

IN-DEPTH

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GERMANY



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In-Depth: Intellectual Property (formerly The Intellectual Property Review) provides a global overview of the forms of intellectual property coverage available in each jurisdiction, along with an update of the most consequential recent developments. It offers deep insight into the key legal and commercial issues that arise when seeking to obtain and enforce IP rights – including patents, copyright, designs, trademarks and trade secrets.

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Germany

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Introduction

Germany has established itself as a key jurisdiction for the enforcement of intellectual property (IP) rights in Europe. This reputation stems from a well-developed legal framework and a highly specialised court system that offers efficient and reliable mechanisms for rights holders. One of the notable features of the German IP enforcement landscape is its cost-effectiveness in proceedings. This increases its attractiveness to both local and international parties.

Germany's IP regime aligns international and especially European standards, making it an attractive and strategic venue for asserting and defending IP rights. With very effectively enforceable protections available across all major IP categories – patents, trademarks, copyrights, designs and trade secrets – Germany plays a central role in global IP enforcement efforts. As a result, it remains a preferred forum for rights holders seeking a practical and effective environment to safeguard their intellectual assets.

Year in review

The legal framework for intellectual property is subject to constant change, reflecting both technological innovations and social developments. Recent decisions and regulations at national and European level highlight the dynamism and complexity of today's protection of inventions, trademarks, designs, and copyright-protected works. Artificial intelligence in particular is a major topic of current legal debate. In Europe, Germany made the first decision on AI and copyright in 2024, focusing on the issue of AI training with copyright-protected materials. In September 2024, the Hamburg Regional Court confirmed that the use of image material for AI training purposes is lawful and does not constitute copyright infringement.^[1]

Previously, the Federal Court of Justice had already ruled from a patent law perspective that artificial intelligence cannot be recognised as an inventor within the meaning of Section 37(1) of the Patent Act.^[2]

On the legislative level, the EU AI Act^[3] will enter into force in February 2025, in particular regulating prohibited AI practices and thus making an important contribution to the responsible use of AI technologies. In the same year, significant changes will take effect in EU design law: the new Design Regulation No. 2024/2822^[4] will apply from 1 May 2025, while the new Design Directive No. 2024/2823 must be transposed into national law by December 2027 at the latest. Both legal acts broaden the definitions of 'design' and 'product' and introduce the terminological shift from the formerly used term 'Community design' to the modern 'Union design'.

These recent developments reflect the ongoing adaptation of intellectual property law to technological and societal challenges and provide important impulses for the protection and utilisation of innovations in the digital age.

Obtaining protection

In recent years, Germany's intellectual property laws have continued to evolve. Today, IP rights in Germany are primarily granted in the form of trademarks, patents, designs and copyrights. IP Rights are constitutionally protected against government intervention in the Basic Law of the Federal Republic of Germany.^[5]

Germany is signatory to various international conventions in the field of IP rights. The regulatory framework is strongly influenced by European Union legislation, which harmonises IP standards across European Member States and ensures, inter alia, the availability of Union-wide protection for some IP rights such as trademarks and patents. In this context, the Court of Justice of the European Union (CJEU) has assumed a central role in interpreting and applying IP law, shifting much of the responsibility once held by Germany's Federal Court of Justice and the German Federal Constitutional Court. This is due to the requirement that German laws transposing EU directives must align with the interpretations provided by the CJEU. As a result, the ongoing process of internationalisation and European integration in IP law has reached a point where only a few areas of German IP law remain autonomous, and these often have limited economic significance. Today, the vast majority of Germany's IP regulations stem from EU directives or international treaties, underscoring the global and European nature of the current legal framework.

The executive power for the granting intellectual property rights by way of registration vests in the German Patent and Trademark Office ('Deutsches Patent- und Markenamt, DPMA or in English GPTO).

