

AUSTRIA
Utility Model Law

As last amended by BGBl. I 2023/51

Effective on 20.05.2023

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I. GENERAL PROVISIONS

Section 1 Subject Matter

(1) On request, utility models shall be granted for inventions in all fields of technology, provided they are new (section 3), based on an inventive step and susceptible of industrial application.

(2) The program logic on which programs for data processing systems are based shall also be regarded as an invention as defined by subsection 1.

(3) The following in particular shall not be regarded as inventions as defined by subsection 1:

1. discoveries as well as scientific theories and mathematical methods;
2. aesthetic creations;
3. schemes, rules and methods for performing mental acts, playing games or doing business and programs for computers;
4. presentations of information.

(4) Subsection 3 shall exclude the protection as utility models of the subject matter or activities referred to therein only to the extent to which protection is sought to such subject matter or activities as such.

Section 2 Exceptions

The following shall not be protected as utility models:

1. inventions the publication or exploitation of which would be contrary to order public or morality; such violation shall not be deemed to be so contrary merely because the exploitation of the invention is prohibited by law;
2. methods for the treatment of humans by surgery or therapy and diagnostic methods practiced on humans; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods;
3. plants, animals and biologic material as well as processes for their production.

Section 3 Novelty

(1) An invention shall be considered to be new if it does not

form part of the state of the art. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the priority date of the application.

(2) Additionally, the contents of earlier priority date

1. utility model applications based on this Federal Law,
2. patent applications based on the Patent Law 1970, BGBI No. 259,
3. international applications within the meaning of section 1 no. 6 of the Law Introducing Patent Treaties, BGBI No. 52/1979, if the conditions pursuant to section 16(2) of the aforementioned law are fulfilled,
4. European patent applications within the meaning of section 1 no. 4 of the Law Introducing Patent Treaties, and
5. European patent applications within the meaning of section 1 no. 4 of the Law Introducing Patent Treaties, if the European patent application emerged from an international patent application, but only insofar as the conditions of Article 153(5) of the European Patent Convention, BGBI No. 350/1979 are fulfilled, in the originally filed version, whose contents was officially published only on the priority date of the later application or thereafter, shall also be considered as comprised in the state of the art. Such earlier applications shall not be taken into account when assessing the question, whether the invention is based on an inventive step.

(3) The protectability of substances or compositions comprised in the state of the art shall not be excluded by subsections 1 and 2, provided that they are intended for the use in a method referred to in section 2 no. 2 or in such a method for animals and their use for any such method is not comprised in the state of the art. Subsection 1 and 2 shall also not exclude the protectability of the aforementioned substances or compositions for any specific use in one of the aforementioned methods, provided that such use is not comprised in the state of the art.

(4) For the application of subsection 1 and 2 a disclosure of the invention shall not be taken into account, if it occurred no earlier than six months preceding the day of filing of the

application and if it was due to, or in consequence of:

1. the applicant or his predecessor in title or
2. an evident abuse in relation to the applicant or his predecessor in title.

Section 4 Effect

(1) The utility model shall entitle the utility model owner to exclude others from industrially producing the subject matter of the invention, putting it on the market, offering it for sale or using it or importing or possessing it for the said purposes. In case of a process it shall be effective to the products directly obtained by such process. The effect of the utility model shall not extend to studies and trials as well as to the consequential practical requirements, as far as they are necessary to obtain a permission, authorization or registration for putting on the market pharmaceutical products.

(2) The extent of the protection conferred by a utility model shall be determined by the valid claims. The description and drawings shall be used to interpret the claims. The protocol on the Interpretation of Article 69 of the European Patent Convention shall be applied mutatis mutandis. However, the utility model as amended in nullity proceedings shall determine retroactively the protection conferred by the application, in so far as such protection is not thereby extended.

(3) The effect of a utility model does not extend to vehicles and accessories of vehicles which enter Austria only temporarily in the course of their use in traffic.

Section 4a

(1) The utility model shall further have the effect that any third party, without the consent of the owner of the utility model, shall be prohibited from offering or delivering means relating to an essential element of the invention for use of the invention to others than those persons entitled to use the invention protected as a utility model, if the third party knows, or if it is obvious due to the circumstances, that the means are suited and intended to be used for the use of the invention.

(2) Subsection 1 shall not apply, if these means are products generally available on the market, unless the third party deliberately causes the supplied party to act in a way forbidden according to subsection 1.

(3) Persons, who do not industrially conduct the actions mentioned in section (4) 1, shall not be regarded as persons entitled to use the invention under subsection 1.

Section 5 Right to Prior Use

(1) The utility model shall have no effect against persons, who, already before the priority date used the invention in Austria or took measures necessary for such use in good faith (prior user).

(2) The prior user shall be entitled to exploit the invention for the requirements of his own business in his own workshops or in those of others.

(3) This entitlement may be inherited or sold only in conjunction with the business.

(4) The prior user may claim his entitlement to be acknowledged in writing by the utility model owner. On request of the entitled person, the acknowledged entitlement shall be entered in the Utility Model Register.

(5) If such acknowledgement is refused the Patent Office upon request shall decide and, if need be, order the registration of the entitlement in the Utility Model Register.

Section 6 Term of Protection

The utility model protection shall begin on the day of the official publication of the utility model (section 23) and end no later than ten years following the end of the month, in which the utility model application was filed.

Section 7 Entitlement to Utility Model Protection

(1) The inventor or his successor in title shall be entitled to utility model protection.

(2) Sections 6 to 17 and 19 of the Austrian Patent Law 1970, BGBI No. 259, shall apply mutatis mutandis.

Section 8 Designation of Inventor

(1) The inventor shall be entitled to be designated as the inventor in the official publication, in the Utility Model Register, in the utility model specification, in the letters utility model and in the documents certifying priority to be issued by the Patent Office.

(2) The right shall not be assigned or inherited. Renunciation of the right shall have no legal effect.

(3) The request to be designated may be made by the inventor or by the applicant or by the utility model owner. If several persons are entitled to do so, the consent of the other persons entitled shall be proved, unless the request is made jointly by all entitled persons. If a person other than the one already designated as inventor is to be designated as such in addition or instead of the person so designated, the consent of the person already designated as inventor shall be proved.

