



German Patent
and Trade Mark Office

Patents

An information brochure on patent protection

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Patents protect your technical inventions

From everyday objects to sophisticated high-tech products; commercially successful ideas are often copied. Patents allow you to protect your inventions against copying.

As a reward the owners of the patents receive a temporary monopoly on use over a limited territory, which lasts up to a maximum of 20 years. At the same time patents fulfil an important informative function by disclosing the invention as an incentive for further innovation.

Innovation support and knowledge gain benefit both developers and consumers in equal measure.

This brochure will provide answers to questions regarding patents and important information about what you should bear in mind when applying for a patent.

We wish you every success for your invention.



What can be patented?

Patent protection can be granted for inventions in the field of technology. As regards inventions, it is distinguished between products and processes.

The product patent will protect all types of objects such as machines and their parts, arrangements of individual parts, electronic circuits, chemical substances and pharmaceuticals. No other person may, without the patent owner's consent, use the patented product, by making, offering for sale, putting on the market or importing it for the mentioned purposes, or possessing it.

In addition, there are also process patents. These protect, for example, processes for manufacturing products, work processes or also the utilisation of a product for a certain purpose. No other person may use the protected process in Germany.

However, patented products and processes may be used for personal use or research.

Invention and discovery

The terms invention and discovery are often confused. A discovery is something unknown that already existed and has only been found. X-rays can be mentioned as an example. They have always existed in certain radioactive materials, a fact that nobody had known before their discovery at the end of the 19th century.

In contrast, an invention is something that had not existed before, while there is often a connection to something that is already known. For example, this might be a process for generating artificial x-rays or the device suitable for this purpose. It is important to note that patents are granted only for inventions that have a technical application.

What cannot be patented?

The Patent Act (*Patentgesetz*) excludes from patent protection, for example, products and processes which do not constitute technical inventions.

Patents cannot be granted for:

- mere discoveries
- scientific theories and mathematical methods
- aesthetic creations
- schemes, rules and methods for performing mental acts, playing games or doing business
- computers programmes as such
- presentations of information as such
- inventions the commercial exploitation of which would be contrary to “ordre public” or morality, such as torture instruments, letter bombs, apparatus for illegal gambling or for the production of clearly harmful or dangerous food or drinks
- plant or animal varieties
- the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene
- processes for cloning human beings
- processes for modifying the germ line genetic identity of human beings
- uses of human embryos for industrial or commercial purposes
- processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man
- methods for treatment of the human or animal body by surgery or therapy and diagnostic methods



Patent law changes with the times

As science and technology are developing constantly, the area for which patent protection is available needs to be redefined again and again.

With regard to the economically important information technology, for example, case law has developed to also provide protection for what is referred to as computer-implemented inventions provided that they are based on technical considerations and solve a technical problem.

The classic definition of technology is extended also by biotechnology. Here too, product developers are interested in patent protection to safeguard their huge investment in product development. Isolated gene sequences for example are regarded as chemical substances and so they can be patented. Based on the same principle, microorganisms are eligible for patent protection.



Computer-implemented inventions

Software has meanwhile been integrated into many products. Today, software is a part of our everyday lives – from the cars we drive to our mobile phones. Software-related, computer-implemented inventions account for about ten percent of the patent applications annually filed with the German Patent and Trade Mark Office (DPMA). A computer-implemented invention is any invention the performance of which involves the use of a computer, computer network or other programmable apparatus, the invention having one or more features which are realised wholly or partly by means of a computer programme.

The Patent Act excludes computer programmes as such from patent protection. Without technical contribution they have an exclusively verbal function and are protected by copyright. Examples are text processing programmes or accounting programmes.

However, computer-implemented inventions can be patented if they have a technical character. The decision by the Federal Court of Justice (Bundesgerichtshof) on the software for an antiskid system clearly explains this approach. Brakes as such are not new, consequently they can no longer be patented. A computer programme as such is also excluded from patentability, but in combination the brakes and the programme result in the patentable antiskid system.

Patent protection for computer-implemented inventions such as the antiskid system will give the inventor a limited monopoly right to the exclusive use of the invention for a maximum term of 20 years.

Biotechnological patents

In the area of biotechnology the patent system does not only consider technology, law and business, but ethical and moral principles too play an important role. For instance, even research projects are subject to the Genetic Engineering Act (Gentechnikgesetz). Finally, the Embryo Protection Act (Embryonenschutzgesetz) and the Stem Cell Act (Stammzellgesetz) may restrict patentability of biotechnological inventions. With regard to the patenting of human embryonic stem cells and genetically modified plants, the legislative development has not yet been completed. In this context, the EU Directive on the Legal Protection of Biotechnological Inventions is of particular importance. Its provisions are implemented through national legislation and have to be interpreted consistently throughout the European Union.

“Genes occur in nature and must not be patented.” This slogan has been voiced against gene patents again and again. However, the knowledge alone about which genes occur in which organism is worthless. Before a gene can be commercially used to produce a pharmaceutical product, a suitable partial sequence of the gene has to be isolated from the organism. This is technically complex, takes a long time and costs a lot of money – this is why it should be possible to reward these efforts by patent protection. There are only about 200 pharmaceuticals worldwide which were developed from gene sequences.

Three requirements for your patent

A patent is granted for a technical invention which is new, involves a sufficient inventive step and is industrially applicable.

