

AUSTRIA

奥地利



IP Authorities 知识产权主管机关

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IP Firms Recommendation 知识产权服务机构推荐

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IP OVERVIEW OF AUSTRIA

IP matters may obtain protection by registration (e.g. patents, utility models, designs, trademarks) or granted protection by a court decision as a result of a proceedings (e.g. protection of innovations, designations, copyright).

Since January 1, 2014 all remedies against decisions of first instance of the Austrian Patent Office (Legal Department, Technical Department, Nullity Department) are to be brought before the Vienna Upper Provincial Court. Afterwards, depending on the case, a recourse or revision to the Supreme Court is possible. Furthermore, the Vienna Commercial Court has competence in the first instance not only for patent infringement matters but also for all civil-law trademark litigations.

PROTECTION OF REGISTERED IP-MATTERS

Patent

Patents are granted on inventions which are novel, which - having regard to the state of art - are not obvious to the person skilled in the art, and which are susceptible of industrial application.

Austrian Patents

After an application is prepared and filed with the Austrian Patent Office it is examined by the Office. It may be converted into a utility model application in the course of such examination.

After completion of the examination a patent may be granted. Within a period of four months after the granting date an opposition may be lodged. Against a decision passed in opposition proceedings recourse may be brought before the Vienna Upper Provincial Court.

A patent application shall be published eighteen months after the application or priority date, possibly already together with a search report.

A granted patent enjoys a maximum period of protection of 20 years (starting with the filing date) and may be contested during that period on the grounds of nullity. An appeal to the Vienna Upper Provincial Court may be lodged against a decision of the Nullity Department of the Patent Office.

Moreover, it is possible to file a petition for a declaratory statement by the Austrian Patent Office whether a process or a subject matter is partly or entirely encompassed by a particular patent. Furthermore, proceedings for a declaration of dependence, lacking authorship, fraudulent abstraction, for the grant of compulsory licenses etc. are possible.

Within one year as from the filing date, applications based on an Austrian first application may be filed in almost all countries of the world, enjoying the priority of the Austrian first application.

European Patents

European patents may be filed through the Austrian Patent Office in Vienna or directly at the European Patent Office in Munich. On completion of the central grant procedure the patent has to be validated in the individual designated countries, if necessary by submitting translations.

Within nine months as from the grant a European patent may be opposed centrally at the European Patent Office, later only in the individual designated countries. The maximum period of protection is 20 years, maintenance in the

IP Firms List 知识产权服务机构名单

A

Anwalte Burger und Partner Rechtsanwalt GmbH

B

Barger, PISO & Partner
Binder Groesswang Rechtsanwalte
BMA Brandstatter Rechtsanwalte GmbH

C

Christian Gassauer-Fleissner Gassauer-Fleissner
Rae GmbH
CHSH Cerha Hempel Spiegelfeld Hlawati
CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH

D

Dr. Katharina Schmid, Attorney at law

F

Fellner Wratzfeld & Partner Rechtsanwälte
GmbH
Fiebinger, Polak, Leon & Partners Rechtsanwälte
GmbH
Foglar-Deinhardstein

H

Haffner und Keschmann Patentanwälte
Haupt & Ellmeyer KEG

K

KLIMENT & HENHAPEL PATENTANWÄLTE OG
Kopecky & Schwarz

L

Law Firm Dr. Hintermayr & Partner

N

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individual countries is effected separately.

European Patents granted in English or French require, in the course of validation in Austria, translation into German.

International Patent Applications (PCT Procedure)

International patent applications may be filed directly at the World Intellectual Property Organisation in Geneva (WIPO) or through national Patent Offices (with or without claiming a priority).

These constitute a bundle of national or regional patent applications for which an international search report is prepared centrally at first and - upon request - an international preliminary examination is carried out.

Upon expiry of the international phase - maximum of 30 months - the national or regional phase can be further prosecuted in each designated country or designated region.

Protection Certificates

Supplementary protection for a maximum of 5 years going beyond the maximum period of protection of a patent may be obtained for patented pharmaceutical products or plant protection products. Pharmaceuticals designed for children may be granted a half-year-prolongation of the protection period.

