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## Order Concerning Patent Applications

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of May 29, 1981<sup>1</sup>

(last amended by the Fifth Order on the amendment of the  
Order Concerning Patent Applications  
of June 27, 1997<sup>2</sup>)

In accordance with Section 35, subsection 4, of the Patent Law in the version promulgated on December 16, 1980<sup>3</sup> (BGBl. 1981 I p. 1) in conjunction with Article 20 of the Order Concerning the German Patent Office of September 5, 1968<sup>4</sup> (BGBl. I p. 997) the following regulations are hereby made:

### Section 1 Scope of Application

In addition to the provisions of the Patent Law, the following prescriptions shall apply to applications for the protection of an invention by a patent.

### Section 2 Filing of the Application

The application (Sec. 35 (1) of the Patent Law) and the abstract (Sec. 36 of the Patent Law) shall be filed with the Patent Office in writing and in the German language.

### Section 3 Request for the Grant of the Patent

(1) The request for the grant of the patent (Sec. 35 (1) sentence 3, No 1 of the Patent Law) shall be submitted on the form prescribed by the Patent Office.

(2) The request shall contain:

1. the family name and the given name(s), the trade name or any other designation of the applicant, the residence or principal place of business and the address (street and number of building, postal code, place, postal district, if any). In the case of places in foreign countries, the State and district shall also be indicated; foreign place names shall be underlined. It shall be made clearly visible

whether the patent is requested on behalf of one or more individuals or companies, or for the applicant under his trade name or under his civil name. Firms shall be designated in the manner in which they appear in the Commercial Register (column 2 a). The Office shall be immediately notified of any subsequent changes in name, trade name or other designation, residence or principal place of business, or address; in the case of changes in name or trade name, written evidence shall be submitted;

2. a short and precise title of the invention;
3. a statement that a patent is requested for the invention. If a patent of addition is requested, this fact shall be stated and the file number of the parent patent application or the number of the parent patent shall be given;
4. if a representative is appointed, his name and address. The power of attorney shall be appended to the request. A power of attorney submitted to the Patent Office shall be referred to, indicating its number of registration. More than one representative may be appointed;
5. if several persons having no common representative file an application, or several representatives having different addresses are appointed, a statement indicating which of the said representatives is entitled to receive service of official communications;
6. the signature of the applicant(s) or his (their) representative(s). In the event of an employee signing the request on behalf of his employer, the authority to sign shall be established; an employee's authority to sign submitted to the Patent Office shall be referred to, indicating its number of registration.

### Section 4 Patent Claims

(1) Patent claims shall contain what is to be protected by patent (Sec. 35 (1) sentence 3, No 2 of the Patent Law) and shall be drafted in one piece or shall be divided into generic part and characterizing portion (two piece). In both cases the version may be arranged according to features.

<sup>1</sup> Bl. f. PMZ 1981, 229

<sup>2</sup> Bl. f. PMZ 1997, 274 seq.

<sup>3</sup> Bl. f. PMZ 1981, 2 seq.

<sup>4</sup> Bl. f. PMZ 1968, 278 seqq.

(2) If the two piece claim formulation is chosen, the known features of the invention comprised in the state of the art shall be included in the generic part; the characterizing portion shall include the features of the invention for which protection is sought in connection with the features of the generic part. The characterizing portion shall be preceded by such words as "characterized in that" or "characterized by" or any other expressions to this effect.

(3) If patent claims are arranged according to features or groups of features, the said arrangement shall be set off by starting a new line for each feature or group of features. The features or groups of features shall be preceded by subdivision signs clearly set off against the text matter.

(4) The essential features of the invention shall be indicated in the first patent claim (principal claim).

(5) An application may contain several independent patent claims provided the principle of unity of the invention is respected (Sec. 35(1) sentence 2 of the Patent Law). Subsection 4 shall apply mutatis mutandis. Independent claims may contain a reference to at least one of the preceding patent claims.

(6) Any principal or independent patent claim, respectively, may be followed by one or more dependent claims concerning particular embodiments of the invention. Dependent claims shall contain a reference to at least one of the preceding patent claims. They shall be grouped together to the extent and in the most appropriate way possible.

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

(8) Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or drawings. In particular, they shall not rely on such references as: "as described in part ... of the description", or "as illustrated in figure ... of the drawings".

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

## Section 5 Description

(1) The description according to Section 35 (1) sentence 3, No 3 of the Patent Law shall first state the title of the invention as appearing in the request.

(2) The description shall further:

1. specify the technical field to which the invention relates unless it results from the claims or the indications concerning the state of the art;
2. the state of the art known to the applicant which may be taken into account for the understanding of the invention and its protectability by indicating the sources known to the applicant;
3. the problem underlying the invention unless it results from the indicated solution or the indications made with regard to subsection 6, in particular, if it is indispensable for the understanding of the invention or for its detailed textual definition.

4. the invention for which protection is sought in the patent claims;

5. indicate, when it is not obvious from the description or the nature of the invention, the way in which the invention is capable of being exploited in industry;

6. state any advantageous effects of the invention with reference to the background art;

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

(3) The description shall not include such indications as are not necessary in order to explain the character of the invention. Repetitions of claims or parts of claims may be replaced by corresponding references.

