

GERMANY

Utility Model Law

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1.

(1) Utility model protection shall be afforded to inventions that are new, involve an inventive step and are susceptible of industrial application.

(2) The following, in particular, shall not be regarded as the subject matter of a utility model within the meaning of subsection (1):

1. discoveries, 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.
5. biotechnological inventions (§1 (2) of the Patent Act).

(3) Subsection (2) shall oppose utility model protection only to the extent to which protection is sought for the above-mentioned subject matter or activities as such.

2.

The following utility models shall not be protected:

1. inventions the exploitation of which would be contrary to public policy or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation.;
2. plant varieties or animal species; and
3. processes.

3.

(1) The subject matter of a utility model shall be considered to be new if it does not form part of the state of the art. The state of the art comprises any knowledge made available to the public by means of a written description or by use within the territory to which this Law applies before the date relevant for the priority of the application. Description or use within the six months preceding the date relevant for the priority of the application shall not be taken into consideration if it is based on the conception of the applicant or his predecessor in title.

(2) The subject matter of a utility model shall be considered susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

4.

(1) Applications in respect of inventions for which utility model protection is sought shall be filed in writing with the Patent Office. A separate application shall be filed for each invention.

(2) The Applications can also be filed through a patent information centre if such agency has been designated by the Federal Ministry of Justice and Consumer Protection to receive utility model applications in the Federal Law Gazette. An application that may contain an state secret (§93 criminal code) must not be filed at a patent information centre.

(3) The application must contain:

1. The name of the applicant;
2. a request for registration of the utility model, which must designate clearly and concisely the subject matter of the utility model;
3. one or more claims in which shall be specified what is to be protected by the utility model;
4. a description of the subject matter of the utility model;
5. the drawings to which the claims or the description refer.

(4) The Federal Ministry of Justice and Consumer Protection shall be empowered to issue via a statutory instrument provisions on the form and other requirements of the application. It may confer such power on the German Patent and Trademark Office via a statutory instrument.

(5) Up to the time of the decision to register the utility model, alterations in the contents of the application shall be permissible insofar as they do not broaden the scope of the subject matter of the application. No rights may be derived from alterations which broaden the scope of the subject matter of the application.

(6) An applicant may at any time divide his application. The division shall be made by a statement in writing. The date of the original application and any priority that has been claimed shall continue to apply to each part of a divided application. For the period up to division the same fees which were payable for the original application shall be paid for the separated application.

(7) The Federal Ministry of Justice and Consumer Protection shall have power to issue by statutory order regulations on the deposit, access, including the access to biological material, and the renewed storage of biological material, provided that the invention includes the use of biological material or material that is not accessible to the public and cannot be so described in the application that an expert can implement the invention from it ((3)). It may confer such power on the German Patent and Trademark Office via a statutory instrument.

4a.

(1) The application date of the utility model application is the date when the documents under §4(3)1 and 2, and §4(3)4 insofar as they contain information which to all appearances is to be regarded as a description, were received

1. at the Patent Office; or
2. at a patent information centre, if such agency has been designated by the Federal Ministry of Justice and Consumer Protection by promulgation in the Federal Law Gazette.

(2) If the application contains a reference to drawings, and no drawings are enclosed with the application or at least a part of the drawings is missing, then the Patent Office shall invite the applicant within a period of one month after delivery of the invitation, either to subsequently file the drawings or to declare that the reference is to be deemed not to have been made. If the applicant, upon such invitation, subsequently files the missing drawings or the missing part, then the date of receipt of such missing drawings or part at the Patent Office shall become the date of filing; otherwise the reference to the drawings shall be deemed not to have been made.

(3) (2) shall apply correspondingly to missing parts of the description.

4b.

If the application is not or only partially written in German, the applicant shall subsequently file a German translation within a period of three months after filing the application. If the German translation is not filed within the aforementioned period, the application shall be considered as withdrawn.

5.

(1) Where an applicant has already sought, at an earlier date, a patent

with effect in the Federal Republic of Germany for the same invention, he may file together with the utility model application a declaration claiming the date of filing relevant for the patent application. Any priority right claimed in respect of the patent application shall also apply to the utility model application. The right under the first sentence may be exercised up to the expiration of two months from the end of the month in which processing of the patent application or any opposition procedure is terminated, at the latest, however, by the end of the tenth year from the date of filing of the patent application.