An SPC can be applied for within six months from the notification of the first market admission or of the grant of the respective patent on which it relies. Recently it was decided that if more than one market admission were based on one and the same patent only that market admission is the first one which refers to the medical product for treating, curing or preventing the specific disease or suffering in question.

Semiconductor Topographies

Three-dimensional structures of microelectronic semiconductor products may – as far as they have distinctive features, i.e. are not ordinary – be protected for a maximum period of 10 years by filing applications with the Patent Office and registration in the Semiconductor Protection Register.

Utility Models

Novel, commercially usable inventions may, alternatively to patents, be protected as utility models for a maximum period of 10 years. The merit of invention has to be, however, the same as for patents. Programme logics on which the programmes for data processing equipment are based may also be protected as utility models – but not by patents. The logic of a computer program is, however, only protectable if it refers to a technical content. A disclosure of the invention by the applicant or his predecessor within a period of six months prior to filing the application with the Austrian Patent Office does not affect novelty. Examination is only for formal requirements, not for novelty and inventive merit; however, a search concerning the prior art is carried out to which the scope of protection claimed may be adapted. If desired, a utility model application may be converted into a patent application prior to registration. After the granting and simultaneous entry into the register a utility model may only be contested by a nullification request (but not by an opposition).

Plant Varieties

The original breeder or his successor in title may obtain a registered property right for plant varieties which are distinguishable, homogenous, persistent and novel. The period of protection of vines and woody plants is 30 years, and 25 years for all other varieties.

Austrian Plant Variety Protection

The application has to be filed with the Plant Variety Office (Federal Institute for Plant Cultivation).

At present protection is limited to 13 varieties. The Federal Minister of Agriculture and Forestry is responsible for decisions on appeals against decisions of the Variety Office.

P

PATENTANWÄLTE PUCHBERGER, BERGER & PARTNER

Patentanwaltskanzlei Matschnig & Forsthuber
 Patentwaelte Schuetz & Partner
 Peter Pawloy Sonn & Partner Patentanwalte
 Petsch Frosch Klein Arturo Rechtsanwälte
 PFR RECHTSANWALTE
 Preslmayr Rechtsanwälte OG
 Puchberger, Berger & Partner

R

Rainer Beetz Sonn & Partner Patentanwalte
 REDL Life Science Patent Attorneys

S

Sascha Daniel Salomonowitz Schonherr
 Rechtsanwälte
 Sattler & Schanda, Rechtsanwälte
 SCHMIDT KORNFELD WUKOSCHITZ
 Schonherr Rechtsanwälte GmbH
 Schwarz Schonherr Rechtsanwälte
 Sonn & Partner Patentanwalte
 Specht Rechtsanwalt GmbH

T

Thomas Adocker Schwarz Schonherr

W

WILTSCHKE
 Wolf Theiss

Z

Zeiner & Zeiner

All other proceedings (declaration of nullity, etc.) pursuant to the plant variety law which largely conforms to patent law have to be brought before the Austrian Patent Office (Nullity Department) and may be appealed before the Vienna Upper Provincial Court.

Community Plant Variety Protection

After a filing and examination procedure at the Community Variety Office Community variety protection may be obtained for the entire territory of the European Union.

Varieties of all botanical genera and species, among others also hybrids between genera or species, may enjoy Community variety protection.

The procedure before the Community Variety Office is similar in material and formal respects to that concerning patents before the European Patent Office.

Designs

A design is the model for the (outer) appearance of a commercial product.

Austrian Designs

Novel and peculiar models may be protected for a maximum of 25 years by depositing and registering them at the Austrian Patent Office. Examination by the Austrian Patent Office is only for formal requirements. The effects of protection are similar to those of patents. Registered designs may be contested by a nullification request in conformance with the usual procedure.

Design protection covers the appearance of a product but neither the original per se nor a product as such manufactured according to the design.

A design is to be regarded as having individual character if none of the known designs shows all its impressive features or if a known design shows different impressive features.

