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### **Austria: Opposition in Force July 1<sup>st</sup>, 2010**

With Opposition Proceedings (reported in newsletter 01-01-2010) now coming into force soon (01-07-2010), some *practical guidance* on same may be required: opposition may be *raised* no sooner than trademark *registered* but *based* on trademark (ATM, CTM or IR designating Austria) *filed* already - *not* upon other prior rights, however, such as company or personal names, 'doing business as...' - aliases or trademarks through use.

*Grounds* are limited to 'risk of confusion' and may *not* extend to scope of protection as 'famous' trademark; *other* objections - such as 'agents-mark', 'bad faith' or else - are *not* admissible neither.

To *save* the (3-months) term from publication (ie from day 20<sup>th</sup> of month for AT and day 1<sup>st</sup> of next month for IR) opposition (in duplicate) will have to be *received* by the Patent Office - with *no* reinstatement granted, since filing for *cancellation* was still possible.

Proceedings are provided in *writing* - with (exceptional) hearing at officers discretion; he/she may 'privilege', however, the most 'promising' (of several) opposition(s) and *resolve* upon same, whilst others remain *suspended* (and would be remanded to, if same was successful).

Opposition *itself* would be *suspended*, if 'qualified legal doubt' (such as *rejection* of application or *cancellation* of registration in first instance) was cast on right cited against; same as to *revocation* of trademark referred to - as all of those would become effective *retroactively*.

*Decision* being subject to *two-instance recourse* to 'Appellate Division' (of Patent Office) and 'Supreme Patent & Trademarks Board'; with *office-dues* of EUR 150/220/600 per instance, however, it should be bourn in mind as well, that there will be *no award* - neither on same nor on costs of representation - even in case of success.

With a (reasonable) *Duration* of two years until decision may be come final in third instance, *opting* for opposition should be considered carefully and 'circumspect', therefore, as *cancellation* would offer equal (even: wider) opportunities plus *cost-award* - just one or two years later - with *suspensive* effect (on execution of trademark opposed) almost *equal*.

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