Deutsches
Patent- und Markenamt

Information leaflet
"Data Protection regarding IP applications"

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I. Controlling body

Deutsches Patent- und Markenamt (German Patent and Trade Mark Office)

Zweibrückenstraße 12

80331 München

Germany

Phone: +49 89 2195-1000

Fax: +49 89 2195-2221

E-mail: info@dpma.de

The DPMA is a higher federal authority which is represented by the President of the DPMA.

II. Data protection officer

Die oder der Datenschutzbeauftragte des Deutschen Patent- und Markenamtes (Data Protection Officer of the German Patent and Trade Mark Office)

Zweibrückenstraße 12

80331 München

Germany

Phone: +49 89 2195-3333

E-mail: datenschutz@dpma.de

III. Competent supervisory authority

Die oder der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit – BfDI (The Federal Commissioner for Data Protection and Freedom of Information)

Graurheindorfer Str. 153

53117 Bonn

Germany

IV. Data processing with respect to patent applications

When you file a patent application at the DPMA, we will process the following personal data about you:

- name and address
- details of the representatives before the DPMA
- information about the IP right applied for, possible business intentions
- bank details and/or information about the preferred payment option
- information on your personal and financial circumstances if you request legal aid

These data will be processed and stored exclusively in connection with the application filed by you. They will be used to the following extent:

- in the context of pending procedures before the DPMA or in appeal proceedings
- for the publication of the IP right in the Register, see section 30 of the Patent Act (*Patentgesetz*)
- for reasoned requests for file inspection, see section 31 of the Patent Act (however, certain parts of the case file are excluded if there is a legal provision that conflicts with this or if you obviously have an overriding interest that merits protection)
- for the first publication of the patent application documents (*Offenlegungsschriften*), the publication of the patent specifications and the Patent Gazette (*Patentblatt*), see section 32 of the Patent Act
- in the context of the supply of data on IP rights and IP applications to third parties in electronic form for further processing or use for the purposes of providing patent information, see section 32 of the Patent Act
- in the context of reasoned requests for administrative assistance
- in the context of the information exchange with other patent offices worldwide
- for passing on details to banks for direct debiting of IP fees
- in anonymised form for statistical purposes of the DPMA

However, any other disclosure of the data to third parties, in particular for commercial purposes, is excluded.

a) Legal basis

The legal basis for the processing of personal data within the framework of patent applications is point (e) of Article 6 (1), Article 6 (3) of the General Data Protection Regulation in conjunction with section 3 of the Federal Data Protection Act (*Bundesdatenschutzgesetz*). Receiving IP applications and granting, registering, managing and publishing IP rights as well as providing information on existing IP rights are tasks of the DPMA.

b) Purpose of data processing

For successfully filing a patent application, it is necessary to process all submitted data at the DPMA. In addition, the DPMA fulfils its statutory duty to inform the public about IP rights valid in Germany by means of its publication and search services available on the internet. This also requires the processing of personal data.

c) Duration of storage

The data will be deleted as soon as they are no longer necessary to achieve the purpose for which they were collected. The duration of storage of the personal data processed in connection with a patent application is determined by an internal order of the German Patent and Trade Mark Office regarding storage and destruction of documents, based on guidelines stipulated by the German government.

Personal data in the Register or in publicly accessible electronic information services of the DPMA are permanently in the public interest and therefore remain published.

d) Option of objecting and of removal

The recording of data is absolutely indispensable for processing patent applications. Therefore, you do not have any option to object.

e) Rights of data subjects

Information on your rights as data subject is available in section X.

V. Data processing with respect to utility model applications

When you file a utility model application at the DPMA, we will process the following personal data about you:

- name and address
- details of the representatives before the DPMA
- information about the IP right applied for, possible business intentions
- bank details and/or information about the preferred payment option
- information on your personal and financial circumstances if you request legal aid

These data will be processed and stored exclusively in connection with the application filed by you. They will be used to the following extent:

- in the context of pending procedures before the DPMA or in appeal proceedings
- for the publication of the IP right in the Register, see section 8 of the Utility Model Act (*Gebrauchsmustergesetz*)
- for reasoned requests for file inspection, see section 8 of the Utility Model Act (however, certain parts of the case file are excluded if there is a legal provision that conflicts with this or if you obviously have an overriding interest that merits protection)
- for the utility model specification
- for publication in the Patent Gazette, see section 8 of the Utility Model Act
- in the context of the supply of data on IP rights and IP applications to third parties in electronic form for the purposes of establishing, developing and updating their own IP databases as well as for other information systems and services, see section 8 (3) of the Utility Model Act
- in the context of the information exchange with other patent offices worldwide
- in the context of reasoned requests for administrative assistance
- for passing on details to banks for direct debiting of IP fees
- in anonymised form for statistical purposes of the DPMA

