

TECHNICAL SOLUTIONS AND LEGAL PROTECTION THEREOF

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TECHNICAL SOLUTIONS AND LEGAL PROTECTION THEREOF

One of the main tasks of the Industrial Property Office (hereinafter Office) is to decide on providing industrial legal protection of technical solutions in the form of granting patents of inventions and registering utility models.

The purpose of the industrial legal protection is to guarantee benefits to the creator and owners of new technical solutions and to secure results of their creative work in order to prevent easy and quick acquisition thereof by competitors, who would spend any cost therefor and deprive the creators of the new solution or a person, who provided funds for and controlled the project of profit, that appertains to him within the framework of standard practices.

In the present time there are offered two kinds of legal protection of technical solutions: a patent protection or utility model protection. These protection kinds differ from each other particularly in protection period and financial costs for acquiring and maintaining the acquired protection. Higher financial costs for patent granting procedure and maintenance of its validity, as well as a longer time of procedure for granting a patent are compensated by both a longer protection period and thanks to examination of patentability conditions by a great security for patent proprietor in its position on the market.

Protection objects, i.e. an invention, respectively a technical solution are comparable; for the invention capable of protection by a patent there is assumed a higher professional activity, whose input was necessary for resolution of the given technical problem.

Patent or utility model protection and application procedure are governed particularly by the following legal rules of law:

- Law No. 527/1990 Coll., on Inventions and Rationalization Proposals, as amended;
- Decree No. 21/2002 Coll. amending
- Decree No. 550/1990 Coll., on Patent and Industrial Design Procedure;
- Law No. 478/1992 Coll., on Utility Models, as amended;
- Law No. 634/2004 Coll., on Administration Fees;
- Law No. 116/2000 Coll., amending some Acts on the Protection of Industrial Property;
- Law No. 173/2002 Coll., on the Maintenance Fees for Patents and Supplementary Protection Certificates for Pharmaceuticals and Plant Protection Products and on the Amendment to several laws.

WHAT IS A PATENT?

Patents are titles of protection that are granted for inventions complying with law's conditions for granting this protection. The patent owner has an exclusive right to employ the protected invention, to authorize approval for exploitation thereof by other persons (through the mediation of a license agreement) and has also

a right to assign the patent to another person. An invention to which a patent was granted, e.g. a product, manufacturing equipment, chemical substance or process of manufacture, cannot be offered for sale or employed by a third person for industrial or commercial purposes without consent of the owner. If the patent relates to processes of manufacture, the owner can prohibit making use of them by the third persons. The prohibition right relates also to a goods that is the direct result of the protected manufacturing process.

Patents are granted for inventions, which are new, involve an inventive step and are industrially applicable. Discoveries, scientific theories, mathematical methods, mere appearance of products, plans, rules and methods for performing mental acts, computer programs, mere presentation of information are not patentable. Patent cannot be granted for inventions that are contrary to public order, particularly to humanity and morality principles, further for prevention, diagnostics and treatment of humans and animals, plant varieties and animal breeds as well as biological methods of growing and breeding thereof.

HOW A PATENT CAN BE OBTAINED?

A patent can be granted on the basis of an application concerning the respective invention filed on a prescribed form with the Office, where the application form can be also obtained free of charge. The application form can also be obtained through the mediation of Internet on web pages of the Office on <http://www.upv.cz>. In addition to the application form specifying request for granting a patent, being duly filled in and submitted in two copies, the application should be further accompanied by three copies of a separate document containing description of the invention, at least one patent claim, optionally drawings and abstract, whereby at least one main copy must comply with requirements for printing and reproduction. The applicant must sign one auxiliary copy.

The application may be filed by electronically with certified electronic signature.

The invention must be explained in the application clearly and completely enabling so realization thereof by a professional and from the point of view of the patent effects it is necessary to clearly and exactly distinguish the feature being protected thereby. The individual patent claims must define clearly and in brief the subject matter to be protected by the patent. In the abstract, serving particularly for searching purposes a short summary of the subject to be protected is to be carried out.

Demands made on an application concerning the respective invention are specified in detail in „Instruction of the Office President determining standard format of the application concerning the invention“. The instruction can be obtained free of charge in the Office filing room as well as on Internet.

By filing an application concerning the invention the applicants acquire the right of priority. This mainly means that if the protection of the applied subject-matter or publication thereof during the patent application procedure (see further in text) is granted, no effective protection of the same subject-matter can be granted to any other later applicant.