(2) Where an applicant has filed a declaration under the first sentence of subsection (1), the Patent Office shall request him to communicate the serial number and the date of filing and to file a copy of the patent application, within two months of service of the request. Where the particulars are not provided in due time, the priority right under the first sentence of subsection (1) shall be forfeited.

6.

(1) Within a period of 12 months from the date of filing for an earlier patent or utility model application filed with the Patent Office, the applicant shall enjoy a right of priority for the application for a utility model for the same invention, unless a domestic or foreign priority has already been claimed for the earlier application. §40(2) to (4), (5) first sentence, (6) of the Patent Law shall apply mutatis mutandis, with the proviso in the case of §40(5) first sentence, that the earlier patent application shall not be deemed to have been withdrawn.

(2) The provisions of the Patent Law on foreign priority (§41) shall be applicable mutatis mutandis.

6a.

(1) If the applicant has exhibited an invention

1. in an official or officially recognised international exhibition, as determined by the 22 November 1928 agreement signed in Paris on international exhibitions; or
2. in another domestic or foreign exhibition,

and has filed the invention as a utility model within a period of six months since the initial exhibition, he may claim a priority right from the date of filing.

(2) The exhibitions stated in (1)1 shall be promulgated by the Federal Ministry of Justice and Consumer Protection in the Federal Gazette.

(3) The exhibitions stated in (1)2 shall in individual cases be determined by the Federal Ministry of Justice and Consumer Protection and promulgated in the Federal Gazette.

(4) Anyone who claims a priority pursuant to (1) shall specify the exhibition and the date of such initial exhibition, and submit proof of the exhibition before expiry of the 16th month from the date of the initial exhibition of the invention.

(5) Exhibition priority pursuant to (1) shall not extend the priority periods pursuant to §6 (1).

7.

(1) The Patent Office shall upon request search for the publications which are to be considered in assessing the registrability of the subject matter of the utility model application or the utility model.

(2) A request may be filed by the applicant or the registered proprietor or by any other party. Requests shall be filed in writing. §28 shall be applicable mutatis mutandis.

(3) The filing of the application shall be published in the Patent Office Journal, but not before the registration of the utility model. If a third party has made the application, then the applicant or the party registered as proprietor shall also be notified of the filing of the application. Anyone shall be entitled to give to the Patent Office information on the state of the art which is to be considered for assessment of registrability of the subject matter of the utility model application or the utility model.

(4) If a request pursuant to (1) is received, later requests shall be deemed not to have been made. §43 (4) Clauses 2 and 3 of the Patent Act shall apply mutatis mutandis.

(5) When the applicant or the party registered as proprietor has been notified of the receipt of a request by a third party, and such request proves to be ineffective, the Patent Office shall also notify the applicant or party registered as proprietor in addition to the third

party.

(6) The Patent Office shall notify the applicant or the party registered as proprietor of the state of the art determined pursuant to (1), if the request has been made by a third party, the latter and the applicant or the party registered as proprietor shall be notified and publish in the Patent Office Journal that such notification has been made, without any guarantee of completeness.

8.

(1) Where an application complies with the requirements of §4, 4a, 4b the Patent Office shall order registration in the Utility Model Register. No examination of the subject matter of the application as to novelty, inventive step or industrial applicability shall be carried out. §49(2) of the Patent Law shall apply *mutatis mutandis*.

(2) The registration shall contain the name and address of the applicant and of his representative and service agent appointed in accordance with §28, as well as the date of filing of the application.

(3) Summary of registrations shall be published in the Patent Gazette at regular intervals. Publication may be in electronic format. The Patent Office may communicate the specifications in the Patent Gazette in electronic form to third parties for further processing or for use for utility model information purposes. There shall be no communication insofar as an examination pursuant to (7) is excluded.

(4) The Patent Office shall record in the register any change in the person of the proprietor of the utility model or of his representative or authorised recipient if proven. So long as the change is not entered, the former rights holder and his former representative or authorised recipient shall pursuant to this law remain entitled and obligated.

(5) Anyone may inspect the Register and the files of registered utility models, including the files of cancellation proceedings. In addition, the Patent Office shall permit any person so requesting to inspect the files if and to the extent that a legitimate interest has been satisfactorily proved.

