

AUSTRIA

Industrial Property Regulations

Ordinance of the Federal Minister of Economic Affairs relating to the implementation of the 1970 Patent Law, the Patent Treaty Introductory Law, the 1996 Protection Certificate Law, the Utility Model Law, the Semiconductor Protection Law, the 1970 Trademark Registration Law, and the 1990 Designs Copyright Law (Ordinance on patents, utility models, trademarks, and designs - PGMMV), BGBl. (Federal Law Gazette) II No. 226/94, BGBl. II No. 238/1997, BGBl. II No. 477/2001 and BGBl. II 459/2002
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TABLE OF CONTENTS

I. COMMON PROVISIONS

- §1. Address
- §2. Priority documents
- §3.
- §4. Payments to the Patent Office
- §5. Certification of written copies of the Patent Office
- §6. Official dress
- §7.

II. PROVISIONS IN PATENT AND UTILITY MODEL AFFAIRS

- §8. Presentation of the application
- §9. Description
- §10. Patent claims (claims)
- §11. Unity of the invention
- §12. Summary
- §13. Common requirements as to the form of description, patent claims (claims), and summary
- §14. Drawings
- §15. Translation
- §16. Priority documents
- §17. Public notice of the patent application

III. PROVISIONS IN TRADEMARK AND DESIGN AFFAIRS

- §18. Priority documents

§19.

IV. FEES

§20.

§21.

V. FINAL PROVISIONS

§22.

§23.

I. COMMON PROVISIONS

§1. Address

Parties involved in procedures before the Patent Office shall notify their complete address and that of their representatives if any. The declaration of a post-office box is only sufficient if no other address exists.

§2. Priority documents

The priority documents establishing the timely claim of a priority right according to §95 of the 1970 Patent Law, §17(3) of the Utility Model Law, §24 of the 1970 Trademark Protection Law, and §20 of the 1990 Designs Copyright Law shall be submitted within an appropriate limit of time that is to be set. The limit of time to be set shall be at least three months from the date of application in this country. It shall be extended for reasons worth considering.

§3.

(1) As priority document shall be submitted a copy of the application the priority of which is claimed, together with a confirmation of the competent authority of the state in which the application was filed, concerning the time of deposition and concerning agreement of the copy with the application.

(2) A certification of the documents to be submitted according to paragraphs 1 and 3 is not necessary.

(3) If the application in this country is not filed by the same applicant who has filed the application whose priority is claimed, the legal succession in title shall be proved.

(4) Unless the documents submitted are drawn up in German, English or French, a certified translation into one of these languages shall also be added. The Patent Office is, however, authorized to demand a certified translation into German if this is factually justified.

§4. Payments to the Patent Office

(1) The fees to be paid within the Patent Office's scope of operation shall be paid in at, or transferred to, the postal checking account of the Austrian Patent Office. The payment is in time if the amount, within a limit of time to be set,

1. is paid in at a post office in this country or at the Austrian Post-Office Savings Bank or
2. is credited free of charges via interbank money transfer to the postal checking account of the Patent Office.

(2) For the payment or transfer of fees, the purpose of the payment as well as either the reference number or registration number with kind of protection right shall be given. Any further proof of payment is not necessary. For the national application, the reference number shall be announced immediately to the applicant after the acceptance of the application.

(3) Each fee shall be paid in or transferred separately unless annual fees for several patents, annual fees or flat-rate fees for several utility models, renewal fees for several trademarks or designs or fees in a procedure relating to the same protective right are involved. In the latter cases, the fees combined in a single payment shall, however, be segmented by type, amount, and purpose of the individual fees.

(4) If a due payment in accordance with Section 2 is not carried out, a reasonable term shall be given by the Patent Office for the supplement or the proof of this payment. This shall not be applied to the annual fees and renewal fees.

(5) The Patent Office shall confirm to any holder of a protective right on his demand that annual fees, flat-rate fees, and renewal fees have been paid in time. The forms issued for that purpose by the Patent Office or forms conforming thereto shall be filled in and submitted by the payer.

