

**Law on the European Convention on the Unification of Certain
Points of Substantive Law on Patents for Invention of
November 27, 1963, the Patent Cooperation Treaty of June 19,
1970, and the Convention on the Grant of European Patents of
October 5, 1973**

(Law on International Patent Treaties)*

(of June 21, 1976)

TABLE OF CONTENTS†

[Article I](#): Approval of the Treaties

[Article II](#): European Patent Law

[Article III](#): Procedure under the Patent Cooperation Treaty

[Article IV](#): Adaptation of the Patent Law to European Patent Law

[Article V](#): Amendment of Procedural Provisions of the Patent Law

[Article VI](#): Amendment of the Law Concerning the Protection of Inventions, Models and Trademarks at Exhibitions

[Article VII](#): Restriction of Provisions of the Ordinance on Patent Attorneys and of the Federal Ordinance on Attorneys

[Article VIII](#): Amendment of the Ordinance on Patent Attorneys

[Article IX](#): Amendment of the Law on the Fees of the Patent Office and of the Patent Court

[Article X](#): Publication of Amendments

[Article XI](#): Transitional and Final Provisions

* *German title*: Gesetz zu dem Übereinkommen vom 27. November 1963 zur Vereinheitlichung gewisser Begriffe des materiellen Rechts der Erfindungspatente, dem Vertrag vom 19. Juni 1970 über die internationale Zusammenarbeit auf dem Gebiet des Patentwesens and dem Übereinkommen vom 5. Oktober 1973 über die Erteilung europäischer Patente (Gesetz über internationale Patentübereinkommen).

Entry into force: See Article XI.

Source: *Bundesgesetzblatt* II, 1976, No. 32, June 26, 1976.

† This Table of Contents is added by WIPO for the convenience of the reader (*Editor's Note*).

Article I

Approval of the Treaties

The following treaties are approved:

1. Convention on the Unification of Certain Points of Substantive Law on Patents for Invention (Strasbourg Patent Convention),¹ signed by the Federal Republic of Germany at Strasbourg on November 27, 1963;

2. Patent Cooperation Treaty,² signed by the Federal Republic of Germany at Washington on June 19, 1970;

3. Convention on the Grant of European Patents (European Patent Convention),³ signed by the Federal Republic of Germany at Munich on October 5, 1973.
These treaties will be published soon.

Article II

European Patent Law

Claims of Indemnification Arising out of European Patent Applications

1.—(1) Any person having filed a European patent application, which has been published and in respect of which protection for the Federal Republic of Germany has been requested, may claim indemnification appropriate to the circumstances from any person who has used the subject matter of the application, even though the latter person knew or should have known that the invention being used by him was the subject of a European patent application. The first sentence of **Section 48** of the Patent Law⁴ shall apply *mutatis mutandis*. Additional claims on the basis of **Article 67(1)** of the European Patent Convention are excluded.

(2) Where the European patent application has not been published in German, the applicant shall be entitled to indemnification under the first sentence of [subsection \(1\)](#) only as from the day on which a German translation of the claims submitted by him has been published by the German Patent Office, or on which the applicant has transmitted such a translation to the user of the invention.

(3) The preceding subsections shall apply *mutatis mutandis* in the case of an international application under **Article 21** of the Patent Cooperation Treaty in respect of which the European Patent Office has acted as designated Office. **Article 158(3)** of the European Patent Convention shall not be affected.

Publication of Translations of the Claims of European Patent Applications

¹ See *Industrial Property* 1964, p. 13.

² See *Industrial Property* 1970, p. 259.

³ See *Industrial Property* 1974, p. 51.

⁴ See *Industrial Property Laws and Treaties* —GERMANY, FEDERAL REPUBLIC OF, Text 2-002.

2.—(1) At the request of the applicant, the German Patent Office shall publish the translation submitted under [Section 1\(2\)](#). Within one month following the filing of the request, a publication fee shall be paid according to the schedule of fees. If the fee is not paid in time, the translation shall be regarded as not having been submitted.

