Deutsches
Patent- und Markenamt

Information for Patent Applicants

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The legal requirements for a patent application are set forth in

- the Patent Act (*Patentgesetz*) in its version published on 16 December 1980 (Federal Law Gazette[1] I, 1981 page 1), last amended by Article 1 of the Act of 30 August 2021 (Federal Law Gazette I, page 4074),
- the Ordinance on Electronic Legal Transactions with the German Patent and Trade Mark Office (*Verordnung über den elektronischen Rechtsverkehr beim Deutschen Patent- und Markenamt*) of 1 November 2013 (Federal Law Gazette I, page 3906), last amended by Article 2 of the ordinance of 7 February 2022 (Federal Law Gazette I, page 171),
- the Ordinance on Patent Procedures before the German Patent and Trade Mark Office (Patent Ordinance – *Patentverordnung*) of 1 September 2003 (Federal Law Gazette I, page 1702), last amended by the Ordinance Amending the Patent Ordinance and the Utility Model Ordinance concerning Nucleotide and Amino Acid Sequence Listings of 14 June 2022 (Federal Law Gazette I, page 878),
- the Ordinance Concerning the German Patent and Trade Mark Office (DPMA Ordinance – *DPMA-Verordnung*) of 1 April 2004 (Federal Law Gazette I, page 514), last amended by Article 7 of the Act of 10 August 2021 (Federal Law Gazette I, pages 3490, 3500),
- the Ordinance on the Deposit of Biological Material in Patent and Utility Model Procedures (*Biomaterial-Hinterlegungsverordnung*) of 24 January 2005 (Federal Law Gazette I, page 151), amended by Article 14 (1) of the Act of 4 April 2016 (Federal Law Gazette I, page 558).

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 (in German)).

Forms and information leaflets of the German Patent and Trade Mark Office (DPMA) can be obtained free of charge from the DPMA and can also be downloaded from the website (www.dpma.de).

I. What can be protected

1. Patentable inventions

Patents are to be granted for technical inventions, which are new, involve an inventive step and are susceptible of industrial application (section 1 (1) of the Patent Act). This also applies 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 (section 1 (2) of the Patent Act). Biological material means any material containing genetic information and which is 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 (see also information leaflet X 1200 (in German)).

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 (section 34a (1) sentence 1 of the Patent Act).

2. Non-patentability

In particular, the following are not protectable as patents (section 1 (3) of the Patent Act):

- discoveries (meaning finding something that has existed before but was previously unknown, such as magnetism) as well as scientific theories and mathematical methods;
- aesthetic creations (however, you may obtain design protection for shapes, patterns and colour configurations if the relevant requirements are met);
- schemes, rules and methods for performing mental acts (for example building plans, dress patterns, teaching methods for human beings and animals, musical notes, shorthand systems), for playing games or for doing business (for example accounting systems) as well as for programs for computers as such (meaning insofar as they do not contain a technical teaching);
- presentations of information (for example tables, forms, typographical arrangements).

Furthermore, constructions and processes which cannot be carried out, for example because they are contrary to the laws of nature (such as a machine supposed to operate without energy supply – perpetual mobile engines), cannot be patented (section 1 of the Patent Act)

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 (section 1a (1) of the Patent Act);

[1] *Bundesgesetzblatt (BGBl.)*

- inventions the industrial exploitation of which would be contrary to *ordre public* or morality (section 2 of the Patent Act); 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 (Embryo Protection Act – *Embryonenschutzgesetz*),
  - processes for modifying the genetic identity of animals which are able to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes,
- plant and animal varieties as well as essentially biological processes for the production of plants and animals, and plants and animals exclusively produced by such processes (section 2a (1) number 1 of the Patent Act),
- methods for treatment of the human and animal body by surgery or therapy and diagnostic methods (section 2a (1) number 2 of the Patent Act).

3. Novelty

An invention is considered to be new if it does not form part of the state of the art. The state of the art comprises any knowledge made available to the public by means of a written or oral description, by use in any part of the world, or in any other way, before the date relevant for the priority of the application (filing or priority date) (section 3 (1) of the Patent Act). Additionally, the content of the 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 must be considered as comprised in the state of the art (section 3 (2) of the Patent Act). A description, use or other disclosure of the invention is not to 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 (section 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 DPMA, the Information and Service Centre Berlin and the patent information centres. Before filing an application, the applicant should at any rate check documents that define the technological background of the technical field to which the subject matter of the patent application belongs. A list of the patent information centres indicating addresses and opening hours as well as the available prior-art documents may be obtained free of charge from the DPMA and can also be downloaded from the website (https://www.dpma.de/english/our_office/contact/openinghours/index.html).

