

DEUTSCHES PATENT- UND MARKENAMT

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Information for Patent Applicants

(2011 Edition)

The legal requirements for a patent application are set forth in

- the Patent Act in its version published on 16 December 1980 (Federal Law Gazette* I 1981 p. 1), last amended by Article 1 of the law of 31 July 2009 (Federal Law Gazette I p. 2521),
- *Verordnung über den elektronischen Rechtsverkehr beim Deutschen Patent- und Markenamt* (ordinance on electronic legal transactions at the German Patent and Trade Mark Office) of 26 September 2006 (Federal Law Gazette I p. 2159) amended by Article 2 (3) of the ordinance of 10 February 2010 (Federal Law Gazette I p. 83),
- Ordinance on Patent Procedures before the German Patent and Trade Mark Office (Patent Ordinance) of 1 September 2003 (Federal Law Gazette I p. 1702), last amended by Article 1 of the ordinance of 26 May 2011 (Federal Law Gazette I p. 996),
- the Ordinance Concerning the German Patent and Trade Mark Office of 1 April 2004 (Federal Law Gazette I p. 514), last amended by Article 1 of the ordinance of 24 March 2010 (Federal Law Gazette I p. 330),
- *Biomaterial-Hinterlegungsverordnung* (ordinance on the deposit of biological material in patent and utility model procedures) of 24 January 2005 (Federal Law Gazette I p. 151).

This leaflet is intended to advise the applicant in the drafting and filing of a patent application and in the patent grant procedure. It is completed by the information leaflet on the deposit of biological material for the purposes of patent and utility model procedures (X 1200). It may be obtained free of charge, either separately or with the text of the Patent Ordinance, the text of the Ordinance Concerning the German Patent and Trade Mark Office and/or the information leaflet X1200 from the German Patent and Trade Mark Office.

Forms and information leaflets of the German Patent and Trade Mark Office are also available on the Internet (see top of first page).

I. What is capable of being protected?

1. Patentable inventions

Patents shall be granted for technical inventions, which are new, involve an inventive step and are susceptible of industrial application (Sec. 1 (1) of the Patent Act).

This shall apply also to inventions that concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used as well as to biological material which is isolated from its natural environment or produced by means of a technical process even if it previously occurred in nature. Biological material means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

If an invention concerns biological material, a sample of this biological material capable of reproducing itself may be deposited – instead of a repeatable process of supplying or manufacturing - for the purposes of disclosing the technical information (information leaflet X 1200).

Whereas if an invention is based on biological material of plant or animal origin or if it uses such material, the patent application should include information on the geographical origin of such material, if known (Sec. 34a, first sentence, Patent Act).

2. Non-patentable inventions

In particular the following are not protectable as patents:

- discoveries as well as scientific theories and mathematical methods;
- aesthetic creations;

* Bundesgesetzblatt (BGBl.)

- schemes, rules and methods for performing mental acts (e.g. building plans, dress patterns, teaching methods for human beings and animals, musical notes, shorthand systems), for playing games or for doing business (e.g. accounting systems) as well as for programs for computers as such (i.e. in as far as they do not contain a technical teaching);
- presentations of information (e.g. tables, forms, typographical arrangements);
- constructions and processes which are contrary to the laws of nature (e.g. a machine supposed to operate without energy supply - perpetual mobile engines).

Furthermore, patents cannot be granted in respect of

- the human body, at the various stages of its formation and development, including germ cells, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene.
- inventions the industrial exploitation of which would be contrary to "ordre public" or morality; such violation, however, cannot merely be derived from the fact that the use of the invention is prohibited by law or regulation; in particular, patents cannot be granted in respect of
 - processes for cloning human beings and for modifying the germ line genetic identity of human beings;
 - uses of human embryos for industrial or commercial purposes (*Embryonenschutzgesetz* - Protection of Embryos Act);
 - processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes;
- plant or animal varieties as well as essentially biological processes for the production of plants or animals;
- Measures for treatment of the human and animal body by surgery or therapy, and diagnostic methods (Sec. 2a (1) No. 2 Patent Act).

3. Novelty

The subject matter of a patent is considered to be new if it does not form part of the state of the art. It comprises any knowledge made available to the public by means of a written or oral description, by use, or in any other way, before the date relevant for the priority of the application (Sec. 3 (1) of the Patent Act). Additionally, the content of the following patent applications, which have an earlier priority and which were published only on or after the date relevant for the priority of the later application, shall be considered as comprised in the state of the art (Sec. 3 (2) of the Patent Act). A description, use or other disclosure of the invention shall not be taken into consideration if it occurred not earlier than six months preceding the filing of the application and if it was due to an evident abuse for the disadvantage of the applicant or a display of the invention at certain official or officially recognised exhibitions published in the Federal Law Gazette (Sec. 3 (5) of the Patent Act).

It is recommended that applicants inform themselves thoroughly on the state of the art before filing a patent. It is possible to inspect the official publications (first publications, publications of examined applications, patent specifications as well as the documents of registered utility models) at the German Patent and Trade Mark Office, the Technical Information Centre in Berlin and the patent information centres. Before filing an application the applicant should at any rate check the documents in the technical field to which the subject matter of the patent belongs. A list of the patent information centres indicating addresses and opening hours as well as the stock of documents available may be obtained free of charge from the German Patent and Trade Mark Office and are also available on the Internet (see top of first page).