(2)The Federal Minister of Justice is empowered to enact, by means of decrees not requiring the approval of the *Bundesrat*, provisions on other requirements relating to publication. He may transfer this empowerment, by decree not requiring the approval of the *Bundesrat*, to the President of the German Patent Office.

Submission of Translations in Legal Proceedings

3.Where a European patent or a European patent application that has not been published entirely in German is the subject of court proceedings within the scope of this Law, and in so far as a translation would be required under [Section 184](#) of the Law on the Organization of the Judiciary, a translation of the description of the patent or of the patent application shall, notwithstanding that provision, be submitted by the party claiming rights under the said patent or patent application only if the court so orders.

European Patent Applications to be Kept Secret

4.—(1) European patent applications that may contain a State secret ([Section 93](#) of the Criminal Code) shall be filed with the German Patent Office. It shall be stated in an annex to the application that the subject matter of the patent application may, in the opinion of the applicant, contain a State secret.

(2)Where the application does not satisfy the requirement in the second sentence of [subsection \(1\)](#), its acceptance shall be refused by resolution. The provisions of the Patent Law, *mutatis mutandis*, shall apply to this procedure. Acceptance of the application may not be refused on the grounds that the conditions of the first sentence of [subsection \(1\)](#) have not been met.

(3)The German Patent Office shall examine without delay whether applications filed under [subsection \(1\)](#) are for patent protection for an invention that is a State secret ([Section 93](#) of the Criminal Code). The provisions of the Patent Law, *mutatis mutandis*, shall apply to this procedure; [Section 30d](#) of the Patent Law shall apply.

(4)Where examination under [subsection \(3\)](#) reveals that the invention is a State secret, the German Patent Office shall order *ex officio* that the application proceed no further and that there be no disclosure. Once the order has force of law, the European patent application shall be treated as a national patent application filed at the outset with the German Patent Office, in respect of which an order has been issued under [Section 30a\(1\)](#) of the Patent Law. The extension of the time limit for the payment of the application fee under the second sentence of [Section 26\(2\)](#) of the Patent Law shall be for two months. [Section 9\(2\)](#) shall apply *mutatis mutandis*.

(5)Where the application does not contain a State secret, the German Patent Office shall transmit the patent application to the European Patent Office and inform the applicant accordingly.

Claims Against Unauthorized Applicants

5.—(1) The owner of the rights under [Article 60\(1\)](#) of the European Patent Convention in respect of whose invention a patent application is filed by an unauthorized person may demand of that person the assignment to him of the claim to the grant of a European patent. Where the patent application has already resulted in the grant of a European patent, he may demand of the owner of the patent that it be transferred to him.

(2)The claim under the second sentence of [subsection \(1\)](#) may be made before the courts within an exclusive period of two years following the day on which the grant of the European patent was notified in the European Patent Bulletin, and later only if the owner of the patent was aware at the time of grant or acquisition of the patent of the fact that he had no right to a European patent.

Nullity

6.—(1) The European patent granted with effect in the Federal Republic of Germany shall be declared invalid on request if it appears that:

1. the subject matter of the European patent is not patentable within the meaning of [Articles 52 to 57](#) of the European Patent Convention;
2. the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
3. the subject matter of the European patent extends beyond the content of the European patent application in the form in which it was originally filed with the authority competent to receive applications or, if the patent was granted on a European divisional application or on a new European patent application filed in accordance with [Article 61](#) of the European Patent Convention, beyond the content of the earlier application in the form in which it was originally filed with the authority competent to receive applications;
4. the protection conferred by the European patent has been extended;
5. the owner of the European patent is not entitled under [Article 60\(1\)](#) of the European Patent Convention.

(2)If the grounds for nullity affect the European patent only in part, nullity shall be pronounced in the form of a corresponding limitation of the said patent. The limitation may be effected in the form of an amendment to the claims, the description or the drawings.

(3)In the case provided for in [subsection \(1\)](#), under 5, only the person entitled under [Article 60\(1\)](#) of the European Patent Convention shall be competent to make the request.

