

GERMANY

Patent Regulations

Patent Ordinance of 1 September 2003 (PatV)

Amended by the ordinance of 10 August 2021 (BGBl. IS 3436)

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Part I General provisions

Section 1 Scope of application

In addition to the provisions of the Patent Act and the Ordinance Concerning the German Patent and Trade Mark Office , the provisions of this ordinance shall apply to procedures before the German Patent and Trade Mark Office, prescribed in the Patent Act.

Section 2 German industrial standards, measuring units, symbols and signs

(1) German industrial standards, referred to in this ordinance, have been published by Beuth-Verlag GmbH, Berlin and Cologne, and securely stored in an archive at the German Patent and Trade Mark Office in Munich.

(2) Measuring units shall be indicated in accordance with the Act on Measuring Units and the Determination of Time and the corresponding implementing regulations in the respective applicable versions. For chemical formulae the signs and symbols recognised in national or international practice in the field in question shall be used.

Part II Patent applications; patent procedures

Section 3 Filing of the application

The application (Sec. 34 Patent Act) and the abstract (Sec. 36 Patent Act) shall be filed in writing or electronically with the German Patent and Trade Mark Office. The Ordinance Concerning the German Patent and Trade Mark Office shall apply to electronic filing.

Section 4 Request for the grant of a patent

(1) For the written request for the grant of a patent, the form issued by the German Patent and Trademark Office shall be used to provide the following information, unless otherwise provided for in this Ordinance.

(2) The request shall contain:

1. the following information on the applicant:

a) if the applicant is a natural person, given name and the family name or, if registration is sought under the trade name, the trade name as recorded in the commercial register as well as the address of the residence or the principal place of business indicating the street, house number, postcode and town,

b) if the applicant is a legal entity or a partnership:

aa) name or the trade name, legal form as well as address indicating the street, house number, postcode and town where the principal place of business is located; the usual abbreviation of the legal form can be used; if the legal entity or partnership is registered in a register, the details shall correspond to the register entry

bb) in case of a partnership under the Civil Code (Gesellschaft bürgerlichen Rechts) in addition, the name and address indicating the street, house number, postcode and town of at least one partner entitled to act as representative;

2. a short and precise title of the invention;

3. a statement that the grant of a patent is requested for the invention;

4. if applicable, information on the representative;

5. the signatures of all applicants or their representative;

(3) If the residence or principal place of business of the applicant is not in Germany, the country in addition to the town shall be indicated when indicating the address under subsection (2) no.1.

Further information on the district, county or state where they have their residence or principal place of business or to whose legal order, they are subject to is optional.

(4) If the German Patent and Trade Mark Office has assigned a code number to the applicant, this number should be indicated in the application. In the application, a postal address differing from the applicant's address may also be provided as well as a P.O. box address, telephone numbers, fax numbers and e-mail addresses.

(5) If the application is filed by several persons or partnerships, subsection (2) no. 1 and subsections (3) and (4) shall apply to all persons or partnerships filing the application.

(6) Where a representative has been appointed, subsection (2) no. 1 and the subsections (3) and (4), second sentence, shall apply mutatis mutandis to the information on the representative. If the German Patent and Trade Mark Office has assigned a code number or the number of a general power of attorney to the representative, this number should also be indicated.

(7) If employees sign for their notifying employer, proof of the authorised signatory shall be provided on request. Employee powers of attorney deposited with the German Patent and Trademark Office for the signatories must be indicated, stating the identification number provided for this purpose.

(8) The geographical origin of biological material under Sec. 34a, first sentence, Patent Act shall be indicated on a separate sheet attached to the request.

Section 5 Application documents

(1) The documents making up the application and the abstract shall not contain any pictorial representation in the text matter. It may contain chemical and mathematical formulae as well as tables. Fancy names, trade marks or other designations which are not suited to clearly indicate the nature of an object, shall not be used. If, in exceptional cases, an indication can only be clearly denoted by using a trade mark, the said designation shall make it clear that it is a trade mark.

(2) Technical terms and designations as well as reference signs shall be used uniformly throughout the application unless the use of different terms is adequate.

