

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

IP/N/1/DEU/P/3
15 November 1996

(95-4850)

**Council for Trade-Related Aspects
of Intellectual Property Rights**

Original: English/
anglais/
inglés

**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

Germany

The present document reproduces the Utility Model Law¹, as notified by Germany under Article 63.2 of the Agreement (see document IP/N/1/DEU/1/Rev.1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES
A LA PROPRIETE INTELLECTUELLE NOTIFIEES
AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD**

Allemagne

Le présent document contient le texte¹ de la Loi sur les modèles d'utilité notifiée par l'Allemagne au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/DEU/1/Rev.1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

Alemania

En el presente documento se reproduce la Ley sobre Modelos de Utilidad¹, notificada por Alemania en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/DEU/1/Rev.1).

¹English only/anglais seulement/inglés solamente.

(This text replaces the one previously published under the same code number.)

GERMANY

Utility Model Law*

(of August 28, 1986,
as last amended by the Law on the Reform of the
Professional Statute of Attorneys and Patent Attorneys
of September 2, 1994)

1.-(1) Utility model protection shall be afforded to inventions that are new, involve an inventive step and are susceptible of industrial application.

(2) The following, in particular, shall not be regarded as the subject matter of a utility model 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) Subsection (2) shall oppose utility model protection only to the extent to which protection is sought for the above-mentioned subject matter or activities as such.

2. Utility model protection 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 protection of an invention falling under Section 9;
2. plant or animal varieties;
3. processes.

3.-(1) The subject matter of a utility model shall be considered to be new if it does not form part of the state of the art. The state of the art comprises any knowledge made available to the public by means of a written description or by use within the territory to which this Law applies before the date relevant for the priority of the

application. Description or use within the six months preceding the date relevant for the priority of the application shall not be taken into consideration if it is based on the conception of the applicant or his predecessor in title.

(2) The subject matter of a utility model shall be considered susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

4.-(1) Applications in respect of inventions for which utility model protection is sought shall be filed in writing with the Patent Office. A separate application shall be filed for each invention.

(2) Applications shall contain:

1. a request for registration of the utility model, which must designate clearly and concisely the subject matter of the utility model;
2. one or more claims in which shall be specified what is to be protected by the utility model;
3. a description of the subject matter of the utility model;
4. the drawings to which the claims or the description refer.

(3) The Federal Minister for Justice shall have power to issue by statutory order regulations concerning other requirements for the application. He may delegate such power by statutory order to the President of the Patent Office.

(4) A fee as prescribed by the schedule of fees shall be paid with each application for registration of a utility model. If the fee is not paid, the Patent Office shall notify the applicant that the application will be deemed to have been withdrawn unless payment is made within one month of service of the notification.

(5) Up to the time of the decision to register the utility model, alterations in the contents of the application shall be permissible insofar as they do not broaden the scope of the subject matter of the application. No rights may be derived from alterations which broaden the scope of the subject matter of the application.

(6) An applicant may at any time divide his application. The division shall be made by a statement in writing.

* German title: Gebrauchsmustergesetz.

Entry into force (of the latest amendment): January 1, 1995, with the exception of Section 27(3) (see footnote 2).

Source: Communication from the German authorities.

Note: Translation by the International Bureau of WIPO on the basis of an English translation supplied by the German authorities.

The date of the original application and any priority that has been claimed shall continue to apply to each part of a divided application. For the period up to division the same fees which were payable for the original application shall be paid for the separated application.

5.-(1) Where an applicant has already sought, at an earlier date, a patent with effect in the Federal Republic of Germany for the same invention, he may file together with the utility model application a declaration claiming the date of filing relevant for the patent application. Any priority right claimed in respect of the patent application shall also apply to the utility model application. The priority right under the first sentence may be exercised up to the expiration of two months from the end of the month in which processing of the patent application or any opposition procedure is terminated, at the latest, however, by the end of the tenth year from the date of filing of the patent application.

(2) Where an applicant has filed a declaration under the first sentence of subsection (1), the Patent Office shall request him to communicate the serial number and the date of filing and to file a copy of the patent application, within two months of service of the request. Where the particulars are not provided in due time, the priority right under the first sentence of subsection (1) shall be forfeited.

6.-(1) Within a period of 12 months from the date of application for an earlier patent or utility model application filed with the Patent Office, the applicant shall enjoy a right of priority for the application for a utility model for the same invention, unless a domestic or foreign priority has already been claimed for the earlier application. Section 40(2) to (4) and (5), first sentence, of the Patent Law¹ shall apply *mutatis mutandis*, with the proviso in the case of Section 40(5), first sentence, that the earlier patent application shall not be deemed to have been withdrawn.

(2) The provisions of the Patent Law on foreign priority (Section 41) shall be applicable *mutatis mutandis*.

7.-(1) The Patent Office shall upon request search for the publications which are to be considered in assessing the registrability of the subject matter of the utility model application or the utility model.

(2) A request may be filed by the applicant or the registered proprietor or by any other party. Requests shall be filed in writing. Section 28 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. Section 43(3), (5), (6) and the first sentence of (7) of the Patent Law shall apply *mutatis mutandis*.

¹ See *Industrial Property Laws and Treaties, GERMANY – Text 2-002 (Editor's note)*.

8.-(1) Where an application complies with the requirements of Section 4, the Patent Office shall order registration in the Utility Model Register. No examination of the subject matter of the application as to novelty, inventive step or industrial applicability shall be carried out. Section 49(2) of the Patent Law shall apply *mutatis mutandis*.

(2) The registration shall contain the name and address of the applicant and of any duly appointed representative (Section 28), together with the date of filing of the application.