→ Novelty

An invention is new if it does not form part of the state of the art. The state of the art comprises all knowledge made available to the public by means of a written or oral description, anywhere in the world, before the date of filing. To determine prior art our patent examiners search and compare patent specifications, published patent applications, technical literature and published lectures from many countries. Prior art also includes earlier publications by the inventor or the applicant themselves, for example, conference papers, articles in scientific journals and presentations of the invention on trade fairs.

→ Inventive step

It is not sufficient that the invention is new, it must also involve an inventive step. That means it must not be obvious from prior art. This criterion ensures that IP rights will not be granted for any innovation, be it ever so trivial. IP rights protecting inventions which hardly differ from the known prior art would impede the use and development in that field. This would hinder progress.



→ Industrial applicability

The requirement of industrial applicability is basically met by all inventions that can be produced or used in any field of industry (compare Section 5 Patent Act).

Ideas that cannot be realised must not be patented, for example, a perpetual motion machine, which violates currently recognised laws of physics. Furthermore, medical treatment is not susceptible to industrial application due to socio-ethical reasons. It is intended that a doctor may freely choose the method of treatment of the patient by surgery or therapy without being inhibited by patents. However, this exclusion is only applicable to medical treatment as such, but not to the products used. Objects like medical devices, surgical instruments, dressing material, pregnancy tests or pharmaceuticals can be patented.

What forms part of the “state of the art”?

To assess whether an invention is new and involves an inventive step we compare it with all the prior art in the world. For this purpose we conduct a thorough and comprehensive search of the subject matter of the patent application and evaluate the documents found.

For the assessment of inventive step the examiner only considers knowledge published earlier that means information that was known before the date relevant for the patent application. This includes all knowledge made available to the public by means of written or oral description, by use or in any other way.

Patents create competitive advantages



Primarily, a patent protects products or processes from being copied. Due to the legal protection, the patent owner can be certain that he or she can exclusively offer their products on the German market without having to face competitors. For a limited time – up to 20 years from the date of filing – competitors are excluded from using the invention.

By this means, the patent owner may hamper or completely spoil competitors' chances of entering a certain market segment. He or she may grant licences and allow licensees to exploit the invention in return for adequate consideration. Furthermore, the patent may be sold or bequeathed.

The patent grants the owner an exclusive right to exploitation, but this is no guarantee of profits. Whether or not an invention will lead to economic success is finally decided by the market alone. Patents have further advantages, apart from their protective effect and the possible financial success; they reflect the research performance and innovative capacity of an enterprise. Furthermore, due to their reward function, industrial property rights increase the motivation of the staff in a company. If the employer applies for a patent for an invention made by an employee, the inventor is not only recognised for the invention, but also entitled to remuneration for his or her achievements (see page 11).

It is not only the patent owner who benefits from patents but also society since patents contribute to recovering development costs, which are often quite high. The profits gained by marketing new products enable new investment in research and development, that means further new products and manufacturing processes.

New patents also increase transparency since the new state of development is made public. The protection provided to innovative entrepreneurs does not only strengthen the competitiveness of individual companies but also Germany's attractiveness as a location for industry. And last not least, the consumer also benefits from innovative products.

German Employee Inventions Act (Gesetz über Arbeitnehmererfindungen)

According to estimates, about 80 to 90 percent of all inventions are service inventions, that means inventions made by employees within the scope of their employment. Service inventions either result from the employee's assigned tasks or are based on experience gained in the enterprise. Under the inventor principle, the inventor has the right to the patent. Under labour legislation, the employer has a claim to the work result and thus to the invention. By virtue of the inventor principle, the employee-inventor originally acquires all rights in the invention. However, the employee has the duty to report a service invention to the employer. The employer can claim the service invention and thereby pass to himself all proprietary rights in the service invention. In this case, the employee-inventor has a claim to reasonable compensation for the loss of rights, in addition to his or her salary. The employer has the duty to apply for the grant of an IP right (regularly a patent) for the reported service invention in Germany and is entitled to apply for IP rights on the service invention abroad.

Despite detailed provisions governing employee inventions, disputes can arise between the parties to an employment contract when it comes to the practical application of the Employee Inventions Act and the guidelines established on its basis. This applies in particular to the adequate assessment of the employee's share in the service invention, specifically the economic value of the invention, which depends on a range of estimates of future circumstances. In the interest of maintaining peace in a company, not all such disputes should need to be taken to court, all the more since employees, in view of their personal and economic dependency, should not be compelled to take action against their employers. An arbitration board has been established at the German Patent and Trade Mark Office to offer parties the option to reach an amicable settlement within the scope of arbitration proceedings before going to court. Disputes brought before the arbitration board mostly concern the equitability of remuneration. The arbitration board submits a settlement proposal to the parties which they can accept (in this case it will become binding as a contractual agreement) or to which they can object (in this case the legal relationship of the parties will remain in abeyance).

The arbitration board is very successful: 50 to 70 percent of its settlement proposals are accepted by the parties.

Alternatives to the patent?

Publication – everybody should know it!

It is also conceivable that the invention is published without filing a prior patent application. This prevents any person from obtaining a patent for the invention, because after its publication an invention is no longer deemed to be “new”. Then everybody may use or exploit the invention. However, in that case, the inventor will hardly gain adequate benefits for his or her achievement.

The utility model – low-cost and fast protection

The utility model – the so-called small or “petty” patent – is a true alternative to the patent. Technical inventions that are new, inventive and susceptible to industrial application may be protected by a patent or by a utility model. Processes are exceptions. These may be protected by a patent but not registered as a utility model.

Other differences between the two types of industrial property rights are the term of protection and the procedure before the DPMA.