Community Designs

Community designs are registered at the OHIM (Office for Harmonization in the Internal Market) in Alicante, Spain. The scope of protection covers the whole European Union for a maximum period of 25 years. Unregistered designs can also claim protection, however, only three years as from the date of first availability in the European Union.

Trademarks

All signs which can be represented graphically, e.g. words, letters, numbers, pictures and combinations thereof as well as the shape or make-up of an article may be trademarks provided that these are capable of distinguishing the goods or services of one enterprise from those of another enterprise. Even sound marks are registrable, but no olfactory and haptic marks.

The period of protection runs for 10 years and may be extended for 10 years.

Austrian Trademarks

After filing with the Austrian Patent Office, the application is examined for legal conformity and a report on prior registered marks which are deemed to be similar is prepared. However, the same or similar prior trademarks are no obstacle to registration.

Within three months from the publication of the registration an opposition may be filed which may only be based on a senior trademark right. Decisions of the Legal Department of the Austrian Patent Office on oppositions are contestable by recourse to the Vienna Upper Provincial Court. Irrespective of the opposition term, trademarks may be contested on the grounds of confusing similarity with prior trademarks, non-registered designations, company names etc. or non-use for the past five years by filing a petition for cancellation, with the Nullity Department of the Austrian Patent Office.

International Trademarks

An international trademark may be registered on the basis of a national (home) trademark (i.e. first registration in the country of the establishment of the owner) by the World Intellectual Property Organisation (WIPO) either directly or through the original registration office for a plurality of countries, having the same effects in each of these countries as a national trademark.

However, the designated countries may object to protection in their territories within a certain period of time after international registration, resulting in national proceedings.

European Union Trademarks

Applications for trademarks enjoying EU-wide protection may be filed with the European Union Intellectual Property Office (EUIPO). After an examination for conformity with the law these are first published for possible opposition and ultimately, when all requirements for registration are met, registered.

Appeals against decisions by the Divisions (Opposition, Nullity Divisions) of the EUIPO may be lodged with the Board of Appeal of that office.

The next instances are the General Court and finally the Court of Justice of the European Union. Upon request a filed or registered European Union trademark may be converted into a national trademark application in a EU member state.

Remarkable decisions on Trademarks

The Vienna Upper Provincial Court recently held that words defining goods or services in a foreign language are excluded from trademark registration even if they are not yet known in Austria or regarded as fanciful, respectively. They are to be kept free because otherwise importers would not be allowed to designate the imported goods or services in the language of the country of origin.

The Austrian Supreme Court held that if a word is regarded fanciful by consumers but descriptive by specialists, i.e. if varying views exist among the trade involved, then the overall impression of a trademark might differ. Even if the circle of the specialists, e.g. importers, dealers, etc. is small it must not be neglected. For registration of a trademark it is necessary that in none of the circles of the trade involved exists a bar.

Domain Names

An application for the registration of domain names may be filed through the national Network Information Centre Austria, NIC.AT in Austria.

Such application may be filed by the applicant or his representative directly with NIC.AT if all the technical and organisational requirements are fulfilled.

Otherwise it is advisable to file the petition through a provider because names are granted on the basis of priority (first come, first serve); all technical and organisational requirements have to be met for the grant of the priority.

The application is not examined for conformity with the law. However, a prerequisite for registration is uniqueness, i.e. each domain name is unique worldwide.

An annual fee has to be paid for the maintenance of the domain name. Disputes in domain matters, in particular on the basis of prior trademark or name rights in the event of unauthorized domain registration (domain grabbing, cybersquatting, typosquatting etc.), have to be taken to the courts of law.

Remarkable decision on Domains

The question whether different top-level domains (ie “.com” and “.at”) may prevent confusion between one and the same name of a community (ie “Schladming” – a famous skiing center) as second-level domain was solved by the Supreme Court of Austria in that likelihood of confusion was attested. In the same judgement it was held that an infringing name holder has a claim for discontinuance and for cancellation of the infringing domain, however no claim for assignment of that domain.

