

GERMANY

Utility Model Regulations

Utility Model Ordinance of 11 May 2004 (Federal Law Gazette I p. 890)
last amended by Article 4 of the Ordinance of 17 December 2004 (Federal
Law Gazette I p. 3532)

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Chapter 1 General Provision

Section 1 Scope of Application

(1) In addition to the provisions of the Utility Model Law 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 (utility model matters), prescribed in the Utility Model Law.

(2) 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.

Chapter 2 Utility Model Applications

Section 2 Filing of the Application

An application in writing shall be filed with the German Patent and Trade Mark Office in respect of any invention for which protection as a utility model is sought (Sec. 1(1) Utility Model Law).

Section 3 Request

(1) The request for registration of a utility model (Sec. 4(3) No. 2 Utility Model Law) shall be filed on the form prescribed 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, the given name and the family name or, if registration is sought under the trade name of the applicant, 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 utility model is filed 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, precise technical title of the subject matter of the utility model (no trade marks or other fancy titles);

3. a statement that the registration of a utility model 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 the application relates to a division of a utility model application (Sec. 4(6) Utility Model Law) (voluntary or due to lack of unity), the file number and the date of filing of the original application;

7. where the applicant has already sought, at an earlier date, a patent with effect in the Federal Republic of Germany for the same invention and wishes to claim its date of filing, a declaration to this effect which

shall be filed with the utility model application (Sec. 5(1) Utility Model Law - splitting off).

(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.

Section 4 Application Documents

(1) The claims, the description and the drawings shall be filed on separate sheets in two copies each.

(2) The documents making up the application shall clearly show to which application they pertain. Following communication of the official file number, this shall be quoted on all subsequent communications.

(3) The application documents shall not contain any communication referring to other applications.

(4) The documents shall meet the following requirements:

1. The size of the sheets shall exclusively be A4. The sheets shall be used in upright position. Only one side of the sheets shall be used; the typing shall be 1 1/2 spaced. For the drawing, the sheets may, if appropriate, also be used sideways.

2. The margins of the sheets containing the request, the claims and the description 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.

3. Only typing, printing or other technical methods shall be used. Symbols not existing on the keyboard may be written by hand.

4. The strong and non-transparent paper shall not be folded and be free from creases, tears, alterations, erasures and the like.

5. Black, clean and well-defined characters and strokes with sufficient contrast shall be used uniformly throughout all application documents. The letters of the type used shall be clearly separated and must not touch.

Section 5 Claims

(1) What is to be protected by the utility model (Sec. 4(3) No. 3 Utility Model Law) may be specified in one part or in two parts, i.e. divided in a generic and a characterising portion. In both cases, the version may be arranged according to the features.

(2) If the two-part version is chosen, the features of the invention on which the invention is based as 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 words such as "characterised in that" or "characterised by" or any other expression to this effect.

(3) If the claims are arranged according to features or groups of features, this 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 claim (principal claim).

(5) An application may contain several independent claims (secondary claims) provided the principle of unity is respected (Sec. 4(1), second sentence, Utility Model Law). Subsection 4 shall apply mutatis mutandis.

(6) Any principal or secondary claim 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 claims. They shall be grouped together to the extent possible and in the most appropriate way.

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

(8) Except where absolutely necessary, the claims shall not, in respect of the technical features of the invention, rely on references to the description or drawings, such as "as described in part ... of the description", or "as illustrated in figure ... of the drawing".

(9) If the application contains drawings, the features indicated in the claims shall preferably be followed by reference signs, if the intelligibility of the claim can thereby be increased.

Section 6 Description

(1) The description according to Section 4(3) No. 4 of the Utility Law shall first state the title of the subject matter of the utility model as appearing in the request (Sec. 3(2) No. 2).

