German Patent
and Trade Mark Office

Important Notices

of the German Patent and Trade Mark Office 2023

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Important Notice of 1 January 2023

Entry into force of the 14th edition of the Locarno Classification and the list of goods for designs (version: 2023_LOC14)

On 1 January 2023, the 14th edition of the Locarno Classification and the official list of goods for designs (version: 2023_LOC14) entered into force. In December 2022, the list of classes and the alphabetical list of goods for designs were published in the Federal Gazette (Bundesanzeiger). The current versions of the list of the classes of the Locarno Classification (in German) and the alphabetical list of the official list of goods for designs (in German) are available on our webpage "Search/Designs". Terms relating to the product indication in the context of a design application can be searched in our online search engine.

The International Classification for Industrial Designs (Locarno Classification) is reissued every two years. Major structural amendments (changes of classes) are made in these editions only.

The official list of goods for designs is based on the currently applicable edition of the Locarno Classification and also contains other permitted national entries. Updates with regard to new national entries, deletions and amendments to existing entries are carried out annually.

Important notice of 10 January 2023

Eva Schewior will become new President of the German Patent and Trade Mark Office

The Federal Ministry of Justice has announced that Eva Schewior will become President of the German Patent and Trade Mark Office (DPMA) with effect from 1 February 2023. She will succeed Cornelia Rudloff-Schäffer, who, as the first woman to lead the DPMA in its 145-year history, has held this position for 14 years. President Cornelia Rudloff-Schäffer will retire at the end of January.

For five years from 2004 onwards, Eva Schewior was Head of the Division for the Administrative Affairs of the DPMA, the Federal Patent Court and the European Patent Organisation. Most recently, she served as Head of the Division for Civil Law. For further information and a statement by the Federal Minister of Justice, Dr Marco Buschmann, please see the press release of the Federal Ministry of Justice (in German).

Important notice of 31 March 2023

IP applications: EPO filing tool eOLF to be decommissioned – DPMA recommends switching to DPMAdirektPro

For many years, the German Patent and Trade Mark Office (DPMA) and the European Patent Office (EPO) have been maintaining a trusting cooperation in the field of electronic patent filing. In this context, our users had the possibility to also file German patent applications and PCT applications with Germany (DE) as receiving office at the DPMA using the EPO's online filing system eOLF (Electronic Online Filing).

Even though the system has worked well, eOLF is based on an outdated technology which requires a lot of maintenance. For this reason, the EPO and the national offices/EPO member states will decommission eOLF in close coordination. This type of online filing will thus no longer be available for applications at the DPMA in the near future. The DPMA will not participate in the new Front Office Project of the EPO, which is to replace eOLF, because with DPMAdirektPro, we have our own sophisticated system that is constantly being further developed. In contrast to Front Office, DPMAdirektPro also covers all types of IP rights (patents, utility models, trade marks, designs) and enables electronic documents to be sent from the office back to users. We therefore recommend all active eOLF users to switch to the DPMA's filing tool DPMAdirektPro in time.

We always strive to offer our customers the best possible services. With DPMAdirektPro you can file applications and perform other procedural actions for all four IP rights. You also have the option to register for electronic dispatch and to electronically receive documents from the DPMA. Our system will support you in effectively protecting your IP rights in the future, too. If you have any questions or need assistance, our Customer Care and Services will be pleased to help you.

Important notice of 3 July 2023

on the entry into force of a new version of the standard for the representation of nucleotide and amino acid sequence listings in XML under Section 11(2) of the Patent Ordinance of 1 July 2023

On 1 July 2023, a new version of the standard for the representation of nucleotide and amino acid sequence listings in XML entered into force. It replaces the previous version which came into force on 1 July 2022 (BAnz AT 30.06.2022 B9).

The reason for the new regulation is a revision of the WIPO International Standard ST.26. Compared to the original version, it mainly contains editorial changes. An overview of these changes can be found on the website of WIPO.

The new version of the standard applies to all patent and utility model applications filed with the DPMA on or after 1 July 2023. It also applies to applications filed on or after 1 July 2023 that claim the priority of an application that was filed before 1 July 2023 and therefore still contains a sequence listing under the regulations in force until 30 June 2023. The new version of the standard also applies to divisional applications, even if the parent application was filed before 1 July 2023. For patent and utility model applications filed before 1 July 2023, the previous version of the standard as applicable until 30 June 2023 shall apply.

