Deutsches
Patent- und Markenamt

Guidelines for the Search under Section 43 of the Patent Act

(Search Guidelines)[1]
of 2 March 2026

[1] *Rechercherichtlinien*

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1. Preliminary remark

These Search Guidelines aim at ensuring the uniform treatment of search requests under section 43 of the Patent Act (*Patentgesetz*) at the German Patent and Trade Mark Office (DPMA) in accordance with equal principles.

These guidelines supersede the guidelines of 14 May 2020 (*Blatt für PMZ* 2020, page 157 and following) as of 2 March 2026.

As part of their obligation to cooperate, applicants are asked to take the results of the search report into account in a timely and appropriate manner and to thus support the uniform and efficient handling of resulting examination procedures.

2. Search request

The DPMA will, upon request, identify the state of the art to be taken into consideration in assessing the patentability of the application's subject matter and preliminarily assess the protectability of the invention in respect of which an application has been filed according to sections 1 to 5 of the Patent Act and whether the application meets the requirements of section 34 (3) to (5) of the Patent Act (section 43 (1) sentence 1 of the Patent Act).

The request may be filed by the applicant only. The request must be filed in writing. Any person who has neither a residence nor a principal place of business nor an establishment in Germany may file a valid search request only upon appointing as representative a patent attorney or a lawyer who is entitled and authorised to represent this person in proceedings before the German Patent and Trade Mark Office, before the Federal Patent Court and in civil litigation affecting the patentas well as to apply for criminal prosecution (domestic representative, section 43 (2) sentence 3 in conjunction with section 25 (1) of the Patent Act). Under certain conditions, a *Patentassessor*, that is, a person who passed the patent attorney examination at the DPMA and is employed at a company (section 155 (1) number 2 and (2) of the Patent Attorney Code [*Patentanwaltsordnung*]), or a permit holder authorised under section 160 of the Patent Attorney Code in conjunction with section 178 of the Patent Attorney Code (in the version valid until 31 August 2009) may act as representative. Lawyers or patent attorneys from the European Union, the European Economic Area and Switzerland are also authorised to act as domestic representatives, provided they comply with the requirements listed in section 25 (1) of the Patent Act. This authorisation is governed by the relevant regulations governing access to the profession of lawyer or patent attorney as well as the provisions on temporary services.

The corresponding fee pursuant to number 311 200 of the annex to section 2 (1) of the Patent Costs Act (*Patentkostengesetz*) is to be paid within three months from filing the request. If the fee is not paid, not paid in full or not paid within the prescribed time limit, the request will be deemed withdrawn pursuant to section 6 (2) of the Patent Costs Act.

If the request is filed in connection with an application for a patent of addition, the applicant is asked to also file the request for the application of the main patent; if the applicant fails to comply with this demand, the application for the patent of addition will be deemed an application for an independent patent (section 147 (3) of the Patent Act in conjunction with section 43 (2) sentence 4 of the Patent Act in the version valid until 1 April 2014). With effect from 1 April 2014, the Act Revising Certain Provisions of Patent Law and Other Acts in the Field of Industrial Property Protection (*Gesetz zur Novellierung patentrechtlicher Vorschriften und anderer Gesetze des gewerblichen Rechtsschutzes*) of 19 October 2013 (Federal Law Gazette[2] I page 3830) annulled the provisions concerning applications of addition and patents of addition in the Patent Act. However, due to the transitional provisions of section 147 (3) of the Patent Act, section 43 (2) sentence 4 of the Patent Act in its version valid until 1 April 2014 still applies in the cases mentioned therein.

The request is deemed not to have been filed if a request for examination or search has already been filed (section 43 (4) and (5) of the Patent Act).

The search request presupposes a pending application. It may be submitted at the time of filing the application. If the search request pursuant to section 43 of the Patent Act is filed before or at the same time as the examination request pursuant to section 44 of the Patent Act, the search pursuant to section 43 of the Patent Act is carried out first, including a preliminary assessment whether the invention in respect of which an application has been filed is protectable according to sections 1 to 5 of the Patent Act and whether the application meets the requirements of section 34 (3) to (5) of the Patent Act. The applicant will be notified of the result. Then, the examination procedure will begin (section 44 (3) sentence 1 of the Patent Act).

3. Formal handling of the search request

The search request filed will be checked for validity. The competent section also takes action to have the communications sent to the applicant and arranges for publication of the fact that a search request has been received in the Patent Gazette (*Patentblatt*); however, the publication in the Patent Gazette will not take place before the publication of the reference under section

[2] *Bundesgesetzblatt* (BGBl)

32 (5) of the Patent Act to the possibility of file inspection (section 43 (3) sentence 1 of the Patent Act). After establishment of the validity of the search request, the file will be transmitted to the examining section competent for the main class to carry out the search.