(4) If the applicant, the utility model owner or the person already designated as the inventor refuses to give his consent, the Patent Office shall decide on the claim to be designated as inventor upon request pursuant to the procedural provisions governing the declaration of nullity. By virtue of the final decision granting the request, the inventor shall be designated pursuant to subsection 1.

Section 9 Relationship of Co-Owners of Utility Models

The legal relationship of the co-owners of utility models shall be governed by civil law. The right to allow third persons the use of the utility model shall, in case of doubt, be asserted only jointly by the co-owners of the utility model; however, each co-owner shall have the right to solely prosecute infringements of the property right before court.

Section 10 Transfer

(1) The right arising from a utility model application and the utility model may be transferred to others, either wholly or in

proportionate shares.

(2) Such rights shall not pass to the state (section 760 Civil Code).

Section 11 Lien

The utility model may be subjected to a lien.

Section 12 Expiration

(1) The utility model shall expire

1. at the end of the maximum term;
2. if the annual fee due has not been paid in time;
3. if the utility model owner waives the utility model.

(2) If only parts of the utility model are waived (restriction), the utility model shall remain valid with regard to the remaining parts. The Patent Office shall not examine whether the remaining parts are still in compliance with the provisions of this law and if the restriction is permissible.

(3) Expiration shall be effective as of the day following the end of the maximum term in case of subsection 1 no. 1, the day following the end of the last year of validity in case of subsection 1 no. 2 and the day following notification of waiver to the Patent Office in case of subsection 1 no. 3.

II. APPLICATION PROCEDURE

Section 13 Filing

(1) The application for a utility model shall be filed at the Patent Office in written form. The day on which the application is received at the Patent Office shall be regarded as the day of filing.

(2) The utility model application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

(3) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Section 14

(1) The application shall contain:

1. the name and domicile or place of business of the applicant and his representative, if any;
2. the request for the registration of a utility model;
3. an appropriate, brief designation of the invention (title);
4. a description of the invention;
5. one or several claims (subsection 2);
6. any drawings necessary to understand the invention;
7. an abstract (subsection 3).

(2) The claims shall, in a clear and distinguishing manner, define the matter for which protection is sought. They shall be supported by the description.

(3) The abstract shall contain a concise summary of the disclosure contained in the application. It shall merely serve as technical information and shall not be used for any other purpose, in particular not for determining the scope of protection.

(4) The parts of the application cited in (1)4. to 7. shall be written in English or French. If parts of the application are in English or French, the applicant shall be requested in the context of the examination of conformity with the law to submit

a translation into German within the time limit set by section 18(2). This translation shall be the basis for the application proceeding; its correctness shall not be examined in the application proceeding.

Section 15

The form and content of the application and the form in which the utility model specification to be published are to be regulated in more detail by order of the President of the Patent Office. In doing so, consideration shall be paid to a maximum of expediency and simplicity as well as to the requirements for publication of the utility model specification are to be taken into account.

Section 15a Deviation

(1) The applicant or owner of a patent filed or granted with effect for the Republic of Austria, or the respective successor in title, may for the same invention during the entire application proceeding as well as up to the expiration of a time limit

1. of two months after the patent application is deemed withdrawn, or
 2. of two months after the entry into force of the decision rejecting the patent application, or
 3. of six months after the announcement of the grant of the patent under section 101c(2) of the Austrian Patent Law 1970, if no opposition has been filed, or
 4. of eleven months after the decision on the grant of the European Patent entered into force, if no opposition has been filed, or
 5. of two months after the entry into force of the decision on an opposition raised in time
- file a utility model application and claim as day of filing of the utility model application the day of filing of the patent application (deviation declaration). Priority rights claimed for the patent application shall be preserved for the utility model application.

(2) The deviation declaration shall be filed at the Patent Office within a time limit of two months after receipt of the utility model application. The day of filing and the number of

the patent application shall be indicated and a copy of the originally filed version of the patent application as well as a translation into German of the patent application, if it was not filed in German, shall be submitted.

(3) The applicant shall be requested to eliminate any deficiencies within a time limit of two months. If the deficiencies are not eliminated within the time limit set, the deviation declaration shall be deemed withdrawn.

Section 16 Priority

(1) The applicant shall have the right of priority to his invention from the day on which his application for a utility model was duly filed.

(2) Separate priorities for individual parts of the subject matter of the application (partial priorities) shall be claimed only on the basis of sections 16a or 16b or on the basis of intergovernmental agreements. Such partial priorities shall also be admissible, if the day of receipt of the application at the Patent Office remains decisive for the priority of a feature of the subject matter of the application. Several priorities may be claimed for one claim.

Section 16a

Within a period of twelve months after the day of filing of an earlier patent or utility model application filed at the Patent Office the applicant shall be entitled to the right of priority of the earlier patent or utility model application for a later filed utility model application concerning the same invention (inner priority). The requirements and the effects of this right of priority shall correspond to those of Article 4 of the Paris Convention for the Protection of Industrial Property, BGBI No. 399/1973.

Section 16b

Within a period of twelve months after the day of filing of an earlier patent or utility model application filed at an filing office not coming under the scope of an intergovernmental agreement on the recognition of priority, the applicant shall be entitled to the priority of the earlier patent or utility

model application for a later filed utility model application concerning the same invention in Austria, if a corresponding reciprocity with this filing office is confirmed by announcement of the Federal Minister for Transport Innovation and Technology in the BGB1.

The requirements and the effects of this right of priority shall correspond to those of Article 4 of the Paris Convention for the Protection of Industrial Property, BGB1 No. 399/1973.

Section 17

(1) The rights of priority granted on the basis of sections 16a or 16b or on the basis of intergovernmental agreements shall be expressly claimed. The day of filing of the application, the priority of which is claimed, and the country in which that application has been made, shall be indicated (declaration of priority). Furthermore the number of that application shall be specified.

(2) The declaration of priority shall be submitted not later than two months after the receipt of the application at the Patent Office. Within this time limit the claimed priority may be corrected.

(3) If the maintenance of the utility model depends on whether the right of priority has been lawfully claimed, the right of priority must be proved. It shall be governed by order of the President of the Patent Office what documents in the proceedings before the Patent Office and in the appeal proceedings and when these documents must be submitted.