PROTECTION OF NON-REGISTERED IP MATTERS

Unfair Competition

On basis of the *Law Against Unfair Competition* any unfair acts of another party may be brought before the respective civil court.

In case that non-registered devices, designs, etc. of one party are copied more or less as a whole the infringer may be sentenced on the grounds of slavish imitation.

A name, a firm name or any other special designation of an enterprise or of a printed matter (even if the latter is not protected by copyright) enjoys protection in case it is misused by a third party in the course of business. However, direct protection is only accepted in case of distinctiveness per se. Otherwise acquired

distinctiveness has to be proven. As special designations are regarded e.g. names of establishments or premises, outlets etc as well as domain names, i.e. sub-level domains, as long as they do not correspond to a name or firm name.

The injured party may sue the infringing party at the respective civil court to refrain from infringement whereby the usual remedies (ceasing, destruction, monetary relief etc.) are available.

Copyright

Unlike the anglo-american jurisdiction the Austrian "copyright" is in fact a "creator's right". Protection may be granted to a work which is a peculiar intellectual creation in the field of literature (including computer programs), music, visual art (including architecture) and cinematography. In addition protection may be granted for performances, interpretations etc. (derivative or ancillary copyright). Copyright protection expires 70 years after the death of the creator or 50 years after the first performance, interpretation etc.

As there is no (pre)registration of a work available the felt-injured party has to sue the offender at the respective civil court where at first the preliminary question has to be solved of whether or not there exists a protectable work.

In case that a work will be attested the usual remedies are available (ceasing, destruction, adequate monetary compensation, compensation of non-pecuniary damages).

Remarkable decisions on Copyright

Recently it was ruled that the publication of pictures in social media is not equal to publication in mass media. From a person's publication of pictures directed to a desired specific public no consent can be derived for a publication directed to the general public.

In another judgement it was held that the digital processing of a person's hand writing does not constitute a work protected by copyright because the computer writing was neither regarded as a preparation or revised edition nor as an original work based on a pattern or copy without copyright protection.

GENERAL PROVISIONS

Licenses, Liens

All intellectual property rights may be the subject matter of license agreements.

After preparation and execution such an agreement may be registered in the respective Register, if any. It is not necessary to register the entire agreement, but a license declaration disclosing the essential data is sufficient. E.g. by registration of a patent license in the Patent Register the license becomes a right in rem (i.e. it adheres to the respective property right independent of its owner) and effective vis-à-vis third parties. However, e.g. the registration of a trademark license has only declaratory effect, i.e. just serves to inform the public.

Intellectual property rights may also be the subject of liens which may be registered upon request in the respective Register of the respective Office (Patent Office, Plant Variety Office).

Product Piracy

Pursuant to an EU-wide regulation and the *Austrian Product Piracy Act* the import, export or transit of counterfeited goods and unauthorized reproductions or imitations may be stopped by the customs authorities of any country of the European Union, which gives the owner of an intellectual property right (except utility models) or copyright or a third party entitled to use that right or an entrepreneur claiming protection under the law against unfair competition, respectively, the chance to bring the case to court (petition for injunction, action etc.).

To this end a petition to the customs authorities containing all the required data and information of identification has to be filed. In the course of the seizure the customs authorities then inform a person and/or domestic expert appointed by the petitioner.

奥地利知识产权概况

在奥地利,知识产权保护可以通过注册(例如专利权、实用新型、设计、商标)或法院诉讼(如对创新、地理名称和版权的保护)获得。

自2014年1月1日起,所有不满奥地利专利局(法律部门、技术部门和无效部门)一审判决的,均可以上诉至维也纳上层省级法院,之后,依据实际情况也可以向最高院提交修正案。此外,维也纳商事法庭不仅可以受理专利侵权一审案件,也可对所有民法领域的商标诉讼案件进行一审判决。