4. Inventive step

An invention involves an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art (Sec. 4, first sentence, of the Patent Act) and thus exceeds the knowledge of the average man skilled in the art (inventiveness).

5. Industrial application

The subject matter of a patent is considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture and forestry (Sec. 5 of the Patent Act).

The industrial application of a sequence or a partial sequence of a gene must be disclosed in the application specifying what function the sequence or partial sequence performs. If the structure of a sequence or a partial sequence of a gene is identical to the structure of a natural sequence or partial sequence of a human gene, its use shall be included in the patent claim (Sec. 1a (3) and (4) Patent Act).

6. Unity of invention

An application may contain only a single invention or a group of inventions manifesting a single general inventive idea (Sec. 34 (5) Patent Act).

The requirement of the unity of invention is met if there is a technical relationship between the inventions manifested by one or more of the same or corresponding special technical features.

II. Professional advice

Generally speaking an applicant may himself file a patent application with the German Patent and Trade Mark Office (DPMA). The following particulars should be observed:

1. Consultation and representation

The applicant may call on assistance from advisors experienced in the field of industrial property and authorised to act as legal advisors (attorney-at-law, patent attorney or holder of certificate of representation). These advisors may represent the applicant in the granting procedure. Lists of German patent attorneys may be obtained free of charge by calling the DPMA on +49 89 21 95 - 3402.

2. Foreign nationals/persons resident outside Germany

Applicants having neither a domicile nor an establishment in the Federal Republic of Germany must appoint a patent attorney or an attorney at law in Germany as representative (Sec. 25 (1) of the Patent Act).

This representative may also be a national of a member State of the European Union or of a State party to the Agreement on the European Economic Area, if he is authorised to pursue his professional activity under a professional title that is comparable to that of a German attorney-at-law or patent attorney (Sec. 25 (2) of the Patent Act).

3. Power of attorney

A **written authorization** must be submitted to the DPMA only if the representative is not a patent attorney, attorney-at-law, holder of a certificate of representation or, if Sec. 155 of the Order Concerning Patent Attorneys is applicable, a patent agent. The person acting as attorney must have the capacity to sue and be sued; and the power of attorney must be executed in favour of a person using his/her civil name. It is also possible to appoint an association of representatives by indicating the name of this association. If the grantor of a power of attorney is not a natural person the signatory of the authorization has to prove convincingly his entitlement to sign the authorization by indicating his position or subjoining suitable other means of proof. In case of doubt the DPMA requests that proof is furnished under notarial authentication.

If the applicant has filed several applications and wishes to be represented in all cases by the same representative, he may either grant a **general power of attorney** for all procedures before the DPMA or an **individual power of attorney** for each procedure. An enterprise may grant a **general employee's power of attorney** to an employee authorising him to represent his employer in all patent affairs before the DPMA. The general powers of attorney are registered at the DPMA under an administrative number.

III. Filing of patent applications

Applications can be filed at the **German Patent and Trade Mark Office (DPMA) in Munich**, at the **Jena Sub-Office** or at the **Technical Information Centre in Berlin (TIZ)** (addresses: see heading of this leaflet). Furthermore, patent applications are also accepted by certain **Patent Information Centres** (the addresses will be communicated by the DPMA on request). These Patent Information Centres note the date of receipt and transmit the patent applications to the German Patent and Trade Mark Office without examining them.

IV. Electronic filing of the application

National patent applications may be filed **electronically** with the German Patent and Trade Mark Office. Reduced filing fees are charged for an electronic patent application (cf. VI no. 1 (10)).

The legal and technical requirements are prescribed in Section 125a of the Patent Act, the ordinance on electronic legal transactions at the German Patent and Trade Mark Office, the Patent Ordinance and the Ordinance Concerning the German Patent and Trade Mark Office. Detailed technical information on filing an electronic application using the DPMAdirekt software, provided by the DPMA, is available on the DPMA website at:

http://www.dpma.de/service/e_dienstleistungen/dpmadirekt/allgemeineinformationen/technischevoraussetzungen/index.html

Electronic patent applications may also be filed using the filing system (DE-Modul) of the epoline® software developed by the European Patent Office for German applications. The technical requirements published by the European Patent Office are available from the EPO website at: (<http://www.epo.org/index.html>)

For further details, please refer to the Notification No. 5/2003 of the President of the German Patent and Trade Mark Office of 3 September 2003 (Official Gazette (*BIPMZ* 2003) p. 305) and the Notification No. 10/2004 of the President of the German Patent and Trade Mark Office of 28 April 2004 (Official Gazette (*BIPMZ* 2004) p. 173).

V. Language requirements

Applications can also be filed in a language other than German. In that case, however, a German translation must be submitted within a period of three months after filing (Sec. 35 (1), first sentence, Patent Act). If the translation is not filed in due time, the application will be deemed to not have been made.

German translations of documents forming part of the documentation relating to the application must be certified by an attorney-at-law or a patent attorney or be done by an officially authorised translator (Sec. 14 (1) of the Patent Ordinance).

The signature of the officially authorised translator must be certified by a notary. The notary must also certify that the translator is officially authorised for such purposes.