If the application does not contain evidently non-patentable solutions (see above) and if it is free of deficiencies that would obstruct publication thereof, the Office will

publish the application after lapse of 18 months from the date of priority acquisition and announces this publication in the Office Bulletin.

When demanded so by the applicant or another person, the Office will subject the application to examination, whether it complies with conditions for granting a patent, i.e. novelty, inventive step and industrial applicability conditions. Request for full examination must be filed at the latest within 36 months from the filing date of the application. Said term cannot be prolonged and failing thereof cannot be waived. If the applied technical solution complies with the legal conditions, the Office will grant the patent for the invention.

The patent is valid for a period of 20 years from the date of filing the application and is effective from the patent granting publication date in the Office Bulletin. After issuance of the patent, the Office will invite the patent owner to pay first maintenance fees for the years that have expired. The fees for maintenance of the patent validity for next periods are to be paid without imposition (without invitation made by the Office) each year prior lapse of the preceding year of the patent validity. The fee can be also paid within so called period of grace lasting six months (after the date on which the payment of the fee had to be done), however in this case the fee to be paid is doubled.

The fees to be paid for the patent application procedure and validity maintenance fees thereof are enumerated below:

WHICH ARE THE BASIC ADMINISTRATIVE FEES FOR PROTECTION?

Application fee	1 200,- CZK
- if the applicant(s) is (are) exclusively inventor(s)	600,- CZK
Full examination fee	3 000,- CZK
- for 11th and each next asserted patent claim	500,- CZK
Letters Patent issuance fee (up to 10 pages of typescript)	1600,- CZK
- for each next page	100,- CZK
Patent validity maintenance fee	
- for the period from the 1st to the 4th year, per year	1 000,- CZK
- for the 5th to the 8th year, per year	2 000,- CZK
- for the 9th year	3 000,- CZK
- for the 10th year	4 000,- CZK
- for the 11th and each subsequent year, per year the amount to the preceding year increased by an additional amount of	2 000,- CZK

WHAT IS A UTILITY MODEL?

By means of a utility model it is possible to protect a technical solution that is new, exceeds a frame of a mere professional skill and is industrially applicable. Discoveries, scientific theories, mathematical methods, mere external adaptations of products (pursuing esthetical purposes), plans, rules and methods of exercising intellectual activity, computer programs, mere indication of information are not considered as technical solutions. Protection cannot be granted to technical solutions that are contrary to public order, particularly to humanity and morality principles, further for prevention, diagnostics and treatment of humans and animals, plant varieties and animal breeds as well as biological reproduction materials and manufacturing processes or working activities. Subjects that can be protected by a patent and a utility model are thus comparable, however contrary to a patent by the utility model it is impossible to protect the biological reproduction materials as well as any „processes“.

Utility models are registered on the basis of so called registration principle, where the Office records the respective utility model into the register without examining whether the subject matter complies with the criteria of novelty and creative level, i.e. whether it is capable of protection. This is the main feature distinguishing the utility model from the patent system.

Due to the fact that recording the utility model in the Office register gives rise to a protection, whose effects correspond fully with those of the patent, the utility model provides possibility to acquire the protection of a solution being capable of registration in a much quicker way than that of the patent. This is particularly important for objects that are in time of providing protection ready for introduction onto market, while in case of relatively long-term procedure for patent granting they would remain a long time (or optionally ever) without protection.

Without consent of the registered utility model owner, no one can produce, introduce onto market or use the technical solution protected thereby. Identically as in case of a patent the owner of the registered utility model is authorized to afford approval for exploitation of the respective utility model object (license) to other persons or to transfer the utility model to them.

HOW THE REGISTRATION OF A UTILITY MODEL CAN BE OBTAINED?

A utility model can be applied for on the basis of a utility model application filed on a prescribed form with the Office. The form can be obtained free of charge in the Office filing room or on the Office Internet web pages. In addition to this application form of utility model registration being duly filed in, signed and submitted in one copy, the application must be further accompanied by two copies of a separate document containing description of the technical solution, at least one claim for protection and optionally drawings, whereby at least one main copy must comply with requirements for printing and reproduction and the other auxiliary copy must be signed by the applicant.

The application may be filed by electronically with certified electronic signature.

The technical solution must be explained in the application clearly and completely enabling so realization thereof by a professional. The individual claims for protection must define clearly and in brief the object to be protected by the respective utility model. Form of the claims corresponds fully to that of the patent with the only exception that no process claims can be effectively made.