(6) Insofar as inspection of the register and files pursuant to (5) Clause 1 is available to anyone, inspection of the register and files

using electronic means can also be guaranteed via the Internet.

(7) Inspection pursuant to (5) and (6) shall be excluded if it conflicts with a legal provision or when the legitimate interests of the data subject as defined by §3 (1) of the Federal Data Protection Act clearly prevail.

9.

(1) If an application is filed for a utility model, the subject matter of which is a State secret (§93 of the Penal Code), the Examining competent to issue an order under §50 of the Patent Law shall order ex officio that there shall be no laying open for inspection (§8(5)) and no publication in the Patent Gazette (§8(3)). The competent supreme federal authority shall be heard before the order is issued. That authority may request that an order be issued. The utility model shall be entered in a Special Register.

(2) In other respects, the provisions of §31(5), 50(2) to (4), and 51 to 56 of the Patent Law shall apply mutatis mutandis. The Examining competent under subsection (1) shall also be competent for the decisions to be taken in applying §50(2) of the Patent Law mutatis mutandis and for the acts to be performed in applying §50(3) and 53(2) of the Patent Law mutatis mutandis.

10.

(1) For requests relating to utility models, with the exception of cancellation requests (§15 to 17), a Utility Model Section shall be established within the Patent Office, under the direction of a legal member appointed by the President of the Patent Office.

(2) The Federal Ministry of Justice and Consumer Protection shall be empowered to entrust by a statutory instrument officials of senior- and middle rank or comparable employees with the performance of transactions which are incumbent upon utility model bodies or utility model departments, and which, depending upon their type, offer no particular technical or legal difficulties; excluded therefrom however are rejections of applications on grounds the applicant has objected to. The Federal Ministry of Justice and Consumer Protection may confer such power on the German Patent and Trademark Office via a statutory instrument.

(3) Decisions on cancellation requests (§15 to 17) shall be taken by one of the Utility Model Divisions to be set up within the Patent Office, which shall be composed of two technical members and one legal member. The provisions of §27(7) of the Patent Law shall apply mutatis mutandis. The Utility Model Divisions shall also be required to give expert opinions within their areas of competence.

(4) For the exclusion and challenge of members of the Utility Model and the Utility Model Divisions, §41 to 44, 45(2), second sentence, and §47 to 49 of the Code of Civil Procedure relating to exclusion and challenge of members of a court shall apply mutatis mutandis. The same shall apply to officials of the higher and intermediate grades of the civil service and to employees, insofar as they have been entrusted under subsection (2) with the handling of certain matters within the competence of the Utility Model or the Utility Model Divisions. §27(6), third sentence, of the Patent Law shall apply mutatis mutandis.

11.

(1) Registration of a utility model shall have the effect that the proprietor alone is authorized to use the subject matter of the utility model. Any person not having his consent shall be prohibited from making, offering, putting on the market or using a product which is the subject matter of the utility model, or importing or stocking the product for these purposes.

(2) Registration shall have the further effect that any person not having the consent of the proprietor shall be prohibited from supplying or offering to supply within the territory to which this Law applies persons, other than those entitled to exploit the subject matter of the utility model, with means, relating to an essential element of the subject matter of the utility model, for using it within the territory to which this Law applies, when such person knows, or it is obvious in the circumstances, that the means are suitable and intended for using the subject matter of the utility model. The first sentence shall not apply when the means are staple commercial products, except when such person induces those supplied to commit acts prohibited by the second sentence of subsection (1). Persons performing the acts referred to in items 1 and 2 of §12 shall not be considered to be persons entitled to exploit the subject matter of the utility model within the meaning of the first sentence.

12.

The effects of the utility model shall not extend to

1. acts done privately for non-commercial purposes;
2. acts done for experimental purposes relating to the subject matter of the utility model;
3. acts of the kind specified in §11(4) to (6) of the Patent Law.

12a.

The scope of protection of the subject matter of the utility model shall be determined by the terms of the claims. When interpreting the claims, reference shall be made, however, to the description and the drawings.

13.

(1) Registration shall not afford utility model protection where a claim for cancellation of the utility model (§15(1) and (3)), assertable by any person, exists against the person registered as the proprietor.