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 (section 4 sentence 1 of the Patent Act) and thus exceeds the knowledge of the average man skilled in the art (inventiveness).

5. Industrial application

The invention is considered as susceptible of industrial application if its subject matter can be made or used in any kind of industry, including agriculture and forestry (section 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 is to be included in the patent claim (section 1a (3) and (4) of the 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 (section 34 (5) of the Patent Act).

It constitutes a single general inventive idea 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 themself file a patent application with the DPMA. The following particulars should be observed:

1. Consultation and representation

Applicants may call on assistance from advisors experienced in the field of industrial property and authorised to act as legal advisors (lawyer or patent attorney). These advisors may represent the applicant in the grant procedure.

2. Foreign residence or principal place of business

Applicants having neither a residence nor a principal place of business nor an establishment in Germany must appoint a patent attorney or a lawyer in Germany as representative who is authorised to represent them in proceedings before the DPMA, before the Federal Patent Court and in civil litigation affecting the patent, as well as to file an application for criminal prosecution (section 25 (1) of the Patent Act).

3. Power of attorney

A **written** authorisation must be submitted to the DPMA only if the representative is not a patent attorney, lawyer, or – in cases where section 155 of the Patent Attorney Code (*Patentanwaltsordnung*) applies – a *Patentassessor/Patentassessorin*. 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 their civil name. If the grantor of a power of attorney is not a natural person, the signatory of the authorisation has to prove convincingly their entitlement to sign the authorisation by indicating their position or subjoining suitable other means of proof. In case of doubt, the DPMA will demand the proof to be furnished under notarial authentication.

If the applicant files multiple applications and wishes to be represented in all cases by the same representative, they can 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 them to represent their 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 **DPMA in Munich**, at the **Jena Sub-Office** or at the **Information and Service Centre Berlin** (addresses: see front page of this leaflet). Furthermore, patent applications are also accepted by certain **patent information centres** (the addresses will be communicated by the DPMA on request or can be found on the DPMA website at https://www.dpma.de/english/our_office/about_us/cooperation/patent_information_centres/index.html). These patent information centres note the date of receipt and transmit the patent applications to the DPMA without examining them.

National patent applications may be filed **electronically** with the DPMA. Reduced filing fees are charged for an electronic patent application (see V. number 1 (10)).

The legal as well as the technical requirements are prescribed in section 125a of the Patent Act and the Ordinance on Electronic Legal Transactions with the DPMA. Thereunder, patent applications may be filed electronically using the software supplied by the DPMA for this purpose, DPMAdirektPro. More detailed technical information on filing and processing requirements is available on the DPMA website at https://www.dpma.de/english/services/efiling/dpmadirekt/index.html.

IV. Language requirements

Applications can also be filed in a language other than German (see section 35a of the Patent Act). In that case, however, a German translation must be submitted within a period of three months after filing. If the application is written in English or French in full or in part, a German translation must be submitted within twelve months; if an earlier date than the filing date is claimed for this application, the period expires 15 months after that earlier date. If the translation is not filed in due time, the application will be deemed to be withdrawn.

German translations of foreign-language documents must be certified by a lawyer or a patent attorney or be done by an officially authorised translator (section 14 (1) of the Patent Ordinance).

V. 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. Formal requirements to be observed when filing a patent application are listed in detail in sections 3 and 4 (request for grant), 6 (formal requirements for the application), 9 (patent claims), 10 (description), 12 (drawings) and 13 (abstract) of the Patent Ordinance. The provisions of the DPMA Ordinance must also be observed.

The application must include the following documents:

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

The request must be filed on the form issued by the DPMA, that is form P 2007 (in German), which can also be downloaded from the website (https://www.dpma.de/english/services/forms/patents/index.html).

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

(1) Mailing address/date

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

- family name,
- given name,
- academic degree (if any),

- company,
- street,
- house number,
- post office box (if any),
- place and postal code,
- country (if not Germany).

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 must be indicated.

Furthermore, the filing date of the request must be entered.

(2) Reference/telephone

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

(3) Function of the addressee

By ticking the appropriate box, it is 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. 3 above) has to be given, if such number has already been communicated 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) are to made for the applicant and the representative. If the applicant or representative has their residence or principal place of business abroad, the country must also be indicated in addition to the place; 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, the type of register and the register number as well as the register court must be indicated.