Annual Fees

7. Annual fees shall be paid in accordance with [Section 11](#) of the Patent Law for European patents effective in the Federal Republic of Germany. However, they shall be payable only as from the year following that in the course of which the notification of the grant of the European patent was published in the European Patent Bulletin.

Prohibition of Double Protection

8.—(1) Where the subject matter of a patent granted according to the procedure under the Patent Law is an invention in respect of which a European patent with the same priority has been granted to the same inventor or to his successor in title with effect in the Federal Republic of Germany, that patent shall have no further effect, in so far as it protects the same invention as the European patent, as from the time when:

1. the time limit for the filing of opposition to the European patent has expired without any opposition having been filed;
2. the opposition procedure has been completed and the European patent confirmed, such completion having force of law;
3. the patent is granted, where that time is later than the times referred to [under 1](#) and [2](#), above.

(2)The revocation and the declaration of nullity of the European patent shall not affect the legal consequences under [subsection \(1\)](#).

(3)On request, which request may be filed by the owner of the patent himself, the Patent Court shall pronounce the legal consequences under [subsection \(1\)](#). The provisions of the Patent Law on the revocation procedure shall apply *mutatis mutandis*.

Conversion

9.(1) Where the person filing a European patent application in which protection is requested for the Federal Republic of Germany has submitted a request for conversion under [Article 135\(1\)\(a\)](#) of the European Patent Convention, with the indication that he wishes to initiate the procedure for the grant of a national patent, the said European patent application shall be treated as a national patent application filed at the German Patent Office at the time of the filing of the conversion request; [Article 66](#) of the European Patent Convention shall not be affected by this provision. The extended time limit for the payment of the application fee under the second sentence of [Section 26\(2\)](#) of the Patent Law shall be two months. Where, in the cases under [Article 77\(5\)](#) of the European Patent Convention, the European patent application was filed with the German Patent Office, the application fee shall be deemed to have been paid on payment of the conversion fee.

(2)The applicant shall, within a period of three months after the German Patent Office has served on him a request to do so, submit a German translation of the European patent application in its original form and, where applicable, in the form as amended in the procedure before the European Patent Office where he wishes to use the said amended form of the application as the basis for the procedure before the German Patent Office. If the translation is not submitted in time, the patent application shall be rejected.

(3)Where there is a European search report for the application, the fee for the examination of the application, payable under [Section 28b\(3\)](#) of the Patent Law, shall be reduced in the same way as if a request under [Section 28a\(1\)](#) of the same Law had been filed with the German Patent Office. There shall be no reduction pursuant to the first sentence where the European search report was not made for certain parts of the application.

Competence of the Courts

10.(1) Where the competence of the courts in matters arising out of the application of this Law is determined by the Protocol on Jurisdiction and the Recognition of Decisions in respect of the Right to the Grant of a European Patent, local jurisdiction shall be determined by general provisions. If these do not specify a competent court, the court in the jurisdiction of which the European Patent Office has its headquarters shall be competent.

(2) **Section 51** of the Patent Law shall apply *mutatis mutandis*.

Central Office for Legal Assistance

11. The Federal Minister of Justice is empowered to appoint a Federal authority, by decree not requiring the approval of the *Bundesrat*, as a central authority for the receipt and transmittal of requests for legal assistance issuing from the European Patent Office.

Removal of Entitlement to Establish a Place of Business

12. The competent authority for the removal of entitlement to establish a place of business in accordance with the first sentence of **Article 134(5)** and **Article 134(7)** of the European Patent Convention shall be the Justice Administration of the *Land* in which the said place of business is established. The *Land* governments are empowered to transfer the competence of the *Land* Justice Administrations, by decree, to the President of the *Land* Court of Appeal, the President of the Regional *Land* Court or the President of the Court of First Instance of the district in which the place of business is established. The *Land* governments may transfer this empowerment to the *Land* Justice Administrations.

