

## ID NOW found to be descriptive

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### SWITZERLAND

Legal updates: case law analysis and intelligence

- The IGE refused to register the mark ID NOW in Class 10 on the ground, among others, that it was descriptive
- The Federal Administrative Court confirmed, finding that the term 'ID' was familiar in connection with the detection and identification of viruses
- The court has held in previous cases that 'ID' would be perceived as meaning 'identification'

The Swiss Federal Administrative Court has affirmed a decision of the Federal Institute of Intellectual Property (IGE) denying the registration of the word mark ID NOW for medical equipment ([Case B-1776/2023](#), 19 February 2024).

### Background

Abbott Diagnostics Scarborough Inc, which is specialised in the field of laboratory and diagnostics equipment, filed the Swiss trademark ID NOW (No 76193/2018) for medical equipment in Class 10. The company uses ID NOW for a covid-19 testing device ([ID NOW COVID-19 2.0](#)).

The IGE refused to register the trademark on the ground that ID NOW belonged to the public domain, would be understood by the public as being descriptive, and would also be laudatory in the sense of an indication of quality.

Abbott appealed to the Federal Administrative Court.

## Decision

The court stated that the functionality of the ID NOW product - which, according to Abbott, operates by means of replication of DNA sequences - did not appear to be a rarity. Further, Abbott advertised its ID NOW COVID-19 product as providing "fast diagnosis and treatment". The court concluded that the terms 'ID', 'identify' and 'identification' were - in addition to their immediately obvious meaning - familiar in connection with the detection and identification of bacteria and viruses in the medical sector. The appeal was therefore dismissed.

## Comment

The decision highlights the risk involved when a trademark application is already in use and the IGE takes this fact into account when judging the distinctiveness of the sign. The Federal Administrative Court has found in previous decisions that 'ID' would be perceived as meaning 'identification' (see, eg, Case BVGer B-4839/2022 regarding FACE ID and Case B-7995/2015 regarding TOUCH ID).

As such, the refusal in this case does not come as a surprise, especially since Abbott had tried to register ID NOW in other classes and the applications were never successful (see, eg, Application No 76191/2018 in Class 5 and Application No 76194/2018 in Class 9).



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