VI. Documents to submit

The patent claims, the description, the drawings as well as the text and the drawing of the abstract must be submitted on separate sheets. Further formal requirements to be observed when filing a patent application are listed in detail in Sections 3 and 4 (request for grant), Section 6 (formal requirements for the application), Section 9 (patent claims), Section 10 (description), Section 12 (drawings) and Section 13 (abstract) of the Patent Ordinance. The provisions of the Ordinance Concerning the German Patent and Trade Mark Office must also be observed.

The application must include the following documents:

1. Request for grant (Sec. 34 (3) of the Patent Act, Sec. 4 of the Patent Ordinance)

The request must be on the form issued by the DPMA, i.e. form P 2007, which may also be obtained via the Internet (see top of first page).

For completing box (1) to (12) of the request form the following information might be useful:

(1) Mailing address / date

The person shall be indicated to whom all mail concerning this procedure shall be sent by the DPMA by giving the

- name,
- first name,
- academic degree (if any),
- company,
- street,
- house number,
- Post Office Box (if any),
- town and postal code.

This may be the address of the applicant, of a person authorised to receive service of official communications or an appointed representative. If the patent application is jointly filed by several applicants and a common representative has not been appointed, the address of a person authorised to receive service of official communications shall be indicated.

Furthermore the filing date of the request shall be entered.

(2) Reference / telephone

The internal reference and the telephone number of the addressee as indicated in box (1) shall be given.

(3) Function of the addressee

By marking the appropriate box, it shall be stated which of the functions listed in box (1) is exercised by the addressee. If applicable, the administrative number of the "General Power of Attorney" (see II no. 3 above) shall be given, if such number has already been notified by the DPMA after the registration.

(4) Applicant / representative

Entries in this box are only necessary if the indications concerning the applicant or the representative differ from those given in box (1). In this case the same indications as in box (1) shall be made for the applicant and the representative. In case of foreign towns, the country of the applicant must also be indicated; the district, county or state may also be indicated, where appropriate. If a company applies for the patent, the name of the company registered in the commercial register and the number in the commercial register shall be indicated.

If the applicant is a legal entity or a partnership, and registered as such in a register, the name shall be indicated in the form corresponding to the register entry.

In case of a partnership under the Civil Code, the name and address of at least one partner entitled to act as representative shall also be indicated in addition to the name of the partnership and its principal place of business.

(5) Code numbers

The Patent Office assigns an individual administrative number to the applicant, the representative and the mailing address as indicated in box (1). Such number shall be entered if an administrative number has been already allotted and notified in an earlier patent, utility model or design application.

(6) Designation of the invention

A short and technically precise designation of the invention, for which protection is sought, shall be given which corresponds to the title of the description. Trade marks or fancy designations are not admitted. Common terms shall be given preference to make-shift terms such as "device", "means", "implement" (e.g. "flower-pot" instead of "pot-shaped appliance to receive plants and soil"). Innovations, for which protection is sought, should not be anticipated in the designation. These shall form part of the patent claims.

(7) Other requests

Requests made simultaneously with the request for granting a patent should be indicated by marking the appropriate box.

a) Application of addition (Sec. 16 (1) sentence 2 of the Patent Act)

If the purpose of an invention is the improvement or further development of the subject matter of an earlier application or of an already granted patent, an application may be filed as application of addition to that prior application. However, it has to be noted that an application of addition shall be filed within 18 months from the filing date or the priority date of the earlier application (main application). This restriction also applies to requests for converting an independent application which has been filed later into an application of addition. The condition for the recognition of the status of addition are the identity of the applicants of the main application and the application of addition (the identity may also be assured subsequently by changing the record entry), and a sufficient technological connection between the inventions. No renewal fees are payable for applications of addition.

(b) Request for examination (Sec. 44 of the Patent Act)

The mere filing of an application does not result automatically in the examination as to patentability of the filed invention. This examination must be requested separately. This request is subject to the payment of fees (see explanatory notes concerning box (10)). Where the fee for the examination request is not paid within three months from the receipt of the request, the examination request shall be deemed withdrawn. However, the period for the payment of the fee for the examination request ends upon expiry of seven years from filing the application, at the latest. This request may be filed by the patent applicant and by any third person until the expiry of seven years from filing the application. If no request is filed within this period or the fee is not paid within this period, the application is deemed withdrawn.

The examination procedure shall continue, even if the request for examination is withdrawn (Sec. 44 (5) of the Patent Act).

The examination request will be processed faster (usually within 8 months after the filing date/ priority date) if the request for examination is filed within 4 months after the filing date/ priority date.

c) Search request (Sec. 43 of the Patent Act)

The applicant may request a search of the state of the art to get a basis for his own assessment of the chances for a patent grant. This request for identification of publications may be submitted by marking the corresponding box when filing the application, but also at a later date. The DPMA will then identify in the search file of the competent examining section the domestic and foreign publications to be considered in connection with the determination of the patentability of the invention in respect of which the application has been filed (Sec. 43 (1) sentence 1 of the Patent Act). The request is subject to a fee (see explanatory notes concerning box (10)). If the said fee is not paid within a period of three months from the date of receipt of the request, the request is deemed to be withdrawn.

Searches shall start only after the fee has been paid - (the same applies also to the examination procedure under Sec. 44 of the Patent Act). If a search request is made prior to or simultaneously with the examination request, first the publications will be identified and communicated, and then the examination procedure started. However, it should be mentioned that the simultaneous filing of a search request and an examination request is, in general, unnecessary.

