

Leaflet Patents in Germany

Disclosure of the application to the public

Patent applications will be laid open 18 months after the filing date (or in case of a priority application after the priority date) irrespective of the examination as to patentability. Only a simple formality examination will take place prior to publication. The disclosure of the application cannot be prevented, unless it is withdrawn. A respective request would have to reach us at least 6 weeks before the application is actually laid open. We would like to point out that case law in this country requires that the existence of a patent application for the purpose of sales promotion be published by the applicant only after the application has been laid open.

Examination procedure

As soon as the application is laid open, a limited protection commences. In order to obtain the full patent protection, it is necessary to have the invention examined and a patent granted on the application. The examination procedure, however, is started by the Patent and Trademark Office only in case of an Examination Petition which has to be filed within 7 years from the German filing date. In case this term is missed the application is abandoned automatically.

The Patent Act provides for the possibility to request for an Official Novelty Search. The search report which thereupon is issued by the Patent and Trademark Office will facilitate evaluation of the chances of a successful examination procedure. The official fee for the novelty search will be partly credited to the official fee for the Examination Petition. Note, however, that the term for petitioning for examination is not prolonged by a request for an Official Novelty Search.

Annuities and Duration

For the application as well as for a resulting patent annuities have to be paid, in order to prevent automatic abandoning. The first annuity will fall due at the beginning of the third year after the German filing date. The patent has a duration of 20 years from the German filing date, provided that the renewal fees are paid annually.

Compulsory use and Licenses

The German provisions regarding working and compulsory licences are of an almost totally theoretical nature. The last compulsory licence was granted before 1950. Only in extremely rare exceptional cases, such as special pharmaceutical preparations, can a compulsory license be granted in favour of third parties.

Marking

For reasons of competition law, it should be noted that you may only make public reference to a patent application in advertising once the disclosure document has been published.

Marking is no requirement in Germany. In proceedings for infringement of a patent the question of marking has no influence whatsoever on the possibility to claim damages for past infringements. If marking is desired for other reasons the term "Patent" or the abbreviation "DBP" with or without the German serial number of the patent can be used.

EU member countries

Germany is a member of the European Union (EU). As far as patents are concerned, this has the consequence that once products protected by the patent are sold by or with the permission of the patentee in one EU member country, shipment of these products into and out of other EU member countries basically cannot be prevented.