Requests for the Preparation of Technical Opinions

13. Requests from courts for the preparation of technical opinions under **Article 25** of the European Patent Convention shall be addressed directly to the European Patent Office.

Unauthorized Filing with the European Patent Office

14. Direct filing with the European Patent Office of a patent application that contains a State secret (**Section 93** of the Criminal Code) shall be punished by imprisonment for up to five years or by a fine.

Article III

Procedure under the Patent Cooperation Treaty

The German Patent Office as Receiving Office

1.—(1) The German Patent Office is a receiving Office under **Article 10** of the Patent Cooperation Treaty. It shall receive international applications from persons having German nationality or their headquarters or residence within the area of application of this Law. It shall also receive international applications from applicants having the nationality of another State, or their headquarters or residence in another State, where the Federal Republic of Germany has agreed with that other State to receive such

applications and where this fact has been published by the President of the German Patent Office, or where the German Patent Office, with the consent of its President, has been designated as receiving Office by the Assembly of the International Patent Cooperation Union.

(2) International applications shall be filed with the German Patent Office in German.

(3) A transmittal fee according to the schedule of fees shall be paid for the international application at the time of filing, in addition to the fees to be collected by the receiving Office under the Patent Cooperation Treaty. The fees may still be paid within a month following the receipt of the application by the German Patent Office.

(4) In the procedure before the German Patent Office as receiving Office, the application of the provisions of the Patent Cooperation Treaty shall be complemented by the application of the provisions of the Patent Law on procedure before the German Patent Office.

International Applications to be Kept Secret

2. (1) The German Patent Office shall examine all international applications filed with it in its capacity as receiving Office to determine whether the invention for which protection is sought is a State secret (**Section 93** of the Criminal Code). The procedure shall be governed by the provisions of the Patent Law, *mutatis mutandis*; **Section 30d** of the Patent Law shall apply.

(2) Where examination under **subsection (1)** reveals that the invention is a State secret, the German Patent Office shall order *ex officio* that the application be neither transmitted nor published. Once the order has force of law, the international application shall be treated as a national application filed at the outset with the German Patent Office in respect of which an order under **Section 30a(1)** of the Patent Law has been issued. The transmittal fee paid for the international application shall be deducted from the application fee to be paid under the first sentence of **Section 26(2)** of the Patent Law; any amount in excess shall be refunded.

International Searching Authority

3. The President of the German Patent Office shall publish the name of the authority that has been designated as International Searching Authority for international applications filed with the German Patent Office.

The German Patent Office as Designated Office

4.— (1) The German Patent Office is the designated Office when the Federal Republic of Germany is named as a designated State in the international application. This shall not apply if in the international application, the applicant has applied for the grant of European patent.

(2) Where the German Patent Office is a designated Office, the applicant shall, within the time limit provided for in **Article 22(1)** of the Patent Cooperation Treaty, pay the application fee under the first sentence of **Section 26(2)** of the Patent Law and, where

the international application has not been filed in German, shall submit a translation of the application in German. Where the German Patent Office is also the receiving Office, the application fee shall be deemed to have been paid on payment of the transmittal fee.

Further Processing as a National Application

5.— (1) Where the International Bureau transmits to the German Patent Office, in the latter's capacity as designated Office, an international application to which the competent receiving Office has refused to give an international application date, or which the said Office has declared to have been withdrawn, the German Patent Office shall examine whether the objections of the receiving Office are valid as soon as the applicant has paid the application fee under the first sentence of [Section 26\(2\)](#) of the Patent Law and, where the international application has not been filed in German, submitted a translation of the international application in German. The German Patent Office shall decide by resolution whether the objections of the receiving Office are justified. The procedure shall be governed by the provisions of the Patent Law, *mutatis mutandis*.

(2)[Subsection \(1\)](#) shall apply, *mutatis mutandis*, to cases where the receiving Office declares the designation of the Federal Republic of Germany to have been withdrawn, or where the International Bureau has treated the application as having been withdrawn.