Demands made on the utility model application are specified in detail in „Instruction of the Office determining unified form and requirements of the utility model application“. The instruction can be obtained free of charge either in the Office filing room or through Internet.

By filing the application with the Office the applicant acquires the right of priority over an applicant, who will file the utility model application with the identical subject-matter later.

Based on so called registration principle the Office subjects the application, prior registering the utility model, to a formal examination and excludes from further proceeding the applications whose subject-matters are not technical solutions, are not evidently industrially applicable or pertain within exclusions of protection. The office does not examine, whether the application subject matter complies with novelty and creative level criteria. This so called registrability examination results in quick registration of the utility model if compared with the grant of a patent, generally within 2 to 3 months from the date of filing the application.

The registered utility model validity lasts 4 years from the date of the application filing. The Office can prolong the validity period of the utility model registration up to two times, each time by three years, provided the utility model owner applies therefor. It means that the total duration of the registered utility model validity is 10 years.

Application procedure, as well as prolongation of validity of the utility model registration is subject to administrative fees.

WHICH ARE THE BASIC ADMINISTRATIVE FEES FOR PROTECTION?

Utility model application fee	1 000,- CZK
- if the applicant(s) is (are) exclusively inventor(s)	500,- CZK
Fee for request for prolongation of validity of utility model registration	
- for the first time, by three years	6 000,- CZK
- for the second time, by another three years	6 000,- CZK

HOW TO REGISTER AN INVENTION ABROAD?

In the present time there exist the following possibilities how to make a registration of an invention abroad:

1. THROUGH NATIONAL CHANNELS

The applicant can apply for an invention directly in each state, in which he wants to have his invention protected. For making this, it is necessary to have in each state a representative who is authorized to represent the applicant before the respective office and to translate the invention. All information concerning the application of the invention, the own application procedure and fee amounts including payment terms thereof will then be provided by the selected representative.

2. USING A „EUROPEAN PATENT“

If an applicant wishes to gain a patent only for those countries, which are member states of the European Patent Organisation (EPO), it is possible to file an application for a European patent. As of 31. 12. 2005, the member states of the EPO are: Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Italy, Ireland, Cyprus, Luxembourg, Hungary, Monaco, Germany, the Netherlands, Portugal, Austria, Romania, Greece, Slovakia, Slovenia, Spain, Sweden, Switzerland and Liechtenstein, Turkey, Great Britain, Poland, Iceland, Lithuania and Latvia.

A European patent application may be submitted by any natural or legal persons, regardless of their citizenship or the location of their residence or place of business. However, applicants which do not have their residence or their place of business in any of the member states must be represented during all of the proceedings before the European Patent Office by a representative who has been entered in the register held by the European Patent Office for this very purpose. The only exception is the case of the filing of the European patent application. The directory of the qualified representatives can be ordered from the European Patent Office.

The European patent application can be filed:

at the European Patent Office in Munich, at its branch in The Hague or at its office in Berlin, provided the law of the member state allows or prescribes this. Otherwise, it may be filed at the central industrial property office or any other appropriate body of the given member state. Since 1st July 2002, it has also therefore been possible to file a European application at the Industrial Property Office of the Czech Republic (hereafter simply referred to as „the Office“).

The application forms for the awarding of a European patent are available free of charge from the Office's mail room, at the Office's website or at the website of the European Patent Office. The form must be filed in using any of the European Patent Office's official languages, i.e. English, French or German. The European patent applications are filed in any of the European Patent Office's official languages, i.e. English, French or German. However, an applicant with a residence or place of business within the territory of a member state with an official language other than the official languages of the European Patent Office and nationals of such a state with permanent residence abroad may file the application in the official language of the state in question. This means that it has been possible to file the application

in Czech since 1. 7. 2002, whereby a translation of the application into any of the European Patent Office's official languages must be submitted within three months of the date of the filing of the European patent application, but at the latest within thirteen months of the day of the establishment of the priority right. If the applicant makes use of this option, the application fee is reduced by 20%.

All of the payments associated with the filing of European applications are payable directly to the European Patent Office in the European currency (EUR). The payment day is considered to be the day when the amount is actually credited to the bank account of the European Patent Office. It is recommended that applicants always use the EPA/EPO/OEB 1010 form when stating the information concerning payments.