Utility model protection initially lasts for three years. It can be extended to a maximum of ten years. In contrast, the term of protection of a patent can be extended each year by payment of an annual fee, from the third year until a maximum period of 20 years. So the patent provides a longer term of protection.

The DPMA will only grant a patent after an examination has shown that the invention is patentable. The utility model will be registered without examination of the requirements for protection. Consequently, the utility model is much cheaper and faster to obtain than the patent.

The utility model can be published as early as three months after filing and the official fees are considerably lower than the fees for a patent application. However, since no substantive examination of a utility model takes place, the protection conferred by a utility model is often weaker than that provided by an examined patent. A comprehensive examination of all requirements for protection will only take place when another person files a request to cancel the utility model registration. Frequently, only cancellation proceedings can show whether a utility model will last.

Further information on the utility model is available on our website and in our utility model brochure.

[www.dpma.de/english/
utility_models](http://www.dpma.de/english/utility_models)

Industrial property protection – your IP rights at the DPMA

	Patents	Utility models	Trade marks	Designs	Topographies
protect	technical inventions	technical inventions (except processes)	trade marks for goods and services	designs on flat surfaces or of three-dimensional objects	three-dimensional structures of micro-electronic semiconductor products
requirements for protection	<ul style="list-style-type: none"> • new • inventive step going beyond the state of the art • industrially applicable • reproducible 	<ul style="list-style-type: none"> • new • not resulting from the state of the art – inventive step • industrially applicable • reproducible 	<ul style="list-style-type: none"> • clear and precise subject matter of protection can be determined • not merely a description of goods or services • distinctive character 	<ul style="list-style-type: none"> • new • two- or three-dimensional appearance of a product • individual character 	<ul style="list-style-type: none"> • originality (not produced by simple reproduction of another topography)
beginning of protection	retrospective protection as of publication of grant in the patent gazette (Patentblatt)	upon registration in the respective register	upon registration in the respective register, retrospectively from the filing date, due to originally being protectable as a trade mark or having become established in the relevant trade circles	upon registration in the respective register	depends on whether the topography has been previously exploited commercially*
maximum term	20 years	10 years	unlimited extensions (every 10 years)	25 years	10 years

* Sec. 5 Semiconductor Protection Act (*Halbleiterschutzgesetz*)

The search – information is valuable

German Patent and Trade Mark
Office

www.dpma.de/english/search

European Patent Office

[https://worldwide.espacenet.com/
?locale=en_EP](https://worldwide.espacenet.com/?locale=en_EP)

Patent Information Centres

www.piznet.de

If you want to apply for a patent you should know about already existing patents at an early date because otherwise you might find out only after having developed an invention and filed a patent application that another person had already applied for a patent for the same invention. A search for existing patents can also avoid unintentional patent infringement. The Internet offers you search options.

Online

We offer you the following services on the Internet:

DPMAregister

Official publications and register database for patents, utility models, trade marks and registered designs

- Published patent applications
- Patent specifications
- Utility model documents
- Official journals: patent gazette (*Patentblatt*), trade mark journal (*Markenblatt*), design gazette (*Designblatt*)
- Search options
- **DPMAkurier** (subscription to patent gazette, trade mark journal, design gazette, monitoring of legal status information whose publication is obligatory)

DEPATISnet

Patent publications from around the world.

In person

We will be pleased to help you at our offices in Munich, Jena and Berlin. More detailed information on our search rooms, enquiry units and our service hotline search support is available in the service section of this brochure as of page 33.



Why are patent applications and patents published?

The applicant makes his or her knowledge available to the public by the publication of the patent application after 18 months and the publication of the patent specification after the patent grant.

In return for the publication of his or her knowledge, the invention will be protected by a patent. The information on the patent application, previously kept secret, becomes accessible to everybody in the databases of the DPMA on the publication date.

The publication has many advantages:

- Patents may be the key to the solution of a problem. That means that we do not have to reinvent the wheel, but use the knowledge of others with their consent.
- Patent information can be used as the basis of technology analyses and hence allows to assess developments in various sectors.
- Patent searches keep companies informed about other companies, i.e. their competitors and, on the other hand, help them to find potential cooperation partners.
- Only those who know that an invention is protected by a patent can avoid patent infringement. A search conducted before using a technical innovation can give you certainty.
- A search allows you to assess your own innovative achievement.
- A search will help any interested person to quickly find out the legal status of an application.
- The databases of the patent offices are valuable search databases for market research and business-oriented and/or research institutions.
- In most cases the publication of a patent in our databases is the earliest and often also the only publication of a technical development.
- Last not least, our databases are a free and unique information source, actually a “database of ideas”.

How to apply for a patent

Where do I file an application?

To apply for a patent you can submit the documents describing your invention and the request for the grant of a patent to any branch of the DPMA. You will find the addresses in the service part of this brochure. Many patent information centres will also accept your application. On the Internet you can find a patent information centre near you.

www.piznet.de

How to apply?

The application must be in writing and in the German language; if the application is in English or French, a German translation must be filed within twelve months; if the application is in another language, a German translation must be filed within three months.

www.dpma.de/english/patents/application

You can either hand in your application documents directly at the DPMA or you can send them by post or fax. It is also fast and easy to apply for a patent online.

Is the date important?

Upon receipt of the application, your invention is deposited at the DPMA and a filing date is accorded. This filing date is very important. It determines the state of the art which forms the basis for the examination of the filed invention. Furthermore, it prevents competitors from being granted a patent for the same invention based on a later application.

What else do I have to consider?

When the application is filed, it does not matter whether or not you have drafted a final version of your documents on the invention.