The German Patent Office as Elected Office

6.— (1) Where the person filing an international application in respect of which the German Patent Office is a designated Office makes a demand for international preliminary examination of the said application under [Chapter II](#) of the Patent Cooperation Treaty, and indicates the Federal Republic of Germany as the Contracting State in which he intends to use the results of the international preliminary examination ("elected State"), the German Patent Office shall be the elected Office.

(2)Where the election of the Federal Republic of Germany occurs prior to the expiration of the nineteenth month after the priority date, [Section 4\(2\)](#) shall be applied subject to the replacement of the time limit specified therein by the time limit provided for in [Article 39\(1\)](#) of the Patent Cooperation Treaty.

International Search Report

7.If there is an international search report for the international application, the fee payable under [Section 28b\(3\)](#) of the Patent Law for the examination of the application shall be reduced in the same way as if a request under [Section 28a\(1\)](#) of the Patent Law had been filed. There shall be no reduction under the first sentence if the international search report was not made for certain parts of the application.

Publication of the International Application

8.— (1) The publication under [Article 21](#) of the Patent Cooperation Treaty of an international patent application in respect of which the German Patent Office is a designated Office shall have the same effect as the publication of a notification under the first sentence of [Section 24\(4\)](#) of the Patent Law for a patent application filed with the

German Patent Office ([Section 24\(5\)](#) of the Patent Law). Notification of publication shall be published in the Patent Gazette.

(2) Where the international application has not been published in German by the International Bureau, the German Patent Office shall publish *ex officio* the translation submitted to it of the international application. In such case, the effects under [subsection \(1\)](#) shall commence only at the time of publication of the German translation.

(3) The international application published under [Article 21](#) of the Patent Cooperation Treaty shall not be considered prior art within the meaning of [Section 2\(2\)](#) of the Patent Law until the conditions specified in [Section 4\(2\)](#) have been met.

Article IV

Adaptation of the Patent Law to European Patent Law

The Patent Law as promulgated on January 2, 1968 (*Bundesgesetzblatt I*, p. 1), last amended by [Section 4, subsection 8](#), of the Law Amending the Law on Court Costs, the Law on the Costs of Law Enforcement Officers, the Federal Ordinance on Lawyers' Fees and Other Provisions, of August 20, 1975 (*Bundesgesetzblatt I*, p. 2189), is amended as follows:⁵

Article V

Amendment of Procedural Provisions of the Patent Law

The Patent Law as promulgated on January 2, 1968 (*Bundesgesetzblatt I*, p. 1), last amended by [Section 4, subsection 8](#), of the Law Amending the Law on Judicial Costs, the Law on the Costs of Law Enforcement Officers, the Federal Ordinance on Lawyer's Fees and Other Provisions, of August 20, 1975 (*Bundesgesetzblatt I*, p. 2189), is amended as follows:⁶

Article VI

Amendment of the Law Concerning the Protection of Inventions, Models and Trademarks at Exhibitions

The Law Concerning the Protection of Inventions, Models and Trademarks at Exhibitions, of March 18, 1904, as published in updated form in the *Bundesgesetzblatt*, Part III, Classification No. 424-2-1, is amended as follows:

- 1). In the heading, the word "inventions" and the following comma are deleted.
- 2). In the first sentence, the word "inventions" and the following comma are deleted.
- 3). In Item 2, the words "the invention" and the following comma, and the word "patent" and the following comma, are deleted.

⁵ See footnote 4, above.

⁶ *Ibid.*

Article VII
**Restriction of Provisions of the Ordinance on Patent Attorneys
and of the Federal Ordinance on Attorneys**

(This Article is not reproduced here.)

Article VIII
Amendment of the Ordinance on Patent Attorneys

(This Article is not reproduced here.)

Article IX
**Amendment of the Law on the Fees of the Patent Office and of
the Patent Court**

(This Article is not reproduced here.)