The new version of the standard (BAnz AT 22.06.2023 B5; available in the official part of the Bundesanzeiger) is also available as form P 2790c on the Website des DPMA.

Important notice of 28 July 2023

Hearings, proceedings and giving of evidence using image and sound transmission

Since 1 May 2022, it has been possible for the examining sections and the patent, utility model, trade mark and design divisions to permit the parties, upon request or ex officio, to participate via image and sound transmission in hearings, proceedings and the giving of evidence in procedures pursuant to the Patent Act (Patentgesetz), the Utility Model Act (Gebrauchsmustergesetz), the Trade Mark Act (Markengesetz), the Design Act (Designgesetz) and the Semiconductor Protection Act (Halbleiterschutzgesetz) (see Important notice of 23 May 2023) .

The required technical equipment and appropriate premises are now available at the DPMA offices in Munich and Jena. For general information on the course of hearings and oral proceedings using image and sound transmission in procedures pursuant to the Patent Act and the Utility Model Act, please refer to the information leaflet concerning the participation in video conferences with the DPMA ("Hinweise zur Teilnahme an Videokonferenzen mit dem DPMA") (in German).

There are no formal requirements for the request for participation using image and sound transmission. For the avoidance of doubt, there is no right or requirement to participate via video conferencing.

Important notice of 9 November 2023

Entry into force of the Act Adjusting Patent Law Provisions Due to the European Patent Reform of 20 August 2021

On 1 June 2023, the substantial provisions of the Act Adjusting Patent Law Provisions Due to the European Patent Reform (Gesetz zur Anpassung patentrechtlicher Vorschriften auf Grund der europäischen Patentreform) of 20 August 2021 (Federal Law Gazette I 2021, p. 3914) entered into force along with the Unitary Patent system (see announcement of the Federal Ministry of Justice of 27 June 2023, Federal Law Gazette I 2023, no. 175). As a result, a number of important amendments have been made to the Act on International Patent Conventions (Gesetz über internationale Patentübereinkommen) and the Patent Act (Patentgesetz). Please find below information on the amendments the DPMA considers to be of particular importance:

1. Adjustment of the Act on International Patent Conventions to the Unitary Patent system

a. Amendment to the prohibition on double protection as of 1 June 2023

Until 31 May 2023, German law prohibited double protection (referred to as “prohibition on double protection”) for national patents and European patents. Accordingly, it was not possible to obtain protection under a national patent for an invention in respect of which a European patent with the same priority and the same scope had been granted to the same inventor with effect in the Federal Republic of Germany. The national patent became ineffective if the inventor had been granted a European patent for the same invention that could not be revoked in opposition proceedings any more.

On 1 June 2023, fundamental amendments to the prohibition on double protection became effective.

Basically, since 1 June 2023, it has been possible to hold a national patent in addition to either a European patent or a European patent with unitary effect (referred to as "Unitary Patent") (see Article II section 8 of the Act on International Patent Conventions). Since then, the prohibition on double protection has applied only to European patents that are not subject to the exclusive competence of the Unified Patent Court due to an opt-out pursuant to Article 83(3) of the Agreement on a Unified Patent Court. The combination of a national patent and a European patent for which an opt-out has been declared is the only situation in which a national patent with an identical subject matter still loses its effect, that is, double protection cannot be obtained. However, if no opt-out declaration is made and the European patent is still subject to the competence of the Unified Patent Court, the national patent continues to have effect alongside the European patent.

However, under certain conditions, such double protection is subject to the objection to double demands (Article II section 18 of the Act on International Patent Conventions), which is a "protective mechanism for defendants". Defendants in infringement proceedings thus cannot be sued both under a national patent before national courts and under a European patent or a Unitary Patent before the Unified Patent Court.