However, it is important that all essential features of the invention are described in detail, because they cannot be added subsequently. Caution is advised with “provisional” applications.

Generally, it is recommendable seeking the help of a patent attorney.

However, you only need to be represented by a lawyer if you do not have a residence in Germany. If you wish to apply for a patent for your invention without appointing a lawyer, it is essential that you should gather comprehensive information about patent applications.

We recommend reading the “Information for Patent Applicants”, which can be ordered together with the necessary application forms from our enquiry units or downloaded from our website. We will also be pleased to personally answer any question you have.

www.dpma.de/english/services/forms/patents

Elements of the application

→ Request for the grant of a patent

→ Description of the invention

The description must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. The description forms the basis for the patent claims.

→ Naming of the inventor

→ Patent claims

The patent claims determine the scope of protection of the patent, that means they specify exactly the matter for which protection is sought.

→ Drawings, if any

→ Abstract



File first – publish later

Another important aspect when filing a patent application is that you do not publish the invention in any way before filing the application. A patent can only be granted for an innovation that has not yet been communicated to the public, neither in writing nor orally. The right way is to first file and then publish.

Should it be necessary to present your invention to business partners or investors, it is advisable to conclude a confidentiality agreement, since even publications by third parties relating to your invention prevent the awarding of a patent.

Initial processing of your application

The receipt of the application secures the filing date. We do not automatically examine your application for novelty and inventiveness. These criteria are only examined upon a request for examination that can be filed by the applicant, but also by any other person, until the expiry of seven years from the date of filing. If no request is filed, the application will be considered to be withdrawn.

The following, among other things, can be detrimental to novelty

- Your own pre-publications
- Lectures
- Publications
- Posters
- Theses, dissertations and other academic papers (if published)
- Final reports (if published)
- Research applications (if published)
- Guided tours
- Press releases
- Presentations at fairs
- User instructions
- Prior use known to the public

We make it easier for you to take a decision

If you have filed a patent application, you can request us to conduct a search relating to the invention even before the examination stage. Such an early search may be useful if you wish to assess the prospects of patentability in advance which will give you an idea of the later examination result. Both search and examination of your invention and the maintenance of the patent are subject to fees. Fee details are listed in our Information Concerning Costs, Fees and Expenses:

https://www.dpma.de/docs/english/formulare/allg_eng/a9510_1.pdf

You should take these additional costs into account when taking a decision on your application.

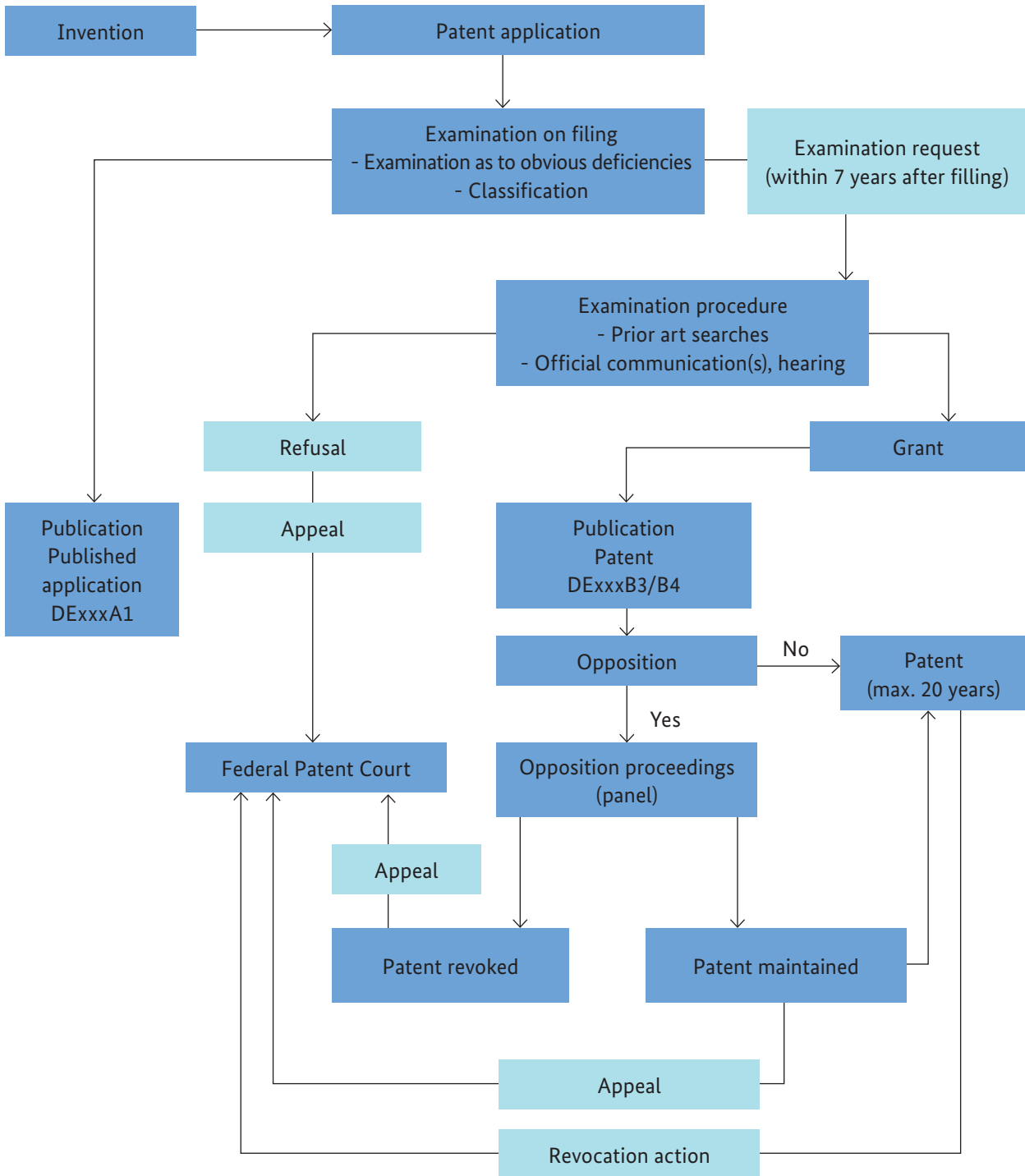
Your key objective in filing an application is to obtain a patent that provides the exclusive right to the invention. If you file a request for examination together with the application, usually you will receive information on whether your invention is suitable for patenting within the first year after filing.