For more information see the Guidelines for the identification of publications under Sec. 43 of the Patent Act (Search Guidelines) of 2 September 2009 (form P 3611.1).

Note regarding (b) and (c):

The transmittal of one copy of publications identified in the examination and search procedure is not subject to additional charges. These charges are included in the fee for the examination request and the fee for the search request. Further copies may be purchased from the Publication Service of the Technical Information Centre Berlin.

d) Postponement (Sec. 49 (2) of the Patent Act)

Upon request of the applicant the grant of the patent may be postponed up to a maximum of 15 months from the filing or priority date. A postponement may be useful if the applicant intends to file an application in countries not members of the Paris Convention for the Protection of Industrial Property, and if a previous publication of the invention in the Federal Republic of Germany could be contrary to novelty in those countries.

(8) Explanatory Notes

- Division / division due to lack of unity

Indications are only necessary if the application results from division under Sec. 39 of the Patent Act or a division due to lack of unity from an already pending patent application (original application). In this case, the corresponding box shall be marked and the reference number of the original application shall be entered.

- Non-binding declaration of being interested in licensing

The declaration of being interested in licensing is not binding. It does not oblige the applicant to grant licences, but merely serves as information for potential licensees. If the patent is granted, the declaration is entered in the Patent Register and published in the Patent Gazette. It may be revoked at any time vis-à-vis the DPMA and third parties.

Note: The non-binding declaration of being interested in licensing does not correspond to the declaration of willingness to grant a licence under Sec. 23 (1), first sentence, Patent Act. A separate declaration of willingness to grant a licence is required (see also VII no. 3 of this leaflet).

- Intention of filing subsequent applications outside Germany (non-binding)

On filing an application, patent protection is sought for the territory of the Federal Republic of Germany. If you intend to seek patent protection in other countries by means of individual subsequent applications in other countries or a subsequent European or international application, you can communicate the intention in this section without obligation.

(9) Priority

On principle the priority of the application is determined by the date of receipt at the DPMA. The priority of an earlier application concerning the same invention may be claimed for a later application as a domestic or foreign priority. If the requirements for claiming a priority are met, and if the applicant wishes to claim the priority, he shall indicate on which earlier application of the invention the priority claimed is based. In this, the following principles should be observed:

- Domestic priority (Sec. 40 of the Patent Act)

Within a period of 12 months from the filing date of an earlier patent or utility model application with the DPMA, the applicant shall enjoy a right of priority for the application for a patent for the same invention, unless a domestic or foreign priority has already been claimed for the earlier application. The priority of several applications for patents or utility models filed with the DPMA may be claimed for the application. The priority may only be claimed within two months from the date of the later application and only for such features of the application which are clearly disclosed in the application documents of the earlier application. The declaration of priority shall be deemed not to have been made if the reference number of the earlier application is not communicated **without invitation to this effect** to the DPMA within two months from the date of filing of the later application. If the earlier application concerns a patent still pending before the DPMA, it shall be deemed to have been withdrawn when the declaration of priority is made.

- Foreign priority (Sec. 41 of the Patent Act)

An earlier application (patent or utility model application) for the same invention and duly filed in a country party to the Paris Convention for the Protection of Industrial Property affords the priority of that earlier application for a later application filed within one year with the DPMA. An analogous right is also afforded by earlier applications in Taiwan (Art. 2 (1) TRIPS Agreement in conjunction with Art. 4 of the Paris Convention). The applicant has to state the date, the country and the reference number of the earlier application within 16 months from the date of filing of the earlier application, and to file a copy of the earlier application, if such action has not already been taken. Within the time limit specified, the statements may be amended. If the statements are not made in due time, the priority claim for the application shall be forfeited. It is therefore advisable to file the respective declarations and statements already in, or with, the request for grant of a patent.

(10) Payment of Fees

The following fees and charges are payable:

- for a patent application: **(filing fee)**
 - filed electronically
 - containing **up to 10** patent claims **EUR 40.00** (fee number 311 000)
 - containing **more than 10** patent claims **EUR 40.00 + 20.00** (fee number 311 050)
for each claim > 10
 - filed on paper
 - containing **up to 10** patent claims **EUR 60.00** (fee number 311 100)
 - containing **more than 10** patent claims **EUR 60.00 + 30.00** (fee number 311 100)
for each claim > 10
- for a search: **(search request fee)** **EUR 250.00** (fee number 311 200)
- for the examination of the application **(examination request fee)**
 - if a search request has been filed: **EUR 150.00** (fee number 311 300)
 - if no search request has been filed: **EUR 350.00** (fee number 311 400)

The information leaflet '*Hinweise für die Gebühren in Patentsachen*' (P 2795 - in German) contains concrete examples for the calculation of the filing fee.

If the filing fee, the fee for the search request or the fee for the examination request is not paid within three months after receipt of the application or of the request, the application or the search request or the examination request, as the case may be, is deemed to be withdrawn.

If the number of patent claims increases **during the course of the patent grant procedure** so that a higher fee would be due in comparison to the filing fee already paid, the difference will be due upon receipt of the additional patent claims (Sec. 3 (1), second sentence, No. 5, Patent Costs Act). The period for payment is three months from the due date. If the difference of the amounts is not paid or not paid in full within the period of payment, the other act is deemed not to have been carried out (Sec. 6 (2) Patent Costs Act) and the subsequently filed patent claims will not be considered.

