

Changes in trade mark protection in Estonia

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On April 1, 2019, amendments to the trade mark legislation entered into force, bringing along significant changes to the current regulation. As a result, the process of registering trade marks simplifies and becomes faster. Additionally, it is possible to register new types of trade marks. The current legislation has been updated as part of the transposition of Directive (EU) 2015/2436.

Examination and the work of Board of Appeals

One of the key changes concerns the examination process. Namely, the Estonian Patent Office has ceased examination on relative grounds (prescribed by § 10 of the Trade Marks Act), i.e. the Office is no longer obliged to check whether there are any earlier rights that could prevent the registration of the applied trade mark. Thus, trade mark proprietors need to keep a close eye on later registrations to protect their interests, and, when necessary, oppose the registration decision of identical or confusingly similar trade marks. An analogue system has been applied by the European Union Intellectual Property Office for over 20 years.

The proprietors of earlier trade marks retain the right to oppose later trade mark application in the Board of Appeal of Industrial Property, the organisation of which is also subject to changes. For example, active opposition proceedings are preceded by a cooling off period for parties to come to a suitable agreement by themselves; an accelerated procedure is also available. The latter is relevant mostly in circumstances where the applicant of the later trade mark shows no interest in challenging the opposition or even take part in the opposition proceedings (similarly to a decision rendered in absentia).

Calculating the term of legal protection of trade marks

In Estonia, the term of legal protection of trade marks is 10 years. Previously, the term was calculated from the registration date of the trade mark, however, after the amendments the term is calculated from the application date of the trade mark. The amendment affects trade marks the applications of which are submitted after 01.04.2019 since the term is calculated pursuant to legislation in force at the time of filing the application.

Patent attorneys presumed to have right of representation

A crucial change concerns the communication between patent attorneys and the Patent Office and the Board of Appeal. Namely, a patent attorney who performs acts related to trade marks at the Patent Office or the Board of Appeal is presumed to have the right of representation, i.e. they no longer need to submit an original power of attorney. The change certainly accelerates the process and, compared to the previous regime, is a more environmentally friendly option as it lessens the amount of paper documents being sent to the Patent Office (especially regarding foreign applicants).

Other changes

In addition to the aforementioned changes, the trade mark registration certificates that were formerly issued in paper form are accessible in digital form from now on, and the state fee of 45 EUR for trade mark registration is no longer applicable (other fees concerning trade mark application and other acts remain the same). Due to the changes in legislation, applicants also have the opportunity to register new types of trade marks, e.g. multimedia- and motion marks that can be applied for by submitting video files with or without sound.

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