If the applicant is a legal entity or a partnership with legal capacity and registered as such in a register, the name registered in the register, the type of register and the register number as well as the register court is to be indicated in the form.

If a partnership under the Civil Code (*Gesellschaft bürgerlichen Rechts*) is not registered in the company register (*Gesellschaftsregister*), the name and address – including the street, house number, postal code and place – of at least one partner entitled to act as representative must also be indicated.

(5) Numbers for applicants, representatives and mailing addresses

The DPMA assigns an individual administrative number to the applicant, the representative and the mailing address as indicated in box (1). Such numbers must be entered here if an administrative number for an earlier patent, utility model, trademark or design application has been already assigned and communicated.

(6) Designation of the invention

A short and technically precise designation of the invention for which protection is sought must be given which corresponds to the title of the description. Trade marks or fancy designations are not admitted. Common terms will be given preference to make-shift terms such as "appliance", "means" or "device" (for example "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 form part of the patent claims.

(7) Other requests

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

(a) Request for examination (section 44 of the Patent Act)

The mere filing of an application does not automatically result 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 is deemed to be 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 to be withdrawn.

The examination procedure is to continue even if the request for examination is withdrawn (section 44 (5) of the Patent Act).

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

(b) Search request (section 43 of the Patent Act)

Applicants may request a search of the state of the art to get a basis for their own assessment of the chances for a patent grant. This request may be submitted by ticking the corresponding box when filing the application, but also at a later date. The DPMA will then identify the state

of the art to be considered in connection with the determination of the patentability of the invention in respect of which the application has been filed and determine preliminarily the eligibility for protection of the invention in respect of which the application has been filed according to sections 1 to 5 of the Patent Act. In addition, it will be determined preliminarily whether the application fulfils the requirements of section 34 (3) to (5) of the Patent Act (section 43 (1) sentence 1 of the Patent Act). If it is determined that the application does not fulfil the requirements of section 34 (5) of the Patent Act, the search will be conducted only for the part of the application referring to the invention or group of inventions related in a way that they implement a single inventive idea described first in the patent claims. The request is subject to a fee (see explanatory notes concerning box (10)). If 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 start only after the fee has been paid (the same applies also to the examination procedure under section 44 of the Patent Act). If a search request is made prior to or simultaneously with the examination request, first the search will be conducted and the state of the art will be identified and communicated; only then will the examination procedure be started.

Note regarding (a) and (b):

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 Information and Service Centre Berlin.

(c) Postponement (section 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 where a previous publication of the invention in Germany could be contrary to novelty.

(8) Explanatory notes

(a) Division/division due to lack of unity

Indications are only necessary if the application results from division under section 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 must be ticked and the file number of the original application entered.

(b) 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 (*Patentblatt*). 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 section 23 (1) sentence 1 of the Patent Act. A separate declaration of willingness to grant a licence is required (see also VI.3 of this leaflet).

(c) 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

As a rule, 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 applicant wishes to claim a priority, they must indicate on which earlier application of the invention the priority claimed is based. In this, the following principles should be observed:

(a) Domestic priority (section 40 of the Patent Act)

Within a period of twelve months from the filing date of an earlier patent or utility model application with the DPMA, the applicant enjoys 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 is deemed not to have been made if the file number of the earlier application is not communicated without any request 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 is deemed to have been withdrawn when the declaration of priority is made.

(b) Foreign priority (section 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 WTO member

states that are not contracting parties of the Paris Convention but party to the TRIPS Agreement (Article 2 (1) of the TRIPS Agreement in conjunction with Article 4 of the Paris Convention).

The applicant has to state the date, the country and the file number of the earlier application within 16 months from the date of filing of the earlier application, and has to file a copy of the earlier application, if such action has not already been taken. The statements may be amended within the time limit specified. If the statements are not made in due time, the priority claim for the application is 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 are payable:

- for a patent application (**filing fee**)
  - filed electronically
    - containing **up to 10** patent claims ..... **40 euros** (fee number 311 **000**)
    - containing **more than 10** patent claims ..... **40 + 20 euros** (fee number 311 **050**)
      for <u>each</u> claim > 10
  - filed on paper
    - containing **up to 10** patent claims ..... **60 euros** (fee number 311 **100**)
    - containing **more than 10** patent claims ..... **60 + 30 euros** (fee number 311 **100**)
      for <u>each</u> claim > 10
- for a search **(search request fee)** ..... **300 euros** (fee number 311 200)
- for the examination of the application **(examination request fee)**
  - if a search request has been filed ..... **150 euros** (fee number 311 300)
  - if no search request has been filed **350 euros** (fee number 311 400)

Information leaflet P 2795 (in German) contains concrete examples for the calculation of the filing fee.