(4) If the declaration of priority is not submitted in time, if the priority documents are not lodged in time, or if the number of the application, the priority of which has been claimed, is not notified upon official request within the time set, the day of filing of the application in Austria shall count as the priority date.

Section 18 Examination of Conformity with the Law

(1) Every application shall be subject to an examination of conformity with the law. However, no examination for novelty, inventive step, industrial application as well as whether the

applicant is entitled to utility model protection shall be made during the application proceeding. If no objections exist against the publication and registration of the utility model, a search report shall be provided pursuant to section 19.

(2) If the examination of conformity with the law shows that objections exist against the publication and registration of the utility model, the applicant shall be requested to comment within a time limit of two months, which is extendable for reasons meriting consideration. If the inadmissibility of the publication and the registration is determined after the expiration of the period, the application shall be rejected.

(3) If the objections pursuant to subsection 2 are based on the lack of unity of the claims, the applicant shall be requested to establish unity (section 13(3)) within the time limit set in (2) and to submit a new version of all maintained claims not lacking unity. If these orders are not observed, the application shall be rejected in its entirety.

(4) If within the time limit set in section 20 a separate application of the part no longer pursued in the original application is filed (subsection 3), and if, in this case, the day on which the original application was submitted to the Patent Office is claimed as the day of filing, this day shall be the day of filing of the separate application.

(5) If amended application documents are submitted, there will be no examination during the application proceeding if they extend beyond the contents of the application in the version as originally filed.

Section 19 Search Report

(1) If there are no objections against the publication and the registration of the utility model, the Patent Office will provide the search report, which will indicate the documents determined by the Patent Office at the time the search report is provided that can be taken into account to assess novelty and inventive step.

(2) The search report shall be based on the claims. Section

4(2) sentence 2 and 3 shall be applied mutatis mutandis. If possible, the search report shall be provided within six months from the filing date.

(3) Unless the applicant files a request for accelerated publication and registration (section 27), the search report shall be served to the applicant with the request to pay the publication fee within a time limit of two months from service of the report and to duly prove the payment. Upon justified request the time limit shall be extended.

(4) The applicant may amend the claims within the time limit set in subsection 3 by filing a new version of all claims to be maintained. In such case the search report shall not be supplemented or amended. Section 18(3) and (5) shall apply mutatis mutandis.

(5) If the payment of the publication fee has not been duly proved (subsection 3) or if the amended claims (subsection 4) are defective, the applicant shall be set a time limit of one month to eliminate the deficiencies. If the deficiencies are not eliminated within that time limit, the application shall be rejected.

Section 20 Voluntary Division

The applicant or the owner of a utility model or the respective successor in title may during the entire application proceeding as well as up to the expiration of a time limit

1. of two months after the entry into force of the decision rejecting the utility model application, or
2. of two months after the publication of the utility model (section 23)

file a separate application (divisional application). The day of filing of the divisional application shall be the day on which the original application was filed at the Patent Office, if the applicant claims this day as day of filing in the divisional application and the divisional application does not go beyond the contents of the earlier application in the originally filed version.

Section 21 Conversion

The applicant may request the conversion of the application into a patent application as defined by the Austrian Patent Law 1970 until the expiration of the time limit set in section 19(3). The day of filing of that patent application shall be the day of filing of the utility model application at the Patent Office. The conversion of a utility model application shall not be admissible if the application concerned is a converted patent application under section 92b of the Austrian Patent Law.

Section 22 Publication and Registration

If the application meets the requirements of Sections 18 and 19, the Technical Department must decide on the publication of the utility model in the Utility Model Gazette (Section 23) and its registration in the Utility Model Register (Section 24).

Section 23

The utility model is published by announcing the data specified in section 24 in the Utility Model Gazette (section 40).

Section 24

On registration, which shall be effected at the same time as the publication (section 23), the following shall be entered in the Utility Model Register (section 31) kept by the Patent Office:

1. the register number;
2. the day of application and the claimed priority, if any;
3. the beginning of the term of protection (section 6);
4. the title of the invention;
5. the name and domicile or place of business of the utility model owner and his representative, if any;
6. the name and domicile of the inventor, if any.

Section 25 Utility Model Specification

(1) The Patent Office shall issue a utility model specification for every registered utility model, which shall comprise in particular:

1. the data specified in section 24;
2. the version of the description, claims, drawings and abstract on which the decision of publication and registration

of the utility model (sections 22, 27(2)) is based;
3. the search report, unless the search report is issued separately pursuant to section 27(3).

(2) Institutions under public law shall, on request, get free of charge one copy of all utility model specifications issued and all separately issued search reports as of the time of receipt of the respective request provided that these are made accessible to the public.

Section 26 Letters Utility Model

The Patent Office shall issue a letters utility model to the owner of the utility model. The letters shall comprise a certificate of the registration of the utility model as well as a copy of the utility model specification.

Section 27 Accelerated Publication and Registration

(1) The applicant may request the immediate publication and registration of the utility model independent of the date of completion of the search report. Such request may be filed until the day before service of the search report. The request shall be granted only if the payment of the publication fee and the surcharge for the accelerated publication and registration is duly proved.

(2) If as a result of the examination of compliance with the law (section 18) no objections exist against the publication and registration, the publication of the utility model in the Utility Model Gazette (section 23) and its registration in the Utility Model Register (section 24) shall be ordered immediately.

(3) If the search report has not been completed at the time of publication and registration of the utility model, the search report shall not be included in the utility model specification (section 25), but issued separately. The search report shall be forwarded to the utility model owner.

III. DECLARATION OF NULLITY, DECLARATION OF LACK OF TITLE AND DECLARATION OF DEPENDENCE

Section 28 Declaration of Nullity

(1) Anyone may request the declaration of nullity of a utility model, if

1. the subject matter of the utility model is not in compliance with sections 1 to 3;
2. the claims, the description and the drawings on which the decision pursuant to section 22 or section 27(2) is based do not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
3. the subject matter of the utility model extends beyond the contents of the application as originally filed determining the day of filing.

(2) If the grounds of nullity apply only in part, the utility model shall be declared null and void only in part.