However, any legitimate other disclosure of the data to third parties, in particular for commercial purposes, is excluded.

a) Legal basis

The legal basis for the processing of personal data within the framework of utility model applications is point (e) of Article 6 (1), Article 6 (3) of the General Data Protection Regulation in conjunction with section 3 of the Federal Data Protection Act. Receiving IP applications and granting, registering, managing and publishing IP rights as well as providing information on existing IP rights are tasks of the DPMA.

b) Purpose of data processing

For successfully filing a utility model application, it is necessary to process all submitted data at the DPMA. In addition, the DPMA fulfils its statutory duty to inform the public about IP rights valid in Germany by means of its publication and search services available on the internet. This also requires the processing of personal data.

c) Duration of storage

The data will be deleted as soon as they are no longer necessary to achieve the purpose for which they were collected. The duration of storage of the personal data processed in connection with a utility model application is determined by an internal order of the German Patent and Trade Mark Office regarding storage and destruction of documents, based on guidelines stipulated by the German government.

Personal data in the Register or in publicly accessible electronic information services of the DPMA are permanently in the public interest and therefore remain published.

d) Option of objecting and of removal

The recording of data is absolutely indispensable for processing utility model applications. Therefore, you do not have any option to object.

e) Rights of data subjects

Information on your rights as data subject is available in section X.

VI. Data processing with respect to trade mark applications

When you file a trade mark application at the DPMA, we will process the following personal data about you:

- name and address
- details of the representatives before the DPMA
- information about the IP right applied for, possible business intentions
- bank details and/or information about the preferred payment option

These data will be processed and stored exclusively in connection with the application filed by you. They will be used to the following extent:

- in the context of pending procedures before the DPMA or in appeal proceedings
- for the publication of the IP right in the Register, see section 41 of the Trade Mark Act (*Markengesetz*)
- for the Trade Mark Journal (*Markenblatt*)
- for reasoned requests for file inspection, see section 62 of the Trade Mark Act (however, certain parts of the case file are excluded if there is a legal provision that conflicts with this or if you obviously have an overriding interest that merits protection)
- in the context of the supply of data on IP rights and IP applications to third parties in electronic form for the purposes of providing trade mark information, see section 41 (3) of the Trade Mark Act
- in the context of the information exchange with other trade mark offices worldwide
- in the context of reasoned requests for administrative assistance
- for passing on details to banks for direct debiting of IP fees
- in anonymised form for statistical purposes of the DPMA

However, any legitimate other disclosure of the data to third parties, in particular for commercial purposes, is excluded.

a) Legal basis

The legal basis for the processing of personal data within the framework of trade mark applications is point (e) of Article 6 (1), Article 6 (3) of the General Data Protection Regulation in conjunction with section 3 of the Federal Data Protection Act. Receiving IP applications and granting, registering, managing and publishing IP rights as well as providing information on existing IP rights are tasks of the DPMA.

b) Purpose of data processing

For successfully filing a trade mark application, it is necessary to process all submitted data at the DPMA. In addition, the DPMA fulfils its statutory duty to inform the public about IP rights valid in Germany by means of its publication and search services available on the internet. This also requires the processing of personal data.

c) Duration of storage

The data will be deleted as soon as they are no longer necessary to achieve the purpose for which they were collected. The duration of storage of the personal data processed in connection with a trade mark application is determined by an internal order of the German Patent and Trade Mark Office regarding storage and destruction of documents, based on guidelines stipulated by the German government.

Personal data in the Register or in publicly accessible electronic information services of the DPMA are permanently in the public interest and therefore remain published.

d) Option of objecting and of removal

The recording of data is absolutely indispensable for processing trade mark applications. Therefore, you do not have any option to object.

e) Rights of data subjects

Information on your rights as data subject is available in section X.