If the filing fee, the search request fee or the examination request fee 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 examination request is not filed within the legal time limit of seven years from the date of filing the application, or the examination request fee is not paid within this period, the application is likewise deemed to be withdrawn. Processing of the application, search request or examination request begins only after the filing fee or the request fee has been paid.

If the number of patent claims increases **during the course of the patent grant procedure** so that a higher fee is due in comparison to the filing fee already paid, the difference will be due upon receipt of the additional patent claims (section 3 (1) sentence 2 number 5 of the Patent Costs Act – *Patentkostengesetz*). 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 act, that is, the change of the number of patent claims, is deemed not to have been carried out (section 6 (2) of the Patent Costs Act) and the subsequently filed patent claims will not be considered.

Please note that, apart from the acknowledgement of receipt, no fee notices will be sent out.

Annual renewal fees

The **annual renewal fee** according to the Patent Costs Act must be paid, **without further notification by the office to that effect,** for each patent renewal and for each patent application at the beginning of the third year and each following year counted from the date of filing:

Patent year	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
Amount in euro	70.00	70.00	100.00	150.00	210.00	280.00	350.00	430.00	540.00	680.00
Fee number	312 030	312 040	312 050	312 060	312 070	312 080	312 090	312 100	312 110	312 120

Patent year	13rd	14th	15th	16th	17th	18th	19th	20th
Amount in euro	830.00	980.00	1,130.00	1,310.00	1,490.00	1,670.00	1,840.00	2,030.00
Fee number	312 130	312 140	312 150	312 160	312 170	312 180	312 190	312 200

The third to the fifth annual renewal fee can also be paid in **a single** payment at the due date of the third annual renewal fee (210 euros – fee number 312 205) which is reduced by 30 euros compared to the individual payments of these fees (fee number 312 030 to 312 050).

The **annual renewal fees** fall 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 2022, third annuity due on 30 June 2024). 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 50 euros** 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 2024). Payment of the annual renewal fee can be made in advance, but not earlier than one year before the respective fee is due. **If the annual renewal 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.**

In addition to these fees, the applicant may incur further expenses, for example 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 – *Patentkostenzahlungsverordnung*). Payments may be made by:

- **bank transfer** to:
  Beneficiary: *Bundeskasse*
  IBAN: DE84 7000 0000 0070 0010 54
  BIC (SWIFT Code): MARKDEF1700
- (cash) **deposit** with a pay-in slip at *Postbank* or at all banks and saving banks to the account indicated above or
- **submitting a valid "SEPA Core Direct Debit Mandate"** form together with the **"Specification of the purpose of use of the mandate"** form. Please use the forms available at www.dpma.de (A 9530.1 and A 9532.1) for this purpose and refer to the information about the SEPA scheme provided on our website.

  It is always required to submit the original SEPA mandate form to the DPMA. If you submit the SEPA mandate by fax, you must send us the original form within one month to claim the payment date. Otherwise, the date of receipt of the original form is deemed to be the payment date.

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

For each payment, the complete **file number**, the exact name of the **applicant (owner)** and the **fee numbers** have to be indicated in legible letters. The fee numbers are determined by the Patent Costs Act (*Patentkostengesetz*), which is also printed in the information leaflet concerning costs, fees and expenses of the German Patent and Trade Mark Office (A 9510.1). Incorrect or incomplete indications may cause delay in processing.

The following date will be deemed to be the **payment date** under section 2 of the Patent Costs Payment Ordinance (*Patentkostenzahlungsverordnung*):

- for bank transfers, the day when the amount is credited to the account of *Bundeskasse* for the German Patent and Trade Mark Office
- for (cash) deposits to the account of *Bundeskasse* for the German Patent and Trade Mark Office, the day of paying in the amount

  Based on the accounting data, the *Bundeskasse* cannot see whether an amount was credited by cash deposit or by credit transfer. Applicants who have paid by cash deposit should submit the **deposit receipt** issued by the financial institution

without delay to the German Patent and Trade Mark Office if they want to claim the earlier payment date determined by this payment form.

