

德國專利法

1980年12月16日公布¹

1998年8月6日修訂²

第一章 專利

第1條：授與專利之要件

- (1)對於創新的、以發明工作為依據、且可供產業利用的發明，授與專利。
- (2)特別是有下列情形者，不視為第一項的發明：
 - 1.發現、科學原理、或數學方法；
 - 2.美學上的外型創作；
 - 3.思想工作、遊戲或商業工作的計劃、規則或方法，或資料處理設備的程序；
 - 4.資料的轉述。
- (3)僅在對上述的標的或工作請求受專利保護時，第二項規定不受專利保護。

第2條：無專利之授與

有下列情形者，不授與專利：

- 1.其發表或使用違反公共秩序或善良風俗之發明；此一違反不得僅以因法律或行政法規禁止使用該發明的事實推論之。第一句不排除第50條第一項規定對於發明授與秘密專利。
- 2.植物品種或動物種類、以及為栽培植物或飼養動物所使用重要的生物方法。此一規定不適用於微生物的方法與藉此微生物方法而獲得的產品。

第3條：創新的概念

- (1)發明不屬於現有的技術水準者，視為創新。現有的技術水準，包括在申請日前以書面或口頭描述、以使用或以其他方式可得公開獲得的所有知識。
- (2)連同較舊的日期，在較新的申請日或在較新的申請後可公開獲得下列的專利申請內容，亦視為現有的技術水準：
 - 1.向德國專利局原始提起文本的國內申請；
 - 2.在主管機關原始提出文本的歐洲申請，以此申請而獲得在德國的保護，並且已經依據歐洲專利公約第79條第二項之規定繳納指定適用於德國的費用，但依據一個國際申請而取得歐洲專利申請且不符合歐洲專利公約第158條第二項之構成要件者，不在此限。
 - 3.依據專利合作條約在申請局原始提起文本的國際申請，對該申請係以德國專利局為申請機關者。

在申請較舊的日期係依據先申請的優先權要求時，則僅在依據的文本未逾越先申請文本時，適用第一句的規定。對於第一句第一款的專利申請依據專利法第50條第一項或第四項規定公布命令，自其提出後第十八個月期限屆滿時起，視為可公開獲得。

¹參閱聯邦法律公報1981 I，第1頁

²參閱聯邦法律公報1998 I，第2030頁

- (3)材料或材料的混合屬於現有的技術水準時，則不因第一項與第二項而排除其得受專利之保護，僅以該材料或材料的混合係明確為應用在第5條第二項的程序中且在此一程序的應用不屬於現有的技術水準為限。
- (4)對於適用第一項與第二項之規定，不考慮發明的公開，其要件為在提起申請前不早於六個月已經公開發明，且直接或間接
- 1.以明顯的濫用而不利於申請人或其前權利人為根據，或
 - 2.以申請人或其前權利人依據1928年11月22日在巴黎簽署的關於國際展覽公約在官方或官方承認的展覽上以展示該發明的事實為根據。
- 第一句第二款僅適用於申請人在申請機構陳述，發明係事實上供展示，且申請人在提出申請後四個月內關於發明交付證明。在第一句第二款指稱的展覽，應由聯邦司法部長公布於聯邦法律公報。

第4條：依據發明工作的發明

對於熟悉該項技術者而言，以明顯的方式，非自現有的技術產生的發明，視為係以發明工作為依據的發明。若第3條第二項的資料亦屬於現有的技術水準時，則在判斷發明的作品時，不考慮這些資料。

第5條：可供產業利用的發明

- (1)發明之標的在任何一個產業的領域，包括農業在內，可供產業製造或使用時，視為可供產業利用的發明。
- (2)在人體或動物身體進行外科手術或治療處理的方法、與在人體或動物身體進行的診斷方法，均不視為第一項規定的可供產業利用的發明。亦不適用於產品為應用在前文指稱的方法，特別是材料或材料混合之應用。

第6條：發明者的權利

發明者³或其權利繼受人享有專利的權利。數個發明人共同完成發明時，則由發明人共同享有專利的權利。數個發明人個別獨立的完成發明時，則由首先向專利局申請發明者享有專利的權利。

第7條：申請人的權利；舊權利

- (1)為使專利申請的事物審查不因確認發明人而受拖延，在專利局的程序中，視申請人為有授與專利請求權者。
- (2)在以違法引用(第21條第一項第三款)為依據的異議而撤回專利時、或在異議導致拋棄專利時，異議人在官方通知後一個月內關於此得自己申請該發明，並得請求先前專利的優先權。

第8條：專利返還請求權

其發明已經由一無權利人提起申請的權利人、或因他人違法引用的受害人得向專利尋求者請求讓與授與專利的請求權。申請已經形成專利時，得向專利權利人請求移轉權利。保留第四項與第五項的規定，僅在授與專利公告(第58條第一項)後二年的期限內，得以訴訟主張該請求權。受害人因違法引用(第21條第一

³發明者的概念參閱受僱人發明法

項第三款)而提起異議時，在異議程序有法律確定力的終結後一年內仍得提起訴訟。專利權利人非以善意取得專利時，不適用第三句與第四句之規定。

第9條：專利之效力

專利具有專屬之效力，即僅專利權利人有權使用獲得專利的發明。未經權利人之同意，任何人均不得

1. 製造、供給、交易、使用、或為上述之目的而進口或占有係專利標的之產品；
2. 應用專利標的之方法，或第三人明知或可得而知未經專利權利人之同意不得應用這些方法，而在本法的適用範圍內供給應用；
3. 供給、交易、或使用、或為上述之目的而進口或占有以專利標的之方法直接製造的產品。

第10條：為使用發明禁止利用的方法

- (1) 專利具有禁止第三人的效力，即第三人明知或可得而知這些方法可以且確定可用於發明之使用時，未經專利權利人之同意，在本法的適用範圍內，任何第三人不得作為以使用權利人獲得專利發明為目的涉及發明重要要素之方法，在本法的適用範圍內成為販賣或供給發明之使用。
- (2) 若方法係涉及通常在交易上可獲得的產品時，則不適用第一項之規定，但第三人使受讓人知悉以第9條第二句所禁止的方式行為時，則不在此限。
- (3) 在第11條第一款至第三款所規定的行為人，在第一句的意義下，不視為發明的有使用權人。

第11條：合法的行為

專利的效力，不適用於

1. 在私人的領域，無營利目的的行為；
2. 為試驗用途而涉及專利標的之行為；
3. 在藥房根據醫生的處方、與根據涉及以此方式調製藥品的行為，而直接的個別調製藥品；
4. 在船舶暫時或偶然進入本法適用範圍的領水時，在巴黎保護智慧財產權公約的其他締約國船舶上使用專利發明之標的於船殼、機器、帆具、器械、與其他配件，其前提要件係專門為船舶的需要而使用該標的；
5. 在交通工具暫時或偶然進入本法的適用範圍時，在巴黎保護智慧財產權公約的其他締約國的航空器或陸路運輸工具、或在這些運輸工具的配件製造過程或運轉中使用專利發明之標的；
6. 在1994年12月7日簽署的國際民用航空協定⁴第27條規定的行為，即涉及應適用該條文於其他國家航空器的行為。

第12條：對於使用人的效力限制

- (1) 專利對於在申請時已經在國內使用發明時、或對發明已經採取必要的籌備時，不發生效力。其有權就自己的生產需要在自己或他人的工廠使用發明。此一權限僅得與工廠一併繼承或讓與。若申請人或其權利人在他人的申請前

⁴參閱聯邦法律公報1956 II，第411頁

已經傳達發明，且因而對在授與專利的情形保留其權利時，因傳達而獲悉發明者不得主張第一句在受傳達後六個月內其所採取的措施。

- (2)若專利權利人享有優先權時，代替第一項指稱的申請，應以先前的申請為準據。此一規定不適用於對此未互惠給與請求外國優先權的外國國民。

第13條：對公共福利與國家安全的效力限制

- (1)聯邦政府命令應為公共福利而使用發明時，專利不發生效力。權責的聯邦最高機關或受其委託的下級機關命令為聯邦的安全利益而使用發明時，專利不發生效力。
- (2)聯邦行政法院有權撤銷依據第一項規定由聯邦政府或權責的聯邦最高機關所發佈的命令。
- (3)在第一項的情形，專利權利人得對聯邦請求相當的補償。因補償的金額有爭議時，得在普通法院尋求法律救濟。在使用發明前，應將聯邦政府依據第一項第一句所發佈的命令告知在專利登記簿(第30條第一項)內登記為專利權利人者。依據第一項第二句的命令或委託，在聯邦最高機關獲悉發生第一項的補償請求權時，聯邦最高機關應將其告知登記為專利權利人者。

第14條：保護範圍

以專利請求權的內容確定專利與專利申請的保護範圍。而以說明書與圖示解釋⁵專利請求權。

第15條：權利之移轉；特許(Lizenz)

- (1)在專利的權利、授與專利的請求權、以及基於專利所產生的權利，得移轉給繼承人。這些權利得限制的或無限制的移轉給其他人。
- (2)依據第一項規定的權利，得全部或部分作為在本法適用範圍或部分適用範圍內專屬或非專屬的特許標的。以領有特許証者違反第一句規定的特許限制為限，得對領有特許証者主張基於專利所產生的權利。
- (3)權利移轉或特許授與不得抵觸先前已經授與第三人的特許。

第16條：保護期限

- (1)專利始於發明申請日的次日，為期二十年。在一發明係以改善或繼續發展申請人因專利而受保護的其他發明為目的時，至申請提起日後的十八個月期限屆滿止、或若對申請以先前的時間為準據時，在此一時間後，申請人得聲請追加專利，而對較舊的發明終止專利。
- (2)因撤回、無效的宣告、或拋棄而塗銷主要專利時，則追加專利成為獨立的主要專利；其保護期限依據主要專利的開始日確定之。有數個追加專利時，僅第一個追加專利成為獨立的專利；其餘的視為該獨立專利的追加專利。

第16a條⁶：補充的保護證明

⁵參閱關於解釋歐洲專利公約第69條之議定書

⁶參閱1992年第1768號歐洲共同體理事會關於藥品創設補充的保護證明規章，1992 L 182 第1頁；1996年第1610號歐洲共同體理事會關於植物保護方法創設

- (1)對於專利，得依據在聯邦法律公報中指明的歐洲經濟共同體關於創設補充的保護證明之規章聲請直接接續第16條第一項專利期限屆滿的補充保護。對於補充的保護，應依據專利費用法之規定繳納年費。
- (2)以歐洲共同體法無其他規定者為限，對於補充保護，準用專利法關於申請人的權利(第6條至第8條)、專利之效力及其例外規定(第9條至第12條)、使用命令、強制特取與收回(第13條、第24條)、保護範圍(第14條)、特許與特許之登記(第15條、第30條)、費用(第17條第二項至第六項、第18條與第19條)、專利之消滅(第20條)、無效宣告(第22條)、特許同意(第23條)、本國代理人(第25條)、專利法院與在專利法院的訴訟程序(第65條至第99條)、在聯邦最高法院的訴訟程序(第100條至第122條)、回復原狀(第123條)、真實的義務(第124條)、官方語言、送達、法律協助(第126條至第128條)、權利侵害(第130條至第141條、與第142a條)、以及訴訟集結(Klagenkonzentration)與專利標示(第145條與第146條)之規定。
- (3)專利法第23條對於專利有效的特許與表示，亦適用於補充的保護。

第17條⁷：費用

- (1)任何一個申請與任何一個專利自申請日起對於第三年與下一年計算，應依據專利費用法繳納年費。
- (2)對於追加專利(第16條第一項第二句)不需繳納年費。在追加專利成為獨立的專利時，則必須繳納費用；到期日與年費，以至目前為止的主要專利之開始日為準。對於追加專利之申請準用第一句與第二句前段規定，而在申請追加專利視為申請獨立專利之情形，應如同自始申請獨立專利繳納年費。
- (3)下一年的年費在申請日指稱的月份最後一日到期。若費用未在到期後至第二個月最後一日的期限屆滿止繳納時，則必須依據專利費用法繳納附加費。在期限屆滿後，專利局應通知申請人或專利權利人，費用與附加費未在通知送達後的月份屆滿後四個月的期限內繳納時，視為撤回申請(第58條第三項)或消滅專利(第20條第一項)。
- (4)申請人或專利權利人證明目前依其資金狀況無法繳納費用時，依申請人或專利權利人之聲請，專利局得延緩寄送通知。延緩得視在一定期限內繳納部分費用的情形而定。未按期限繳納部分費用時，專利局應告知申請人或專利權利人未在送達後一個月的期限內繳納餘款時，視為撤回申請或消滅專利。
- (5)若未提起聲請延緩寄送通知時，在證明無法繳納費用時，在送達後十四天內提起聲請且足以有怨至目前為止的延緩時，在通知送達後得允許延期繳納費用與附加費。在承擔繳納部分費用的條件下，亦得同意延期繳費。若未及時繳納允許延期繳納的款項時，專利局應再通知以索取全部的餘款。在第二個通知送達後，不得再允許延期繳納費用。
- (6)依聲請而延緩通知(第四項)或給與延期繳費後而必須重新通知(第五項)時，最遲必須在費用到期後二年寄送通知。若因未繳納餘款而視為撤回申請(第58條第三項)或消滅專利(第20條第一項)時，不退還已經繳納的部分費用。

補充的保護證明規章，1996 L 198 第30頁

⁷參閱專利費用法

第18條：費用之延期或免除；退還費用

- (1)申請人或專利權利人證明目前依其資金狀況無法繳納費用時，而且在撤回申請或專利在第一個十年內消滅時，依聲請同意其延期繳納授與專利的費用、與第三年至第十二年至第十三年開始止的費用。延期繳納費用的個人或經濟要件變更時，專利申請人或專利權利人應立即通知專利局。
- (2)若授與專利時或在異議後維持專利時，申請人證明目前依其資金狀況無法繳納繪圖、圖示說明、模型、樣品與鑑定、在授與專利的程序或在異議程序中提供樣品與鑑定的必要費用時，有利於申請人，專利局得命令退還給申請人作為墊款的相當費用；必須在授與專利後六個月內向專利局提起退款請求；提起異議時，必須在維持專利後六個月內提起退款請求。在專利登記簿(第30條第一項)中應記載退款。之後依情況係合法正當時，專利局應命令償還全部或部分已經繳納的費用。規定償還作為年費的附加費應以年費的一部分處理之。

第19條：年費之繳納

在到期前得繳納年費。經確定費用不可能再到期時，應償還該無法到期的費用。

第20條：專利之消滅

- (1)專利消滅，在
 - 1.專利權利人以書面向專利局表示拋棄時，
 - 2.在官方的通知(第37條第二項)送達後，未及時作第37條第一項所規定的表示時，或
 - 3.在官方的通知(第17條第三項)送達後，未及時繳納年費與附加費時。
- (2)專利局僅判斷是否及時依據第37條第一項規定作表示、以及是否及時繳納費用；不得抵觸第73條與第100條之規定。

第21條：專利之撤回

- (1)有下列情事者，應撤回專利(第61條)
 - 1.依據第1條至第5條之規定，專利標的不具有專利保護能力，
 - 2.專利未明確與完整的揭示足以使熟悉該項技術者實施的發明，
 - 3.專利的重要內容，係未經他人之同意，而引用其他或在其中所應用方法的說明書、圖示、模型、工具或設備時(違法引用)，
 - 4.專利標的逾越在文本內原始向專利局提起申請的申請內容；相同的，專利係依據部分申請或第7條第二項規定提起的新申請，而專利標的逾越在文本內原始向專利局提起先前申請的先前的申請內容。
- (2)撤回事由僅涉及專利的一部分時，得以相符的限制維持專利。限制得以變更專利請求權、說明書或繪圖的形式為之。
- (3)撤回專利時，專利與專利申請視為自始不發生效力。在限制的維持專利時，亦適用此一規定；在此一情形，不得抵觸申請之效力。

第22條：無效之宣告

- (1)存在第21條第一項規定列舉的任一事由、或擴大專利的保護範圍時，依聲請

- (第81條)宣告專利為無效。
- (2)準用第21條第二項、第三項第二句與第三句前段之規定。

第23條：特許同意(Lizenzbereitschaft)

- (1)專利尋求者或在專利登記簿(第30條第一項)內登記為專利權利人者，應以書面向專利局表示，同意允許任何人在支付相當的補償而使用發明時，在表示到達後，對於專利將到期的年費減少為依據專利費用法所規定費用的一半。對於主要專利所作表示的效力，延伸至全部的附加專利。在專利登記簿內應記載該表示，並且在專利公報中公告之。
- (2)在專利登記簿中已經登記授與專屬特許(第30條第四項)之記載或向專利局聲請登記此一記載時，則不得為特許同意之表示。
- (3)在特許同意表示登記後，欲使用發明者應將其意圖告知專利權利人。對於在專利登記簿登記為專利權利人者或登記為其代理人者以掛號信寄送告知時，視為已經作成告知。在告知中，必須說明應如何使用發明。在告知後，告知人有權以其說明的方式使用發明。告知人必須依據日曆年度在每一季屆滿後向專利權利人闡述其使用的過程，並支付相當的補償。告知人未在適當的時間內履行這些義務時，登記為專利權利人者對告知人得定相當的延展期限，而在期限屆滿後告知人仍未履行義務時，得禁止其繼續使用該發明。
- (4)依利害關係人之書面聲請，由專利科確定補償。對於確定程序，準用第46條、第47條與第62條之規定。針對數個利害關係人之聲請，應依據專利費用法繳納費用；未繳納費用時，則視為未提起聲請。在確定補償時，專利局得命令由聲請的相對人償還全部或部分的費用。若專利權利人證明目前依其資金狀況無法繳納費用時，至程序結束後六個月的期限屆滿止，專利權利人得延期繳納費用。未繳納延期的費用時，得命令聲請的相對人必須繳納對使用發明的補償，至專利權利人對專利局的費用債務清償時止。
- (5)在此期間出現所確定的補償明顯不相當的情形、或所確定的補償不相當的情形眾所周知時，自所確定最後的補償一年期限屆滿後，任何受補償確定者得聲請變更相關的事項。對於該聲請應依據專利費用法繳納費用。此外，準用第四項第一句至第四句之規定。
- (6)對申請作特許同意之表示時，準用第一項至第五項之規定。
- (7)只要使用發明的意圖尚未向專利權利人告知時，得隨時向專利局以書面撤回表示。在提起撤回時，發生效力。應在撤回表示後一個月內，繳納減少的年費金額。準用第17條第三項第二句與第三句之規定，並應以月份期限屆滿取代第三句的期限。

第24條：強制特許；收回專利

- (1)在具體個案中，由專利法院依據下列規定授與營利使用發明的非專屬權限(強制特許)，只要
 - 1.在相當的期限內，特許尋求者經努力但未獲得專利權利人之同意時，在相當與一般的營利條件下使用發明，且
 - 2.因公共利益而應授與強制特許。
- (2)在特許尋求者不能利用因比較新的專利而受保護的發明，並不侵害比較舊的專利時，與比較舊的專利作比較，只要其自己的專利顯示重要的技術進步具有重大的經濟意義，在第一項的範圍內，特許尋求者對於比較舊的專利權利

人享有授與強制特許的請求權。專利權利人得向特許尋求者請求對使用比較舊的專利發明在相當的條件下給與其相對的特許(Gegenlizenz)。

- (3)在半導體的科技領域，對於專利的發明，僅在為排除專利權利人在訴訟程序或行政程序中確定違反競爭的實務所必要時，在第一項的範圍內得授與強制特許。
- (4)若專利權利人不在國內實施具有專利的發明時，在第一項的範圍內得授與強制特許，以期確保具有專利的產品在國內市場上充分的供應。在這方面，進口與在國內實施專利有相同的地位。
- (5)在授與專利後，才得對專利准予強制特許。得限制的授與強制特許，並得視條件而定授與強制特許。使用的範圍與期限僅限於所允許的目的。對於強制特許權利人，專利權利人享有依據具體情況考量強制特許經濟價值相當的補償請求權。在未來再次出現將到期的補償給付重大變更確定補償額所依據的情形時，任何利害關係人有權請求作相符的調整。在授與強制特許所依據的情況消失時，且不太可能再出現該情況時，專利權利人得請求收回強制特許。
- (6)僅在企業係充分利用發明時，才得將企業與專利的強制特許一併移轉。對比較舊的專利標的之發明授與強制特許，才得與比較新的專利一併移轉。

第25條：本國代理人

在國內無住所或營業所者，僅在國內選任一位專利律師或律師為其代理人時，才得在專利局或專利法院參與在本法所規範的程序，且才得主張基於專利的權利。代理人在專利局的程序、在專利法院的訴訟程序、與在涉及專利的民事訴訟享有代理權；代理人亦得提起刑事告訴。在民事訴訟法第23條之意義下，代理人的事務所所在地視為資產所在地；無事務所者，則以代理人的住所為準據，無住所時則以專利局的所在地為準據。

第二章 專利局

第26條：組成

- (1)專利局由局長與其他的委員組成。委員必須依據德國法官法具有法官的任用資格(精通法律的委員)或在技術領域擁有專門的知識(技術的委員)。委員係終身職。
- (2)技術委員通常應曾經在國內的大學、技術專科學、或農業專科學、或礦業學院的技術科系或自然科學系就讀，並通過國家的結業考試或學術性的結業考試，之後至少有五年在自然科學或技術領域從事職業，並且僅在擁有必要的法律知識者中選任技術委員。依據歐洲共同體法之規定，在歐洲聯盟的其他會員國或在歐洲經濟區協定締約國內的結業考試，係與在國內的結業考試有同等的地位。
- (3)有預期時間的限制需要時，專利局局長得委任擁有委員所需要的基礎教育(第一項與第二項)者以專利局委員的事務(即輔助委員)。得以一定時間為限或依據實際需要的期限委任之。另外，對於委員之規定，亦適用於輔助委員。

第27條：審查處；專利科

- (1)在專利局內設置
 - 1.審查處，以負責專利申請之處理和給與技術水準之查詢(第29條第三項)；
 - 2.專利科，以負責授與專利的所有相關事務、確定補償(第23條第四項與第六項)、以及在專利局程序中同意程序費用之救助。在其業務範圍內，每個專利科亦必須作鑑定(第29條第一項與第二項)。
- (2)由專利科的一位技術委員(審查人)執行審查處的職務。
- (3)至少由三位委員共同參與以作成專利科的審定；以在專利科進行異議程序為限，必須有二位技術委員共同參與專利科之審定。在案件具有特別的法律困難但無委員屬於精通法律的委員，在作成專利科的審定時，應有精通法律的委員參與之。以審定拒絕聲請一位精通法律委員的會商時，不得個別獨立撤銷該審定。
- (4)除作成維持專利、撤回專利、或限制專利、以及確定補償(第23條第四項)與同意程序費用救助之審定外，專利科科長得單獨處理專利科的所有事務或將該任務移轉給專利科的一位技術委員；但不適用於聽證。
- (5)聯邦司法部有權以法律規章委託高級或中級職務的公務員或可比較的職員，以執行審查處或專利科所負責而依其種類並無特別技術或法律困難的個別業務；但基於申請人反對的事由而授與專利或駁回申請不適用之。聯邦司法部得以法律規章將此一授權移轉給專利局局長。
- (6)民事訴訟法第41條至第44條、第45條第二項第二句、第47條至第49條關於法院人員迴避之規定，亦適用於審查人與專利科其他委員之迴避。就其依據第五項規定委託以執行由審查處或專利科負責的個別業務內，相同的迴避規定亦適用於受委託的高級或中級職務的公務員或職員。以需要作決定時為限，由專利科決定迴避之請求。
- (7)得延請非委員的專家參與專利科的磋商；非委員的專家不得參與表決。

第28條：法律規章

- (1)聯邦司法部長規定專利局的設置與其業務手續，以法律規章⁸規定程序的形式，但僅以法律未規定者為限。
- (2)僅以法律未規定者為限，聯邦司法部長有權以法律規章⁹規定課徵行政費用，以填補因專利局的需要所產生的費用，特別是
 - 1.規定課徵書面證明、認證、卷宗查閱、與查詢的費用、以及墊款，
 - 2.關於費用債務人、費用到期、預付費用義務、費用免除、時效、與確定費用程序的規定。

第29條：鑑定；查詢技術水準

- (1)在訴訟程序上出現由數個專家作成彼此不同的鑑定時，應法院或檢察署針對與專利問題有關之請求，專利局應作出鑑定。
- (2)此外，未經聯邦司法部長之同意，專利局無權在其法定的業務範圍外作審定

⁸參閱1968年9月5日德國專利局規則，聯邦法律公報 I，第997頁

⁹參閱1991年10月15日在專利局的行政費用規則，聯邦法律公報 I，第2013頁

或作出鑑定。

- (3)為使公眾得利用專利局的文件，毋須聯邦參議院之同意，聯邦司法部長有權以法律規章10規定，專利局不保證文件完整給與技術水準之查詢。就此，聯邦司法部長特別是得規定其前提要件、給與查詢的種類與範圍、以及得給與查詢的技術領域。毋須聯邦參議院之同意，聯邦司法部長得以法律規章11將此一授權移轉給專利局局長。

第30條：專利登記簿

- (1)專利局應負責在專利登記簿之登記，在專利登記部內包括給與任何人查閱專利申請卷宗的標示、授與專利的標示、補充保護證明的標示(第16a條)、以及申請人或專利權利人之姓名與住所、及其所選任代理人(第25條)之姓名與住所，經登記的代理人即為已足。在專利登記簿內，亦應記載專利之開始、分割、期限屆滿、消滅、限制之命令、撤回、無效之宣告、與補充的保護證明(第16a條)、以及提起異議和提起無效之訴。
- (2)12專利局局長得規定在專利登記簿內登記的其他事項。
- (3)經向專利局證明，申請人或專利權利人、姓名或住所、或其代理人有變更時，專利局應在專利登記簿內標記該變更。以聲請在專利登記簿內變更登記申請人或專利權利人時，應依據專利費用法繳納費用；未繳納費用時，則視為未提起聲請。僅以變更尚未登記為限，先前的申請人、專利權利人、或代理人仍依據本法之規定享權利與盡義務。
- (4)經向專利局證明，同意其他部分時，依專利權利人或領有特許證者之聲請，專利局將授與專屬特許登記於專利登記簿內。僅以有表示特許同意(第23條第一項)為限，不得提起第一句之聲請。依專利權利人或領有特許證者之聲請，塗銷登記。專利權利人的塗銷聲請需附具在登記時被指稱為領有特許證者或其權利繼受人同意之證明。
- (5)提起第四項第一句或第三句之聲請時，應依據專利費用法繳納費用；未繳納費用時，視為未提起聲請。

第31條：卷宗查閱

- (1)在確信有合法利益時且以確信有正當利益時為限，專利局依聲請給與任何人查閱卷宗、以及查閱在卷宗內的模型與樣品。任何人均得查閱專利登記簿與專利卷宗，包括限制程序(第64條)之卷宗；相同的亦適用於專利分割部分卷宗(第60條)之查閱。
- (2)任何人均得查閱專利申請之卷宗，
1. 在申請人向專利局表示同意卷宗查閱，且已經指稱發明人時，或
 2. 自申請日(第35條第二項)起或自得請求以先前的時間作為申請的準據時起，已經經過十八個月。而且已經公告第32條第五項的指示。
- (3)以任何人得查閱卷宗為限，任何人亦得查閱在卷宗內的模型與樣品。
- (4)在由申請人指稱的發明人提起聲請時，依據第一項第一句規定僅給與查閱發明人之指稱(第37條第一項)；準用第63條第一項第四句與第五句之規定。

¹⁰參閱1982年2月25日規則，聯邦法律公報 I，第313頁

¹¹參閱1979年1月25日規則，聯邦法律公報 I，第114頁

¹²參閱1980年10月14日規則，聯邦法律公報 I，第2005頁

- (5)在給與查閱對聲請人有特別需要保護的利益，且以給與查閱對聲請人有特別需要保護的利益為限，而藉此預料不會對德意志聯邦共和國的對外安全造成嚴重不利的危險時，僅在權責的聯邦最高機關聽證後，專利局才給與查閱專利申請與專利依據第50條規定所不公告的卷宗。在一程序中，對於專利申請或專利依據第3條第二項第三句規定作為技術水準提起異議時，則在卷宗涉及異議的部分準用第一句之規定。

第32條：公開的文書；申請專利的說明書；專利公報

- (1)專利局應公告
1. 公開的文書
 2. 申請專利的說明書
 3. 專利公報
- (2)公開的文書應包含依據第31條第二項所規定准予任何人查閱的申請資料、與在原始提起或由專利局為公告而允許變更形式的總結。已經公告申請專利的說明書時，則不公告公開的文書。
- (3)申請專利的說明書應包含授與專利所根據的專利請求權、說明書、與圖示。此外，在申請專利的說明書中應說明專利局對於判斷申請發明的專利能力所考慮的印刷品(第43條第一項)。尚未公告總結時，則應將其納入申請專利的說明書內。
- (4)在撤回申請或駁回申請時、或視為撤回申請或消滅專利時，在第31條第二項的要件下，在對公告的技術準備終結後，亦得公告公開的文書或申請專利的說明書。
- (5)專利公報應包含關於在專利登記簿內登記通常表示的摘要，以其不僅涉及專利通常的期滿或專屬特許之登記與塗銷為限，亦應包含指示查閱專利申請卷宗，包括專利分割部分卷宗(第60條)之可能性。

第33條：對已經申請發明之補償

- (1)自公告第32條第五項的指示時起，對雖然明知或必須知悉其所使用的發明係申請標的之使用者，申請人得請求依情況的相當補償；不得行使廣泛的請求權。
- (2)在申請標的明顯不具有專利能力時，則不存在請求權。
- (3)依據請求權在授與專利後一年的期限屆滿前未消滅時效時，準用第141條之規定。

第三章 在專利局的程序

第34條：發明之申請

- (1)為授與專利，發明應向專利局提起申請。
- (2)因聯邦司法部在聯邦法律公報公告規定專利資料中心可接受專利申請時，亦得經由專利資料中心提起申請。有可能包含國家機密(刑法第93條)的申請，不得向專利資料中心提起。
- (3)申請應包含：
1. 申請人的姓名；