You can also apply for protection of your invention in other countries within one year from the filing date. This may be interesting if your invention is found to be patentable and market prospects outside Germany for relevant products seem to be favourable. The costs of international patent procedures are high. The procedure at the DPMA constitutes a low-cost first examination which is a particularly suitable option for individual inventors, universities and small and medium enterprises. If you first file with the DPMA you can decide, on the basis of the examination result, if you wish to incur the high costs associated with international patent procedures.

Request for accelerated processing

In urgent cases, for example, if you are engaged in licence or sales negotiations, you can request accelerated processing of your application. In that case, your application will be given preferential treatment with the aim to reach a decision quickly. The request is not subject to formal requirements. It must be filed in writing and should explain the necessity of accelerated processing.

How to obtain a patent



We have the expertise

Your application will be classified according to the International Patent Classification (IPC), depending on the substantive content. The classification determines which patent examiner will process your file. Each examiner is in charge of a certain field of technology. His or her expertise guarantees high quality of patent examination. After a thorough analysis of your application papers, the examiner will conduct a search for the state of the art. He or she assesses whether your invention meets all requirements set out in the Patent Act. If deficiencies are found, the examiner will inform you in an official communication to enable you to rectify your application in writing or during a hearing. When wording is modified, it is important not to add anything that was not described in the initial documents.

The examination procedure is concluded either by the grant of the patent or the refusal of the application in case the requirements are not met. Appeals against decisions can be lodged with us. They will be considered by the Federal Patent Court.

Notice relating to opposition period

Names of patent owner, representative and inventor

Title and short description of the invention, which may be supplemented by a drawing

Formal data on the patent, such as file number and filing date

Earlier patent documents considered for assessing the state of the art

(19) Deutsches Patent- und Markenamt

(10) DE 10 2017 006 169 B4 2019.01.24

(12) Patentschrift

(21) Aktenzeichen: 10 2017 006 169.6
 (22) Anmeldetag: 29.06.2017
 (43) Offenlegungstag: 03.01.2019
 (45) Veröffentlichungstag der Patenterteilung: 24.01.2019

(51) Int. Cl.: H04L 9/06 (2006.01)
 G06F 21/62 (2013.01)
 G06F 21/55 (2013.01)
 G06F 21/72 (2013.01)

Innerhalb von neun Monaten nach Veröffentlichung der Patenterteilung kann nach § 59 Patentgesetz gegen das Patent Einspruch erhoben werden. Der Einspruch ist schriftlich zu erklären und zu begründen. Innerhalb der Einspruchsfrist ist eine Einspruchsgebühr in Höhe von 200 Euro zu entrichten (§ 6 Patentkostengesetz in Verbindung mit der Anlage zu § 2 Abs. 1 Patentkostengesetz).

(73) Patentinhaber: Giesecke+Devrient Mobile Security GmbH, 81677 München, DE
 (72) Erfinder: Krüsselberg, Sabine, 80469 München, DE

(56) Ermittelter Stand der Technik:
 DE 101 62 594 A1
 DE 10 2012 015 158 A1
 WO 2004/ 032 411 A1
 CA 2 327 037 A1

