



<b>X. (Title and date of the applicable national law)</b>
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## Extract from the Trade Mark Law

### Version of 19/10/2013, Section 96 updated

#### *Absolute obstacles to protection*

8. - (1) Signs eligible for protection as a trade mark within the meaning of section 3 which cannot be depicted graphically shall be excluded from registration.
- (2) The following trade marks shall be excluded from registration
1. those which are devoid of any distinctive character for the goods or services,
  2. which consist exclusively of signs or indications which may serve, in the course of trade, to designate the nature, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the services or to designate other characteristics of the goods or services,
  3. which consist exclusively of signs or indications which have become customary in the current usage or in the bona fide and established practices of the trade to designate the goods or services,
  4. which are of such a nature to mislead the public, in particular with regard to the nature, the quality or the geographical origin of the goods or services,
  5. which are contrary to public policy or to accepted principles of morality,
  6. which contain state coats of arms, state flags or other sovereign state symbols or coats of arms of a domestic locality or of a domestic municipal or other local authority association,
  7. which contain official certification marks or hallmarks which are excluded from registration as a trade mark in accordance with a notice made by the Federal Ministry of Justice in the Federal Law Gazette (BGBl.),
  8. which contain coats of arms, flags or other symbols, seals or designations of international intergovernmental organisations which are excluded from registration as a trade mark in accordance with a notice made by the Federal Ministry of Justice in the Federal Law Gazette,
  9. the use of which can evidently be prohibited in the public interest in accordance with other provisions, or
  10. which have been applied for in bad faith.
- (3) Subs. 2 Nos. 1, 2 and 3 shall not apply if, prior to the point in time of the decision on registration, the trade mark has become established in the trade circles involved as a result of its use for the goods or services for which the application was filed.
- (4) Subs. 2 Nos. 6, 7 and 8 shall also be applied if the trade mark contains the imitation of a sign listed there. Subs. 2 Nos. 6, 7 and 8 shall not be applied if the applicant is empowered to include in the trade mark one of the signs listed therein, even if it can be confused with one of the other signs listed therein. Subs. 2 No. 7 shall furthermore not be applied if the goods or services for which the trade mark application was filed are neither identical with nor similar to those for which the certification mark or hallmark has been introduced. Subs. 2 No. 8 shall further not be applied if the trade mark applied for is not suitable to create among the public the incorrect impression of a connection with the international intergovernmental organisation.

#### *Trade marks that have been filed or registered as relative obstacles to protection*

9. - (1) The Registration of a trade mark may be cancelled
1. if it is identical to a trade mark applied for or registered which has older seniority and the goods or services for which it was registered are identical with the goods or services for which the trade mark with older seniority was filed or registered,
  2. if the likelihood of confusion exists, including the likelihood of association between the trade marks, for the public because of its identity with or similarity to a trade mark applied for or registered with older seniority and owing to the identity or similarity of the goods or services covered by both trade marks, or
  3. if it is identical with or similar to a trade mark applied for or registered with older seniority and has been registered for goods or services which are not similar to those for which the trade mark with older seniority has been filed or registered, if the trade mark with older seniority is a trade mark which has a reputation in this country and the use of the registered trade mark would without due cause take unfair advantage of, or be detrimental to, the distinctive character or the repute of the trade mark which has a reputation.
- (2) Applications for trade marks shall only constitute an ground for refusal within the meaning of subs. 1 if they are registered.

#### *Opposition*

42. - (1) Within a three-month period after the date of the publication of the registration of the trade mark in accordance with section 41, the proprietor of a trade mark or of a commercial designation with older seniority may lodge an opposition against the registration of the trade mark.
- (2) The opposition may only invoke that the trade mark may be cancelled
1. because of a trade mark applied for or registered with older seniority in accordance with section 9,
  2. because of a well-known mark with older seniority in accordance with section 10 in conjunction with section 9,
  3. because of its registration for an agent or representative of the trade mark proprietor in accordance with section 11, or
  4. because of a trade mark not registered with older seniority in accordance with section 4 No. 2 or of a commercial designation with older seniority in accordance with section 5 in conjunction with section 12.
- (3) (repealed)