Trademarks

In Germany, trademark protection is primarily governed by the Trademark Act,^[6] which transposes almost all trademark law provisions the European Union Trademark Directive into national law. This Act protects trademarks as symbols of intellectual and commercial creation, allowing businesses to distinguish their goods or services from those of others.^[7] Protection is granted to various types of trademarks, including conventional marks such as words, logos and names, as well as non-traditional marks. These non-traditional marks include three-dimensional shapes, colours, sounds, smells, textures and animations, provided they can distinguish the goods or services of one business from those of others.

Trademark protection in Germany is mainly obtained primary through registration with the GPTO. The registration procedure, outlined in Sections 33–44 of the Trademark Act, involves the GPTO examining whether the application meets formal filing requirements and assessing whether the sign is distinctive enough to distinguish the goods or services. If the sign lacks distinctiveness, the application will be rejected under Section 8 of Trademark Act. Once the trademark satisfies all necessary criteria, it is entered into the trademark register,^[8] at which point the applicant is granted exclusive rights to the mark under Section 14(1) of the Trademark Act. A registered trademark provides protection throughout Germany, regardless of where it is actually used. once a trademark application has been accepted by the GPTO, it will be published. The publication initiates a three-month period within which an opposition can be filed on the basis of earlier trademark registrations, applications as well as firm names and work titles.^[9]

However, trademark protection is not limited to registered trademarks. It can also be acquired through the use of a sign within relevant trade circles.^[10] In such cases, if a significant portion of the public identifies the sign as an indicator of the origin of goods or services, even if the name of the company is not known, the mark may still be protected. This type of protection is often limited to the region where the mark is recognised. The requisite degree of notoriety depends on the mark and the market segment in question. Moreover, the lower the level of distinctiveness of the mark, the higher the degree of awareness acquired by the use must be.^[11]

Additionally, the Trademark Act extends protection to marks that are well-known within Germany, even if they are not registered or used in the country. Section 3(3) of the Trademark Act aligns with Article 6 of the Paris Convention, which ensures that marks with international recognition receive protection, even without registration in Germany.

Germany also provides protection for European Union Trademarks (EUTMs), which cover all EU Member States, including Germany. EUTMs are treated as equivalent to national trademarks^[12] for the purposes of refusal and enforcement. In addition, Germany's trademark law aligns with international treaties such as the Paris Convention and the Madrid Protocol, providing protection for trademarks registered under these agreements.

A national trademark application retains the priority date from when the application is received by the GPTO, unless the priority of another registration or application in one of the Paris Convention member states is claimed within two months from the filing date. The protection granted by a registered trademark lasts for 10 years from the date of registration. It can be renewed indefinitely, provided the trademark remains in use. If a trademark is not used for five consecutive years, it can be cancelled.^[13] Furthermore, the trademark must be renewed on time to maintain protection.^[14]

Trade names and other commercial designations

Under German trade mark law, commercial designations encompass both trade names and titles of works.^[15] These designations enjoy legal protection, and their proprietors are granted exclusive rights pursuant to Section 15 of the Trademark Act. Unlike trade marks, these rights are not harmonised by European Union law and therefore largely constitute autonomous German intellectual property law. Nevertheless, there is a discernible tendency to interpret provisions on commercial designations in line with the case law of the Court of Justice of the European Union.

Trade names are defined in Section 5(2) sentence 1 Trademark Act as signs used in the course of trade to identify a business, either by its name, corporate designation or other specific identifier. Titles of works, as provided in Section 5(3) Trademark Act, refer to the names or particular designations of printed publications, cinematographic works, musical compositions, theatrical productions and comparable creative works. These signs do not serve to indicate the commercial origin of goods or services, as trade marks do, nor do they designate companies themselves; rather, they denote the intellectual content of the respective work, such as a book or film.

The protection of trade names is independent from the company's formal registration to the Companies' Registry at the local court, although the latter is an indication for determining the priority and the existence of the company name rights. Rights in commercial designations arise through their lawful use in the course of trade,

assuming that the designation in question possesses distinctiveness. The threshold for distinctiveness is interpreted with relative leniency, acknowledging that work titles and company signs frequently contain descriptive elements concerning content or geographic location, and that such usage is familiar to the relevant public. Even signs lacking inherent distinctiveness can acquire protection if they attain public recognition as company signs or titles of works within the relevant German trade circles. The priority of a work title may be secured even prior to the publication of the work, provided that the title is publicly announced and thereby claimed.