SOME OF THE SELECTED FEES FROM THE SCHEDULE OF FEES:

- The filing fee
- The search fee
- Additional fees for every further patent claim over and above ten (payable within one month of the filing of the application)

If the aforementioned fees are not paid within the prescribed time limits, they may also be paid within one month of the delivery of the payment invitation together with a late payment fee.

- The fee for the designation for each member state, whereby

Switzerland and Luxembourg are regarded as a single designation; when paying for 7 designations, the fee is considered to have been paid for all of the member states (payable within 6 months of the day when the report on the European search is published in the European Patent Bulletin)

- The extension fee (the payment prescribed time limit is as above)
- The examination fee

The fee for the late filing of the request for examination 50% of the examination fee

FURTHER INFORMATION ON THE FILING OF EUROPEAN PATENT APPLICATIONS:

Internet: <http://www.european-patent-office.org/>,
tel.: (+49-89) 2399-0

Publications: How to Get a European Patent European Patent Office

address: The central office in Munich:
European Patent Office
Erhardtstr. 27,
D-80331 München, Germany

3. USING AN INTERNATIONAL APPLICATION - PCT

As far as the international applications filed according to the Patent Cooperation Treaty (PCT) are concerned, a single application filed at the Industrial Property Office may be sufficient to achieve protection in the 128 treaty states, as well as four

regional patents (including the European one) - the state as of 31. 12. 2005. The international application is filed at the Industrial Property Office in English, German or French and the request for the international application which is available free of charge at the Industrial Property Office must be in the same language. The application may be filed in Czech, whereby it is necessary to have the application translated into one of the aforementioned languages within one month of the filing of the international application. The request must, however, always be in one of those languages.

THE FEES ASSOCIATED WITH THE FILING ARE:

- the transmittal fee 1 500 CZK
- the fee for the priority document (provided the priority right from an earlier filed Czech application is to be applied) 600 CZK
- the international filing fee 1 400 CHF
- the international search fee 1 550 EUR
(EUR 1615 as for 01/04/2006)

If the applicant is a natural person and has Czech citizenship and a place of business in the Czech Republic, it is possible to apply a 75% discount on the international filing fee. If there are several applicants, each of them must fulfil this condition.

Since 1. 1. 1999, it has also been possible to file the request for an international application and abstract in electronic form, but only prepared using the PCT-EASY software (a diskette + paper). This option has also existed for other electronic means using the PCT-SAFE software since 1. 1. 2004. The information concerning the software, including how to acquire it, is available on the Internet at (<http://www.wipo.int/pct/en>).

The international phase of the procedure consists of performing an international search and the publishing of the international application 18 months from priority. Upon the basis of the international search and the issue of the written opinion on patentability, the applicant may then decide whether and in which state he/she will apply for the issue of a national patent. Since 1. 4. 2002, the prescribed time limit for the entry into the national phase has been designated as 30 months from the establishment of the priority right, whereby each office may designate a longer prescribed time limit. Nevertheless, those offices where the extension of the prescribed time limit to 30 months is not in accordance with their national law may allow themselves a prescribed time limit for the entry into the national phase in the manner designated earlier. Each office must inform the WIPO of this and the WIPO will publish this information. It is therefore necessary for the applicant to verify in time (for example using the WIPO website or in the PCT Applicant's Guide) which prescribed time limit for the entry into the national phase has been set by the office from which the applicant intends to apply for the issue of a national or regional patent.

The applicant may also request preliminary examination within a prescribed time limit of 22 months of the date of the establishment of the priority right or within three months of the submission of the search report and the written opinion, depending on which prescribed time limit expires later. The fee for the interna-

tional preliminary examination amounts to 1530 EUR and the procedural fee has been set at 200 CHF (the equivalent of 129 EUR). In this way, the applicant may also extend the prescribed time limit for the entry into the national or regional phase to 30 months from the date of the establishment of the priority right at those offices where it is not possible to extend the prescribed time limit for the entry into the national phase from 20 to 30 months without first requesting the realisation of international preliminary examination according to the national law.

The Demand for the international preliminary examination and the appropriate fee are addressed directly to the European Patent Office in Munich (see the address above) that performs the examination for international applications filed in the Czech Republic. Since 1. 7. 2002, it has also been possible in this case to pay fees that are directly owed to the European Patent Office using the account opened in Prague by the European Patent Office in connection with the entry of the Czech Republic into the EPO. The account is held in the EUR currency. The account number is 01841280/0300 and it is held at the Československá obchodní banka, a.s. Na Příkopě 14, 115 20, Prague 1, the Czech Republic.