VII. Data processing with respect to design applications

When you file a design application at the DPMA, we will process the following personal data about you:

- name and address
- details of the representatives before the DPMA
- information about the IP right applied for, possible business intentions
- bank details and/or information about the preferred payment option
- information on your personal and financial circumstances if you request legal aid

These data will be processed and stored exclusively in connection with the application filed by you. They will be used to the following extent:

- in the context of pending procedures before the DPMA or in appeal proceedings
- for the publication of the IP right in the electronic Design Gazette (*Designblatt*), see section 19 of the Design Act (*Designgesetz*)
- for reasoned requests for file inspection, see section 22 of the Design Act (however, certain parts of the case file are excluded if there is a legal provision that conflicts with this or if you obviously have an overriding interest that merits protection)

- in the context of the supply of data on IP rights and IP applications to third parties in electronic form for the purposes of providing design information, see section 19 (3) of the Design Act
- in the context of the information exchange with other IP offices worldwide
- in the context of reasoned requests for administrative assistance
- for passing on details to banks for direct debiting of IP fees
- in anonymised form for statistical purposes of the DPMA

However, any legitimate other disclosure of the data to third parties, in particular for commercial purposes, is excluded.

a) Legal basis

The legal basis for the processing of personal data within the framework of design applications is point (e) of Article 6 (1), Article 6 (3) of the General Data Protection Regulation in conjunction with section 3 of the Federal Data Protection Act. Receiving IP applications and granting, registering, managing and publishing IP rights as well as providing information on existing IP rights are tasks of the DPMA.

b) Purpose of data processing

For successfully filing a design application, it is necessary to process all submitted data at the DPMA. In addition, the DPMA fulfils its statutory duty to inform the public about IP rights valid in Germany by means of its publication and search services available on the internet. This also requires the processing of personal data.

c) Duration of storage

The data will be deleted as soon as they are no longer necessary to achieve the purpose for which they were collected. The duration of storage of the personal data processed in connection with a design application is determined by an internal order of the German Patent and Trade Mark Office regarding storage and destruction of documents, based on guidelines stipulated by the German government.

Personal data in the Register or in publicly accessible electronic information services of the DPMA are permanently in the public interest and therefore remain published.

d) Option of objecting and of removal

The recording of data is absolutely indispensable for processing design applications. Therefore, you do not have any option to object.

e) Rights of data subjects

Information on your rights as data subject is available in section X.

VIII. (Electronic) file inspection

The case files of the following IP procedures can be inspected by anybody without charge:

patent applications after the first publication of the application documents (*Offenlegung*, see section 31 of the Patent Act)

utility models (section 8 (5) of the Utility Model Act) upon registration

trade marks (section 62 of the Trade Mark Act) upon registration

designs (section 22 of the Design Act) also upon registration

Online file inspection is available for most of the patent and utility model case files via DPMAregister. The DPMA will gradually be able to offer this service for the other IP areas as well.

Your details, such as contact details on the letterhead, are visible to third parties via file inspection. Only certain parts of case files are excluded from file inspection, if you have an obviously overriding interest that merits protection (for example personal information allowing to draw conclusions about a person's economic, financial or health situation, such as for example, requests for reinstatement or legal aid).

More information is available at

https://www.dpma.de/english/services/file_inspection/index.html

IX. Data processing with respect to the granting of compensation of witnesses

If you appear as a witness in procedures before the DPMA and claim compensation under the Judicial Remuneration and Compensation Act *(Justizvergütungs- und -entschädigungsgesetz)*, we will process the following personal data about you:

- name and address
- data on your employment, your working hours and your salary
- data on costs incurred by you
- data concerning your bank details

These data will be processed and stored exclusively in connection with the request filed by you. Your personal data will not be passed on to third parties.

a) Legal basis

The legal basis for the processing of personal data with respect to compensation of witnesses is as follows:

- for patent procedures: point (e) of Article 6 (1), Article 6 (3) of the General Data Protection Regulation in conjunction with section 128a of the

Patent Act in conjunction with the provisions of the Judicial Remuneration and Compensation Act

- for utility model procedures: point (e) of Article 6 (1), Article 6 (3) of the General Data Protection Regulation in conjunction with section 21 of the Utility Model Act in conjunction with section 128a of the Patent Act in conjunction with the provisions of the Judicial Remuneration and Compensation Act
- for trade mark procedures: point (e) of Article 6 (1), Article 6 (3) of the General Data Protection Regulation in conjunction with section 93a of the Trade Mark Act in conjunction with the provisions of the Judicial Remuneration and Compensation Act
- for design procedures: point (e) of Article 6 (1), Article 6 (3) of the General Data Protection Regulation in conjunction with section 23 of the Design Act in conjunction with section 128a of the Patent Act in conjunction with the provisions of the Judicial Remuneration and Compensation Act

b) Purpose of data processing

For granting compensation pursuant to the Judicial Remuneration and Compensation Act, the processing of the mentioned personal data is necessary.

c) Duration of storage

The data will be deleted as soon as they are no longer necessary to achieve the purpose for which they were collected. The duration of storage of the personal data processed in connection with a compensation of witnesses is determined by an internal order of the German Patent and Trade Mark Office regarding storage and destruction of documents, based on guidelines stipulated by the German government.

d) Option of objecting and of removal

The recording of data is absolutely indispensable for the processing of the compensation of witnesses. Therefore, you do not have any option to object.

e) Rights of data subjects

Information on your rights as data subject is available in section X.

