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Intellectual property rights (applying for a patent, registering a trademark, a drawing or a design, getting a licence for reproduction)

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Modul	Sachverhalt
Leistungsschlüssel	99154051000000
Leistungsbezeichnung I	Intellectual property rights (applying for a patent, registering a trademark, a drawing or a design, getting a licence for reproduction)
Leistungsbezeichnung II	Intellectual property rights
Typisierung	11 - SDG: Allgemeine Rechte und Pflichten
Quellredaktion	Bund
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt
Leistungsgruppierung	SDG allgemeine Rechte und Pflichten (154)





Modul	Sachverhalt
Verrichtungskennung	
SDG-Informationsbereich	Rechte des geistigen Eigentums (Antrag auf Erteilung eines Patents, Anmeldung einer Marke, einer Zeichnung oder eines Gebrauchsmusters, Erwerb einer Lizenz für die Vervielfältigung)
Lagen Portalverbund	Wissens- und Technologietransfer (2100400), Patente und geistiges Eigentum (2100500)
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	13.12.2022
Fachlich freigegen durch	German Patent and Trade Mark Office
Handlungsgrundlage	 Law on the Convention on the Unification of Certain Points of Substantive Law on Patents for Invention of 27 November 1963, the Patent Cooperation Treaty of 19 June 1970 and the Convention on the Grant of European Patents of 5 October 1973 (International Patent Conventions Act) of 21 June 1976 (IntPatÜbkG) Gesetz über das Gemeinschaftspatent und zur Änderung patentrechtlicher Vorschriften (Gemeinschaftspatentgesetz) vom 26. Juli 1979 (GPatG) Patent Act, in the version as published on 16 December 1980 (PatG) Regulation on patent procedures before the German Patent and Trade Mark Office (Verordnung zum Verfahren in Patentsachen vor dem Deutschen Patent- und Markenamt) European Patent Convention Utility Models Act (GebrMG) Utility Models Regulation (GebrMV) Trade Mark Act (MarkenG) Trade Mark Regulation (MarkenV) Act on the Legal Protection of Designs (DesignG) Regulation implementing the Act on the Legal Protection of Designs (DesignV) https://www.gesetze-im-internet.de/markeng/ https://dpma.de/docs/formulare/patent/p2790a.pdf https://www.gesetze-im-internet.de/designv/ https://www.gesetze-im-internet.de/designv/ https://www.gesetze-im-internet.de/designv/ https://epo.org/law-practice/legal-texts/html/epc/2020/ d/ma1.html





Modul	Sachverhalt
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Teaser	This section provides information on your rights and obligations with regard to setting up, running and closing a business, with particular regard to registering patents, utility models, marks and designs.
Volltext	Registering a patent in Germany A patent is an industrial property right that confers on its holder the exclusive right to use their invention. It can be granted for inventions across all technical and technological fields, as long as they are new, based on an inventive step, and susceptible of industrial application. In order to obtain a patent for your invention in Germany, you must apply to the German Patent and Trade Mark Office (Deutsches Patent- und Markenamt, DPMA) for a patent. As part of your application documents, you must disclose your invention so clearly and completely that a specialist would be able to use it without needing any further information. It is not possible to subsequently provide further information on the subject of the application. You can apply for a patent from the DPMA in writing or electronically via the DPMAs special application software. A patent is not immediately granted after filing an application with the DPMA. It can only be
	filing an application with the DPMA. It can only be granted once your invention has passed the statutory examination procedure.





Sachverhalt

Applying for a patent in writing

If you would like to file the application in writing:

• The DPMA provides a form on its website that should be used when applying for a patent. Print out the application form, complete it and submit it to the DPMA together with the necessary documents. The application can also be submitted via a patent information centre if this body has been designated to accept patent applications by notice of the Federal Ministry of Justice in the Federal Law Gazette.

• Pay the application fees.

• Optional: if you have already included the examination of the application in your application, you can also transfer the examination fee for the examination of the application.

• Upon submission of the application documents and payment of the application fee, your application will be checked for compliance with the formal requirements and obvious bars to patenting. Your invention will also be placed within a classification scheme, known as the International Patent Classification (IPC), according to its merits.