Section 6 Formal requirements for an application

(1) The documents making up the application shall be so presented as to admit electronic data input.

(2) The patent claims, the description, the drawings as well as the text and the drawings of the abstract shall be filed on separate sheets. The size of the sheets shall be 210mm x 297mm (DIN A4) and be used in upright position. For the drawings, the sheets may, if appropriate, be used sideways; in this case, the top of the figures shall be presented at the left side of the sheet in an upright position. This shall apply mutatis mutandis to the representation of chemical and mathematical formulae and tables. All sheets shall be free from creases, tears and folds. The paper of the sheets shall be non-transparent, pliable, strong, smooth, matt and durable.

(3) Only one side of the sheets shall be typed or printed or contain drawings. The sheets shall be connected in such a way that they can be easily separated and joined together again. The patent claims, the description, the drawings as well as the text matter and the drawings of the abstract each shall commence on a new sheet. The sheets of the description shall be numbered in consecutive Arabic numerals. These numbers shall be placed below the top margin of the sheet, in the middle. The lines and paragraphs should not be numbered nor any other numbering be applied.

(4) The margins of the sheets containing the request, the patent claims, the description and the abstract must be blank. The minimum margins shall be as follows:

top 2.0 cm

left side 2.5 cm

right side 2.0 cm

bottom 2.0 cm

The minimum margins may contain the name, the trade name or other designation of the applicant as well as the file number of the application.

(5) The request, the patent claims, the description and the abstract

shall be typed or printed, using single-column formatting. The right margin should not be justified. The letters of the type used shall be clearly separated and must not touch. Graphic symbols and characters and chemical or mathematical formulae may, if necessary, be written by hand or drawn. The typing shall be 1.5 spaced. The text matter shall be in characters, the capital letters of which are not less than 0.21 cm high (the minimum font size shall be 10 point) and shall be in dark, indelible colour. The typeface shall have sharp outlines and be high-contrast. Each sheet shall be reasonably free from erasures, alterations, overwriting and interlineations. If appropriate, non-compliance with this rule may be authorised. The text shall not be underlined, italicised, bolted; character spacing shall not be expanded.

(6) The documents making up an application shall clearly show to which application they pertain.

Section 7 Naming the inventor

(1) When indicating the inventor in writing, the applicant shall use the form issued by the German Patent and Trade Mark Office.

(2) This indication must contain:

1. the first names, surnames and addresses, indicating the street, house number, postcode and place of the inventor; § 4 paragraph 3 shall apply accordingly;
2. the affirmation of the applicant that to his knowledge no other person has contributed to the invention (Sec. 37 (1) Patent Act);
3. if the applicant is not the inventor or not the sole inventor, a statement by the applicant on how he acquired the right to the patent (Sec. 37 (1), second sentence, Patent Act);
4. the title of the invention and the official file number, if already known;
5. the signature of the applicant or his representative; if the patent grant has been requested by several persons, each person or their representative shall sign the declaration.

Section 8 Omission of the mention of the inventor; change of the mention of the inventor

(1) The request by the inventor not to be mentioned as inventor, the withdrawal of this request (Sec. 63 (1), third and fourth sentences, Patent Act) and the requests for correction or subsequent mention of

the inventor (Sec. 63 (2) Patent Act) shall be filed in writing. The documents shall be signed by the inventor and shall contain the title of the invention and the official file number.

(2) The consent to the correction or subsequent mention of the inventor (Sec. 63 (2) Patent Act) by the applicant or patentee and the person wrongly mentioned shall be given in writing.

Section 9 Patent claims

(1) Patent claims shall contain what is to be protected by the patent (Sec. 34 (3) no. 3 of the Patent Act) and shall be drafted in one piece or shall be divided into generic part and characterizing portion (two-piece). In both cases the version may be arranged according to features.

(2) If the two-piece claim formulation is chosen, the known features of the invention comprised in the state of the art shall be included in the generic part; the characterizing portion shall include the features of the invention for which protection is sought in connection with the features of the generic part. The characterizing portion shall be preceded by such words as "characterized in that" or "characterized by" or any other expressions to this effect.