(3) By the legally binding declaration of nullity the effects of the utility model provided in sections 4 and 4a shall be deemed not to have occurred from the beginning to the extent to which the utility model is declared null and void. If the subject matter of the utility model was not capable of being protected pursuant to section 3(2), the license rights lawfully granted by the owner of the later priority utility model and acquired in good faith by third parties, registered in the Utility Model Register for one year and not the subject of any legally founded entry relating to disputes (section 32(3)), shall remain, however, unaffected by such retroactive effect, irrespective of any claims for compensation arising therefrom against the owner of the later priority utility model.

Section 29 Declaration of Lack of Title

(1) Anyone who claims

1. that he is entitled to utility model protection instead of the utility model owner (section 7), or
2. that the substantial contents of the utility model has been taken from the description, drawings, models, implements or installations of a third person or from a process used by said

third person without consent of the latter, may request that the utility model owner is declared to lack title to the utility model and that it is assigned to the person so requesting. Unless an assignment is requested, the utility model protection shall end once the decision declaring a lack of title becomes legally binding. If the assignment of the utility model is requested, the utility model owner may waive the utility model only with the petitioner's consent until the decision becomes legally binding.

(2) If the grounds for declaration of lack of title (subsection 1) apply only in part, the utility model owner shall be declared only partially lacking in title or the utility model shall be assigned only in part.

(3) The claim against a bona fide utility model owner shall become statute-barred after three years from the entry of the utility model in the Utility Model Register.

(4) Mutual claims for compensation and reimbursement arising from a declaration of lack of title shall be governed by civil law and asserted by way of civil proceedings.

(5) In the case of an assignment pursuant to subsection 1, the licensing rights lawfully granted by the earlier utility model owner and acquired in good faith by third parties and registered in the Utility Model Register for at least one year, shall remain binding on the new utility model owner, irrespective of any claims for compensation arising therefrom against the earlier utility model owner, provided they are not the subject of any legally founded entry relating to disputes (section 32(3)).

(6) Section 49(7) of the Austrian Patent Law 1970 shall apply mutatis mutandis.

Section 30 Declaration of Dependence

The owner of a utility model having an earlier priority date or of a patent having an earlier priority date may request the decision that the commercial use of a utility model requires the full or partial use of his invention protected by a utility

model or by a patent.

IV. UTILITY MODEL REGISTER

Section 31

(1) Besides the data mentioned in section 24, the expiration of the utility model protection, the declaration of nullity, of lack of title, of dependence, the designation as inventor as well as the assignment of utility models, liens and other rights in rem relating to utility models, licenses, the employer's right to use the invention, the entitlement to prior use, the restoration of rights, declaratory decisions and entries relating to disputes as well as indications to decisions submitted pursuant to section 41 by applying mutatis mutandis section 156(2) of the Austrian Patent Law 1970, BGB1 No. 259, shall be entered in the Utility Model Register.

(2) Any person may inspect the Utility Model Register. On request, a certified copy of the entries in the Register shall be issued.

Section 32

(1) Rights in rem to utility models as well as the utility model, in the event of a transfer (section 10), shall be acquired upon entry in the Utility Model Register.

(2) The application for registration must be accompanied by a copy of the document on the basis of which the registration is to be made. If the original of the document is not a public document, it must be accompanied by the certified signature of the person holding the right. In the case of a transfer of the utility model, a mutual declaration of the parties or their representatives regarding the transfer may be submitted instead of the document.

(3) Legal disputes relating to utility models shall, on request, be recorded in the Utility Model Register upon request (entry relating to disputes).

(4) Additionally section 43(2), (3), (4), (5) and (7) (entries in the Patent Register), section 44(encumbrances) and section 45(2) (entries relating to disputes) of the Austrian Patent Law 1970, BGB1 No. 259, shall apply mutatis mutandis.

(5) Subsection 2 as well as section 43(5) and (7) of the Austrian Patent Law 1970, BGB1 No. 259, shall apply mutatis mutandis to the transfer of the right arising from the application of a utility model.

V. RESPONSIBILITY AND PROCEDURE

Section 33 General

(1) Unless otherwise provided in this Federal Law, the Patent Office shall be responsible for taking decisions and instructions in matters relating to utility model protection. In the Patent Office the responsibilities are as follows:

1. the Technical Department for the application proceedings, the providing of the search report and for taking note of the waiver of a utility model;
2. the Legal Department for the proceedings regarding matters related to the transfer of the right arising from an utility model application, to other legal dispositions relating to such a right, to registered utility models - with the exception of providing the search report and of taking note of the waiver of a utility model - or to requests for the restoration of rights, to the extent that Nullity Department are not responsible for those matters;
3. the Nullity Department is responsible for proceedings on applications for a declaration of invalidity, revocation, declaration of dependence, designation as inventor, recognition of the right of prior use and applications for a declaratory judgment.

(2) Sections 51 to 56, 57(2), sections 57b to 58b, 60(1) and (2), sections 61, 64, 66 to 69, 76 to 79, 82 to 86, 126 to 137 of the Patent Act 1970 shall apply mutatis mutandis.

Section 34

(1) Decisions and instructions within the competence of the Technical Department shall reside with the technically qualified member (examiner) competent according to the allocation of duties.

(2) Sections 51 to 56, 57(2), sections 57b to 58b, 60(1) and (2), sections 61, 64, 66 to 69, 76 to 79, 82 to 86, 126 to 137 of the Patent Act 1970 shall apply mutatis mutandis.

(3) Prior to decisions pursuant to subsection 1 the examiner shall seek the opinion of the legally qualified member where the utility model's protectability on the grounds of section 2

or disciplinary penalties or penalties for wanton acts are to be decided upon.

Section 34a

(1) By order of the president employees who are not members of the Patent Office may be authorized to deal with issues to be clearly specified in their kind concerning applications and registered utility models, as far as this is appropriate due to the simplicity of the settlement and the training of the authorized employees guarantees proper handling. The employees shall be bound by the instructions of the member competent according to the allocation of duties. The latter shall have the right to reserve or to draw acts to him at any time.

(2) The decisions made by employees authorized under subsection 1 may be appealed like those of the competent member.

Section 36 Proceedings before the Nullity Department

(1) The Nullity Department shall debate on the requests and petitions under section 33(1)4, subject to (3), by applying sections 112 to 125 of the Austrian Patent Act Law, BGB1 No. 259, mutatis mutandis, in Senates comprised of two legally qualified and three technically qualified members.

