Patents, trade marks, copyright and designs in Norway: overview

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PATENTS

1. What are the legal requirements to obtain a patent?

To obtain a patent an invention must be:
- Of technical character.
- Capable of industrial application.
- Novel.

The invention must differ from the prior art and must not have been known before the filing date.

2. What categories are excluded from patent protection?

The following categories are excluded from patent protection:
- Artistic creations and expressions.
- Scientific theories and abstract ideas.
- Information presentations.
- Surgical and therapeutic diagnostic and treatment methods.
- Plants and animals.
- Processes to produce animals and plants.

3. Which authority registers patents? Does its website provide guidance on the application procedure?

The Norwegian Industrial Property Office (Patentstyret) (see box, The regulatory authority) administers Norwegian patents. European applicants can acquire patents in Norway by submitting the patent application to the European Patent Office (EPO) (www.epo.org).

For application forms and procedural guidance, see www.patentstyret.no/en/Patents/What-is-a-patent.

4. On what grounds and when can third parties oppose a patent application?

Opposition regarding a patent’s validity can be filed if:
- One or more criteria for patentability are not met (see Question 1).
- If the patent description does not enable a person skilled in the art to make the invention.
- The subject matter is overly broad.

Opposition must be filed within nine months of the patent publication. Patent applications are published in the Official Patents Gazette (Patenttidende) and as at July 2014 are only available in Norwegian (see http://patentstyret.no/en/For-Experts/Patents-Expert/Official-Gazette-).

5. When does patent protection start and how long does it last?

Protection for national applications starts when the application is received at the Norwegian Industrial Property Office (see box, The regulatory authority), or for international applications, as of the international filing date. Protection for the majority of patents lasts 20 years, with a possibility of a five year extension for medical inventions.

6. On what grounds can a patent infringement action be brought?

Norway operates with three main grounds to bring a patent infringement action, that is, when a third party:
- Produces, offers to sell, introduces to the domestic market or uses a patented product.
- Uses or offers to use a patented process.
- Offers to sell, introducing to the domestic market, or uses an invention made by a patented process.

7. Which courts deal with patent infringement actions?

Norway's district courts deal with patent infringement actions. The venue is dictated by the general procedural provisions (under the Norwegian Act relating to mediation and procedure in civil disputes (Dispute Act)).

Oslo District Court is the mandatory venue for annulment actions.

8. What are the defences to patent infringement actions?

The defences to patent infringement actions are as follows:
- Invalid patent.
- Non-infringement.
- Explicit or implicit licence.
- Patent exhaustion.
- Non-professional use.
- Lack of evidence.
9. **What are the remedies in patent infringement actions?**

The remedies in patent infringement actions are as follows:

- Monetary damages or reasonable licence fee, and/or forfeiture of proceeds.
- Equitable relief such as preliminary or permanent injunctions.
- Confiscation or destruction of infringing goods.
- Criminal sanctions such as penalty fees and imprisonment for up to three months.

10. **Is there a fast-track and/or a small-claims procedure for patent infringement actions?**

There is no fast-track or small claims procedure for patent infringement actions.

**TRADE MARKS**

11. **What are the legal requirements to obtain a trade mark?**

The legal requirements to obtain a trade mark are that the mark is:

- Capable of graphical representation.
- Sufficiently distinctive. Marks that lack the required distinction can be registered if secondary meaning has been acquired. Secondary meaning is acquired when consumers recognise the mark as a source indicator.

12. **Is it necessary or advisable to register trade marks?**

It is not necessary to register trade marks. Protection can be obtained from use. However, the standard of review for use is strict, it is therefore advisable to register trade marks.

13. **Which authority registers trade marks? Does its website provide guidance on the application procedure?**

The Norwegian Industrial Property Office (Patentstyret) is the authority that registers trade marks (see box, The regulatory authority).

14. **On what grounds can the regulatory authority refuse to register a trade mark?**

Marks are either refused on absolute or relative grounds. Absolute grounds are that the mark is:

- Non-distinctive.
- Descriptive.
- Obscene.
- Deceptive.

Relative grounds are:

- Likelihood of confusion.
- Unfair competition.

15. **On what grounds and when can third parties oppose a trade mark application?**

All third parties can oppose trade mark applications. Opposition must be filed within a two month window after publication of the mark. Trade mark applications are published in the Official Trademark Gazette (Varemerketidende) and as at July 2014 are only available in Norwegian (see http://patentstyret.no/en/For-Experts/Patents-Expert/Official-Gazette/). The petitioner can base the opposition on both absolute and relative grounds (see Question 14).

16. **When does trade mark protection start and how long does it last?**

Registered marks are protected from the filing date and last indefinitely, contingent on renewal every ten years. Unregistered marks are protected indefinitely, as long as they remain well known.

17. **On what grounds can a trade mark infringement action be brought?**

Infringement actions can be made by owners of both registered and unregistered trade marks, if:

- The other mark relates to identical or similar goods.
- The other mark is used in commerce.
- There is actual confusion between the marks.

There is not a requirement of identical or similar goods for famous marks.

