

Utility Model Protection in Germany

Utility models have a long tradition in Germany, having been introduced as early as 1891. While the general remarks in the article “What is a utility model” are essentially valid for Germany, the following specific points apply:

- A utility model is registered about 6 to 8 weeks after filing, so effective protection is rapidly available.
- As mentioned, the requirements regarding inventiveness are essentially the same as for a patent.
- The prior art is more limited compared to that of patents: It only comprises written descriptions. Prior use is relevant only within the territory of Germany.
- Description or use by the applicant within six months before the application date (priority date) of the utility model is not taken into account as prior art (six months grace period)
- In Germany, utility models are not available for methods.
- As a utility model is not an examined right, it is essential that validity is assessed before initiating infringement action. Failure to do this might result in the utility model owner having to pay damages if the utility model is found to be invalid during infringement proceedings.
- The maximum term of protection for a utility model in Germany is 10 years.
- A utility model can be “branched-off” from a pending patent application (German national filing, European patent application or PCT application designating Germany) or from a granted patent during opposition procedures. A utility model thus branched off is entitled to the application date or priority date of the patent application. The ten year term of protection begins with the application date of the patent. Such a branching off is possible up to two months after grant of a patent or after a final decision in opposition proceedings.



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