Upon entry into the national or the regional phase, it is also necessary to pay further fees in accordance with the appropriate national or regional legislation. In most countries, the applicant must be represented by a representative who is authorised to represent before the appropriate body during the proceedings.

INFORMATION ON THE PROCEEDINGS ON INTERNATIONAL APPLICATIONS:

Internet: <http://www.wipo.int>

E-mail: pct.infoline@wipo.int

tel.: (+41 - 22) 338 83 38

fax (+42 - 22) 338 83 39

WHERE CAN YOU GET FURTHER INFORMATION?

INDUSTRIAL PROPERTY OFFICE

Employees of the Industrial Property Office are ready to answer your questions connected with the protection of the technical solutions, to provide for you general information of individual titles of the industrial property right, formal requirements for applications or circumstances of application procedure as well as of administrative fees and execution of searches.

PUBLIC READING ROOM OF THE IPO PROVIDES THE FOLLOWING SERVICES:

- present lending of patent literature
- express reproduction services
- sale of copies of patent and utility model documents
- permanent dispatching of newly published documents or parts thereof
- on-line searches (database centres STN, Dialog, Questel, EPIDOS):
- legal status searches - patent family searches
- inventor or applicant name searches

- thematic searches (according to key words, indexes of international patent classification, and so on.)
- search services carried out on CD ROM and lending of full text CD ROMs
- inquiries and searches in database of national documents
- prior art searches

INFORMATION CENTRE

Employees of our information centre will be glad to furnish you all the necessary information connected with relevant questions of protection of technical solutions or with invention and utility model application procedure.

INTERNET

Information of activities and services of the Office are also available on Internet, on the following address:

<http://www.upv.cz>

On its home page the Office makes accessible information of individual subject-matters of industrial property, furnished services, fundamental legal prescriptions and activity of the Industrial Property Training Institute. Demonstrations of relevant application forms form also integral part of the individual subject matters of the industrial property rights.

Within the framework of expansion of services for Internet users, the Office web pages contain also ordering forms, through the mediation of which it is possible to order on-line patent searches, industrial design and trademark searches, Office Bulletins and publications of the Industrial Property Training Institute.

The Office intends to develop its electronic services in the future, too. By now it presents on its Internet pages individual classifications from the field of industrial property rights (in PDF format). An electronic form of the 8th version (both levels) of the International Patent Classification are available for the public through Internet pages with possibility to carry out searches and starting with No. 1/2000, the Official Bulletins have been displayed on Internet in static form.

ESPACE-PRECES

In the field of patent document digitization the Office participates in the ESPACE-PRECES project, that is a joint CD-ROM of the Central and East European countries. The PRECES disks offer full texts of national patent specifications including representation of eight states (Czech Republic, Slovakia, Poland, Hungary, Romania, Bulgaria, Lithuania and Latvia). For these disks there are published ACCESS-PRECES search files containing bibliographic data and in some cases abstracts in English.



Industrial Property Office

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160 68 Praha 6 - Bubeneč

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+420 220 383 111 (switchboard)
+420 220 383 121 Information Centre

fax: +420 224 324 718

e-mail: objednavky@upv.cz
posta@upv.cz
helpdesk@upv.cz
studovna@upv.cz

Internet: <http://www.upv.cz>

Reading Room and Inventions, Utility Models and Industrial Designs Information Centre is open to the public:

Monday	8.00 - 17.00
Tuesday	8.00 - 16.00
Wednesday	8.00 - 17.00
Thursday	8.00 - 16.00
Friday	8.00 - 14.30

Trade Mark Information Centre is open to the public:

Monday	8.00 - 12.00	13.00 - 17.00
Tuesday	8.00 - 12.00	13.00 - 16.00
Wednesday	8.00 - 12.00	13.00 - 17.00
Thursday	8.00 - 12.00	13.00 - 16.00
Friday	8.00 - 12.30	13.00 - 14.30

The patent attorneys and lawyers:

The patent attorneys and lawyers provide the professional help on industrial property matters for natural and legal persons. They provide not only the professional advice, act for you when making an application, file it and represent you before the Industrial Property Office.

Contacts:

Chamber of Patent Attorneys of the Czech Republic

Gorkého 12
602 00 Brno
tel./fax: 541 248 246
e-mail: kpz@patent-agents.cz
<http://www.patent-agents.cz/>

Czech Bar Association

Národní třída 16
110 00 Praha 1
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