已注册的知识产权保护

专利

专利授予的对象为具有新颖性的发明,即在充分考虑该领域的现有技术的情况下,对于业内人士而言,该发明不是显而易见的,并且可以应用于工业用途。

奥地利专利

专利申请提交之后需要交予奥地利专利局进行审核。审核过程中,专利申请可转化为实用新型申请。

审核通过之后,专利权即可授予。自专利权授予之日起4个月内他人可提出异议,对异议结果不满的,可向专利局救济部门提出上诉,上诉后仍然不满的,可向维也纳上层省级法院提出上诉。

申请日或专利优先权日18个月后,专利申请即可公布,同时专利局可能已经备有专利检索报告。

奥地利规定的专利保护期为自申请之日起20年,在此期间,在先权利人可对专利的有效性提出质疑。

对奥专利局的无效部裁决结果不服的,可向维也纳上层省级法院提出上诉。

此外,申请人可就奥专利局做出的,关于某方法或专利客体是否部分或完全涵盖在某一特定专利中的决定提起上诉。另外,诉讼的内容也可以是关于专利从属性的声明以及作者署名缺失、摘要中含有不实内容、请求强制许可等事宜。

自申请之日起一年内,凡是在奥地利首次提出申请的专利也可由申请人在世界其他国家提出专利申请,从而可以享有在奥地利首次申请的优先权。

欧洲专利

欧洲专利可以向设在维也纳的奥地利专利局申请获得,或直接在慕尼黑的欧洲专利局申请获得。完成主要流程后,专利将在指定国家生效,如果需要,专利的生效需要提交有相应的译文的文件。

欧洲专利授予后的9个月中,他人可以在欧洲专利局对其提出异议,9个月则需在指定国家逐国提出异议。

欧洲专利保护期最长为20年,各国专利保护期各异。

用英语或法语申请通过的专利,在奥地利进行验证时需翻译为德语。

国际专利申请(PCT程序)

国际专利申请可以直接在日内瓦世界知识产权组织申请,也可以在国家专利局申请(有无优先权均可)。由此就产生了一揽子国家或地区专利申请,一般申请人要首先准备一份国际专利检索报告,并可申请开展国际初步审查。

国际申请阶段届满后(最长30个月),专利申请进入国家和地区阶段。

专利保护证书

专利最长保护期届满后,专利药品和植物保护新品种可额外获得5年的续展期,儿童用药可再额外获得半年的专利保护期。

自药品获准上市,或该药品所依据的专利获授权后六个月以内,可提出补充保护申请。近期规定,基于某专利获准上市的产品,如果不是处理、治疗或预防特殊疾病或疑难病症的第一个面市品种,则不再批准同一个专利的其他产品上市。

半导体产品拓扑图

微电子半导体产品的三维结构可以通过在专利局申请专利和在半导体保护

登记处登记获得最长为 10 年的保护期，前提是该产品具有独特性，即该产品是独一无二的。

实用新型

实用新型的保护期最长为 10 年，要求具有新颖性或可以在商业上应用。数据处理设备的基础——程序逻辑也可作为实用新型保护，但是不能作为专利保护。申请人在向奥地利专利局提出申请前 6 个月内公开其发明，不影响发明的新颖性。实用新型的审查为形式审查，不审查其新颖性或创造性步骤。尽管如此，专利局还是会进行现有技术检索，根据检索结果，权利要求的范围可能要做相应调整。实用新型申请可在注册前转为专利申请。实用新型注册成功之后只能提起无效申请撤销，不能通过异议撤销。

植物新品种

植物新品种培养人或其指定继承人可以为其培育的独特的、同源的、持久稳固的、新颖的植物品种申请专利保护。藤本植物和木本植物的保护期为 30 年，其他新品种的保护期为 25 年。

奥地利植物新品种保护

申请人需要向植物品种局（联邦植物栽培研究所）提交申请。

目前，植物新品种保护只针对 13 种类。农林业联邦部长负责有关对品种局上诉的判决。

其它所有程序（宣布无效等）需要先依照《植物品种法》（大部分与《专利法》一致），其后再向奥地利专利局或最高专利商标委员会（无效部门）提出，亦可向维也纳上层省级法院提起上诉。