• Submit the request for examination.

• Pay the examination fee.

• Optional: you can also submit the request for examination when submitting your patent application by ticking the relevant box. Otherwise, you can subsequently submit the request via an informal letter either in writing or electronically, i.e., in paper form, via fax or by using the DPMAdirektPro program.

• You have 7 years from the filing date to submit the request for examination. However, in order to maintain your application, you will have to pay renewal fees from the third patent year onwards; you must pay these fees unprompted without being reminded or requested to do so.

• If you wish, you may also apply for a search request for your application before you submit request for examination. A search request is subject to a separate fee. If you do so, your inventions protectability will be assessed and justified in a detailed search report, which will also include documents that may be relevant





Sachverhalt

for the assessment of the patentability of your invention.

• If you have submitted a request for examination, a patent examiner, among others, will examine the state of the art relevant to your invention and, where appropriate, grant a patent.

• If your invention does not meet the requirements or if your application contains other defects, you will be informed in an examination decision.

• You can then submit comments and correct the defects. It is important that all changes are in line with the description of your invention submitted on the filing date.

• Your patent application will remain secret for 18 months, after which it will be published in a disclosure notice (Offenlegungsschrift). The disclosure notice will be published regardless of whether you have submitted a request for examination.

• Where a patent has been granted, this will be published in the Patent Gazette (Patentblatt). It can also be searched in the DEPATISnet and DPMAregister databases.

• Once granted, a patent has effect for a maximum period of 20 years, starting from the day following the date on which the application is filed. In order to maintain protectability and the application, you will have to pay renewal fees for each patent/application from the third year onwards. You must pay these fees unprompted without being reminded or requested to do so.

• The validity of your patent can be challenged by third parties, either by means of opposition or by an action for annulment.

Applying for a patent electronically

You can use the free DPMAdirektPro software to file your application. To do so, download the software from the DPMA website and follow the instructions. You can also find information on signature requirements for electronic filing on the DPMA website. You will then need to pay the application fee (and, where applicable, the examination fee); you must do this unprompted without being specifically requested. You cannot apply for a patent via email.





Sachverhalt

The further procedure is identical to that described for a written application.

Deadlines for patent applications

There are numerous deadlines that you must observe in relation to a patent application.

• Payment of the application fee: within 3 months of receipt of the application by the DPMA. The application will be deemed to have been withdrawn if the application fee is not paid in full by this deadline.

• Submission of the technical description, patent claims and any drawings: the same time as the submission of the application.

• Submission of the summary and designation of the inventor: within 15 months of the filing date.

• Submission of the request for examination: within 7 years of the filing of the application. Renewal fees must be paid from the third patent year.

• Payment of the search fee: within 3 months of receipt of the search request.

• Payment of the examination fee: within 3 months of receipt of the request for examination. However, this deadline will end at the latest 7 years after the application is submitted.

• Challenge against the granting of a patent: within 9 months of the grant of the patent being published in the Patent Gazette.

• Payment of the renewal fee: from the beginning of the third year, and every subsequent year, counted from the filing date, unprompted and without being reminded or requested to do so. The patent will expire if you fail to pay the renewal fee on time or in full.

Typical fees in relation to a patent application

• fee for applications submitted electronically for up to 10 claims: EUR 40.00; for each additional claim: EUR 20.00

fee for applications submitted on paper for up to 10 claims: EUR 60.00; for each additional claim: EUR 30.00
prior search without an application being submitted: EUR 300.00



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Sachverhalt

examination fee after a search request has been submitted: EUR 150.00
examination fee if nosearch request has been submitted in advance: EUR 350.00
renewal fees from the 3rd patent year up to the 20th patent year: EUR 70.00 to EUR 2030.00

Acquiring a licence to use a patent

The non-binding declaration interest in licensing (unverbindliche Lizenzinteresseerklärung) relates to the information concerning possible licence holders and the willingness to license. The non-binding declaration of interest in licensing is entered into the register and published in the Patent Gazette. This declaration can be withdrawn at any time.

