

Information on extending time limits and further processing

Time limits exist primarily to ensure legal certainty and prevent examination and granting procedures from being unnecessarily lengthy. The IPI always indicates in its letters when a time limit will expire and the consequences of failing to comply with this time limit.

Time limits set by the IPI can usually be extended. Statutory time limits, however, cannot. In the event of a missed time limit, it is possible to request further processing.

This leaflet informs you about our practice regarding extending time limits and further processing. The rules apply to trade marks, patents and designs.

Extending a time limit set by the IPI

1. Submission deadline

We must receive your request for an extension to a time limit before the specified deadline.

2. Number of extensions

Time limits set by the IPI will not be extended more than three times. A third extension will only be granted in exceptional cases; serious grounds must be substantiated. In trade mark opposition proceedings and in trade mark cancellation proceedings on the grounds of non-use, it has to be demonstrated that evidence for the use of the trade mark cannot easily be submitted. The time limit for the payment of a fee will only be extended with good cause once, by a month.

3. Duration of the extension

For a first and second extension, the time limit will be extended by two months (one month in trade mark opposition proceedings and in trade mark cancellation proceedings on the grounds of non-use). The third extension may be shorter depending on the specific circumstances of the individual case (i.e. depending on how long the serious grounds will continue to exist) or in exceptional cases, longer.

In exceptional cases – in particular, if we have to respect time limits ourselves in an international procedure – we reserve the right to deviate from the rules regarding the number and duration of extensions.

4. Justification

You must justify your request for an extension to a time limit. A first and second extension will be granted if there are sufficient grounds for doing so. Sufficient grounds are subjective reasons attributable to the applicant, which are not necessarily through no fault of his or her own (e.g. work overload, holiday absences, scope of the dossier, difficulty in contacting the client, etc.). A third extension will

be granted if serious grounds are substantiated. Serious grounds are objective reasons that prevent the applicant from complying with the time limit, i.e. through no fault of his or her own (e.g. accident, serious illness or death of the rights owner or representative).

5. Signature

On the basis of Article 6 para. 3 of the Trade Mark Protection Ordinance, Article 6 para. 3 of the Design Ordinance and Article 3 para. 3 of the Patent Ordinance, requests for first and second extensions of time limits do not require a signature. You can submit such an application by email.

6. Deficient request

If the request does not meet the formal requirements (e.g. there is no justification), we can set a grace period of ten days for rectification. If we reject the application on substantive grounds (because insufficient grounds have been asserted), we do not set a grace period, but instead make a decision on the matter. Further processing (Art. 41 TmPA, Art. 31 DesA, Art. 46A PatA) remains reserved.

Requesting further processing

If you have missed a statutory time limit or one set by the IPI, you may still request further processing in certain cases. You must file the request within two months after you have been notified of the failure to comply with the time limit, but no later than six months after the expiry of the time limit. Within these time limits, you must also effect whatever action has been omitted in its entirety and pay the fee for further processing. If we approve your request, this will have the effect of restoring the state of your IP right to that which would have resulted from acting in due time.

January 2019