(54) Bezeichnung: Mikroprozessor-Einrichtung mit Schlüssel-Prüfungs-Routine

(57) Zusammenfassung: Die Erfindung schafft eine Mikroprozessor-Einrichtung, bei der, falls willentlich ein Schlüssel mit bestimmten Eigenschaften gesetzt wird, eine Schlüsselprüfungsroutine übersprungen werden kann, und ein Verfahren zum Betreiben einer solchen Mikroprozessor-Einrichtung.

```

    graph TD
      A[Schlüssel festlegen] --> B{Prüfung: Nullschlüssel?}
      B -- JA --> C[Nullschlüssel-Flag setzen]
      B -- NEIN --> D[Führe AES aus]
      C --> D
      D --> E[Start FEHLER-ROUT]
      E --> F{Nullschlüssel-Flag gesetzt?}
      F -- JA --> G{Nullschlüssel?}
      F -- NEIN --> H{DFA-Prüf. Angriff?}
      G -- JA --> I[Fehler-Maßnahme]
      G -- NEIN --> H
      H -- JA --> I
      H -- NEIN --> J[Ausgabe AES-Ergebnis]
      I --> J
  
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How much does a patent cost?

The costs of a patent can be divided into two categories:

- Official fees for application, examination and maintenance of a patent
- Costs that arise in the patent application process for commercial searches, possibly counselling by a lawyer and translation

www.dpma.de/english/services/fees

Application fee	
electronic filing including up to ten claims	40 euros
<i>extra fee for each further claim</i>	20 euros
paper-based filing including up to ten claims	60 euros
<i>extra fee for each further claim</i>	30 euros
prior search without examination	300 euros
Examination procedure	
after prior search	150 euros
without prior search	350 euros

If the invention is no longer profitable, you can abandon the patent by not paying the annual fee for maintaining the patent in force. This allows you to save money that can be invested in new inventions that promise success. The invention will then be freely available for general use.

As the annual fees gradually rise over the years a patent is usually only maintained in case of financial success.

Maintenance of a patent or an application	
for the 3rd patent year	70 euros
for the 4th patent year	70 euros
for the 5th patent year	100 euros
for the 6th patent year	150 euros
for the 7th patent year	210 euros
for the 8th patent year	280 euros
for the 9th patent year	350 euros
for the 10th patent year	430 euros
for the 11th patent year	540 euros
for the 12th patent year	680 euros
for the 13th patent year	830 euros
for the 14th patent year	980 euros
for the 15th patent year	1,130 euros
for the 16th patent year	1,310 euros
for the 17th patent year	1,490 euros
for the 18th patent year	1,670 euros
for the 19th patent year	1,840 euros
for the 20th patent year	2,030 euros



After patenting

Opposition and revocation

Anybody who thinks that a patent was wrongly granted can file an opposition within nine months from the publication of the patent. The opposition must be filed in writing and state all reasons that, in the objector's view, oppose the grant of the patent and that were not considered in the examination procedure. For example, he might cite a publication relating to the invention which had been published prior to the filing date of the application and was not considered in the examination procedure.

A panel of at least three members of the DPMA will then re-examine the patent, taking into account the submitted facts and arguments. Depending on the situation, a patent will be maintained, revoked in part or fully revoked.

If a third party has any doubts about the validity of a patent after expiry of the nine-month period from the publication, they can challenge the patent by bringing a revocation action before the Federal Patent Court.

Enforcing patent rights

A patent confers certain rights to its owner. The owner can, among other things, request anybody to refrain from using the patented invention for commercial purposes. Nobody may, for example, produce, offer, put into circulation, possess, import or export the invention, except for research and private purposes.

If the patent owner finds that his or her rights are being infringed, he or she can have recourse to the courts (infringement action before a civil court). The court can order coercive measures and thus help the complainant to enforce his or her rights. In addition the patent owner can demand prosecution.

Upon request, customs will seize counterfeited goods at the borders. Further information on this topic is available from the Central IP Unit (*Zentralstelle Gewerblicher Rechtsschutz*) of the customs services.

How long does a patent last?

The maximum term of a patent is 20 years. This is subject to regular payment of the annual fees which are due from the third year after filing. Otherwise the patent will lapse automatically.

Protection of medicinal products and plant protection products that require a marketing authorisation can be extended for up to further five years, at the expiry of the 20-year period, by means of a “supplementary protection certificate”. An additional extension period of up to six months is available for medicinal products for children.

Make the most of the patent

→ Patent protection abroad?

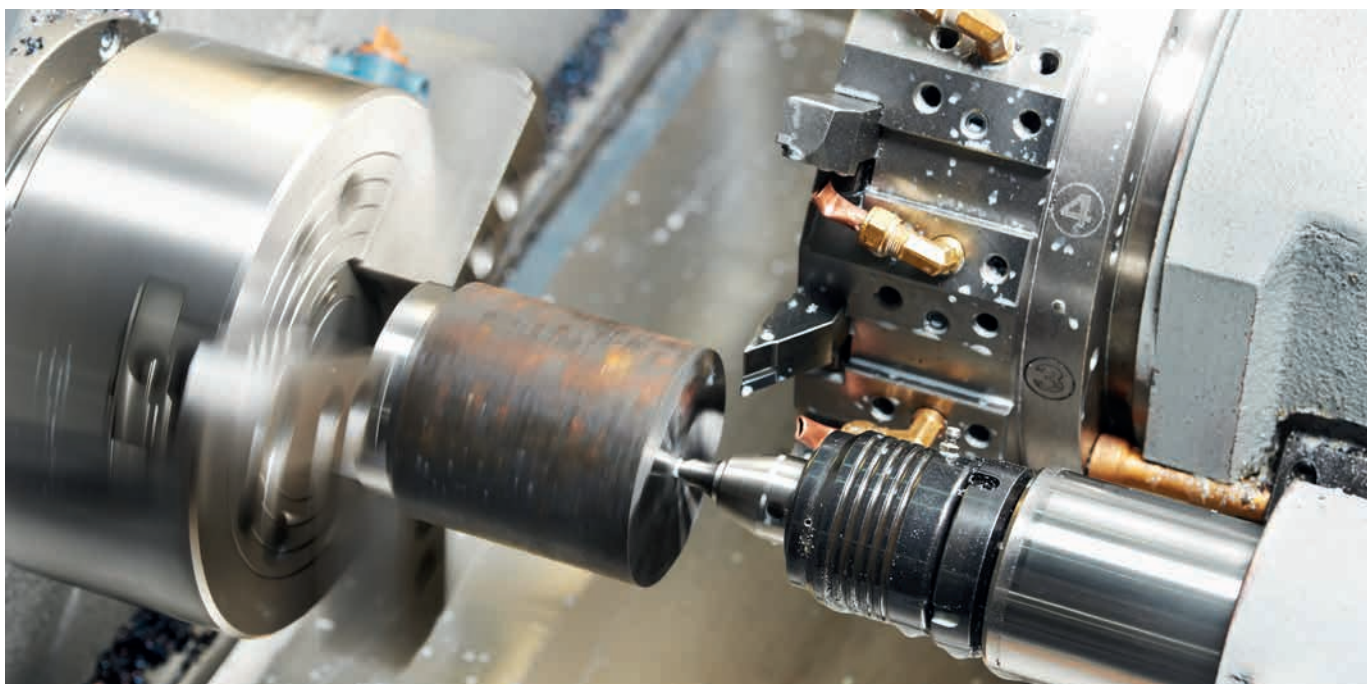
It is possible to file an international application within the priority year

→ Exploit it yourself

manufacture, market, import, export, apply or use the protected process or product

→ Grant licences

→ Sell the patent



For global players: European and international patent applications

In addition to a national patent application, you can file a European or an international application if you wish to obtain patent protection in other countries. It depends on the type of invention and the markets in which your company is active whether such filings are useful.

The European patent application

European patent applications are filed centrally with the European Patent Office (EPO) and examined by that office. They can be granted for the contracting states of the European Patent Organisation. The procedure is set out in the European Patent Convention (EPC). The decision on a patent grant is also taken by the European Patent Office. The grant of the patent creates a bundle of individual national patents. A European patent has, in each designated state for which it has been granted, the same effect as a national patent conferred in that state and is subject to the same provisions. The national offices are in charge of patent administration until the expiry of the term of protection.

The international patent application

Under the Patent Cooperation Treaty (PCT) you can obtain the effects of national applications in all PCT contracting states by filing a single international application. The PCT procedure simplifies the application procedure considerably, since you will be able to obtain a large number of national patents by means of a single application.