(2) For interim decisions in the Nullity Department the presence of three members shall be sufficient. Decisions terminating proceedings without the need for a decision on the matter itself, decisions pursuant to (3), as well as decisions on claims under the Fee Claims Act and decisions rejecting applications due to non-payment of application fees shall be made by the presiding judge.

(3) In case of a request for declaration of nullity of a utility model (section 28) the Nullity Department shall declare the utility model null and void to the requested extent if the utility model owner fails to file a counterstatement within the time limit set to him pursuant to subsection 1 in conjunction with section 115(2) of the Austrian Patent Law 1970, BGB1 No. 259.

Section 38 File inspection and data protection

(1) The parties involved in proceedings shall be entitled to inspect the files relating to the proceedings.

(2) Anyone may inspect files relating to published utility models (section 23).

(3) Third parties shall be entitled to inspect the files relating to unpublished utility models only on approval by the applicant. The approval shall not be required for any person against whom the applicant has cited his utility model application. After the publication of a utility model based on a divisional application, any person may inspect the files of the earlier application without the approval of the applicant.

(4) The right to inspect the files shall also comprise the right to make copies thereof. These shall be certified by the Patent Office on request.

(5) Information and official certificates as to when, under what title, by whom and, if any, by which representative an application for a utility model has been filed, the file number of the application, to which patent class it belongs, which priority has been claimed, the file number of the application on which priority is claimed, the naming of the inventor, if any, whether the application is still pending as well as whether and to whom the right of it has been assigned shall be supplied to any person.

(6) Records of consultations and parts of files relating solely to the internal office procedure shall be excluded from inspection. In case of a trade or business secret or another reason worthy of being taken into consideration parts of files, the publication of which is not necessary for the public's information, may also be exempted from inspection on request.

(7) To the extent that personal data is processed in the Utility Model Register or in publicly accessible electronic information services of the Patent Office, the following shall not apply

1. the right to access pursuant to Art.15(1)(c) of Regulation

(EU)2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ No.L119 of 4 May 2016, p.1, as amended by OJ No.L314 of 22 November 2016, p.72 (hereinafter: GDPR),

2. the obligation to notify pursuant to Art.19, second sentence, GDPR and

3. the right to restrict processing pursuant to Art.18 and the right to object pursuant to Art.21 GDPR, whereby the data subjects must be informed of this in an appropriate manner. The right to receive a copy of these data pursuant to Art.15(3) GDPR is fulfilled by the fact that the data subject can inspect the Utility Model Register or publicly accessible electronic information services of the patent office.

Section 39 Representatives

(1) Anyone acting as a representative in matters of utility model protection before the Patent Office shall have his residence or place of business in Austria; however, for attorneys at law, patent attorneys and notaries public the professional regulations shall apply. The representative shall prove his authorization by producing the original and written power of attorney or a duly certified copy thereof. If a power of attorney has been granted to several persons, each of them shall be authorized to solely act as a representative.

(2) If an attorney at law, a patent attorney or a notary public acts as representative, he may refer to the authorization granted to him without actually producing documentary evidence.

(3) If a representative acts without any power of attorney or, in the case of (2), without referring to the authorization granted to him, the procedural act taken by him shall be valid only on condition that he produces a duly executed power of attorney or refers to the power of attorney granted to him within a reasonable time limit set to him.

(4) Anyone having neither a residence nor a place of business in Austria shall claim rights from this Federal Law before the Patent Office only if he is represented by an attorney at law,

a patent attorney or a notary public. If the residence or place of business is located in the European Economic Area or in the Swiss Confederation, the appointment of an authorized recipient with a residence in Austria shall be sufficient to claim rights under this Federal Law. The requirement of having a main residence in the country does not apply to nationals of EEA contracting states if deliveries are ensured by international treaties with the contracting state of the residence of the authorized service agent or in some other way. In order to use the services and information provided by the Patent Office, it is not necessary to appoint a representative or an authorized service agent.

(5) In addition to section 83c Law on Jurisdiction the place where

1. the representative has his Austrian residence or his Austrian place of business, or
2. the authorized recipient has his residence in Austria, or
3. in the absence of a representative having an Austrian residence or an Austrian place of business or an authorized recipient with an Austrian residence, the place where the Patent Office is located, shall, in matters relating to the utility model, be regarded as the residence or place of business of a utility model owner having neither his residence nor a place of business in Austria.

(6) The authorization granted to a lawyer, patent attorney or notary to represent before the Patent Office authorizes him by law to assert all rights arising from this Federal Act before the Patent Office and, to the extent that he is legally authorized to do so, before the appeal courts, in particular to file utility models applications, restrict or withdraw applications, waive utility models, file and withdraw requests to be dealt with by the Nullity Department as well as appeals, enter into settlements, receive service of documents of any kind and payment of official fees and the costs of proceedings and representation to be reimbursed by the adverse party, as well as to appoint a substitute.

(7) The power pursuant to subsection 6 may be limited to a particular property right and to representation in particular

proceedings. It shall, however, expire neither on the death of the mandatory nor by any change in his capacity to act.

(8) If a representative who is neither an attorney at law, nor a patent attorney nor a notary public is to be authorized to waive, in whole or in part, a utility model, he must be expressly authorized to do so.

Section 40 Utility Model Gazette

The Patent Office shall periodically issue a Utility Model Gazette, which, in particular, shall include publications pursuant to section 23, publications about the end of the utility model protection, about restrictions, about changes of the company name and the person of the utility model owner as well as those publications that must take place pursuant to section 33(2) by applying mutatis mutandis sections 128 and 133(3) of the Austrian Patent Law 1970, BGB1 No. 259.

VI. INFRINGEMENTS OF UTILITY MODELS AND REQUESTS FOR DECLARATORY DECISIONS

Section 41 Infringements of Utility Models

Anyone whose utility model has been infringed shall be entitled to injunction, elimination, publication of the judgment, adequate compensation, damages, surrender of profits, rendering of accounts and information on the origin and distribution networks; even anyone who worries about such an infringement shall be entitled to injunction. Sections 147 to 157 of the Austrian Patent Law 1970 shall apply mutatis mutandis.

Section 42

(1) Anyone who infringes a utility model shall be condemned by the court to a fine of up to 360 times the per diem rate. Any person who commits such an act commercially shall be sentenced to detention not exceeding two years.