As a rule, the territorial scope of rights in commercial designations extends to the entire territory of Germany, unless the business activities or the distribution of the work are confined to a specific locality. In such cases, the specific product, its usual form of distribution, its sales territory and the business structure must be taken into account when assessing whether there is a reputation, at least in geographically limited circles of trade.^[16]

These rights entitle the proprietor to prevent unauthorised third parties from using the protected designation or a similar sign in trade, if such use is likely to lead to confusion.^[17]

Patents

The legal framework for patent protection in Germany is established by the Patent Act^[18] In accordance with both German and European legal traditions, a patentable invention must always constitute a creation in the field of technology. A patent is granted in Germany by way of an administrative act issued by the GPTO or, in certain circumstances, by the German branch of the European Patent Office (EPO), provided that the substantive and procedural requirements are met. Furthermore, a European patent granted by the EPO may also take effect in the Federal Republic of Germany, provided that the applicant pays the necessary national fee and completes the post-grant formalities required for national validation. Germany is a contracting state to the EPC, the PCT and the UPC, and actively participates in the unitary patent system. As such, patent protection in Germany may be obtained through several routes: by filing a national application with the GPTO (either directly or following national phase entry of a PCT application), by validating a European patent in Germany, or by opting for a European patent with unitary effect under the Unitary Patent Regulation. In all cases, the right to the patent belongs to the inventor or their legal successor and is governed by the principles of first-to-file and territorial registration.

In conformity with internationally recognised patentability standards, Section 1 of the Patent Act stipulates that patents shall be granted for inventions in all fields of technology, provided they are novel, involve an inventive step and are capable of industrial application. Section 3 defines the novelty requirement, stating that an invention shall be considered new if it does not form part of the prior art. Prior art comprises all knowledge made publicly available before the relevant priority date, irrespective of the form or place of disclosure, including all prior national, EPC and PCT applications that designate Germany.

An invention shall be regarded as involving an inventive step if it is not obvious to a person skilled in the art in view of the state of the art.^[19] This qualitative assessment serves to exclude subject matter from patent protection that contributes only marginal or trivial advances over existing knowledge, as affirmed by the Federal Supreme Court.^[20] The right

to a patent belongs to the inventor or his or her legal successor, with priority accorded to the first person to file the application.^[21]

A distinctive feature of the German patent system is the bifurcated structure of judicial proceedings. Questions regarding the validity of a patent are addressed either by opposition proceedings, which must be initiated within nine months of the patent's publication before the German Patent and Trade Mark Office, or by a revocation action brought before the Federal Patent Court, which holds exclusive jurisdiction. In contrast, patent infringement actions are brought before the competent regional courts. These infringement courts are bound by the presumption of validity of the granted patent and are not authorised to independently re-evaluate its legal validity. Consequently, defendants in infringement proceedings may only argue that their actions do not constitute an infringement. If, however, they have initiated opposition or revocation proceedings, they may apply for a stay of the infringement proceedings pending the outcome of the validity challenge.

Patent protection in Germany endures for a maximum term of twenty years, beginning on the day after the patent application is filed.^[22]

Utility models

In addition to the patent, German law provides for the protection of technical inventions through the utility model, regulated by the Utility Model Act.^[23] While the patent remains the more comprehensive and central protective instrument, the utility model offers a supplementary route to protection, particularly for smaller innovations and technical solutions that may not meet the more stringent inventive step requirement for patentability, or for which the costs and duration of patent prosecution are disproportionate.

The utility model system is specifically designed to provide small and medium-sized enterprises with a simplified and cost-effective means of protecting their inventions. Although utility models share certain characteristics with patents, they are subject to notable distinctions. Most significantly, utility models cannot be obtained for all types of technical inventions that are eligible for patent protection. Moreover, utility models are not examined for novelty, inventive step or industrial applicability by the German Patent and Trade Mark Office prior to registration. This unexamined registration system accelerates the process but also implies a higher risk of invalidity.