After receipt of the file, the examining section checks whether it is responsible for this case. If it does not consider itself responsible, it takes immediate action to determine the examining section responsible for the main class.

This examining section is then responsible for carrying out the search. To the extent required, it will also add any missing related classes.

Searches under section 43 of the Patent Act are performed without delay in the chronological order of receipt taking into account the workload of the respective examining section. The examining sections are advised to carry out the searches so as to make the search result available to the person filing the request in time before the expiry of the priority year, if possible. Upon a well-founded request for accelerated processing, the order of the requests to be processed may be adjusted. As a rule, a request for accelerated processing is well- founded if regular processing would appear likely to cause considerable disadvantages to the person filing the request.

Under section 43 (3) sentence 2 of the Patent Act, any person is authorised to provide information on the state of the art to the DPMA which might adversely affect the grant of a patent. Such information is to be communicated promptly to the applicant and, when a search procedure is pending, also to the examining section. This state of the art will be included in the search report if it is deemed relevant by the competent examining section.

4. Subject matter of the search

The search covers the subject matter(s) to be protected by a patent according to the patent claims.

If, following a search request, the examining section determines that the application does not meet the requirement of section 34 (5) of the Patent Act (lack of unity), it will carry out a search for the part of the application referring to the invention or group of inventions described first in the patent claims so linked as to form a single general inventive concept (section 43 (6) of the Patent Act). The search report will include a reference to the lack of unity. The inventions or groups of inventions whose subject matters lack unity are to be indicated using the numbers of the claims. The numbers of the claims where no search was carried out for the subject matter are to be indicated in the relevant section of the search report.

If a search on the whole subject matter in respect of which an application has been filed or on parts of the subject matter in respect of which an application has been filed cannot be carried out due to deficiencies in the documents filed, this too is to be included in the relevant section of the search report giving the respective claim numbers.

If there are several versions of the claims, the search will be based on the version last filed that the competent examining section considers to be admissible within the meaning of section 38 of the Patent Act.

5. Scope and carrying out of the search

The search is to determine the state of the art in a way that it can be used as a basis for preliminarily assessing the protectability of the invention in respect of which an application has been filed. In line with the procedure according to section 43 of the Patent Act, each application is searched only once. For this purpose, the examining section makes use of the existing technical tools as well as of the sources of information thus available, if this appears to be useful and where the effort involved seems to be justified; this always includes consideration of the state of the art mentioned by the applicant. In any search, it is checked to the extent possible whether previous search results are available in other countries.

For each patent claim that does not only contain commonly known facts, the determined state of the art has to be indicated. The documents indicated by the applicant are to be taken into consideration by the examining section responsible for the main class – if needed, the applicant will be requested to provide the documents. If due to the broadness of the main claim, the state of the art to be cited is too broad, the state of the art will be selected which comes closest to the subject matter of the invention taking into account restricting features of the dependent claims. The description and the drawings are to be considered for the interpretation of the claims.

When citing patent documents (publications), it is sufficient if one member of each patent family is taken into account, unless there are reasons to believe that essential differences as to substance will be found in the contents of individual members of the same patent family.

The search is to be thorough but not excessive. The search will be terminated if, in the course of the search, the examiner realises that an unjustified amount of work would be necessary to achieve a modest improvement of the already obtained search result.

The reference date for the search is the filing date rather than a priority date claimed.

Subsequently published patent applications with an earlier priority (see section 3 (2) of the Patent Act) also have to be cited if they challenge the novelty of the subject matter of a patent claim and are available to the public at the time the search is carried out. In addition, international applications under the Patent

Cooperation Treaty (PCT) where the DPMA is the designated office have to be mentioned as well as European patent applications where the Federal Republic of Germany has been designated, even if the requirements of section 3 (2) sentence 1 number 2 of the Patent Act have not yet been met but still can be met.

For conducting a search, external electronic sources of search including online technical journals, online databases and other websites can also be used. The use of such sources must be decided on a case-by-case basis. In some technical fields, however, such as information technology or chemistry, determining the state of the art is usually not possible in any other way. When conducting the search, applications of artificial intelligence may also be used, to the extent their use is permitted at the DPMA. However, it has to be made sure in any case that the content of yet unpublished applications is not made available to the public through the use of search terms or in any other way. It is the responsibility of each examining section to choose search terms and search strategies by which a search can be carried out in a reasonable, efficient and comprehensive way that at the same time maintains and protects the confidentiality with regard to unpublished applications. This especially requires considering on a case-by-case basis which use of text, terms, sequences or chemical structures is appropriate in which scope, taking into account the security level of the respective source of search as well as any particularities of the respective technical field and its usual sources and methods of search.