(2) Likewise the proprietor or manager of an enterprise who fails to prevent the infringement of a utility model committed by an employee or agent in the course of the activities of the enterprise shall be sentenced.

(3) If the proprietor of the enterprise pursuant to subsection 2 is a corporation, a collective, an association or another legal entity which is not a physical person, subsection 2 shall apply to the organs, if they are guilty of having committed such an omission.

(4) Subsection 1 shall not apply to employees or agents who acted on instruction of their employer or the ordering party if, due to their economic dependency, they cannot be expected to refuse to commit such acts.

(5) Prosecution shall take place only at the request of the infringed party.

(6) Sections 160 and 161 of the Austrian Patent Law 1970 shall apply mutatis mutandis for the criminal proceeding.

Section 43 Obligation to Provide Information

Any person who designates products in a manner likely to give the impression that they enjoy utility model protection shall, on request, provide information on what utility model such designation is based.

Section 44 Jurisdiction

(1) The Commercial Court of Vienna shall have exclusive jurisdiction for actions and preliminary injunctions under this Federal Law. The Senate (section 7(2) first sentence) shall decide irrespective of the value at dispute. This shall also apply to preliminary injunctions. Section 50d(1) shall apply to the composition of the Senate in the first and second instance, and Section 50d(2) shall apply in the third instance.

(2) Criminal matters under this Federal Law shall fall within the jurisdiction of the Vienna Provincial Court for Criminal Matters.

Section 45 Requests for Declaratory Decisions

(1) Anyone who industrially produces, puts on the market, offers for sale or uses an object, applies a process industrially or intends to take such matters may request a declaratory decision at the Patent Office against the owner of a utility model or the exclusive licensee, that the object or the process is covered neither wholly nor partly by the utility model.

(2) The owner of a utility model or the exclusive licensee may request a declaratory decision at the Patent Office against any person, who industrially produces, puts on the market, offers for sale or uses an object, applies a process industrially or intends to take such measures, that the object or the process is covered wholly or partly by the patent.

(3) Requests under subsection 1 and 2 shall be rejected, if the opposing party proves that an action for infringement in respect of the same utility model and the same object or the same process was brought before court prior to the submission of the request for a declaratory decision and is still pending or has been finally decided upon.

(4) The request shall be related to only one utility model. The request shall be accompanied by a precise and clear description of the object or process, and drawings where necessary, in four copies. One copy of the description, and of the drawings if any, shall be attached to the final decision.

(5) When judging the scope of protection of the utility model, which is the subject matter of the declaratory proceedings, the Patent Office shall take into consideration the contents of the application file and the prior art proved by the parties.

(6) The procedural costs shall be borne by the requesting party, if the opposing party has not provoked the request by its conduct and has acknowledged the claim within the time limit set for its counterstatement.

(7) In addition the provisions governing the proceedings before the Nullity Department shall apply to the declaratory proceedings (section 36).

VII. THE HIGH REGIONAL COURT OF VIENNA AND THE SUPREME COURT OF JUSTICE AS APPEAL INSTITUTIONS

A. Appeals against the decisions of the Technical Department and the Legal Department of the Patent Office

Section 46 Appeal

(1) The decisions of the Technical Department and the Legal Department can be contested by appeal to the Higher Regional Court of Vienna.

(2) No appeal is admissible against the orders of the referee preparing a decision of the Technical Department or Legal Department.

Section 47 Procedure

The provisions of the Non-Contentious Disputes Act (AußStrG), BGBI No.111/2003, apply to the appeal procedure, mutatis mutandis, with the exception of from section 44 to section 49 (AußStrG) and the following special features:

1. References in the AußStrG to the court of first instance are considered references to the Technical Department or Legal Department.
2. The deadline for appeals and the deadline for responding to appeals are two months; they cannot be extended.
3. New facts or evidence may only be presented to support or refute the facts and evidence presented in time in the first instance.
4. If an appeal submitted in time contains deficiencies, the responsible member must set a deadline for the appellant to make improvements. Appeals submitted late or appeals that are not improved within the set deadline must be rejected by the department in the composition in which the contested decision was made. Appeals against decisions of the authorized official must be rejected by the responsible member.
5. Decisions pursuant to Section 50 of the AußStrG must be made by the department in the composition in which the contested decision was made. If the decision was made by the authorized official, the responsible member must decide.
6. Section 51(1) of the AußStrG is to be applied with the proviso that the files relating to the case are to be

submitted, if necessary with an explanatory report.

7. The parties must bear the costs of the proceedings themselves.

8. Appeal decisions of the appeal court are to be served by the appeal court.

Section 48 Appeal on appeal

(1) An appeal on appeal is admissible against a decision of the appeal court made in the course of the appeal proceedings in accordance with section 62 of the AußStrG.

(2) The provisions of the AußStrG apply mutatis mutandis to the appeal proceedings with the following special features:

1. The appeal period and the period for the response to the appeal are two months; they cannot be extended.

2. The appeal on appeal and, if applicable, the request for admission must be submitted to the appeal court; the appeal court will reject the appeal in accordance with section 67 of the AußStrG. Except in the case of section 68(4)2. of the AußStrG, the response to the appeal must also be submitted to the appeal court.

3. The parties must bear the costs of the proceedings themselves.

B. Legal remedies against the resolutions and decisions of the Nullity Division of the Patent Office

Section 49 Appeal

(1) The final decisions of the Nullity Division of the Patent Office can be contested by appeal to the Vienna Higher Regional Court.

(2) The provisions of the Code of Civil Procedure (ZPO), RBG1. No.113/1895, apply to the appeal procedure, mutatis mutandis, with the exception of Section 461(2) of ZPO and the following special features:

1. References in the ZPO to the court of first instance are considered references to the Nullity Division.

2. The appeal period and the period for responding to the appeal are two months; they cannot be extended.

3. If an appeal submitted in good time contains deficiencies,

the legally qualified advisor of the Nullity Division must set the appellant a deadline for improvement.

If the deficiencies are remedied within the deadline, the appeal is deemed to have been properly filed.

4. Decisions of the Court of Appeal on appeal shall be served by the Court of Appeal.

Section 50 Appeal

(1) No appeal is admissible against a preparatory order of the referee. Subject to (2), there is no separate appeal against the decisions of the Nullity Division made during the preliminary proceedings or the hearing, they can only be contested by appeal if they have had an influence on the final decision.