The maximum term of protection for a utility model is ten years, calculated from the date of filing. The prior art for assessing novelty and inventive step differs from that applicable to patents and is generally more limited in scope.^[24] Because of this, utility models may protect technical subject matter that would not withstand scrutiny under the higher standards of patent law.

Designs

Design protection serves to safeguard the intellectual and creative activities of designers by granting exclusive rights in the appearance of products. The statutory basis for the protection of designs in Germany is the Design Act.^[25] The rights emanating from an aesthetic design arise with registration with the GPTO. Collectively, design rights protect the novel aesthetic appearance of the whole or a part of a product, including features

such as lines, contours, colours, shapes, texture, or ornamentation, provided that the design is new and possesses individual character. These rights may be asserted against unauthorised third-party designs that do not produce a different overall impression on the informed user or that otherwise constitute a substantial imitation. A registered design enjoys legal protection only if the design is new and has individual character.^[26] 'New' mean that no identical design other than that of the owner has been made available to the relevant public before the date of the application.^[27] The individual character requirement is moreover fulfilled, if the overall impression perceived by an informed user differs from the overall impression of any previously known design, which has been made available to the public.^[28] The issue hereby is the differentiation from previously known designs.^[29]

The assessment of novelty and individual character is made with reference to the overall impression created by the design, taking into account the degree of freedom of the designer in developing the design. Design protection complements other forms of intellectual property and can be combined strategically, particularly by brand owners, with trade marks, copyright, or unfair competition law in order to enhance the protection of a product's identity or market appearance. Such multi-layered protection can be especially valuable in sectors where the visual appeal of a product is central to its market success, such as fashion, consumer goods, or product packaging.

In Germany, registered design protection is obtained via application to the GPTO, which carries out only a formal examination. As a result, registration is typically rapid and cost-effective. The maximum term of protection is 25 years, subject to the timely payment of renewal fees in five-year increments. As a Member State of the European Union, Germany also affords protection under the Community Design Regulation, allowing for the enforcement of EU-wide design rights granted by the European Union Intellectual Property Office (EUIPO).

Copyrights

The legal foundation for Copyright law is in the Copyright Act.^[30] Section 2 Paragraphs 1–7 Copyright Act provides for a detailed, but non-exclusive, list of those works that are eligible for copyright protection. In order to facilitate the protection of computer programs, they are explicitly subject to copyright protection pursuant to Section 69a et seq. Copyright Act.

Under German law, copyright arises automatically upon the creation of a qualifying work; it does not protect abstract ideas but only their specific expression. There is no registration requirement or formal procedure – protection is conferred by operation of law. It is therefore beyond the control of the parties.^[31]

German Copyright law grants that authors of literary, scientific and artistic works shall enjoy copyright protection for their creations.^[32] The object of protection is not the physical embodiment of the work but rather the intangible intellectual creation itself, which may be exploited through any form of reproduction or communication. According to the statutory definition, protected works must constitute 'personal intellectual creations',^[33] which reflects a qualitative threshold that excludes mere routine output or functional expressions. The work must feature at least a minimum level of individuality and creativity beyond that of the average well-skilled and trained person in the area.^[34] German copyright law is fundamentally personalistic in nature: the author is always the natural person who created the work,^[35] and the law generally does not recognise the Anglo-American concept

of works made for hire. Accordingly, the rights initially vest in the individual creator, even if the work was produced within the scope of an employment relationship.

German copyright law distinguishes between the author's non-alienable right of personality, which is related to their work product and economic interest in the exploitation of his work.^[36] The German legal system operates with a non-exhaustive list of protected work categories, encompassing the literary, scientific and artistic domains. This includes, among others, written texts, speeches, musical compositions, stage works, films, works of fine art, architecture and software, provided the requisite threshold of originality is met. German copyright law is increasingly confronted with emerging challenges, particularly in relation to the protection of works generated or assisted by artificial intelligence. The prevailing legal view maintains that copyright protection continues to require human authorship, thereby excluding works generated independently by AI from protection under current law.