2. 授與專利的聲請，應簡短且精確的標明發明；
 3. 一個或數個專利請求權，應說明具有專利能力之保護標的；
 4. 發明之說明書；
 5. 關於專利請求權或說明書之圖示。
- (4) 發明在申請中應明確與完整的公開，以期使對於熟悉該項技術者得以實施之。
 - (5) 申請僅得包含唯一一個發明或一組以實現唯一一般的發明思想方式相互結合的發明。
 - (6) 專利的申請應依據專利費用法繳納費用。未繳納費用時，專利局應通知申請人，至通知到達後一個月的期限屆滿時止，仍未繳納費用時，視為撤回該申請。
 - (7) 聯邦司法部有權以法律規章公布申請的形式與其他申請要件的規定¹³。聯邦司法部得以法律規章將此一授權移轉給專利局局長。
 - (8) 依專利局之要求，申請人依其最佳的知識完整地與符合真實地說明技術水準，並將其納入說明書內(第三項)。
 - (9) 聯邦司法部有權以法律規章公布關於保管生物物質、包括進入有權利人範圍的門路、與重新保管生物物質的規定，但僅以發明包含利用生物物質、或發明涉及的物質係無法公開取得，而在申請中無法描述致使對於熟悉該項技術者無法依此實施(第四項)為限。聯邦司法部得將此一授權以法律規章移轉給專利局局長。

第35條：翻譯；申請日

- (1) 若申請的全部或部分非以德語撰寫時，則申請人應在申請提起後的三個月期限內補交德語翻譯。若申請包含關於圖示部分，而未附具圖示時，專利局應催告申請人在催告送達後的一個月期限內補交圖示，或表示任何有關圖示的部分應視為未提起申請。
- (2) 專利申請的申請日，係指依據第34條第三項第一款與第二款含有可視為說明書陳述的資料，且依據第34條第三項第四款
 1. 在專利局
 2. 或在因聯邦司法部在聯邦法律公報公告規定的專利資料中心到達的日期。若資料未以德語撰寫時，僅在依據第一項第一句的期限內補交德語翻譯到達專利局時，視為申請日，否則視為未提起申請。申請人因第一項第二句的催告補交欠缺的圖示時，圖示到達專利局的日期為申請日；否則關於圖示部分視為未申請。

第36條：申請的資料

- (1) 申請應附具一份總結，得至申請日後十五個月的期限屆滿時止、或在請求以先前的時間為申請依據的時間後十五個月期限屆滿時止補交總結。
- (2) 總結僅係作為技術性的報導之用。總結應包含：
 1. 發明之標示；
 2. 在申請內所包含公開說明發明的技術領域的節本，在節本內應撰寫發明的

¹³參閱1981年5月29日專利申請規則，聯邦法律公報 I，第521頁；1998年7月16日修訂，聯邦法律公報 I，第1827頁

技術問題明確的狀況、發明對技術問題的解決方法、與發明主要的利用可能性。

3. 在節本內提及的圖示；若提及數個圖示時，應附具由申請人認為最明確標示發明的圖示。

第37條：發明人的名稱

- (1) 在申請日後的十五個月內，或在請求以先前的時間為申請依據的時間後的十五個月內，申請人應指稱發明人，並且保證就其認知其他人並未參與發明。申請人非為發明人時，或申請人非單獨為發明人，申請人亦應說明其如何取得專利權。專利局不審查說明之正確性。
- (2) 申請人確信，因非常的情形而妨礙其及時作第一項的表示時，專利局應給與申請人一個相當的延長期限。此一延長期限不應逾越公布授與專利之審定。至公布授與專利審定時止，專利局應重新延長期限。在期限屆滿前的六個月，專利局應通知專利權利人，未在通知送達後六個月內作法律規定的表示時，消滅專利。

第38條：申請之變更

至授與專利審定時止，得變更在申請內所包含的資料，而不得變更申請標的，但至審查聲請(第44條)到達時止，僅得變更關於明顯不正確之補正、除去由審查處指稱的瑕疵、或專利請求權之變更。自擴大申請標的之變更，不產生任何權利。

第39條：申請之分割

- (1) 申請人得隨時提起分割申請。應以書面為分割表示。在提起審查聲請(第44條)後表示分割時，則被分割的部分視為申請，並對其提起審查聲請。對於每個分割申請保留原始的申請時間與得請求的優先權。
- (2) 對於被分割的申請，至分割時止，應繳納與原始申請相同的費用。在提起審查聲請(第44條)前表示分割時，不適用於依據第43條規定的費用，但對被分割的申請亦依據第43條規定提起聲請時，不在此限。
- (3) 對於被分割的申請，未在分割表示到達後三個月內交付第34條至第36條的申請資料時，或未在此一期限內對被分割的申請繳納費用時，則視為未作分割的表示。

第40條：申請人的優先權

- (1) 在對於同一發明申請專利向專利局提起先前的專利申請或新型專利申請的申請日後十二個月內，申請人享有優先權，但對先前的申請已經請求國內或外國的優先權時，不在此限。
- (2) 對於申請，得請求在專利局提起的數個專利申請或型專利申請之優先權。
- (3) 僅得對於申請在先前申請的全部資料中明確公開的特徵請求優先權。
- (4) 僅得在比較後的申請之申請日後二個月內請求優先權；在說明先前申請的卷宗卷號時，才視為作優先權的表示。
- (5) 先前的申請仍繫屬於專利局時，依據第四項之規定作優先權表示時，視為撤回該申請。在先前的申請涉及新型專利時，不適用之。
- (6) 聲請請求先前專利申請或新型專利申請優先權的比較後申請卷宗(第31條)之

查閱時，專利局應將先前的專利申請或新型專利申請副本放進比較後申請的卷宗內。

第41條：優先權的表示

- (1)依據國家所簽署的條約，對於相同的發明先前在外國的申請享有優先權者，在優先日後十六個月期限屆滿前，得陳述先前申請的國家與卷宗卷號，並交付先前申請的副本，僅以尚未提起申請者為限。在此期限內，得變更其陳述。
- (2)若先前的外國申請係在不承認優先權的國家提起時，則申請人得依據巴黎保護智慧財產權公約的優先權規定請求優先權，僅以依據聯邦司法部在聯邦法律公報之公告該其他國家因在專利局的第一次申請而給與依據其要件及內容可與巴黎保護智慧財產權公約的優先權比較的優先權為限；準用第一項之規定。

第42條：申請之瑕疵

- (1)在申請明顯不符合第34條、第36條、第37條、與第38條之構成要件時，審查處應要求申請人在一定期限內補正瑕疵。在申請不符合申請的形式與其他要件的規定(第34條第七項)時，至審查程序(第44條)開始止，審查處得不考慮這些瑕疵的指摘。
- (2)明顯地申請標的
 - 1.依其本質非發明時，
 - 2.無法供產業利用時，
 - 3.依據第2條規定不可能授與專利時，或
 - 4.在第16條第一項第二句的情形，無意圖改善或繼續發展其他的發明時，在說明理由下，審查處應將其告知申請人，並要求申請人在一定期限內發表意見。在第16條第一項第二句的情形，未在規定的期限內提起追加申請時，亦適用之。
- (3)未補正第一項的瑕疵時，或雖然明顯的不存在專利能力的發明(第二項第一款至第三款)、或明顯的不符合第16條第一項第二句的要件而仍然維持申請時，審查處應駁回申請。駁回應以尚未通知專利尋求者的情況為根據時，通知前應給與專利尋求者機會，以期在一定期限內陳述其意見。

第43條：聲請調查公開的印刷品

- (1)專利局依聲請應調查對判斷申請發明的專利能力所應考慮的公開印刷品。以完全委託一個國際機構、或對一定的技術專業範圍全部或部分委託一個國際機構調查這些印刷品(第八項第一款)為限，得聲請在申請人亦得利用調查結果於一歐洲的專利申請的方式進行調查。
- (2)聲請得由專利尋求者與任何未參與程序的第三人提起。應以書面提起聲請。準用第25條之規定。聲請應依據專利費用法之規定繳納費用；未繳納費用時，則視為未提起聲請。為申請追加專利(第16條第一項第二句)而提起聲請時，專利局應催告專利尋求者至催告送達後一個月的期限屆滿後，應對主要專利之申請依據第一項之規定提起聲請；未提起聲請時，則追加專利之申請視為獨立專利之申請。
- (3)應在專利公報中公告聲請之到達，但不得早於依據第23條第五項規定的指示

公告。在第三人提起聲請時，並應將聲請之到達通知專利尋求者。任何人得交付給專利局足以阻礙授與專利的印刷品。

- (4)在已經依據第44條之規定提起聲請時，視為未提起聲請。在此一情形，專利局應通知聲請者依據第44條規定提起聲請的到達時間。退還對於聲請已經繳納的費用。
- (5)在第一項的聲請到達時，之後的聲請視為未提起。準用第四項第二句與第三句之規定。
- (6)經證明由第三人提起的聲請在通知專利尋求者(第三項第二句)後為無效時，除第三人外，專利局亦應將其通知專利尋求者。
- (7)專利局應將依據第一項規定調查的印刷品通知申請人、在由第三人提起聲請時，則應通知該第三人與申請人，但不保證調查之完整，並應將該通知公告於專利公報。在印刷品由一個國際機構調查且係由申請人聲請國際調查(第一項第二句)時，應在通知中加以說明。
- (8)為加速終結專利授與程序，聯邦司法部長有權以法律規章規定下列的事項
 - 1.以這些機構顯示適於調查所考慮的印刷品為限，應委託專利局內的一個其他單位作為審查處(第27條第一項)、一個其他的國內機構或國際機構完全或就特定技術的專業領域或就特定的語言調查在第一項所指稱的印刷品；
 - 2.專利局授與外國或國際機構自專利申請的卷宗以互相傳達查詢關於審查程序的結果與調查技術水準的結果，僅以關於亦在這些外國或國際機構聲請授與專利的發明申請為限。
 - 3.全部或部分委託專利局內的其他單位作為審查處或專利科(第27條第一項)，應依據第42條規定對專利申請之審查、以及監督費用與期限。

第44條：審查聲請

- (1)專利局依聲請應審查申請是否符合第34條、第37條與第38條之構成要件、以及專利標的是否符合第1條至第5條規定具有專利能力。
- (2)得由專利尋求者或任何並未參與審查程序的第三人，至提起申請後七年的期限屆滿止，提起聲請。
- (3)聲請應依據專利費用法繳納費用；未繳納費用時，則視為未提起聲請。
- (4)已經依據第43條提起聲請時，僅在第43條的聲請終結後，才開始進行審查程序。此外，準用第43條第二項第二句、第三句與第五句、第三項、第五項與第六項之規定。在由第三人提起聲請而無效的情形，至通知送達後三個月期限屆滿時止，只要此一期限晚於第二項的期限屆滿，專利尋求者仍得自行提起申請。專利尋求者未提起聲請時，在指示公告由第三人提起的聲請下，應在專利公報中公告此一聲請無效。
- (5)在撤回審查聲請時，亦繼續進行審查程序。在第四項第三句的情形，由專利尋求者提起的審查聲請到達專利局時的狀態繼續審查程序。

第45條：瑕疵之補正

- (1)申請不符合第34條、第37條、與第38條之構成要件時，或明顯的不符合第36條之構成要件時，審查處應催告申請人在一定期限內補正瑕疵。第一句不適用於涉及已經公告總結的瑕疵。
- (2)審查處的審查結果係不存在第1條至第5條所規定具有專利能力之發明時，在說明理由下，審查處應將結果通知專利尋求者，並催告其在一定的期限內陳

述意見。

第46條：聽證與訊問

- (1) 審查處得隨時傳喚利害關係人與聽取其陳述，並得隨時經宣誓或無宣誓的訊問證人、鑑定人與利害關係人，以及派任其他人以闡明案件的必要調查。至授與專利審定止，在有益於案件時，依聲請聽取申請人的陳述。應以書面提起聲請。未以法定的形式提起聲請時、或審查處認為聽證對案件無益時，審查處得駁回聲請。駁回聲請的裁定，係獨立的且不得撤銷。
- (2) 聽證與訊問應作成筆錄，以記錄審理的重要過程，並且應包含利害關係人在法律上重要的表示。準用民事訴訟法第160a條、第162條、與第163條之規定。利害關係人獲得筆錄的副本。

第47條：審查處審定的形式

- (1) 審查處的審定應申述理由、以書面作成、並且依職權送達給利害關係人。在聽證結束後，並得宣示審定。不得抵觸第一句規定。僅申請人參與程序且允諾其聲請時，不需要申述理由。
- (2) 以書面作成的正本，應附具向利害關係人說明不服審定之訴願、提起訴願之單位、訴願期限、與以應繳納費用為限，應繳納訴願費之宣告。僅以書面向利害關係人說明時，才開始訴願期限(第73條第二項)。未作說明時或說明有不正確時，僅得在自送達審定時起一年內提起訴願，但已經作書面說明而仍未提起訴願時，不在此限；準用第123條之規定。

第48條：申請之駁回

在依據第45條第一項所欠缺的瑕疵未補正時、或審查結果不存在第1條至第5條所規定具有專利能力的發明時，審查處應駁回申請。適用第42條第三項第二句之規定。

第49條：授與專利之審定

- (1) 申請符合第34條、第37條、與第38條之構成要件時，已經補正依據第45條第一項所欠缺的總結瑕疵，而且申請標的依據第1條至第5條之規定具有專利能力時，審查處應審定授與專利。
- (2) 依申請人之聲請，至十五個月的期限屆滿止，延展專利授與之審定，此一期限始於向專利局提起申請之日或始於對申請請求以先前的時間為依據的此一時間。

第49a條：授與補充保護證明之程序

- (1) 登記為專利權利人者聲請補充的保護證明時，專利科應審查申請是否符合歐洲經濟共同體理事會所制定的規章，以及是否符合第三項、第四項、與第16a條之規定。
- (2) 申請符合這些構成要件時，專利科授與其有效期期限的補充保護證明。否則，專利科應催告申請人在由其規定至少兩個月的期限內，應補正可能的瑕疵。未補正瑕疵時，專利科以審定駁回申請。
- (3) 適用第34條第七項之規定。適用第46條與第47條規定於專利科的程序。

- (4)申請應依據專利費用法繳納費用。未繳納費用時，專利局應告知申請人，至告知送達後一個月的期限屆滿時止未繳納費用時，視為撤回申請。

第50條：秘密的專利

- (1)已經申請專利的發明係國家機密(刑法第93條)時，審查處依職權應命令不作任何公告。在命令前，應聽取權責的聯邦最高機關之意見。權責的聯邦最高機關得申請公布命令。
- (2)在命令的前提要件消失時，依職權、或依權責聯邦最高機關、申請人或專利權利人之聲請，審查處應廢棄第一項之命令。審查處每年應審查第一項命令的前提要件是否繼續存在。在廢棄第一項的命令時，應聽取權責聯邦最高機關之意見。
- (3)審查處應告知利害關係人，在不服審查處駁回聲請第一項公布命令的審定或廢棄第一項命令的審定時，在訴願期限(第73條第二項)內無人提起訴願。
- (4)第一項至第三項之規定準用於由外國基於國防理由保密且委託聯邦政府在其同意下保守秘密的發明。

第51條：卷宗查閱

專利局應給與權責的聯邦最高機關查閱卷宗，以審查是否不應依據第50條第一項規定作任何的公告或是否應廢棄依據第50條第一項公告的命令。

第52條：在德意志聯邦共和國外的申請

- (1)經權責的聯邦最高機關給與書面同意時，才得在本法的適用範圍外提起含有國家機密(刑法第93條)的專利申請。權責的聯邦最高機關得在一定的條件下給與同意。
- (2)有下列的行為時，處五年以下的有期徒刑或科以罰金，
- 1.違反第一項第一句規定提起專利申請者，或
 - 2.違反第一項第二句規定的條件者。

第53條：無保密的命令

- (1)自向專利局申請專利時起四個月內，未送達給申請人第50條第一項的命令時，只要申請人或任何其他人有疑慮發明的保密是否有必要，申請人與任何其他知悉發明的人得認為發明係毋須保密。
- (2)得不在第一項所規定的期限內終結審查是否不需依據第50條第一項作任何的公告時，專利局向申請人在第一項的期限內為送達的通知最多得延長兩個月。

第54條：授與秘密專利

對於依據第50條第一項規定的命令申請授與專利時，應在特別的登記簿內登記專利。準用第31條第五項第一句規定於查閱特別的登記簿。

第55條：不利用的補償

- (1)在無法期待其自己承擔損害時且以無法期待其自己承擔損害時為限，不利用符合第1條至第5條規定具有專利能力的發明，為了和平目的，並顧及第50條

第一項命令的申請人、專利權利人或其權利繼受人因其因而所產生的財產損害，對於聯邦有補償請求權。在判斷可期待性時，特別是應考慮受害人的經濟狀況、其對發明或取得發明的權利所花費的金額、發明需要保護的可能性對其產生花費認識的程度、以及從一個其他利用發明歸受害人所有的利用。僅在授與專利後，才得主張補償請求權。得在事後且對不短於一年的時間要求補償。

- (2)應向權責的聯邦最高機關主張補償請求權。得向普通法院尋求法律救濟。
- (3)僅在專利局對發明的第一次申請，且在公布第50條第一項的命令前未由外國基於國防理由保守秘密的發明時，才得依據第一項規定給與補償。

第56條：權責聯邦最高機關的規定

聯邦政府有權以法律規章¹⁴規定在第31條第五項、第50條至第55條、與第74條第二項意義的權責聯邦最高機關。

第57條：授與專利的費用

- (1)對於專利之授與，應依據專利費用法繳納費用。以授與專利審定之送達，為費用之到期。未在到期後二個月內繳納費用時，必須依據專利費用法繳納附加費。在到期期限屆滿後，專利局應告知專利權利人，在告知送達後一個月內未繳納費用與附加費時，則視為未授與專利和撤回申請。
- (2)在官方通知送達後未及時繳納費用和附加費時，則視為未授與專利和撤回申請。

第58條：專利授與之公告

- (1)在專利公報中公告專利之授與。同時公告申請專利的說明書。在專利公報中公告時，發生專利的法定效力。
- (2)在公告指示卷宗查閱的可能性(第32條第五項)後撤回申請、或駁回申請、或視為撤回申請時，則視為不發生第33條第一項規定之效力。
- (3)至第44條第二項規定的期限屆滿時止，未提起審查聲請時、或未及時對申請繳納年費(第17條)時，則視為撤回申請。

第59條：異議

- (1)在公告授與專利後三個月內，任何人均得對專利提起異議，在違法引用的情形，僅得由受害人提起之。應以書面表示異議，並申述理由。異議僅得主張存在第21條的撤回理由。應具體詳細說明使異議合法正當的事實。以在異議書狀內未包含說明為限，至異議期限屆滿時止，必須以書面補交說明。
- (2)不服專利提起異議時，任何第三人經證明因侵害專利而對其提起訴訟時，在提起侵害訴訟日後三個月期限內表示加入時，在異議期限屆滿後得作為異議人而加入異議程序。相同的，亦適用於任何第三人經證明其在專利權利人催告後無所謂的專利侵害並對專利權利人已經提起其未侵害專利的確認之訴，應以書面表示加入，並至在第一句的期限屆滿時止申述理由。準用第一項第三句至第五句之規定。
- (3)第43條第三項第三句、第46條、與第47條規定準用於異議程序。

¹⁴參閱1961年5月14日的規則，聯邦法律公報 I，第595頁

第60條：專利之分割

- (1)至異議程序結束時止，專利權利人得分割專利。表示分割時，則視為對被分割的部分提起審查聲請(第44條)之申請。準用第39條第一項第二句與第四據、第二項與第三項之規定。對於被分割的部分，專利之效力視為自始不發生效力。
- (2)在專利公報中，公告專利之分割。

第61條：專利之維持或撤回

- (1)專利科以審定作成決定，是否及在何種範圍維持專利或撤回專利。在撤回異議時，依職權無異議人繼續進程序。
- (2)撤回專利時、或僅有限的維持專利時，應在專利公報中公告之。
- (3)有限的維持專利時，應相應的修改申請專利說明書。應公告申請專利說明書之修改。

第62條：異議程序之費用

- (1)在異議的審定中，專利科依公平的裁量得規定至何種範圍由一利害關係人負擔因聽證或調查證據時所產生的費用。在全部或部分撤回異議時或拋棄專利時，亦得作此規定。
- (2)除專利局的墊款外，以費用係為符合的維護請求權或權利所必要者為限，利害關係人所產生的費用亦屬於費用。專利局依聲請確定應償還費用的金額。準用民事訴訟法關於費用確定程序與基於費用確定裁定強制執行之規定。代替民事訴訟的異議，不服費用確定裁定時，提起抗告；依據應在二星期內提起抗告，適用第73條之規定。由專利法院書記處的書記官給與可執行的正本。

第63條：發明人之列舉(Nennung)

- (1)在公開文書(第32條第二項)、申請專利的說明書(第32條第三項)、以及在授與專利的公告中，只要已經指稱發明人時，應列舉發明人。在專利登記簿(第30條第一項)內應記載發明人之列舉。在由申請人指稱的發明人聲請時，則不發生列舉。得隨時撤回聲請；在撤回的情形，應事後的列舉發明人。發明人放棄列舉時，無法律上的效力。
- (2)未正確的說明發明人的人時、或在第一項第三句根本未說明的情形，專利尋求者、或專利權利人、以及被不合法指稱者，必須對發明人負有向專利局對此表示同意報告或補正在第一項第一句與第二句規定列舉之義務。不得撤回同意。提起表示同意的訴訟不阻礙授與專利程序。
- (3)在已經公告的官方印刷品不得事後的列舉發明人(第一項第四句、第二項)或更正(第二項)之。
- (4)聯邦司法部長有權以法律規章¹⁵公布為實施前述各項規定之規定。聯邦司法部長得以法律規章將此一授權移轉給專利局局長。

¹⁵參閱1968年9月5日德國專利局規則，聯邦法律公報 I，第997頁

第64條：專利之限制

- (1)依專利權利人之聲請，得以專利請求權之變更限制專利，具有溯及既往的效力。
- (2)應以書面提起聲請與申述理由。聲請應依據專利費用法繳納費用；未繳納費用時，則視為未提起聲請。
- (3)專利科應決定聲請。準用第44條第一項與第45條至第48條之規定。在允諾聲請的審定，申請專利的說明書應符合限制作調整。應公告申請專利說明書之變更。

第四章 專利法院

第65條：設置；管轄權；組成

- (1)設置專利法院為獨自主的聯邦法院，以裁判不服專利局審查處或專利科之審定、以及宣告專利無效之訴與強制特許程序(第81條、第85條)。
- (2)專利法院由院長、審判長、與其他法官組成。院長、審判長、與法官必須具備依據德國法官法的法官資格(精通法律的委員)、或在一技術領域擁有專門的知識(技術的委員)。第26條第二項規定準用於技術委員，而且技術委員必須通過國家的結業考試或學術性的結業考試。
- (3)以不抵觸第71條之規定為限，由聯邦總統以終身職任命法官。
- (4)專利法院院長應負責對法官、公務員、職員、與工人的職務監督。

第66條：抗告庭；無效庭

- (1)專利法院由下列的法庭組成
 - 1.裁判抗告的法庭(抗告庭)；
 - 2.裁判宣告專利無效之訴與強制特許程序的法庭(無效庭)。
- (2)聯邦司法部長規定法庭的庭數。

第67條：法庭的組成

- (1)在第23條第四項與第50條第一項、第二項的情形，由一位精通法律的委員擔任審判長與二位技術委員組成抗告庭裁判之；在第73條第三項、第130條、第131條、與第133條的情形，由一位技術委員擔任審判長、二位其他的技術委員與一位精通法律的委員組成抗告庭裁判之；在第三十一條的情形，由一位精通法律的委員擔任審判長、另一位精通法律的委員與一位技術委員組成抗告庭裁判之；在其他的情形，由三位精通法律的委員組成抗告庭裁判之。
- (2)在第84條與第85條第三項的情形，由一位精通法律的委員擔任審判長、另一位精通法律的委員與三位技術委員組成無效庭裁判之；在其他的情形，由三位法官組成無效庭，其中應有一位精通法律的委員。

第68條：事務分配；主席團；院長之代理

依據下列標準，法院組織法第二章的規定準用於專利法院：

- 1.根據選舉結果，在精通法律的審判長與另一位精通法律的法官不屬於主席團的情形，精通法律的審判長與另一位精通法律的法官視為係由精通法律的委員以最高的票數選舉產生。

2. 由三位精通法律的法官組成專利法院的一個法庭以裁判選舉撤銷(法院組織法第21b條第六項)。
3. 聯邦司法部長任命院長的常務代理人。

第69條：審理公開；法警

- (1) 只要已經公告指示第32條第五項的查閱卷宗可能性或公告指示第58條第一項的申請專利說明書時，抗告庭應進行公開的審理。準用法院組織法第172條至第175條之規定，並依據
 1. 在顧慮公開審理將危害利害關係人需要受保護的利益時，依利害關係人之聲請，亦得不進行公開的審理，
 2. 至公告指示第32條第五項查閱卷宗的可能性止或至公告第58條第一項的申請專利說明書止，不公開宣示裁定。
- (2) 無效庭的審理，包括宣示裁判在內，應公開進行。準用第一項第二句第一款之規定。
- (3) 法庭開庭時，審判長應維持秩序。準用法院組織法第177條、第180條、第182條、與第183條關於法警之規定。

第70條：評議與表決

- (1) 對於法庭的決議，應以評議與表決作成。僅得由法庭依據本法所規定的委員人數共同參與評議與表決。在評議與表決時，除為裁判而委派的委員外，僅得由在專利法院進行培訓的人員在場，但以審判長允許其出席為限。
- (2) 法庭依多數票決議之；在票數相同時，審判長的一票具有決定性的作用。
- (3) 法庭的委員依年資順序投票，在年資相同時依年齡；年少者在年長者之前投票。已指定制作裁判書的法官時，由其首先投票。審判長最後投票。

第71條：委任法官

- (1) 在專利法院得使用委任法官(Richter kraft Auftrags)。適用第65條第二項第三句之規定。
- (2) 委任法官與被委派的法官(abgeordneter Richter)不得擔任審判長。

第72條：書記處

在專利法院內設置由必要人數的書記官組成書記處。聯邦司法部長¹⁶規定書記處之設置。

第五章 在專利法院的程序

第一節 抗告程序

第73條：許可；形式；期限；費用

- (1) 不服審查處或專利科的審定，得提起訴願。
- (2) 在送達後一個月內，應以書面向專利局提起訴願。對於其他的利害關係人應

¹⁶參閱1980年12月10日命令

附具訴願與所有書狀的副本。專利局應依職權將訴願與所有包含實體法的聲請、或撤回訴願表示、或聲請表示的書狀送達給其他的利害關係人；僅以未命令送達時為限，應以不要式的方式將其他的書狀通知其他的利害關係人。

- (3)對不服駁回申請、或判定專利維持、撤回專利、或限制專利的審定，而提起訴願時，在再議期間內應依據專利費用法繳納費用；未繳納費用時，則視為未提起訴願。
- (4)其審定被撤銷的單位認為訴願有理由時，應更正訴願。該單位得命令退還訴願費用。未更正訴願時，該單位在一個月的期限屆滿前，未經實質的發表意見，應提交專利法院。
- (5)另一位參與程序者與訴願人係對造當事人時，不適用第四項第一句之規定。

第74條：訴願權人

- (1)參與專利局程序者得提起訴願。
- (2)在第31條第五項與第50條第一項、第二項的情形，權責的聯邦最高機關亦得提起訴願。

第75條：停止執行的效力

- (1)訴願有停止執行之效力。
- (2)不服審查處依據第50條第一項規定所公布命令的審定而提起之訴願，不具有停止執行之效力。

第76條：專利局局長之職權

專利局局長為維護公共利益而認為適當時，在抗告程序中，專利局局長得向專利法院作書面表示、參加期日，並在期日內作闡明。專利法院應將專利局局長的書面表示通知利害關係人。

第77條：專利局局長的加入

因一個法律問題具有原則的意義，而專利法院認為適當時，得交由專利局局長處理，並加入抗告程序。以加入的表示到達時，專利局局長取得利害關係人的地位。

第78條：言詞審理

在下列的情形，應進行言詞審理

- 1.由一利害關係人聲請言詞審理時，
- 2.向專利法院提出證據(第88條第一項)，或
- 3.專利法院認為言詞審理係有益時。

第79條：抗告的裁判

- (1)以裁定裁判抗告。
- (2)抗告不合法、或未以法定形式、或未在法定期限內提起時，為不合法而不受理。未經言詞審理得作成裁判。
- (3)在下列的情形，專利法院得廢棄被撤銷的審定，而毋須自己作裁判，
 - 1.在專利局自己尚未對該案件作決定時，

2. 在專利局的程序有重大的瑕疵時，
 3. 在出現對決定是重要的新事實或證據時。
- 專利局亦應以廢棄所根據的法律判斷作為其決定的依據。

第80條：費用的裁判

- (1) 數人參與程序時，符合公平，專利法院得規定由一位利害關係人負擔全部或部分的程序費用。特別是專利法院亦得規定由另一位利害關係人償還全部或部分由一利害關係人產生的費用，以該費用係為符合目的維護請求權與權利所必要者為限。
- (2) 在專利局局長加入程序後，由其提起聲請時，才得由專利局局長負擔費用。
- (3) 專利法院得命令退還訴願費(第73條第三項)。
- (4) 在全部或部分撤回抗告、撤回申請、撤回異議、或拋棄專利時，亦適用第一項至第三項之規定。
- (5) 此外，準用民事訴訟法關於費用確定程序與基於費用確定裁定的強制執行之規定。

第二節：無效之訴與強制特許的訴訟程序

第81條：訴訟

- (1) 因宣告專利或補充保護證明無效、或因授與或收回強制特許、或因調整以判決對強制特許所規定的補償，應以訴訟開始程序。應對在專利登記簿內登記為專利權利人者或對強制特許的權利人提起訴訟。對補充保護證明的訴訟得與對所根據專利的訴訟合併，並得主張對所根據的專利存在無效的理由(第22條)。
- (2) 只要仍得提起異議或異議程序仍在繫屬中時，不得提起宣告專利無效的訴訟。
- (3) 在違法引用的情形，僅受害人有權提起訴訟。
- (4) 應以書面向專利法院提起訴訟。對於對造當事人應附具訴訟與所有書狀的副本。專利法院依職權應將訴訟與所有的書狀送達給當事人。
- (5) 訴訟必須指明原告、被告、與訴訟標的，並應包含一個特定的聲明。應陳述理由所根據的事實與證據。訴訟不完全符合這些構成要件時，在一定的期限內，審判長應催告原告作必要的補充。
- (6) 提起訴訟應依據專利費用法繳納費用；未繳納費用時，則視為未提起訴訟。
- (7) 因訴訟費用，依被告之要求，在歐洲聯盟的一個會員國內或在歐洲經濟區協定的一締約國內無居所的原告應提供擔保；準用民事訴訟法第110條第二項第一款至第三款之規定。依據公平的裁量，專利法院確定擔保的金額，並確定在一定期限內應提供擔保的期限。延誤期限時，視為撤回訴訟。