18. **Which courts deal with trade mark infringement actions?**

Infringement actions can be brought at any Norwegian district court.

19. **What are the defences to trade mark infringement actions?**

The defences to trade mark infringement actions are:

- Invalid trade mark registration, exhaustion and non-use.
- No likelihood of confusion between the marks.
- Existence of licence.
- Overbroad classifications.
- Acceptance of co-existence due to passivity.

20. **What are the remedies in trade mark infringement actions?**

The remedies in trade mark infringement actions are:

- Monetary damages or reasonable licence fee, and/or forfeiture of proceeds.
- Equitable relief such as preliminary and permanent injunctions.
- Declaration of infringement.
- Confiscation or destruction of goods bearing the infringed mark.
21. Is there a fast-track and/or a small-claims procedure for trade mark infringement actions?

There is no fast-track or small claims procedure for trade mark infringement actions.

**COPYRIGHT**

22. What are the legal requirements to obtain copyright protection?

The legal requirements to obtain copyright protection are that it must be an original literary, scientific or artistic work.

23. Can copyright be registered?

Copyright cannot be registered.

24. When does copyright protection start and how long does it last?

Copyright protection starts with the creation of the work and lasts the life of the author plus 70 years. Related rights such as protection for performers and producers of phonograms is seventy years (recently up from 50 years), from the time of creation.

25. On what grounds can a copyright infringement action be brought?

Copyright infringement actions can be brought for violation of the author's exclusive right to:
- Reproduce.
- Make publicly available.
- Be named in accordance with fair practise.
Infringement actions can also be brought for derogatory use of the work harming the author's reputation.

26. Which courts deal with copyright infringement actions?

Copyright infringement actions can be brought at any Norwegian district court.

27. What are the defences to copyright infringement actions?

The defences to copyright infringement actions are:
- Use/action does not infringe on any of the exclusive rights.
- Fair use.
- Independent work.
- Licence.
- Expired copyright.

28. What are the remedies in copyright infringement actions?

The remedies in copyright infringement actions are:
- Monetary damages and reasonable royalty.
- Equitable relief such as preliminary and permanent injunctions.
- Confiscation, transferal or destruction of the infringing work.

29. Is there a fast-track and/or a small-claims procedure for copyright infringement actions?

There is no fast-track or small claims procedure for copyright infringement actions.

**REGISTERED DESIGNS**

30. What are the legal conditions to obtain a registered design right?

The legal conditions to obtain a registered design right area that the design:
- Is novel.
- Has individual character.
The design must not:
- Be functional.
- Infringe on prior registrations.

31. Which authority registers designs?

The Norwegian Industrial Property Office (Patentstyret) is the authority that registers designs (see box, The regulatory authority).

32. On what grounds and when can third parties oppose a registered design application?

Third parties can at any time oppose a design registration. Common opposition arguments are:
- The design is not novel and lacks individual character.
- The design goes under the categories that are excluded (that is, functional or infringing).

33. When does registered design protection start and how long does it last?

Registered design protection starts at the day of filing and is valid for five years. The registration can be renewed four times, offering a total of 25 years of protection. The protection term for spare parts is limited to a total of five years.
34. On what grounds can a registered design infringement action be brought?

A registered design infringement action can be brought when someone, without authorisation makes, offers, places on the market, imports, exports or uses a product incorporating the registered design.

35. Which courts deal with registered design infringement actions?

Design infringement actions can be brought at any Norwegian district court.

36. What are the defences to registered design infringement actions?

The defences to registered design infringement actions are:
- Claim of invalid design.
- Non-infringement.
- Fair use.
- The right is not exclusive.

37. What are the remedies in registered design infringement actions?

The remedies in registered design infringement actions are:
- Transferral of the rights to the correct owner.
- Cancellation.
- Monetary damages or reasonable licence fee, and/or forfeiture of proceeds.
- Destruction or confiscation of infringing goods.

38. Is there a fast-track and/or a small-claims procedure for registered design infringement actions?

There is no fast-track or small claims procedure for registered design infringement actions.

UNREGISTERED DESIGNS

39. What are the legal conditions for unregistered design rights to arise?

There are no legal conditions for unregistered design rights to arise per se. An unregistered design may however be protected under Norwegian copyright law if the work is considered original, and/or marketing law, which prohibits product imitation.

40. When does unregistered design protection start and how long does it last?

Not applicable (see Question 39).

41. On what grounds can an unregistered design infringement action be brought?

An unregistered design infringement action can be brought under the marketing law, which prohibits unfair competition and using copies of third parties’ products in commerce (Marketing Act (markedsføringsloven)).

42. What are the defences to unregistered design infringement actions?

The relevant defences to an unregistered design infringement action relating to the marketing law are that:
- The design is not a unique design.
- There is no risk of confusion.
- There is no actual imitation.

Relevant defences relating to the copyright law are:
- Non-copyrightable subject matter.
- Non-original.

43. What are the remedies in unregistered design infringement actions?

The remedies in unregistered design infringement actions are:
- Equitable relief such as preliminary and permanent injunctions.
- Damages.
- Prohibition of use.