(3) If patent claims are arranged according to features or groups of features, the said arrangement shall be set off by starting a new line for each feature or group of features. The features or groups of features shall be preceded by subdivision signs clearly set off against the text matter.

(4) The essential features of the invention shall be indicated in the first patent claim (principal claim).

(5) An application may contain several independent patent claims provided the principle of unity of the invention is respected (Sec. 34 (5) of the Patent Act). Subsection (4) shall apply mutatis mutandis. Independent claims may contain a reference to at least one of the preceding patent claims.

(6) Any principal or independent patent claim, respectively, may be followed by one or more dependent claims concerning particular embodiments of the invention. Dependent claims shall contain a

reference to at least one of the preceding patent claims. They shall be grouped together to the extent and in the most appropriate way possible.

(7) If there are several patent claims, they shall be numbered consecutively in Arabic numerals.

(8) Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or drawings. In particular, they shall not rely on such references as: "as described in part ...of the description", or "as illustrated in figure ... of the drawings".

(9) If the patent application contains drawings, the features mentioned in the claims shall preferably be followed by reference signs.

Section 10 Description

(1) The description according to Section 34 (3) no. 4 of the Patent Act shall first state the title of the invention according to Section 4 (2) no. 2.

(2) Additionally, it shall:

1. specify the technical field to which the invention relates unless it follows from the claims or the indications concerning the state of the art;
2. indicate the state of the art known to the applicant which may be taken into account for the understanding of the invention and its protectability by indicating the source known to the applicant;
3. describe the problem underlying the invention unless it follows from the indicated solution or the indications made with regard to no. 6, in particular, if it is indispensable for the understanding of the invention or for specifying its contents more closely.
4. indicate the invention for which protection is sought in the patent claims;
5. when it is not obvious from the description or the nature of the invention, at least one way in which the invention is capable of exploitation in industry;
6. state any advantageous effects of the invention with reference to the background art;
7. describe in detail at least one way of carrying out the invention

claimed, using, where appropriate, examples or drawings, indicating the respective reference signs.

(3) The description shall not include any indications obviously not necessary in order to explain the invention. Repetitions of claims or parts of claims may be replaced by corresponding references.

Section 11 Presentation of nucleotide and amino acid sequences

(1) If structural formulae in form of nucleotide or amino acid sequences are indicated and hence disclosed in concrete terms in the patent application, a corresponding sequence listing shall be filed as annex to the application, separately from the description and the claims. The sequence listing shall comply with the standards for the filing of sequence listings prescribed in annex 1.

(2) If the patent application is filed in writing, a data carrier containing the sequence listing in machine readable form shall additionally be submitted. The data carrier shall be clearly marked as data carrier for a sequence listing and comply with the standards mentioned in subsection (1). The data carrier shall be accompanied by a statement that the information recorded on the data carrier is identical to the written sequence listing.

(3) If the sequence listing on the data carrier filed in the application is corrected subsequently, the applicant shall submit a statement that the corrected sequence listing does not include matter which goes beyond the content of the application as filed. Subsections (1) and (2) shall apply mutatis mutandis to the correction.

(4) In case of an application derived from an international patent application under the Patent Cooperation Treaty in respect of which the German Patent and Trade Mark Office is a designated or an elected office (Art. III Sec. 4 (1), Sec. 6(1) of the Act on International Patent Treaties of 21 June 1976, Federal Law Gazette 1976 II p. 649), the rules of the Regulations under the Patent Cooperation Treaty shall apply directly, insofar as they concern the standard for filing sequence listings.

Section 12 Drawings

Drawings furnished shall comply with the standards contained in

annex 2.

Section 13 Abstract

(1) The abstract according to Section 36 of the Patent Act shall preferably not consist of more than 1,500 characters.

(2) The abstract may also indicate the chemical formula which best characterizes the invention.

(3) Section 9 (8) shall apply mutatis mutandis.

Section 14 German translations

(1) German translations of foreign-language documents shall be certified by a lawyer or patent attorney or be done by an officially authorised translator.