第82條：訴訟送達；陳述期限

- (1) 專利法院應將訴訟對被告為送達，並要求其應在一個月內陳述其意見。
- (2) 被告未及時陳述意見時，不經言詞審理，亦得立即在訴訟後裁判之，而認為每個由原告主張的事實已經證實。

第83條：異議

- (1)被告及時提起異議時，專利法院應將異議通知原告。
- (2)專利法院依據言詞審理為裁判。經當事人之同意，專利法院得不經言詞審理為裁判。

第84條：判決；費用之裁判

- (1)以判決裁判訴訟。亦得以中間判決預先裁判訴訟之合法性。
- (2)在判決中，亦應裁判訴訟費用。以公平而不需其他的裁判為限，準用民事訴訟法關於專利費用之規定；準用民事訴訟法關於費用確定程序與基於費用確定裁定強制執行之規定。不得抵觸第99條第二項之規定。

第85條：因授與強制特許的訴訟程序

- (1)在因授與強制特許的訴訟程序中，若原告確信存在第24條第一項的構成要件，而立即授與許可係為公共利益所急需時，依原告之聲請，以假處分准許原告使用發明。
- (2)提起聲請時，應依據專利費用法繳納費用；未繳納費用時，則視為未提起聲請。假處分之公布得取決於因相對人脅迫的不利益，而由聲請人提供擔保。
- (3)專利法院依據言詞審理裁判。準用第83條第二項第二句與第84條之規定。
- (4)假處分之效力終於撤回或駁回授與強制特許之訴；在一造當事人在撤回後一個月內或在駁回發生法律確定力後一個月聲請變更時，得變更假處分的費用裁判。
- (5)經證明假處分的命令自始無正當理由時，聲請人必須賠償相對人因執行假處分所產生的損害。
- (6)在執行具有公共利益時，依聲請以提供擔保或無供擔保得宣告假執行判給強制特許的判決。在廢棄或變更判決時，聲請人必須對相對人負有因執行所產生損害的賠償責任。

第三節 共同的程序規定

第86條：法院人員的迴避

- (1)民事訴訟法第41條至第44條、第47條至第49條規定準用於法院人員的迴避。
- (2)法官有下列情形者，不得執行職務
 - 1.在抗告程序中，曾參與先前在專利局的程序者；
 - 2.在宣告專利無效的訴訟程序中，曾參與在專利局或專利法院授與專利或異議程序者。
- (3)由應迴避者所屬的法庭裁判法官的迴避。因應迴避人員的退出而不能決議時，由專利法院三位精通法律的委員組成抗告庭裁判之。
- (4)關於書記官的迴避，由案件所屬事物範圍的法庭裁判之。

第87條：職權原則；審理的準備

- (1)專利法院應依職權調查事實。專利法院不受利害關係人提出的證據與聲請調查證據之拘束。
- (2)在言詞審理前、或在未進行言詞審理時，在專利法院裁判前，審判長或由審

判長指定的一位委員應已經採取所有必要的指示，以期在言詞審理時或在審判時儘可能終結案件。此外，準用民事訴訟法第273條第二項、第三項第一句、與第四項第一句之規定。

第88條：舉證

- (1)專利法院在言詞審理時提出證據。特別是專利法院得進行勘驗，訊問證人、鑑定人與利害關係人，與調閱文件。
- (2)在適當的情形，專利法院得以其一位委員為受命法官，在言詞審理前舉證、或在標示個別證據問題下請求其他法院為證據調查。
- (3)專利法院應將所有證據調查的期日通知利害關係人，利害關係人並得出席證據調查。利害關係人得對證人和鑑定人提出與案件有關的問題。在利害關係人指摘一個問題時，專利法院應作裁判。

第89條：傳喚

- (1)言詞審理的期日一經確定，應以至少二個星期的傳喚期限傳喚利害關係人。在急迫的情形，審判長得縮短期限。
- (2)在傳喚時，應指明利害關係人不到場，欠缺利害關係人時專利法院亦得審理與裁判。

第90條：審理的進行

- (1)審判長開始和指揮言詞審理。
- (2)在點呼案件後，由審判長或書記官朗讀卷宗的重要內容。
- (3)利害關係人發言，以期提起聲請與申述理由。

第91條：法官的發問義務

- (1)審判長應與利害關係人就案件作事實的和法律的討論。
- (2)審判長應准許每位法庭的成員依要求發問。在指摘一個問題時，由法院裁判之。
- (3)在討論案件後，審判長應宣告言詞審理終結。法庭得裁定再開言詞審理。

第92條：審判筆錄

- (1)延請一位書記處的書記官在言詞審理和每個證據調查作記錄員。依審判長的指示不予考慮延請記錄員時，則應由法官負責筆錄。
- (2)關於言詞審理和每個證據調查，應作成筆錄。準用民事訴訟法第160條至第165條。

第93條：自由的證據判斷；判決的法官

- (1)專利法院依據其自由的心證和從程序的全部結果所獲得的論證作成裁判。在判決中，應陳述主導法官的論證所根據的理由。
- (2)僅得依據由利害關係人陳述的事實或證據的結果作成裁判。
- (3)先前已經進行過言詞審理時，在最後的言詞審理未在場的法官僅在利害關係人同意時，才得參與作成裁判。

第94條：宣示；送達；理由

- (1)已經進行過言詞審理，應在言詞審理終結的期日或在立即指定的期日宣示裁判。在有重要理由，特別是案件的範圍或困難的需要時，應指定超過三個星期的期日。得以最終裁判的送達代替宣示。專利法院應依職權對利害關係人送達最終裁判。專利法院未經言詞審理而裁判時，應以對利害關係人送達代替宣示。
- (2)專利法院駁回聲請或判決法律救濟的裁判，應申述理由。

第95條：裁判之更正

- (1)在裁判中有書寫的錯誤、計算錯誤、與類似的明顯不正確，得隨時由專利法院更正。
- (2)更正得不經先前進行的言詞審理而裁判。更正裁定記載於裁判與正本。

第96條：更正聲請

- (1)裁判的構成要件含有其他的不正確或不明確時，在裁判送達後二星期內得聲請更正之。
- (2)不經證據調查，專利法院以裁定作成裁判。就此僅由曾經參與聲請更正裁判的法官參與之。更正裁定應記載於裁判與正本。

第97條：代理

- (1)在專利法院一利害關係人得由一代理人代理其在訴訟程序的每個情況。專利法院得以裁定命令必須指定代理人。不得抵觸第25條之規定。
- (2)以書面交付代理權於法院卷宗內。得補交代理權；對此專利法院得定一期限命期補交之。
- (3)在訴訟程序的每個情況，得主張代理權之欠缺。在非以律師或專利律師為代理人時，專利法院依職權應考量代理權之欠缺。

第98條：墊款

在專利法院的訴訟程序中，對於墊款準用裁判費用法。

第99條：準用法院組織法與民事訴訟法

- (1)以本法未規定在專利法院的訴訟程序為限，在專利法院訴訟程序的特性不排除法院組織法與民事訴訟法之適用時，準用法院組織法與民事訴訟法。
- (2)僅以本法允許為限，才得撤銷專利法院的裁判。
- (3)對於給與第三人查閱卷宗，準用第31條之規定。專利法院裁判查閱卷宗之聲請。在專利權利人證明有相反而需要保護的利益時，且以專利權利人證明有相反而需要保護的利益為限，因宣告專利無效不得准許查閱訴訟程序的卷宗。
- (4)不適用民事訴訟法第227條第三項第一句之規定。

第六章 在聯邦最高法院的程序

第一節 法律抗告程序

第100條：法律抗告之准許

- (1)不服專利法院依據第73條裁判抗告的裁定，在抗告庭在其裁定內准許法律抗告時，得向聯邦最高法院提起法律抗告。
- (2)有下列情形者，應准予法律抗告，
 - 1.在具有原則意義應裁判的法律問題時，或
 - 2.為法律的繼續發展或為確保一致的裁判，而需要聯邦最高法院的裁判時。
- (3)不服專利法院抗告庭的裁定時，不需准許提起法律抗告，在有下列訴訟程序瑕疵之一者：
 - 1.在作裁定的法院未依規定組成時，
 - 2.作裁定時，有依法不得執行法官職務或因有偏頗之虞而應迴避的法官參與時，
 - 3.在一利害關係人拒絕法律的審訊時，
 - 4.只要一利害關係人明示或默示不同意訴訟程序的進行，在訴訟程序中依據法律規定利害關係人無代理人時，
 - 5.依據違反程序公開規定的言詞審理作成裁定時，或
 - 6.在裁定未附具理由時。

第101條：抗告權人；抗告理由

- (1)參與抗告程序者得提起法律抗告。
- (2)法律抗告僅得主張裁定係違反法律。準用民事訴訟法第550條、第551條第一款至第三款、與第五款至第七款之規定。

第102條：期限；形式；費用；理由

- (1)在裁定送達後一個月內，應以書面向聯邦最高法院提起法律抗告。
- (2)第144條關於訴訟價值確定之規定準用於在聯邦最高法院的法律抗告程序。
- (3)法律抗告應申述理由。申述理由的期限為一個月；期限始於提起法律抗告時，審判長依聲請得延長之。
- (4)法律抗告的理由應包含
 - 1.聲請撤銷裁定、變更或廢棄裁定的表示；
 - 2.指明違反的法律規定；
 - 3.法律抗告主張涉及程序違反法律的範圍，指明造成瑕疵的事實。
- (5)在聯邦最高法院，利害關係人必須由准許在聯邦最高法院進行訴訟的律師為代理人代理其訴訟。依一利害關係人之聲請，得授權專利律師為其訴訟代理人。在這方面，不適用民事訴訟法第157條第一項與第二項之規定。準用第143條第五項之規定。

第103條：停止執行之效力

法律抗告有停止執行之效力。準用第75條第二項之規定。

第104條：合法的審查

聯邦最高法院應依職權審查是否向其提起法律抗告，是否以法定形式與在法定期限內提起法律抗告，並附具理由。欠缺這些要件之一者，視為不合法，應駁回法律抗告。

第105條：數個利害關係人

- (1)數人參與法律抗告程序時，聯邦最高法院應對其他利害關係人送達抗告狀、抗告理由、連同催告在送達後的一定期限內以書面向聯邦最高法院交付可能的表示。以抗告狀之送達，通知提起法律抗告的時間。抗告人應連同抗告狀或抗告理由交付經認證副本所需要的份數。
- (2)專利局局長未參與法律抗告程序時，準用第76條之規定。

第106條：應適用的規定

- (1)在法律抗告程序，準用民事訴訟法關於法院人員的迴避、訴訟代理人與輔佐人、依職權的送達、傳喚、期日與期限、以及回復原狀之規定。在回復原狀的情形，準用第123條第五項至第七項之規定。
- (2)第69條第一項規定準用於程序的公開。

第107條：以裁定作裁判

- (1)以裁定裁判法律抗告；得不經言詞審理裁判之。
- (2)在裁判時，聯邦最高法院應受在被撤銷裁定中所作的事實確認之拘束，但對於此一確認提起合法的且有理由的法律抗告理由時，不在此限。
- (3)裁定應申述理由與依職權向利害關係人為送達。

第108條：駁回專利法院

- (1)在廢棄被撤銷裁定的情形，應將案件駁回專利法院更行審理與裁判。
- (2)專利法院應以廢棄所依據的法律判斷作為其裁判的根據。

第109條：費用裁判

- (1)數人參與法律抗告程序時，聯邦最高法院得規定符合公平由一利害關係人償還全部或部分為符合目的終結事務所必需的費用。駁回法律抗告、或視為不合法而駁回法律抗告時，因法律抗告所產生的費用應由抗告人負擔。一利害關係人因重大過失而產生費用時，應由其負擔之。
- (2)僅在專利局局長提起法律抗告或在程序中提起聲請時，才得由專利局局長負擔費用。
- (3)此外，準用民事訴訟法關於費用確定程序與基於費用確定裁定的強制執行之規定。

第二節 上訴程序

第110條：合法

- (1)不服專利法院無效庭(第84條)的判決，應向聯邦最高法院提起上訴。
- (2)以向聯邦最高法院遞交上訴狀，提起上訴。

- (3)上訴期限為一個月。上訴期限始於以完整形式撰寫判決書之送達，但最遲在宣示後五個月的期限屆滿時。
- (4)上訴狀應包含
 - 1.上訴不服判決之標明；
 - 2.不服此一判決而提起上訴之表示。
- (5)連同上訴狀，應提出受撤銷判決的正本與經認證的副本。
- (6)無效庭的裁定僅得連同其判決(第84條)一起撤銷；不適用民事訴訟法第71條第三項之規定。

第111條：理由

- (1)上訴人應申述上訴理由。
- (2)僅以未在上訴狀內敘明上訴理由為限，應以書狀向聯邦最高法院遞交上訴理由。遞交上訴理由的期限為一個月；其始於提起上訴時。依審判長之自由心證，不因延長期限而拖延訴訟程序時、或上訴人闡明有重要理由時，審判長依聲請得延長期限。
- (3)上訴理由應包含：
 - 1.判決應如何撤銷與應聲請如何變更判決之表示(上訴聲明)；
 - 2.以個別的詳細理由特定的標明撤銷(上訴理由)，以及當事人應舉出上訴合法正當的新事實、證據、與證據抗辯。
- (4)在聯邦最高法院，當事人必須委託律師或專利律師為訴訟代理人代理其進行訴訟。代理人得與一位技術輔佐人一起出庭。

第112條：送達；答辯

- (1)上訴狀與上訴理由應對被上訴人為送達。以上訴狀之送達，通知提出上訴的時間。連同上訴狀或上訴理由，上訴人應交付經認證副本所需要的份數。
- (2)法庭或審判長得對被上訴人確定提出書面上訴答辯的期限，並得對上訴人確定針對上訴答辯提出書面意見的期限。

第113條：駁回

- (1)聯邦最高法院應依職權審查，是否得向其提起上訴，與是否以法定形式和在法定期限內提起上訴及是否申述理由。欠缺這些要件之一者，視為不合法，應駁回上訴。
- (2)不經言詞審理，得以裁定裁判之。

第114條：言詞審理的期日

未以裁定視為不合法而駁回上訴時，應規定言詞審理的期日，並向當事人公布。

第115條：舉證

- (1)聯邦最高法院依自由裁量，為闡明案件採取必要的處分。聯邦最高法院不受當事人提出的證據與聲請調查證據之拘束。
- (2)亦得以專利法院之傳達舉證。

第116條：言詞審理；傳喚期限

- (1)聯邦最高法院的判決應依據言詞審理作成。
- (2)傳喚期限至少為二星期。
- (3)得不考慮言詞審理，在
 - 1.當事人同意時，
 - 2.應宣告一造當事人不得再上訴時，或
 - 3.應僅裁判費用時。

第117條：新事實與證據

- (1)在陳述書狀因被上訴人提出證據而促成主張時，才得在期日主張新事實與證據。
- (2)聯邦最高法院亦得考量與當事人無關的事實與證據。
- (3)仍有必要的證據調查，應適用第115條之規定。
- (4)若判決應依據未由當事人討論的情況時，應促使當事人就其陳述意見。

第118條：證據之擬制；依據卷宗之判決

- (1)由一造當事人主張而對造當事人未陳述的事實，得推定為已經證明。
- (2)在期日無當事人出席時，依據卷宗作成判決。

第119條：審判筆錄

- (1)在期日內，應作成通常審理進行的筆錄。
- (2)筆錄應由審判長與辦公處的書記官簽名。

第120條：判決之宣示

- (1)判決應在審理終結的期日內、或在立即指定的期日內宣示。
- (2)若認為宣示判決的理由是適當時，應以朗讀理由或以重要內容的口頭通知為之。
- (3)依職權送達判決。

第121條：訴訟利益值；費用

- (1)在聯邦最高法院的上訴程序，準用第144條關於訴訟利益值確定之規定。
- (2)在判決中，亦應裁判訴訟費用。僅以公平而不需其他的判決時為限，準用民事訴訟法關於訴訟費用之規定(第91條至第101條)；準用民事訴訟法關於費用確定程序(第103條至第107條)與基於費用確定裁定之強制執行(第724條至第802條)之規定。

第三節 抗告程序

第122條

- (1)不服專利法院無效庭在訴訟程序因授與強制特許(第85條)而關於公布假處分的判決，應向聯邦最高法院提起抗告。準用第110條第六項之規定。
- (2)在一個月的期限內，應以書面向聯邦最高法院提起抗告。
- (3)抗告期限始於以完整形式撰寫判決書之送達，但最遲在宣示後五個月的期限

屆滿時。

- (4)第74條第一項、第84條、第110條至第121條規定準用於聯邦最高法院的抗告程序。

第七章 共同的規定

第123條：回復原狀

- (1)因不可歸責於己之事由，對專利局或專利法院延誤法定期間，且依據法律規定造成權利不利的結果時，應依聲請回復原狀。但不適用於提起異議(第59條第一項)之期限、有權提起異議者對於維持專利提起抗告(第73條第二項)之期限、與提起得依據第7條第二項與第40條請求優先權申請的期限。
- (2)在延誤事由消滅後二個月內，應以書面聲請回復原狀。聲請應包含說明回復原狀所根據的事實；在提起聲請時或在聲請的程序中，應使人相信該事實。在聲請的期限內應補正延誤的行為；已補正延誤行為時，未經聲請亦得予以回復原狀。在延誤期限屆滿後一年，不得再聲請回復原狀，並不得再補正延誤的行為。
- (3)關於聲請，由應決議延誤行為的單位決議之。
- (4)不得撤銷回復原狀。
- (5)在國內以善意在專利消滅與專利恢復效力間的時間內已經使用由於回復原狀而恢復效力的專利標的者、或在此一期間內對由於回復原狀而恢復效力的專利標的已經採取必要的籌備者，有權在自己或他人的工廠內因自己的生產需要而繼續使用專利標的。此一權限僅得與企業一併繼承或讓與。
- (6)由於回復原狀而恢復第33條的效力時，準用第五項之規定。
- (7)在國內以善意在優先權的十二個月期限屆滿與優先權恢復效力間的時間內已經使用由於回復原狀而請求一個先前在外國申請的優先權的申請標的、或在此一期間內已經對恢復優先權效力的申請標的採取必要的籌備者，亦享有第五項的權利。

第124條：真實的義務

在專利局、專利法院、或聯邦最高法院的程序中，利害關係人應完整的與符合真實陳述事實的狀況。

第125條：資料的要求

- (1)異議專利或宣告專利無效之訴主張專利標的不具有第3條的專利保護能力時，專利局或專利法院得要求應對專利局或專利法院、與參與程序的關係人各提出一份在異議或訴訟中提及在專利局或專利法院所欠缺的印刷品。
- (2)印刷品使用外國語言時，依專利局或專利法院之要求，應附具簡單的或經認證的翻譯本。

第126條：官方語言

僅以無其他規定者為限，在專利局與在專利法院應以德語進程序。

第127條：行政送達法之適用

- (1)在專利局或專利法院的程序中，依據下列規定，行政送達法之規定亦適用於送達：
 - 1.若無法定事由而拒絕收受以掛號信的送達時，仍視為已受送達。
 - 2.應向居住於外國的收受人為送達時，亦得依據民事訴訟法第175條與第213條規定以交付郵局為送達。
 - 3.行政送達法第5條第二項之規定準用於對合法的表見權利人(專利律師規則第177條)之送達。
 - 4.對於在專利局或在專利法院設有取件信箱的收受人為送達時，亦得以在收受人的取件信箱內放置文書的方式作為送達。關於放置，應在卷宗內附以書面通知。在文書中應記載放置的日期。在取件信箱內放置後的第三天，視為完成送達。
- (2)在提起抗告(第73條第二項、第122條第三項)、或法律抗告(第102條第一項)、或提起上訴(第110條第三項)的期限始於送達時，不適用行政送達法第9條第一項之規定。

第128條：法律協助

- (1)法院必須給與專利局或專利法院以法律協助。
- (2)在專利局的程序中，依專利局之囑託，專利法院應對不到場、拒絕其證言或宣誓的證人或專家規定秩序罰或強制方法。同樣地，應命令拘提不到場的證人。
- (3)由專利法院的三位精通法律的委員組成抗告庭裁判第二項的囑託。裁判以裁定為之。

第八章 程序費用救助

第129條：程序費用救助

在專利局、專利法院、與聯邦最高法院的程序，依據第130條至第138條之規定，利害關係人獲得程序費用救助。

第130條：授與專利程序

- (1)在授與專利的程序，申請人依聲請在準用民事訴訟法第114條至第116條規定下，以有充分希望授與專利時為限，獲得程序費用救助。費用應向聯邦國庫繳納。
- (2)同意程序費用救助導致程序費用救助標的之費用，對於未繳納的情形，不發生所規定的法律效果。此外，準用民事訴訟法第122條第一項之規定。
- (3)數人共同聲請專利時，僅在所有申請人均符合第一項的構成要件時，才獲得程序費用救助。
- (4)申請人非發明人時、或非發明人的全部權利繼受人時，僅在發明人亦符合第一項的構成要件時，申請人才獲得程序費用救助。
- (5)依聲請，如有必要時，得包括代替一個准許的延期繳納費用、或依據第18條第一項予以准許的延期繳納的數個年費，以期排除阻礙依據民事訴訟法第115條第三項給與程序費用救助之限制。以分期付款繳納專利授與程序的費用，包括委派一位代理人所產生的費用時，應將已經繳納的分期付款款額算

入年費。以已經繳納的分期付款款額的視為已經繳納年費時為限，準用第19條之規定。第一句規定準用於第23條第四項第三句與第五項第二句在程序費救助中所包括的費用。

- (6)在第三人使人相信具有自己需要保護的利益時，第一項至第三項之規定準用於第43條與第44條由第三人提起聲請的情形。

第131條：專利限制程序

在限制專利的程序(第64條)中，準用第130條第一項、第二項與第五項之規定。

第132條：異議程序

- (1)在異議程序(第59條至第62條)中，依聲請，在準用民事訴訟法第114條至第116條、第130條第一項第二句、第二項、第四項、與第五項規定下，專利權利人獲得程序費用救助。就此不需審查權利抗辯是否有充分希望取得成果。
- (2)在聲請人使人相信具有自己需要保護的利益時，第一項第一句規定準用於異議人、依據第59條第二項之規定參與的第三人、以及利害關係人，在因宣告專利無效的程序或在強制特許程序(第81條、第85條)。

第133條：委派一位專利律師或律師

在顯示代理係有助於程序終結時、或一利害關係人因專利律師、律師、或合法的表見權利人之代理而有相反的利益時，依利害關係人之聲請委派由其選擇一位準備代理的專利律師或律師、或依據明確的要求委派合法的表見權利人，以協助依據第130條至第132條規定准予程序費用救助的一位利害關係人。準用民事訴訟法第121條第三項與第四項之規定。

第134條：費用期限之未完成

在應繳納費用的法定期限屆滿前提起第130條至第132條所規定的准予程序費用救助的申請時，至依申請而作成裁定的送達後一個月的期限屆滿時止，該期限未完成。

第135條：申請准予程序費用救助

- (1)應以書面向專利局、專利法院、或聯邦最高法院提起申請准予程序費用救助。在第110條與第122條的程序中，申請亦得在聯邦最高法院的書記處表示以筆錄為之。
- (2)對於請求程序費用救助的程序，由有管轄權的單位決議申請。
- (3)以非關於專利科拒絕程序費用救助或第133條委派代理的審定為限，不得撤銷依據第130條至第133條作成的裁定；不得向聯邦最高法院提起法律抗告，民事訴訟法第127條第三項規定準用於專利法院的程序。

第136條：民事訴訟法規定之適用

準用民事訴訟法第117條第二項至第四項、第118條第二項與第三項、第119條與第120條第一項、第三項與第四項、以及第124條至第127條第一項與第二項之規定。在異議程序、在因宣告專利無效的程序、或強制特許程序(第81條、第85條)，亦適用民事訴訟法第117條第一項第二句、第118條第一項、第122條第二

項、以及第123條、第125條與第126條之規定。

第137條：程序費用救助之廢棄

關於已經申請或因專利而受保護的發明給與程序費用救助時，以讓與、使用、授與特許、或以其他方式，對於已經申請的發明或因專利而受保護的發明作經濟上的利用時，而從中取得的收入變更准予程序救助所依據的情況，致使利害關係人有能力繳納程序費用時，得廢棄程序費救助；在民事訴訟法第124條第三款的期限屆滿後，亦適用之。獲得程序費用救助的利害關係人應向作准予程序費用救助的單位通知該發明的每個經濟利用。

第138條：法律抗告程序

- (1)在法律抗告程序中，在準用民事訴訟法第114條至第116條規定下，依聲請准予利害關係人的程序費用救助。
- (2)應以書面向聯邦最高法院提起申請准予程序費用救助；亦得在書記處表示以筆錄為之。關於申請，由聯邦最高法院裁定之。
- (3)此外，準用第130條第二項、第三項、第五項、與第六項、以及第133條、第134條、第136條、與第137條，並規定僅得委派在聯邦最高法院進行訴訟的律師協助准予訴訟程序費用的利害關係人進行訴訟。

第九章 權利侵害

第139條：不作為與損害賠償請求權

- (1)受害人得對違反第9條至第13條規定而使用專利的發明者，行使不作為的請求權。
- (2)因故意或過失侵害專利者，對於受害人因而產生的損害負有賠償的義務。侵害人僅為輕過失時，法院得在受害人所受損害與現存利益間規定補償以代替損害賠償。
- (3)在專利標的係一新產品的製造方法時，至有提出反證時止，由其他人製造的相同產品視為係依據專利方法製造的產品。在提出反證時，應考慮維護被告製造與營業秘密的正當利益。

第140條：暫時保護之侵害

在授與專利前，在訴訟上主張基於申請而使任何人得查閱卷宗(第31條第一項第一句第二段與第二項)的權利時，而法律爭訟的判決取決於存在第33條第一項的請求權時，法院得命令至授與專利裁判時止延展審理。未依據第44條規定提起審查聲請時，依對造當事人之聲請，法院應定一期限使主張基於申請而產生權利的當事人提起審查聲請。未在此一期限內提起審查聲請時，不得在法律爭訟上主張基於申請所產生的權利。

第140a條：銷毀請求權

- (1)在第139條的情形，受害人得請求銷毀侵害人占有或所有係專利標的之產品，但得以其他方式除去產品因侵害權利所造成的狀態，與在具體個案中銷毀對侵害人或所有人不相當時，不在此限。在關於以專利標的之方法直接製

造的產品時，亦適用第一句之規定。

- (2)第一項規定準用於屬於侵害人所有、專屬、或幾近專屬用以違法製造產品所使用或特定的設備。

第140b條：關於第三人的查詢請求權

- (1)受害人得對違反第9條至第13條規定使用專利發明者請求立即告知關於所使用產品的來源與銷售途徑，但在具體個案不相當者，不在此限。
- (2)依據第一項規定有告知義務者應說明產品的製造者、供應者與其他前占有人、營業上的顧客或委任人的姓名與住所、以及產品的製造、交貨、獲得或訂貨的數量。
- (3)在明顯侵害權利的情形，得依據民事訴訟法的規定，以假處分的方式命令其履行告知義務。
- (4)在刑事訴訟或在依據社會安寧法進行的程序中，因在給與告知前所作的行為係針對有告知義務者、或係針對在刑事訴訟法第52條第一項所指稱的家屬時，僅在有告知義務者的同意下，得利用其告知。
- (5)不得抵觸更廣泛的查詢請求權。

第141條：時效

因侵害專利權的請求權時，自請求權人知悉侵害與知悉義務人時起，三年間不行使而消滅，不考慮此一知悉，自侵害時起三十年間不行使而消滅。準用民法第852條第二項之規定。若義務人因侵害行為而獲得權利人的費用時，在時效完成後，亦應依據不當得利的規定返還之。

第142條：罰則

- (1)未經專利權利人或補充保護證明(第16a條，第49a條)的權利人必要的同意，而有下列行為者，處三年以下有期徒刑或科以罰金
- 1.製造、販賣、交易、使用、或為上述目的而進口或占有專利標的或補充保護證明(第9條第二句第一款)標的之產品，或
 - 2.應用係專利標的或補充保護證明(第9條第二句第二款)標的之方法或供應以應用在本法的適用範圍者。

在關於以專利標的或補充保護證明標的之方法直接製造的產品時，亦適用第一句第一款之規定。

- (2)行為人的營利行為，處以五年以下的有期徒刑或科以罰金。
- (3)未遂犯處罰之。
- (4)在第一項的情形，僅為告訴乃論，但刑事追訴機關因追訴有特別的公共利益而認為應依職權干預者，不在此限。
- (5)涉及犯罪行為之標的，得沒收之。適用刑法第74a條之規定。在依據刑事訴訟法之規定關於被害人補償的訴訟(第403條至第406c條)中，允諾在第140a條指稱的請求權時，不適用關於沒收之規定。
- (6)在受害人提起告訴且證明有正當的利益時，判決時應命令依要求公開宣示判決。在判決中確定宣示的方式。

第142a條：海關的措施：扣押，沒入

- (1)只要明顯的侵害權利，依聲請且由權利人提供擔保，在進口或出口依據本法

侵害受專利保護的產品時，海關應扣押之。僅以進行海關檢查為限，亦適用於與其他歐洲聯盟的其他會員國、以及與歐洲經濟區協定其他締約國間的貿易。

- (2)海關命令扣押時，海關應立即通知有處分權人與聲請人。應將產品的來源、數量、存放地、以及有處分權人的姓名與住址告知聲請人；在這方面限制通訊秘密(基本法第10條)。只要未因而干預營業或企業的秘密時，應給與聲請人機會，以檢查產品。
 - (3)最遲在依據第二項第二句規定的通知送達後二星期期限屆滿後對扣押未異議時，海關應命令沒入已扣押的產品。
 - (4)有處分權人對扣押有異議時，海關應立即通知聲請人。聲請人應立即向海關說明關於被扣押的產品是否維持依據第一項的聲請。
 - 1.若聲請人撤回聲請時，海關應立即終止扣押。
 - 2.若聲請人維持聲請，並提出一個命令保管扣押產品獲限制處分可執行的法院判決時，海關應立即採取必要的措施。
- 不存在第一款或第二款之情形時，在依據第一句規定通知送達聲請人後的二星期期限屆滿後，海關應終止扣押；聲請人證明已要求第二款的法院判決但仍未到達時，最長得再繼續扣押二星期。
- (5)若證明扣押為自始不正當，而聲請人針對扣押產品依據第一項維持聲請或未立即表示(第四項第二句)時，聲請人應賠償有處分權人因扣押所受的損害。
 - (6)應向最高財政部門提起第一項的聲請。只要未聲請更短的適用期限時，此一聲請有二年之效力；並得重新提起聲請。針對與聲請有關連的職務行為，依據稅務法(Abgabenordnung)第178條之規定，向聲請人徵收費用。
 - (7)扣押與沒入得以依據社會安寧法的罰鍰程序中針對扣押與沒入合法的法律救濟撤銷。在法律救濟程序中，應聽取聲請人之陳述。不服區法院(Amtsgericht)之裁判，得立即提起抗告；由高等法院裁判立即的抗告。