The period for the payment of the fee for the examination request ends upon expiry of seven years from the filing of the application, at the latest. If the examination request is not filed within the legal time limit of seven years from the date of filing the application, or the fee for the examination request is not paid within this period, the application is likewise deemed to be withdrawn. Processing of the application, search request or examination request shall begin only after the filing fee or the request fee has been paid.

Please note that, apart from the acknowledgement of receipt, no notes on fees will be sent out.

Annual fees

The **annual fee** according to the Patent Costs Act must be paid, **without invitation**, for each patent and for each patent application at the beginning of the third year and each following year counted from the date of filing:

Patent year:	3 rd	4 th	5 th	6 th	7 th	8 th	9 th	10 th	11 th	12 th
Amount EUR	70.00	70.00	90.00	130.00	180.00	240.00	290.00	350.00	470.00	620.00
Fee number	312 030	312 040	312 050	312 060	312 070	312 080	312 090	312 100	312 110	312 120
Patent year:	13 rd	14 th	15 th	16 th	17 th	18 th	19 th	20 th		
Amount EUR	760.00	910.00	1,060.00	1,230.00	1,410.00	1,590.00	1,760.00	1,940.00		
Fee number	312 130	312 140	312 150	312 160	312 170	312 180	312 190	312 200		

The third to the fifth annual fee can also be paid in a **single** payment at the due date of the third annual fee (EUR 200.- - fee number 312 205) which is reduced by EUR 30.- compared to the individual payments of these fees (fee number 312 030 to 312 050). The **annual fees** are falling due before the beginning of the desired protection period, that is on the last day of the month of the applicable year of protection corresponding to the application month (example: filing date 15 June 2009, third annuity due on 30 June 2011). If the fee is not paid before the expiry of the second month from the due date, it may be paid together with a **surcharge of EUR 50.-** before the expiry of the sixth month from the due date (in the above example the time limit for a surcharge expires on 31 December 2011). Payment of the annual fee can be made in advance, but not earlier than one year before the respective fee is due. **If the annual fee is not paid at all, not paid in time or not paid in full, the application is deemed to be withdrawn or the patent lapses.**

For applications of addition, no annual fees have to be paid.

In addition to the said fees the applicant may incur expenses for the appointment of a representative, for evidence, expert opinions and models, for demonstrations requested by the Examining Section, for hearings before the Examining Section or the Patent Division, or for photocopies.

The payment of the fees is governed by the Ordinance on the Payment of Costs of the German Patent and Trade Mark Office and the Federal Patent Court (Patent Costs Payment Ordinance). Payments may be made by:

1. **cash** (at the paying offices of the German Patent and Trade Mark Office in Munich, Jena and at the Technical Information Centre in Berlin,
2. **transfer**;
3. **(cash) payment** into the account of *Bundeskasse Weiden*, or
4. **transmitting or handing in a direct debiting mandate** for an account in Germany.

We highly recommend using the official form A 9507 (also available via the Internet at the indicated site) for the **direct debiting mandate**. This is the only way to avoid delays in the processing of payments. The direct debiting mandate or the debit advice mandate should only be given on the relevant form and should by no means be included in the text of the request.

Apart from payments made by direct debiting mandate, the **filing fee** should be paid only after communication of the official file number.

For each payment, the **complete file number** and the **fee number**, listed in the schedules of fees (annex to Sec. 2 (1) Patent Costs Act and the annex to Sec. 2 (1) of the Ordinance on the Administrative Costs of the German Patent and Trade Mark Office) and the **payer** must be indicated. The fee numbers for all fees and charges are indicated in the fee schedule (A 9510.1). Incorrect or incomplete indications may cause delay in processing.

(11) Enclosures

The number of the attached enclosures shall be indicated.

(12) Signature

The signature shall be set by the applicant or his representative (see II no. 3) using the civil name, in the case of companies by the person authorised to sign. If an employee signs for his employer (applicant), he must prove his authorization to sign. In the case of several applicants without a common representative, the request shall be signed by all the applicants.

(13) Function of the signatory

If the application is not filed by a natural person using his civil name, the function of the signatory (e.g. managing director, authorised officer) must be indicated to prove the signature power.

2. Application documents

The invention must be disclosed in the application documents in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. For this purpose, it is as a rule not sufficient to submit a filled-in request form without further documents (patent claims, description etc.). If the invention is not completely disclosed, the application has to be rejected. This defect cannot be remedied later. The filing fee is forfeited.

2.1. Claims (Sec. 9 of the Patent Ordinance)

They may be drafted in one part or in two parts, the latter being divided in the preamble and the characterising part. In both cases the text may be arranged according to features.

If the two part version is chosen, the features of the invention shall be included in the preamble which underlies the invention as state of the art. The title of the invention as indicated in box (6) of the application form shall be used in the preamble. The characterising part shall contain the features of the invention for which protection is sought in connection with the features of the preamble. The characterising part shall be preceded by expressions such as "characterised in that" ("*dadurch gekennzeichnet*") or "characterised by" ("*gekennzeichnet durch*") or any other expression of this effect.

If claims are arranged according to features or groups of features, the arrangement shall be accentuated by a new line for each feature or group of features. Features or groups of features shall be preceded by division signs clearly set off against the text.