(2) German translations of foreign-language priority documents and copies of earlier applications (Sec. 41(1) Patent Act [Patentgesetz]) shall be furnished only upon invitation by the German Patent and Trade Mark Office. The German Patent and Trade Mark Office will fix a reasonable time limit for the subsequent filing.

(3) German translations of documents

1. not forming part of the documentation relating to the application and

2. filed in English, French, Italian or Spanish, shall be subsequently furnished only upon invitation by the German Patent and Trade Mark Office. The German Patent and Trademark Office sets a reasonable deadline for subsequent filing.

(4) If other documents which are not included in the documents of the application are filed in languages other than those listed in paragraph 3, first sentence, point 2, translations into the German language must be filed within one month of receipt of the documents.

(5) If the translation within the meaning of subsections (2) to (4) is filed after expiry of the time limit, the foreign-language document shall be deemed to have been received on the date of receipt of the translation. If no translation is submitted, the foreign-language document shall be deemed not to have been received.

Part III Other formal requirements

Section 15 Subsequently filed application documents; changes in application documents

(1) Any document filed after communication of the official file number shall indicate the complete file number. If the application documents are altered in the course of the procedure, the applicant shall submit a clean copy of the application documents incorporating any changes.

(2) If the applicant subsequently furnishes further copies of the application documents, the documents shall be accompanied by a declaration stating that the subsequently furnished documents correspond to the documents as originally filed.

(3) Insofar as the changes have not been proposed by the German Patent and Trade Mark Office, the applicant shall state in detail where the features of the invention described in the new documents are disclosed in the originally filed documents. In addition, the changes effected shall be marked either in a copy of the changed documents, by separate explanations, or in the clean copy. If the changes are marked in the clean copy, they shall be in bold lettering.

(4) Insofar as the changes have been proposed by the German Patent and Trade Mark Office and have been accepted by the applicant without further changes, the applicant shall attach a declaration to the clean copy mentioned in subsection (1), second sentence; this declaration shall state that the clean copy does not contain any other changes than the changes proposed by the German Patent and Trade Mark Office.

Section 16 Models and samples

(1) Models and samples shall only be supplied if the German Patent and Trade Mark Office invites the applicant to do so. They shall bear durable labels indicating the contents and the application to which they relate. If necessary, clear reference shall be made to the patent claim and the description.

(2) Fragile models and samples shall be submitted in sturdy containers clearly so marked. Small articles shall be fastened on

stiff paper.

(3) Samples of chemical materials shall be submitted in durable and firmly closed containers. If they are poisonous, corrosive or inflammable or have other dangerous characteristics, they shall bear an indication to this effect.

(4) Dyeing and tanning samples as well as other flat samples shall be firmly fixed on stiff paper in the format 21 x 29.7 (DIN A4). They shall be accompanied by a precise description of the process of manufacture or use.

Section 17 Official certification of signatures

Upon invitation by the German Patent and Trade Mark Office the signatures mentioned in Section 7 (2) no. 5 and in Section 8 shall be officially certified (Section 129 of the Civil Code).

Section 18 (deleted)

Part IV Supplementary protection certificates

Section 19 Filing of the application

(1) The request for the grant of a supplementary protection certificate and the request for an extension of the duration of a supplementary protection certificate (Sec. 49a Patent Act) shall be furnished on the forms issued by the German Patent and Trade Mark Office. Section 4 (2) No. 1, 4 and 5, and Section 4 (3), (5), (6) as well as Section 14 (1), (3) to (5) shall apply mutatis mutandis.

(2) The request for the grant of a supplementary protection certificate shall be accompanied by information setting forth the protection afforded by the parent patent.

Section 20 Supplementary protection certificates for medicinal products

Both the request for the grant of a supplementary protection certificate for medicinal products and the request for an extension of the duration of a supplementary protection certificate for medicinal products shall contain the information and documents specified in Article 8 of the Regulation (EC) no. 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ EC no. L 152 of 16 June 2009, p. 1).

Section 21 Supplementary protection certificates for plant protection products

The request for the grant of a supplementary protection certificate for plant protection products shall contain the information and documents specified in Article 8 of the Regulation (EC) no. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products (OJ EC no. L 198 of 8 August 1996, p. 30).