第十章 專利訴訟程序

第143條：專利訴訟的管轄法院

- (1)不論訴訟標的之價值，地方法院的民事庭對於所有主張依據在本法所規範的法律關係請求權的訴訟(專利訴訟)享有專屬管轄。
- (2)只要係為促進訴訟的事務，各邦政府有權以法律規章就數個地方法院的管轄區域指定由其中一個地方法院管轄專利訴訟。各邦政府得將此一授權移轉給邦司法行政部。
- (3)17在對進行專利訴訟的法院亦得由准許在地方法院進行訴訟的律師代理當事人，無第二項規定管轄分配而進行訴訟。相符的規定亦適用於在上訴法院的訴訟代理。
- (4)依據第三項規定不得在訴訟法院進行訴訟的律師，因代理一造當事人所產生

¹⁷對舊的各邦(即指德國統一前原來西德的各邦)自2000年1月1日起，而對新的各邦(即指德國統一後新加入的東德各邦)自2005年1月1日起，第143條第三項規定如下：不服法院對專利訴訟的判決而提起上訴時，在上訴法院亦得由准許在高等法院進行訴訟的律師代理當事人，無第二項的管轄分配而上訴高等法院。

的額外費用，該當事人不應償還之。

- (5)由專利律師共同參與專利訴訟所產生的費用，依據聯邦律師費用法第11條之規定應償還全額費用及專利律師的其他必要支出。

第144條：減少訴訟標的價值

- (1)一當事人在專利訴訟中，使人相信依據完全的訴訟標的價值計算訴訟費用的負擔，將可能嚴重危及其經濟狀況時，法院依其聲請得命令按照訴訟標的價值並適合其經濟狀況的數額確定該當事人應支付訴訟費用的負擔。相同的，法院的命令使受惠當事人僅依據此一訴訟標的價值的數額給付其律師費用。僅以其應負擔訴訟費用或其承擔訴訟費用為限，該當事人應按照訴訟標的價值的數額償還對造當事人所繳納的裁判費與其律師的費用。僅以對造當事人應負擔或由其承擔裁判費以外的訴訟費用為限，受惠當事人的律師得向對造當事人按照對其適用的訴訟標的價值數額收取費用。
- (2)第一項的聲請，得向法院的書記處以筆錄表示之。應在訴訟標的審理前，提起聲請。在訴訟標的審理後，僅在之後由法院提高已接受或確定的訴訟標的價值時，才得提起聲請。在裁判聲請前，應聽取對造的陳述。

第145條：因其他專利所產生的其他訴訟

提起第139條的訴訟者，在無過失且無法在先前的訴訟中主張此一專利時，才得因相同的或相同種類的行為而對被告依據其他的專利提起其他的訴訟。

第十一章 專利之標示

第146條：專利之標示

在物品或其包裝上，標示足以使人認為該物品係依據本法受保護的專利或受保護的專利申請者，或以公開廣告、招牌、推薦卡片、或在類似的公告使用這類標示者，依對於就瞭解權利狀況有正當利益者之要求，應告知其關於使用標示所根據的專利或專利申請。

德國新型專利法

1986年8月26日修訂

1998年7月16日增訂

第1條：新型專利之保護要件

- (1)創新、以發明步驟為依據、且可供產業利用的發明，得受新型專利之保護。
- (2)特別是下列情形者，不視為第一項規定的新型專利標的：
 - 1.發現、科學原理或數學方法；
 - 2.美學上的外形創作；
 - 3.思想工作、遊戲或商業工作的計劃、規則或方法，或資料處理設備的程序；
 - 4.資料的轉述。
- (3)第二項規定僅在上述的標的或工作請求受保護時，不適用新型專利之保護。

第2條：公共秩序、善良風俗、植物、動物、方法

有下列情事者，不受新型專利之保護：

- 1.其發表或使用違反公共秩序或善良風俗之發明；此一違反不得僅以因法律或行政法規禁止使用該發明的事實推論之。第一句不排除在第9條規定的發明保護；
- 2.植物品種或動物種類；
- 3.方法。

第3條：技術水準

- (1)新型專利之標的不屬於現有的技術水準者，視為創新。現有的技術水準包括在申請日前以書面描述或以在本法的適用範圍內可得公開獲得使用的所有知識。在申請日前六個月內已有的描述或使用，若係以申請人或其前權利人之製作為依據時，則不在此限。
- (2)新型專利之標的在任何一个產業的領域，包括農業在內，可供產業製造或使用時，視為可供產業之利用。

第4條：申請的要件

- (1)請求受新型專利保護之發明，應向專利局以書面提起申請。對於每個發明應單獨提起申請。
- (2)因聯邦司法部在聯邦法律公報公告規定專利資料中心可接受新型專利申請時，亦得經由專利資料中心提起申請。有可能包含國家機密(刑法第93條)的申請，不得向專利資料中心提起。
- (3)申請應包含：
 - 1.申請人的姓名；
 - 2.聲請登記新型專利，應簡短且精確的表明新型專利之標的；
 - 3.一個或數個保護請求權，應說明具有保護能力之標的；
 - 4.新型專利標的之說明書；
 - 5.關於保護請求權或說明書之圖示。

- (4)聯邦司法部有權以法律規章18公布規定申請的形式與其他的申請要件。聯邦司法部得以法律規章將此一授權移轉給專利局局長。
- (5)新型專利的申請，應依據專利費用法19繳納費用。未繳納費用時，專利局應通知申請人，至通知送達後一個月的期限屆滿止，仍未繳納費用時，視為撤回該申請。
- (6)至新型專利完成登記時止，僅以未擴大申請標的為限，得變更申請。自擴大申請標的之變更中，不得派生任何的權利。
- (7)申請人得隨時提起分割申請，應以書面為分割表示。對於每個分割申請保留原始的申請時間與得請求的優先權。對於被分割的申請，至分割時止，應繳納與原始申請相同的費用。
- (8)聯邦司法部有權以法律規章公布關於保管、包括進入有權利人範圍的門路、與重新保管生物物質的規定，但僅以發明包含利用生物的物质，或發明涉及的物質係無法公開取得，而在申請中無法描述致使對於熟悉該項技術者無法依此實施(第三項)為限。聯邦司法部得將此一授權以法律規章移轉給專利局局長。

第4a條：翻譯；申請日

- (1)若申請的全部或部分非以德語撰寫時，則申請人應在申請提起後的三個月期限內補交德語翻譯。若申請含有關於圖式的部分，而未附具圖示時，專利局應催告申請人在催告送達後的一個月期限內補交圖示，或表示任何有關圖示的部分應視為未提起申請。
- (2)新型專利申請的申請日，係指依據第4條第三項第一款與第二款含有可視為說明書陳述的資料，且依據第4條第三項第四款
 - 1.在專利局
 - 2.或在因聯邦司法部在聯邦公報公告規定的專利資料中心到達的日期。若資料未以德語撰寫時，僅在依據第一項第一句的期限內補交德語翻譯到達專利局時，視為申請日，否則視為未提起申請。申請人因第一項第二句的催告補交欠缺的圖示時，圖示到達專利局的日期為申請日；否則關於圖示部分視為未申請。

第5條：專利申請之優先性

- (1)若申請人以前已經對同一發明請求專利在德國生效時，則申請人得以新型專利申請表示主張該專利申請的申請日。對於專利申請所主張的優先權，亦適用於新型專利之申請。依據第一句規定產生的權利，得在完成專利申請或有可能發生的異議程序終結的月底後二個月期滿，但最長在專利申請的申請日後十年期滿，行使之。
- (2)若申請人已經依據第一項第一句之規定作表示時，則專利局應催告申請人在催告送達後二個月內應說明卷宗卷號與申請日，並交付給專利申請之副本。若未及時說明時，則第一項第一句所規定的權利喪失其效力。

¹⁸參閱1968年9月5日德國專利局規則，聯邦法律公報I，第997頁；與新型專利申請規則

¹⁹參閱1976年8月18日專利局與專利法院費用法

第6條：期限

- (1)在向專利局先提起的專利或新型專利申請後的十二個月期限內，申請人對於同一發明申請新型專利享有優先權，但對於先前的申請已經請求國內或外國的優先權者，不在此限。準用專利法第40條第二項至第四項、第五項第一句之規定；第40條第五項第一句規定，先前的專利申請不視為撤回。
- (2)準用專利法關於外國優先權之規定(第41條)。

第7條：聲請權人

- (1)專利局依聲請調查對判斷新型專利申請或新型專利標的保護能力應考慮的公開印刷品。
- (2)得由新型專利申請人或作為登記的權利人、及任何的第三人提起聲請。應以書面提起聲請。準用第28條(本國的代理人)之規定。聲請應依據專利費用法之規定繳納費用；未繳納費用時，視為未提起聲請。準用專利法第43條第三項、第五項、第六項、與第七項第一句之規定。

第8條：新型專利登記簿

- (1)若申請符合第4條之構成要件時，專利局應將其登載入新型專利登記簿內。對申請標的不作創新、發明步驟、與可供產業利用的審查。準用專利法第49條第二項之規定。
- (2)登記應指明申請人之姓名與住所、其所選任的代理人(第28條)、以及申請之時間。
- (3)應在專利公報以通常表示的摘要公告登記。
- (4)經向專利局證明新型專利權利人或其代理人有變更時，專利局應在新型專利登記簿內標記該變更。以聲請權利人的變更登記時，應依據專利費用法之規定繳納費用；未繳納費用時，視為未提起聲請。僅以變更未經登記為限，先前的權利人與其先前的代理人仍依據本法之規定享權利與盡義務。
- (5)任何人均得查閱在登記簿與在卷宗登記的新型專利，包括塗銷程序的卷宗在內。此外，專利局給與任何人依聲請查閱卷宗，在確信有合法利益時且以確信有正當利益為限。

第9條：秘密的新型專利

- (1)已經申請的新型專利標的係國家機密(刑法第93條)時，專利局應依職權命令依據專利法第50條所規定專責的審查處不公開(第8條第五項)與不在專利公報公告(第8條第三項)。在專利局的命令前，審查處應聽從權責的聯邦最高機關²⁰之指示。權責的聯邦最高機關得申請公布命令。涉及國家機密的新型專利應登記於特別的新型專利簿內。
- (2)此外，準用專利法第31條第五項、第50條第二項至第四項、與第51條至第56條之規定。依據第一項所規定的權責審查處亦得準用專利法第50條第二項之規定作決定，且有權準用專利法第50條第三項與第53條第二項之規定採取行為。

²⁰參閱1961年5月24日專利法第30g條與新型專利法第3a條施行規章，聯邦法律公報I，第595頁

第10條：新型專利處

- (1)除塗銷聲請(第15條至第17條)外，在專利局內設置新型專利處以負責新型專利之聲請，新型專利處由專利局局長任命一位精通法律的委員領導之。
- (2)聯邦司法部有權以法律規章，委託高級或中級職務的公務員、或可比較的職員以執行新型專利處或新型專利科負責的個別業務²¹，但基於申請人反對的事由而駁回的申請不適用之。聯邦司法部得以法律規章將此一授權移轉給專利局局長。
- (3)由在專利局內設置新型專利科以負責審定塗銷聲請，由兩位技術委員與一位精通法律的委員組成新型專利科。準用專利法第27條第七項之規定。在其業務範圍內，每個新型專利科亦應作出鑑定。
- (4)民事訴訟法第41條至第44條、第45條第二項第二句、與第47條至第49條關於法院職員迴避之規定，亦適用於新型專利處與新型專利科委員之迴避。就其依據第二項規定委託以執行由新型專利處或新型專利科負責個別的業務內，相同的迴避規定亦適用於受委託的高級或中級職務的公務員或職員。準用專利法第27條第六項第三句之規定。

第11條：登記之效力

- (1)新型專利登記具有專屬之效力，即僅權利人有權使用新型專利之標的。未經權利人之同意，任何人均不得製造、供給、交易、使用、或為上述之目的進口或占有係新型專利標的之產品。
- (2)此外，登記具有禁止第三人的效力，即第三人明知或可得而知這些方法可以且確定可用於新型專利標的之使用時，未經權利人之同意，在本法的適用範圍內，任何第三人不得作為以使用權利人新型專利標的為目的涉及新型專利標的重要要素之方法，在本法的適用範圍內成為販賣或供給使用的方法。若方法係涉及通常在交易上可獲得的產品時，則不適用第一句之規定，但第三人使受讓人知悉以第一項第二句禁止的方式行為時，則不在此限。在第12條第一款與第二款規定的行為人，在第一句的意義內，不視為有使用新型專利標的之權利人。

第12條：無新型專利之效力

新型專利之效力，不適用於

- 1.在私人領域，無營利目的之行為；
- 2.為試驗用途而涉及新型專利標的之行為；
- 3.在專利法第11條第四款至第六款所標示種類的行為。

第12a條：保護請求權之內容

以保護請求權的內容確定新型專利之保護範圍，而說明書與圖示得用以解釋保護請求權。

²¹參閱1968年9月5日德國專利局規則，聯邦法律公報I，第997頁

第13條：無新型專利之保護

- (1)僅以有人對已經登記的權利人存在塗銷登記請求權(第15條第一項與第三項)為限，該登記不創設新型專利的保護。
- (2)若未經他人之同意，引用他人的說明書、圖示、模型、工具、或設備，而登記為重要的內容時，對於受害人不發生法律的保護。
- (3)準用專利法關於保護的權利(第6條)、請求給與保護權(第7條第一項)、移轉請求權(第8條)、預先使用權(第12條)、與國家的使用規定(第13條)之規定。

第14條：申請在後之專利

僅以申請在後的專利會影響依據第11條規定創設的權利為限，未經新型專利權人之同意，不得行使因該專利而取得的權利。

第15條：塗銷請求權

- (1)有下列情事者，任何人對於登記為權利人者享有塗銷新型專利的請求權：
 - 1.依據第1條至第3條之規定，新型專利之標的不具有保護能力，
 - 2.基於以前的專利或新型專利申請之事由，新型專利之標的已經受保護者，
或
 - 3.新型專利之標的逾越原始的申請內容。
- (2)在第13條第二項的情形，僅受害人享有塗銷請求權。
- (3)塗銷事由僅涉及新型專利的一部分時，僅塗銷此一範圍。得以變更保護請求權之形式限制之。

第16條：塗銷聲請

依據第15條規定塗銷新型專利時，應以書面向專利局提起聲請。聲請應陳述其所根據的事實。聲請應依據專利費用法繳納費用；未繳納費用時，視為未提起聲請。準用專利法第81條第七項與第125條之規定。

第17條：塗銷程序

- (1)專利局應將塗銷聲請通知新型專利人，並要求其在一個月內表示意見。新型專利人未及時異議時，則塗銷新型專利。
- (2)否則，專利局應將異議通知聲請人，並此採取闡明事物的必要處分。專利局得命令訊問證人與鑑定人。準用民事訴訟法之相關規定²²。延請一位經宣誓的記錄員進行證據之調查。
- (3)根據言詞審理審定聲請。應在言詞審理終結的期日或在立即指定的期日內宣示審定之。審定應申述理由，以書面制作，並依職權向利害關係人為送達。準用專利法第47條第二項之規定。得以送達審定代替宣示。
- (4)專利局應確定利害關係人的程序費用負擔。準用專利法第62條第二項與第84條第二項第二句及第三句之規定。

²²參閱民事訴訟法第373條以下與第402條以下的規定

第18條：抗告

- (1)不服新型專利處與新型專利科之審定者，得向專利法院提起抗告。
- (2)不服新型專利處因駁回新型專利申請審定之抗告、或不服新型專利科因決定塗銷聲請審定之抗告時，在抗告期限內應依據專利費用法繳納費用；未繳納費用時，視為未提起抗告。
- (3)此外，準用專利法關於抗告程序的規定。若係不服在塗銷程序中所公布審定而提起抗告時，專利法第84條第二項規定準用於程序費用之決定。
- (4)專利法院的抗告庭裁判不服新型專利處與新型專利科審定之抗告。不服駁回新型專利申請之抗告，由抗告庭以兩位精通法律的委員與一位技術委員裁判之；不服新型專利科對塗銷聲請審定之抗告，由抗告庭以一位精通法律的委員與兩位技術委員裁判之。應由精通法律的委員擔任審判長。法院組織法第21g條第一項與第二項之規定適用於在抗告庭的事務分配。對不服新型專利處審定之抗告審理準用專利法第69條第一項之規定，對不服新型專利科審定之抗告審理準用第69條第二項之規定。
- (5)不服專利法院的抗告庭對第一項抗告而作的裁定時，應向聯邦最高法院提起法律抗告，以抗告庭的裁定允許法律抗告時為限。準用專利法第100條第二項與第三項、及第101條至第109條之規定。

第19條：對爭訟之效力

在塗銷程序中，若有訴訟繫屬，而其裁判取決於存在新型專利保護時，法院得命令至塗銷程序終結止，延展審理；若法院認為新型專利為無效時，則必須命令延展；若撤回塗銷聲請時，法院僅受在相同當事人間之審定之拘束。

第20條：強制特許

專利法關於給與強制特許(第24條第一項)與因給與強制特許程序(第81條至第99條、第100條至第122條)之規定，準用於已經登記的新型專利。

第21條：適用專利法之規定

- (1)專利法關於作鑑定(第29條第一項與第二項)、回復原狀(第123條)、在程序上的真實義務(第124條)、官方語言(第126條)、送達(第127條)、及法院間的法律協助(第128條)之規定，亦適用於新型專利事件。
- (2)準用專利法關於程序費用救助准許之規定(第129條至第138條)在新型專利事件，在第135條第三項的前提條件下，應給與依據第133條並列的代理人抗告權。

第22條：權利之移轉

- (1)在新型專利的權利、新型專利的登記請求權、以及因登記而創設的權利，得移轉給繼承人。這些權利得限制的或無限制的移轉給其他人。
- (2)依據第一項規定的權利，得全部或部分作為在本法適用範圍或部分適用範圍內專屬或非專屬的特許標的。以領有特許證者違反第一句所規定的特許限制為限，得對領有特許證者主張因登記所創設的權利。
- (3)權利移轉或特許給與不得抵觸先前已經給與第三人的特許。

第23條：保護期限

- (1) 新型專利保護始於申請日的次日，為期三年。
- (2) 在依據專利費用法繳納費用後，首先得延長保護期限三年，然後每次得再延長兩年，最長得延長至十年。延長應在新型專利簿內記載之。延長費用在保護期限屆滿的月份最後一日到期。若延長費用未在到期後至第二個月最後一日屆滿止繳納時，則必須依據專利費用法繳納附加費。在期限屆滿後，專利局應通知登記人，僅在通知送達後的月份屆滿四個月內繳納費用與附加費時，才得延長保護期限。在延長費用未在通知登記送達的月份屆滿後的四個月內繳納時，在第一個與第二個保護期限終止後才登記新型專利時，必須繳納專利費用法所規定的附加費；適用第五句規定。
- (3) 登記人證明目前依其資金狀況無法繳納費用時，專利局依登記人之聲請得延緩寄送通知。延緩得視在一定期限內繳納部分費用的情形而定。未按期限繳納部分費用時，專利局應告知登記人，僅在送達後一個月內繳納餘款時，才得延長保護期限。
- (4) 若未提出聲請延緩寄送通知時，則在證明無法繳納費用時，在送達後十四天內提起聲請且足以宥恕至目前為止的延緩時，在通知送達後得允許延期繳納費用與附加費。在承擔繳納部分費用的條件下，亦得同意延期繳費。若未及時繳納允許延期繳納的款項時，專利局應再通知以索取全部的餘款。在第二個通知送達後，不得再允許延期繳納費用。
- (5) 依聲請而延緩的通知(第三項)或給與延期繳費後而必須重新通知(第四項)時，最遲必須在延長費用到期後一年寄送通知。若因未繳納餘款而不獲延長保護期限時，不退還已經繳納的部分費用。
- (6) 登記為權利人者以書面表示拋棄新型專利時，消滅新型專利。
- (7) 非基於因保護期限屆滿而予以之塗銷，應以通常表示的摘要公告於專利公報。

第24條：不作為與損害賠償請求權

- (1) 受害人得對違反第11條至第14條之規定而使用新型專利者，行使不作為的請求權。
- (2) 因故意或過失侵害新型專利者，對於受害人因而產生的損害負有賠償的義務。侵害人僅為輕過失時，法院得在受害人所受損害與現存利益間規定補償以代替損害賠償。

第24a條：銷毀請求權

- (1) 在第24條的情形，受害人得請求銷毀侵害人所有或占有係新型專利標的之產品，但得以其他方式除去產品因侵害權利所造成的狀態，且在具體個案中銷毀對侵害人或所有人不相當時，不在此限。
- (2) 第一項規定準用於屬於侵害人所有、專屬或幾近專屬用以違法製造產品所使用或特定的設備。

第24b條：關於第三人的查詢請求權

- (1) 受害人得對違反第11條至第14條之規定而使用新型專利者，請求立即告知關於所使用產品的來源與銷售途徑，但在具體個案不相當者，不在此限。

- (2)依據第一項之規定有告知義務者應說明產品的製造者、供應者與其他前占有人、營業上的顧客或委任人的姓名與住址、以及產品的製造、交貨、獲得或訂貨的數量。
- (3)在明顯侵害權利的情形，得依據民事訴訟法的規定，以假處分的方式命令其履行告知義務。
- (4)在刑事訴訟或在依據社會安寧法進行的程序中，因在給與告知前所作的行為係針對有告知義務者或係針對在刑事訴訟法第52條第一項所指稱的家屬時，僅在有告知義務者的同意下，得利用其告知。
- (5)不得抵觸更廣泛的查詢請求權。

第24c條：時效

因侵害保護權的請求權，自請求權人知悉侵害與知悉義務人時起，三年間不行使而消滅，不考慮此一知悉，自侵害時起三十年間不行使而消滅。準用民法第852條第二項之規定。若義務人因侵害行為而獲得權利人的費用時，在時效完成後，亦應依據不當得利的規定返還之。

第25條：罰則

- (1)未經新型專利權人必要的同意而有下列行為者，處三年以下有期徒刑或科以罰金
 - 1.製造、販賣、交易、使用、或為上述目的而進口或占有新型專利標的(第11條第一項第二句)之產品，或
 - 2.違反第14條規定，行使基於專利的權利。
- (2)行為人的營利行為，處以五年以下的有期徒刑或科以罰金。
- (3)未遂犯處罰之。
- (4)在第一項的情形，僅為告訴乃論，但刑事追訴機關因追訴有特別的公共利益而認為應依職權干預者，不在此限。
- (5)涉及犯罪行為之標的，得沒收之。適用刑法第74a條規定。在依據刑事訴訟法所規定關於被害人補償的訴訟(第403條至第406c條)中，允諾在第24a條指稱的請求權時，不適用關於沒收之規定。
- (6)在受害人提起告訴且證明有正當的利益時，裁判時應命令依要求公開宣示判決。在判決中確定宣示的方式。

第25a條：海關的措施：扣押、沒入

- (1)只要明顯的侵害權利，依聲請且由權利人提供擔保，在進口或出口依據本法侵害受新型專利保護的產品時，海關應扣押之。僅以進行海關檢查為限，亦適用於與歐洲聯盟其他會員國間的貿易，以及與歐洲經濟區協定其他締約國間的貿易。
- (2)海關命令扣押時，海關應立即通知有處分權人與聲請人。應將產品的來源、數量、存放地、以及有處分權人的姓名與住址告知聲請人；在這方面限制通訊秘密(基本法第10條)。只要未因而干預營業或企業的秘密時，應給與聲請人機會，以檢查產品。
- (3)最遲在依據第二項第二句規定的通知送達後二星期屆滿後對扣押未異議時，海關應命令沒入已經扣押的產品。
- (4)有處分權人對扣押異議時，海關應立即通知聲請人。聲請人應立即向海關說

明關於被扣押的產品是否維持依據第一項的聲請。

1. 若聲請人撤回聲請時，海關應立即終止扣押。
2. 若聲請人維持聲請，並提出一個命令保管扣押產品或限制處分可執行的法院判決時，海關應立即採取必要的措施。

不存在第1款或第2款之情形時，在依據第一句之規定通知送達聲請人後的二星期屆滿後，海關應終止扣押；聲請人證明已要求第2款的法院判決但仍未到達時，最長得再繼續扣押二星期。

- (5) 若證明扣押為自始不正當，而聲請人針對扣押產品依據第一項維持聲請或未立即表示(第四項第二句)時，聲請人應賠償有處分權人因扣押所受的損害。
- (6) 第一項的聲請應向最高財政部門提起，只要未聲請更短的適用期限時，此一聲請有二年之效力；並得重新提起聲請。針對與聲請有關連的職務行為，依據稅務法(Abgabenordnung)第178條之規定，向聲請人徵收費用。
- (7) 得以依據社會安寧法的罰鍰程序中針對扣押與沒入合法的法律救濟撤銷扣押與沒入。在法律救濟程序中，應聽取聲請人陳述。不服區法院(Amtsgericht)之裁判，得立即提起抗告；由高等法院裁判立即的抗告。

第26條：減少訴訟標的價值

- (1) 一當事人在以訴訟主張其基於在本法所規範法律關係請求權的民事訴訟中，使人相信依據完全的訴訟標的價值計算訴訟費用的負擔，將可能嚴重危及其經濟狀況時，法院依其聲請得命令按照訴訟標的價值，並適合其經濟狀況的數額確定該當事人應支付訴訟費用的負擔。同樣的，法院的命令使受惠當事人僅依據此一訴訟標的價值的數額給付其律師費用。僅以其應負擔訴訟費用或其承擔訴訟費用為限，該當事人應按照訴訟標的價值的數額償還對造當事人所繳納的裁判費與其律師的費用。僅以對造當事人應負擔或由其承擔裁判費以外的訴訟費用為限，受惠當事人的律師得向對造當事人按照對其適用的訴訟標的價值數額收取費用。
- (2) 第一項的聲請，得向法院的書記處所以筆錄表示之。應在訴訟標的審理前提起聲請。在訴訟標的審理後，僅在之後由法院提高已接受或確定的訴訟標的價值時，才得提起聲請。在裁判聲請前，應聽取對造的陳述。

第27條：地方法院的管轄權

- (1) 不論訴訟標的之價值，地方法院的民事庭對於所有主張依據在本法所規範法律關係請求權的訴訟(新型專利訴訟)享有專屬管轄。
- (2) 只要係為促進訴訟的事務，各邦政府有權以法律規章就數個地方法院的管轄區域指定由其中一個地方法院管轄新型專利訴訟。各邦政府得將此一授權移轉給邦司法行政部。
- (3) 不服法院對新型專利訴訟的判決而提起上訴時，在上訴法院亦得由准許在高等法院進行訴訟的律師代理當事人，無第二項的管轄分配而上訴高等法院。
- (4) 依據第三項之規定，不得在訴訟法院進行訴訟的律師，因代理一造當事人所產生的額外費用，該當事人不應償還之。
- (5) 由專利律師共同參與新型專利訴訟所產生的費用，依據聯邦律師費用法第11條之規定應償還全額費用及專利律師的其他必要支出。

第28條：本國的代理人

在國內無住所或營業所者，僅在國內選任一位專利律師或律師為其代理人時，才得在專利局或專利法院參與在本法所規範的程序，且才得主張基於新型專利的權利。經登記的代理人在涉及新型專利的訴訟享有代理權；代理人亦得提起刑事告訴。在民事訴訟法第23條的意義下，代理人的事務所所在地視為資產所在地；無事務所者，則以代理人的住所為準據，無住所時則以專利局的所在地為準據。

第29條：施行細則

- (1)聯邦司法部長規定專利局的設置與其業務手續，以法律規章23規定程序的形式，但僅以法律未規定者為限。
- (2)僅以法律未規定者為限，聯邦司法部長有權以法律規章24規定課徵行政費用，以填補因專利局的需要所產生的費用，特別是
 - 1.規定課徵書面證明、認證、卷宗查閱、與查詢的費用、以及墊款，
 - 2.關於費用債務人、費用到期、預付費用義務、費用免除、時效與確定費用程序的規定。

第30條：新型專利之標示

在物品或其包裝上，標示足以使人認為該物品係依據本法受保護的新型專利者，或以公開廣告、招牌、推薦卡片、或在類似的公告使用這類標示者，依對於就瞭解權利狀況有正當利益者之要求，應告知其關於使用標示所根據的新型專利。

²³參閱1968年9月5日德國專利局規則，聯邦法律公報I，第997頁

²⁴參閱1991年10月15日在專利局的行政費用規則，聯邦法律公報I，第2013頁

德國新式樣專利法
1876年1月11日公布
1998年7月16日修訂

第1條：著作權人之專屬權

- (1)全部或部分複製可供產業利用的樣本或模型，著作權人享有專屬的權利。
- (2)僅創新的且特有的產品，視為本法的樣本或模型。

第2條：受僱人製作的樣本

樣本或模型係由任職於國內的營利機構的製圖者、彩畫匠、雕刻家等，受營利機構所有權人的委託或由營利機構所有權人負擔費用而製作者，僅以契約無其他規定者為限，營利機構的所有權人視為樣本或模型的著作權人。

第3條：可移轉性

著作權人的權利得移轉給其繼承人。此一權利得以契約或以死因處分限制的或無限制的移轉給其他人。

第4條：個別題材的自由使用

為製作新的樣本或模型，而自由使用樣本或模型的個別題材時，不視為複製。

第5條：禁止的複製

未經有權利人(第1條至第3條)之同意，意圖散佈該樣本或模型而生產樣本或模型的複製品、以及散佈該複製品時，均禁止之。有下列情事者，視為禁止的複製：

- 1.在生產相同的樣本或模型時，應用不同於原作的方法，或複製明確地係為其他的行業而非原作者；
- 2.在複製以不同於原作的其他形狀大小或顏色製作時，或僅在應用時得以特別引人注意所作的改變區別複製與原作時；
- 3.複製非直接就原作而係間接就相同樣本或模型的複製而完成者。