(2) If the essential elements of the registration have been taken from the description, drawings, models, appliances or equipment of another person without that person's consent, protection under this Law may not be invoked against the injured party.

(3) The provisions of the Patent Law concerning the right to protection (§6), the right to the grant of protection (§7(1)), the right to assignment (§8), the right deriving from prior use (§12) and the official order of exploitation (§13) shall be applicable mutatis mutandis.

14.

If a subsequently filed patent infringes a right under §11, the right deriving from such patent may not be exercised without the consent of the proprietor of the utility model.

15.

(1) Any person may assert a claim against the person registered as proprietor for cancellation of the utility model

1. if the subject matter of the utility model is not registrable within the terms of §1 to 3;
2. if the subject matter of the utility model is already protected on

the basis of an earlier patent or utility model application; or
3. if the subject matter of the utility model extends beyond the content of the application as filed.

(2) In the case of §13(2), only the injured party may assert a claim for cancellation.

(3) Where the grounds for cancellation relate to a part only of the utility model, only that part shall be cancelled. The limitation may be effected in the form of an amendment to the claims.

16.

Cancellation of the utility model pursuant to §15 shall be applied for in writing to the Patent Office. The application must specify the facts on which it is based. The provisions of §81 (6) and of §125 of the Patent Act shall apply mutatis mutandis.

17.

(1) The Patent Office shall notify the proprietor of the utility model of the request and shall invite him to reply thereto within one month. If he fails to file a contesting reply in due time, cancellation shall be effected.

(2) Otherwise the Patent Office shall inform the applicant of the objection and take the necessary decisions for clarification of the matter. It may order a hearing of witnesses and experts. The provisions of the Code of Civil Procedure (§373 to 401 and 402 to 414) shall apply accordingly to them. Evidentiary hearings shall be recorded with the assistance of a recorder under oath.

(3) The decision on a request shall be taken on the basis of a hearing. The decision shall be pronounced at the session at which the hearing is closed or at a session to be fixed forthwith. The decision shall contain the grounds therefor, shall be in writing and shall be communicated ex officio to the parties. A certification of the copy is not required. The original shall be made only upon request by a party and only in paper form. §47(2) of the Patent Law shall apply mutatis mutandis. Service of the decision is admissible instead of pronouncement.

(4) The Patent Office shall determine in what proportion the costs of

the proceedings shall be borne by the parties. §62(2) and the second and third sentences of §84(2) of the Patent Law shall apply mutatis mutandis.

18.

(1) Appeals against the decisions of the Utility Model Section and the Utility Model Divisions shall take place at the patent court.

(2) In other respects, the provisions of the Patent Law governing proceedings on appeal shall be applicable mutatis mutandis. If an appeal lies from a decision given in cancellation proceedings, Section 84(2) of the Patent Law shall apply mutatis mutandis in respect of the decision on the costs of the proceedings.

(3) Appeals from decisions of the Utility Model Section and from decisions of the Utility Model Divisions shall be heard by a Chamber of Appeal of the Federal Patent Court. Appeals against rejection of an application for registration of a utility model shall be heard by a Chamber of Appeal composed of two legal members and one technical member, and appeals from decisions of the Utility Model Divisions regarding cancellation requests by a Chamber of Appeal composed of one legal member and two technical members. For appeals against decisions on applications for the granting of legal aid, Clause 2 shall apply mutatis mutandis. The presiding judge must be a legal member. Section 21g(1) and (2) of the Judiciary Law shall apply with regard to the allocation of business within the Chamber of Appeal. In the case of proceedings relating to appeals from decisions of the Utility Model Section, Section 69(1) of the Patent Law shall apply and, in the case of proceedings relating to appeals from decisions of the Utility Model Divisions, Section 69(2) of the Patent Law shall apply, mutatis mutandis.

(4) An appeal on a point of law from a decision of the Chamber of Appeal of the Federal Patent Court in respect of an appeal under subsection (1) shall lie to the Federal Court of Justice if the Chamber of Appeal, in its decision, has given leave to appeal on that point of law. Sections 100(2) and (3) and 101 to 109 of the Patent Law shall apply.

19.