(2) An appeal to the Vienna Higher Regional Court is admissible against decisions to interrupt proceedings, decisions rejecting an appeal, decisions pursuant to section 34(2) in conjunction with section 130(2) of the Patent Act and decisions on claims under the Fee Claims Act. Decisions of the Court of Appeal can be appealed to the Supreme Court in accordance with section 519 of ZPO.

(3) The provisions of ZPO apply mutatis mutandis to the appeal procedure with the following special features:

1. References in ZPO to the court of first instance are deemed to be references to the Nullity Division.

2. Appeals according to (2), first sentence, are to be submitted to the Nullity Division, appeals according to (2), second sentence, are to be submitted to the Court of Appeal.

3. If an appeal submitted in a timely manner according to (2), first sentence, contains deficiencies, the legally qualified reporter of the Nullity Division or the chairman, if he alone was competent to make the decision, must set the appellant a deadline for making improvements. If the deficiencies are remedied within the deadline, the appeal is deemed to have been submitted in a timely manner.

4. Appeal decisions of the Court of Appeal must be served by the Court of Appeal.

Section 50a Revision and appeal

(1) An appeal is admissible against judgments of the appeal court in accordance with section 502 of ZPO, and an appeal against a decision of the appeal court in accordance with section 528 of ZPO.

(2) The provisions of the ZPO apply mutatis mutandis to the appeal procedure with the following special features:

1. The period for appeal and the period for responding to the appeal are two months; they cannot be extended.
2. The appeal must be submitted to the appeal court. The references to the court of first instance are considered references to the appeal court, with the exception of those that refer to the referral back to the first instance. Except in the case of section 507a(3)2 of ZPO, the response to the appeal must also be submitted to the appeal court.

(3) The provisions of ZPO shall apply mutatis mutandis to the appeal proceedings, provided that the appeal shall be lodged with the Court of Appeal.

C. Common provisions

Section 50b Legal aid

Legal aid for an appeal procedure under this main section must be applied for at the Patent Office. The Nullity Division must decide on the application for the granting of legal aid by means of a resolution passed by one of the chairpersons.

Section 7(2) of the AußStrG, section 63, 64, from section 66 to 73 of the ZPO and section 45 of the RAO, RGBl. No. 96/1868, are to be applied with the proviso that references to the court are to be considered references to the Nullity Division. Instead of the provision of a lawyer, the provision of a patent attorney can also be granted for the appeal procedure before the Vienna Higher Regional Court. An appeal against the resolution can be lodged within two weeks.

Section 50c Service, representation, entry into the proceedings, inspection of files

(1) The service of documents by the Patent Office in an appeal procedure under this main section takes place in accordance

with section 34(2) in conjunction with section 85 and 86 of the Patent Act 1970.

(2) In proceedings before the Higher Regional Court of Vienna, patent attorneys and notaries are also authorized to represent. Invoking the authorization replaces documentary evidence of this.

(3) In multi-party proceedings, the acquirer of a disputed right can enter the proceedings even without the consent of the opponent.

(4) Section 38 applies mutatis mutandis to the inspection of files in appeal proceedings under this main section.

Section 50d Composition of the Senates

(1) Section 8(2) JN is to be applied with the proviso that the position of lay judge can be held either by expert lay judges from the commercial sector or by other persons with special expertise, such as members of the Patent Office, who are appointed by the Federal Minister of Justice on the proposal of the Federal Minister of Transport, Innovation and Technology for a term of office of five years. If members of the Patent Office or other federal employees are appointed as lay judges, they perform the work as expert lay judges as an official task and are independent in the exercise of their office and are not bound by any instructions. Sections 19 to 25 JN are to be applied mutatis mutandis.

(2) In the case of appeals against a decision based on a decision of the Technical Division or the Nullity Division, the Supreme Court must decide in a Senate which, in addition to three judges, comprises two lay judges in accordance with (1).

(3) Unless otherwise provided, the provisions applicable to expert lay judges from the commercial profession shall apply mutatis mutandis. The Chairman shall appoint a member of the Senate as a speaker.

IX. TRANSITIONAL AND FINAL PROVISIONS

Section 51a Transitional provisions

(1) Section 15a(1)3 in the version valid before entry into force of the Federal Law, BGB1 No. 149/2004, shall continue to be applied to utility model applications, if section 107 of the Austrian Patent Law 1970 in the version valid before entry into force of the aforementioned Federal Law is still applicable to the patent application, the day of filing of which is claimed.

(2) Section 21 last sentence as amended by Federal Law, BGB1 No. 149/2004, shall not be applied to requests for conversion submitted before the entry into force of the aforementioned Federal Law.

(3) A written power of attorney pursuant to section 39(1) in the version of the Federal Law, BGB1 No. 149/2004, shall only be considered as reference power of attorney if it is submitted to the Patent Office after entry into force of the aforementioned Federal Law.

(4) Section 37a in the version of Federal Law, BGB1 No. 149/2004 shall apply, if the decision of the Appeal Department is passed after the day which is before the day of entry into force of the aforementioned Federal Law.

(5) Section 150(3), section 156(3) to (5) and section 161 of the Austrian Patent Act 1970 in the version valid before entry into force of the Federal Law, BGB1 No. 149/2004, shall continue to apply mutatis mutandis to actions filed before entry into force of the aforementioned Federal Law.

(6) To applications submitted before entry into force of the Federal Law, BGB1 No. 149/2004, section 16(3) in the version valid before entry into force of the aforementioned Federal Law shall continue to apply. Section 46(2) in the version valid before entry into force of the aforementioned Federal Law shall continue to apply to publication fees, whose payment was requested pursuant to section 19(3) before the entry into force of the aforementioned Federal Law.

(7) To requests submitted before entry into force of the Federal Law, BGB1 No. 149/2004, section 17(2), section 46(3) and section 48(1), (2) and (3) first sentence in the version valid before entry into force of the aforementioned Federal Law shall continue to apply. To requests submitted before entry into force of the aforementioned Federal Law, section 132(1) and (3) of the Austrian Patent Law 1970 in the version valid before entry into force of the aforementioned Federal Law shall continue to apply mutatis mutandis.