第6條：非禁止的複製

有下列情事者，不視為禁止的複製：

- 1.僅以該樣本或模型在私人的範圍，無營利散佈與利用的意圖而製作者為限，樣本或模型的個別重製者；
- 2.在著作出版物內收入個別的樣本或模型的複製。

第7條：申請的要件

- (1)僅以樣本或模型的著作權人或其權利的繼受人向專利局申請登記於新式樣專利簿內為限，樣本或模型的著作權人或其權利的繼受人取得對於複製的保護。
- (2)樣本或模型之發表或其複製的散佈違反公共秩序或善良風俗時，對於複製不因申請而取得保護；此一違反不得僅以因法律或行政法規禁止散佈複製樣本

或模型的事實推論之。

- (3)申請應包含：
 - 1.登記的聲請；
 - 2.樣本或模型的攝影或其他圖解的說明，以清楚與完整的表示依據本法請求保護的特徵。
- (4)依據本法僅請求保護一產品表面的造型時，得以產品外表的樣本本身或其一部分代替以攝影或其他圖解的說明表示樣本或模型。
- (5)依據本法不僅對於產品的形狀造型，而且對於產品的表面造型應請求保護時，申請得包含關於形狀的造型符合第三項第二款的構成要件與關於外表造型符合第四項構成要件的說明。
- (6)若申請以提出樣本的攝影或其他圖解說明、以及模型本身說明模型的攝影或其他圖解的說明，不能充分清楚與完整表示依據本法請求保護的特徵時，則專利局得允許以模型本身代替攝影或其他圖解的說明作為第三項第二款的說明。在此情形，應依據專利費用法繳納額外的費用。
- (7)為解釋說明，得附加說明書。
- (8)申請人得附加說明商品等級的目錄，以編排在說明中所表達的樣本或模型。或申請人意圖將樣本或模型移轉到其他商品等級的產品時，則亦應加以說明。
- (9)在一個集合申請中，得合併數個樣本或模型。集合申請不得超過五十個樣本或模型；同時必須屬於相同的商品等級。
- (10)申請人得請求分割集合申請。對於任何一個分割申請仍保留原始申請的時間，以及得請求的優先權。對於已經繳納的申請費用，應補繳依據專利費用法對於每個分割申請應繳納最低費用差額的費用。

第7a條：創新的寬限期限

若申請人或其前權利人在申請日前的六個月內已經使產品可以公開獲得時，在申請人或其前權利人未變更而以相同產品作為樣本或模型申請時，在判斷創新與特性(第1條第二項)時，不予考慮。

第7b條：聯盟之優先權

- (1)依據國家所簽署的條約，對於相同的樣本或模型先前在外國的申請享有優先權者，在優先日後十六個月期限屆滿前，得陳述先前申請的國家與卷宗卷號，並交付先前申請的副本，僅以尚未提起申請者為限。在此期限內，得變更其陳述。
- (2)若先前的外國申請係在不承認優先權的國家提起時，則申請人得依據巴黎保護智慧財產權公約的優先權規定請求優先權，僅以依據聯邦司法部在聯邦法律公報之公告該其他國家因在專利局的第一次申請而給與依據其要件及內容可與巴黎保護智慧財產權公約的優先權比較的優先權為限；準用第一項之規定。
- (3)若未及時作第一項的陳述時，或未及時交付副本時，則視為未作優先權之表示。專利局應確認之，並不在新式樣登記簿內登記該優先權。

第8條：登記；公告

- (1)專利局應負責在新式樣登記簿內之登記。

- (2)專利局應公布登記在新式樣登記簿內的申請，連同說明的插圖，以及任何一個延長的保護期限，藉以在新式樣公報中一次公告之。在第7條第四項至第六項之情形，由專利局安排為公告所必須的說明或產品本身的插圖。公布並不保證說明的完整性與在依據本法保護特徵的可辨認性。公布的費用視為墊款，應徵收之。

第8a條：變更之登記

- (1)申請人在登記聲請中表示，由其將一集合申請的一個樣本或模型標明為基本樣本，而應與其他的樣本或模型作為其變更時，則專利局應將此一表示記載於新式樣登記簿內，並依據第8條第二項在公布中指出此一表示的記載，而僅公告基本樣本的插圖。
- (2)依據第一項作表示的申請人或其他權利的繼受人在與基本樣本的關係上不得主張變更因其不一致的特徵，係創新與特有的。
- (3)變更之保護終於基本樣本之消滅。第7條第十項規定不適用於依據第一項作表示的申請。

第8b條：公布的延期

- (1)以申請得聲請將樣本或模型的說明插圖，自申請日的次日起延緩十八個月公布之。提起聲請時，則僅公布在新式樣登記簿內登記的申請。保護期限終於延期期限之終止。
- (2)在樣本或模型的所有人於申請後十二個月的期限內，依據專利費用法繳納費用時，保護延伸至第9條第一項的保護期限。若未按期限繳納費用時，在依據專利費用法繳納費用與附加費時，開始延長保護期限。在期限屆滿後，專利局應通知登記為樣本或模型的所有人，未在延緩期限內繳納費用和依據專利費用法規定的附加費時，保護期限終於延緩期限屆滿時。
- (3)若保護期限延長至第9條第一項的保護期限屆滿止時，在指出第一項第二句的公布下，應補交公布說明的插圖。準用第8條第二項第三句與第四句之規定。

第8c條：申請費

- (1)提起申請時，應依據專利費用法繳納申請費。若聲請延緩公布插圖時，則應連同申請費，依據專利費用法繳納此一聲請費用。
- (2)未繳納申請費或聲請延緩公布插圖的費用時，專利局應通知申請人，至通知送達後一個月的期限屆滿時止，仍未繳納費用時，視為未提起申請。

第9條：保護期限

- (1)保護期限始於申請日的次日，為期五年。
- (2)保護期限每次得延長五年，或數次延長，最多得延長至二十年。保護期限之延長應在新式樣登記簿內登記之。
- (3)在保護期限屆滿前，依據專利費用法繳納費用時，開始延長期限。未及時繳納費用時，則必須依據專利費用法繳納附加費。最早在保護期限屆滿後兩個月，專利局應通知登記人，未在通知送達後四個月內繳納費用與附加費時，因保護期限之終止而塗銷在新式樣登記簿內所登記的樣本或模型。
- (4)登記人證明目前依其資金狀況無法繳納費用時，依登記人之聲請，專利局得

延緩寄送通知。延緩得視在一定期限內繳納部分費用的情形而定。未按期限繳納部分費用時，專利局應告知登記人，未在送達後一個月內繳納餘款時，因保護期限之終止而塗銷在新式樣登記簿內之登記。

- (5)未提起聲請延緩寄送通知時，在證明無法繳納費用時，在送達後十四天內提起聲請且足以宥恕至目前為止的延緩時，在通知送達後得允許延期繳納費用與附加費。在承擔繳納部分費用的條件下，亦得同意延期付款。未及時繳納允許延期繳納的款項時，專利局應再通知以索取全部的餘款。在第二個通知送達後，不得再允許延期繳納費用。
- (6)依聲請而延緩的通知(第四項)，或在給與延期付款後應重新寄送的通知(第五項)，最遲在費用到期後二年應寄送通知。因未繳納餘款而塗銷在新式樣登記簿內之登記時，不退還已經繳納的部分費用。

第10條：在德國專利局的登記程序

- (1)在依據本法的程序中，由專利局中一位依據專利法第26條第一項第一句所規定精通法律的委員作決定。民事訴訟法第41條至第44條、第45條第二項第二句、與第47條至第49條關於法院職員迴避之規定，亦適用於專利局此一委員之迴避。僅以需要作決定為限，專利局局長一般對此種的決定指定另一位精通法律的委員，以決定迴避之聲請。
- (2)專利局規定，應登記與應公布的商品等級。此外，專利局應將申請人必須登記的說明記載於新式樣登記簿內，而不須審查其所申請的權利或在申請中所陳述事實的正確性。在第7條第二項的情形，經確認對申請的樣本或模型未取得保護時，則不予以登記。
- (3)若不符合在本法或依據第12條第一項對於符合規定的申請所公布法規的強制規定之構成要件時，專利局應將欠缺通知申請人，並要求其在通知送達後的二個月期限內補正之。在期限內補正欠缺時，則書狀到達專利局的時間，視為樣本或模型的申請時間。專利局應確認此一時間，並將其告知申請人。
- (4)在期限內未補正第三項之欠缺時，或在第8c條第二項規定的期限內未繳納申請費時，則視為未提起申請；專利局應確認之，並不予以登記。
- (5)準用專利法第123條第一項至第五項、第七項、第124條、與第126條至第128條之規定。

第10a條：抗告

- (1)不服專利局在依據本法的程序所作的審定時，得向聯邦專利法院提起抗告。抗告由專利法院的三位精通法律的委員組成抗告庭裁判之。對於抗告，應依據專利費用法繳納費用；未在抗告期限內繳納費用時，視為未提起抗告。準用專利法第69條、第73條第二項、第四項與第五項、第74條第一項、第75條第一項、第76條至第80條、第86條至第99條、第123條第一項至第五項與第七項、第124條、第126條至第128條之規定。
- (2)不服專利法院抗告庭對第一項抗告所作的裁定時，應向聯邦最高法院提起法律抗告，以抗告庭的裁定允許法律抗告時為限。準用專利法第100條第二項與第三項、第101條至第109條、第123條第一項至第五項與第七項、以及第124條之規定。

第10b條：程序費用救助

在第10條與第10a條的程序中，準用民事訴訟法第114條至第116條之規定，在有充分的希望可登記於新式樣登記簿時，申請人得依聲請而獲得程序費用救助。費用應向聯邦國庫繳納。準用專利法第130條第二項、第三項與第六項、第133條、第134條、第135條第一項第一句、第二項第一句與第三項、以及第136條至第138條之規定。

第10c條：登記之塗銷

- (1)有下列情事者，應塗銷樣本或模型之登記
 - 1.在保護期限終止時，
 - 2.依登記人之聲請，或
 - 3.依第三人之聲請，即第三人連同聲請提出登記人拋棄樣本或模型、或登記人表示允許塗銷在新式樣登記簿內所登記樣本或模型的官方文件或經官方公證的文件。
- (2)登記人得以訴訟途徑要求塗銷之同意，
 - 1.在經登記的樣本或模型在申請日已不具有保護能力時，
 - 2.申請人係非申請權人。
- (3)在第二項第二款的情形，法院依聲請在判決中判給有權聲請樣本或模型的原告，在重新申請相同的樣本或模型時有權請求因無權利人已經申請的優先權。

第11條：查閱

任何人均得查閱新式樣登記簿。查閱亦適用於樣本或模型的說明、或由專利局處理樣本或模型申請的卷宗，

- 1.在公布說明的插圖時，
- 2.在登記人向專利局表示同意查閱時，且以登記人向專利局表示同意查閱時為限，或
- 3.在確信有合法利益時，且以確信有正當利益為限。

第12條：新式樣登記處的設置與業務手續

- (1)聯邦司法部規定在專利局內設置新式樣登記處與其業務手續，以無其他法律規定者為限，以法律規章²⁵規定樣本或模型申請的形式與其他要件、用以說明產品表面造型與產品本身的合法尺寸、說明的附加說明書之內容與範圍、商品等級的編排、登記簿的登記與形式、在登記簿內應登記的事實、以及應公布的項目，包括第7條第四項至第六項由專利局製作樣本或模型的插圖、為支付公布費用而應徵收的墊款、與在新式樣登記簿內塗銷登記後為說明申請附加的產品處理(第10c條)。聯邦司法部得以法律規章將此一授權移轉給專利局局長。
- (2)以法律未規定者為限，聯邦司法部有權以法律規章命令課徵行政費用，以填補因專利局的需要所產生的費用，特別是

²⁵參閱1988年1月8日公布新式樣申請規則，聯邦法律公報I 1988，第76頁，1998，第1827頁；及1988年1月8日公布新式樣登記規則，聯邦法律公報I 1988，第78頁

1. 規定課徵書面證明、認證、卷宗查閱與查詢的費用、以及墊款，
2. 關於費用債務人、費用到期、預付費用義務、費用免除、時效與確定費用程序的規定。

第12a條：由高級與中級職務的公務員執行個別的業務

- (1) 聯邦司法部有權以法律規章委託高級或中級職務的公務員、或可比較的職員，以執行在新式樣登記程序中依其種類無特別法律困難的個別業務。但不適用於下列事項
 1. 基於申請人提起異議的事由，依據第7條第三項第二據與第10條第四項的確認而不予以登記；
 2. 依據第10條第二項第三句規定的確認而不予以登記；
 3. 依據第10c條第一項第三款規定的塗銷；
 4. 關於應在新式樣登記簿內登記和公布的商品等級不符合申請人的陳述的決定；
 5. 不服依本法在程序上的審定所提起的補救或抗告。
- (2) 聯邦司法部得以法律規章將第一項的授權移轉給專利局局長。
- (3) 對於依據第一項受委託人員的迴避，準用第10條第一項第一句與第三句之規定。

第13條：著作權人之推定

依據第7條規定已經申請將樣本或模型登記於新式樣登記簿者，推定其為著作權人，但有反證者，不在此限。

第14條：罰則

- (1) 未經權利人之同意，違反第5條規定意圖製造樣本或模型之複製而散布該複製者，或散布此一複製者，處三年以下有期徒刑或科以罰金。
- (2) 行為人的營利行為，處以五年以下的有期徒刑或科以罰金。
- (3) 未遂犯處罰之。
- (4) 在第一項的情形，僅為告訴乃論，但刑事追訴機關因追訴有特別的公共利益而認為應依職權干預者，不在此限。
- (5) 準用著作權法關於沒收(第110條)之規定。
- (6) 在受害人提起告訴且證明有正當的利益時，裁判時應命令依要求公開宣示判決。在判決中確定宣示的方式。

第14a條：對禁止複製的損害賠償

- (1) 因違法製造複製或散布此一複製而侵害著作權人在樣本或模型之權利者，受害人對其得請求除去其侵害，有侵害之虞時得請求防止之，且在受害人因故意或過失而造成損害時，並得請求損害賠償。代替損害賠償，受害人得請求返還侵害人因複製或散布複製所獲得的利益與請求提出關於此一利益的帳目。
- (2) 不得抵觸其他法律規定的請求權。
- (3) 準用著作權法關於銷毀請求權與類似措施(第98條至第101條)、關於第三人的查詢請求權(第101a條)、時效(第102條)、判決宣示(第103條)、與海關措施(第111a條)之規定。

第15條：新式樣專利訴訟的管轄法院

- (1)不論訴訟標的之價值，地方法院對於所有主張依據在本法所規範法律關係請求權的訴訟(新式樣專利訴訟)享有專屬管轄。
- (2)只要係為促進訴訟的事務或更迅速的終結訴訟，各邦政府有權以法律規章就數個地方法院的管轄區域指定由其中一個地方法院管轄新式樣專利訴訟。各邦政府得將此一授權移轉給移轉給邦司法行政部。
- (3)不服法院對新式樣專利訴訟的判決而提起上訴時，在上訴法院亦得由准許在高等法院進行訴訟的律師代理當事人，無第二項的管轄分配而上訴高等法院。
- (4)依據第三項規定，不得在訴訟法院進行訴訟的律師，因代理一造當事人所產生的額外費用，該當事人不應償還之。
- (5)由專利律師共同參與新式樣專利訴訟所產生的費用，依據聯邦律師費用法第11條之規定應償還全額費用及專利律師的其他必要支出。

第16條：本國的代理人

在國內無住所或營業所者，僅在國內選任一位專利律師或律師為其代理人時，才得在專利局或專利法院參與在本法所規範的程序，且才得主張依據本法保護樣本或模型所規定的權利。此一代理人在專利局、專利法院的程序、與在涉及樣本或模型的民事訴訟中，享有代理權；代理人亦得提起刑事告訴。在民事訴訟法第二十三條的意義下，代理人的事務所所在地視為資產所在地；無事務所者，則以代理人的住所為準據，無住所時則以專利局的所在地為準據。

第17條：生效

- (1)本法自1876年4月1日起生效。本法適用於所有在生效後而製作的相同樣本與模型。
- (2)(多餘的過渡規定)
- (3)(多餘的過渡規定)

GERMANY

Patent Law*

(Text of December 16,1980, as last amended by the Laws of July 16 and August 6,1998)

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**German title:* Patentgesetz.

Text of December 16,1980 as amended by
Laws of August 15,1986, December 9,1986,
March 7,1990, December 20,1991, March 27,
1992, March 23,1993, September 2, 1994,
October 25, 1994, October 28, 1996, July 16,
1998 and August 6,1998.

Entry into force(of last amending laws):Law
of July 16,1998-November 1,1998, Law of August
6,1998—October 1,1998. See also Section 143(3)
and footnote 1 below.

Source: Communication from the German
authorities.

Note: Consolidation and translation by the
International Bureau of WIPO on the basis of a
German consolidated text provided by the
German authorities.

Part I

The Patent

1.—(1) Patents shall be granted for inventions that are new, involve an inventive step and are susceptible of industrial application.

(2) The following in particular shall not be regarded as invention within the meaning of subsection (1):

1. discoveries, scientific theories and mathematical methods;
2. aesthetic creations;
3. schemes, rules and methods for performing mental acts, playing games or doing business and programs for computers;
4. presentations of information.

(3) The provisions of subsection (2) shall exclude patentability only to the extent to which protection is sought for the above-mentioned subject matter or activities as such.

2. Patents shall not be granted in respect of :

1. inventions the publication or exploitation of which would be contrary to public policy or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation. The first sentence above shall not exclude the granting of a patent for an invention falling under Section 50 (1);
2. plant or animal varieties or essentially biological processes for the production of plants or animals. This provision shall not apply to microbiological processes or the products thereof.

[Amended by Law of March 27, 1992]

3.—(1) An invention shall be considered to be new if it does not form part of the state of the art. The state of the art comprises all knowledge made available to the public by means of a written or oral description, by use or in any other way, before the date relevant for the priority of the application.

(2) Additionally, the content of the following patent applications, which have an earlier priority and which were published only on or after the date relevant for the priority of the later application, shall be considered to be comprised in the state of the art:

1. national applications, as originally filed with the German Patent Office;
2. European applications, as originally filed with the competent authority, in which protection is sought in the Federal Republic of Germany and for which the designation fee for the Federal Republic of Germany has been paid in accordance with Article 79(2) of the European Patent Convention, unless the application for a European patent is based on an international application and does not fulfill the conditions set out in Article 158(2) of the European Patent Convention;
3. International applications under the Patent Cooperation Treaty, as originally filed with the receiving Office, where the German Patent Office is the designated Office with respect to the application.

If the earlier priority of an application is based on a claim to the priority of an earlier application, the first sentence of the present subsection shall be applicable only to the extent that the contents of the application in question do not go beyond the contents of the earlier application Patent applications under item 1 of the first

sentence of the present subsection which have been subject to a decision under Section 50(1) or (4) of the Patent Law shall be considered to have been made available to the public on expiry of the 18th month following their filing.

(3) The provisions of subsections (1) and (2) shall not exclude from patentability any substance or composition comprised in the state of the art where it is intended for use in a method referred to in Section 5(2) and its use for such method is not comprised in the state of the art.

(4) For the application of subsection (1) and (2), disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the application and if it was due to or in consequence of

1. an evident abuse in relation to the applicant or his legal predecessor or
2. the fact that the applicant or his legal predecessor has displayed the invention at an official or officially recognized international exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on November 22, 1928.

Item 2 of the first sentence of the present subsection shall apply only if the applicant states, when filing the application, that the invention has been so displayed and files a supporting certificate within four months following the filing. The exhibitions referred to in item 2 of the first sentence of the present subsection shall be notified by the Federal Minister for Justice in the Federal Law Gazette [*Bundesgesetzblatt*].

[Amended by Law of July 16, 1998]

4. An invention shall be considered to involve an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Section 3(2), these documents shall not be considered in deciding whether there has been an inventive step.

5.—(1) An invention shall be considered susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

(2) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of subsection (1). This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

6. The right to a patent shall belong to the inventor or his successor in title. If two or more persons have jointly made an invention, the right to a patent shall belong to them jointly. If two or more persons have made an invention independently of each other, the right shall belong to the person who is the first to file an application with the Patent Office.

7.—(1) To avoid the substantive examination of the patent application being delayed due to the need to determine the identity of the inventor, the applicant shall be deemed in the proceedings before the Patent Office to be entitled to request grant of a patent.

(2) If a patent is revoked by reason of opposition based on usurpation (Section 21(1)3) or if opposition results in the withdrawal of the patent, the opponent may

himself file an application in respect of the invention, within one month after the official notification thereof, and claim the priority of the earlier patent.

8. An entitled person whose invention has been applied for by a person not so entitled may require the patent applicant to surrender to him the right to the grant of a patent. If the application has already resulted in a patent, he may require the patentee to assign the patent to him. Such right may only be asserted by an action at law within two years after publication of the grant of the patent (Section 58(1)), subject to the fourth and fifth sentences. If the injured person has filed opposition on the grounds of usurpation (Section 21(1)3), he may bring an action within one year of the final conclusion of the opposition proceedings. The third and fourth sentences shall not apply if the patentee had not acted in good faith in obtaining the patent.

9. A patent shall have the effect that the patentee alone shall be authorized to use the patented invention. A person not having the consent of the patentee shall be prohibited.

1. from making, offering, putting on the market or using a product which is the subject matter of the patent or importing or stocking the product for such purposes;
2. from using a process which is the subject matter of the patent or, when he knows or it is obvious from the circumstances that the use of process is prohibited without the consent of the patentee, from offering the process for use within the territory to which this Law applies;
3. from offering, putting on the market, using or importing or stocking for such purposes the product obtained directly by a process which is the subject matter of the patent.

10.—(1) A patent shall have the further effect that a person not having the consent of the patentee shall be prohibited from supplying or offering to supply within the territory to which this Law applies a person, other than a person entitled to exploit the patented invention, with means relating to an essential element of such invention for exploiting the invention, where such person knows or it is obvious from the circumstances that such means are suitable and intended for exploiting the invention.

(2) Subsection (1) shall not apply when the means are staple commercial products, except where such person induces the person supplied to commit acts prohibited by the second sentence of Section 9.

(3) Persons performing the acts referred to in Section 11.1 to 3 shall not be considered persons entitled to exploit the invention within the meaning of subsection (1).

11. The effects of a patent shall not extend to

1. acts done privately and for non-commercial purposes;
2. acts done for experimental purposes relating to the subject matter of the patented invention;
3. the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;
4. the use on board vessels of another State party to the Paris Convention for the Protection of Industrial Property of the patented invention, in the body of the vessel, in the machinery, tackle gear and other accessories, where such vessels

- temporarily or accidentally enter the waters to which the territory of this Law extends on condition that such use serves exclusively the needs of the vessel;
5. the use of patented invention in the construction or operation of aircraft or land vehicles of another State party to the Paris Convention for the Protection of Industrial Property or of accessories for such aircraft or land vehicles, where these temporarily or accidentally enter the territory to which this Law applies;
 6. the acts specified in Article 27 of the Convention on International Civil Aviation of December 7, 1944, where such acts concern the aircraft of another State to which the provisions of that Article are applicable.

12.—(1) A patent shall have no effect against a person who, at the time of the filing of the application, had already begun to use the invention in Germany, or had made the necessary arrangements for so doing. Such person shall be entitled to use the invention for the needs of his own business in his own plant or workshops or the plant or workshops of other. This right can only be inherited or transferred together with the business. If the applicant or his predecessor in title has, before applying for a patent, disclosed the invention to other persons and reserved his rights in the event of a patent being granted, a person learning of the invention as a result of such disclosure cannot, under the provisions under the first sentence, invoke measures which he has taken within six months after the disclosure.

(2) If the patentee is entitled to a right of priority, the date of the prior application shall be substituted for the date of the application referred to in subsection (1). However, this provision shall not apply to nationals of a foreign country which does not guarantee reciprocity in this respect, where they claim the priority of a foreign application.

13.—(1) A patent shall have no effect where the Federal Government orders that the invention be exploited in the interest of public welfare. Nor shall the effect of a patent extend to any exploitation of the invention which is ordered in the interests of the security of the Federal Republic by the appropriate supreme federal authority or, on the latter's instructions, by a subordinate agency.

(2) Appeals from orders under subsection (1) shall be heard by the Federal Administrative Court where such orders have been made by the Federal Government or the appropriate supreme federal authority.

(3) In the cases mentioned in subsection (1), the patentee shall have a claim against the Federal Republic for reasonable compensation. In the event of dispute as to its amount, legal action may be brought before the ordinary civil courts. Any order by the Federal Government under the first sentence of subsection of subsection (1) shall be communicated to the person recorded as patentee in the Register (Section 30 (1)) before the invention is exploited. If the supreme federal authority by which an order or an instruction under the second sentence of subsection (1) is issued learns that a claim for compensation has arisen under the first sentence, it shall give notice thereof to the person recorded in the Register as patentee.

14. The extent of the protection conferred by a patent or a patent application shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

15.—(1) The right to a patent, the right to the grant of a patent and the rights deriving from a patent shall pass to the heirs. They may be assigned to others with or without restrictions.

(2) The rights under subsection (1) may be licensed in whole or in part, exclusively or non-exclusively, for the whole or part of the territory to which this Law applies. Where a licensee contravenes a restriction of his license covered by the first sentence, the right conferred by the patent may be invoked against him.

(3) The assignment of rights or the granting of a license shall not affect licenses previously granted to other persons.

[Amended by Law of August 15, 1986]

16.—(1) The duration of a patent shall be 20 years, beginning on the day following the filing of the application in respect of the invention. If the purpose of an invention is the improvement or further development of another invention for which the applicant has already secured patent protection, he may apply, within 18 months from the date of filing of the application or, insofar as an earlier date is claimed as relevant for the application, from that date, for a patent of addition, which shall expire at the same time as the patent for the earlier invention.

(2) If the main patent lapses due to revocation, declaration of nullity or abandonment, the patent of addition shall become an independent patent; its duration shall be determined by the date of commencement of the main patent. Where there are several patents of addition, only the first shall become independent; the others shall be deemed patents of addition to that patent.

[Amended by Law of July 16, 1998]

16a.—(1) Pursuant to Regulations of the European Economic Community concerning the creation of supplementary certificates of protection, which shall be notified in the Federal Law Gazette, supplementary protection may be requested in respect of a patent, that shall follow on immediately from the expiry of the term of the patent under Section 16(1). Annual fees shall be paid for supplementary protection in accordance with the schedule of fees.

(2) Unless otherwise provided by the law of the European Communities, the provisions of the Patent Law concerning entitlement of the applicant (Sections 6 to 8), effects of the patent and exceptions thereto (Sections 9 to 12), order to exploit the patent, compulsory license and forfeiture (Sections 13,24), extent of protection (Section 14), licenses and their registration (Section 15,30), fees(Sections 17(2)to (6),18 and 19), lapse of the patent (Section 20), nullity(Section 22), preparedness to grant licenses(Section 23), domestic representative (Section 25), the patent Court and proceedings before the Patent Court(Sections 65 to 99), Proceedings before the Federal Court of Justice (Sections 100 to 122), reinstatement(Section 123), obligation of truth (Section 124), official language, service of documents and legal aid (Sections 126 to 128), infringement(Sections 139 to 141 and 142a), joining of actions and advertising of patent (Sections 145 and 146) shall apply *mutation mutandis* to supplementary protection.

(3) Licenses and declarations under Section 23 of the patent Law which are effective for a patent shall also apply to supplementary protection.

[Added by Law of March 23, 1993 and amended by Law of July 16, 1998]

17.—(1) There shall be paid in respect of every application and every patent an

annual fee, as prescribed in the schedule of fees for the third year and each subsequent year following the date of filing.

(2) No annual fees shall be payable for a patent of addition (second sentence of Section 16(1)). If a patent of addition is converted to an independent patent, it shall become subject to the payment of fees; the due date and the annual amount shall be determined by the date of commencement of the preceding main patent. The first sentence and the first half of the second sentence shall apply *mutatis mutandis* to an application for a patent of addition with the proviso that, where an application for a patent of addition is regarded as an application for an independent patent, such annual fees shall be payable as are due for an application that is independent from the beginning.

(3) Annual fees in respect of the coming year shall be due on the last day of the month bearing the same name as the month containing the anniversary of the date of the application. If an annual fee has not been paid by the end of the last day of the second month after the due date, the surcharge prescribed in the schedule of fees shall become due. After the expiration of the time limit, the Patent Office shall notify the applicant or patentee that the application will be deemed to have been withdrawn (Section 58(3)) or that the patent will lapse (Section 20(1) if the fee and the surcharge prescribed in the schedule of fees are not paid before the expiration of a period of four months from the end of the month in which the notification has been served.

(4) The Patent Office may postpone dispatch of the notification at the request of the applicant or patentee on proof being furnished by the latter that payment may not reasonably be expected of him at present due to his financial situation. Postponement may be made conditional upon payment of installments within specified periods. If an installment is not paid in due time, the Patent Office shall advise the applicant or patentee that the application will be deemed to have been withdrawn or that the patent will lapse if the balance is not paid within one month after service of the notification.

(5) Where no request has been made to postpone dispatch of the notification, the due date of the fee and the surcharge may be deferred on proof being furnished that payment may not reasonably be expected of the applicant or the patentee at present due to his financial situation, even after service of the notification, provided that a request is made within 14 days after service and the previous failure to comply is satisfactorily explained. Deferment may also be authorized subject to the payment of installments. If a deferred sum is not paid in due time, the Patent Office shall repeat the notification, whereby the whole of the balance outstanding shall be demanded. After service of the second notification, no further deferment shall be allowed.

(6) A notification which has been postponed on request (subsection (4)) or which, after deferment has been granted, must be repeated (subsection (5)) shall be dispatched not later than two years after the fee falls due. Installments paid shall not be refunded if, owing to nonpayment of the balance outstanding, the application is deemed to have been withdrawn (Section 58(3)) or the patent lapses (Section 20(1)).

[Amended by Law of July 16, 1998]

18.—(1) If an applicant or patentee furnishes proof that the payment may not reasonably be expected of him at present due to his financial situation, payment of the fees for the grant and for the third to 12th years may be deferred, at his request, until the commencement of the 13th year and may be waived if the patent application is withdrawn or the patent lapses within the first 13 years. The patent applicant or patentee shall immediately inform the Patent Office of any alteration in his personal

and economic circumstances relevant to the deferral.

