



Guidelines for the Classification of Patent and Utility Model Applications

(Classification Guidelines)¹
of 2 December 2014

¹ *Klassifizierungsrichtlinien*

	Mailing address	Telefax	Telephone
Dienststelle München	80297 München	+49 89 2195-2221	Customer Care and Services: +49 89 2195-1000
Dienststelle Jena	07738 Jena	+49 3641 40-5690	
Informations- und Dienstleistungszentrum Berlin	10958 Berlin	+49 30 25992-404	

Beneficiary: Bundeskasse Halle/DPMA

IBAN: DE84 7000 0000 0070 0010 54, BIC (SWIFT-Code): MARKDEF1700

Address of the bank: Bundesbankfiliale München, Leopoldstr. 234, 80807 München

Internet:
<https://www.dpma.de>

Contents

1. Classification principles	3
1.1. Responsibility	3
1.2. Rules	3
1.3. Time limits	3
2. Classification procedures	3
2.1. First-time classification	3
2.1.1. Preliminary classification ("stock exchange")	3
2.1.2. Determination of the main class and related classes	3
2.1.3. Compulsory classification	4
2.1.3.1. Compulsory classification by the classification and documentation officers of several Patent Divisions	4
2.1.3.2. Compulsory classification by the board of classification and documentation officers	4
2.1.4. Binding rules	4
2.2. Special cases	4
2.2.1. Classification of divisional applications (division)	4
2.2.2. Non-classifiable applications	4
2.2.3. Foreign-language applications	4
3. Change of classification (questioning of classification, Patent Divisions)	5
3.1. Search and examination procedures	5
3.2. Opposition proceedings	5
3.3. Utility models	5
3.4. Secret applications	5
3.5. Published patent applications without examination request	5
4. Classification of subject matter not adequately covered in the IPC	6
5. Impact of the classification	6
6. Entry into force	6

1. Classification principles

1.1. Responsibility

The International Patent Classification (IPC) is a classification system used in more than 120 countries for filing and retrieving patent documents; it thereby ensures data transfer from different data stocks without time-consuming "reclassification".

For the first-time and complete classification of all patent and utility model applications in the DPMApatente/gebrauchsmuster program structure according to the IPC (main class and related classes), the examiners of the Patent Divisions with the roles of preliminary classifier (*Grobauszeichner*) and formal examination officer (*Eingangsprüfer*) shall be responsible. These roles may be assigned, depending on the model, to one examiner, to a group of examiners or to all examiners of a Patent Division.

For a change of the main class, the responsibility depending on the procedural status needs to be taken into consideration (see items 2.1. to 3.3.).

The formal examination officers for the Patent Divisions shall be determined by the respective Heads of the Patent Divisions in cooperation with the classification and documentation officer (*Beauftragter für Klassifikation und Dokumentation*).

Deputising arrangements for the formal examination officer(s) must be made by the classification and documentation officer in consultation with the Head of the Patent Division.

1.2. Rules

Relevant for the classification of the subject matter disclosed in the applications shall be the current valid version of the IPC; the German version shall be used as reference. In cases of dispute or doubt, the original version of the IPC in English published by the World Intellectual Property Organization (WIPO) shall always prevail. In the Guide to the IPC, chapters V to XII contain the classification rules.

Paragraphs 75 to 91 in chapter VIII of the Guide define invention information on which the classification is based. The equivalent at the German Patent and Trade Mark Office (DPMA) of the invention information mentioned in paragraph 156 in chapter XII which most adequately represents the invention and which must be listed first is the main class. It serves as the basis for the assignment of tasks and determines the competence of the examining section. It is the central part of the subject matter requiring classification and is usually but not always contained in claim 1 of the application. Overall, all claims as well as the problem, description and drawing shall be adequately taken into consideration.

Other relevant subject matter shall be indicated as related classes.

1.3. Time limits

The accuracy of the classification must, without delay, be examined and, if necessary, clarified after it has been received by the examining section (questioning of classification).

The final decision should be taken by the examining section immediately, at the latest two months after the application has been received.

2. Classification procedures

2.1. First-time classification

2.1.1. Preliminary classification ("stock exchange")

After the patent or utility model applications have been received by the DPMA, the program *Elektronischer Klassifikator* (electronic classifier) will use a comparison of imported classified patent documents and a probability analysis to suggest a maximum of three IPC units (depending on the number of documents to be compared down to the subgroup level) and to forward them to the preliminary classifiers of the respective Patent Division(s). The preliminary classifier shall decide whether their Patent Division is provisionally responsible or whether to forward the task to another Patent Division. After a certain number of times of forwarding (referrals²), the application may be forwarded to the coordinator of preliminary classification, who shall then determine the responsible Patent Division.

Applications received together with a request claiming internal priority at the DPMA shall be directly forwarded to final classification and the responsible formal examination officer together with the classification of the prior application as a suggestion; they shall be treated like any independent new application as to further procedure.

PCT applications in the national phase and applications with foreign priority shall go through the normal, complete classification process.