#### *Objection of insufficient use, decision on the opposition*

43. - (1) If the opposition has been lodged by the proprietor of a registered trade mark with older seniority, he/she shall, if the other party disputes the use of the trade mark, make a plausible case that he/she, within the last five years prior to the publication of the registration of the trade mark which is targeted by the opposition, has been used in accordance with section 26 insofar as it has been registered for at least five years at this point in time. If the period of five years of non-use ends after the publication of the registration, the opponent, if the other party disputes the use, must make a plausible case that the trade mark has been used in accordance with section 26 within the past five years prior to the decision on the opposition. Only those goods or services shall be taken into consideration in the decision with respect to which a plausible case has been made for use.
- (2) If the examination of the opposition reveals that the trade mark is to be cancelled for all or part of the goods or services in respect of which it is registered, the registration shall be cancelled in full or in part. If the registration of the trade mark cannot be cancelled, the opposition shall be refused.
- (3) If the registered trade mark is to be cancelled because of one or several trade marks with older seniority, the proceedings on further objections may be suspended until a decision has been handed down with legal force on the registration of the trade mark.
- (4) Section 52 subs. 2 and 3 shall be applied mutatis mutandis in the event of cancellation in accordance with subs. 2.

#### *Domestic representative*

96. - (1) Any person who has neither their residence nor principal place of business nor an establishment in Germany may participate in the proceedings before the German Patent and Trade Mark Office or the Federal Patent Court which are regulated under this Act and assert the rights deriving from a trade mark only if he has appointed as his representative a lawyer or patent attorney who is authorised and empowered to represent him in proceedings before the German Patent and Trade Mark Office, before the Federal Patent Court and in civil litigation affecting this trade mark, as well as to file motions for criminal prosecution.
- (2) The place where a representative appointed pursuant to subsection (1) has his commercial premises shall be deemed, within the meaning of section 23 of the Code of Civil Procedure, to be the place where the asset is located; if there are no such commercial premises, the place where the representative is residing in Germany shall be decisive or, if there is no such place, the place where the German Patent and Trade Mark Office has its seat.
- (3) The legal termination of the appointment of a representative in accordance with subsection (1) shall not become effective until the German Patent and Trade Mark Office or the Federal Patent Court has been informed of both the termination of this appointment and the appointment of another representative.

#### *Application of the provisions of this Act; language*

107. (1) The provisions of this Act shall be applied mutatis mutandis to the international registration of trade marks in accordance with the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement on Marks) carried out through the intermediary of the Patent Office or whose protection covers the territory of the Federal Republic of Germany unless provided otherwise in this Chapter or in the Madrid Agreement on Marks.
- (2) All and any applications, as well as other communications in the proceedings for international registration and the list of goods and services, shall be submitted in either French or English, at the choice of the applicant.

#### *Opposition*

114. - (1) The publication of the registration (section 41) for internationally-registered trade marks shall be substituted by publication in the Information Notice published by the International Bureau of the World Intellectual Property Organisation.
- (2) The time limit to lodge the opposition (section 42 subs. 1) against the granting of protection for internationally-registered trade marks shall commence on the first day of the month following the month stated as the issue month of the edition of the Information Notice containing the publication of the internationally-registered trade mark.
- (3) Refusal of protection shall take the place of the cancellation of the registration (section 43 subs. 2).


#### *Extract from the Trade Mark Ordinance version of 11 May 2004*

#### *Section 46 Refusal of Protection*

- (1) Where protection is, in full or in part, refused to an international registration the protection of which has been extended to the territory of the Federal Republic of Germany under Article 3ter of the Madrid Agreement or under Article 3ter of the Protocol Relating to the Madrid Agreement, and where this refusal is communicated to the International Bureau of the

World Intellectual Property Organization to be transmitted to the proprietor of the international registration, the time limit for appointing a representative in Germany shall, to avoid final refusal, be fixed to four months from the date on which notification of refusal was dispatched by the International Bureau of the World Intellectual Property Organization.