(2) If a patent has been granted or maintained after opposition, an order may be made in favor of an applicant that the reasonable expenses for drawings, models and expert opinions, the production of which was necessary in the grant proceedings or opposition proceedings, be refunded to him as outlay if he furnishes proof that payment of such expenses may not reasonably be expected of him at present due to his financial situation. The request for refund must be submitted to the patent Office within six months after the grant of the patent; if opposition is brought, it must be filed within six months after the maintenance of the patent. The refund shall be recorded in the Register (Section 30(1)). If later circumstances seem so to justify, the Patent Office shall order the sum refunded to be repaid in whole or in part. Repayments shall be added as a supplement to the annual fees and treated as part thereof.

19. Annual fees may be paid before they fall due. Fees which have not become due shall be refunded if it is established that they will no longer become due.

20.—(1) A patent shall lapse if

1. the patentee abandons it by a written declaration to the Patent Office;
2. the declarations prescribed in Section 37(1) are not made in due time after service of the official notification (Section 37(2)); or
3. the annual fee and the surcharge are not paid in due time after service of the official notification (Section 17(3)).

(2) The Patent Office shall be the sole judge of whether the declarations prescribed under Section 37(1) and the payments have been made in due time; Sections 73 and 100 shall remain unaffected.

21.—(1) A patent shall be revoked (Section 61) if it transpires that

1. the subject matter of the patent is not patentable under Sections 1 to 5;
2. the 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 essential elements of the patent have been taken from the description, drawings, models, appliances or equipment of another person, or from a process used by another person, without his consent (usurpation);
4. the subject matter of the patent extends beyond the content of the application as originally filed with the competent authorities; the same shall apply if the patent was granted on a divisional application or on a new application filed in accordance with Section 7(2) and the subject matter of the patent extends beyond the content of the earlier application as originally filed with the competent authorities.

(2) If the grounds for revocation affect the patent in part only, the patent shall be maintained in the form of a corresponding limitation. The limitation may be affected in the form of an amendment to the claims, the description or the drawings.

(3) In the event of revocation, the effects of the patent and of the application shall be deemed not to have existed *ab initio*. This provision shall apply *mutatis mutandis* to limited maintenance; where in such case a patent is not maintained by reason only of a division (Section 60), the effect of the application shall remain unaffected.

22.—(1) Nullity of a patent shall be declared on request (Section 81) if it transpires that one of the grounds mentioned in Section 21(1) is present or the scope of the

patent has been broadened.

(2) Section 21(2) and (3), first sentence and first half of second sentence, shall apply *mutatis mutandis*.

23.—(1) If the applicant for a patent or the person recorded as patentee in the Register (Section 30(1)) declares to the Patent Office in writing that he is prepared to allow anyone to use the invention in return for reasonable compensation, the annual fees falling due after receipt of the declaration shall be reduced to one half of the amount prescribed in the schedule of fees. The effect of a declaration made in respect of a main patent shall extend to all its patents of addition. The declaration shall be recorded in the Register of Patents and published in the Patent Gazette [*Patentblatt*].

(2) Such declaration shall not be accepted if a note concerning the grant of an exclusive license (Section 30(4)) is recorded in the Register of Patents or a request for the recording of such note is pending before the Patent Office.

(3) Any person who wishes to exploit the invention after the recording of the declaration shall notify the patentee of his intention. Notification shall be deemed to have been effected if it has been dispatched by registered mail to the person recorded in the Register as patentee or to his registered representative. A statement of how the invention is to be exploited shall be given in the notification. After such notification, the notifying party shall be entitled to exploit the invention in the manner stated by him. He shall be obliged, at the end of every calendar quarter, to give the patentee particulars of the use which has been made and to pay the compensation therefor. If he fails to meet this obligation in due time, the person recorded in the Register as patentee may grant him a reasonable extension of time and, if the extension of time expires without result, may prohibit further use of the invention.

(4) The compensation shall be assessed by the Patent Division at the written request of a party. Sections 46, 47 and 62 shall apply *mutatis mutandis* to the proceedings. A fee as prescribed in the schedule of fees shall be paid with the request, which may be directed against more than one party; if the fee is not paid, the request shall be deemed not to have been made. In assessing the compensation, the Patent Office may order that the fee be repaid in whole or in part by the opponents of the request. Payment of the fee may be deferred for up to six months after the termination of the proceedings if the patentee furnishes proof that payment may not reasonably be expected of him at present due to his financial situation. If the fee is not paid by that time, the opponents of the request may be ordered to pay compensation for the exploitation of the invention to the Patent Office for the account of the patentee until such time as the amount of the fees still owing has been paid.

(5) After the expiration of one year from the last assessment, any person affected thereby may apply for it to be altered if, in the meantime, circumstances have arisen or have become known which show that the amount of compensation assessed is obviously inappropriate. A fee as prescribed in the schedule of fees shall be paid with the request. In other respects, the provisions of the first to fourth sentences of subsection (4) shall apply *mutatis mutandis*.

(6) If the declaration is made in respect of an application, the provisions of subsections (1) to (5) shall apply *mutatis mutandis*.

(7) The declaration may be withdrawn at any time by a written communication to the Patent Office insofar as no intention of using the invention has been notified to the patentee. Withdrawal shall take effect on filing. The amount by which the annual fees have been reduced shall be paid within one month after withdrawal of declaration. The amount by which the annual fees have been reduced shall be paid within one month

after withdrawal of the declaration. The second and third sentences of Section 17(3) shall apply *mutatis mutandis* with the proviso that the due date shall be replaced by the end of the one-month period in accordance with the third sentence.

[Amended by Laws of December 20, 1991 and July 16, 1998]

24.—(1) A non-exclusive authorization to commercially exploit an invention shall be granted by the Patent Court in individual cases in accordance with the following provisions (compulsory license) if

1. the applicant for a license has unsuccessfully endeavored during a reasonable period of time to obtain from the patentee consent to exploit the invention under reasonable conditions usual in trade; and
2. public interest commands the grant of a compulsory license.

(2) If the applicant for a license is unable to exploit an invention for which he holds protection under a patent of later date without infringing a patent of earlier date, he shall be entitled within the framework of subsection (1) to request the grant of a compulsory license with respect to the owner of the patent of earlier date if his own invention comprises, in comparison with that under the patent of earlier date, an important technical advance of considerable commercial significance. The patentee may require the applicant for a license to grant him a counter license under reasonable conditions for the exploitation of the patented invention of later date.

(3) A compulsory license under subsection (1) may be granted for a patented invention in the field of semiconductor technology only if such grant is necessary to remove an anti-competitive practice on the part of the patentee that has been established in judicial or administrative proceedings.

(4) If the patentee does not use the patented invention or does not use it predominantly in Germany, compulsory licenses under subsection (1) may be granted ensure an adequate supply of the patented product to the domestic market. Importing shall be deemed to constitute use of the patent in Germany in such case.

(5) The grant of a compulsory license in a patent shall be permissible only after the grant of the patent. It may be granted subject to restrictions and made dependent upon conditions. The scope and duration of use shall be restricted to the purpose for which they have been permitted. The patentee shall be entitled to remuneration from the holder of a compulsory license that shall be commensurate with the circumstances and shall take into consideration the commercial value of the compulsory license. Incense. In the event of a significant change, with respect to the repeated remuneration that will become due in future, in the circumstances on which the determination of the amount of the remuneration was based, each party shall be entitled to require a corresponding adjustment. If the circumstances on which the grant of a compulsory license was based no longer apply and if it is unlikely that they will reoccur, the patentee may require the withdrawal of the compulsory license.

(6) A compulsory license in a patent may only be transferred together with the enterprise concerned by the exploitation of the invention. A compulsory license in an invention that is the subject matter of a patent of earlier date may only be transferred together with the patent of later date.

[Amended by Law of July 16, 1998]

25. A person who has neither domicile nor establishment in Germany may take part

in proceedings before the Patent Office or the Patent Court regulated by this Law and assert rights deriving from a patent only if he has appointed a patent attorney or an attorney-at-law in Germany as his representative. The latter shall be authorized to represent him in Patent Office and Patent Court proceedings and in civil litigation affecting the patent; he may also file requests for the institution of criminal proceedings. The place where the representation has his business premises shall be deemed, within the meaning of Section 23 of the Code of Civil Procedure [*Zivilprozessordnung*], to be the place where the assets are located; if there are no business premises, then the place where the representative has his domicile shall be relevant and, in the absence thereof, the place where the Patent Office has its seat.

Part II

The Patent Office

26.—(1) The Patent Office shall consist of a President and other members. They must possess the qualifications required for judicial office under the German Law Relating to Judges [*Richtergesetz*] (legal members) or must be experts in a branch of technology (technical members). The members shall be appointed for life.

(2) As a rule, only a person who has passed a final State or academic examination in a technical or scientific subject at a university, a technical or agricultural university or a mining academy, who has worked professionally for at least five years thereafter in the field of science, agronomy or technology and who is in possession of the requisite legal knowledge shall be appointed a technical member. Final examination in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area shall be deemed equivalent to German final examinations in accordance with European Community law.

(3) When a probable temporary need exists, the President of the Patent Office may temporarily appoint persons having the qualifications required for members (subsection (1) and (2)) to perform the duties of a member of the Patent Office (assistant members). The temporary appointment may be for a specified period or for as long as is needed and cannot be terminated during such period. In other respects, the provisions regarding members shall also apply to assistant members.

[Amended by Law of July 16, 1998]

27.—(1) There shall be established in the Patent Office

1. Examining Sections for the processing of patent applications and for the provision of information on the state of the art (Section 29(3);
2. Patent Divisions for all matters concerning granted patents, for the assessment of compensation (Section 23(4) and (6) and for the grant of the right to legal aid in proceedings before the patent Office. It shall also be the duty of each Patent Division to give opinions (Section 29(1) and (2)) on matters within its competence.

(2) The tasks of the Examining Sections shall be performed by a technical by a technical member of the Patent Division (examiner).

(3) The Patent Division shall be competent to take decisions when at least three members participate, who shall include two technical members when the Division operates under the opposition procedure. If the case involves special legal difficulties and if none of the members participating is a legal member, one of the legal members

belonging to the patent Division shall assist in rendering the decision. A decision whereby a request for the calling in of a legal member is refused shall not be subject to interlocutory appeal.

(4) The Chairman of the Patent Division may handle alone all matters of the Patent Division, with the exception of decisions on maintenance, revocation or limitation of a patent or assessment of compensation or limitation of a patent or assessment of compensation (Section 23(4) and grant of legal aid, or he may delegate these functions to a technical member of the Division; the shall not apply to a hearing.

(5) The Federal Ministry of Justice shall have power to establish by statutory order that officials of the higher and intermediate grades of the civil service as well as comparable employees shall be entrusted with the handling of matters within the competence of the Examining Sections or the Patent Divisions which present no particular technical or legal difficulties, with the exception, however, of the grant of a patent and the rejection of a patent application on grounds which the applicant has contested. The Federal Ministry of Justice may delegate such power by statutory order to the President of the Patent Office.

(6) For the exclusion and challenge of examiners and other members of the Patent Divisions, Sections 41 to 44, the second sentence of Section 45(2) and Sections 47 to 49 of the Code of Civil Procedure relating to exclusion and challenge of members of a court shall apply *mutatis mutandis*. The same shall apply to officials of the higher and intermediate grades of the civil service and to employees, insofar as they have been entrusted under subsection (5) with the handling of matters within the competence of the Examining Sections or Patent Divisions. Where a challenge plea requires a decision, it shall be taken by the patent Division.

(7) Experts who are not members may be called in during the deliberations of the Patent Divisions; they shall not take part in the voting.

[Amended by Laws of March 23, 1993 and July 16, 1998]

28.—(1) The Federal Minister for Justice shall regulate the establishment and the business procedure of the Patent Office and determine by statutory order the form of procedure, insofar as provision therefor has not been made by law.

(2) To the extent that provision therefor has not been made by law, the Federal Minister for Justice may prescribe by statutory order the collection of administrative fees to cover the expense of requests addressed to the Patent Office and may, in particular,

1. order that fees be collected for certificates, authentications, consultation of files and furnishing of information and to cover all costs incurred;
2. establish rules concerning the persons liable to pay fees, the due date of payments, the obligation to pay in advance, exemption from fees, prescription and the procedure for determining fees.

29.—(1) The Patent Office shall be required to give opinions at the request of the courts or of the State Prosecutor's Office on questions affecting patents if divergent expert opinions are submitted in the proceedings.

(2) In other respects, the Patent Office shall not have the power to take decisions or give opinions outside its statutory sphere of activity without the approval of the Federal Minister for Justice.

(3) The Federal Minister for Justice may, in order to make the documentation of the

Patent Office available to the public, prescribe by statutory order that the Office will provide information on the state of the art, without guarantee that the information is complete, without requiring the approval of the Federal Council. In this regard, he shall be authorized to determine the manner in which the information shall be given, the volume of information and the technical fields involved. The Federal Minister for Justice may delegate such authority to the President of the Patent Office without requiring the approval of the Federal Council.

30.—(1) The Patent Office shall maintain a Register in which shall be recorded the titles of patent applications, the files of which may be inspected by any person, and of granted patents, supplementary certificates of protection (Section 16a) and the names and addresses of applicants or of patentees and appointed representatives, if any (Section 25), whereby it shall suffice to enter one such representative. The commencement, division, expiration, lapsing, order for limitation, revocation, declaration of nullity of patents or supplementary certificates of protection (Section 16a), as well as the filing of opposition and of a nullity action shall also be recorded therein.

(2) The President of the Patent Office may determine that further particulars be entered in the Register.

(3) The Patent Office shall record in the Register a change in the identity of the person, of the name or of the address of the applicant or the patentee and of their representatives, if proof thereof is furnished to it. A fee as prescribed by the schedule of fees shall be paid with the request to register a change in the identity of the applicant or of the patentee; if the fee is not paid, the request shall be deemed not to have been filed. As long as the change has not been recorded, the former applicant, patentee or representative shall remain subject to the rights and obligations as provided in this Law.

(4) The Patent Office shall enter in the Register, at the request of the patentee or the licensee, the grant of an exclusive license on condition that the consent of the other party is proven. A request under the first sentence shall not be admissible for the duration of a declaration of willingness to license (Section 23(1)). The entry shall be cancelled on a request by the patentee or the licensee. A request for cancellation by the patentee shall require proof of the consent of the licensee designated in the entry or of his successor in title.

(5) A fee as prescribed by the schedule of fees shall be paid together with a request under the first or third sentences of subsection (4); if the fee is not paid, the request shall be deemed not to have been filed.

[Amended by Law of July 16, 1998]

31.—(1) The Patent Office shall permit any person so requesting to inspect the files and the models and samples relating thereto if and to the extent that satisfactory proof of a legitimate interest has been furnished. However, any person may freely inspect the Register and the patent files, including the files of limitation proceedings (Section 64); the same shall apply to the inspection of files concerning separated parts of a patent (Section 60).

(2) Any person may freely inspect the files of patent applications

1. if the applicant has expressed to the Patent Office his consent to the inspection of files and has designated the inventor; or
2. if 18 months have elapsed since the filing date (Section 35(2)) or, if an earlier

date is claimed with respect to the application, since that date, and a notification has been published under Section 32(5).

(3) Where inspection of the files is open to any person, the inspection of models and samples belonging to the files shall also be open to any person.

(4) With respect to the naming of the inventor (Section 37(1)), inspection shall be authorized only in accordance with the first sentence of subsection (1) if requested by the inventor designated by the applicant; the fourth and fifth sentences of Section 63(1) shall be applicable *mutatis mutandis*.

(5) Inspection of patent applications and patents which, pursuant to Section 50, have not been published, shall be permitted by the Patent Office only after hearing the competent supreme federal authority if and to extent a special interest, warranting protection, of the person making the request appears to justify affording access and no serious prejudice to the external security of the Federal Republic of Germany is to be expected. If a patent application or a patent under the third sentence of Section 3(2) is cited in proceedings as prior art, the first sentence shall apply *mutatis mutandis* to that part of the file that is relevant to the opposition.

[Amended by Law of July 16, 1998]

32.—(1) The Patent Office shall publish

1. unexamined patent applications;
2. patent specifications; and
3. a Patent Gazette.

(2) The published applications shall contain those elements of the application open to public inspection under Section 31(2) and the abstract (Section 36) as originally filed or in the altered form accepted for publication by the Patent Office. The application shall not be published if the patent specification has already been published.

(3) The patent specification shall include the patent claims, description and drawings, on the basis of which the patent was granted. The patent specification shall also state the publications which the Patent Office has taken into account for the assessment of the patentability of the invention which is the subject matter of the application (Section 43(1)). If the abstract (Section 36) has not already been published, it shall be included in the patent specification.

(4) The published applications and patent specifications shall also be published according to the provisions of Section 31(2) if the application has been withdrawn, refused or deemed to have been withdrawn, or if a patent has lapsed after the technical preparation of the publication has been completed.

(5) The Patent Gazette shall regularly contain summaries of entries in the Register, except where they concern only the normal term of patents or the entry and cancellation of exclusive licenses, and references to the possibility of inspection of patent application files, including the files concerning separated parts of a patent (Section 60).

[Amended by Law of July 16, 1998]

33.—(1) As from publication of the notification pursuant to Section 32(5), the applicant may require from any person who has used the subject matter of the application, although he knew or should have known that the invention used by him

was the subject matter of the application, compensation appropriate to the circumstances; further claims shall not be permitted.

(2) No claim to compensation shall be admissible if the subject matter of the application is obviously unpatentable.

(3) Section 141 shall be applicable *mutatis mutandis* with the proviso that the claim shall not be barred prior to expiration of one year after the grant of the patent.

Part III

Procedure Before the Patent Office

[Amended by Law of July 16, 1998]

34.—(1) Applications for the grant of patent for invention shall be filed with the Patent Office.

(2) Applications may also be filed through a Patent Information Center where an announcement by the Federal Ministry of Justice in the Federal Law Gazette has designated such center for receiving patent applications. Applications that may contain a State secret (Section 93 of the Penal Code [*Strafgesetzbuch*]) may not be filed with a Patent Information Center.

(3) Applications shall contain

1. the name of the applicant;
2. a request for the grant of a patent, which shall designate the invention clearly and concisely;
3. one or more claims defining the matter for which protection is sought;
4. a description of the invention;
5. any drawings referred to in the claims or the description.

(4) Applications shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

(5) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(6) A fee as prescribed by the schedule of fees shall be paid with the application. If the fee is not paid, the Patent Office shall notify the applicant that the application will be deemed to have been withdrawn unless the fee is paid before the end of one month after service of the notification.

(7) The Federal Ministry of Justice shall have power to issue by statutory order regulation concerning the form and other requirements of the application. It may delegate such power by statutory order to the President of the Patent Office.

(8) At the request of the Patent Office, the applicant shall state the prior art fully and truthfully to the best of his knowledge and incorporate it in the description (subsection (3)).

(9) The Federal Ministry of Justice shall have power to issue by statutory order regulations concerning the deposit of biological material, access to such material, including those persons entitled to have access and the repeated deposit of biological material where an invention comprises the use of biological material or concerns such material that is not accessible to the public and cannot be described in the application in such a way that a person skilled in the art could carry out the invention (subsection (4)). It may delegate such power by statutory order to the President of the Patent Office.

[Amended by Law of July 16, 1998]

35.—(1) If the application is not drafted or is not drafted wholly in German, the applicant shall be required to file a German translation within months of the filing of the application. If the application contains a reference to drawings and no drawings accompany the application, the Patent Office shall invite the applicant to file the drawings or to declare or to declare that any reference to drawing shall be deemed not to have been made, within one month of service of the invitation.

(2) The filing date of the patent application shall be the date on which the elements referred to in Section 34(3) 1 and 2 and, if they contain any statements that would appear to constitute a description, those referred to in Section 34(3)4, have been received.

1. at the Patent Office ;

2. or at a Patent Information Center where such center has been designated for that purpose in an announcement by the Federal Ministry of Justice in the Federal Law Gazette.

If the elements are not drafted in German, this shall apply only if a German translation is received by the Patent Office within the period of time referred to in the first sentence of subsection (1); If such is not done, the application shall be deemed not to have been filed. If the applicant files the omitted drawings after having been invited to do so in accordance with the second sentence of subsection(1), the date of receipt of the drawings at the Patent Office shall constitute the filing date, if such is not done, any reference to the drawings shall be deemed not to have been made.

[Amended by Law of July 16, 1998]

36.—(1) Applications must be accompanied by an abstract which can be filed up to 15 months from the filing date or, where an earlier date is claimed for the application, up to 15 months from that date.

(2) Abstracts shall merely serve for use as technical information. They shall contain.

1. the title of the invention;

2. a concise summary of the disclosure as contained in the application, which shall indicate the technical field of the invention and shall be drafted in such a way that it permits a clear understanding of the technical problem, its solution and the main use or uses of the invention;

3. a drawing, if mentioned in the concise summary; if several drawings are mentioned, the drawing that, in the opinion of the applicant, most clearly identifies the invention.

[Amended by Law of July 16, 1998]

37.—(1) Within a period of 15 months from the filing date or, if an earlier date is claimed as relevant to the application, within 15 months from such date, the applicant shall name the inventor or inventors and affirm that to his knowledge no other person has contributed to the invention. If the applicant is not the inventor or not the sole inventor, he shall also state how acquired the right to the patent. The correctness of such statement shall not be verified by Patent Office.

(2) If the applicant can justifiably show that he has been prevented by exceptional circumstances from making in due time the declarations prescribed in subsection (1), the Patent Office shall grant him a reasonable extension of time. The time limit shall

not be prolonged beyond the time of issue of the decision to grant a patent. If by that time the aforesaid circumstances still exist, the Patent Office shall grant another extension. Six months before the expiration of the time limit, the Patent Office shall notify the patentee that the patent will lapse if he does not make the prescribed declarations within six months after service of the notification.

[Amended by Law of July 16, 1998]

38.Up to the time of the decision to grant a patent, the contents of the application may be amended on condition that the scope of the subject matter of the application is not extended; however, until a request for examination is filed (Section 44), only the correction of obvious mistakes, the remedying of defects pointed out by the Examining Section or amendments to claims shall be permissible. No rights may be derived from amendments which broaden the scope of the subject matter of the application.

39.—(1) An applicant may at any time divide his application. The division shall be declared in writing. If the division is declared after the filing of the request for examination (Section 44), the separated part shall be deemed an application for which a request for examination has been filed. The date of the original application and any claimed priority shall be maintained for each divisional application.

(2) For the period up to division, the same fees which were payable for the original application shall be paid for the separated application. This shall not apply to the fee under Section 43 if the division is declared prior to the filing of the request for examination (Section 44), unless a request under Section 43 is filed for the separated application.

(3) If the elements of the application required by Sections 34 to 36 are not filed for the separated application within three months of receipt of the declaration of division, or the fees for the separated application have not been paid within such period, the declaration of division shall be deemed not to have been made.

[Amended by Law of July 16, 1998]

40.—(1) An applicant shall enjoy, within a period of 12 months from the filing date of an earlier patent or utility model application filed with the Patent Office, a priority right with respect to a patent application for the same invention, unless a domestic or foreign priority had already been claimed for the earlier application.

(2) The priority of more than one application for a patent or utility model filed with the Patent Office may be claimed for the application.

(3) Priority may only be claimed for those features of the application which are clearly disclosed in the totality of the application documents for the earlier application.

(4) Priority may only be claimed within two months of the filing date of the later application; the declaration of priority shall only be deemed to have been made if the reference number of the earlier application is given.

(5) If the earlier application is still pending before the Patent Office, it shall be deemed withdrawn at the time of making the declaration of priority under subsection (4). This shall not apply if the early application concerns a utility model.

(6) If inspection of the file is requested (Section 31) for a later application that claims the priority of an earlier patent or utility model application, the Patent Office shall include a copy of the earlier patent or utility model application in the file of the

later application.

[Amended by Laws of December 20, 1991 and July 16, 1998]

41.—(1) Any person who, in accordance with an international treaty, claims the date of an earlier foreign application for the same invention shall, before the end of the 16th month following the priority date, state the date, country and reference number of the earlier application and file a copy of the earlier application where such has not already been done. Particulars may be altered within those periods. Where the particulars are not provided in due time, the priority claim for the application shall be forfeited.

(2) Where the earlier foreign application has been filed in a State not bound by an international agreement on the recognition of priority, the applicant may claim a right of priority corresponding to that under the Paris Convention, provided that, after publication by the Federal Ministry of Justice in the Federal Law Gazette, the other State grants a right of priority for a first filing with the Patent Office, which is, according to its requirements and contents comparable to that under the Paris Convention; subsection (1) shall be applicable.

[Amended by Laws of October 25, 1994 and July 16, 1998]

42.—(1) If the application obviously does not comply with the requirements of Sections 34, 36, 37 and 38, the Examining Section shall request the applicant to remedy the defects within a specified period. If the application does not comply with the provisions in respect of the form and other requirements for applications (Section 34(7)), the Examining Section may refrain from objecting to the defects until the start of the examination procedure (Section 44).

(2) If the subject matter of the application obviously

1. does not, by reason of its nature, constitute an invention;
2. is not susceptible of industrial application;
3. is excluded from patentability under Section 2; or
4. its purpose is not, in the case of the second sentence of Section 16(1), an improvement or further development of the other invention,

the Examining Section shall notify the applicant thereof, stating its reasons, and invite him to submit his comments within a specified period. The same shall apply if, in the case of the second sentence of Section 16(1), the additional application has not been filed within the specified period.

(3) The Examining Section shall reject the application if the defects referred to in subsection (1) are not remedied or the application is maintained although obviously no patentable invention exists (subsection(2), items 1 to 3) or the requirements of the second sentence of Section 16(1) are obviously not met (subsection (2), first sentence, item 4, second sentence). If rejection is to be based on facts that have not yet been communicated to the applicant, he shall first be given an opportunity to submit his comments within a specified period.

[Amended by Law of July 16, 1998]

43.—(1) The Patent Office shall, upon request, identify those publications to be taken into consideration in assessing the patentability of the invention in respect of

which an application has been filed. Where the search for such publications is assumed for all or for certain technical fields, wholly or in part, by an international institution (subsection (8), item 1), a request may be submitted that the search be made in such a way that the applicant can also use the result for a European application.

(2) The request may be filed by the patent applicant or by any other person, whereby the latter shall not thereby become a participant in the procedure. The request shall be filed in writing. Section 25 shall be applicable *mutatis mutandis*. A fee as prescribed by the schedule of fees shall be paid with the request; if the fee is not paid, the request shall be deemed not to have been filed. If the request is filed in connection with an application for a patent of addition (Section 16(1), second sentence), the Patent Office shall invite the applicant to file a request as specified in subsection (1), before the expiration of one month after the invitation in connection with the application for the main patent; if no request is filed, the application for the patent of addition shall be regarded as an application for an independent patent.

(3) The filing of the request shall be published in the Patent Gazette, but not before publication of the notification pursuant to Section 32(5). If the request is filed by a person other than the applicant, the applicant shall also be notified of the filing of the request. Any person shall be entitled to inform the Patent Office of publications which might oppose the grant of a patent.

(4) The request shall be deemed not to have been filed if a request pursuant to Section 44 has already been filed. In such case, the Patent Office shall notify the person making the request of the date of filing of the request pursuant to Section 44. The fee paid for the request shall be refunded.

(5) If a request pursuant to subsection (1) has been filed, subsequent requests shall be deemed not to have been filed. The second and third sentences of subsection (4) shall be applicable *mutatis mutandis*.

(6) If a request filed by a person who is not the applicant is found to be ineffective after notification of the applicant (subsection (3), second sentence), the Patent Office shall also advise the applicant thereof in addition to such other person.

(7) The Patent Office shall communicate the publications ascertained in accordance with subsection (1) to the applicant and, if the request has been filed by another person, to such person and the applicant, without guarantee as to their completeness, and shall publish in the Patent Gazette the fact that such communication has been made. If the publications have been searched by an international institution and if the applicant has so requested (subsection (1), second sentence), this shall be stated in the communication.

(8) To accelerate the patent granting procedure, the Federal Minister for Justice shall have power to direct by statutory order that

1. the search for the publications specified in subsection (1) shall be assigned to a section of the Patent Office other than the Examining Section (Section 27(1)) or to another national or international institution, in whole or for certain technical fields or certain languages, provided that the institution concerned appears competent to search for the publications to be into consideration;
2. the Patent Office shall provide foreign or international authorities with data from the files of patent applications for their mutual information on the results of examination procedures and state-of-the-art searches, where the applications concerned relate to inventions in respect of which the grant of a patent has also been applied for to such foreign or international authorities;
3. the examination of patent applications according to Section 42 and the supervision of fees and time limits shall be transferred in whole or in part to

sections of the Patent Office other than the Examining Sections or Patent Divisions (Section 27(1)).

44.—(1) The Patent Office shall examine on request whether the application complies with the requirements of Sections 34, 37 and 38 and whether the subject matter of the application is patentable under Sections 1 to 5.

(2) The request may be filed by the applicant or by any other person, whereby the latter shall not become a participant in the examination procedure, prior to the expiration of seven years after the filing of the application.

(3) A fee as prescribed in the schedule of fees shall be paid with the request; if the fee is not paid, the request shall be deemed not to have been filed.

(4) If a request pursuant to Section 43 has already been filed, the examination procedure shall begin only after the request pursuant to Section 43 has been dealt with. In other respects, Section 43(2), second third and fifth sentences, and subsections (3), (5) and (6) shall be applicable *mutatis mutandis*. If a request filed by a person other than the applicant is ineffective, the applicant himself may file a request within a period of three months from service of the notification, provided that such period expires later than the period specified in subsection (2). If the applicant does not file a request, a notice shall be published in the Patent Gazette, referring to the publication of the request filed by such other person and stating that the request is ineffective.

(5) The examination procedure shall be continued even if the request for examination is withdrawn. In the case under the third sentence of subsection (4), the procedure shall be continued from the point which it had reached at the time the applicant's request for examination was filed.

[Amended by Law of July 16, 1998]

45.—(1) If the application does not comply with the requirements of Section 34, 37 and 38 or if the requirements of Section 36 are manifestly not fulfilled, the Examining Section shall request the applicant to remedy the defects within a specified period. The first sentence shall not apply to defects concerning the abstract, where the abstract has already been published.

(2) If the Examining Section reaches the conclusion that the invention is not patentable under Sections 1 to 5, it shall notify the applicant thereof, shall state its grounds, and shall invite the applicant to submit his comments within a specified period.