The term of protection for most works is 70 years from the death of the author.^[37] After expiration of this term, the work is subject to the public domain.

Trade secrets

Germany affords comprehensive legal protection to undisclosed know-how and business information against their unlawful acquisition, use and disclosure. This protection is governed by the Act on the Protection of Trade Secrets (GeschGehG), which transposed Directive (EU) 2016/943 into German law and came into force on 26 April 2019. The Act closely mirrors the structure and wording of the Directive and ensures near-complete harmonisation of substantive trade secret protection across EU Member States.

According to Section 2(1) GeschGehG, a trade secret is defined as information that: (1) is not generally known or readily accessible to persons within the circles that normally deal with such information; (2) is of commercial value because it is secret; and (3) has been subject to reasonable steps, under the circumstances, by its lawful holder to keep it secret. This aligns with Article 2(1) of Directive 2016/943. The definition represents a departure from earlier German legal practice, which relied on the general principles of unfair competition law and contractual obligations.

Unlawful acquisition of trade secrets is prohibited under Section 4 GeschGehG, which mirrors Article 4 of the Directive. It includes unauthorised access, copying, appropriation and any other conduct contrary to honest commercial practices. Equally, the unlawful use or disclosure of a trade secret – where the person knew or should have known that the information was obtained unlawfully – is prohibited under Sections 4(2) and 4(3) GeschGehG.

The Act also provides a detailed system of legal remedies. Under Sections 6–10 GeschGehG, right holders may seek injunctive relief, removal and destruction of infringing products or documents, damages and recall or withdrawal of infringing goods from the market. In addition, Section 16 GeschGehG contains specific provisions on the preservation of confidentiality in court proceedings, reflecting Article 9 of the Directive, in order to prevent further dissemination of trade secrets during litigation.

Importantly, the German law also contains balanced exceptions that reflect fundamental rights and public interest considerations. Pursuant to Section 5 GeschGehG, the

acquisition, use or disclosure of a trade secret is not unlawful if it occurs for the purpose of exercising freedom of expression and information, revealing misconduct or illegal activity (whistleblower protection), or in the context of employee participation rights. However, the balance between trade secrets and freedom of opinion and freedom of the press must always be weighed up on a case-by-case basis.^[38] Article 11 of the EU Charter of Fundamental Rights must always be taken into account. These carve-outs implement Article 5 of the Directive.

The protection of trade secrets in Germany is now characterised by increased legal certainty, particularly for companies engaged in cross-border operations within the EU. The Act underscores that only information that is actively protected through appropriate confidentiality measures is eligible for protection; passive or informal secrecy is insufficient.

Enforcement of rights

The EU Enforcement Directive (2004/48/EC) establishes mandatory standards for civil law measures, procedures, and remedies in cases of infringements of EU and national intellectual property (IP) rights. These standards have been transposed into German law and are integrated into all German IP statutes. For matters not specifically addressed in the specialised provisions, the general rules of the German Civil Code (BGB) and the Code of Civil Procedure apply.

Most civil claims for IP infringements are set out directly in the respective IP statutes. These claims either seek to prevent further infringements or to compensate for damage resulting from infringements that have already occurred. Among the available claims, the most significant in practical terms is the claim for cessation of the infringing act. This allows the injured party to demand that the infringer stop the unlawful conduct.

In practice, the enforcement of IP infringement claims often depends on the availability of information that is not accessible to the injured party. To address this, German IP statutes provide several accessory information claims that allow a claimant to obtain relevant information from the infringer or third parties in order to substantiate the claim or to calculate damages. These provisions are especially important in cases where the claimant may not have complete knowledge of the extent of the infringement or the identity of all parties involved.

IP infringement remedies in Germany are treated as special tort claims. Where IP statutes do not contain specific provisions, the general rules of tort law apply. Claims for damages in IP cases are subject to a time limitation of three years, which begins at the end of the year in which the claimant becomes aware of the circumstances giving rise to the claim, as well as the identity of the infringer, or would have become aware had they not acted with gross negligence.^[39] This statute of limitations ensures that claimants must act within a reasonable time frame once they become aware of the infringement.

