German Patent
and Trade Mark Office

Important Notices

of the German Patent and Trade Mark Office 2022

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Important notice of 1 January 2022

on the update of the thirteenth edition of the Locarno Classification (classification for registered designs)

The German translation of the product terms contained in the thirteenth edition of the Locarno Classification is part of the alphabetical list of goods for designs, which is published by the German Patent and Trade Mark Office together with the list of the classes and subclasses in the Federal Gazette (Bundesanzeiger).

The current publication is also available on our webpage "Designs".

The German Patent and Trade Mark Office offers an online search engine (in German) for searching existing product terms.

For the electronic filing of design applications by means of DPMAdirektWeb, the current list of goods for designs is provided when selecting the product indication. The current version of the list of goods is also available for the DPMAdirektPro software, provided the update function of the software is used.

Important notice of 1 January 2022

on the "version 2022" of the eleventh edition of the international Nice Classification (valid from 1 January 2022) and on the publication of the lists of classes and the alphabetical lists of goods and services in the Bundesanzeiger

On 1 January 2022, version 2022 of the eleventh edition of the "International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification)" (NCL 11-2022) entered into force.

In addition to the new editions of the Nice Classification, which are published every five years, there have been annual versions since 1 January 2013, which may provide for new entries or deletions and modifications of existing entries. They do not contain major structural amendments (changes of classes); these are reserved for the editions, which are issued every five years.

The version of the list of classes and the alphabetical lists of goods and services based on the Nice Classification to be applied from 1 January 2022 in procedures before the German Patent and Trade Mark Office (DPMA) pursuant to Section 19 of the Trade Mark Ordinance (Markenverordnung) has been published in the Bundesanzeiger (Federal Gazette – Bundesanzeiger).

The version of the list of classes and the alphabetical lists of goods and services published in the Bundesanzeiger is also available on our Trade Marks page "Goods and Services".

Important notice of 8 March 2022

On the occasion of the current situation in Ukraine

It is with deep dismay and great concern that the German Patent and Trade Mark Office (DPMA) is following the news about the armed conflicts after Russia's attack on Ukraine and their consequences for Ukrainian applicants. We would like to support the people of Ukraine, in the best possible way, in the field for which we are responsible and assure them: The DPMA will take the current situation into account with respect to IP procedures, as far as possible under the statutory framework conditions.

This applies in particular to the granting of requests for the extension of time limits fixed by the DPMA. Statutory time limits cannot be extended by the DPMA. However, the DPMA advises the applicants of the possibility of re-establishment of rights. Any person who through no fault of his or her own was prevented from observing a statutory time limit due to current circumstances, may have his or her procedure restored upon request. The person filing the request is then treated as if he or she had observed the time limit. Whether the requirements for re-establishment are fulfilled has to be assessed in each individual case by the competent unit at the DPMA.

For the requirements and scope of application of re-establishment, please refer to the respective provisions in IP legislation.

- Re-establishment is governed for procedures
- in patent matters by section 123 of the Patent Act (Patentgesetz),
- in trade mark matters by section 91 of the Trade Mark Act (Markengesetz),
- in design matters by section 23 (3) sentence 3 of the Design Act (Designgesetz) in conjunction with section 123 (1) to (5) and (7) of the Patent Act,
- in utility model matters by section 21 (1) of the Utility Model Act (Gebrauchsmustergestz) in conjunction with section 123 of the Patent Act, and
- in semiconductor protection matters by section 11 (1) of the Semiconductor Protection Act (Halbleiterschutzgesetz) in conjunction with section 123 of the Patent Act.

Important notice of 23 May 2022

On the participation in hearings, proceedings and on giving of evidence using image and sound transmission

On 1 May 2022, further legal amendments entered into force under the Second Act to Simplify and Modernise Patent Law (2. Patentrechtsmodernisierungsgesetz). These also comprise the option to participate in hearings and give evidence in procedures under the Patent Act (Patentgesetz), Utility Model Act (Gebrauchsmustergesetz), Trade Mark Act (Markengesetz), Design Act (Designgesetz) and Semiconductor Protection Act (Halbleiterschutzgesetz) using image and sound transmission by accordingly applying section 128a of the Code of Civil Procedure (Zivilprozessordnung) (section 46 (1) sentence 2 of the Patent Act, section 17 (2) sentence 6 of the Utility Model Act, section 60 (1) sentence 2 of the Trade Mark Act, section 34a (3) sentence 4 of the Design Act, section 8 (5) of the Semiconductor Protection Act).

Since 1 May 2022, the examining sections and the patent, utility model, trade mark and design divisions may permit the parties, upon their filing a request or ex officio, to stay at another location in the course of a hearing or giving of evidence, and to take actions in the proceedings from there. For the avoidance of doubt, there is no entitlement to participation by means of videoconferencing technology.