Article X
Publication of Amendments

The following shall be published in the *Bundesgesetzblatt*:

- 1). Amendments to the European Patent Convention decided upon by the Administrative Council of the European Patent Organisation under [Article 33\(1\)](#) of the European Patent Convention, and the Rules relating to Fees adopted under [Article 33\(2\)\(d\)](#) of the said Convention including amendments thereto;
- 2). Amendments to the Patent Cooperation Treaty and to the Regulations under that Treaty decided upon by the Assembly of the International Patent Cooperation Union under [Articles 47\(2\)](#), [58\(2\)](#) and [61\(2\)](#) of the said Treaty. The same shall apply through voting by correspondence to amendments under [Article 47\(2\)](#) of the Treaty.

Article XI
Transitional and Final Provisions

1.— (1) [Article IV](#) shall apply only to patent applications filed with the German Patent Office prior to its entry into force, and to patents granted on the basis thereof.

(2) A patent application filed within six months following the entry into force of [Article IV, Section 3](#), may not be rejected, or a patent granted on the basis of such an application be declared invalid, on the ground that the invention has been described or used within six months, where the description or use relies on the invention of the

applicant or his successor in title. The first sentence shall not apply where the description or use of the invention is made by the applicant or his successor in title and is not undertaken until after the entry into force of [Article IV, Section 3](#).

(3)The effects of temporary protection having occurred prior to the entry into force of [Article IV, Section 7](#), and [Article VI](#) shall not be affected by the entry into force of those provisions.

2.This Law shall apply also in the *Land* of Berlin, in so far as the *Land* of Berlin recognizes the application of this Law. Decrees enacted under this Law shall apply to the *Land* of Berlin in accordance with [Section 14](#) of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt* I, p. 1).

3.— (1) [Articles I, V](#) and [VIII](#), as well as [Sections 2](#) and [3](#) of this Article, shall enter into force on October 1, 1976.

(2)The date of entry into force for the Federal Republic of Germany of

1. the Strasbourg Patent Convention, pursuant to its [Article 9](#),
2. the Patent Cooperation Treaty, pursuant to its [Article 63](#),
3. the European Patent Convention, pursuant to its [Article 169](#),

shall be published in the *Bundesgesetzblatt*.

(3)[Articles II](#) and [VII, IX](#) in so far as it concerns the insertion of [paragraph 10 in Section 1, subsection 1, letter A](#), of the Law on the Fees of the Patent Office and of the Patent Court, and [Article X, Section 1](#), shall enter into force on the day on which it is decreed by the Administrative Council of the European Patent Organisation that European patent applications may be filed at the European Patent Office ([Article 162\(1\)](#) of the European Patent Convention); the date of entry into force shall be published in the *Bundesgesetzblatt*.

(4)[Article III, Article IX](#) in so far as it concerns the insertion of [paragraph 11 in Section 1, subsection 1](#), letter A, of the Law on the Fees of the Patent Office and of the Patent Court, and [Article X, Section 2](#), shall enter into force on the day on which the Patent Cooperation Treaty enters into force for the Federal Republic of Germany.

(5)[Article IV, Article IX](#) in so far as it concerns the insertion of letters r and s in [Section 1, subsection 1](#), letter A, [paragraph 3](#) of the Law on the Fees of the Patent Office and of the Patent Court, and [Section 1](#) of this Article, shall enter into force on the first day of the fourth calendar month following the publication in the *Bundesgesetzblatt* of the entry into force of the European Patent Convention, subject, as far as [Article IV](#) is concerned, to the provisions of [subsection \(6\)](#), below.

(6)[Article IV, Section 3](#), in so far as it concerns [Section 2\(4\)](#) of the Patent Law, and [Section 7](#), as well as [Article VI](#), shall enter into force on the first day of the fourth calendar month following the publication in the *Bundesgesetzblatt* of the entry into force of the Strasbourg Patent Convention. Until that date, any description or use made within six months prior to the application shall not be taken into consideration for the application of [Article IV, Section 3](#), in so far as it concerns [Section 2\(1\)](#) and [\(2\)](#) of the

Patent Law, where such description or use relies on the invention of the applicant or his successor in title.