In case of database searches, a report about the complete procedure of the search containing the selected databases as well as the search terms used will be prepared. The report will be included as an electronic document in the file.

6. Search report

The search report must contain the following information:

A. Classification of the subject matter in respect of which an application has been filed under the International Patent Classification (IPC)

B. Fields and tools used for the search (for example, databases)

All classification units and search tools used for the search have to be indicated, even if it was not possible to determine the state of the art in the class the search was carried out for.

C. Result of determining the state of the art

The determined state of the art with reference to the respective numbers of the patent claims, if necessary with explanations and references to relevant passages and drawings, is to be listed **in a table**, if needed for comprehension. No reference to patent claims is made in case of state of the art which cannot be attributed to any of the patent claims.

Publications are to be cited according to the two-letter country code pursuant to WIPO Standard ST.3 (see *Mitteilung des Präsidenten des Deutschen Patent- und Markenamts Nr.* 2/98[3] , *Blatt für PMZ* 1998, pages 157 to 159). The numbers and kind codes of the publications are to be indicated too. According to **in-office order number 15**, non-patent literature such as text passages in books or periodicals is to be cited in such a way as to ascertain unequivocally the book or periodical as well as the text passages concerned.

The categories (relevance indicators) of the determined state of the art are to be indicated in capital letters pursuant to WIPO Standard ST.14. The codes are defined as follows:

X	citation which, **when it is taken alone**, challenges the novelty or the inventive step of a claimed invention
Y	citation challenging the inventive step of a claimed invention when the document is combined with one or more such documents, such combination being obvious to a person skilled in the art
A	document defining the technological background
O	document referring to an oral disclosure, use, exhibition or other kind of disclosure
P	state of the art published during the priority interval
T	subsequently published non-colliding state of the art concerning the theory of the invention in respect of which an application has been filed and which may be useful for the better comprehension of the invention in respect of which an application has been filed or indicates that the train of thoughts or statement of facts underlying the invention might be wrong
E	earlier patent application under section 3 (2) of the Patent Act
D	state of the art already cited in the patent application (“self-citation”) and also deemed relevant by the examining section
L	document mentioned for special reasons, for example, in order to prove the publication date of a citation taken into account or in case of doubt as to priority

[3] Notice of the President of the German Patent and Trade Mark Office number 2/98

In case of state of the art that is non-patent literature of which printing and copying may be restricted, such documents may not be integrated into the electronic case file for copyright reasons. Therefore, it must be made sure to record such documents in the DPMA's non-patent literature archive and to include citations with the full bibliographic data as well as archive identification numbers of the documents in the electronic case file.

D. Preliminary assessment whether the invention in respect of which an application has been filed is protectable according to sections 1 to 5 of the Patent Act and whether the application meets the requirements of section 34 (3) to (5) of the Patent Act

For the preliminary assessment according to section 43 (1) sentence 1 of the Patent Act, the electronic form provided for this purpose must be used, and it may not be altered. It must be made sure that the preliminary assessment according to section 43 (1) sentence 1 of the Patent Act is complete and includes statements on all relevant criteria of protectability according to sections 1 to 5 of the Patent Act and on the requirements of section 34 (3) to (5) of the Patent Act. Therefore, the corresponding sections of the form have to be revised regularly.

Some possible defects of an application (for example, lack of novelty or non-assessability of novelty) may require a statement of reasons to be inserted in the free-text field on the form. This statement of reasons should always be sound and reasonable but may be short and limited to the most essential facts.

If the examining section deems certain defects that are not included in the form of the search report to be relevant in individual cases, these will be communicated in a separate section. If the search shows that features cannot be proven in the state of the art, this may be mentioned.

If non-patent literature of which printing and copying may be restricted is cited as relevant, the applicant is to be informed in the relevant section that such state of the art may not be transmitted annexed to the search report but will be transmitted separately by post.

It is to be noted that non-selection of a form field referring to a defect means that such a defect does not exist according to the preliminary assessment.

At the end of the search report, the date of conclusion of the search is to be indicated (automatic indication in the electronic form) as well as a notice that no guarantee for the completeness of the state of the art determined and for the correctness of the categories can be given (section 43 (7) sentence 1 of the Patent Act).

The applicant will receive the determined state of the art together with the search report. Only non-patent literature of which printing and copying may be restricted is transmitted separately by post.

Cited non-patent literature is only available to the public as a reference within the scope of online file inspection.

If, after the publication of the reference to the search report in the Patent Gazette, a serious mistake relating to the state of the art cited (for example, a wrong reference to a publication) is discovered in the publication of the application or patent specification, a rectification is published in the Patent Gazette. The applicant must be notified of this. If, on the basis of the search report, a wrong document has been dispatched, the correct one will be forwarded.