However, even if the damage claim is statute-barred under these general rules, an infringer must still surrender the monetary benefit obtained through the infringement. This includes, for instance, the equitable licence fee saved and any profits derived from the infringing act. This claim for surrender of the profit is subject to a longer limitation period, as it only

expires 10 years after it arises, but in any case 30 years after the act of infringement, as clarified by the Federal Court of Justice (BGH) in its ruling of 26 March 2019.^[40]

Special considerations

Customs enforcement regarding goods entering or leaving the customs territory of the EU is primarily governed by EU Regulation 603/2013. This regulation provides the framework for the customs authorities to seize goods that are suspected of infringing IP rights. The regulation allows customs authorities to act on their own initiative or following a request from a right holder to detain goods at the border. Right holders can file an application for customs intervention, which enables them to request the suspension of the release of goods into the EU market if they believe that the goods infringe their IP rights. Customs enforcement serves as a crucial tool in preventing the importation or exportation of counterfeit goods, thereby enhancing the protection of intellectual property.

In addition to customs enforcement, German law criminalises all intentional infringements of German and EU IP rights. Section 143 of the Trademark Act and other relevant provisions within the Copyright Act, Patent Act and the Design Act establish penalties for the illegal use of protected IP. The basic penalty for intentional infringement is imprisonment for up to three years or a fine. If the infringement is committed on a commercial scale, the penalty increases to a maximum of five years' imprisonment or a higher fine. Attempts to infringe IP rights are also punishable, reflecting the intent of the law to deter not only completed infringements but also the initiation of such activities.

These provisions aim to safeguard the integrity of the intellectual property system by imposing significant legal consequences for those who intentionally infringe the rights of others. The application of criminal penalties serves as an additional deterrent against IP violations, particularly where commercial gain is involved.

Court actions for IP infringements are usually preceded by a warning or cease-and-desist letter. The owner of the IP Right sends a registered mail, facsimile or email to the infringer requesting them to immediately stop the infringing use and to return a corresponding written undertaking, which must include an commitment to pay a contractual penalty in the event of future violations. If the infringer complies with the request, there is no need for legal proceedings. If not, the infringed party may seek relief by way of preliminary injunction proceedings or a regular civil court action, or both. This method allows the rights holder to demand the cessation of the infringing act and may include claims for damages or contractual penalties. While not as formal as judicial proceedings, cease-and-desist letters are a commonly used tool in the enforcement of IP rights, providing an expedited and often less costly means to resolve disputes and prevent further infringement.

Outlook and conclusions

Germany acknowledges its importance as a key jurisdiction for international businesses, recognising the value of IP rights and generally adopting a rights-holder-friendly approach in its judicial practice. Recent developments, particularly in the field of artificial intelligence,

have already led to some initial decisions in Germany. However, the legal evaluation of AI in the context of IP rights remains fluid, especially with regard to emerging technologies such as generative AI, large language models (LLMs) and other forms of AI-driven innovation. As such, it will be fascinating to observe how German courts continue to evolve in their treatment of these issues and whether Germany will maintain its leading role in IP enforcement on the global stage.

The EU AI Act, the upcoming design legislative reforms and the development of case law from the Unified Patent Court are just a few of the areas that will influence the landscape of German IP law in the coming years. The interaction between AI and IP law will continue to evolve, requiring careful navigation, and potentially leading to new legal precedents. This process is likely to span several years as German courts assess and refine the application of IP principles to AI innovations.

In the meantime, the increasing ubiquity of generative AI in various sectors, including industry, legal practice and everyday life, will undoubtedly present new challenges and opportunities for IP law. How Germany addresses these evolving issues will have significant implications for both domestic and international IP practices.

Endnotes

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- 2 Federal Supreme Court 11 June 2024 – X ZB 5/22. [^ Back to section](#)
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- 35** Section 7 Copyright Act. [^ Back to section](#)
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