## Section 5a Presentation of Nucleotide and Amino Acid Sequences

(1) If nucleotide or amino acid sequences are disclosed in the patent application the description shall contain a corresponding sequence listing. The sequence listing shall comply with the requirements provided for in the Notice No 11/94 of August 8, 1994, of the President of the German Patent Office, *Blatt für Patent-, Muster- und Zeichenwesen* 1994, p. 303 to 331.

(2) In addition to the written application documents a data carrier containing the sequence listing in machine readable form shall be submitted. The data carrier shall be clearly marked as a data carrier for a sequence listing and comply with the requirements provided for in the Notice No 11/94 of August 8, 1994, of the President of the German Patent Office, *Blatt für Patent-, Muster- und Zeichenwesen* 1994, p. 303 to 331. The data carrier shall be accompanied by a statement that the information recorded on the data carrier is identical to the written sequence listing. If the data carrier furnished is damaged or unusable, a data carrier in perfect condition shall be submitted subsequently.

(3) If a sequence listing or the corresponding data carrier is filed or corrected after the date of filing, the applicant shall submit a statement that the sequence listing or the data carrier so filed or corrected does not include matter which goes beyond the content of the application as filed.

(4) In the case of an international application under the Patent Cooperation Treaty in respect of which the German Patent Office is a designated or an elected Office (Art. III § 4 (1), § 6 (1) of the Law on International Patent Treaties), the provisions of the Regulations under the Patent Cooperation Treaty shall directly apply.

## Section 6 Drawings

(1) The drawings shall be on sheets with the following minimum margins:

|            |        |
|------------|--------|
| top        | 2.5 cm |
| left side  | 2.5 cm |
| right side | 1.5 cm |
| bottom     | 1.0 cm |

The area used for drawings may not exceed 26.2 cm x 17 cm; the area used for the drawing of the abstract may be 8.1 cm x 9.4 cm when presented in an upright position, or 17.4 cm x 4.5 cm when presented sideways.

(2) Drawings shall be executed with sufficient contrast in durable, black, sufficiently dense and dark, uniformly thick and clearly delineated lines and strokes without colourings.

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

(4) The scale of the drawings and the distinctness of their graphical execution shall be such that, after electronic data capture (scanning), with a linear reduction in size to two-thirds all details are discernable without difficulty. If, as an exception, the scale is given on a drawing, it shall be represented graphically.

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

(6) The same sheet of drawings may contain several figures. The figures shall be arranged on the sheet in such a way as to avoid wasting space while remaining clearly separated from one another, preferably in an upright position, and shall be numbered consecutively in arabic numerals. Drawings concerning the state of the art are admissible if the understanding of the invention is thereby facilitated; however, they shall be clearly marked as "Stand der Technik" (state of the art). Where figures drawn on two or more sheets are intended to form one whole figure, the figures on the several sheets shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures. All elements of a figure shall be in the same scale, except where the use of different scales is indispensable for the clarity of the figure.

(7) Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. The same applies mutatis mutandis to the abstract and its drawing.

(8) The drawings shall not contain text matter, except, when absolutely indispensable, a single word or words such as "water", "steam", "open", "closed", "section on AB", and, in the case of electric circuits and block schematics or flow sheet diagrams, a few short catchwords indispensable for understanding.

## Section 7 Abstract

(1) The abstract according to Section 36 of the Patent Law shall preferably not contain more than one hundred and fifty words.

(2) The abstract may also indicate the chemical formula best characterizing the invention.

(3) Section 4 (8) shall apply mutatis mutandis.

## Section 8 General Requirements of the Application Documents

(1) The patent claims, the description, the drawings as well as the text and the drawing of the abstract shall be filed on separate sheets in three copies. The prescribed size of sheet is A 4 according to DIN 476, the sheets being used in the upright position. For the drawings, the sheets may, if appropriate, also be used sideways; in this case, the top of the figures shall be on the left side of the sheet. The same applies mutatis mutandis to the presentation of chemical and mathematical formulae and tables. All sheets shall be free from cracks, creases and folds. The paper of the sheets shall be nontransparent, pliable, strong, smooth, mat and durable.

(2) The application documents shall be so presented as to admit of electronic data capture.

(3) The sheets shall be typed or printed, or contain drawings on one side only. The sheets shall be connected in such a way that they can easily be separated and joined together again. Each of the documents making up the application (request, patent claims, description, drawings) and the abstract (text matter, drawing) shall commence on a new sheet. All the sheets containing the description shall be numbered in consecutive arabic numerals. These shall be placed at the top of the sheet, in the middle. The lines of each sheet of the description and of the claims shall preferably be numbered in sets of five. These numbers shall appear on the left side, to the right of the margin.