[Amended by Law of July 16, 1998]

46.—(1) The examination Section may at any time summon and hear the parties, may examine witnesses, experts and the parties, whether under oath or not, and may institute other inquiries necessary for clarification of the matter. Before a decision is taken as to publication, the patent applicant shall be given a hearing on request where appropriate. The request shall be filed in writing. If the request is not filed in the prescribed form or if the Examining Section does not consider a hearing to be appropriate, it shall reject the request. A decision to reject a request shall not be subject to interlocutory appeal.

(2) Minutes of the hearing and examination of witnesses shall be taken, which shall reproduce the essentials of the proceedings and shall contain those declarations of the

parties that are relevant in law. Sections 160a, 162 and 163 of the Code of Civil Procedure shall apply *mutatis mutandis*. The parties shall receive a copy of the minutes.

47.—(1) The decisions of the Examining Sections shall contain the grounds, shall be in writing and shall be communicated *ex officio* to the parties. They may also be pronounced at the end of a hearing; the first sentence shall remain unaffected. Grounds need not be given if the applicant is the sole party and his request is allowed.

(2) The written copy shall be accompanied by a statement informing the parties of possible appeal from the decision, of the authority with which an appeal may be lodged, of the time limit for lodging an appeal and of the appeal fee, if any, to be paid. The time limit for lodging an appeal (Section 73(2)) shall begin to run only when the parties have been informed in writing. If they have not been informed or have been incorrectly informed, an appeal may only be lodged within one year from service of the decision, except where information has been given in writing that an appeal was not permissible; Section 123 shall apply *mutatis mutandis*.

48. The Examining Section shall reject the application if the defects objected to under Section 45(1) have not been remedied or if examination shows that the invention is not patentable under Sections 1 to 5. The second sentence of Section 42(3) shall be applicable.

[Amended by Law of July 16, 1998]

49.—(1) If the application complies with the requirements of Sections 34, 37 and 38, if defects in the abstract objected to under Section 45(1) have been remedied and if the subject matter of the application is patentable in accordance with Sections 1 to 5, the Examining Section shall order the grant of a patent.

(2) The decision to grant shall be deferred at the request of the applicant for a period of 15 months beginning either with the date on which the application is filed with the Patent Office or, if an earlier date has been claimed, with such earlier date.

[Amended by Law of July 16, 1998]

49a.—(1) If the person registered as patentee requests supplementary protection, the Patent Division shall examine whether the application complies with the relevant Council Regulation of the European Economic Community and with subsections (3) and (4) and Section 16a.

(2) If the application complies with those requirements, the Patent Division shall grant a supplementary certificate of protection for the duration of its term. In the contrary case, it shall invite the applicant to rectify any defect within a time limit to be set by the Patent Division, which shall be of at least two months. If the defects are not remedied, it shall reject the application by a decision.

(3) Section 34(7) shall apply. Sections 46 and 47 shall apply to proceedings before the Patent Division.

(4) The application shall be accompanied by a fee as prescribed in the schedule of fees. If the fee is not paid, the Patent Office shall notify the applicant that the application will be deemed to have been withdrawn if the fee is not paid within one month after service of the notification.

50.—(1) If a patent is sought in respect of an invention which is a State secret (Section 93 of the Penal Code), the Examining Section shall order *ex officio* that no publication shall take place. The competent supreme federal authority shall be heard before the order is issued. The latter authority may request that an order be issued.

(2) The Examining Section shall cancel *ex officio* or at the request of the competent supreme federal authority or of the applicant or patentee an order under subsection (1) when the relevant grounds cease to exist. The Examining Section shall examine at yearly intervals whether the grounds of the order under subsection (1) continue to exist. Before an order under subsection (1) is cancelled, the competent supreme federal authority shall be heard.

(3) The Examining Section shall notify the parties if no appeal has been lodged within the time limit (Section 73(2)) against a decision of the Examining Section refusing a request for the issue of an order under subsection (1) or canceling an order under subsection (1).

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to inventions which have been kept secret by a foreign State for reasons of defense and have been entrusted to the Federal Government with its consent and on condition that it maintain secrecy.

51. The Patent Office shall permit the competent supreme federal authority to inspect the files in order to examine whether, in accordance with Section 50(1), no publication shall take place or whether an order issued under Section 50(1) shall be cancelled.

52.—(1) A patent application containing a State secret (Section 93 of the Penal Code) may only be filed, outside the territory to which this Law applies, with the written consent of the competent supreme federal authority. Consent be given subject to the fulfillment of conditions.

(2) Any person who

1. files an application in violation of the first sentence of subsection (1); or

2. acts in violation of a condition under the second sentence of subsection (1)

shall be liable to imprisonment not exceeding five years or to a fine.

53.—(1) If no order under Section 50(1) is served on the applicant within a period of four months after the filing of the application with the Patent Office, the applicant or any other person having knowledge of the invention may assume, when in doubt as to whether the invention is required to be kept secret (Section 93 of the Penal Code), that the invention need not be kept secret.

(2) If examination of whether in accordance with Section 50(1), publication of an application is not to take place cannot be concluded within the period mentioned in subsection (1), the Patent Office may, by means of a notice to be served on the applicant within the period mentioned in subsection (1), extend this period by a maximum of two months.

54. If a patent has been granted in respect of an application for which an order under Section 50(1) was issued, the patent shall be recorded in a Special Register. The first sentence of Section 31(5) shall apply *mutatis mutandis* to the inspection of the Special Register.

55.—(1) An applicant, a patentee or his successor in title who refrains from using or ceases to use for peaceful purposes an invention which is patentable under Sections 1 to 5 as a result of an order under Section 50(1), shall have a claim for compensation, in respect of the damage thereby caused to him, against the Federal Republic if and to the extent that he cannot reasonably be expected to bear the damages himself. In determining the extent to which he can reasonably be expected to do so, account shall be taken, in particular, of the financial position of the injured party, the amount of expenditure incurred by him for the invention or for acquiring title thereto, the degree to which the probability that the invention would have to be kept secret could have been recognized by him at the time the expenditure was incurred, and the profit derived by the injured party from other exploitation of the invention. A claim may only be asserted after a patent has been granted. Compensation may be claimed only after it has become due and for periods which shall not be shorter than one year.

(2) A claim shall be asserted before the competent supreme federal authority. Legal action may be instituted before the ordinary courts.

(3) Compensation under subsection (1) shall be awarded only if the first application in respect of the invention has been filed with the Patent Office and the invention has not already been kept secret by a foreign State for reasons of defense before the issue of an order under Section 50(1).

56. The Federal Government shall have power to determine by statutory order the competent supreme federal authority within the meaning of Sections 31(5), 50 to 55 and 74(2).

57.—(1) A fee for grant shall be paid for the grant of the patent in accordance with the schedule of fees. The fee shall fall due on service of the decision to grant. If it is not paid within two months of becoming due, the surcharge prescribed by the schedule of fees shall be paid. After the expiration of such period, the patent Office shall notify the patentee that the patent will be deemed not to have been granted and the application will be deemed to have been withdrawn if the fee and the surcharge are not paid within one month after service of the notification.

(2) If the fee and the surcharge are not paid in due time following service of the official notification, the patent shall be deemed not to have been granted and the application to have been withdrawn.

58.—(1) The grant of a patent shall be published in the Patent Gazette. The patent specification shall be published at the same time. The legal effects of the patent shall come into force on publication in the Patent Gazette.

(2) If the application is withdrawn after publication of the reference to the possibility of inspection of the files (Section 32(5)) or is refused or is deemed withdrawn, the effects under Section 33(1) shall be deemed not to have come into force.

(3) If no request for examination is filed before the expiration of the period prescribed in Section 44(2) or if the annual fee payable for the application is not paid in due time (Section 17), the application shall be deemed to have been withdrawn.

59.—(1) Within three months of the publication of grant, any person, but only the injured party in the case of usurpation, may give notice of opposition to the patent. Opposition shall be lodged in writing and grounds shall be stated. The opposition may

be based only on the assertion that one of the grounds of opposition mentioned in Section 21 exists. The facts which justify the opposition shall be stated in detail. The particulars must, if not already contained in the document of opposition, be subsequently provided in writing before the expiration of the opposition period.

(2) In the event of opposition to a patent, any person who proves that proceedings for infringement of the same patent have been instituted against him may, after the opposition period has expired, intervene in the opposition proceedings, provided he gives notice of intervention within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any person who proves both that the proprietor of the patent has demanded that he cease alleged infringement of the patent and that he has instituted proceedings for a ruling that he is not infringing the patent. Notice of intervention shall be filed in writing stating the reasons therefor before the expiration of the period mentioned in the first sentence. The third to fifth sentences of subsection (1) shall apply *mutatis mutandis*.

(3) The third sentence of Section 43(3) and Sections 46 and 47 shall apply *mutatis mutandis* in opposition proceedings.

60.—(1) Up to the completion of opposition proceedings, a patentee may divide his patent. If division is declared, the separated part shall be deemed to be an application for which a request for examination (Section 44) has been filed. Section 39(1), second and fourth sentences and subsections (2) and (3) shall apply *mutatis mutandis*. For the separated part, the effects of the patent shall be deemed not to have come into force *ab initio*.

(2) The division of the patent shall be published in the Patent Gazette.

61.—(1) The Patent Division shall decide whether and to what extent the patent shall be maintained or revoked. The proceedings shall be continued *ex officio* without the opponent if the opposition has been withdrawn.

(2) If the patent is revoked or maintained with limitations, the fact shall be published in the Patent Gazette.

(3) If the patent has been maintained with limitations, the patent specification shall be correspondingly amended. The amendment of the patent specification shall be published.

62.—(1) In its decision on the opposition, the Patent Office may at its equitable discretion determine to what extent the costs arising from a hearing or the taking of evidence shall be borne by a party. This shall also apply if the opposition is wholly or partly withdrawn or if the patent is relinquished.

(2) The costs shall include, in addition to the expenses of the Patent office, the costs incurred by the parties to the extent that they were necessary for the appropriate defense of their interests and rights. The amount of the costs to be awarded shall be determined by the Patent Office upon request. The provisions of the Code of Civil Procedure relating to the procedure for the assessment of costs and execution of decisions regarding the assessment of costs shall apply *mutatis mutandis*. An appeal shall lie in place of a complaint from the decision regarding the assessment of costs; Section 73 shall apply with the proviso that the appeal be lodged within two weeks. The enforceable copy shall be issued by the registrar of the Patent Court.

[Amended by Law of July 16,1998]

63.—(1) The inventor shall be mentioned as such in the published application (Section 32(2)), in the patent specification (Section 32(3)) and in the publication of the grant of the patent (Section 58(1)), if he has already been mentioned. Such mention shall be entered in the Register (Section 30(1)). It shall be omitted if the inventor designated by the applicant so requests. The request may be withdrawn at any time; in the event of withdrawal, mention shall be effected thereafter. Renunciation by the inventor of the right to be mentioned as such shall have no legal effect.

(2) If the identity of the inventor is incorrectly given or, in the case of the third sentence of subsection (1), is not given at all, the applicant or the patentee or the person wrongly mentioned shall be under an obligation to the inventor to declare to the Patent Office that they consent to having the mention provided for in the first and second sentences of subsection (1) corrected or subsequently effected. Consent shall be irrevocable. The procedure for the grant of the patent shall not be delayed by the bringing of an action for a declaration of consent.

(3) Subsequent mention of the inventor (subsection (1), fourth sentence, and subsection(2)) or the correction (subsection (2)) shall not be effected in official publications which have already been published.

(4) The Federal Minister for Justice shall have power to issue by statutory order regulations for the implementation of the foregoing provisions. He may delegate this power by statutory order to the President of the Patent Office.

64.—(1) A patent may be limited with retroactive effect, at the request of the patentee, by amending the patent claims.

(2) The request shall be filed in writing and the grounds on which it is based shall be stated. A fee as prescribed by the schedule of fees shall be paid with the request; if the fee is not paid, the request shall be deemed not to have been filed.

(3) The Patent Division shall decide on the request. Sections 44(1) and 45 to 48 shall be applicable *mutatis mutandis*. In the decision whereby the request is granted, the patent specification shall be adapted to the limitation. The amendment of the patent specification shall be published.

Part IV

The Patent Court

65.—(1) There shall be established a Patent Court as an autonomous and independent federal court for hearing appeals from decisions of the Examining Sections or Patent Divisions of the Patent Office and actions for declaration of nullity of patents and for compulsory licenses (Section 81,85). It shall have its seat at the seat of the Patent Office. It shall be designated the “Federal Patent Court”.

(2) The Patent Court shall consist of a President, presiding judges and other judges. They must possess the qualifications required for judicial office under the German Law Relating to Judges (legal members) or must be experts in a branch of technology (technical members). For the technical members, Section 26(2) shall be applicable *mutatis mutandis* provided they have passed a State or academic final examination.

(3) Judges shall be appointed for life by the Federal President, except where otherwise provided in Section 71.

(4) The President of the Patent Court shall exercise official supervision over judges, officials, employees and workers.

[Amended by Law of July 16,1998]

66.—(1) There shall be established in the Patent Court

1. chambers for hearing appeals (Chambers of Appeal);
2. chambers for deciding actions for declaration of nullity of patents and for compulsory licenses (Nullity Chambers).

(2) The number of chambers shall be determined by the Federal Minister for Justice.

[Amended by Law of July 16, 1998]

67.—(1) Chambers of Appeal shall decide cases under Sections 23(4) and 50(1) and (2) in the composition of one legal member as presiding judge and two technical members, in cases under Section 73(3) and Sections 130, 131 and 133, in the composition of one technical member as presiding judge, two additional technical members and one legal member, in cases under Section 31(5) in the composition of one legal member as presiding judge, one additional legal member and one technical member and in other cases in the composition of three legal members.

(2) Nullity Chambers shall decide in cases under Sections 84 and 85(3) in the composition of one legal member as presiding judge, one additional legal member and three technical members and in other cases in the composition of three judges of whom one must be a legal member.

68. The provisions of Part II of the Judiciary Law [*Gerichtsverfassungsgesetz*] shall apply to the Patent Court with the following provisos:

1. where election does not result in a presiding judge and a further judge who are legal members, the presiding judge and further judge being legal members who obtain the most votes from the legal members shall be considered elected;
2. disputes concerning election (Section 21b(6) of the Judiciary Law) shall be heard by a Chamber of the Patent Court consisting of three judges being legal members;
3. the Federal Minister for Justice shall appoint the permanent substitute of the President.

69.—(1) Proceedings before the Chambers of Appeal shall be public if notice of the possibility of inspecting the files under Section 32(5) has been given or if the patent specification has been published under Section 58(1). Sections 172 to 175 of the Judiciary Law shall be applicable, *mutatis mutandis*, with the proviso that

1. at the request of one of the parties, the public may also be excluded from the proceedings if publicity threatens to endanger the interests worthy of protection of the party making the request;
2. the public shall be excluded from the pronouncement of the decisions until publication of a notice of the possibility of inspecting the files under Section 32(5) or until publication of the patent specification under Section 58(1).

(2) The proceedings before the Nullity Chambers, including the pronouncement of decisions, shall be public. The second sentence of subsection (1), item 1, shall be applicable *mutatis mutandis*.

(3) The maintenance of order in the sessions of the Chambers shall be the responsibility of the presiding judge. Sections 177 to 180, 182 and 183 of the Judiciary Law relating to the maintenance of order in court shall be applicable *mutatis*

mutandis.

70.—(1) Decisions in the Chambers shall be made on the basis of deliberation and the taking of votes. In such cases, only the number of members of the Chambers prescribed by law may participate. During the deliberation and voting there may be present, in addition to the members of the Chambers, only persons employed at the Patent Court for training purposes, provided that the presiding judge permits them to be present.

(2) The decisions of the Chambers shall require a majority vote; if the votes are equally divided, the presiding judge shall have the casting vote.

(3) The members of the Chambers shall vote according to seniority of service and, seniority of service being equal, according to age, the younger voting before the older. If a recording judge has been appointed, he shall vote first. The presiding judge shall vote last.

71.—(1) Judges may be employed at the Patent Court on temporary appointment. The third sentence of Section 65(2) shall be applicable.

(2) Judges appointed on a temporary basis and temporarily delegated judges may not preside.

72. There shall be established at the Patent Court a registrar's office, which shall be staffed by the necessary number of registrars. The establishment of the office shall be determined by the Federal Minister for Justice.

Part V

Proceedings Before the Patent Court

1. Proceedings on Appeal

73.—(1) An appeal shall lie from the decisions of the Examining Sections and Patent Divisions.

(2) An appeal shall be filed in writing with the Patent Office within one month after service of the decision. Copies of the appeal and of all written statements shall be attached for the other parties. The appeal and all written statements containing motions pertaining to the matter or the declaration of withdrawal of the appeal or of a motion shall be served *ex officio* upon the other parties; other documents shall be communicated informally to those parties, where service has not been ordered.

(3) If an appeal lies from a decision to reject an application or from a decision on the maintenance, revocation or limitation of a patent, a fee as prescribed by the schedule of fees shall be paid within the period allowed for filing an appeal; if the fee is not paid, the appeal shall be deemed not to have been filed.

(4) If the authority whose decision is contested considers the appeal to be well founded, it shall rectify its decision. It may order that the appeal fee be refunded. If the appeal is not allowed, it shall be remitted to the Patent Court without comment as to its merits before the expiration of one month.

(5) If the appellants is opposed by another party to the proceedings, the provisions of the first sentence of subsection (4) shall not be applicable.

[Amended by Law of July 16, 1998]

74.—(1) An appeal may be lodged by the parties to the proceedings before the Patent

Office.

(2) In the case of Sections 31 (5) and 50(1) and (2), an appeal may also be lodged by the competent supreme federal authority.

75.—(1) An appeal shall have a staying effect.

(2) An appeal shall have no staying effect, however when it lies from a decision of the Examining Section by which an order under Section 50(1) has been issued.

76. The President of the Patent Office may, if he considers it appropriate to safeguard the public interest, make written statements in appeal proceedings before the Patent Court, be present at hearings and make representations therein. Written statements by the President of the Patent Office shall be communicated to the parties by the Patent Court.

77. The Patent Court may, if it considers it appropriate on an issue of law of basic importance, give the President of the Patent Office the opportunity to intervene in appeal proceedings. The President of the Patent Office shall become a party on receipt of the notice of intervention.

78. A hearing shall be held if

1. one of the parties so requests;
2. evidence is to be taken before the Patent Court (Section 88(1)); or
3. the Patent Court considers it appropriate.

79.—(1) A decision shall be given on an appeal.

(2) If an appeal is not admissible or not lodged in the form provided by law and within the prescribed period, it shall be dismissed as inadmissible. The decision may be given without a hearing.

(3) The Patent Court may reverse the contested decision without itself deciding the case on its merits if

1. the Patent Office has not yet decided the case on its merits;
2. the proceedings before the Patent Office suffer from a substantial defect;
3. new facts or evidence have become known which are essential to the decision.

The Patent Office shall base its decision on the legal judgment on which the reversal is based.

80.—(1) Where more than one person is party to the proceedings, the Patent Court may decide that the costs of the proceedings shall be borne in whole or in part by one of the parties if and to the extent that this is equitable. It may, in particular, also order that costs incurred by the parties shall, to the extent that they were necessary for the appropriate protection of the rights involved, be refunded in whole or in part by one of the parties.

(2) Costs may be awarded against the President of the Patent Office only if he has made petitions after his intervention in the proceedings.

(3) The Patent Court may order that the appeal fee (Section 73 (3)) be refunded.

(4) Subsections (1) to (3) shall also be applicable if, either in whole or in part, the appeal, the application or the opposition is withdrawn or if the patent is relinquished.

(5) In other respects, the provisions of the Code of Civil Procedure relating to the procedure for the assessment of costs shall apply *mutatis mutandis*.

[Amended by Law of July 16, 1998]

2. Nullity and Compulsory License Proceedings

[Amended by Law of July 16, 1998]

81.—(1) Proceedings for a declaration of nullity of a patent or supplementary certificate of protection or for the grant or withdrawal of a compulsory license or for the adaptation of the remuneration determined by a judgment under a compulsory license shall be instituted by bringing legal action. The action shall be directed against the person recorded in the Register as patentee or against the holder of the compulsory license. An action against a supplementary certificate of protection may be consolidated with an action against the basic patent and may also be based on the fact that one of the grounds for nullity exists in respect of the basic patent (Section 22).

(2) An action for a declaration of nullity of a patent shall not be brought as long as opposition may still be filed or opposition proceedings are pending.

(3) In the cases of usurpation, only the injured party shall be entitled to bring an action.

(4) An action shall be filed with the Patent Court in writing. Copies of the action and of all written statements shall be attached for the defendant. The action and all written statements shall be served *ex officio* on the defendant.

(5) An action shall designate the plaintiff, the defendant and the matter at issue and shall contain a specific motion. The facts and documentary evidence relied on shall be stated. If the action does not fully comply with these requirements, the presiding judge shall invite the plaintiff to file the necessary additional materials within a specified period.

(6) A fee as prescribed by the schedule of fees shall be paid when the action is filed; if the fee is not paid, the action shall be deemed not to have been filed.

(7) Plaintiffs who do not have their usual place of residence in a Member State of the European Union or in a Contracting State to the Agreement on the European Economic Area shall provide security, at the demand of the defendant, with respect to the costs of the procedure; Section 110(2)1 to 3 of the Code of Civil Procedure shall apply *mutatis mutandis*. The Patent Court shall determine, at its equitable discretion, the amount of the security and shall fix a time limit within which that amount shall be furnished. If the time limit is not observed, the action shall be deemed to have been withdrawn.

[Amended by Laws of March 23, 1993, July 16, 1998 and August 6, 1998]

82.—(1) The Patent Court shall serve notice of the action on the defendant and invite him to reply thereto within one month.

(2) If the defendant fails to reply in due time, a decision complying with the plaintiff's request may be rendered forthwith without a hearing and every factual allegation of the plaintiff assumed to be proved.

83.—(1) If the defendant files a contesting reply in due time, the Patent Court shall notify the plaintiff of such reply.

(2) The Patent Court shall render its decision on the basis of a hearing. With the consent of the parties, a decision may be rendered without a hearing.

84.—(1) The decision on an action shall be delivered in the form of a judgment. An

interim decision on the admissibility of the action may be delivered in the form of an interlocutory judgment.

(2) In the judgment, the costs of the proceedings shall also be decided. The provisions of the Code of Civil Procedure concerning procedural costs shall apply *mutatis mutandis* insofar as equity does not require otherwise; the provisions of the Code of Civil procedure relating to the procedure for the assessment of costs and execution of decisions regarding the assessment of costs shall apply *mutatis mutandis*. Section 99(2) shall remain unaffected.

85.—(1) In proceedings for the grant of a compulsory license, the plaintiff may, at his request, be allowed to exploit the invention by a provisional order if he satisfies the Court that the conditions referred to in Section 24(1) to (5) are complied with and that an immediate grant of permission is urgently required in the public interest.

(2) A fee as prescribed by the schedule of fees shall be paid with the request; if the fee is not paid, the request shall be deemed not to have been filed. The issue of a provisional order may be made conditional on the furnishing of security, by the person making the request, for the damage which the defendant may suffer.

(3) The Patent Court shall render its decision on the basis of a hearing. The provisions of the second sentence of Section 83(2) and of Section 84 shall be applicable *mutatis mutandis*.

(4) The effect of the provisional order shall cease with the withdrawal or refusal of the action for the grant of a compulsory license (Section 81); the decision as to costs may be amended if a party applies for amendment within one month after the withdrawal or after the refusal becomes final.

(5) If the issue of the provisional order proves to have been unjustified *ab initio*, the person making the request shall be required to compensate the defendant for the damage which he has suffered from the execution of the provisional order.

(6) The judgment granting the compulsory license may, on request, with or without security, be declared provisionally enforceable if such is in the public interest. If the judgment is reversed or altered, the person making the request shall be obliged to compensate the defendant for the damage which he has suffered through the enforcement.

[Amended by Law of July 16, 1998]

3.Common Rules of Procedure

86.—(1) For the exclusion and challenge of members of the Court, Sections 41 to 44 and 47 to 49 of the Code of Civil Procedure shall be applicable *mutatis mutandis*.

(2) The following shall also be excluded from judicial office:

- 1.in proceedings on appeal, persons who have participated in the previous proceedings before the Patent Office;
- 2.in proceedings for declaration of nullity of a patent, persons who have participated in the proceedings before the Patent Office or Patent Court relating to the grant of the patent or relating to opposition.

(3) The decision on the challenge of a judge shall be rendered by the Chamber to which the person who is challenged belongs. If as a result of the elimination of the member who has been challenged, the Chamber is unable to render a decision, a Chamber of Appeal of the Patent Court consisting of three legal members shall render the decision.

(4) The decision on the challenge of a registrar shall be rendered by the Chamber in whose jurisdiction the matter falls.

87.—(1) The Patent Court shall investigate *ex officio* the facts of the case. It shall not be bound by the factual statements and the offers of proof of the parties.

(2) The presiding judge or a member designated by him shall, before the hearing or, in the absence of a hearing, before the decision of the Patent Court, make all arrangements necessary for the matter to be dealt with, if possible, in one hearing or in one session. In other respects, Section 273(2),(3), first sentence, and (4), first sentence, of the Code of Civil Procedure shall be applicable *mutatis mutandis*.

88.—(1) The Patent Court shall take evidence at the hearing. In particular, it may make inspections on the spot, examine witnesses, experts and the parties and order the consultation of documents.

(2) In suitable cases, the Patent Court shall may, prior to the hearing, have evidence taken by one of its members as commissioned judge or, specifying particular questions of evidence, request another court to take such evidence.

(3) The parties shall be notified of all hearings in which evidence is to be taken and may attend such hearings. They may put relevant questions to witnesses and experts. If a question is objected to, the Patent Court shall decide.

89.—(1) As soon as the date for a hearing is fixed, the parties shall be summoned with at least two weeks' notice. In urgent cases, the presiding judge may shorten this period.

(2) It shall be pointed out in the summons that if a party fails to appear, the case may be heard and decided in his absence.

90.—(1) The presiding judge shall open and conduct the hearing.

(2) After the case is called, the presiding judge or recording judge shall report on the essential contents of the files.

(3) Thereupon, the parties shall be given leave to speak in order to make and substantiate their motions.

91.—(1) The presiding judge shall discuss with the parties the questions of fact and questions of law involved in the case.

(2) The presiding judge shall, upon request, permit each member of the Chamber to ask questions. If a question is objected to, the Chamber shall decide.

(3) After discussing the case, the presiding judge shall declare the hearing closed. The Chamber may decide to reopen the hearing.

92.—(1) At the hearing, and whenever evidence is taken, a registrar of the Court shall be called to act as minute-writer. If, by order of the presiding judge, no minute-writer is called, one of the judges shall record the minutes.

(2) Minutes shall be taken of oral proceedings and of all taking of evidence. Sections 160 to 165 of the Code of Civil Procedure shall apply *mutatis mutandis*.

93.—(1) The Patent Court shall take its decisions on the basis of its own conclusions freely reached in the light of the results of the proceedings as a whole. The decision shall state the grounds which led the judges to form their conclusions.

(2) The decision may be based only on facts and the results of evidence on which

the parties have had an opportunity to state their views.

(3) Where there has been a previous hearing, a judge not present at the last session of the hearing may participate in rendering the decision only if the parties consent.

94.—(1) Final decisions of the Patent Court shall, if a hearing has taken place, be rendered at the court session at which the hearing was concluded or at a session to be fixed forthwith. This deadline shall not exceed three weeks except when important reasons, in particular the volume and the difficulty of the case, so require. Final decisions shall be served *ex officio* on the parties. They may be served on the parties instead of being pronounced in court. If the Patent Court makes its decision without a hearing, pronouncement of the decision shall be replaced by service thereof on the parties.

(2) Final decisions of the Patent Court by which a motion is refused or a legal remedy is decided upon shall state the grounds upon which the decision is based.

95.—(1) Clerical errors, errors in calculation and similar obvious errors in the decision may at any time be corrected by the Patent Court.

(2) The correction may be decided without a previous hearing. The decision concerning the correction shall be recorded on the decision itself and on the copies thereof.

96.—(1) If the statement of facts as set out in the decision contains other mistakes or obscurities, correction may be requested within two weeks after service of the decision.

(2) The Patent Court shall decide on this matter without taking evidence. In such decisions, only judges who have taken part in rendering the decision whose correction is requested shall participate. The decision concerning the correction shall be recorded on the decision itself and the copies thereof.

97.—(1) A party may, at any stage of the proceedings, be represented before the Patent Court by an authorized representative. A decision may be made ordering the appointment of a representative. The provisions of Section 25 shall remain unaffected.

(2) The power of attorney shall be filed in writing at the Court with the documents of the case. It may be filed later, the Patent Court may set a time limit for this purpose.

(3) The lack of a power of attorney may be raised at any stage of the proceedings. The Patent Court shall *ex officio* consider the lack of a power of attorney if an attorney-at-law or patent attorney does not appear as the representative.

98. In proceedings before the Patent Court, the Law on Court Costs [*Gerichtskostengesetz*] shall apply *mutatis mutandis* with respect to expenses.

99.—(1) In the absence of provisions in this Law concerning proceedings before the Patent Court, the Judiciary Law and the Code of Civil Procedure shall apply *mutatis mutandis* unless the special nature of the proceedings before the Patent Court does not so permit.

(2) Appeals from decisions of the Patent Court shall lie only to the extent permitted under this Law.

(3) For the grant to other persons of permission to inspect the files of the case, Section 31 shall apply *mutatis mutandis*. The request for permission shall be decided by the Patent Court. Permission to inspect the files of proceedings for obtaining a

declaration of nullity of a patent shall not be granted if and to the extent that the patentee proves an interest to the contrary worthy of protection.

(4) The first sentence of Section 227(3) of the Code of Civil Procedure shall not apply.

[Amended by Law of October 28, 1996]

Part VI

Proceedings Before the Federal Court of Justice

1. Procedure in Respect of Appeals on Points of Law

100.—(1) An appeal on a point of law from decisions of the Chambers of Appeal of the Patent Court in respect of an appeal under Section 73 shall lie to the Federal Court of Justice if the Chamber of Appeal in its decision has given leave to appeal on the point of law.

(2) Appeal on a point of law shall be permitted if

1. an issue of law of basic importance is to be decided; or
2. the further development of the law or the assurance of uniform judicial practice requires a decision by the Federal Court of Justice.