In addition, there is still the option to apply for a German utility model at the same time or split off a German utility model from a European patent application effective in the Federal Republic of Germany.

b. Further important amendments to law

Furthermore, sections 15 to 20 have been incorporated into Article II of the Act on International Patent Conventions. They stipulate which of the existing provisions of the Act on International Patent Conventions apply to the Unitary Patent and they contain new provisions. These new provisions concern, for example, the relationship of European patents and Unitary Patents, a measure referred to as the "safety net for patent proprietors" in cases in which unitary effect is denied, the legal framework for compulsory licences and the waiver of the Unitary Patent:

- Article II section 15 (2) of the Act on International Patent Conventions contains an essential provision that excludes a coexistence of European patents and Unitary Patents in the Federal Republic of Germany. Accordingly, upon the date of publication by the European Patent Office (EPO) of the mention of the grant of the European patent in the European Patent Bulletin, the effect of the European patent in the Federal Republic of Germany is deemed not to have occurred if the unitary effect of the European patent is registered in the Register for unitary patent protection.

- Article II section 15 (3) of the Act on International Patent Conventions provides for what is referred to as a "safety net for patent proprietors" in the event of a refusal of the request for unitary effect. In this case, the proprietor usually has an interest in maintaining their patent in the form of a European patent. This special provision concerning the determination of the due date of the national annual renewal fees ensures that a timely payment of these fees for the European patent effective in the Federal Republic of Germany is still possible.

- Article II section 16 of the Act on International Patent Conventions clarifies that, with regard to the national provisions concerning compulsory licences (section 24 of the Patent Act), Unitary Patents have to be treated like national patents.

- Article II section 17 of the Act on International Patent Conventions clarifies that German law (section 20 (1) no. 1 of the Patent Act) does not apply if the Unitary Patent is waived and that, accordingly, such a waiver cannot be declared to the DPMA.

2. Adjustment of the Patent Act to the Unitary Patent system

In addition, the Act Adjusting Patent Law Provisions Due to the European Patent Reform results in an amendment to the Patent Act. Since 1 June 2023, the following information on the Unitary Patent (section 30 (1) sentence 3 of the Patent Act) has also been entered in the register maintained by the DPMA (DPMAregister):

- the date of registration of the unitary effect of a European patent in the Register for unitary patent protection (see Article 3(1) of Regulation (EU) No 1257/2012); and
- the date of effect of the Unitary Patent, that is, the date of publication by the EPO of the mention of the grant of the European patent in the European Patent Bulletin (Article 4(1) of Regulation (EU) No 1257/2012).

Furthermore, in order to provide the public with this information, the DPMA has decided to also enter in the register the date on which the request for unitary effect has been filed.

The DPMA receives this information from the EPO; the information is displayed in the procedural data section in the register. Practical information on how to search the register is available on the homepage of DPMAregister.

Important notice of 17 November 2023

On the occasion of the current situation in Israel and Gaza

The German Patent and Trade Mark Office (DPMA) is following with sympathy and concern the current armed conflict, which has been provoked by the brutal attack of the terrorist organisation Hamas on the citizens of Israel. We would like to provide support to the people affected in the region and assure them: The DPMA will take due account of the current situation when conducting IP procedures, insofar as this is possible within the scope of the statutory provisions.

Due to the legal framework in Germany, statutory time limits cannot be extended by the DPMA. However, there is the possibility of reestablishment of rights: Any person who through no fault of his or her own was prevented from observing a statutory time limit may have his or her procedure restored upon request. The request will then be handled as if the time limit had been observed.

The re-establishment of rights allows us to react very flexibly to the difficult and exceptional circumstances of the applicants concerned.

For prerequisites and scope of application of the re-establishment of rights, please refer to the provisions of the respective IP laws. Re-establishment of rights for proceedings

- in patent matters is governed by section 123 of the Patent Act
- in trade mark matters is governed by section 91 of the Trade Mark Act
- in design matters is governed by section 23 (3) sentence 3 of the Design Act in conjunction with section 123 (1) to (5) and (7) of the Patent Act
- in utility model matters is governed by section 21 (1) of the Utility Model Act in conjunction with section 123 of the Patent Act
- in semiconductor protection matters is governed by section 11 (1) of the Semiconductor Protection Act in conjunction with section 123 of the Patent Act

On 12 October, DPMA President Eva Schewior sent a letter of sympathy to the Israel Patent Office on the occasion of the terrorist attack by Hamas.