(4) The minimum margins on the sheets of the request, the patent claims, the description and the abstract shall be as follows:

|            |        |
|------------|--------|
| top        | 2.5 cm |
| left side  | 2.5 cm |
| right side | 2.0 cm |
| bottom     | 2.0 cm |

The minimum margins may contain the name, the trade name or other designation of the applicant as well as the number of the application.

(5) The request, the patent claims, the description and the abstract shall be typed or printed. The letters of the type used shall be clearly separated from one another and not tangent. Graphic symbols and characters and chemical or mathematical formulae may, if necessary, be written by hand or drawn. The typing shall be 1 1/2 spaced. All text matter shall be in characters, the capital letters of which are not less than 0.21 cm high, and shall be in a dark, indelible colour. The typeface shall have sharp outlines and be high-contrast. Each sheet shall be reasonably free from erasures, alterations, overwritings and interlineations. If appropriate, non-compliance with this rule may be authorized.

(6) The documents making up an application shall clearly show to which application they pertain. On all documents filed after communication of the official file number, the latter shall be completely indicated.

(7) The documents making up the application and the abstract shall not contain pictorial representations in the text matter. Only chemical or mathematical formulae as well as tables are excepted. Fancy names, trade marks or other

designations which are not suited to indicate clearly the nature of an object, shall not be used. If, in exceptional cases, an indication can only be clearly denoted by using a trade mark, the said designation shall make clear that it is a trade mark.

(8) Measuring units shall be indicated according to the Law on Measuring Units and the Implementing Regulations thereunder in the applicable version. For chemical formulae, the symbols and signs recognized in national and international practice in the special field shall be employed.

(9) Technical terms and designations as well as reference signs shall be used uniformly throughout the application unless the use of different terms is adequate. With respect to technical terms and designations, the same applies to applications of addition in relation to the parent application.

(10) If the documents making up an application are altered in the course of the proceedings, the applicant shall submit clean copies incorporating any changes.

(11) Insofar as the alterations have not been proposed by the Patent Office, the applicant shall state in detail where the features of the invention described in the new documents are disclosed in the original documents submitted. In addition, the alterations effected shall be marked either in a copy of the altered documents, by separately listed explanations, or in the clean copies. If the marking is carried out in the clean copies the alterations shall be printed in bold type or highlighted by means of a yellow fluorescent marker pen (which does not interfere with electronic data capture). Underlining shall not be admissible.

## Section 9 Models and Samples

(1) Models and samples shall be supplied to the Patent Office only upon request. They shall bear durable labels indicating the contents and the corresponding application to which they pertain. If necessary, the patent claim and the description shall be clearly referred to.

(2) Fragile models and samples shall be submitted in sturdy containers clearly so marked. Small articles shall be fastened on stiff paper.

(3) Samples of chemical materials shall be submitted in durable and firmly closed containers. If they are poisonous, corrosive or inflammable or have other dangerous characteristics, they shall bear an indication to this effect.

(4) Dyeing and tanning samples as well as other flat samples shall be firmly fixed on stiff paper (size A 4 according to DIN 476). They shall be accompanied by a precise description of the process of manufacture or use followed.

## Section 10 Translations

(1) If any document concerning a German patent application is not in German, it shall be accompanied upon request by a German translation made by an officially authorized translator. Upon request, the translator's signature and the fact that he is officially authorized to perform such duties shall be officially certified (Article 129 of the Civil Code).

(2) Where, in the case of priority documents submitted under the revised Paris Convention for the Protection of Industrial Property or of copies of earlier applications (Sec. 41 (1) sentence 2 of the Patent Law) a German translation is required, such translation shall be furnished on demand.

## Section 11 Supplementary Protection Certificates

(1) The request for the grant of a supplementary protection certificate (Sec. 49a of the Patent Law<sup>5</sup>) shall be filed on the printed form drawn up by the Patent Office. Sec. 3 (2) No 1, Sec. 3 (2) Nos 5 and 6, and Sec. 10 (1) shall apply *mutatis mutandis*.

(2) The request for the grant of a supplementary protection certificate for medicinal products shall contain the information and documents specified in Article 8 of the Council Regulation (EEC) No 1768/92 of 18 June 1992<sup>6</sup> concerning the creation of a supplementary protection certificate for medicinal products (OJ EC No L 182/1).

(3) The request for the grant of a supplementary protection certificate for plant protection products shall contain the information and documents specified in Article 8 of the Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products (OJ EC No L 198 p.30).

(4) The request shall be accompanied by information setting forth the protection afforded by the basic patent.

## Section 12 Transitional Regulation

The provisions of the present Order heretofore in force shall apply to patent applications filed before the entry into force of the amendments<sup>7</sup> of the present Order.

## Section 13 Entry into Force; Repealed Provisions

The present Order shall enter into force on the day following its promulgation. At the same date, the Regulations Concerning Patent Applications of July 30, 1968 (BGBl. I p. 1004), last amended by the Order of April 28, 1978 (BGBl. I p. 629) shall cease to be effective.

<sup>5</sup> Bl. f. PMZ 1993, 171 seq.

<sup>6</sup> Bl. f. PMZ 1992, 494 seqq.

<sup>7</sup> September 1, 1997