At present, the technical equipment and appropriate rooms required for the intended use of videoconferencing technology are not yet fully available. The DPMA is currently assuming that these prerequisites will be accomplished in August 2022.

Important notice of 24 June 2022

on the entry into force of the Ordinance Amending the Patent Ordinance and the Utility Model Ordinance Concerning Nucleotide and Amino Acid Sequence Listings (Verordnung zur Änderung der Patentverordnung und der Gebrauchsmusterverordnung im Hinblick auf Nukleotid- und Aminosäuresequenzprotokolle) of 14 June 2022

On 1 July 2022, the Ordinance Amending the Patent Ordinance and the Utility Model Ordinance Regarding Nucleotide and Amino Acid Sequence Listings of 14 June 2022 Federal Law Gazette I, p. 878 will enter into force.

This ordinance will amend the requirements of the Patent Ordinance for the filing of sequence listings and, for the first time, incorporate provisions on sequence listings into the Utility Model Ordinance. In particular, in order for the form to be valid, a sequence listing relating to a patent or utility model application filed on or after 1 July 2022 must be filed as an electronic document in XML.

The reason for the amendment is the new international WIPO Standard ST.26 for the presentation of nucleotide and amino acid sequence listings using XML (eXtensible Markup Language). WIPO Standard ST.26 modernises and specifies the requirements as to the content and form of a sequence listing and replaces the current WIPO Standard ST.25 for the presentation of nucleotide and amino acid sequence listings in patent applications. In particular, WIPO Standard ST.26 provides that the uniform format for sequence listings is the presentation as a single file in XML using the document type definition (DTD) set out in the standard. To generate sequence listing files in ST.26 format, WIPO provides the software "WIPO Sequence", which can be downloaded from the WIPO website free of charge.

1. Amendment of the Patent Ordinance

To implement this international standard, the new requirements for the filing of sequence listings will be provided in sections 11 to 11b of the Patent Ordinance in the future. Annex 1 to the Patent Ordinance, which has essentially implemented WIPO Standard ST.25 so far, will be repealed.

Section 11 (1) of the Patent Ordinance will define in the future which nucleotide and amino acid sequences will have to be included in a sequence listing. If such nucleotide or amino acid sequences are disclosed in a patent application, the description must include, along with the main section of the description (section 10 of the Patent Ordinance), a sequence listing as a separate part.

Pursuant to section 11 (2) of the Patent Ordinance, such a sequence listing must comply with the standard for the presentation of nucleotide and amino acid sequence listings using XML as amended, published by the DPMA in the Federal Gazette.

The requirements of this standard, published by the DPMA in the Federal Gazette, are consistent with the internationally agreed WIPO Standard ST.26.

The standard for the presentation of nucleotide and amino acid sequence listings using XML pursuant to section 11 (2) of the Patent Ordinance will be published in the Federal Gazette (www.bundesanzeiger.de) in June 2022. The standard is also available on the Website of the DPMA.

The standard published by the DPMA in the Federal Gazette is divided into a main body document and seven annexes. The key provisions on the content and form of a sequence listing are contained in the main body document and in Annexes I, II and IV. Annex III contains a link to a sequence listing specimen. In addition, Annex VI contains a detailed guidance document on how to apply the standard, illustrating the application of the standard by a number of examples. Finally, Annex VII contains recommendations on how to transform a sequence listing compliant with the current requirements (section 11 in conjunction with Annex 1 to the Patent Ordinance in the version valid until 30 June 2022; WIPO Standard ST.25) to a sequence listing compliant with the new requirements (sections 11 to 11b of the Patent Ordinance in the version valid as of 1 July 2022; WIPO Standard ST.26).

The standard provides which sequences must be included in a sequence listing and – as opposed to such mandatory inclusions – which sequences must not be included. In particular, the standard also considers sequence types such as linear regions of branched sequences, D-amino acids and nucleotide analogues.

The standard provides that the uniform format for sequence listings is the presentation as a single file in XML using the document type definition (DTD) set out in Annex II to the standard. Accordingly, by way of derogation from section 3 sentence 1 of the Patent Ordinance, a sequence listing relating to an application filed on or after 1 July 2022 must be filed as an electronic document in XML in order for the form to be valid. Sequence listings can no longer be validly filed as paper or PDF documents, for example. We recommend that sequence listings be filed using the e-filing systems of the DPMA. However, sequence listings are also accepted if stored on data carriers. This is again emphasised by section 11a (1) of the Patent Ordinance, which also refers to the fact that the provisions of the Ordinance on Electronic Legal Transactions with the DPMA (Verordnung über den elektronischen Rechtsverkehr beim Deutschen Patent- und Markenamt) are decisive for the filing of this electronic document.