- for issuing a SEPA Core Direct Debit Mandate together with a form specifying the purpose of use covering the costs: the day the payment is received by the German Patent and Trade Mark Office or the Federal Patent Court; for costs becoming due in the future: the due date, provided the applicant's account will be debited to the credit of the relevant *Bundeskasse* for the German Patent and Trade Mark Office. If the SEPA Core Direct Debit Mandate is transmitted by fax, the original has to be submitted within one month after receipt of the fax. Otherwise, the date of receipt of the original will be deemed to be the payment date.

(11) Enclosures

Here, the number of the attached enclosures must be indicated.

(12) Signature

The signature is to be set by the applicant or their representative (see II. 3) using the civil name, or, in the case of companies, by the person authorised to sign. If an employee signs for their employer (applicant), they must on request prove their authorisation to sign. In the case of several applicants without a common representative, the request must be signed by all the applicants. In case of a partnership under the Civil Code which is not registered in the company register (*Gesellschaftsregister*), at least one partner entitled to act as representative (whose name must be indicated) has to sign the documents.

(13) Function of the signatory

If the application is not filed by a natural person using their civil name, the function of the signatory (for example 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, etcetera). If the invention is not completely disclosed, the application has to be refused. This deficiency cannot be remedied later. The filing fee is forfeited.

2.1 **Claims** (section 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 underlying the invention as state of the art is to be included in the preamble The title of the invention as indicated in box (6) of the application form must be used in the preamble. The characterising part has to contain the features of the invention for which protection is sought in connection with the features of the preamble. The characterising part is to be preceded by expressions such as "characterised in that" (*dadurch gekennzeichnet*) or "characterised by" (*gekennnzeichnet durch*) or any other expression of this effect.

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

The first claim (principal claim) must contain the essential features of the invention. An application may contain several independent claims (secondary claims) provided the principle of unity is respected (section 34 (5) of the 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. Dependent claims have to contain a reference to at least one of the preceding claims. They are to be grouped together to the extent possible and in the most appropriate way.

If the sequence or partial sequence of a gene with 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 has to include its use, for which the industrial application has been disclosed under section 1a (3) of the Patent Act.

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

Claims may not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or the drawings, for example "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.

Please note the example given at the end of this leaflet.

2.2 **Description** (section 10 of the Patent Ordinance)

The designation in box (6) of the application form must 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, and 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 they have 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 are to be used in this part of the description. It is advisable to conclude the description by stating the advantages achieved by the invention.

Documents have to be cited in full so that they can be identified, for example patent specifications with country and file number (however, no reference is made to unpublished applications); books with author, title, publisher, edition, place and year of publication as well as page; journals with title, volume or year as well as number of publication and page.

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

Please note the example given at the end of this leaflet.

Important note: If missing parts of the description, to which reference is made in the application documents as originally filed, are filed at a later date, the filing date of the entire application will be the date on which the missing parts of the description are received by the DPMA (section 35 (2) and (3) of the Patent Act). This may be of advantage for the applicant if full disclosure of the application results from the full description only.

2.3 Presentation of nucleotide and amino acid sequences; sequence listings (sections 11 to 11b of the Patent Ordinance)

If the patent application discloses nucleotide or amino acid sequences which have to be included in a sequence listing according to section 11 (1) sentence 2 of the Patent Ordinance, the description must include the sequence listing as a separate part in addition to the main part of the description (section 10 of the Patent Ordinance).

The 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 (section 11 (2) of the Patent Ordinance).

The requirements detailed in sections 11 to 11b of the Patent Ordinance apply.

Pursuant to section 11a (1) of the Patent Ordinance, the sequence listing – in contrast to section 3 sentence 1 of the Patent Ordinance – is to be submitted to the DPMA in accordance with the standard specified in section 11 (2) sentence 1 of the Patent Ordinance as an electronic document in the form of one single XML file. Sequence filings can no longer be validly submitted as hardcopies or, for example, as a PDF file.

The requirements of sections 11 to 11b of the Patent Ordinance apply to patent applications filed with the DPMA on or after 1 July 2022. This also includes applications filed on or after 1 July 2022 if the priority of an application with a filing date before 1 July 2022 is claimed.

However, for applications filed prior to 1 July 2022 and their following procedures, the requirements detailed in section 11 in conjunction with annex 1 of the Patent Ordinance in its version valid until 30 June 2022 continue to apply (section 22 of the Patent Ordinance).