The first claim (principal claim) shall contain the essential features of the invention. An application may contain several independent claims (secondary claims) provided the principle of unity is respected (Sec. 34 (5) Patent Act). Secondary claims may contain a reference to at least one of the preceding claims. Any principal or secondary claim may be followed by one or more dependent claims concerning particular embodiments of the invention. Sub-claims shall contain a reference to at least one of the preceding claims. They shall be grouped together to the extent possible and in the most appropriate way.

If the sequence or partial sequence of a gene, having a structure identical to the structure of a natural sequence or partial sequence of a human gene, is the subject-matter of the invention, the patent claim shall include its use, for which the industrial application has been disclosed under Sec. 1a (3) Patent Act.

If there are several claims, they shall be numbered consecutively in Arabic numerals.

Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or the drawings, e.g. "as described in part ... of the description" or "as represented in picture ... of the drawing".

If the application contains drawings, the features mentioned in the claims should be indicated with their reference signs.

Reference is made to the example given at the end of this leaflet.

2.2. Description (Sec. 10 of the Patent Ordinance)

The designation in box (6) of the application form shall be used as title of the description.

It is recommended to start the description by indicating the technical field to which the invention belongs. Subsequently, the state of the art from which the applicant sets out, as well as the deficiencies of the known solutions should be indicated. The applicant should then present the technical problem underlying the invention and the means by which he has solved this problem. Thereupon, the subject matter should be explained by describing at least one way of carrying out the invention, also by giving details for the embodiments of the invention as contained in the other claims. If drawings are referred to, reference signs shall be used in this part of the description; it is advisable to conclude the description by stating the advantages achieved by the invention.

Documents shall be cited in a way which permits their identification, e.g. patent specifications with country and file number (however, no reference shall be made to unpublished applications); books with author, title, editor, edition, place and year of publication as well as page; journals with title, volume or year of publication, number and page.

The industrial application of a sequence or partial sequence of a gene shall be disclosed in the application specifying what function the sequence or partial sequence performs (Sec. 1a (3) Patent Act).

Reference is made to the example given at the end of this leaflet.

2.3. Presentation of nucleotide and amino acid sequences (Sec. 11 of the Patent Ordinance)

If structural formulae in form of nucleotide or amino acid sequences are indicated and hence disclosed in concrete terms in the patent application, a corresponding sequence listing shall be filed as annex to the application, separately

from the description and the claims. The sequence listing shall comply with the standard for filing sequence listings prescribed in annex 1 of Section 11 (1), second sentence, Patent Ordinance.

If the patent application is filed in writing, a data carrier containing the sequence listing in machine readable form shall be submitted in addition to the written application documents. The data carrier shall be accompanied by a statement that the information recorded on the data carrier is identical to the written sequence listing (Sec. 11 (2) Patent Ordinance).

2.4. Drawings (Sec. 12 of the Patent Ordinance)

The drawings shall clearly show the interaction of the individual features of the invention and emphasize the essentials. Unimportant details may be neglected. The drawings must comply with the standards in Annex 2 of Section 12 of the Patent Ordinance.

Photographic representations are not drawings within the meaning of Sec. 12 of the Patent Ordinance. They cannot replace the drawings, if required.

IMPORTANT NOTICE: If the application contains a reference to drawings and if these drawings are submitted subsequently, the filing date will be deferred. The filing date of the entire application will be the date on which the drawings were received by the DPMA. This may be of advantage for the applicant, if full disclosure results from the drawings only.

If this is not the case, the applicant can declare that a reference to drawings shall be deemed not to have been made; in that case, the initial date of filing will be maintained. Where such a declaration is not received, the DPMA states *ex officio* that references to drawings shall be deemed not to have been made.

3. Abstract (Sec. 13 of the Patent Ordinance)

According to Sec. 36 of the Patent Act, the application shall be accompanied by an abstract which may be filed also subsequently until the expiration of 15 months from the filing date or the priority date claimed. The abstract is exclusively intended as technical instruction. It shall contain:

- the title of the invention,
- a short summary of the disclosure contained in the application, indicating the technical field of the invention and constructed in a way that third parties can understand the technical problem, its solution and the principal possibility of use of the invention,
- a drawing if mentioned in the short summary; if several drawings are mentioned, only the drawing that identifies most clearly the invention in the applicant's view shall be enclosed.

The abstract shall preferably not consist of more than 1,500 characters. It may also contain the chemical formula which most clearly characterizes the invention. The abstract shall not be based on references "as described in part ... of the description" or "as illustrated in figure ... of the drawing" (Sec. 13 (3) in conjunction with Sec. 9 (8) of the Patent Ordinance).

A separate leaflet (P 2794) provides information on how to draw up the abstract pursuant to Sec. 36 Patent Act. This leaflet (in German only) is also available free of charge at the German Patent and Trade Mark Office or via the Internet (see top of first page).

The patent claims, the description, the drawings as well as the text and drawing of the abstract must be filed on separate sheets (Sec. 6 (2) of the Patent Ordinance)

4. Models and samples (Sec. 16 of the Patent Ordinance)

Models and samples shall be submitted to the German Patent and Trade Mark Office only upon request. They shall bear durable labels indicating the contents and the application to which they pertain. When submitting them the applicant shall preferably indicate whether or not he wishes that they be returned after the conclusion of the procedure.

If the models or samples are of a particular value this shall be indicated by the applicant. If they may be damaged by careless unpacking or spoilt by the effects of light, humidity etc., the packing shall be clearly marked "*Ungeöffnet in den Geschäftsgang*" ("for office routine unopened").