The binding declaration of willingness to license (verbindliche Lizenzbereitschaftserklärung) relates to the patent applicant or patent holder declaring to the DPMA that they allow anyone to use the invention in return for equitable remuneration. For this, the declaration must be submitted in its original paper form or electronically with a qualified electronic signature via DPMAdirektPro. The entry will be made in the register and will be published in the Patent Gazette. Withdrawal can be made in writing or via DPMAdirektPro, provided that no intention to use has been indicated to the patent holder.

For exclusive licences, the licence holder acquires an exclusive right against all persons in the form of a contract with the patent applicant/holder. Entry into the register follows payment of a fee. The exclusive licence is not published in the Patent Gazette.

Contact Zentraler Kundenservice (Central Customer Service) Tel. 089 2195-1000 Email: info@dpma.de

Patenting is a very extensive and complex area of law. In light of this, it may be beneficial to hire a patent lawyer or a solicitor for your patent application. If you live outside of Germany and have neither a registered office nor a branch in Germany, you will require a solicitor or a patent lawyer who is authorised and





Sachverhalt

empowered to represent you before the German Patent and Trade Mark Office.

European patents

The European Patent Office (EPO) implements an independent European procedure for granting patents. The European Patent Convention (EPC) forms the basis of this.

You can apply for a European patent for the 39 contracting states of the EPC. However, the patent does not apply uniformly throughout all contracting states of the European Patent Convention. Rather, the patent, once granted, has the same binding nature in each EPC contracting state in which it was granted and is subject to the same provisions as a national patent granted in that EPC contracting state. These provisions enter into force upon publication of the European patent in the respective contracting state of the EPC. You can decide in which EPC states your European patent should apply.

As per Article II, Section 4(1) of the International Patent Conventions Act (Gesetz über internationale Patentübereinkommen [IntPatÜbkG]), you can submit your European patent application to the EPA, the DPMA or the patent information centres in the following cities: Chemnitz, Dresden, Hamburg, Ilmenau, Kaiserslautern, Saarbrücken and Stuttgart. For applications in accordance with Article II, Section 4(2) IntPatÜbkG, you must note in an annex that the invention may contain an official secret.

You can also submit your applications electronically using the DE module (developed for German patent applications) of the EPOs online filing software, Online Filing 2.0, or the EPOs web-based filing system.

A European patent application confers provisional protection in accordance with Article 67(2) EPC in conjunction with Article II, Section 1(1) IntPatÜbkG. As per Article 67(3) EPC in conjunction with Article II, Section 1(2) IntPatÜbkG, the patent claim must be translated into German in order to obtain this





Sachverhalt

protection. As per Article II, Section 1(2) IntPatÜbkG, provisional protection only applies from the day on which the DPMA publishes a German translation of the patent claim submitted by the applicant or from the day on which the applicant shares such a translation with the user of the invention. As per Article II, Section 2(1) IntPatÜbkG, the DPMA will only publish the submitted translation if the applicant so requests. It is not necessary to appoint an authorised representative in Germany for this purpose. All correspondence addressed to the DPMA must include, at the very least, the following in the header of the first page: the filing reference (application number) and the EP application, preceded by the abbreviation EP. As per Article 65(1) EPC, a patent does not need to be translated once it has been granted.

A fee of EUR 60.00 is payable for publication of the translation of the patent claim within 3 months following submission of the request for publication. The request for publication of the translation will be deemed to have been withdrawn if the fee is not paid, not paid in full, or not paid within this deadline.

Once the Agreement on a Unified Patent Court (UPCA) enters into force, from mid-2023 you will also have the option of submitting a separate request for unitary effect of the European patent to the EPO after the European patent has been granted. Detailed information can be found on the European Patent Office website.

Renewal fees for maintaining a patent or a patent application

- renewal fees for the 3rd and 4th years: EUR 70.00
- renewal fees for the 5th year: EUR 100.00
- renewal fees for the 6th year: EUR 150.00
- renewal fees for the 7th year: EUR 210.00
- renewal fees for the 8th year: EUR 280.00
- renewal fees for the 9th year: EUR 350.00
- renewal fees for the 10th year: EUR 430.00

Renewal fees can be paid 1 year before the due date at the earliest, and must be paid no later than the end of





Sachverhalt

the second month after the due date. If the fee is not paid by this deadline, you can pay it no later than the end of the 6th month after the due date, subject to a late payment surcharge.