X. Rights of data subjects

Due to the processing of your personal data you are a data subject, so that you have the following rights under the General Data Protection Regulation.

However, to the extent that personal data are contained in the Register or in publicly accessible electronic information services of the German Patent and Trade Mark Office, the following rights and obligations do not exist, pursuant to section 31a of the Patent Act, section 8 (8) of the Utility Model Act, section 62a of the Trade Mark Act, section 4 (3a) of the Semiconductor Protection Act (*Halbleiterschutzgesetz*) and section 22a of the Design Act:

1. the right of access pursuant to point (c) of Article 15 (1) of the General Data Protection Regulation
2. the notification obligation pursuant to the second sentence, Article 19 page 2 of the General Data Protection Regulation
3. the right to object pursuant to Article 21 (1) of the General Data Protection Regulation

The right to obtain a copy pursuant to Article 15 (3) of the General Data Protection Regulation is fulfilled by giving you access to the Register or to publicly available electronic information services of the German Patent and Trade Mark Office.

1. Right of access pursuant to Article 15 of the General Data Protection Regulation

You have the right to obtain from the DPMA as controller confirmation as to whether or not personal data concerning you are being processed by us, and, where that is the case, access to these personal data and the following information:

(1) the purposes of the processing;

(2) the categories of personal data concerned;

(3) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;

(4) the existence of the right to request from the DPMA as controller rectification or erasure of personal data concerning you or restriction of processing of personal data concerning you or to object to such processing;

(5) the right to lodge a complaint with a supervisory authority;

(6) where the personal data are not collected from you, any available information as to their source;

(7) the existence of automated decision-making, including profiling, referred to in Article 22 (1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for you.

You also have the right to be informed as to whether personal data concerning you are transferred to a third country or to an international organisation. In this context, you have the right to be informed of the appropriate safeguards pursuant to Article 46 of the General Data Protection Regulation relating to the transfer.

2. Right to rectification pursuant to Article 16 of the General Data Protection Regulation

You have the right to obtain from the DPMA as controller without undue delay the rectification and/or completion of inaccurate personal data concerning you.

3. Right to erasure pursuant to Article 17 of the General Data Protection Regulation

You have the right to obtain from the controller the erasure of personal data concerning you without undue delay and the controller has the obligation to erase personal data without undue delay where one of the following grounds applies:

(1) The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed.

(2) You withdraw your consent on which the processing is based according to point (a) of Article 6 (1), or point (a) of Article 9 (2), and where there is no other legal ground for the processing.

(3) You object to the processing pursuant to Article 21 (1) and there are no overriding legitimate grounds for the processing, or you object to the processing pursuant to Article 21 (2).

(4) The personal data have been unlawfully processed.

(5) The personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the DPMA is subject.

(6) The personal data have been collected in relation to the offer of information society services referred to in Article 8 (1).

Where the DPMA as controller has made the personal data concerning you public and is obliged pursuant to paragraph 1 to erase the personal data, we, taking account of available technology and the cost of implementation, will take reasonable steps, including technical measures, to inform controllers which are processing the personal data that you have requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

The right to erasure does not apply to the extent that processing is necessary

(1) for exercising the right of freedom of expression and information;

(2) for compliance with a legal obligation which requires processing by Union or Member State law to which the DPMA is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the DPMA;

(3) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9 (2) as well as Article 9 (3);

(4) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89 (1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or

(5) for the establishment, exercise or defence of legal claims.

4. Right to restriction of processing pursuant to Article 18 of the General Data Protection Regulation

You have the right to obtain from the controller restriction of processing where one of the following applies:

(1) the accuracy of the personal data is contested by you, for a period enabling the DPMA to verify the accuracy of the personal data;

(2) the processing is unlawful and you oppose the erasure of the personal data and request the restriction of their use instead;

(3) the DPMA no longer needs the personal data for the purposes of the processing, but they are required by you for the establishment, exercise or defence of legal claims;

(4) you have objected to processing pursuant to Article 21 (1) pending the verification whether the legitimate grounds of the DPMA override your legitimate grounds.