If litigation is pending during cancellation proceedings and the

decision on that litigation depends on the existence of utility model protection, the court may order that the hearing be postponed until the cancellation proceedings have been settled. It shall order such postponement if it considers the utility model registration to be invalid. If the cancellation request is refused, the court shall be bound by that decision only if it was taken in respect of the same parties.

20.

The provisions of the Patent Act on the award or revocation of a compulsory licence, on adjustments to the fixed amount of remuneration for a compulsory licence (§24), and the procedure for the grant of compulsory licenses (§81 to 99 and 110 to 122a) shall apply mutatis mutandis in the case of registered utility models.

21.

(1) The provisions of the Patent Law concerning the giving of opinions (Section 29(1) and (2)), reinstatement (Section 123), on the further processing of the application (§123a), on the obligation of truthfulness in the proceedings (§124), on the electronic conduct of proceedings (§125a), on the official language (§126), on services (§127), on legal assistance of the courts (§128), on the compensation of witnesses and the remuneration of experts (§128a), and on legal protection for overlong court proceedings (§128b) shall also apply to utility model cases.

(2) The provisions of the Patent Law granting legal aid (§129 to 138) shall apply mutatis mutandis in utility model proceedings and §135(3) shall apply with the proviso that the representative assigned under §133 shall have the right to appeal.

22.

(1) The right to a utility model, the right to registration of a utility model and the right derived from such registration shall pass to the heirs. Such rights may be assigned to other parties, with or without restriction.

(2) The rights under subsection (1) may be licensed in whole or in part, exclusively or non-exclusively, for the whole or part of the territory to which this Law applies. Where a licensee contravenes a restriction of his license under the first sentence, the right afforded

by the registration may be invoked against him.

(3) The transfer of rights or the grant of a license shall not affect licenses previously granted to third parties.

23.

(1) The term of protection of a registered utility model shall commence with the date of filing and end ten years after the expiry of the month in which the date of filing falls.

(2) The maintenance of the protection is effected by payment of maintenance fees for the fourth to sixth, seventh and eighth, and ninth and tenth year, counted from the date of filing. The maintenance shall be noted in the register.

(3) The utility model shall expire

1. when the party registered as proprietor waives the utility model by a written statement to the Patent Office; or
2. when the maintenance charge is not paid (\$7 (1), \$13 (3), or \$14 (2) and (5) of the Patent Costs Act) on time.

24.

(1) Anyone who uses a utility model contrary to §11 to 14 may be sued by the injured party if there is a risk of repetition. The claim shall also exist if there is a threat of infringement for the first time.

(2) Any person who undertakes such action intentionally or negligently shall be liable for compensation to the injured party for the damage suffered therefrom. In determining the amount of the damages, the profit that the infringer has gained from breaking the law may also be taken into account. The claim for damages may also be calculated on the basis of the amount that the infringer would have had to pay as appropriate remuneration if he had obtained permission to use the invention.

24a.

(1) Anyone who uses a utility model contrary to §11 to 14 may be sued by the injured party for destruction of the products in the possession or property of the infringer which is the subject matter of the utility model. Clause 1 shall apply mutatis mutandis to materials and equipment in the property of infringer which have been used predominantly for

the production of these products.

(2) Anyone who uses a utility model contrary to §11 to 14 may be sued by the injured party for recovery of the products which is the subject matter of the utility model, or for their permanent removal from distribution channel.

(3) The claims pursuant to (1) and (2) shall be excluded if the claim is disproportionate in individual cases. When assessing commensurability, the legitimate interests of third parties shall also be taken into consideration.

24b.

(1) Anyone who uses a utility model contrary to §11 to 14 may be sued by the injured party for immediate acquisition of information on the origin and distribution channel of the products used.

(2) In cases of obvious infringement or in cases where the injured party has brought an action against the infringer, the claim shall, regardless of (1), also apply against a person who, on a commercial scale,

1. possessed goods that were in infringement of rights;
2. claimed services that were in infringement of rights;
3. provided services for activities that were in infringement of rights; or
4. according to the specifications of a person referred to in numbers 1, 2 or 3, was involved in the manufacture, production, or distribution of such goods or in the provision of such services, unless the person is entitled under §383 to 385 of the Code of Civil Procedure to refuse to give evidence in the trial against the infringer. In the case of the court's enforcement of the claim pursuant to (1), the court may upon petition suspend the pending litigation against the infringer until the petition for disclosure of information has been settled. The party obliged to disclosure may request from the injured party compensation for the expenses necessary for disseminating the information.