(2) Where the refusal of protection has become final because the proprietor of the international registration has failed to appoint a representative in Germany, a special motion (*Erinnerung*) or an appeal from the refusal shall be filed with the German Patent and Trade Mark Office within one further month after the time limit under subsection (1). Instructions about the proprietor's right to appeal shall be attached to the refusal. Section 61(2) of the Trade Mark Act shall apply *mutatis mutandis*.

still X.	<p><b>Supplementary box</b> grounds for refusal – <i>item V</i> –</p> <p style="text-align: center;">International Trade Mark <b>1 419 874</b></p> <p><u>1.) In respect of all products/services:</u></p> <p>The trade mark is a descriptive indication/sign in respect of the goods/services mentioned whose use cannot be reserved for a single applicant but must be kept free for all competitors; it is devoid of any distinctive character (Sec. 119, 124, 113, 37, 8 (2) Nos 1, 2 Trade Mark Law; Art. 5 Protocol Relating to the Madrid Agreement; Art 6 quinquies B Paris Convention).</p> <p>2. ) In respect of class 29 and 40</p> <p>the company (companies) mentioned below has (have) lodged opposition to the admission of the trade mark because of earlier national or international application or registration of its (their) trade mark(s) listed below (Sec. 119, 124, 114, 43 (2), 42 (2), 9 (1) Trade Mark Law; Art. 5 Protocol Relating to the Madrid Agreement; Art. 6 quinquies B Paris Convention):</p> <p>AIR PRODUCTS AND CHEMICALS, INC. 7201 Hamilton Boulevard Allentown, Pennsylvania 18195-1501 ESTADOS UNIDOS</p> <p>EM002941896 FRESHLINE (fig.)</p> <p><u>Note:</u></p> <p>If no representative has been appointed within the provisional time limit of the first four months, this fact constitutes in itself a ground for refusal after the notification concerning the refusal of protection has become final (Sec. 96, 119 Trade Mark Law).</p>	
XII.	<p><b>Annexes</b> (crossed off below)</p> <p><input checked="" type="checkbox"/> 1 reproduction of 1 opposed trade mark including a figurative element or a special graphic design</p> <p><input checked="" type="checkbox"/> List specifying the registration number as well as the relevant goods/services in respect of each opposed trade mark</p> <p><input type="checkbox"/> List of professional representatives</p> <p><input type="checkbox"/> List of goods/services</p>	<p>XI. <b>Signature or official seal of the administration which pronounced the refusal</b></p> <div style="text-align: center;">  </div>

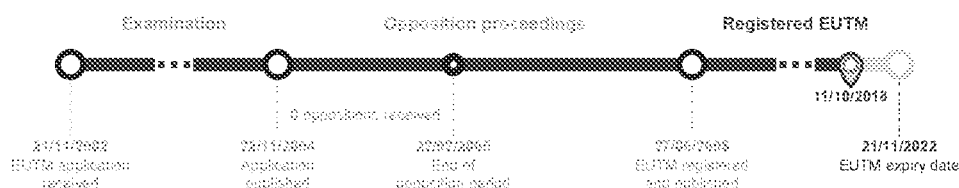


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## EUTM file information

**FRESHLINE**  
002941896

### Timeline



### Trade mark information

Name	<b>FRESHLINE</b>	Filing date	<b>21/11/2002</b>
Filing number	<b>002941896</b>	Registration date	<b>20/04/2005</b>
Basis	<b>EUTM</b>	Expiry date	<b>21/11/2022</b>
Date of receipt	<b>21/11/2002</b>	Designation date	
Type	<b>Word</b>	Filing language	<b>English</b>
Nature	<b>Individual</b>	Second language	<b>French</b>
Nice classes	<b>1, 11, 37, 40, 42 ( Nice Classification )</b>	Application reference	<b>CC884/325891</b>
Vienna Classification		Trade mark status	<b>Registered</b>
		Acquired distinctiveness	<b>No</b>

### Goods and services

English (en) ☒

- 1** Industrial and specialty gases for use in preserving, freezing or processing of food products.
- 11** Refrigeration and food freezing equipment used for food products.
- 37** Installation, operation, repair, and maintenance services for freezing and/or refrigeration and/or processing equipment used for food products.
- 40** Consulting services related to the supply and use of refrigeration and freezing equipment, food processing facilities, and food processing technology.
- 42** Consulting services related to the use of industrial gases; scientific, technological, optimizing and monitoring services related to the supply and use of industrial gases; refrigeration and freezing equipment, food processing facilities and food processing technology, including technology for the preservation, maturation and/or processing of food products; scientific and technological consulting services related to the supply and use of industrial gases.