CONFIDENTIAL INFORMATION

44. What are the legal conditions for rights in confidential information to arise?

Rights in confidential information arise for information that is:
- Company specific.
- Not in the public domain.
- Of value to the company.
- Must be confidential.

45. On what grounds can an action for unauthorised use of confidential information be brought?

Actions for unauthorised use of confidential information can be brought when confidential information is disclosed to third parties without authorisation.

46. Which courts deal with actions for unauthorised use of confidential information?

Actions for unauthorised use of confidential information can be brought at any Norwegian district court.
### 47. What are the defences to actions for unauthorised use of confidential information?

The defences to actions for unauthorised use of confidential information are that the information:

- Is generally known information.
- Is non-confidential information.
- Was not disclosed in confidence.

### 48. What are the remedies in actions for unauthorised use of confidential information?

The remedies in actions for unauthorised use of confidential information are:

- Equitable relief such as preliminary and permanent injunctions.
- Monetary relief, damages.
- Return of the misappropriated information.

### 49. Is there a fast-track and/or a small-claims procedure for actions for unauthorised use of confidential information?

There is no fast-track or small claims procedure for actions for unauthorised use of confidential information.

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## THE REGULATORY AUTHORITY

**Norwegian Industrial Property Office (Patentstyret)**

[www.patentstyret.no/en](http://www.patentstyret.no/en)

### Main areas of responsibility

- Processes applications and rights relating to patents, trade marks and design in Norway for both Norwegian and international businesses.
- Takes initiative to stimulate Norwegian businesses with increased protection and improving the use of intellectual property.
- Delivers information and counselling services to Norwegian businesses.

**Guidance on application procedure.** All pertinent information is available at its website (see above). For specific questions relating to the application procedure contact the Information Centre at infosenteret@patentstyret.no.

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## ONLINE RESOURCES

**Lovdata**

[www.lovdata.no](http://www.lovdata.no)

### Description.

The purpose of Lovdata is to establish and operate legal information systems on a non-profit basis. Lovdata's main activities are:

- Operating a website with legal information.
- Operating an online legal information service.
- Publishing *Norsk Lovtidende* (The Official Legal Gazette) and producing the text for *Norges Lover* (Norwegian statutes in force) and *Overenskomster med fremmede stater* (Norway Treaty Series) and many other publications containing laws and regulations.
- Developing software in connection with maintaining and running large databases.
- Providing consultancy services in informatics.

Lovdata is also the publisher of the following Scandinavian and Norwegian periodicals:

- Lov&Data, a publication for legal informatics (published quarterly).
- EuroRett, a publication highlighting legal developments within the European Union (about 20 issues a year).
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Professional qualifications. Norway, 1988
Areas of practice. Copyright; culture and media; marketing; patents and inventions; privacy policy; internet and e-commerce; trade marks.
Recent transactions
- Advising on the acquisition and management of IT solutions and the purchase, sale, administration and management of copyrights, trade marks, signs and patents, intellectual property rights (IPRs) as well as marketing and competition issues.
- Advising on IPRs and related disputes and advising on, among others, legal sparring concerning legal protection in innovation and acquisition processes.
- Advising on all areas of IPRs and acting for a number of clients in projects relating to the purchase and sale of IPR, IPR due diligence and IPR strategy, and establishing IPR management.
- Advising the Ergo Group and advising on a number of major IT acquisitions, contract negotiations and disputes on behalf of both public and private sector clients.

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Professional qualifications. Norway, 1982
Areas of practice. Copyright; culture and media; dispute resolution and litigation; family and inheritance law; marketing; privacy policy; IP including trade mark and domain name, design, copyright.
Recent transactions
- Advising a number of companies, particularly within the area of trade and industry, on issues within this area of specialism.
- Litigating and pleading cases on behalf of several major international brands, including in anti-piracy actions.
- Acting for a number of charitable organisations in an advisory capacity and as a litigator.
- Advising on inheritance/inheritance tax issues relating to the transfer of copyrights.
**Professional qualifications.** Norway, 2001

**Areas of practice.** Dispute resolution and litigation; labour and employment law; patents and inventions; privacy policy; trade marks.

**Recent transactions.**
- Acting for a number of Norwegian and international companies on questions of intellectual property rights and market law as well as providing general legal advice for, among others, Puma and Timberland, as well as a number of pharmaceutical companies; broad experience in pursuing counterfeit products.
- Acting for clients in competition law cases in both Norway and at EEA level.
- Advising a number of public authorities and local authorities on procurements.
- Litigating at the district court, court of appeal and Supreme Court, especially within the areas of patent, trade mark, market, contract and labour law.

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**Professional qualifications.** Norway, 2013

**Areas of practice.** Copyright; patent; trade marks; trade secrets; cyberlaw; anti-trust; business organisations; corporate governance; IP drafting; negotiation; mediation.

**Recent transactions.** Advising on international commercial law with a particular emphasis on intellectual property, contracts, competition, real estate, administration law and e-commerce.