欧洲共同体植物新品种保护

在欧洲共同体植物品种局提交了申请并通过了审查后，该植物新品种可以在欧盟范围内受到保护。所有植物学种类中的新品种，包括杂交产生的新品种，都可以享有共同体对植物新品种的保护。在共同体植物品种局申请之前的程序，和在欧洲专利局申请专利前的程序在材料和形式方面相似。

工业设计

工业品外观设计指商业产品的外观设计。

奥地利工业品外观设计

在奥地利专利局注册后，新颖独特的工业设计的最长保护时限是 25 年。奥地利专利局只做形式审查。工业设计的保护与专利保护相似。已注册的工业设计也可按正常程序被无效。

工业设计保护范围包含产品的外观，但不涉及产品本身或是按设计制造出的产品。

在判断一个设计是否具有独特性时，可依据现有设计进行。如果现有设计中没有相关创意性元素或是现有设计展现出不同特性，即可判断该设计为具有独特性。

欧洲共同体工业品外观设计

欧洲共同体工业设计需向位于西班牙阿利坎特的欧盟内部市场协调局提起，其保护范围覆盖整个欧盟，最长保护期为 25 年。未登记的设计也可获得保护，但保护期仅为自设计在欧盟使用之日起 3 年。

商标

商标是用以区别商品和服务不同来源的商业性标志，由文字、图形、字母、数字或上述要素的组合构成。声音标志也可以注册商标，但是嗅觉和触觉标志不可。

商标注册的有效期限是 10 年，到期后可以续展 10 年。

奥地利商标

在奥地利，商标提交申请后，奥地利专利局会依照商标是否符合法律要求对申请进行审核，并且会出具一份报告，报告的内容涵盖在先注册的与申请商标构成近似的商标。但是，就算存在相同或类似的商标，也不会对待注册商标造成影响。

自注册发布之日起3个月内，任何人都可以根据在先商标权对申请注册的商标提出异议。奥地利专利局法律部门对异议做出裁决，对裁决结果不服的，可上诉至维也纳上层省级法院。不管是否已经过了商标异议期，如果商标与在先注册商标、未注册商标或公司名称构成相似，或注册后5年内没有使用的，奥地利专利局的无效部门有权利无效此商标。

国际商标

国际商标可以在国家商标（即商标持有人公司在本国内的首次商标登记）的基础上，向世界知识产权组织直接申请，或者通过原注册局向多个国家申请，由此使该商标在每个申请国都享有与本国商标同样的保护。

然而，在登记为国际商标后，指定国家可以在一定时间内，对在该国境内保护该注册商标提出异议，由此可能引发国际诉讼。

欧盟商标

欧盟商标在欧洲共同体范围内享有保护，注册商标申请可以递交给欧盟知识产权局（商标和设计部）。在审核商标是否符合法律要求之后，商标进入公示期，如果公示期内无人提出异议，且商标达到注册的全部要求，则可核准为共同体注册商标。针对欧盟知识产权局（异议、无效部）的决定的上诉可以提交给上诉委员会。

对上诉委员会判决结果不服的，可上诉至总法院，继而上诉至欧盟法院。根据请求，已提交申请的或注册成功的欧盟商标可以在欧盟成员国转为国家商标申请。

商标方面的重要判例

近期，维也纳省高级法院指出，商标注册中不允许使用描述产品或服务的外语词汇，即使这些词语不为奥地利所熟知，或是抽象的。该类词汇不允许用于商标注册，否则，进口商将无法使用原产国的原语言命名相关进口商品或服务。

奥地利最高法院指出，如果同一个商标名称被消费者认为是抽象的，而被专家视为描述性的，即在交易活动中存在理解差异，则就商标的总体印象将发生分歧。即使专业人员如进口商、经销商们的圈子非常狭小，也不容忽视。由此可见，商标注册工作必须确保在贸易涉及的商业圈中，不存在任何由商标的认识障碍而产生的分歧。