Priority

Within a period of twelve months from the filing date of a patent or utility model application filed at the DPMA, applicants have a right of priority for European, international or foreign patent applications relating to the same invention. The date of the earlier application can be claimed as priority date for a later application relating to the same invention. In that case, examination of the later application will be based on the priority date, i.e. the original filing date at the DPMA. The examination procedure of the initial application at the DPMA is not influenced by any subsequent applications in other countries.

You can file your international application directly at the DPMA. The DPMA checks certain formal requirements and transmits your application to the World Intellectual Property Organization (WIPO) in Geneva, where the application will be processed centrally at first. In addition to the examination of formal requirements, this phase includes the establishment of the international search report by the competent International Searching Authority and the publication of the application. Within 31 months from the priority date, you must enter the national phase separately before all designated offices of the countries in which you seek patent protection. The national patent offices are competent for the patent grant. Consequently, to obtain patent protection, the application must comply with the national requirements of the respective countries.

Further information on international and European applications is available from WIPO and the EPO.

You will also find detailed information on application procedures within the individual member states of the European Union and application procedures at WIPO and the EPO on the Internet.

www.wipo.int

www.epo.org

www.innovaccess.eu

TRIPS

The TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) requires member states of the World Trade Organization (WTO) to comply with certain minimum standards for the protection of intellectual property. It globally harmonises patent protection and requires contracting states a.o. to introduce certain rules in order to reduce distortions and impediments to international trade.

Glossary

Annual fees	The patent and thus the protection of an invention is kept in force by paying annual fees.
Applicant	See Patent applicant
Claim	See Patent claims
Deutsches Patent- und Markenamt (DPMA)	See German Patent and Trade Mark Office
European Patent Convention (EPC)	The Convention on the Grant of European Patents, an international agreement, is the basis for the grant of European patents.
European Patent Office (EPO)	The European Patent Office (EPO) grants patents, based on a centralised procedure, that are valid within all or individually designated EPC contracting states. By filing a single European patent application it is possible to obtain patent protection in several or all EPC contracting states. The patent application is centrally examined at the EPO. After grant, a European patent is treated as a national patent in each country of validation.
European Patent Organisation	The European Patent Organisation is an intergovernmental organisation, based on the EPC, whose members are the EPC contracting states.
Examination request	A patent can only be granted if the invention is found to be patentable. The relevant examination is carried out upon request only. The request for examination can be filed by the applicant or a third party within a period of seven years from the filing date.
Federal Patent Court (Bundespatentgericht)	The Federal Patent Court deals, among other things, with appeals from decisions of the examining sections and divisions of the German Patent and Trade Mark Office and decides on actions for the revocation of a patent. The court has its seat in Munich.
Filing date	The date when an application was filed with the patent office (day of filing) determines the filing date.

The DPMA is the central authority in the field of industrial property protection in Germany. The DPMA grants patents and registers the other IP rights. It is in charge of the administration of IP rights and provides information to the public on IP rights and IP applications.

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

Industrial property rights comprise patents, utility models, trade marks and registered designs. They provide protection to inventors or enterprises against copying by competitors for a limited period of time. Trade marks can even be renewed indefinitely.

Industrial property rights

Utility models and patents are classified by categories according to technological fields. The IPC is a hierarchical system in which the whole area of technology is divided into sections, classes, subclasses, groups and subgroups (for example: Section G – Physics, class G 10 – musical instruments, subclass G 10 C – pianos).

International Patent Classification (IPC)

An invention comprises a problem and a solution: a new and not obvious technical teaching allowing to solve a problem by technical means. In addition, it must be possible to perform and repeat the invention.

Invention

An invention is deemed to involve an inventive step if it is not obvious to a skilled person in the light of the state of the art. To qualify for patent protection, an invention must clearly differ from prior art (“level of inventiveness”).

Inventive step

A licence is an agreement on the use of a patent.

Licence

Novelty is one of the requirements for the grant of a patent. An invention is deemed to be new if it is not comprised in the state of the art. This means that the invention must not have been made available to the public, by word of mouth or written publication, before the date on which the patent application is filed.

Novelty

The grant of a patent can be challenged by means of an opposition. Anybody can file an opposition within nine months from the publication of the patent grant.

Opposition

A patent confers to its owner the exclusive right to make commercial use of his technical invention for a limited period of time (industrial property right).

Patent

Patent applicant	The applicant is a natural person or legal entity that has filed a patent application.
Patent claims	Patent claims are a text portion of the application. The applicant defines in the claims what he or she wishes to seek patent protection for. The patent claims determine the scope of protection of a patent. The description and the drawings, which are also part of the application, can be used for interpreting the patent claims.
