



EXCO MEETING, CAPE TOWN 13 & 18 APRIL 2015

COUNTRY REPORT	
TITLE:	Country report for Germany
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TABLED TO:	FICPI delegates
PURPOSE:	For information and consideration
SNIPPET:	News from and activities of the FICPI national group in Germany since the Barcelona ExCo in November 2014.

SECTION B: CHANGES IN LAW

Information supplied under Sections B and C will be published on FICPI's website after the ExCo and will be available to the public.

B1. LEGISLATION

- Please provide details of any changes to IP legislation (patent, trade mark, design and other) in your country implemented or due to be implemented since you reported last in October 2014. *The German Design Act in the version published on February 24, 2014 is in force. There are no further changes or updates. The new Design Regulations is in force since January 2, 2014. There are no further changes or updates.*

B2. MAJOR CASES

- Please provide brief details of any new case law in the field of patents, trademarks, design or other IP of general interest.
The protection of pure, abstract color marks has been strengthened by the Federal Supreme Court BGH in decision I ZR 228-12 – Yellow, relating to the registration of the color yellow for dictionaries. It was confirmed that a yellow colored packaging and a yellow colored web presentation can be considered as use of the color yellow as a mark even when there is no increased distinctiveness of such color. Despite additional word mark elements on said packaging, the colored background can be compared separately to the registered color mark to determine similarity of the marks in terms of similarity of the colors.

In the case X ZR 69/13 “Audiosignalcodierung” (audio signal encoding), decided on 03 Feb. 2015, the Federal Supreme Court BGH ruled that providing a means relating to an essential element of the (method) invention outside of Germany to a third party, knowing that said third party will export this means for use of the invention to Germany, commits an indirect/contributory infringement (defendant was located in CN, manufacturing receivers for receiving and processing broadcast signals apt to perform the patented method of audio signal encoding).

B3. OFFICIAL PRACTICE

- Please provide details of any changes in official patent and trade mark office practice which



would be of general interest to other members.

- The 10th edition of the Locarno Classification (LOC) came into force for DE on 01 Jan. 2015.
- Effective as of end of March 2015, the German Patent and Trademark Office extends its "electronic file" to trademarks, providing for the option of online file inspection at a later stage. Moreover, in 2014, there was a 10% increase in trademark filings at the German Office amounting to a total of 66 613 filings in 2014

B4. PROPOSALS FOR CHANGES

4. Please provide details of any proposed changes in IP laws or practice and indicate if your National Association/Section is involved in providing comments to such changes.
Would it be of assistance to have input from the CET on any proposed changes?
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SECTION C: OTHER INFORMATION

Please provide details of any other information pertaining to your country or region that would be of general interest to FICPI members and other IP practitioners browsing FICPI's website.

C1. QUALIFICATION AND THE RIGHT TO REPRESENT CLIENTS BEFORE A COURT

- 1.1 Please describe the qualification process for becoming a patent attorney in your country/region.
26 months of practice under the supervision of a qualified patent attorney, accompanied by a 24 month distance study course in general law (ends with an exam) and accompanied by monthly regional working group meetings under the supervision of a patent attorney, optionally two months internship at a patent infringement chamber of a first instance regional court, mandatory two months internship at the German Patent and Trade Mark Office, mandatory six months internship at the German Federal Patent Court, accompanied by legal courses given by the judges, final exam consisting of two written examinations covering all field of IP and an oral examination
- 1.2 Has the patent attorney qualification process changed in any way in the past 5 years?
No
- 1.3 Does qualification as a patent attorney permit you any right of representation before any Court in your country?
Before the Federal Patent Court in patent, trade mark, design matters
- 1.4 If so are there any special requirements or restrictions?
No special requirements or restrictions before the Federal Patent Court
- 1.5 Are qualified lawyers in your country permitted to work in the patent field without any further qualification?
Yes
If so are there any restrictions on what they may do?
No
If so, please describe those restrictions.
- 1.6 Please describe what privilege attaches to patent attorney communications including any restrictions.
Fully privileged



- 1.7 Please describe the qualification process for becoming a trade mark attorney in your country/region.
[Cf. above 1.1, trade mark attorney is included in patent attorney, all German patent attorneys qualify as trade mark attorneys](#)
- 1.8 Has the trade mark attorney qualification process changed in any way in the past 5 years?
[No](#)
- 1.9 Does qualification as a trade mark attorney permit you any right of representation before any Court in your country?
[Cf. above](#)
If so are there any special requirements or restrictions?
- 1.10 Are qualified lawyers in your country permitted to work in the trade mark field without any further qualification?
[Yes](#)
If so are there any restrictions on what they may do?
[No](#)
If so, please describe those restrictions.
- 1.11 Please describe what privilege attaches to trade mark attorney client communications including any restrictions.
[Cf. above](#)
- C.2 CET AND PEC SPEAKERS**
- 2.1 Would your National Section/Association be interested in obtaining assistance from FICPI, through either the CET Work and Study Group or the Professional Excellence Commission (PEC), in providing speakers for seminars organized by your national group in your county?
[As a matter of principle, yes](#)
- 2.2 If your group does, or in the future might, require such assistance, please identify topics that might be of interest to your members, with a view to raising FICPI's profile and providing added value from membership of FICPI in your country.
[To be specified](#)
- C.3 TOPICS OF INTEREST**
- 3.1 Please list three IP topics that are of particular interest to you and/or your national section members.

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