2.4 Drawings (section 12 of the Patent Ordinance)

The drawings must clearly show the interaction of the individual features of the invention and emphasise the essentials. Unimportant details may be left out. 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 section 12 of the Patent Ordinance. They cannot replace the drawings, if required.

Important note: If the application contains a reference to drawings and if these drawings are submitted at a later date, as a rule, the filing date of the entire application will be the date on which the drawings are received by the DPMA (section 35 (2) of the Patent Act). 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 the drawings is 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 references to the drawings are deemed not to have been made.

3. Abstract (section 13 of the Patent Ordinance)

According to section 36 of the Patent Act, the application is to 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 has to 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 is to be enclosed.

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

A separate leaflet (P 2794.1) provides information on how to draw up the abstract pursuant to section 36 of the Patent Act. This leaflet (in German only) is available free of charge at the DPMA and can also be downloaded from the website (www.dpma.de).

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

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

Models and samples are to be submitted to the DPMA only upon request. They have to bear durable labels indicating the contents and the application to which they pertain. When submitting them, the applicant must already indicate whether or not they wish that they be returned after the conclusion of the procedure.

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

5. **Naming of inventor** (section 37 of the Patent Act)

The naming of the inventor is to be submitted in writing on the corresponding form issued by the DPMA (form P 2792 – in German) or electronically (see IV above).

The inventor(s) (given name, family name, address) must be named by the applicant, if possible, at the time of the patent application, otherwise within a period of 15 months from the filing or priority date at the latest and without further request from the office. The period for naming the inventor(s) may be extended for exceptional reasons, however, not beyond the date of the decision to grant the patent. Within the same period, the applicant has to affirm that to their knowledge no other person has contributed to the invention. If the applicant is not the inventor, they must also state how they acquired the right to the invention (for example by assignment; by virtue of the Employee Inventions Act – *Gesetz über Arbeitnehmererfindungen*).

The inventor may request that no mention by name is made, either by name and place or only by place, and that the naming of inventor is neither published nor entered in the Register (section 63 (1) sentence 3 of the Patent Act). This request is to 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.

6. **Information on the geographical origin of biological material** (section 4 (8) of the Patent Ordinance)

Where an invention is based on biological material of plant or animal origin pursuant to section 2a (3) number 1 of the Patent Act or if it uses such material, the application should include information on the geographical origin of such material, if known (section 34a (1) sentence 1 of the Patent Act). The information on the origin sought under section 34a of the Patent Act is intended to increase transparency regarding the use of this material.

Information should be given for those biological materials of plant or animal origin that are related to the invention described in the application. This is particularly the case if such material is mentioned in the patent claims or used in a claimed procedure. Inventions based on biological material of plant or animal origin or using such material particularly concern the fields of animal and plant breeding, plant protection, biotechnology, cosmetics, pharmaceutics, animal health, chemistry and foodstuffs.

Any information pursuant to section 34a (1) sentence 1 of the Patent Act is part of the application and is to be submitted on a separate sheet attached to the application (section 4 (8) of the Patent Ordinance).

VI. Procedure after filing

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

The applicant must 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 (sections 34, 36 to 38 of the Patent Act) and whether obvious bars to patenting exist (section 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 or
- is excluded from patent protection.

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

Irrespective of the state of procedure, the patent application is usually published 18 months after the filing date or priority date, (section 31 (2) number 2 of the Patent Act). This includes the publication of a reference to the publication of the patent application in the Patent Gazette (section 32 (5) of the Patent Act) and the publication of the patent application documents as "*Offenlegungsschrift*" (section 32 (2) of the 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 (section 33 of the Patent Act). The applicant may express to the DPMA their consent to an earlier publication of the patent application and to the legal consequences of this publication (section 31 (2) number 1 of the Patent Act).

(b) Examination as to substantive patentability

The DPMA examines the substantive patentability (sections 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 section 44 of the Patent Act has been made. In an official action the DPMA 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, refusal of the application has to be expected.