5. Naming of inventor (Sec. 37 of the Patent Act)

The inventor(s) (first name, family name, address) shall be named by the applicant without request within a period of 15 months from the filing or priority date. Within the same period he has to affirm that to his knowledge no other person has contributed to the invention. If the applicant is not the inventor he shall also state how he acquired the right to the invention (e.g. by assignment, by virtue of the Employee Inventions Act).

The inventor may request that the naming of the inventor will neither be published nor entered in the register. This request shall be filed, if possible together with the naming of the inventor on one and the same document. The inventor(s) must however be made known to the DPMA. The naming of the inventor must be filed in writing on the form (P 2792) issued by the DPMA or, for electronic filing of an application, an electronic file must be furnished which complies with the format requirements published by the DPMA (Notification No. 5/2003 by the President of the German Patent and Trade Mark Office of 3 September 2003; Official Gazette (*BIPMZ*) 2003 p. 305). The naming of the inventor should preferably be filed together with the patent application.

6. Information on the geographical origin of biological material (Sec. 4 (7) Patent Ordinance)

Information on the geographical origin of biological material under Sec. 34a, first sentence, Patent Act should be submitted on an extra sheet as annex to the request for the grant of a patent.

VII. The procedure after filing

After filing the application, the applicant, the person authorised to receive service of official communications or his representative will receive a certificate of receipt which contains the filing date, the file number allotted to the application as well as information on the documents submitted.

The applicant shall observe the further particulars:

1. Implementation of the patent grant procedure

a) Examination as to obvious bars to patenting; publication of the application

After its receipt, the application is examined on the basis of the provisions of the Patent Act and the Patent Ordinance whether it violates formal requirements (Sec. 35 to Sec. 38 of the Patent Act) and whether obvious bars to patenting exist (Sec. 42 of the Patent Act). During the examination the application is objected to if the subject matter of the application obviously

- is not susceptible of industrial application
- does not constitute by its nature an invention,
- does not concern an invention having unity,
- is excluded from patent protection,

or a claimed status of addition in respect of another patent application obviously does not exist.

The applicant is notified of formal defects and obvious bars to patenting and requested to remedy these defects or to withdraw the application within a specified period. If the defects are not remedied or if the application is not withdrawn, the applicant must expect the rejection of the application already at this stage of the procedure.

The applicant may request further processing of the application (Sec. 123a Patent Act) if the application has been rejected following a failure to observe a time limit fixed by the German Patent and Trade Mark Office. The request for further processing shall be filed within one month after notification of the decision to reject the application. Within this time limit of one month, the fee for further processing must be paid and the omitted act must be completed. The amount of the fee for further processing is EUR 100.

Irrespective of the state of procedure, the patent application is usually published eighteen months after the filing date or priority date, (Sec. 31 (2) No. 2 Patent Act). This includes the publication of a reference to the publication of the patent application in the Patent Gazette (Sec. 32 (5) Patent Act) and the publication of the patent application documents as "*Offenlegungsschrift*" (Sec. 32 (2) Patent Act). After the publication of the patent application, the files of the patent application are open to public inspection. Furthermore, as from that date, the applicant may have a claim to compensation, under certain conditions (Sec. 33 Patent Act). The applicant may express to the German Patent and Trade Mark Office his consent to an earlier publication of the patent application and to the legal consequences of this publication (Sec. 31 (2) No. 1 Patent Act).

b) Examination as to substantive patentability

The DPMA examines the substantive patentability (Sec. 1 to 5 of the Patent Act) of the filed invention, in particular whether the invention is new and based on an inventive step (inventiveness), only if an effective examination request according to Sec. 44 of the Patent Act has been made. In an official action the Patent Office informs the applicant of the result of its examination and sets a time limit for reply (office action). It is recommended to answer every action as quickly and completely as possible. An extension of the time limit may be granted in well-founded cases. If the action is not answered completely or in time or if the application is maintained in spite of its non-patentability, rejection of the application has to be expected. If a request for search (Sec. 43 of the Patent Act) has been filed prior to the request for examination, the publications shall be identified and communicated at first. Then the examination procedure shall be initiated.

c) Grant of the patent

If the application complies with the prescribed requirements, if defects are remedied and if the subject matter of the application is patentable, the grant of the patent is decided. The legal effects of the patent enter into force with the publication of the grant in the Patent Gazette. Simultaneously the patent specification is published. It includes the patent claims, the description and the drawings on the basis of which the patent has been granted. Besides, the numbers of all documents which were taken into consideration in the grant procedure are indicated on the patent specification. Reference is made to the other publications which, in the case of a previous search request, had been identified and already communicated to the applicant. The abstract will be included in the patent specification only if it had not already been included in the published patent application.

Within three months from the publication of the grant, any person may give notice of opposition to the patent (Sec. 59 of the Patent Act). If the opposition filed is admissible, the patent, as a whole, is examined as to whether or not it was validly granted and shall be maintained, or whether it shall be revoked.

2. Hearings

The Examining Section and the Patent Division may ex officio summon and hear the interested parties (Sec. 46 (1) and Sec. 59 (3) of the Patent Act). The applicant may also be heard in the grant procedure upon his written request where appropriate. A hearing can only take place after prior arrangement.