(3) The party obliged to disclosure shall give information on

1. the name and address of the manufacturers, suppliers, and other previous owners of the goods, or of the users of the services and the commercial buyers and sales agencies for which they were intended; and

2. the quantity of the manufactured, supplied, received or ordered products and the prices that were paid for the products or services in question.

(4) The claims pursuant to (1) and (2) shall be excluded if the claim is disproportionate in individual cases.

(5) If the party obliged to disclosure deliberately or through gross negligence gives incomplete or false information, he shall be obliged to compensate the injured party for damage arising therefrom.

(6) Anyone who gives correct information without having been obliged to do so shall, pursuant to (1) or (2), only be liable to third parties if he knew that he was not obliged to provide the information.

(7) In cases of obvious infringement, the obligation to provide information can be arranged by way of injunction pursuant to §935 to 945 of the Code of Civil Procedure.

(8) The findings may only be utilised in criminal proceedings or in proceedings pursuant to the Administrative Offences Act due to an act committed before the dissemination of information against the obliged party or against an associate described in §52 (1) of the Code of Criminal Procedure with the consent of the obliged party.

(9) If the information can only be obtained by accessing call detail records (§3 No. 30 of the Telecommunications Act), a prior judicial order on the admissibility of the use of call detail records which is to be applied for by the injured party shall be required for its dissemination. For the adoption of this arrangement, the regional court in whose territory the party obliged to disclosure has his domicile, residence, or establishment, shall have sole jurisdiction regardless of the value of the dispute. The decision shall be adopted by the civil division. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall apply to the proceedings and in matters of jurisdiction over non-contentious matters accordingly. The costs of the judicial order shall be borne by the injured party. An appeal against the decision of the regional court shall be permissible. The appeal shall be submitted within a period of two weeks. As for the rest, the provisions on the protection of personal data shall remain unaffected.

(10) The basic right of telecommunications secrecy shall be restricted by (2) in conjunction with (9) (Article 10 of the basic law).

24c.

(1) Anyone who uses a utility model contrary to §11 to 14 may be required by the rights holder or another entitled party to present a certificate or allow inspection of an object which falls within his powers of disposal if this is necessary for the substantiation of the latter's claims. If there is sufficient probability of an infringement committed on a commercial scale, the claim shall extend also to the presentation of bank, financial, or trade documents. Insofar as the alleged infringer asserts that this is confidential information, the court shall take the necessary measures to ensure the required protection in this particular case.

(2) The claim pursuant to (1) shall be excluded if the claim is disproportionate in individual cases.

(3) In cases of obvious infringement, the obligation to present a certificate or to allow inspection of an object can be arranged by way of injunction pursuant to §935 to 945 of the Code of Civil Procedure. The courts shall take the necessary measures to ensure the protection of confidential information. This applies in particular to cases where the injunction is adopted without prior hearing of the opposing party.

(4) §811 of the Civil Code and §24b (8) shall apply mutatis mutandis.

(5) If there was no infringement or threat thereof, the alleged infringer may demand compensation from the person who sought the certificate or inspection pursuant to (1) for the damage caused him by the request.

24d.

(1) The injured party may also demand the following from the infringer for an infringement committed on a commercial scale in the cases of §24 (2): presentation of bank, financial or trade documents, or appropriate access to the corresponding documents which are in the power or disposal of the infringer, as well as other things required for the assertion of the claim for damages, which if not presented makes the realisation of the claim questionable. Insofar as the

infringer asserts that this is confidential information, the court shall take the necessary measures to ensure the required protection in this particular case.

(2) The claim pursuant to (1) shall be excluded if the claim is disproportionate in individual cases.

(3) The obligation of presentation of the certificates described in (1) can be arranged by way of injunction pursuant to §935 to 945 of the Code of Civil Procedure, if the claim for damages is obvious. The courts shall take the necessary measures to ensure the protection of confidential information. This shall apply in particular to cases where the injunction is adopted without prior hearing of the opposing party.

(4) §811 of the Civil Code and §24b (8) shall apply mutatis mutandis.