Applying for a trade mark

All marks, especially words, letters, numbers and images, but also colours and colour combinations, movements, holograms, multimedia characters, sounds and three-dimensional designs, including the shape of an item or its packaging and other format elements that serve to distinguish the goods and/or services of a particular company from those provided by other companies, can be protected as trade marks.

A trade mark cannot be registered if there are absolute grounds for refusal, including:

lack of distinctive character

• descriptive information that must remain available for general use

- clear risk of consumers being misled
- national emblem incorporated into the trade mark
- · infringement contrary to morality or public order

If you live outside of Germany and have neither a registered office nor a branch in Germany, you will require a solicitor or a patent lawyer who is authorised and empowered to represent you before the German Patent and Trade Mark Office.

Following submission of a trade mark application with the DPMA, the trade mark division will check whether all required information, including the applicant, trade mark and the list of goods and services, is present. However, the trade mark application will not be checked until the fees for the application have been paid in full. The DPMA also checks your trade mark application for absolute grounds for refusal. However, it does not check whether your trade mark infringes the intellectual property rights of third parties or whether it already exists in an identical or similar form. You should therefore research whether your desired trade mark infringes the rights of third parties before





Sachverhalt

submitting your trade mark application. Should you fail to do so, an objection may be raised with the DPMA against your trade mark, which may then be removed. In addition, you may be issued with a written warning regarding your trade mark, or legal proceedings may be brought before the civil courts. Trade mark protection does not apply until the trade mark has been entered into the register. However, under certain circumstances, trade mark protection may also arise through the use of a sign in the course of trade or through the attainment of a certain degree of recognition.

Trade mark registration procedure

You can apply to register a trade mark in writing or electronically. To apply for registration in writing:

• Download the form Antrag auf Eintragung einer Marke in das Register (Application to enter a trade mark into the register) from the DPMA website, print it out and complete it, and attach the required documents.

• Submit the application documents to the DPMA. You will then receive confirmation of receipt with the official filing reference.

• Pay the application fee, unprompted without being specifically requested to do so, within 3 months of submitting the application. The DPMA will then check whether your trade mark can be registered.

• You may be requested to submit a statement of your position or to supplement your application.

• If all of the requirements have been met, the trade mark will be registered and you will receive a registration certificate with the associated excerpt from the register.

• Trade mark protection applies from the day after the application is entered into the register.

• The registration will also be published in the official electronic trade mark journal (Markenblatt).

• Trade mark protection ends 10 years after the filing date. For a fee, you can renew the protection right for a further 10 years as many times as you like.

• If the check reveals that there are grounds for refusal, you will receive a written objection. If these concerns





Sachverhalt

cannot be addressed following a review of your opinion, the application, or part thereof, will be rejected by means of a decision. You can pay to have this decision reviewed via an appeal or complaint procedure.

Registering a trade mark electronically

If you wish to apply to register a trade mark electronically, you can submit your application via the DPMAdirektWeb service. This will then be valid without needing either a handwritten or electronic signature. You will be guided through the application in a few stages. You will be sent the official filing reference immediately. You must then pay the application fee unprompted, without being specifically requested to do so.

If you wish to apply a qualified electronic signature to your application, you can use the free DPMAdirektPro service to do so. To do this, you will need a signature card with the corresponding card reader, as well as the DPMAdirektPro application software to create and validate the application documents. You must then pay the application fee unprompted, without being specifically requested to do so. You will be sent the official filing reference immediately. The DPMA will then check whether your trade mark can be registered.