For PCT applications for which the DPMA is the receiving office but not the search and examination authority (designated office), the responsible Patent Division must check whether referral is obligatory and, if applicable, approve it as well as carry out an examination as to obvious defects; classification is not necessary.

Preliminary classification shall be made by at least one preliminary classifier per Patent Division at their desktop PCs on workdays.

2.1.2. Determination of the main class and related classes

After preliminary examination, the formal examination officer shall analyse the application and determine its focus. The formal examination officer shall assign the main class

² The exact number of times shall be stipulated separately by an internal order of the Patents Department.

and related classes available within their Patent Division and make further referrals with regard to related classes, if necessary. Personal or phone contact may be useful.

Index groups shall be treated the same way as related classes.

The formal examination officer responsible for final classification shall also be responsible for examination as to obvious defects of the application under Section 42 of the Patent Act (*Patentgesetz*) and for the determination of the number of claims required for the calculation of the application fee. Further information is available internally in the FAQ (frequently asked questions) on formal examination as well as in the guidelines for the stock exchange and formal examination with DPMApatente/gebrauchsmuster. Decisions taken within the framework of formal examination, appeals to such decisions as well as orders issued by the Federal Patent Court relating to such appeals must be submitted to the classification and documentation officer of the Patent Division.

If the formal examination officer determined by preliminary examination is not responsible for the technical focus of the invention and thus not for the main class, that formal examination officer shall be entitled to question the class (see 3.1.2.), if necessary, after consultation with the concerned patent examiners.

2.1.3. *Compulsory classification*

2.1.3.1. *Compulsory classification by the classification and documentation officers of several Patent Divisions*

If, in case of a questioned class, the concerned formal examination officers or the consulted examining sections of the Patent Divisions do not reach a common assessment of the subject matter to be classified and thus not a determination of the main class, classification shall be determined by the classification and documentation officers of the Patent Division to which the concerned examining sections belong.

2.1.3.2. *Compulsory classification by the board of classification and documentation officers*

If the classification and documentation officers of the Patent Divisions also cannot agree on the classification and assignment of the application's subject matter in the IPC, the classification and documentation officers concerned due to the subject matter shall decide. If such a decision is not taken, a classification and documentation officer acting as arbitrator responsible for the subject matter shall decide. The arbitrator may be applied to by one of the involved classification and documentation officers after opinions of all involved classification and documentation officers have been submitted.

The arbitrator's decision shall be binding and shall be taken

- in the written procedure taking into consideration the opinions of all involved classification and documentation officers, or
- in a meeting with the classification and documentation officers concerned due to the subject matter, where the

classification and documentation officer acting as arbitrator deems this to be expedient. The arbitrator shall schedule the meeting and inform the involved classification and documentation officers.

The classification and documentation officers acting as arbitrators shall be appointed by the responsible Head of the Patents Department after being elected by the assembly of classification and documentation officers.

2.1.4. *Binding rules*

If it is foreseeable that certain cases of doubt may occur repeatedly, it is possible to determine a future binding rule in cooperation with the concerned examining sections. This rule must be documented by the involved classification and documentation officers and taken into consideration when assigning the main class.

Established rules shall be published internally by the classification and documentation officers acting as arbitrators on the public_share drive.

2.2. *Special cases*

2.2.1. *Classification of divisional applications (division)*

In case of separation of subject matter from a patent application or division of the application, the examining section ordering the division shall request final classification if the classification of the patent application is not appropriate for the divisional application.

2.2.2. *Non-classifiable applications*

If an application is not classifiable (e.g. due to the lack of documents), the coordinator may assign it to an appropriate Patent Division, whose preliminary classifier or formal examination officer shall prepare a deficiency letter and, if necessary, a decision.

Utility model applications must be sent to the Utility Model Unit and may be subsequently classified after correction of the deficiencies.

2.2.3. *Foreign-language applications*

If the patent or utility model application is not in German entirely or partly, the applicant must subsequently submit a German translation.

For patent applications entirely or partly in English or French, the time limit for submitting a German translation shall be twelve months from the date of filing the application which, however, shall end 15 months from the claimed priority date at the latest. Such applications shall be classified according to the English or French documents.

For patent applications in other foreign languages as well as for utility model applications in all foreign languages, the time limit for submitting a German translation shall be three months from the date of filing the application. Such applications shall be classified according to the German translation. If the formal examination officer notices more content requiring translation in such an application after the

translation (filed in due time) has been received, they shall immediately request the applicant to submit a translation.

3. Change of classification (questioning of classification, Patent Divisions)

3.1. Search and examination procedures

3.1.1. If an examining section deems the indicated main class to be incorrect and if that examining section remains responsible for the file after the intended change, it shall immediately correct the classification in its own capacity as it deems necessary.

3.1.2. If an examining section deems the indicated main class to be incorrect and if the intended change leads to changed responsibilities of the examining sections, it shall forward the file – directly, if possible – to the examining section deemed to be responsible.

