German intellectual property law mainly consists of the Copyright Act (UrhG), Patent Act (PatG), Trademark Act (MarkenG), Utility Model Act (GebrMG) and Design Rights Act (GeschMG), flanked by some provisions of the Civil Code (BGBl) and the Act Against Unfair Competition (UWG). All of these bodies of law have histories dating back to before German membership in the European Union (EU) but have since been revised and amended several times to implement European Directives and Guidelines or treaties. In particular, patent law and trademark law are harmonized to a large extent pursuant to the European Patent Convention (EPU) and efforts to harmonize trademark law. On a European Union level, national trademark laws are complemented by the option to apply for and register Community Trademarks.

Copyright
German copyright law is based on a natural law or “sweat of the brow” approach, i.e. only natural persons can be “authors” within the meaning of the Copyright Act, and there are strong protections for personal rights of the author. Copyright protection arises automatically upon creation of a work that is an individual original creation in a form that is perceptible to humans; registration is neither necessary nor possible. The duration of copyrights is the life of the author plus seventy years. A German copyright as a whole is not transferrable except by inheritance. Authors can, however, grant licenses of any scope. License provisions should be drafted in great detail since the UrhG provides that a license is, in principle, only granted to the extent necessary for the purpose of the underlying agreement even if the wording of a license is general and appears to be unlimited. German copyright law does not feature a “work for hire”-doctrine, wherefore employment agreements and service contracts should address the issue of licensing. An exception is made for certain software works created by employees. In such cases, while the employee author retains the personal rights to the work, the employer is granted a statutory license to exploit the work commercially. There is no unified EU copyright but copyright in the EU is harmonized by various Guidelines.

Design rights
Design rights in Germany are similar to copyrights in that they offer protection for creative works. The threshold for protection is slightly lower than for copyrights and in contrast to copyrights, design rights are registered with the German Patent and Trademark Office (DPMA) and protection only arises with registration. Design Rights can be transferred and licensed. The term of protection is 25 years from registration. EU law offers the possibility to register a unified EU design right and there is also a unregistered design right available.

Patents
German patent law requires, in order for a technical invention to be patented, that the invention be new in the respective technical field, inventive, properly disclosed in the application and commercially viable. Applications may be filed with the DPMA and the office examines the application for the above factors before deciding on whether to grant a patent. In Germany, the application process usually takes two to three years. Once granted, the patent grants the holder the right to exclude others from any use (including importation) of the invention for a term of 20 years from filing the application. Patents can be freely assigned and transferred and licenses of any scope can be granted. On a European level, there is no “community patent” offering protection in more than one member state as a Community Trademark does. However, a patent application may be filed with the European Patent Office (EPO) which was established in implementation of the European Patent Convention to which 38 countries, including all EU member states, are members. Such a European Patent Application results in a centralized process but then produces a “bundle” of national patents in those member states of the EPU that were named in the application.

A unified Community Patent, including a single European Patent Jurisdiction, has been under discussion for years but is still not in force; recently some core countries of the EU have agreed on an attempt to establish a unified patent at least for their territories.

Utility models
Utility models in Germany require originality and inventiveness, just as patents do. Utility models also must be commercially viable. The major difference to a patent lies in the fact that the DPMA will not examine a utility model application for these factors. Also, the term of a registered utility model is three years and can be extended to ten years.

Utility models are not available at EU level.

Trademarks
Trademarks offer protection against the use of identical or confusingly similar marks by third parties. On a European level, trademarks can be registered with the Office for Harmonization of the Internal Market (OHIM) in Alicante, Spain. Such Community Trademarks offer protection in all EU member states. National German trademarks are registered with the DPMA. In both cases, in order to be registered, a trademark must be distinctive for the relevant goods and services.

In the registration process, the OHIM or DPMA, as the case may be, examines the application for registration under these standards. During (EU) or after (Germany) registration, third parties may file an opposition to the registration for three months if the trademark is identical or confusingly similar to a prior trademark. Trademark protection may last for an unlimited amount of time, provided that the owner continues to pay renewal fees after each ten year term and, no later than five years after registration, actually uses the trademark as such for the goods and services for which it is registered. Community Trademarks and national German trademarks can be freely assigned and transferred and it should be noted that the register may not correctly reflect ownership since entry in the register does not affect the substantive legal ownership of a trademark.

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