Deadlines for applying for a trade mark

payment of the application fee and any class fees: within 3 months of filing the application
payment of the fee for the fast-track examination: within 3 months of receipt of the application
objection to an entry: within 3 months of the day on which the entry is published in the electronic trade mark journal

• payment of the renewal fee: upon the commencement of the 11th year of protection

Fees for trade mark protection

• electronic application for up to 3 classes: EUR 290.00

• paper application for up to 3 classes: EUR 300.00





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Sachverhalt

- for each additional class (class fee): EUR 100.00
- request for fast-track examination: EUR 200.00
- application fee for a collective or certification trade mark: EUR 900.00
- renewal fee, including class fee for up to 3 classes: EUR 750.00

• renewal fee for collective and certification trade marks: EUR 1800.00

• class fee for renewal (per class from the 4th class onwards): EUR 260.00

• objection procedure, basic amount for one sign cited in opposition: EUR 250.00

• objection procedure, fee for each additional sign cited in opposition: EUR 50.00

Trade mark licence

Trade mark holders can:

• cede rights of use to one person, known as an exclusive licence, or assign multiple licences with the same content to various persons as a non-exclusive licence

• grant licences for the whole of Germany or only for a specific part of Germany

• grant a right to use the trade mark with or without a time limit

• grant the licence for all registered goods and/or services, or just for a part of the protected goods and/or services

Information on licences can be entered in the register on request.

Registering a design

With a registered design, the DPMA confers a temporary monopoly on the appearance, i.e. the external shape and colour of a product. The design representations (known as the reproduction) that you submit with your application are therefore particularly important, because only that which is apparent from the representations is protected.

Protection applies once the design has been entered





Sachverhalt

into the register maintained by the DPMA. It applies throughout Germany. As the owner of a registered design, you have the exclusive right to use the design. You may prohibit third parties from using your design in the manufacture, sale, placing on the market, import or export of goods. This also means that you, as the design owner, can take action against any design that does not produce an overall impression on an informed user that differs from the impression produced by your registered design.

When you apply to register a design, an examination is carried out, to check:

whether the application meets the formal requirements, in particular, if all the required information is included and if the design representations meet the formal requirements; and
whether the representations show a feasible design, i.e. whether the design features the specific shape and colour of a product. The design must also be compatible with public order and morality and must not constitute improper use of national emblems or other signs of public interest.

The DPMA does not check the protection requirements relating to the novelty or individual character of the design during registration proceedings.

If you live outside of Germany and have neither a registered office nor a branch in Germany, you will require a solicitor or a patent lawyer who is authorised and empowered to represent you before the German Patent and Trade Mark Office.

Registering a design in writing

If you would like to register your design in writing:

Please download the application form for registering a design, as well as the annex sheet for multiple applications (applications with multiple [maximum 100] - designs) from the DPMA website and fill both out.
Attach the design representations to the application form by using the representation form or attaching





Sachverhalt

them as (a) JPEG file(s) on an acceptable data carrier (CD or DVD). Up to 10 photos or other graphic representations of the design can be submitted as representations, i.e. for showing the design from different perspectives.

• Enclose all necessary documents and submit your request to the DPMA in person or by post, not by fax. Please be sure to observe the legal requirements and the specifications for the representation of your design. The application for registration must include information on the applicant, the design representations and the product indication.

• You will then receive confirmation of receipt.

• You must pay the application fees within 3 months of filing the application.

• Your application will not be examined in the course of processing at the design office of the DPMA until payment has been made. The DPMA will clarify whether all the information and documents required for the application have been received.

• The application will be assessed to see whether it meets the legal requirements, in particular whether the representation meets the formal requirements and whether it constitutes a feasible design.

• If the requirements are met, the design office will enter your application in the register. The registration is published on the DPMAregister publication platform and in the electronic design journal. Design protection applies upon entry into the register.

• To maintain protection, you must pay the maintenance fees on time by the end of each protection period (5 years); you must do this unprompted without being reminded or requested to do so. However, you may only protect your design for a maximum of 25 years. If you have applied for deferment of publication of the representation in your application, you must pay the extension fee within 30 months following the filing date or priority date to extend protection to the protection period of 5 years and then to be able to maintain it later on, if necessary.

Registering a design electronically

If you wish to apply for registration electronically:





Sachverhalt

• For multiple applications of up to 20 designs, you can submit your request via the DPMAdirektWeb online service; it is then valid without needing either a signature or an electronic signature. You will be guided through the application in a few stages.