§5. Certification of written copies of the Patent Office

(1) The opportunity provided for by §64(3) of the 1970 Patent Law to have copies prepared by the Patent Office certified by its Administrative Department is only available for copies based on a document of the Patent Office containing the appropriate release personally executed by the competent commission.

(2) The copies may be certified only by those officers of the Patent Office who have been authorized to do so, in writing by the President.

(3) The authorization may be limited to particular cases and may be revoked at any time; but even in this case, the legal validity of the copies certified in consideration of the other provisions of this [§5] shall not be affected.

(4) The certification shall be performed in such a way that the name of the person who signed the release appears at the end of the copy, the clause "Certified copy" ["Für die Richtigkeit der Ausfertigung"] is added and the copy is signed by the officer.

§6. Official dress

(1) The official dress of the members of the Patent Nullity Department and the Appeals Department of the Patent Office consists of a robe and a biretta. It corresponds to the official dress prescribed for judges in §1 of the Ordinance of the Federal Minister of Justice, BGBl. No. 133/1962, in the version of the Federal Law BGBl. No. 239/1979, on the nature, way of wearing, and period of wearing of the official dress of judges, with the exception that Tegetthoff blue is to be used instead of violet as a colour.

(2) The official dress shall be worn in the following getups, which differ in the collar-like trimming of the robe and in the biretta:

1. for the President of the Patent Office: collar-like trimming of black velvet, trimmed with ermine fur 6 cm in width, with a narrow strip of Tegetthoff-blue velvet on the lower rim; brim of the biretta of black velvet, with a narrow strip of Tegetthoff-blue velvet on the upper brim;

2. for Patent Office officials of service class VIII: collar-like trimming of black velvet, with a narrow strip of Tegetthoff-blue velvet on the lower rim; brim of the biretta of black velvet, with a narrow strip of Tegetthoff-blue velvet on the upper brim;

3. for all other members of the Nullity and Appeals Department: collar-like trimming of robe cloth, on the lower rim with a strip of black velvet 6 cm in width which has a narrow strip of Tegetthoff-blue velvet on each side; brim of the biretta of robe cloth, on the

lower rim with a strip of black velvet 3 cm in width which has a narrow strip of Tergetthoff-blue velvet on the top.

§7.

The members of the judicial senate shall wear the official dress in all oral procedures. While delivering the verdict and while administering the oath, they shall cover their heads with the biretta.

II. PROVISIONS IN PATENT AND UTILITY MODEL AFFAIRS

§8. Presentation of the application

(1) No trademarks or fancy appellations shall be included in the title of the invention to be patented or to be protected as a utility model. The title shall name the objects for which protection is to be provided by the patent claims (claims).

(2) Explanations of the invention shall be included into the description but not into the application form.

(3) When an application is filed for a patent of addition, the number of the parent patent and, if this has not yet been granted, the reference number of the parent application shall be given.

(4) When a separate application is filed, the reference number of the original application shall be given.

(5) If for the payment of a fee for a patent application, an extension of the limit of time or an exemption is desired or has already been granted, the applicant shall note this on the application form.

(6) The parts of the application and the annexes thereto shall be cited individually in the application form.

(7) If in the application form a request for mention as an inventor is filed and the applicant is not the inventor, then the inventor may state his approval on the application form itself or in a separate annex.

§9. Description

(1) As a cover sheet for the description, a form issued for that purpose by the Patent Office or a form conforming thereto shall be used.

(2) The description shall include the following:

1. the technical field to which the invention relates;

2. the state of the art, in as much as it is regarded as useful for an understanding of the invention;
3. the invention as characterized in the patent claims (claims);
4. if there are drawings, a list of the figures included in the drawings;
5. a detailed description of the object of the invention and, if there are drawings, with reference to the drawings using the reference symbols entered therein.

(3) Superfluous and verbose descriptions which do not characterize the nature of the invention shall be avoided.

