - Austria

Amendment of IP-related statutes will come into force shortly

Contributed by [Graf & Pitkowitz](#)

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The introduction of new provincial administrative courts in Austria will fundamentally change administrative provisions in several IP statutes that will become effective on January 1 2014:

- the Patent Act;
- the Act on Utility Models;
- the Semiconductor Protection Act;
- the Act on Designs; and
- the Trademark Act.

The main amendments concern the reorganisation of appeal procedures. At present, appeals against decisions of the Patent Office's technical and legal departments are raised with the complaint department. The latter's decisions can be challenged, as can the decisions of the nullification department (which handles nullification applications) with the Supreme Patent and Trademark Board.

From the beginning of 2014, the Patent Office will handle only first instance proceedings. Appeals against decisions of the technical, legal and nullification departments will be filed with the Vienna Higher Regional Court. The complaint department and the Supreme Patent and Trademark Board will be dissolved. It will be possible to challenge decisions of the Vienna Appellate Court in a third instance at the Supreme Court, but only if stringent prerequisites for appeal are satisfied.

Parties may be represented at the Patent Office and the Vienna Higher Regional Court by attorneys, patent attorneys and notary publics. However, at the Supreme Court parties may be represented only by attorneys.

The amended Trademark Act contains further important changes, one of which concerns the concentration of all trademark disputes with the Vienna Commercial Court. At present, the court has exclusive jurisdiction for patent disputes, as well as disputes regarding utility models, solid-state contractors and designs. In future, this exclusive competence will also include trademark disputes. The Trademark Act also concentrates criminal proceedings - to be initiated at the request of trademark holder only - with the Vienna Regional Criminal Court.

The amended Trademark Act also changes the rules for opposition proceedings. In future, the holder of a more recent trademark must argue non-use of the older trademark no later than the first response to the opposition. If the holder of the younger mark does not respond within the prescribed time limit to the opposition, the younger trademark will automatically be cancelled in whole or in part as applied for, even if the opposition is based on a trademark application only which has not yet proceeded to registration at the time at which the opposition is decided on.

In addition, in future it will no longer be possible to raise oppositions against trademarks that are registered in Austria due to the conversion of Community trademarks or international trademarks (with regard to the latter, where the declaration as to the grant of protection has already been transmitted and the period to deny protection has already expired).

Finally, two objection periods will be shortened under the new law. The objection period to oppose an application for registration of a name as a geographical indication will be shortened from four to three months. The objection period to oppose an application pursuant to Regulation (EU) 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs will be shortened from three to two months.

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