(3) Leave to appeal on a point of law from the decisions of the Chambers of Appeal of the Patent Court shall not be required if one of the following procedural defects is present and denounced:

1. if the court which rendered the decision was not properly constituted;
2. if a judge having participated in rendering the decision was excluded by law from the exercise of judicial office or, because of the possibility of partiality, had been successfully challenged;
3. if a party to the proceedings was refused the opportunity to present comments;
4. if a party to the proceedings was not represented according to the provisions of the law, unless he expressly or tacitly agreed with the conduct of the proceedings;
5. if the decision was made on the basis of a hearing in which the provisions on the publicity of proceedings were violated; or
6. if the decision does not state the grounds therefor.

[Amended by Law of July 16, 1998]

101.—(1) The right to appeal on a point of law shall belong to the parties to the proceedings on appeal.

(2) The only basis for an appeal on a point of law shall be the argument that the decision is founded on a breach of the law. Sections 550 and 551, items 1 to 3 and 5 to 7, of the Code of Civil Procedure shall apply *mutatis mutandis*.

102.—(1) An appeal on a point of law shall be lodged in writing with the Federal Court of Justice within one month after service of the decision.

(2) In proceedings concerning appeals on points of law before the Federal Court of Justice, the provisions of Section 144 on the assessment of value in dispute shall apply

mutatis mutandis.

(3) An appeal on a point of law shall state the grounds on which it is based. The period allowed for stating the grounds shall be one month; it shall commence with the filing of the appeal on a point of law and may, upon request, be extended by the presiding judge.

(4) The statement of the grounds for the appeal on a point of law must contain

1. a declaration as to the extent to which the decision is contested and if the modification or reversal thereof is requested;
2. designation of the violated rule of law;
3. where the basis for the appeal on a point of law is the argument that the law was violated in respect of procedure, a statement of the facts constituting the defect.

(5) The parties shall be represented before the Federal Court of Justice by an attorney-at-law admitted to practice before the Court as authorized representative. At the request of any party, the latter's patent attorney shall be given leave to speak. Section 157(1) and (2) of the Code of Civil Procedure shall not apply in this event. Section 143(5) shall apply *mutatis mutandis*.

[Amended by Law of July 16, 1998]

103. An appeal on a point of law shall have a staying effect. Section 75(2) shall apply *mutatis mutandis*.

104. The Federal Court of Justice shall examine *ex officio* whether an appeal on a point of law is in itself admissible and whether it has been filed and the grounds therefor have been stated in the form provided by law and within the prescribed time limit. If any of these requirements is lacking, the appeal on a point of law shall be dismissed as inadmissible.

105.—(1) Where more than one person is party to the proceedings in respect of an appeal on a point of law, the appeal and the statement of the grounds therefor shall be served on the other parties, with the request to file declarations, if any, in writing with the Federal Court of Justice within a given period after service. The date on which the appeal was filed shall be communicated with the service of the appeal on a point of law. The appellant shall file the required number of certified copies together with the appeal or the statement of the grounds for the appeal.

(2) If the President of the Patent Office is not a party in an appeal on a point of law, Section 76 shall apply *mutatis mutandis*.

106.—(1) In proceedings in respect of an appeal on a point of law, the provisions of the Code of Civil Procedure regarding exclusion and challenge of members of the Court, authorized representatives and legal assistants, *ex-officio* service of documents, summonses, sessions and time limits, and reinstatement, shall apply *mutatis mutandis*. In the case of reinstatement, Section 123(5) to (7) shall apply *mutatis mutandis*.

(2) For the publicity of proceedings, Section 69(1) shall apply *mutatis mutandis*.

[Amended by Law of July 16, 1998]

107.—(1) An appeal on a point of law shall be the subject of a decision; such decision may be rendered without a hearing.

(2) The Federal Court of Justice shall be bound, when rendering its decision, by the facts established in the decision appealed from, except when admissible and substantiated grounds for an appeal on a point of law are put forward in relation to such facts.

(3) The decision must state the grounds on which it is based and shall be served *ex officio* on the parties.

108.—(1) In the event of reversal of the decision appealed against, the case shall be referred back to the Patent Court for a further hearing and decision.

(2) The Patent Court shall be bound to base its decision on the legal opinion on which the reversal is based.

109.—(1) Where more than one person is party to the proceedings relating to an appeal on a point of law, the Federal Court of Justice may, at its equitable discretion, decide that the costs necessary for the appropriate final disposal of the case shall be borne in whole or in part by one of the parties if and to the extent that this is equitable. If the appeal is rejected or dismissed as inadmissible, the costs arising from the appeal shall be awarded against the appellant. Costs arising from gross negligence by one of the parties shall be awarded against that party.

(2) Costs may only be awarded against the President of the Patent Office if he lodged the appeal on a point of law or made petitions in the proceedings.

(3) In other respects, the provisions of the Code of Civil Procedure relating to the procedure for the assessment of costs and execution of decisions regarding the assessment of costs shall apply *mutatis mutandis*.

2. Procedure on Appeal

110.—(1) An appeal shall lie to the Federal Court of Justice from the judgments of the Nullity Chambers of the Patent Court (Section 84).

(2) The appeal shall be filed in writing with the Federal Court of Justice.

(3) The time limit for appeal shall be one month. It shall begin with service of the full text of the judgment, but at the latest on expiry of five months of delivery of the judgment.

(4) The appeal in writing shall contain

1. the identification of the judgment against which the appeal is directed;
2. a statement that the appeal is filed against that judgment.

(5) The appeal in writing shall be accompanied by an original or a certified copy of the contested judgment.

(6) Decisions of the Nullity Chambers shall be subject to appeal only together with their judgments (Section 84); Section 71(3) of the Code of Civil Procedure shall not apply.

[Amended by Law of July 16, 1998]

111.—(1) The appellant shall state the grounds of appeal.

(2) Where not already contained in the written appeal, the grounds of appeal shall be filed in a written submission to the Federal Court of Justice. The time limit for submitting the grounds of appeal shall be one month; it shall begin with the filing of the appeal. The time limit may be extended by the presiding judge, on request, if it is his conviction that the extension will not delay the procedure or if the appellant can show

significant grounds.

(3) The grounds of appeal shall contain

1. a statement of the extent to which the judgment is contested and the amendments to the judgment that are requested (motions of appeal);
2. the exact designation of the grounds of contestation to be individually presented (grounds of appeal) together with the new facts, evidence and objections to evidence which the party shall submit to justify the appeal.

(4) Parties shall be represented before the Federal Court of Justice by an attorney-at-law or a patent attorney holding their power of attorney. The representative shall be permitted to appear accompanied by a technical advisor.

[Amended by Law of July 16, 1998]

112.—(1) The written appeal and the grounds of appeal shall be served upon the appellee. The date on which the appeal was filed shall be communicated with the service of the appeal. The appellant shall file the required number of certified copies together with the written appeal or the grounds of appeal.

(2) The Chamber or the presiding judge may impose upon the appellee a time limit for submitting his written counter motions and on the appellant for submitting his written observations on the counter motions.

[Amended by Law of July 16, 1998]

113.—(1) The Federal Court of Justice shall be required to examine ex officio whether the appeal as such is admissible and whether it has been filed and grounds given in the statutory form and within the statutory time limit. In the event of failure to comply with any one of these requirements, the appeal shall be dismissed as inadmissible.

(2) A decision may be taken without oral hearing by means of an order.

[Amended by Law July 16, 1998]

114. If the appeal is not dismissed as **inadmissible** by means of an order, the date for the oral hearing shall be determined and the parties advised thereof.

[Amended by Law of July 16, 1998]

115.—(1) The Federal Court of Justice shall have discretion to take all measures necessary for the investigation of the case. It shall not be bound by the factual statements and offers of proof of the parties.

(2) Evidence may also be taken through the intermediary of the Patent Court.

116.—(1) The judgment of the Federal Court of Justice shall be rendered on the basis of a hearing. Section 69(2) shall apply *mutatis mutandis*.

(2) The summons shall be served with at least two weeks' notice.

(3) The hearing may be dispensed with if

1. the parties consent;
2. a party is to be declared to have forfeited the legal remedy; or

3. only the costs are to be decided.

117.—(1) The introduction of new facts and evidence at a hearing shall be admissible only to the extent that it results from the factual statements of the appellee in the written declaration.

(2) The Federal Court of Justice may also consider facts and evidence which the parties are forbidden to invoke.

(3) Section 115 shall be applicable if any additional evidence is required to be taken.

(4) When the judgment is to be based upon factors which have not been discussed by the parties, they shall be given an opportunity to express their views thereon.

118.—(1) Facts alleged by one party on which the other party has made no statement may be deemed to be proven.

(2) If none of the parties appears at the hearing, the judgment shall be based on the files.

119.—(1) At the hearing, minutes shall be taken which shall record the general course of the proceedings.

(2) The minutes shall be signed by the presiding judge and the registrar of the Court.

120.—(1) The judgment shall be pronounced at the hearing that concludes the proceedings or at a hearing whose date shall be fixed forthwith.

(2) If pronouncement of the grounds for the decision is deemed appropriate, it shall take the form of a reading of such grounds or an oral communication of the essential elements thereof.

(3) The judgment shall be served *ex officio*.

121.—(1) The provisions of Section 144 concerning assessment of the value in dispute shall apply *mutatis mutandis* in proceedings before the Federal Court of Justice.

(2) A decision on the costs of proceedings shall be included in the judgment. The provisions of the Code of Civil Procedure concerning costs of procedure (Sections 91 to 101) shall apply *mutatis mutandis* unless equity should require a different decision; the provisions of the Code of Civil Procedure on the procedure for the assessment of costs (Sections 103 to 107) and execution of decisions regarding the assessment of costs (Sections 724 to 802) shall apply *mutatis mutandis*.

[Amended by Law of July 16,1998]

3. Special Procedure on Appeal

122.—(1) An appeal from decisions of the Nullity Chambers of the Patent Court on the issue of provisional orders in proceedings relating to the grant of a compulsory license (Section 85) shall lie with the Federal Court of Justice. Section 110(6) shall apply *mutatis mutandis*.

(2) An appeal shall be lodged in writing with the Federal Court of Justice within one month after service of the decision.

(3) The time limit for appeal shall begin with service of the full text of the judgment, but at the latest on expiry of five months after it has been delivered.

(4) Sections 74(1), 84 and 110 to 121 shall apply *mutatis mutandis* with respect to the proceedings before the Federal Court of Justice.

[Amended by Law of July 16,1998]

Part VII

Common Provisions

123.—(1) Any person who, through no fault of his own, has been prevented from observing a time limit, default of which is detrimental to his rights according to the provisions of the law, shall, on request, be reinstated. This provision shall not apply to the time limit for filing an opposition (Section 59(1)), to the time limit allowed an opponent for filing an appeal against the maintenance of a patent (Section 73(2)) or to the time limit for filing patent applications for which a priority under Section 7(2) and Section 40 may be claimed.

(2) Reinstatement shall be requested in writing within two months after the removal of the impediment. The request shall state the facts upon which the reinstatement may be based; these facts must be established to the satisfaction of the Court in the request or in the procedure on the request. The action in default shall be made good within the time limit for the request; if this is done, reinstatement may be granted without a request. After one year from the expiration of the time limit which has not been observed, reinstatement may no longer be requested and the action in default may no longer be made good.

(3) A decision on the request shall be taken by the authority that is required to decide on the action to be made good.

(4) The decision on reinstatement shall not be appealable.

(5) Any person who, in Germany, has in good faith exploited the subject matter of a patent which, as a result of reinstatement, has re-entered into force in the period between the lapsing and the re-entry into force of the patent or has, within that period, made the necessary arrangements for such purpose, shall be entitled to continue to exploit the subject matter of the patent for the needs of his own business in his own or the plants or workshops of others. This entitlement may only be inherited or transferred together with the business.

(6) Subsection (5) shall apply *mutatis mutandis* if, as a result of reinstatement, the provisions of Section 33(1) again become effective.

(7) Any person who, in Germany, has in good faith exploited the subject matter of an application which, as a result of reinstatement, claims the priority of an earlier foreign application (Section 41), in the period between the expiry of the 12-month time limit and the re-entry into force of the priority right, or has within that period, made the necessary arrangements for such purpose, shall also be entitled in accordance with subsection (5).

[Amended by Law of July 16, 1998]

124. In proceedings before the Patent Office, the Patent Court and the Federal Court of Justice, the parties shall make their statements on questions of fact fully and truthfully.

125.—(1) If an opposition or action for a declaration of nullity of a patent is based upon the assertion that the subject matter of the application or of the patent is not patentable under Section 3, the Patent Office or the Patent Court may require that

originals, photocopies or certified copies of the publications mentioned in the opposition or in the action which are not available at the Patent Office or Patent Court be furnished, in one copy each, for the Patent Office or Patent Court and for the parties to the proceedings.

(2) Uncertified or certified translations of publications in a foreign language shall be produced when required by the Patent Office or Patent Court.

126. The language of the Patent Office and Patent Court shall be German, where not otherwise provided. In other respects, the provisions of the Judiciary Act concerning the language of the courts shall be applicable.

[Amended by Law of July 16, 1998]

127.—(1) For the purpose of the service of documents in proceedings before the Patent Office and the Patent Court, the provisions of the Law on Service in Administrative Procedures [*Verwaltungszustellungsgesetz*] shall apply, subject to the following conditions:

1. if acceptance of service by registered letter is refused without such grounds as provided by law, service shall nevertheless be deemed to have been effected;
2. service on addressees residing abroad may also be effected by mail in accordance with Sections 175 and 213 of the Code of Civil Procedure;
3. for the purposes of service upon holders of certificates of representation (Section 177 of the Patent Attorney Regulations [*Patentanwaltsordnung*]), Section 5(2) of the Law on Service in Administrative Procedures shall apply *mutatis mutandis*;
4. documents may also be served on addresses for whom a mail box has been installed at the Patent Office or at the Patent Court, by depositing the documents in the mail box of the addressee. A written statement relating to the deposit shall be added to the files of the case. The time of the deposit shall be recorded on the document. Service shall be deemed to have been effected on the third day after deposit in the mail box.
5. (repealed)

(2) Section 9(1) of the Law on Service in Administrative Procedures shall not apply if service initiates the period allowed for the filing of an appeal (Section 73(2), 122(3)), an appeal on a point of law (Section 102(1)) or an appeal (Section 110(3)).

[Amended by Law of July 16, 1998]

128.—(1) The courts shall be required to furnish legal assistance to the Patent Office and the Patent Court.

(2) In proceedings before the Patent Office, the Patent Court shall, at the request of the Patent Office, prescribe orders or coercive means against witnesses and experts who fail to appear or who refuse to give evidence or to give it under oath. Enforcement of the summons served on a witness who has failed to appear shall likewise be ordered.

(3) A Chamber of Appeal of the Patent Court composed of three legal members shall pronounce on the request made under subsection (2). Pronouncement in such case shall take the form of a decision.

Part VIII

Legal Aid

129. In proceedings before the Patent Office, the Patent Court and the Federal Court of Justice, parties shall be granted legal aid in accordance with the provisions of Sections 130 to 138.

[Amended by Law of July 16,1998]

130—(1) In proceedings for the grant of a patent, an applicant for a patent shall, on request, subject *mutatis mutandis* to Sections 114 to 116 of the Code of Civil Procedure, be granted legal aid if there are adequate prospects that the patent will be granted. Payments shall be made to the Federal Treasury.

(2) The grant of legal aid shall have the effect that the legal consequences resulting from the non-payment of the fees which are the subject of legal aid shall not come into effect. Section 122(1) of the Code of Civil Procedure shall also apply *mutatis mutandis*.

(3) Where more than one person applies for a patent jointly, legal aid shall be granted only if all the applicants for the patent comply with the requirements of subsection(1).

(4) If the applicant for the patent is not the inventor or his sole successor in title, legal aid shall be granted only if the inventor also complies with the requirements of subsection(1).

(5) On request, as many annual fees shall be included in the legal aid, in lieu of a delay granted or to be granted under Section 18(1), as are necessary to avoid a limitation opposing a grant of legal aid under Section 115(3) of the Code of Civil Procedure. The installments paid shall be set off against the annual fees only when the costs of the patent-granting procedure, including costs possibly arising for an appointed representative, are covered by the payment of the installments. To the extent that the annual fees shall be considered paid by the payment of the installments, Section 19 shall apply *mutatis mutandis*. The first sentence shall apply *mutatis mutandis* to the inclusion of the fees in the legal aid under Section 23(4), third sentence, and (5), second sentence.

(6) Subsections (1) to (3) shall apply *mutatis mutandis* in cases specified in Sections 43 and 44 to the third party filing the request if that third party can substantiate a personal interest worthy of protection.

131. In proceedings for limitation of a patent (Section 64), the provisions of Section 130(1),(2) and (5) shall apply *mutatis mutandis*.

132.—(1) In proceedings for opposition (Sections 59 to 62), a patentee shall, on request, be granted legal aid, subject *mutatis mutandis* to Section 114 to 116 of the Code of Civil Procedure and Section 130(1), second sentence, and (2),(4) and (5). No account shall be taken of whether the legal defense offers adequate prospects of success.

(2) The first sentence of subsection (1) shall apply *mutatis mutandis* to the opponent and to the third party intervening under Section 59(2) as well as to the parties in procedures for nullity of a patent or for a compulsory license (Sections 81,85) if the person making the request can substantiate a personal interest worthy of protection.

[Amended by Law of July 16, 1998]

133. A party who has been granted legal aid in accordance with the provisions of Sections 130 to 132 may, on request, be assigned a patent attorney or attorney-at-law of his choice who is prepared to represent him, or, on express demand, a holder of a certificate of representation, if such assignment appears necessary for the proper handling of the proceedings or a party with contrary interests is represented by a patent attorney, an attorney-at-law or a holder of a certificate of representation. Section 121(3) and (4) of the Code of Civil Procedure shall apply *mutatis mutandis*.

134. If a request for the grant of legal aid in accordance with Sections 130 to 132 is filed prior to the expiration of a period prescribed for the payment of a fee, that period shall be interrupted until the expiration of one month after service of the decision on the request.

135.—(1) A request for the grant of legal aid shall be filed in writing with the Patent Office, the Patent Court or the Federal Court of Justice. In proceedings under Sections 110 and 122, the request may also be deposited with the registry of the Federal Court of Justice.

(2) The decision on a request shall be made by the authority competent for the proceedings in respect of which legal aid is sought.

(3) Decisions rendered under Sections 130 to 133 shall not be appealable except for decisions of the Patent Division refusing the grant of legal aid or the assignment of a representative under Section 133; an appeal on points of law shall be excluded. Section 127(3) of the Code of Civil Procedure shall apply *mutatis mutandis* to proceedings before the Patent Court.

[Amended by Laws of December 9, 1986 and July 16, 1998]

136. The provisions of Sections 117(2) to (4), 118(2) and (3), 119 and 120(1),(3) and (4), as well as Sections 124 and 127(1) and (2) of the Code of Civil Procedure, shall apply *mutatis mutandis*. In opposition proceedings and in proceedings for obtaining a declaration of nullity of a patent or for a compulsory license (Sections 81, 85), the same shall also apply to Sections 117(1), second sentence, 118(1), 122(2), and Sections 123, 125 and 126 of the Code of Civil Procedure.

[Amended by Laws of December 9, 1986 and July 16, 1998]

137. Legal aid may be withdrawn if the invention filed or protected by a patent, with reference to which legal aid has been granted, is commercially exploited through assignment, use, licensing or in any other way, and the income earned thereby has so altered the circumstances relevant for the granting of legal aid that the payment of the costs of proceedings can reasonably be expected to be paid by the party concerned; this shall also apply after the end of the period laid down in Section 124, item 3, of the Code of Civil Procedure. The party to whom legal aid has been granted shall be obliged to reveal every commercial exploitation of the relevant invention to the authority which made the decision on the grant.

138.—(1) In proceedings relating to appeals on points of law (Section 100), the right to legal aid shall be granted to a party, upon request, under Sections 114 to 116 of the Code of Civil Procedure *mutatis mutandis*.

(2) The request for the grant of legal aid shall be filed in writing with the Federal Court of Justice; it may also be declared before and recorded at the registrar's office of the Court. The Federal Court of Justice shall decide on the request.

(3) In other respects, the provisions of Sections 130(2), (3), (5) and (6), 133, 134, 136 and 137 shall apply *mutatis mutandis*, provided that only an attorney-at-law admitted to practice before the Federal Court of Justice may be assigned to a party who has been granted legal aid.

Part IX Infringement

139.—(1) Any person who exploits an invention contrary to Sections 9 to 13 may be sued by the injured party to enjoin such use.

(2) Any person who undertakes such action intentionally or negligently shall be liable for compensation to the injured party for the damage suffered therefrom. If the infringer is charged with only slight negligence, the Court may fix, in lieu of compensation, an indemnity within the limits of the damage to the injured party and the profit which has accrued to the infringer.

(3) If the subject matter of a patent is a process for obtaining a new product, the same product when produced by any other party shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process. In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

140. If, prior to the grant of a patent, rights based on an application the files of which may be inspected by any person (Section 31(1), the second half of the second sentence and (2)) are claimed in court proceedings, and if the decision on the litigation depends on whether an action exists under Section 33(1), the Court may order that the proceedings be deferred until the decision is made on the grant of the patent. If a request for examination pursuant to Section 44 has not been filed, the Court may, at the request of the opposing party, give a time limit for filing the request for examination to the party claiming rights on the basis of the application. If the request for examination is not filed within that time limit, the rights deriving from the application involved in the litigation may not be claimed.

140a.—(1) In the cases covered by Section 139, the injured party may require destruction of the product that is the subject matter of the patent and that is in the possession of the infringer or is his property unless the infringing nature of the product can be removed in some other way and its destruction would be disproportionate in the individual case for the infringer or the owner. The first sentence shall also apply in the case of a product that has been directly manufactured by means of a process that is the subject matter of the patent.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* to devices that are the property of the infringer and that are used or intended exclusively or almost exclusively for the unlawful manufacture of a product.

[Added by Law of March 7, 1990]

140b.—(1) Any person who uses a patented invention in contravention of Sections 9 to 13 may be required by the injured party to give information as to the origin and distribution channels of the product used, without delay, except where disproportionate in the individual case.

(2) The person required to give information under subsection (1) shall give particulars of the name and address of the manufacturer, the supplier and other prior owners of the product, of the trade customer or of the principal, as also in respect of the quantity of products that have been manufactured, dispatched, received or ordered.

(3) In those cases where infringement is obvious, the obligation to provide information may be imposed by an injunction in compliance with the Code of Civil Procedure.

(4) Such information may only be used in criminal proceedings or in proceedings under the Law on Minor Offenses [*Gesetz über Ordnungswidrigkeiten*] against the person required to give information, or against a dependent person under Section 52(1) of the Code of Criminal Procedure [*Strafprozessordnung*], in respect of an act committed before the information was given, with the consent of the person required to give the information.

(5) Further claims to information shall remain unaffected.

[Added by Law of March 7, 1990]

141. Actions for infringement of the rights in a patent shall become statute-barred after three years from the time when the claimant obtains knowledge of the infringement and of the infringer and, irrespective of such knowledge, after 30 years from the identity of the infringement. Section 852(2) of the Civil Code [*Bürgerliches Gesetzbuch*] shall apply *mutatis mutandis*. If the infringer has obtained anything through the infringement at the expense of the claimant, the infringer shall be liable, even after expiration of the term of limitation, for restitution in accordance with the provisions on the surrender of unjust enrichment.

142.—(1) Any person who, without the necessary consent of the patentee or the holder of the supplementary certificate of protection (Sections 16a and 49a)

1. makes or offers, puts on the market, uses or imports or stocks for these purposes a product which is the subject matter of a patent or a supplementary certificate of protection (Section 9, second sentence, item 1); or

2. uses or offers for use within the territory to which this Law applies a process which is the subject matter of a patent or a supplementary certificate of protection (Section 9, second sentence, item 2),

shall be liable to imprisonment not exceeding three years or a fine.

The first sentence, item 1, shall also apply if there is a product which has been directly produced by a process which is the subject matter of a patent or a supplementary certificate of protection (Section 9, second sentence, item 3).

(2) Where the offender acts by way of trade, he shall be liable to imprisonment of up to five years or a fine.

(3) The attempt to commit such an offense shall be punishable.

(4) Offenses under subsection (1) shall only be prosecuted on complaint unless the prosecuting authorities deem that *ex-officio* prosecutions is justified in view of the particular public interest.

(5) Objects implicated in an offense may be confiscated. Section 74a of the Penal Code shall apply. Where the claims referred to in Section 140a are upheld in proceedings under the provisions of the Code of Criminal Procedure with regard to compensation of the injured party (Sections 403 to 406c), the provisions on confiscation shall not be of application.

(6) If a penalty is pronounced, the Court shall, at the request of the injured party and if the latter can show a justified interest, order publication of the judgment. The nature of the publication shall be laid down in the judgment.

[Amended by Laws of March 7, 1990 and March 23, 1993]

142a.—(1) A product that infringes a patent protected under this Law shall be subject, at the request of the holder of the rights and against his security, to seizure by the customs authorities, on import or export, in those cases where the infringement is obvious. This provision shall apply in trade with other Member States of the European Union and with the other Contracting States to the Agreement on the European Economic Area only insofar as controls are carried out by the customs authorities.

(2) Where the customs authorities order a seizure, they shall advise the person entitled to dispose, and also the petitioner thereof without delay. The origin, quantity and place of storage of the product, together with the name and address of the person entitled to dispose, shall be communicated to the petitioner; the secrecy of correspondence and of mail (Section 10 of the Basic Law [*Grundgesetz*]) shall be restricted to that extent. The petitioner shall be given the opportunity to inspect the product where such inspection does not constitute a breach of commercial or trade secrecy.

(3) Where no opposition to the seizure is made, at the latest within two weeks of service of the notification under the first sentence of subsection (2), the customs authorities shall order confiscation of the seized product.

(4) If the person entitled to dispose opposes seizure, the customs authorities shall inform the petitioner thereof without delay. The petitioner shall be required to declare to the customs authorities, without delay, whether he maintains the request under subsection (1) in respect of the seized copies.

1. If the petitioner withdraws his request, the customs authorities shall lift the seizure without delay.
2. If the petitioner maintains his request and submits an executable court decision ordering the impounding of the seized copies or the limitation of the right to dispose, the customs authorities shall take the necessary measures.

Where neither of the cases referred to in items 1 and 2 is applicable, the customs authorities shall lift the seizure on the expiry of two weeks after service of the notification to the petitioner under the first sentence; where the petitioner can show that a court decision according to item 2 has been requested, but has not yet been received, the seizure shall be maintained for a further two weeks at most.

(5) Where the seizure proves to have been unjustified from the beginning and if the petitioner has maintained the request under subsection (1) in respect of the seized product or has not made a declaration without delay (second sentence of subsection (4)), he shall be required to compensate the damages that seizure has occasioned to the person entitled to dispose.

(6) The petition under subsection (1) is to be submitted to the Regional Finance Office and shall be effective for two years unless a shorter period of validity has been requested; the request may be repeated. The cost of official acts related to the request

shall be charged to the petitioner in accordance with Section 178 of the Fiscal Code [*Abgabenordnung*].

(7) Seizure and confiscation may be opposed by the legal remedies allowed by the fixed penalty procedure under the Law on Minor Offenses in respect of seizure and confiscation. The petitioner shall be heard in the review proceedings. An immediate appeal shall lie from the decision of the Local Court; it shall be heard by the Provincial High Court.

[Added by Law of March 7, 1990 and amended by Law of July 16, 1998]

Part X

Procedure in Patent Litigation

143.—(1) For all actions whereby a claim arising out of one of the legal relationships regulated in this Law is asserted (patent litigation), the civil chambers of the regional courts shall have exclusive jurisdiction without regard to the value in dispute.

(2) The Governments of the *Länder* shall have power to allot by statutory order patent litigation for the areas of several regional courts to one such court. The Governments of the *Länder* may transfer those powers to the provincial administrations of justice.

(3) The parties may also, in cases of patent litigation, be represented before the court by attorney-at-law admitted to practice in the *Landgericht* before which the action, in the absence of the arrangement under subsection (2), would be heard. The same shall apply in the case of representation before the Court of Appeal¹.

(4) Any additional costs incurred by a party arranging to be represented, as provided in subsection (3), by an attorney-at-law not admitted to practice in the court hearing the case shall not be refunded.

(5) Of the costs arising from the collaboration of a patent attorney in the case, fees up to the amount of a full fee according to Section 11 of the Federal Regulations on Fees for Attorneys-at-Law [*Bundesgebührenordnung für Rechtsanwälte*] shall be refunded, as shall the necessary expenses of the patent attorney.

¹This subsection, as amended by the Law of September 2, 1994, will read as follows:

“(3) Where an appeal is lodged against a decision of the court in patent litigation, the parties may also be represented before the Court of Appeal by attorneys-at-law admitted to practice before the Provincial High Court that would have heard the appeal in the absence of a ruling under subsection (2).

[Amended by Law of September 2, 1994]”

It will enter into force on January 1, 2000, for the following *Länder* of Germany: Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Schleswig-Holstein; it will enter into force on January 1, 2005, for the other *Länder*.

144.—(1) If, in a patent case, a party satisfies the court that the awarding of the costs of the case against him according to the full value in dispute would considerably endanger his financial position, the court may, at his request, order that party's liability to pay court costs to be adjusted in accordance with a portion of the value in dispute that shall be appropriate to his financial position. As a result of the order, the favored party shall likewise be required to pay the fees of his attorney-at-law only in accordance with that portion of the value in dispute. To the extent that the costs of the case are awarded against him or to the extent to which he assumes such costs, he shall be required to refund the court fees paid by the opposing party and the fees of the latter's attorney-at-law only in accordance with that portion of the value in dispute. To the extent that the extrajudicial costs are ordered to be paid by the opposing party or are assumed by that party, the attorney-at-law of the favored party may recover his fees from the opposing party in accordance with the value in dispute applying to the latter.

(2) The request under subsection (1) may be declared before and recorded at the registrar's office of the Court. It shall be presented before the substance of the case is heard. Thereafter, it shall only be admissible if the presumed or fixed value in dispute is subsequently increased by the Court. Before the decision on the request is given, the opposing party shall be heard.

145. Any person who has brought an action pursuant to Section 139 may bring a further action against the defendant on account of the same or a similar act on the basis of another patent only if, through no fault of his own, he was not in a position to assert that patent also in the earlier suit.

Part XI

Advertising of Patent

146. Any person who places on articles or their packaging a marking of such a nature as to create the impression that the articles are protected by a patent or a patent application pursuant to this Law, or any person who uses a marking of such a nature in public notices, on signboards, on business cards or in similar announcements, shall be required to give on demand, to any person having a legitimate interest in knowing the legal position, information as to the patent or patent application upon which the use of the marking is based.