### Description

No data

### Owners

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**AIR PRODUCTS AND CHEMICALS, INC.**

ID	<b>334</b>	Country	<b>US - United States</b>	Correspondence address	
Organisation	<b>AIR PRODUCTS AND CHEMICALS, INC.</b>	State/country	<b>Pennsylvania</b>	AIR PRODUCTS AND CHEMICALS, INC. 7201 Hamilton Boulevard Allentown, Pennsylvania 18195-1501	Can be accessed and changed by authorised user via the User Area
Legal status	<b>Legal entity</b>	Town	<b>Allentown,</b>	ESTADOS UNIDOS	Can be accessed and changed by authorised user via the User Area
State, district or t...	<b>Delaware</b>	Post code	<b>18195-1501</b>		
		Address	<b>7201 Hamilton Boulevard</b>		Can be accessed and changed by authorised user via the User Area

**Representatives****DECHERT LLP**

ID	<b>26655</b>	Country	<b>GB - United Kingdom</b>	Correspondence address	
Organisation	<b>n/a</b>	State/country	<b>n/a</b>	DECHERT LLP 160 Queen Victoria Street London EC4V 4QQ REINO UNIDO	00 44-2071847000
Legal status	<b>Legal person</b>	Town	<b>London</b>		00 44-2071847001
Type	<b>Association</b>	Post code	<b>EC4V 4QQ</b>		
		Address	<b>160 Queen Victoria Street</b>		paul.kavanagh@dechert.com

**Correspondence**

	From	Procedure	Filing number	Subject	Date	Actions
		Recordal	006456571	L607 V: Notification of the total renewal of the EUTM	29/10/2012	
		Recordal	006456571	Application form and attachment	26/10/2012	
		Recordal	006456571	L601A V: Notification of the need to renew an EUTM registration	30/04/2012	
		EUTM	002941896	Certificate of Registration	18/03/2008	
		EUTM	002941896	Cover letter for registration certificate.	18/03/2008	
		Recordal	001706756	T724A V: Notification that a change of the name or the business address of a representative has been entered into Application(s) for the EUTM pursuant to Rules 265 (7).	01/12/2005	
		Recordal	001706756	Letter to the EUIPO	24/11/2005	
		EUTM	002941896	Letter to the EUIPO	12/04/2005	
		EUTM	002941896	Request for payment of the registration fee	11/04/2005	
		EUTM	002941896	Notification of acceptance for publication	10/11/2004	
Showing 1 to 10 of 32 entries						

**IR transformation**

No data

**Seniority**

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Filing number	Registration number	Country	Priority date	Filing date	Registration date	International code	Status
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Filing number	Registration number	Country	Priority date	Filing date	Registration date	International code	Status
2042891	2042891	United Kingdom		28/10/1995	28/10/1995	EU	ACCEPTED
786365	518241	Benelux		25/09/1992	25/09/1992	EU	ACCEPTED
92 434589	92434589	France		21/09/1992	21/09/1992	EU	ACCEPTED

Showing 1 to 3 of 3 entries

## Exhibition priority

No data

## Priority

No data

## Publications

Bulletin number	Date	Section	Description
2004/047	22/11/2004	A.1	Applications published under Article 44 EUTMR (Article 39 EUTMR before 01/10/2017)
2005/026	27/06/2005	B.1	Registrations with no amendments since the application was published
2007/043	20/08/2007	C.2.1	Representative - Change of name and professional address
2007/045	27/08/2007	C.2.1	Representative - Change of name and professional address
2007/047	03/09/2007	C.2.2	Representative - Appointment / Replacement of representative
2012/208	31/10/2012	D.1	Renewals

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## Cancellation

No data

## Recordals

Bulletin number	Date	Section	Filing number	Title	Subtitle
2007/043	20/08/2007	C.2.1	001706756	Representative	Change of name and professional address
2007/045	27/08/2007	C.2.1	002285206	Representative	Change of name and professional address
2007/047	03/09/2007	C.2.2	001001026	Representative	Appointment / Replacement of representative
2012/208	31/10/2012	D.1	006456571	Renewal	Total Renewal

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## Oppositions

No data

## Appeals

No data

## Decisions

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## Renewals

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Title	Filing number	Status	Status date
Renewal	006456571	Trade mark renewed	31/10/2012
Showing 1 to 1 of 1 entries			

## Trade mark relations

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