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Ordinance on Patent Procedures before the German Patent and Trade Mark Office (Patent Ordinance)

of 1 September 2003

(Federal Law Gazette¹ I p. 1702),

last amended by Article 1 of the Ordinance of 26 May 2011 (Federal Law Gazette I p. 996)

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¹ (Bundesgesetzblatt (BGBl.)

² (Annex 1 is available as separate form P 2790.1b and not printed here.)

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 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

(1) The application (Sec. 34 Patent Act) and the abstract (Sec. 36 Patent Act) shall be filed in writing with the German Patent and Trade Mark Office. Section 12 of the Ordinance Concerning the German Patent and Trade Mark Office shall apply to electronic filing.

(2) In the cases of Sections 8, 14 to 21 the electronic form shall be excluded.

Section 4

Request for the grant of a patent

(1) The request for the grant of a patent (Sec. 34 (3) No. 2 Patent Act) or for the grant of a patent of addition (Sec. 16 Patent Act) shall be filed on the form issued by the German Patent and Trade Mark Office or as an electronic file in accordance with the format requirements published by the German Patent and Trade Mark Office.

(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;
- b) if the applicant is a legal entity or a partnership, the name of this entity or partnership; the usual abbreviation of the legal form can be used. If the legal entity or partnership is registered in a register, the name shall be indicated in a form corresponding to that of the register entry. In case of a partnership under the Civil Code, the name and address of at least one partner entitled to act as representative shall also be indicated;

it shall be made clear whether the patent is sought on behalf of one or more than one individual or partnership, for the applicant under the trade name or under the civil name;

c) the residence or principal place of business and the address (street and house number, postal code, town);

2. a short and precise title of the invention;

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

4. if a representative has been appointed, his name and his address;

5. the signatures of all applicants or their representative;

6. if a patent of addition is sought, the file number of the parent patent application or the number of the parent patent shall also be given;

(3) If the residence or principle place of business of the applicant is not in Germany, the applicant shall also indicate the country in addition to the town when indicating the address under subsection (2) No. 1 item c). Furthermore, the applicant may also indicate the district, county or state where he has his residence or principle place of business or to whose legal order he is subject to;

(4) If the German Patent and Trade Mark Office has assigned an applicant's number to the applicant, this number should be indicated in the application.

(5) If the German Patent and Trade Mark Office has assigned a representative's number or the number of a general power of attorney to the representative, this number should be indicated.

(6) In the event of employees signing the request on behalf of their employer who files an application, the authority to sign shall be proved to the satisfaction of the office; reference shall be made to any employee's authority to sign, deposited with the German Patent and Trade Mark Office, indicating the identification number communicated for this purpose.

(7) 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. With respect to technical terms and designations, the same applies to applications of addition in relation to the parent application.

Section 6

Formal requirements for an application

(1) The documents making up the application shall be so presented as to admit of electronic data input. Written application documents consisting of more than 300 pages shall also be furnished on a data carrier containing the application documents in machine-readable form. The standards prescribed in annex 1 (resp. Sec. 11 (1), second sentence) No. 41 shall apply *mutatis mutandis* to the data carrier. A declaration shall be attached to the data carrier, stating that the information stored on the data carrier corresponds to the application documents.

(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 A 4 according to DIN 476 (German industrial standard) 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. Each of the documents making up the application (request form, patent claims, description, drawings) and the abstract (text matter, drawings) 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 ½ 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) The applicant shall indicate the inventor on the form issued by the German Patent and Trade Mark Office or on an electronic file pursuant to the formatting requirements published by the German Patent and Trade Mark Office.

(2) This indication must contain:

1. the given name and family name and the address (street and house number, postal code, town, postal district, if any) of the inventor;
2. the affirmation of the applicant that to his knowledge no other person has contributed to the invention (Sec. 37 (1) Patent Law);
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 Law);

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 characterising 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 characterising portion shall include the features of the invention for which protection is sought in connection with the features of the generic part. The characterising portion shall be preceded by such words as "characterised in that" or "characterised 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.

(10) For electronic filing, an electronic file pursuant to the formatting requirements published by the German Patent and Trade Mark Office shall be used.

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 as appearing in the request.

(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 sources 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.

(4) For electronic filing, an electronic file pursuant to the formatting requirements published by the German Patent and Trade Mark Office shall be used.

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 Law 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.

(5) Electronic filing of the application by e-mail is possible only if the application with the sequence listing does not exceed the file size admissible for the transmission process.

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 characterises the invention.

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

(4) For electronic filing, an electronic file pursuant to the formatting requirements published by the German Patent and Trade Mark Office shall be used.

Section 14

German translations

(1) German translations of documents forming part of the documentation relating to the application shall be certified by an attorney-at-law or patent attorney or be done by an officially authorised translator. The translator's signature shall be officially certified (Article 129 of the Civil Code) and it shall also be certified that he is officially authorised for such purposes.

(2) German translations of

1. priority documents submitted under the revised Paris Convention for the Protection of Industrial Property (Federal Law Gazette 1970 II p. 391), or
2. copies of earlier applications (Sec. 41 (1), first sentence, Patent Act)

shall only be furnished upon invitation by the German Patent and Trade Mark Office.

(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.

(4) If foreign-language documents not forming part of the documentation relating to the application are filed in languages not mentioned in subsection (3) No. 2, German translations shall be filed subsequently within one month after receipt of the documents.

(5) The translation under subsection (3) or (4) shall be certified by an attorney-at-law or patent attorney or done by an officially authorised translator. If the translation is not filed in due time, the foreign-language document is deemed to have been received on the date of receipt of the translation.

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 (size A 4 according to DIN 476). 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 Law) shall be furnished on the forms issued by the German Patent and Trade Mark Office. Section 4 (2) Nos. 1, 4 and 5, and 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 Order 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 order concerning the naming of the inventor of 29 May 1981 (Federal Law Gazette I p. 525) shall be abrogated.

Annex 1

(resp. Sec. 11 (1), second sentence)

Standards for the Filing of Sequence Listings

(Annex 1 is available as separate form P 2790.1b and not printed here.)

Annex 2

(resp. Sec. 12)

Standards for the Filing of Drawings

A. Paper filing

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 AB”, and, in the case of electric circuits and block schematic or flow sheet diagrams, a few short catchwords indispensable for understanding.

B. Electronic filing

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: A 4 and resolution: 300*300 dpi corresponding to 2480*3508 pixels (width*height)
TIFF	no compression or LZW or Fax group 4	8 bit/p greyscale (256 shades of grey)	maximum size: A 4 and resolution: 150*150 dpi corresponding to 1240*1754 pixels (width*height)
JPEG	individual compression	24 bit/p	maximum size: A 4 and resolution: 150*150 dpi accepts shades of grey only
PDF	no compression	black and white admissible only	the following typefaces (fonts) are allowed: - 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