3. Grant of licences

If the patent applicant or the person recorded in the Register (Sec. 30 (1) of the Patent Act) as the owner of the patent declares to the DPMA in writing that he is prepared to allow anyone to use the invention in return for reasonable compensation, the renewal fees for the patent application or the patent, falling due after receipt of the declaration, shall be reduced to one half (Sec. 23 (1) and Sec. 6 of the Patent Act), i.e. the owner's declaration that he is prepared to grant licences to anyone must reach the DPMA before the next annual fee falls due. Unlike the declaration of being interested in licensing (see VI no. 8) this declaration is binding. The written declaration must be submitted in the original to the DPMA, transmission eg. by fax is not sufficient. It may however be withdrawn at any time by a written communication to the DPMA insofar as no intention of using the invention has been notified to the patentee (Sec. 23 (7) of the Patent Act).

4. Legal aid and assignment of a representative

An applicant who furnishes proof that his personal and economic conditions prevent him from paying the application fee or permit him to do so only in part or by instalments shall upon request be granted legal aid if there are sufficient prospects that the patent will be granted. For the declaration concerning the personal and economic conditions, a special form (A 9541 in German only) shall be completed and signed which may be obtained upon request free of charge along with a leaflet concerning the claiming of legal aid (A 9540 in German only). The form and the leaflet are also available on the Internet (see top of first page).

An applicant who has been granted legal aid may, upon request, be assigned a patent attorney or an attorney at law of his choice who is prepared to represent him, or, on express demand, a holder of a certificate of representation, if such assignment appears necessary for the proper handling of the grant procedure. The applicant has to explain the necessity. It has to be taken into account that the DPMA also supplies information and renders assistance. If the applicant furnishes proof that he has in vain requested several representatives to assume the mandate, a representative designated by the DPMA may be appointed upon request.

VIII. Exploitation of patents

The assessment and exploitation of an invention as well as the prosecution of patent infringements do not form part of the functions of the DPMA. In this context persons or companies dealing with the exploitation of inventions may be helpful. The DPMA cannot furnish any information or references for this purpose. But quite often the patent information centres (addresses may be obtained from the DPMA or via the Internet) may give advice.

In addition thereto, an advisory service for inventors is organised free of charge by the Chamber of Patent Attorneys at the German Patent and Trade Mark Office in Munich, at the Technical Information Centre in Berlin and at several patent information centres and Chambers of Commerce.

Example for patent claims and description

(the terms indicated on the left side are intended to facilitate the comprehension of the example; they should not be used in the application)

Patent claims

(two-part version)

Preamble:

(Indication of features forming part of the state of the art)

1. Stray disc for a signal lamp with a given light intensity distribution in the area of the optical axis, in particular for railway and/or traffic lights

Characterising part:

characterised in that

the stray disc is composed of a supporting frame and several disc sectors, individually produced and each causing a particular portion of the light dispersion.

Preamble of the dependent claim:

Characterising part of the dependent claim:

(Indication of features for which protection is sought in connection with the features of the preamble)

2. Stray disc according to claim 1,

characterised in that

the stray disc sectors and the appurtenant supporting frame are provided with fitting pieces for a non-interchangeable joining of the sectors.

Patent claims

(one-part version)

1. Stray disc for a signal lamp with a given light intensity distribution in the area of the optical axis, in particular for railway and/or traffic lights, the stray disc being composed of a supporting frame and several disc sectors, individually produced and each causing a particular portion of the light dispersion.
2. Stray disc according to claim 1, in which the stray disc sectors and the appurtenant supporting frame are provided with fitting pieces for a non-interchangeable joining of the sectors.

Description

Stray disc for signal lamps

Title:

(Technical description as indicated in the request for grant)

State of the art and indication of references:

It is known to arrange stray discs in front of the signal lamp optic which, from the pencil of rays strictly limited in height and to the sides, branches off enough light for the production of side straying (DE 31 32 016 A 2). In order to alter, in particular in the case of railway signals, the distribution of the long-range light pencil of rays without affecting the near light side dispersion, depending on whether the stretch in front of the signal is straight or curved, it is furthermore known to install into the individual types of signal lamps varying stray discs with varying long-range light dispersion (see Periodical "Signal und Draht", year ... no ... pages ... to ...).

It is however necessary to provide for a large number of stray disc types varying according to the degree of dispersion of the long-range light and the near light.

Problem:
*(Indication of the effects to be achieved
by the invention)*

It is the object of the invention indicated in claim 1 to reduce the large number of stray disc types and to simplify the storage of stray discs.

Advantages achieved:

The advantages of the invention consist in particular in the fact that in lieu of a large number of varying complete stray discs for the various modes of application only one single supporting frame and a few varying disc sectors have to be produced and kept in store. The most advantageous composition of the disc sectors may eventually be made only at the place of its application with a few manipulations by installing the suitable disc sectors; it may immediately be tested and changed at the place of its application, if necessary.

Further embodiment of the invention:

An advantageous embodiment of the invention is indicated in claim 2. The further development according to claim 2 enables a stray disc being assembled individually for a specific signal lamp to be joined together in a simple way by unskilled workers.

Description of one or several modes of carrying out the invention:

An example for carrying out the invention is shown in the drawing and is described in detail as follows:

Fig. 1 shows . . .

Fig. 2 shows . . .

To be followed by the explanation of the invention by means of the drawings according to the structure and, if necessary, also according to the operation of the invention described.