In particular, the application will be refused, pursuant to section 48 of the Patent Act, if

- the examination reveals that the subject matter of the application is not new, does not involve an inventive step or is not susceptible of industrial application (sections 3 to 5 of the Patent Act) or
- the examination reveals that the subject matter of the application, by its nature, does not constitute an invention or is excluded from being patented (sections 1 to 2a of the Patent Act) or
- the deficiencies noted in accordance with section 45 (1) of the Patent Act are not corrected. Pursuant to section 45 (1) sentence 1 of the Patent Act, the examining section invites the applicant to correct, within a specific time limit, certain deficiencies which result from the fact that the application does not meet the requirements set out in sections 34, 37 or 38 of the Patent Act or that the requirements set out in section 36 of the Patent Act are obviously not fulfilled. This concerns, for example, formal and substantive requirements such as reproducibility of the invention, unity and disclosure of amendments, if any. However, pursuant to section 45 (1) sentence 2 of the Patent Act, this does not apply to deficiencies relating to the abstract if the abstract has already been published.

If a request for search (section 43 of the Patent Act) has been filed prior to the request for examination, the search will be conducted and the state of the art identified and communicated first. Then the examination procedure is to be initiated.

(c) Request for further processing

The applicant may request further processing of the application (section 123a of the Patent Act) if the application has been refused following a failure to observe a time limit fixed by the DPMA. The request for further processing must be filed within one month after notification of the decision to refuse 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 100 euros.

(d) Grant of the patent

If the application complies with the prescribed requirements, if deficiencies are remedied and if the subject matter of the application is patentable, the grant of the patent is decided (section 49 (1) of the Patent Act). The legal effects of the patent enter into force with the publication of the grant in the Patent Gazette (section 58 (1) of the Patent Act). Simultaneously the patent specification is published (section 32 (1) number 1, (3) of the Patent Act). It includes the patent claims, the description and the drawings on the basis of which the patent has been granted.

Besides, all documents on the determined state of the art which were taken into consideration in the grant procedure are indicated on the patent specification; reference is made to the state of the art which, in the case of a previous search request, has been identified and already communicated to the applicant. The abstract will be included in the patent specification only if it has not already been included in the published patent application.

Within nine months from the publication of the grant, any person may give notice of opposition to the patent (section 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 is to be maintained, or whether it will be revoked.

2. Hearings

The examining section and the patent division may *ex officio* summon and hear the interested parties. Section 128a of the Code of Civil Procedure (*Zivilprozessordnung*) applies accordingly (sections 46 (1) and 59 (3) of the Patent Act). During the examination procedure, the examining sections must hold a hearing upon request. A hearing can only take place after prior summons. Hearings during the examination procedure are public.

3. Grant of licences

If the patent applicant or the person entered in the Register (section 30 (1) of the Patent Act) as the owner of the patent declares to the DPMA in writing that they are 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, are to be reduced to one half (sections 23 (1) and (6) of the Patent Act). Unlike the declaration of being interested in licensing (see V. (8)), this declaration is binding and must be submitted in writing in the original or electronically via DPMAdirektPro (indicating the name of the signatory and signing the electronic document with a qualified electronic signature, section 126a of the German Civil Code) to the DPMA. The declaration in another form, for example 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 (section 23 (7) of the Patent Act).

4. Legal aid and assignment of a representative

An applicant who furnishes proof that their personal and economic conditions prevent them from paying the application fee or permit them to do so only in part or by instalments may upon request be granted legal aid. The requirement for the granting of legal aid during the patent grant procedure and for the request in the first place is that there are sufficient prospects that the patent will be granted. For the declaration concerning the personal and economic conditions, form A 9541 (in German only) must be completed and signed. The form may be obtained free of charge from the DPMA along with a leaflet concerning the claiming of legal aid (A 9540 – in German only). The form and the leaflet are also available from the DPMA and on the website (www.dpma.de).

An applicant who has been granted legal aid may, upon request, be assigned a patent attorney or a lawyer of their choice who is prepared to represent them, 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 they have in vain requested several representatives to assume the mandate, a representative designated by the DPMA may be appointed upon request.

VII. Assistance with the 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.

However, quite often the patent information centres (addresses may be obtained online (www.dpma.de) or from the DPMA) may give advice.

In addition thereto, an advisory service for inventors is organised free of charge by the German Chamber of Patent Attorneys (*Patentanwaltskammer*) at the DPMA in Munich, at the Information and Service 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:

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

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:

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 claim
(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.

Title:
Technical description as indicated in the request for grant

Description
Stray disc for signal lamps

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 ... number ... 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.

Solution:

This problem is solved by the features specified in patent claim 1 (verbatim citation of the features, if necessary).

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:

Figure 1 shows …

Figure 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.