Where processing has been restricted under paragraph 1, such personal data shall, with the exception of storage, only be processed with your consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

Where the processing pursuant to the above mentioned conditions has been restricted, you will be informed by the DPMA before the restriction of processing is lifted.

5. Right to notification pursuant to Article 19 of the General Data Protection Regulation

If you have claimed the right to rectification or erasure or restriction of processing vis-à-vis the DPMA, we have the obligation to communicate any rectification or erasure of data or restriction of processing to each recipient to whom the personal data concerning you have been disclosed, unless this proves impossible or involves disproportionate effort.

6. Right to data portability pursuant to Article 20 of the General Data Protection Regulation

You have the right to receive the personal data concerning you, which you have provided to the DPMA, in a structured, commonly used and machine-readable format and the right to transmit those data to another controller without hindrance from the DPMA, where

(1) the processing is based on consent pursuant to point (a) of Article 6 (1) or point (a) of Article 9 (2) or on a contract pursuant to point (b) of Article 6 (1); and

(2) the processing is carried out by automated means.

In exercising your right to data portability pursuant to paragraph 1, you have the right to have the personal data concerning you transmitted directly from us to another controller, where technically feasible. This must not adversely affect the rights and freedoms of others.

That right does not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the DPMA.

7. Right to object pursuant to Article 21 of the General Data Protection Regulation

Where personal data concerned are processed for direct marketing purposes, you have the right to object at any time to processing of personal data concerning you for such marketing, which includes profiling to the extent that it is related to such direct marketing.

Where you object to processing for direct marketing purposes, the personal data will no longer be processed for such purposes.

In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, you may exercise your right to object by automated means using technical specifications.

8. Right of withdrawal of consent under data protection law

You have the right to withdraw your consent under data protection law at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

9. Automated individual decision-making, including profiling pursuant to Article 22 of the General Data Protection Regulation

You have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning you or similarly significantly affects you.

This does not apply if the decision

(1) is necessary for entering into, or performance of, a contract between you and the DPMA;

(2) is authorised by Union or Member State law to which the DPMA is subject and which also lays down suitable measures to safeguard your rights and freedoms and legitimate interests; or

(3) is based on your explicit consent.

In the cases referred to in items (1) and (3), the DPMA will implement suitable measures to safeguard your rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the DPMA, to express your point of view and to contest the decision.

Insofar as a decision is not prohibited, it must not be based on special categories of personal data referred to in Article 9 (1), unless point (a) or (g) of Article 9 (2) applies and suitable measures to safeguard your rights and freedoms and your legitimate interests are in place.

10. Right to lodge a complaint with a supervisory authority pursuant to Article 77 of the General Data Protection Regulation

Without prejudice to any other administrative or judicial remedy, you have the right to lodge a complaint with a supervisory authority, in particular in the Member State of your habitual residence, place of work or place of the alleged infringement if you consider that the processing of personal data relating to you infringes this Regulation.

The supervisory authority with which the complaint has been lodged will inform the complainant on the progress and the outcome of the complaint including the possibility of a judicial remedy pursuant to Article 78 of the General Data Protection Regulation.

Further information

If you require further information on the treatment of personal data at the German Patent and Trade Mark Office, please contact our data protection officer.

XI. Data processing with respect to WIPO DAS

Participation in the electronic exchange of priority documents (WIPO DAS) requires the transfer of personal data to WIPO.

Priority documents are copies of applications for intellectual property rights. The personal data to be transferred refer to the data mentioned above depending on the respective IP right. Once they have been transferred as ordered, the personal data leave the scope of protection of the GDPR. By applying for the

participation in WIPO DAS, you consent to the transfer of your data for the purpose of participating in WIPO DAS.

You acknowledge the following risks:

- WIPO is a supranational organisation with its own rules for data privacy law and a data privacy level that may differ from the GDPR.
- WIPO is not subject to a national data protection authority and enjoys immunity.
- There are no guarantees regarding the potential access of public bodies.
- The DPMA has no control over the further processing of the transmitted data.
- The enforcement of the rights of the data subject may be more difficult.

You have the right to withdraw your consent to the participation in WIPO DAS and to the corresponding transfer of your personal data at any time. Withdrawing your consent does not affect the lawfulness of the data processing based on the consent before the withdrawal. If the data have already been transferred to WIPO, the transfer remains lawful. The DPMA has no right to demand WIPO to delete data that have been transferred to WIPO.