As regards the content of the sequence listing, the standard provides that the sequence listing must consist of a general information part and a sequence data part.

The general information part is used for the association of the sequence listing to the relevant patent application and essentially contains bibliographic information of that patent application.

The sequence data part contains detailed information about the individual sequences. The information to be given using the elements and attributes provided for by the standard includes, among other things, the length and molecule type of the sequence, the sequence itself and the features of the sequence or individual regions or locations in the sequence. The standard also contains precise requirements for presenting modified nucleotide and amino acid sequences, coding sequences and variants.

With regard to the language, too, the standard largely determines the terminology to be used in the sequence listing. However, the language requirements of the standard are not exhaustive with regard to the description of the invention to be made in the general information part and the language-dependent free text contained in the sequence data part. In this respect, section 11a (2) and (3) of the Patent Ordinance provides that the title of the invention and the language-dependent free text must be written in the German language. In addition, the title of the invention can also be indicated in other languages. The language-dependent free text can additionally be written in the English language.

In addition, section 11a (4) of the Patent Ordinance provides how to file the translation of a sequence listing.
Ultimately, section 11b of the Patent Ordinance sets out the requirements for changing the sequence listing and for changing the description by filing a sequence listing subsequently.

2. Amendment of the Utility Model Ordinance

Since nucleotide or amino acid sequences that must be included in a sequence listing in accordance with the corresponding provisions set out in the Patent Ordinance are also disclosed in some utility model applications, sequence listing provisions are also incorporated into the Utility Model Ordinance. In this respect, section 6 (4) of the Utility Model Ordinance provides that sections 11 to 11b of the Patent Ordinance will apply accordingly in the future.

3. Entry into force

The new requirements will apply to all patent and utility model applications filed with the DPMA on or after the date of entry into force of the amending ordinance on 1 July 2022 (see section 22 of the Patent Ordinance, section 11 of the Utility Model Ordinance). The new requirements will also apply to applications filed on or after 1 July 2022 that claim the priority of an application filed before 1 July 2022 which, because of its date of filing, contains a sequence listing pursuant to the provisions applicable until 30 June 2022. The new requirements will also apply to divisional applications even if the parent application has been filed before 1 July 2022.

Important: With respect to patent and utility model applications filed with the DPMA before 1 July 2022 and the following procedures, the provisions continue to apply in the version applicable until 30 June 2022. As a result, a sequence listing filed in relation to an application filed before 1 July 2022 must still meet the requirements set out in section 11 in conjunction with Annex 1 to the Patent Ordinance in the version applicable until 30 June 2022 even if the sequence listing is filed after 1 July 2022.

4. "WIPO Sequence"

To generate sequence listing files in ST.26 format, WIPO provides the software "WIPO Sequence", which can be downloaded on the WIPO website free of charge. For additional information on this software and on training and information offered by WIPO concerning the new requirements, please see issue 3/2022 of the DPMA newsletter (in German).

Important Notice of 7 July 2022

PCT applications can now also be filed without signature

Since 1 July 2022, there has been the option to easily file international patent applications (PCT applications) with the DPMA as receiving office online via ePCT. ePCT is a secure, web-based system that offers a broad range of functions. Users can log in with their WIPO accounts to access ePCT and thus the latest bibliographic data and the documents stored by the International Bureau (IB). To access confidential information, a login with strong authentication is required. This means that you need a password and a second authentication factor such as a one-time password generated by a mobile phone app – as with online banking.

Via ePCT, you can file new international applications with the participating PCT receiving offices – which now also include the DPMA. Adding a signature via a signature card is not required. As a matter of course, you can still file your PCT applications with the DPMA as receiving office via DPMAdirektPro and eOLF (tool of the European Patent Office).

To enable the use of ePCT for filings with the DPMA as receiving office, it was necessary to amend the Ordinance on Electronic Legal Transactions with the DPMA ("Verordnung über den elektronischen Rechtsverkehr beim Deutschen Patent- und Markenamt"). The amended ordinance has been in force since 1 July 2022.

Go to ePCT portal of WIPO (https://pct.wipo.int/ePCT/)

Important Notice of 17 August 2022

PPH between the German Patent and Trade Mark Office (DPMA) and the Federal Service for Intellectual Property, Patents and Trademarks of Russia (ROSPATENT)

The German Patent and Trade Mark Office (DPMA) is following with great concern the war started by Russia's attack on Ukraine, violating international law. For this reason, the Patent Prosecution Highway (PPH) between the DPMA and the Federal Service for Intellectual Property, Patents and Trademarks of Russia (ROSPATENT) will be suspended from 1 September 2022.

Please note that, from 1 September 2022, the DPMA will no longer grant requests for participation in the PPH where such requests are based on work performed by ROSPATENT as the Office of Earlier Examination (OEE) under the PPH.