Part V Final provisions and transitory provisions

Section 22 Transitory provisions

For patent applications, the naming of the inventor and requests for the grant of a supplementary protection certificate filed before the entry into force of the amendments to this ordinance, the provisions heretofore in force shall remain applicable in the version applicable until that date.

Section 23 Entry into force; abrogation

This ordinance shall enter into force on 15 October 2003. At the same date,

1. the Ordinance Concerning Patent Applications of 29 May 1981 (Federal Law Gazette I p. 521), last amended by the ordinance of 1 January 2002 (Federal Law Gazette I p. 32), and
2. the Ordinance Concerning the Naming of the Inventor of 29 May 1981 (Federal Law Gazette I p. 525) shall be abrogated.

Annex 1 (Omitted)

Annex 2 (resp. Sec. 12)

Standards for the filing of drawings

1. The drawings shall be on sheets with the following minimum margins:

top 2.5 cm

left side 2.5 cm

right side 1.5 cm

bottom 1.0 cm

The area used for drawings may not exceed 26.2 cm x 17 cm; the area used for the drawing of the abstract may be 8.1 cm x 9.4 cm when presented in an upright position, or 17.4 cm x 4.5 cm when presented sideways

2. Drawings shall be executed with sufficient contrast in durable, black, sufficiently dense and dark, uniformly thick and clearly delineated lines and strokes without colourings.

3. For illustrating the invention, in addition to views and sectional views, perspectives and exploded views may be used. Cross sections shall be indicated by hatching which should not impede the clear reading of the reference signs and leading lines.

4. The scale of the drawings and the distinctness of their graphical execution shall be such that all details can be distinguished without difficulty, after electronic data capture (scanning), in a linear reduction in size to two-thirds. If, as an exception, the scale is given on a drawing, it shall be represented graphically.

5. The lines in the drawings shall be drawn with the aid of drafting instruments rather than freehand. The numbers and letters used in the drawings shall not be less than 0.32 cm of height. For the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used.

6. The same sheet of drawings may contain several figures. The different figures shall be arranged without wasting space while remaining clearly separated from one another, preferably in an upright position, and shall be numbered consecutively in Arabic numerals. Drawings concerning the state of the art are admissible if the understanding of the invention is thereby facilitated; however, they shall be clearly marked as "Stand der Technik" (state of the art). Where figures on two or more sheets form in effect a single complete figure, the figures on the several sheets shall be so arranged that the complete figure can be assembled without

concealing any part of the partial figures. All elements of a figure shall be in the same scale, except where the use of different scales is indispensable for the clarity of the figure.

7. Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. The same shall apply mutatis mutandis to the abstract and its drawing.

8. The drawings shall not contain text matter, except, when absolutely indispensable, a single word or words such as "water", "steam", "open", "closed", "section on A-B", and, in the case of electric circuits and block schematic or flow sheet diagrams, a few short catchwords indispensable for understanding.

9. The following image file formats are admissible for the electronic filing of patent applications with the German Patent and Trade Mark Office:

Image File Format	Compression	Colour Depth	Description
TIFF	no compression or LZW or Fax group 4	1 bit/p or (black and white)	maximum size: 21 x29.7 cm (DIN A4) and resolution: 300*300 dpi corresponding to 2480*3508 pixels (width*height)
TIFF	no compression or LZW or Fax group 4	8 bit/p grayscale (256 shades of grey)	maximum size: 21 x29.7 cm (DIN A4) and resolution: 150*150 dpi corresponding to 1240*1754 pixels (width*height)
JPEG	individual compression	24 bit/p	maximum size: 21 x29.7 cm (DIN A4) and resolution: 150*150 dpi accepts shades of grey only
PDF	no compression	black and white admissible only	the following typefaces (fonts) are allowed: <ul style="list-style-type: none"> - Times (serif font, proportional) - Helvetica (without serifs, proportional) - Courier - Symbol (symbols)

			Colour graphics not admissible Use restrictions possible for PDF files at file level by means of cryptographic means (encryption, deactivation of printing options) are not admissible
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