域名

申请人可以在奥地利网络信息中心（NIC.AT）申请域名的注册。如果满足所有的技术及组织要求条件，申请人或其代理人都可以直接向NIC.AT提交申请。除此之外，也可通过供应商提交申请，因为在奥地利，域名授予遵循优先权原则（先注册，先拥有）。申请人的所有技术及组织条件都符合要求的，可以被授予优先权。域名申请审核不针对其是否符合法律规定，不过，注册的前提条件是唯一性，也就是说，每个域名在世界上都是独一无二的。域名注册成功后，每年须支付一定的费用。域名纠纷事务，特别是未经授权注册他人商标、姓名的（域名抢注、注册拼写错误的域名等），必须交予法院处理。

域名方面重要判例

不同的顶级域名（例如“.com”或“.AT”）是否能够消除两个已经被奥地利最高法院裁决为相似的二级域名所代表的团体（例如“Schladming”，著名滑雪中心）之间的混淆？这一问题已得到了解决：法院判决中认定被侵权者可以要求终止侵权、注销侵权域名，但无权要求转让该域名。

未注册的知识产权保护

不正当竞争

根据《反不正当竞争法》，任何针对另一方的不正当竞争都可以向各民事法院提起诉讼。如果未经注册的发明、设计等部分或全部被另一方复制使用，构成侵权行为，该侵权行为可以以盲目模仿的理由受到处罚。

企业或印刷品的名称，公司名和其他称谓（即使印刷品不受版权保护）都享有保护，以防在商业过程中被第三方滥用。但是，直接保护仅作用于独特性本身，名称持有人需证明其名称具有的独特性。特殊名称只要不与其他人名、公司名重合，则可用于充当企业、公司名、批发商名或域名（二级域名）等。

被侵权方可以在民事法庭起诉侵权方，要求其停止侵权行为，同时也可采用常规救济方法（停止侵权行为、销毁侵权商品、赔偿金等）。

著作权

奥地利的“著作权”实际上是指“作者的权利”。具有独特创造性的文学（含计算机程序）、音乐、视觉艺术（包括建筑）和摄影领域的创作都可受著作权保护。除此之外，表演，诠释（衍生或附属知识产权）也可享受版权保护。著作权保护期到期时间为作者死亡后 70 年，或表演等首次发布后 50 年。

如果作品没有事先登记，权利人可以在民事法庭起诉侵权方，审理过程中，首先需要认定的就是争议作品是否享受著作权保护。如果作品通过审查，可以申请常规救济方法（停止侵权行为、销毁侵权商品、赔偿金、非金钱赔偿等）。

著作权方面的重要判例

近期有相关法规规定，在社交媒体上的图片发表与其在大众传播媒体上的发表不具有同等的法律效力。个人针对特定群体公布图片，并非同意将该图片向普通公众展示。

另一份意见则指出，对人的笔迹进行的数字处理不构成著作权的保护，这是由于电脑文字既不视为其具有预先出版权或再出版权，也不视为是不受版权保护的初稿或复印件一类的原创作品。

一般规定

授权许可和留置权

所有知识产权都可以通过签订合同授权给他人使用。撰写和执行授权协议后，协议应在相应的登记部门登记。登记内容不需要包含整个合同，只要授权申报中涵盖了所有必要信息就可以了。例如，在专利登记处登记专利授权后，该授权书就成为物权（即独立于专利权人的财产权利）和有效地面对第三方的权利。但是，商标权的授权登记仅具有公示效果。

知识产权也可成为留置权主张的对象。可以根据申请通过在相应的登记处（专利局、植物新品种办公室）登记取得。

非法复制产品

根据欧盟范围内的规定和《奥地利非法复制产品法案》，假冒商品和未授权产品的进出口运输可以由欧盟任何成员国的海关拦截，从而赋予了知识产权持有人（实用新型除外）、经授权的第三方和受法律保护的企业根据法律规定，向法院提起诉讼，要求保障其权利的机会（申请禁令和申请海关发起拦截侵权产品的行动）。

申请保护的单位须向海关当局提交附有所有要求信息和认定侵权信息的申请书。海关扣押过程中将告知申请人和 / 或其指定的国内专家。

IP Firms Recommendation

知识产权服务机构推荐

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