Deutsches
Patent- und Markenamt

Guidelines for the Search under Section 7 of the Utility Model Act

(Utility Model Search Guidelines)[1]
of November 2024

[1] *Gebrauchsmuster-Rechercherichtlinien*

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1. Preliminary remark

These Search Guidelines aim at ensuring the uniform treatment of search requests under section 7 of the Utility Model Act (*Gebrauchsmustergesetz*) at the German Patent and Trade Mark Office (DPMA) with due regard to equal principles.

2. Search request

The DPMA shall, upon request, identify the state of the art to be taken into consideration in assessing the protectability of the utility model application's subject matter or of the utility model (section 7 (1) of the Utility Model Act).

The request may be made by the applicant, the registered proprietor and by any other party (section 7 (2) sentence 1 of the Utility Model Act). The request must be filed in writing (section 7 (2) sentence 2 of the Utility Model Act).

Anyone wishing to file a request who has neither a residence nor a principal place of business nor an establishment in Germany must appoint as a representative a patent attorney or lawyer who is entitled and authorised to represent them in proceedings before the DPMA, before the Federal Patent Court and in civil cases concerning the utility model as well as to file a request for criminal prosecution (section 7 (2) sentence 3 in conjunction with section 28 (1) of the Utility Model Act).

A fee as prescribed by the Patent Costs Act (*Patentkostengesetz*) shall be paid together with the request; if the fee is not paid at all, not in full or not within the time limit, the request shall be deemed withdrawn pursuant to section 6 (2) of the Patent Costs Act.

If a search request has already been received, later search requests shall be deemed not to have been filed (section 7 (4) sentence 1 of the Utility Model Act). In such case, the date when the earlier request has been received shall be communicated to the person who filed the later request; the fee paid for the search under the Patent Costs Act shall be refunded (section 7 (4) sentence 2 of the Utility Model Act in conjunction with section 43 (4) sentences 2 and 3 of the Patent Act [*Patentgesetz*]).

Receipt of the search request shall be published in the Patent Gazette (*Patentblatt*); however, publication shall not take place before registration of the utility model (section 7 (3) sentence 1 of the Utility Model Act). If a third party has filed the request, receipt of the request shall also be communicated to the applicant or to the registered proprietor (section 7 (3) sentence 2 of the Utility Model Act); likewise, if the request filed by a third party is found to be ineffective after communication to the applicant or to the registered proprietor, this shall be communicated to the applicant or the registered proprietor, and the third party (section 7 (5) of the Utility Model Act).

The search request presupposes a pending utility model application or a registered utility model. It may be submitted together with the application. If a utility model application for which a search request has been filed is deemed to be withdrawn under section 6 (1) sentences 1 and 2 of the Utility Model Act in conjunction with section 40 (5) sentence 1 of the Patent Act before or during the search, it shall be taken into consideration that the search based on an effectively filed request shall be conducted or completed if the applicant requests so provided that the applicant is able to prove an interest meriting protection in the preparation of the search report.

3. Formal handling of the search request

The search request filed shall be checked for validity. The competent unit shall also take action to have the communication sent to the applicant or the registered proprietor and arranges for publication in the Patent Gazette; however, publication in the Patent Gazette shall not take place before registration of the utility model (section 7 (3) sentence 1 of the Utility Model Act). After establishment of the validity of the search request, the file shall be transmitted to the examining section competent for the main class to carry out the search.

After receipt of the file, the examining section shall check whether it is competent for this case. If it considers itself not to be competent, it shall take immediate action to determine the examining section competent for the main class.

The competent examining section shall be responsible for carrying out the search; to the extent required, it shall also add any missing related classes.

Searches under section 7 of the Utility Model Act shall be performed by the competent examining sections of the DPMA without undue delay in the chronological order of receipt. The examining sections are advised to carry out the searches so as to make the search result available to the requester 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 requester.

Under section 7 (3) sentence 3 of the Utility Model Act, any person is authorised to provide information on the state of the art to the DPMA to be taken into consideration in assessing the protectability of the utility model application's subject matter or of the utility model. Such information shall be communicated promptly to the applicant or the registered proprietor and, when a search procedure is pending, to the examining section too. This state of the art shall be included in the search report if it is deemed relevant by the competent examining section.

4. Subject matter of the search

The search shall cover the subject matter to be protected according to the claims. The description and the drawings shall be considered for the interpretation of the claims.

If there are several versions of the claims, the search shall be based on the version last filed that the competent examining section considers to be admissible within the meaning of section 4 (5) of the Utility Model Act.

5. Scope of the search

The search shall 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. Within the framework of the procedure according to section 7 of the Utility Model Act, each application shall be searched only once. For this purpose, the examining section shall make 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 shall always include consideration of the state of the art mentioned by the applicant. In any search, it shall be checked to the extent possible whether previous search results are available in other countries.

For each 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 or the registered proprietor shall be taken into consideration by the examining section competent for the main class – if needed, the applicant or the registered proprietor shall 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 shall 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 shall 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 shall be thorough but not excessive. The search shall be terminated if, in the course of the search, the examiner sees 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 shall be the filing date rather than a priority date claimed. For split-off utility model applications under section 5 (1) of the Utility Model Act, the filing date of the patent application serving as the basis shall be relevant.

Subsequently published patent applications and utility models with an earlier priority (section 15 (1) no. 2 of the Utility Model Act) have also to be cited if they are available as state of the art 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. It might be necessary to take into consideration a grace period under section 3 (1) sentence 3 of the Utility Model Act.

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 shall be prepared. The report shall be included as an electronic document in the file.

If a search on the 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 shall be included in the search report indicating the respective claims and giving the reasons why the search was not carried out.

6. Search report

The search report shall 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 (e.g. databases)

All classification units and search tools used for the search shall 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 claims, if applicable, with explanations and references to relevant passages and drawings, shall be listed in a table, if necessary for comprehension. No reference to claims shall be made in case of state of the art which cannot be attributed to any of the 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*[2]*, Blatt für PMZ*[3] 1998, pp. 157 to 159). The numbers and kind codes of the publications shall be indicated too.

[2] *Notice of the President of the German Patent and Trade Mark Office no. 2/98*
[3] *Official gazette*

According to in-office order no. 15, non-patent literature such as 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 passages concerned. The categories (relevance indicators) of the determined state of the art shall 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 (only relevant with regard to prior use **in Germany**)
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 or utility model application under section 15 of the Utility Model Act
D	state of the art already cited in the patent application or the utility model (so-called "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

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. Completeness of the search result

The search report shall also contain a notice that completeness of the state of the art ascertained (section 7 (6) of the Utility Model Act) and correctness of the categories given cannot be guaranteed.

E. Subject matter in respect of which no search was carried out

If subject matter of claims under section 2 of the Utility Model Act is not protectable or in respect of which a search cannot be carried out for other reasons, a notice stating this and the reasons shall be included in the search report.

Further references, suggesting an examination-like assessment of the subject matter of the application or of the utility model, are not allowed.

The applicant or the registered proprietor, and the party who filed the request shall receive the state of the art determined together with the search report. Only non-patent literature of which printing and copying may be restricted shall be 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 (e.g. a wrong reference to a publication) is discovered on the utility model specification, a rectification shall be published in the Patent Gazette. The parties concerned shall be notified of this. If, on the basis of the search report, a wrong document has been dispatched, the correct one shall be forwarded.

7. Entry into force

These Guidelines shall enter into force with effect from 1 May 2015 and replace the previous version of 2 September 2009 (*Blatt für PMZ* 2009, p. 363 et seqq.)

The President of the German Patent and Trade Mark Office

Rudloff-Schäffer