24e.

If a legal action has been brought based on this law, the successful party may be promised in the judgement the authority to promulgate the judgement at the cost of the defeated party if it demonstrates a legitimate interest. The type and scope of the promulgation shall be set in the judgement. The authority shall expire if not used within three months of the date of the judgement. The award pursuant to the first clause shall not be provisionally enforceable.

24f.

For the limitation of claims due to infringement of proprietary rights, the provisions of (5) of Book 1 of the Civil Code shall be applied correspondingly. If the obligated party has gained anything by the infringement at the cost of the entitled party, §852 of the Civil Code shall be applied correspondingly.

24g.

Requirements from other statutory provisions shall remain unaffected.

25.

(1) Any person who, without the necessary consent of the proprietor of the utility model

1. makes, offers, puts on the market, uses or imports or stocks for these purposes a product which is the subject matter of a utility

model (§11(1), second sentence) or

2. exercises the right deriving from a patent contrary to §14 shall be liable to imprisonment of up to three years or a fine.

(2) Where the offender acts by way of trade, he shall be liable to imprisonment of up to five years or a fine.

(3) The attempt to commit such an offense shall be punishable.

(4) Offenses under subsection (1) shall only be prosecuted on complaint, unless the prosecuting authorities deem that ex officio prosecution is justified in view of the particular public interest.

(5) Objects implicated in an offense may be confiscated. Article 74a of the Penal Code shall apply. Where the claims referred to in §24a are upheld in proceedings under the provisions of the Code of Criminal Procedure with regard to compensation of the injured party (§403 to §406c), the provisions on confiscation (§74 to §74f of Penal Code) shall not be of application.

(6) If a penalty is pronounced, the Court shall, at the request of the injured party and if the latter can show a justified interest, order publication of the judgment. The nature of the publication shall be laid down in the judgment.

25a.

(1) A product that pursuant to this law infringes a protected utility model shall be subject, upon the request and against collateral of the rights holder, to seizure by the customs authorities when being imported or exported, provided that the infringement is obvious and unless Regulation (EC) No. 608/2013 of the European Parliament and the Council of 12 June 2013 on the enforcement of the rights of intellectual property by the customs authorities and the repeal of Regulation (EC) No. 1383/2003 of the Council (ABl. L 181 of 29/6/2013, S. 15) in its currently applicable version is to be applied. This shall only apply to traffic with other member states of the European Union as well as with other contracting states of the agreement on the European Economic Area insofar as checks are carried out by customs authorities.

(2) Where the customs authorities order a seizure, they shall advise

the person entitled to dispose and also the petitioner thereof without delay. The origin, quantity and place of storage of the product, together with the name and address of the person entitled to dispose, shall be communicated to the petitioner; the secrecy of correspondence and of mail (§10 of the Basic Law) shall be restricted to that extent. The petitioner shall be given the opportunity to inspect the product where such inspection does not constitute a breach of commercial or trade secrecy.

(3) Where no opposition to the seizure is made, at the latest within two weeks of service of the notification under the first sentence of subsection (2), first sentence, the customs authorities shall order confiscation of the seized product.

(4) If the person entitled to dispose opposes seizure, the customs authorities shall inform the petitioner thereof without delay. The petitioner shall be required to declare to the customs authorities, without delay, whether he maintains the request under subsection (1) in respect of the seized copies.

1. If the petitioner withdraws his request, the customs authorities shall lift the seizure without delay.

2. If the petitioner maintains his request and submits an executable court decision ordering the impounding of the seized copies or the limitation of the right to dispose, the customs authorities shall take the necessary measures.

Where neither of the cases referred to in items 1 and 2 is applicable, the customs authorities shall lift the seizure on the expiry of two weeks after service of the notification to the petitioner under the first sentence; where the petitioner can show that a court decision according to item 2 has been requested, but has not yet been received, the seizure shall be maintained for a further two weeks at most.

(5) Where seizure proves to have been unjustified from the beginning and if the petitioner has maintained the request under subsection (1) in respect of the seized product or has not made a declaration without delay (second sentence of subsection (4)), he shall be required to compensate the damages that seizure has occasioned to the person entitled to dispose.