(8) To annual fees falling due on a day before the entry into force of the Federal Law, BGB1 No. 149/2004, section 47 in the version valid before entry into force of the aforementioned Federal Law shall continue to apply. This shall also apply to annual fees falling due after the entry into force of the aforementioned Federal Law, but which are duly paid before the entry into force of the aforementioned Federal Law.

(9) To utility models and utility model applications, whose filing date lies before entry into force of the Federal Law, BGB1 No. 81/2007, section 3(2) 4 in the version valid before the entry into force of the aforementioned Federal Law shall continue to apply. Section 3(3) second sentence shall apply to all utility model applications pending at the time the Federal Law, BGB1 No. 81/2007, entered into force, if a decision on the registration of the utility model has not yet been made.

Section 51b.

Section 176b of the Patent Act 1970 shall apply.

Section 52 Final Provisions

Provisions of other Federal Laws referred to in this Federal Law shall be applied in their respective valid version if not stipulated otherwise.

Section 52a

All person related terms under this Federal Law shall relate to both sexes irrespective of the form chosen.

Section 53

(1) This Federal Law shall entry into force on April 1, 1994.

(2) Orders on the basis of this Federal Law in its respective valid version may already be enacted on the day following the promulgation of the Federal Law to be implemented; they shall, however, not enter into force prior to the legal provisions to be implemented.

(3) Sections 3, 4(3), section 15a including its title, section 16(2), sections 16a, 16b and 17(1), section 28(1) 2 and 3, section 28(3), section 33(1) 5, section 38(6) as well as sections 52 and 52a in the version of the Federal Law, BGBI No. 175/1998, shall enter into force at the beginning of the second month following the promulgation of the Federal Law, BGBI No. 175/1998. Simultaneously, section 4(3) and (5) as well as section 28(1) 2 in the version valid before shall go out of force.

(4) Section 46(1) to (3), section 47(2), (4) and (5), section 48(1) and (4) in the version of the Federal Law, BGBI No. 143/2001, shall enter into force on January 1, 2002.

(5) Section 4(1), sections 4a, 8(4), section 14(4), section 15a(1), section 17(2), section 18(2) and (4), section 19(3) and (5), sections 20, 21, 27(1), section 28(1) 1 and section 28(3), section 29(1) and (6), section 33(2), section 34a, the title of section 35, section 35(2) to (9), section 36(2), section 37(2) and (3), sections 37a, 39(1) and (2), sections 41, 42, the title of Chapter IX., the title of section 51a, section 51a, the title of section 52 and section 54 in the version of the Federal Law, BGBI No. 149/2004, shall enter into force at the beginning of the seventh month following the promulgation of the aforementioned Federal Law. Simultaneously, section 16(3), section 35(6) and (7), Chapter VII and VIII in the version valid before shall go out of force.

(6) Section 39(4) and(5) in the version of the Federal Law, BGBI No.149/2004, shall take effect at the beginning of the day following the promulgation of the aforementioned Federal Law.

(7) Section 2(3) in the version of the Federal Law, BGBI No. 42/2005 (Biotechnology Directive - Implementation Amendment),

shall enter into force at the beginning of the day following the promulgation of the aforementioned Federal Law.

(8) Section 42(3) in the version of the Federal Law, BGBI 151/2005, shall enter into force on January 1, 2006.

Section 53a

(1) Section 4(1) and section 33(1) in the version of the Federal Law, BGBI. No. 130/2005, shall enter into force at the beginning of the day following the promulgation of the aforementioned Federal Law.

(2) Sections 15 and 17(3) in the version of the Federal Law, BGBI No. 130/2005 shall enter into force on January 1, 2006.

(3) Section 1(1), section 3(2) and (3), section 4(2) and section 51a(9) in the version of the Federal Law, BGBI No. 81/2007, shall enter into force with the entry into force of the revised version of the European Patent Convention.

(4) Section 39(4) in the version of the Federal Law, BGBI No. 81/2007, shall enter into force at the beginning of the day following the promulgation of the aforementioned Federal Law.

(5) Section 3(2) last sentence and (4) as well as section 19(4) in the version of the Federal Law, BGBI No. 126/2009, shall enter into force on the beginning of the day following the promulgation of the aforementioned Federal Law.

(6) Section 33(1)2 and 3, Section 36(2), Section 39(1), (4) and (6), Section 44(1), the heading of Chapter VII, Sections 46 to 50d including headings, Sections 51b and 54 item 4 in the version of the Patent and Trademark Law Amendment 2014, BGBI No. 126/2013, come into force on January 1, 2014. At the same time, Section 33(1)4, Sections 35, 37 and 37a including headings in the previously applicable version become invalid.

(7) Sections 15, 17(3), 22 and 32(2) in the version of the Federal Law, BGBI No. 124/2017, come into force on the day following the publication of the aforementioned Federal Law.

(8) The heading of Section 38 and Section 38(7) in the version of the 2nd Data Protection Amendment Act, BGBl No. 37/2018, come into force on May 25, 2018.

(9) Section 14(4), Section 18(3), Section 19(4) and Section 36(2) in the version of the Federal Law, BGBl No. 51/2023 come into force on the day after publication in the Federal Law Gazette.

Section 53b

Section 33(2) in the version of the Federal Law BGBl No. 71/2016 shall enter into force at the beginning of the tenth month following the publication of the aforementioned Federal Law.

Section 54

The following shall be entrusted with enforcing this Federal Law:

1. in terms of section 29(4), sections 41 to 44 in conjunction with sections 147 to 156 and sections 160 and 161 of the Austrian Patent Law 1970, the Federal Minister of Justice,
2. in terms of section 33(2) in conjunction with section 51 of the Austrian Patent Law 1970, the Federal Government,
3. in terms of section 33(2) in conjunction with section 57(2) of the Austrian Patent Law 1970, the Federal Minister for Transport, Innovation and Technology in agreement with the Federal Minister for European and International Affairs,
4. with regard to Section 33(2) in conjunction with Section 126 of the Patent Act 1970 and with regard to Sections 49 to 50d, the Federal Minister for Transport, Innovation and Technology and the Federal Minister for Justice,
5. in terms of all other provisions of this Federal Law the Federal Minister for Transport, Innovation and Technology.