(2) The description shall further:

1. specify the technical field to which the invention relates unless it results from the claims or the indications concerning the state of the art;
2. indicate the prior art known to the applicant which may be considered for the understanding of the invention and its protectability by indicating the documents known to the applicant;
3. disclose the technical problem underlying the invention unless it results from the indicated solution or the indications made under No. 6, in particular, if it is indispensable for the understanding of the invention or the detailed specification of its contents;
4. indicate the invention for which protection is sought in the claims;
5. indicate, when it is not obvious from the description or the nature of the invention, the way in which the invention is capable of exploitation in industry;
6. state any advantageous effects of the invention with reference to the prior art indicated in the application;

7. describe in detail at least one way of carrying out the invention claimed, using, where appropriate, examples and the drawings, indicating the respective reference signs.

(3) The description shall not include trade marks, fancy designations or indications that are not necessary for explaining the invention. Repetitions of claims or parts of claims may be replaced by corresponding references.

Section 7 Drawings

(1) The drawings shall be executed 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 shall not exceed 26.2 cm x 17.0 cm.

(2) The same sheet of drawings may contain several figures. They shall be arranged without wasting space, clearly separated from one another, preferably in an upright position, and be numbered consecutively in Arabic numerals. Drawings concerning the state of the art are admissible if they help to understand the invention; however, they shall be clearly marked as "Stand der Technik" (state of the art).

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

(4) The lines in the drawings should be drawn with the aid of drafting instruments rather than offhand. The height of the numbers and letters used in drawings shall not be less than 0.32 cm. For the lettering of drawings, the Latin and, where customary in technology, other alphabets shall be used.

(5) The drawings should contain reference signs explained in the description and/or claims. The same features shall be denoted in all figures by the same reference signs corresponding to those used in the description and claims.

(6) 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 diagrams, a few short catchwords indispensable for understanding.

Section 8 Splitting off

(1) Where the applicant has already filed, at an earlier date, a patent with effect in the Federal Republic of Germany for the same invention, he may, at the time of filing the utility model application, declare that the date of filing relevant for the patent application is claimed. Any priority right claimed in respect of the patent application shall continue to apply to the utility model application. The right under the first sentence may be exercised up to the expiration of two months from the end of the month in which processing of the patent application or any opposition procedure, if any, is terminated, at the latest, however, by the end of the tenth year from the date of filing of the patent application (Sec. 5(1) Utility Model Law). However, the date of filing of the earlier patent application can only be claimed if the patent application has been filed after 31 December 1986 (Sec. 4 No. 2 of the Law Amending the Utility Model Law of 15 August 1986, Federal Law Gazette I p. 1446).

(2) The copy of the patent application in a foreign language (Sec. 5(2) Utility Model Law) shall be accompanied by a German translation unless the application documents already constitute a translation of the patent application drafted in a foreign language.

Section 9 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. 6(2) Utility Model Law in conjunction with Sec. 41(1), first sentence, Patent Law)

shall be furnished only 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 shall be deemed to have been received on the date of receipt of the translation.

Chapter 3 Final Provisions

Section 10 Transitory Regulation on Occasion of the Entry into Force of this Ordinance

For utility model applications filed before the entry into force of this ordinance, the provisions of the Order Concerning Utility Model Applications of 12 November 1986 (Federal Law Gazette I p. 1739), last amended by Article 22 of the Law of 13 December 2001 (Federal Law Gazette I p. 3656), shall apply.

Section 11 Transitory Regulation for Future Amendments

For utility model applications filed before the entry into force of amendments to this ordinance, the provisions of this ordinance in the version applicable until that date shall apply.

Section 12 Entry into Force; Abrogation

This ordinance shall enter into force on 1 June 2004.

At the same date

1. the Order Concerning Utility Model Applications of 12 November 1986 (Federal Law Gazette I p. 1739), last amended by Article 22 of the Law of 13 December 2001 (Federal Law Gazette I p. 3656), and
 2. the Fourth Order Amending the Order Concerning Utility Model Applications of 10 June 1996 (Federal Law Gazette I p. 846)
- shall be abrogated.