§10. Patent claims (claims)

(1) The object of the requested protection shall be specified in the patent claims (claims) in terms of the technical features of the invention, and without using trademarks and fancy appellations. The patent claims (claims) shall include the following where appropriate:

1. the technical features which are necessary to define the claimed object of the invention, but constitute prior art in their mutual connection (preamble);
2. a characterizing part introduced by the words "characterized in that" or "characterized by" ["dadurch gekennzeichnet" or "gekennzeichnet durch"] and specifying the technical features for which protection is sought in connection with the features mentioned in para. 1. above.

(2) The number of the patent claims (claims) shall be kept within defensible limits while respecting the type of the invention claimed. The patent claims (claims) shall be consecutively numbered with Arabic numbers.

(3) If drawings are appended to the application, reference symbols which shall correspond to the reference symbols used in the drawings, shall be added to the technical features mentioned in the patent claims (claims), if this improves the ease of understanding of the patent claims (claims). The reference symbols in the patent claims (claims) shall be put in brackets.

§11. Unity of the invention

(1) If a group of inventions is claimed in one application, then the requirement of unity of the invention is only met if there is a technical coherence between these inventions which is expressed by one or several identical or corresponding, particular technical features. The term "particular technical features" shall cover those technical features which define a contribution of each claimed invention as a whole to the state of the art.

(2) The decision as to whether the inventions of a group are interconnected in such a way that they realize a single general inventive idea shall be made irrespective of whether the inventions are claimed in separate patent claims (claims) or as alternatives within a single patent claim (claim).

(3) An application may comprise two or more independent patent claims (claims) of the same category (product, method, device, or use) unless, in consideration of the object of the application, it is appropriate to describe this object in a single claim.

§12. Summary

(1) The summary to be submitted as a short formulation of the disclosure shall enable a clear understanding of the technical problem and the solution thereto. Where applicable, the chemical formula which, among the formulas contained in the application, best characterizes the invention shall be indicated in the summary.

(2) The summary shall be submitted on a separate sheet and shall be marked as such. It shall not comprise more than 150 words.

(3) If the application includes drawings, the applicant shall indicate the figure which best characterizes the invention for publication in the summary.

§13. Common requirements as to the form of description, patent claims (claims), and summary

(1) The description and the text of the summary shall not include any fancy appellations nor drawings other than chemical and mathematical formulas in graphical representation. For chemical names, the usual abbreviations and formulas shall be used.

(2) The description, patent claims (claims), and summary shall be typewritten and as far as possible free of erasures, alterations, and overtyping. In sheets with text on both sides, the writing shall not show through.

(3) For the description, patent claims (claims), and summary, sheets of paper 29.7 cm in length and 21 cm in width shall be used. The pages shall be numbered consecutively. A margin of at least 2 cm in width shall be left blank. Between the lines, sufficient space shall be left for the insertion of corrections.

§14. Drawings

(1) The drawings shall be submitted in duplicate on sturdy, smooth and mat white paper. They may consist of copies.

(2) The drawings shall be executed in durable lines, dark and where possible black, without colours or water colours, and must be suitable for a clear photographic reproduction or for a reproduction without intermediate stages on printing plates.

(3) Sections shall be marked by hatching.

(4) The drawings shall be executed on sheets 29.7 cm in length and 21 cm in width, and using one side only. A margin approximately 2 cm in width shall be left blank.

(5) If several figures are shown, they shall be clearly separated from each other and numbered consecutively. If required for an understanding of the description, consecutive reference symbols (numerals or letters) shall be added to the various parts of the figures. In all figures, same parts shall receive the same reference symbols and shall correspond to the reference symbols in the description.

(6) The drawings shall include the name of the applicant or the reference number. They shall be submitted without any creases or folds.

§15. Translation

If parts of the application are drawn up in English or French, §§9, 10, 12, and 13 shall apply to the translation into German to be submitted.

§16. Priority documents

(1) As a priority document, a copy of an official publication issued on the basis of the prior application may be submitted instead of the copy of the application if the competent authority certifies that this publication fully agrees with the application whose priority is claimed.