Patent Cooperation Treaty (PCT)	The Patent Cooperation Treaty provides for a centralised application and search procedure. The national offices are competent for examination and grant. By filing a single international patent application, applicants can request patent protection in any number of PCT contracting states at once.
Patent exploitation	The patent owner can exploit his patent, among other things, by utilising it himself, by granting licences or by selling the patent.
Patent gazette (<i>Patentblatt</i>)	Each entry in the patent register and utility model register will be published in the patent gazette. Individual issues are available at www.dpma.de/english/search/index.html .
Patent infringement	Unauthorised use of a patented invention constitutes a patent infringement. The patent owner can bring an action for injunctive relief and damages.
Patent owner	After the patent has been granted, the applicant is the owner of the patent and entitled to claim the rights derived from the invention.
Patent register	The DPMA records the details of patent applications and granted patents (such as applicant details, file number, title and status of the application) in the register. The details relating to patent applications are recorded in the register when the file has become available for public inspection, as a rule 18 months after filing. The register is available at www.dpma.de/english/search/index.html .
Perpetuum mobile (perpetual motion machine)	A perpetuum mobile is a machine that delivers more energy than was put into it, for example, a device that remains in motion forever while producing output work. Under the laws of physics, this is impossible, and a perpetual motion machine is incapable of being performed and will not be patented.

Illegal use, dissemination or copying of intellectual property is commonly referred to as piracy.

Piracy

If an applicant has already filed a patent application at a patent office (for example, at the DPMA), he or she can claim the priority of the first application for filing a later application relating to the same invention at the same or another patent office (such as the EPO).

Priority

The filing or priority date of a patent application determines, above all, which prior art has to be taken into account when examining whether an invention, filed for patenting, is novel and inventive. Any information published after that date is not relevant for considering prior art. However, examination of novelty must consider earlier patent applications with effect in Germany, irrespective of the date of publication. The date relevant for the priority of a patent application corresponds, on principle, to the date of filing of the application. If the priority of an earlier application is validly claimed that date will be the date relevant for the priority of the later application.

The filing date of the first patent application can be claimed for a later application relating to the same invention (see priority). In that case, the filing date of the first application is the priority date.

Priority date

A patent application is published 18 months after the application or priority date. From that date, at the latest, the file is available for public inspection. The publication of applications informs the public on possible future patent rights. From that date, under certain circumstances, applicants can claim reasonable compensation from a person copying their invention.

Publication of the application

An application must be refused if it does not comply with the formal requirements and/or if the invention is not patentable (for example, due to lack of inventive step).

Refusal

A patent can be declared invalid by a ruling of the Federal Patent Court.

Revocation

The scope of protection of a patent refers to the extent of the technical teaching for which the patent owner enjoys the exclusive right of use. The scope of protection is determined by the patent claim(s).

Scope of protection

Patent examiners perform a search to determine the relevant state of the art of an invention and make a provisional assessment of the general conditions for the grant of a patent.

Search

State of the art (prior art)

The state of the art comprises all knowledge made available to the public by means of written or oral description, by use or in any other way before the date of filing. This includes all published patent applications.

TRIPS Agreement

Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (WTO) (see information box, page 27).

Utility model

A utility model is an IP right for the protection of technical inventions. In contrast to a patent, the invention is not examined for novelty, inventiveness and industrial applicability, within the scope of the registration procedure. For this reason a utility model can be obtained fast and at low cost. An examination will only be carried out if a third party files a request for the cancellation of the utility model. The maximum term of protection of a utility model is ten years.

World Intellectual Property Organization (WIPO)

The World Intellectual Property Organization was founded in 1967 with the aim to promote the protection of intangible property throughout the world. It is a specialised agency of the United Nations (UN) in Geneva and responsible for managing international patent applications under the Patent Cooperation Treaty (PCT).

Service

We will be pleased to answer your questions and provide detailed information on search options and the steps of an IP application. Visit us in Munich, Jena or Berlin. You can also contact us by phone, fax or e-mail.

More information and all necessary application forms are available on the Internet.

www.dpma.de/english/services

Central Customer Care and Services

Our staff of the Central Customer Care and Services will be pleased to inform you about industrial property rights, filing routes and procedures. In addition we arrange for free initial consultations for inventors provided by patent attorneys.

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Search rooms in Munich and Berlin

You can use our extensive technical library in the search rooms in Munich and Berlin, where you can also conduct searches regarding your IP applications and inspect files. The contact details for the public search rooms can be found on page 34.

Service hotline search support

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This information brochure aims at providing a first insight into the field of patent law. For this reason it also contains simplified and generalised information. It does not attempt to provide a complete guide to or binding information on this complex matter. More detailed information is available on the website of the German Patent and Trade Mark Office (www.dpma.de/english).