After questioning the classification, the requesting examining section must carry out a search in its own area, if necessary, and record its result.

If the assessments of the subject matter and classification by the requesting examining section and the examining section receiving the request are identical, responsibility shall be transferred to the responsible examining section, which shall also change classification.

If the examining sections within one Patent Division differ in their assessments, the classification and documentation officer of the Patent Division shall determine the main class without any written statement of reasons.

If two or more Patent Divisions are concerned by the subject matter and if their assessments are not identical, the application/search shall be forwarded by the examining section in charge at that time to its classification and documentation officer for clarification of the classification with other classification and documentation officers. That classification and documentation officer shall then be responsible for the clarification of the classification.

If the assessments of the concerned classification and documentation officers are identical, change of classification shall be performed according to the order of the classification and documentation officer responsible according to the decision taken.

3.1.3. If the classification and documentation officers fail to agree on the correct main class, the board of classification and documentation officers concerned due to the subject matter shall take a final and binding decision. The provisions of item 2.1.3. shall apply *mutatis mutandis*.

3.1.4. Related classes shall be changed by the responsible examining section upon dutiful discretion.

3.2. Opposition proceedings

Within a Patent Division, the classification and documentation officer of the concerned Patent Division shall decide whether a patent's main class needs to be changed in opposition proceedings; the classification and documentation officer shall also order such change.

In opposition proceedings, classification shall be clarified between Patent Divisions by the classification and documentation officers of the concerned Patent Divisions under the direction of the provisionally responsible classification and documentation officer.

In case of an agreement, change of classification shall be ordered by the classification and documentation officer of the Patent Division responsible according to the decision.

If an agreement on the classification of a patent in opposition proceedings cannot be reached by the concerned classification and documentation officers of the Patent Divisions, the provisions of item 3.1.3. shall apply *mutatis mutandis*.

3.3. Utility models

3.3.1. Registered utility models for which the main class proves to be disputable (e.g. due to information from the public or an examining section) shall be forwarded to the classification and documentation officer responsible for the valid main class for correction of the classification together with a short statement by the patent examiner.

Within the Patent Division, the classification and documentation officer shall decide; in case of disputes concerning more than one Patent Division, the provisions of item 2.1.3. shall apply *mutatis mutandis*.

3.3.2. Registered utility models for which cancellation proceedings are pending shall be forwarded by the Utility Model Divisions to the *rapporteur* in the Patent Divisions as defined by the main class. If the main class is incorrect, the concerned *rapporteur* shall proceed according to item 3.3.1. with regard to the clarification of the classification.

3.4. Secret applications

Classifications of patent and utility model applications with subject matter requiring referral for which there is an order under Section 50 of the Patent Act or Section 9 of the Utility Model Act (*Gebrauchsmustergesetz*) shall be reviewed in the Patent Divisions by the examining sections authorised to do so (administrative responsibility for such applications shall lie with Section 1.1.2 ["office 99"]).

Any necessary change of the classification shall be performed through application by analogy of the provisions under items 3.1.1. to 3.1.3.

3.5. Published patent applications without examination request

For already published patent applications not in search or examination procedures (Secs. 43, 44 Patent Act), the formal examination officer(s) shall be provisionally responsible for intended changes of the main class. The applications shall then be forwarded to the responsible classification and documentation officer who shall take a decision as to further procedure. In case of questions concerning more than one Patent Division, the provisions of item 2.1.3. shall apply *mutatis mutandis*.

4. Classification of subject matter not adequately covered in the IPC

As a rule, invention information disclosed in patent documents is sufficiently covered by one or more "normal" classification places.

In exceptional cases (see Guide to the IPC, chapter XIII), for example, due to the development of technology, it may occur that none of the normal classification places are able to adequately provide for the disclosed subject matter. For such cases, the IPC has special classification places whose titles do not contain technical limitations and which may be used for such subject matter.

Such special classification places, consisting of a subclass and a main group, are listed at the end of each section from A to H of the IPC, for example,

A99Z 99/00 subject matter not otherwise provided for in this section.

Note: This classification place covers subject matter that

(a) is not provided for, but is most closely related to, the subject matter covered by the subclasses of this section, and

(b) is not explicitly covered by any subclass of another section.

Furthermore, such special classification places can also be found at the end of some subclasses, for example,

B65H 99/00 subject matter not provided for in other groups of this subclass.

These special classification places may not be used for classification at the DPMA. This does not apply to cases where former IPC groups with related DEKLA groups were transferred to '99' groups. Such cases shall be discussed with the responsible classification and documentation officer acting as arbitrator beforehand, who shall also approve the classification, which shall be documented internally on the public_share drive.

5. Impact of the classification

The main class and the related classes shall determine the inclusion of the first publications of applications, patent specifications and utility model specifications in the search file.

6. Entry into force

These Guidelines shall enter into force with effect from 1 January 2015 and replace the previous version of 15 April 2011.

The President of the German Patent and Trade Mark Office
Rudloff-Schäffer