(6) A petition under subsection (1) is to be submitted to the Regional Finance Office and shall be effective for two years unless a shorter

period of validity has been requested; the request may be repeated. The cost of official acts related to the request shall be charged to the petitioner in accordance with §178 of the Fiscal Code.

(7) Seizure and confiscation may be opposed by the legal remedies allowed by the fixed penalty procedure under the Law on Minor Offenses in respect of seizure and confiscation. The petitioner shall be heard in the review proceedings. An immediate appeal shall lie from the decision of the Local Court; it shall be heard by the Provincial High Court.

25b.

For proceedings pursuant to Regulation (EC) No. 608/2013, §25a (5) and (6) shall apply mutatis mutandis provided that the regulation contains no provisions in conflict with these.

26.

(1) If a party to civil litigation in which an action is brought to assert a claim arising from one of the legal relationships regulated under this Law satisfies the court that the awarding of the costs of the case against him according to the full value in dispute would considerably endanger his financial position, the court may, at his request, order that party's liability to pay court costs to be adjusted in accordance with a portion of the value in dispute that shall be appropriate to his financial position. As a result of the order, the favored party shall likewise be required to pay the fees of his attorney-at-law only in accordance with that portion of the value in dispute. To the extent that the costs of the case are awarded against him or to the extent to which he assumes such costs, he shall be required to refund the court fees paid by the opposing party and the fees of the latter's attorney-at-law only in accordance with that portion of the value in dispute. To the extent that the extrajudicial costs are ordered to be paid by the opposing party or are assumed by that party, the attorney-at-law of the favored party may recover his fees from the opposing party in accordance with the value in dispute applying to the latter.

(2) A request under subsection (1) may be declared before and recorded at the registrar's office of the court. It shall be presented before the substance of the case is heard. Thereafter, it shall be admissible only if the presumed or fixed value in dispute is subsequently

increased by the court. Before the decision is given on the request, the opposing party shall be heard.

27.

(1) For all actions whereby a claim arising out of one of the legal relationships regulated in this Law is asserted (utility model litigation), the civil chambers of the regional courts shall have exclusive jurisdiction without regard to the value in dispute.

(2) The regional governments shall be empowered via a statutory instrument to assign utility model protection cases under the territories of more than one regional court to one of them, provided that this serves the material advancement of the proceedings. The regional governments may transfer such powers to the provincial administrations of justice. The regions may moreover by agreement transfer all the incumbent tasks of a region in whole or in part to a competent court in a different region.

(3) The costs resulting from the participation of a patent lawyer in a utility model dispute shall be reimbursed pursuant to §13 of the Lawyers' Compensation Act, including the necessary expenses of the patent lawyer.

28.

(1) Anyone who has neither domiciled nor registered office in the state shall only be able to participate in a process governed by this law before the Patent Office or the patent court and only assert rights from a utility model if he has appointed a lawyer or patent lawyer who is authorised to represent in proceedings before the Patent Office or the patent court and in civil legal disputes which concern the utility model, and to file criminal applications.

(2) The location at which a representative appointed pursuant to (1) has his premises shall as defined by §23 of the Code of Civil Procedure be considered the location at which the asset is situated; should such premises be absent, then the location at which the representative has his residence, and in the absence of such, the location at which the Patent Office is established shall be decisive.

(3) The contractual termination of the appointment of a representative pursuant to (1) shall only become effective if both the termination

and the appointment of another representative are indicated to the Patent Office or the patent court.

29.

The Federal Ministry of Justice and Consumer Protection shall regulate by a statutory instrument, which shall not require the consent of the Bundesrat, the establishment and operation of the Patent Office, and the form of the proceedings in utility model matters unless otherwise provided by law.

30.

Any person who places on articles or their packaging a marking of such a nature as to create the impression that the articles are protected as utility models under this Law, or any person who uses a marking of such a nature in public notices, on signboards, on business cards or in similar announcements, shall be required to give on demand, to any person having a legitimate interest in knowing the legal position, information as to the utility model upon which the use of the marking is based.

31.

Article 229 §6 of the Introductory Law to the Civil Code shall apply mutatis mutandis subject to the proviso that §24c in the version valid until 1 January 2002 is equivalent to the provisions of the Civil Code on the statute of limitations in the applicable version up to 1 January 2002.