(2) If the priority of the application filed for a utility model is claimed, a copy or representation of the model which may have been handed over with the application shall be also submitted together with the priority document. Agreement between the copy or representation with the copy or representation submitted with the application filed for a utility model, and where applicable the fact that a description has not been submitted with the application, shall be certified by the competent authority.

§17. Public notice of the patent application

(1) The patent application shall be announced and made available for inspection not earlier than the 15th day of the calendar month following the month in which the decision concerning announcement was confirmed. A suspension of the announcement and availability for inspection of the application according to §101(4) of the 1970 Patent Law shall only be granted if the application for suspension has been received at the Patent Office by the 7th day of the month in which the application is intended to be announced and made available for inspection.

(2) If the suspension of the announcement and availability for inspection of the application according to §101(4) of the 1970 Patent Law was granted, the application shall be announced and published on the 15th of the calendar month following the end of the suspension.

(3) The Patent Office shall keep appropriate memoranda about the patent applications made available for inspection, so that any application made available for inspection can readily and rapidly be

found when the name of the applicant and the class assigned to the application are given.

III. PROVISIONS IN TRADEMARK AND DESIGN AFFAIRS

§18. Priority documents

If in design affairs the proof of a priority right is required, the copy or representation of the design submitted together with the application serving as the basis for claiming the right of priority, as well as the description which might have been submitted together with this application, shall also be submitted together with the priority document unless the priority document already includes a description. The identity of the copy or representation, as well as of the description where appropriate, with the documents submitted with the application upon which the priority claim is based, shall be certified by the competent authority.

§19.

An official record of the registration of the trademark or design may also be submitted as a priority document.

IV. FEES

§20.

(1) The fees for official copies shall be as follows:

1. for priority documents, for each sheet copied € 1.-
2. for copies from file documents made by the Patent Office and for the certification of their identity with the original, for each sheet copied € 2.-
3. for the certification of identity with the original, of copies made by the party, for each sheet copied € 4.-
4. for extracts from the patent register made and certified by the Patent Office, for each patent € 4.-
5. for a duplicate copy of a patent document € 4.-
6. for extracts from the protection certificate register made and certified by the Patent Office, for each certificate € 4.-
7. for extracts from the Utility model register made and certified by the Patent Office, for each utility model € 4.-
8. for a duplicate copy of a utility model certificate € 4.-
9. for extracts from the Semiconductor Protection register made and certified by the Patent Office, for each Semiconductor Patent € 4.-
10. for extracts from the trademark register made and certified by the Patent Office, for each trademark € 4.-
11. for a certification of registration of a trademark € 4.-
12. for extracts from the design register made and certified by the Patent Office, for each design € 4.-
13. for a duplicate copy of a design certificate € 4.-
14. for an official certificate € 3.-

(2) For priority documents, only copies made by the Patent Office may be used.

(3) All representations of the design contained in the register shall be attached as copies, and colour representations as colour copies, to the design certificate and to any extract from the design register.

(4) The provisions on stamp duties and legal fees are not affected by this ordinance.

§21.

The fees for the publication of a trademark in the Austrian Trademark Gazette and for the publication of a design in the Austrian Design Gazette shall amount to 254 € each.

V. FINAL PROVISIONS

§22.

The person-related terms used in this ordinance shall relate to women and men in the same way.

§23.

(1) This ordinance shall come into force on 1 April 1994.

(2) The Patent and Trademark Ordinance, BGBl. No. 98/1985, last amended by the Ordinance BGBl. No. 597/1992, shall become invalid at the end of 31 March 1994.

(3) The title and short title as well as the abbreviation of the title, the promulgation clause, §3(2, 3 and 4), §13(2), §14(4) and §20(1) come into force with the start of the first month following announcement of the ordinance, BGBl. II No. 238/1997. At the same time §3(2) of the wording valid thus far is abrogated.

(4) Section 20(1) and Section 21 in the version of the ordinance BGBl. II No. 477/2001 shall enter into force on January 1, 2002.

(5) Section 4(2), (4) and (5) in the version of the ordinance BGBl. II No. 459/2002 shall enter into force on January 1, 2003. At the same time, Section 4(5) and (6) in the version valid thus far is abrogated.