• If you wish to register more than 20 designs in one single application, please use the free DPMAdirektPro service. To do this, you will need a signature card with the corresponding card reader, as well as the free DPMAdirektPro application software supplied by the DPMA to create and validate the application documents.

• You will then receive confirmation of receipt.

• Pay the application fee - unprompted and without being specifically requested to do so - within 3 months of filing the application.

• The DPMA will then examine, as described above, whether your design(s) can be registered.

Payment deadlines for design applications

• payment of the application fee: within 3 months of filing the application

payment of the maintenance fee: by the end of each protection period (5 years from the filing date)
payment of the extension fee if applying for registration with deferment of publication of the

representation: within 30 months from the filing date or priority date

Fees for design applications

• electronic application: EUR 6.00 per design, however no less than EUR 60.00

• paper application: EUR 7.00 per design, however no less than EUR 70.00

• application with deferment of publication of the representation: EUR 3.00 per design, however no less than EUR 30.00

• extension fees: EUR 4.00 per design submitted, however no less than EUR 40.00

maintenance fees for the 6th to 10th years of protection, per registered design: EUR 90.00
maintenance fees for the 11th to 15th years of protection, per registered design: EUR 120.00





Modul	Sachverhalt
	 maintenance fees for the 16th to 20th years of protection, per registered design: EUR 150.00 maintenance fees for the 21st to 25th years of protection, per registered design: EUR 180.00
	Obtaining a licence to reproduce a design
	The non-binding declaration of interest in licensing relates solely to the information held by possible licence holders regarding the applicants willingness to license. The non-binding declaration of interest in licensing is entered into the register and published. This declaration can be withdrawn at any time.
	For exclusive licences, rights of use are ceded to one person only, or multiple licences with the same content are granted to various persons as a non-exclusive licence. Licences can be granted for the whole of Germany or only for a specific part of Germany.
	Registering a utility model
	A utility model is an industrial property right that confers upon its holder the exclusive right to their invention following its entry in the utility model register.
	A utility model is a materially unexamined intellectual property right. The DPMA only carries out a formal examination of the application. The DPMA only checks material protectability when as part of possible cancellation proceedings.
	 Technical inventions that are new, based on an inventive step and susceptible of industrial application are eligible for protection. Novelty, inventive-step and industrial applicability are not checked during the registration procedure. There is no utility model protection, in particular for process inventions. Applicants with a primary residence, a registered office or a branch in Germany can apply for registration themselves. Those who do not have a primary residence, a registered office or a branch in Germany must be

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Sachverhalt

represented by a person authorised to practise law (or specifically patent law) in Germany.

• The registration application is subject to a fee and the processing time is approximately 1 to 3 months.

The term of protection for a utility model is a maximum of 10 years. A fee is payable for maintaining protection after the 3rd, 6th and 8th years.
The German Patent and Trade Mark Office is responsible for examining and registering utility models.

Obtaining a licence to use a utility model

The non-binding declaration interest in licensing (unverbindliche Lizenzinteresseerklärung) relates to the information concerning possible licence holders and the willingness to license. The non-binding declaration of interest in licensing is entered into the register and published in the Patent Gazette. The declaration can be withdrawn at any time.

The rights to the utility model may be the subject of exclusive or non-exclusive licences in full or in part. For exclusive licences, rights of use are ceded to a single licence holder. For non-exclusive licences multiple licences with the same content are granted to various persons. Licences can be granted for the whole of Germany or only for a specific part of Germany. https://epo.org/applying/european/unitary/unitary-pat ent de.html https://www.dpma.de/english/index.html https://epo.org/law-practice/legal-texts/epc.html https://dpma.de/ https://www.gesetze-im-internet.de/intpat_bkg/ https://www.gesetze-im-internet.de/intpat_bkg/ https://epo.org/law-practice/legal-texts/epc_de.html https://epo.org/applying/european/unitary/unitary-pat ent.html

Erforderliche Unterlagen

Voraussetzungen

Kosten

Verfahrensablauf





Modul	Sachverhalt
Bearbeitungsdauer	
Frist	
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