(3) Summary lists of registrations shall be published in the Patent Gazette at regular intervals.

(4) The Patent Office shall record in the Register any change in the identity of the proprietor of the utility model or of his representative if proof thereof is furnished to it. A fee as prescribed in the schedule of fees shall be paid with the request to record the change in the identity of the proprietor; if the fee is not paid, the request shall be deemed not to have been filed. Until such time as the change has been recorded, the former proprietor and his former representative shall continue to have the rights and obligations as provided under this Law.

(5) Anyone may inspect the Register and the files of registered utility models, including the files of cancellation proceedings. In addition, the Patent Office shall permit any person so requesting to inspect the files if and to the extent that a legitimate interest has been satisfactorily proved.

9.-(1) If an application is filed for a utility model, the subject matter of which is a State secret (Section 93 of the Penal Code), the Examining Section competent to issue an order under Section 50 of the Patent Law shall order *ex officio* that there shall be no laying open for inspection (Section 8(5)) and no publication in the Patent Gazette (Section 8(3)). The competent supreme federal authority shall be heard before the order is issued. That authority may request that an order be issued. The utility model shall be entered in a Special Register.

(2) In other respects, the provisions of Sections 31(5), 50(2) to (4), and 51 to 56 of the Patent Law shall apply *mutatis mutandis*. The Examining Section competent under subsection (1) shall also be competent for the decisions to be taken in applying Section 50(2) of the Patent Law *mutatis mutandis* and for the acts to be performed in applying Sections 50(3) and 53(2) of the Patent Law *mutatis mutandis*.

10.-(1) For requests relating to utility models, with the exception of cancellation requests (Sections 15 to 17), a Utility Model Section shall be established within the Patent Office, under the direction of a legal member appointed by the President of the Patent Office.

(2) The Federal Minister for 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, may be entrusted with the handling of certain matters within the competence of the Utility Model Section or the Utility Model Divisions, with the exception, however, of the rejection of applications on grounds which the applicant has contested. The Federal Minister for Justice may delegate such power by statutory order to the President of the Patent Office.

(3) Decisions on cancellation requests (Sections 15 to 17) shall be taken by one of the Utility Model Divisions to be set up within the Patent Office, which shall be composed of two technical members and one legal member. The provisions of Section 27(7) of the Patent Law shall apply *mutatis mutandis*. The Utility Model Divisions shall also be required to give expert opinions within their areas of competence.

(4) For the exclusion and challenge of members of the Utility Model Section and the Utility Model Divisions, Sections 41 to 44, 45(2), second sentence, 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 (2) with the handling of certain matters within the competence of the Utility Model Section or the Utility Model Divisions. Section 27(6), third sentence, of the Patent Law shall apply *mutatis mutandis*.

11.-(1) Registration of a utility model shall have the effect that the proprietor alone is authorized to use the subject matter of the utility model. Any person not having his consent shall be prohibited from making, offering, putting on the market or using a product which is the subject matter of the utility model, or importing or stocking the product for these purposes.

(2) Registration shall have the further effect that any person not having the consent of the proprietor shall be prohibited from supplying or offering to supply within the territory to which this Law applies persons, other than those entitled to exploit the subject matter of the utility model, with means, relating to an essential element of the subject matter of the utility model, for using it within the territory to which this Law applies, when such person knows, or it is obvious in the circumstances, that the means are suitable and intended for using the subject matter of the utility model. The first sentence shall not apply when the means are staple commercial products, except when such person induces those supplied to commit acts prohibited by the second sentence of subsection (1). Persons performing the acts referred to in items 1 and 2 of Section 12 shall not be considered to be persons entitled to exploit the subject matter of the utility model within the meaning of the first sentence.

12. The effects of the utility model shall not extend to

1. acts done privately for non-commercial purposes;
2. acts done for experimental purposes relating to the subject matter of the utility model;
3. acts of the kind specified in Section 11(4) to (6) of the Patent Law.

12a. The scope of protection of the subject matter of the utility model shall be determined by the terms of the claims. When interpreting the claims, reference shall be made, however, to the description and the drawings.

13.-(1) Registration shall not afford utility model protection where a claim for cancellation of the utility model (Sections 15(1) and (3)), assertable by any person, exists against the person registered as the proprietor.

(2) If the essential elements of the registration have been taken from the description, drawings, models, appliances or equipment of another person without that person's consent, protection under this Law may not be invoked against the injured party.

(3) The provisions of the Patent Law concerning the right to protection (Section 6), the right to the grant of protection (Section 7(1)), the right to assignment (Section 8), the right deriving from prior use (Section 12) and the official order of exploitation (Section 13) shall be applicable *mutatis mutandis*.

14. If a subsequently filed patent infringes a right under Section 11, the right deriving from such patent may not be exercised without the consent of the proprietor of the utility model.

15.-(1) Any person may assert a claim against the person registered as proprietor for cancellation of the utility model

1. if the subject matter of the utility model is not registrable within the terms of Sections 1 to 3;
2. if the subject matter of the utility model is already protected on the basis of an earlier patent or utility model application; or
3. if the subject matter of the utility model extends beyond the content of the application as filed.

(2) In the case of Section 13(2), only the injured party may assert a claim for cancellation.

(3) Where the grounds for cancellation relate to a part only of the utility model, only that part shall be cancelled. The limitation may be effected in the form of an amendment to the claims.

16. A request for cancellation of a utility model under Section 15 shall be filed with the Patent Office in writing. The request shall state the grounds on which it is based. 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 provisions of Sections 81(7) and 125 of the Patent Law shall apply *mutatis mutandis*.

17.-(1) The Patent Office shall notify the proprietor of the utility model of the request and shall invite him to reply thereto within one month. If he fails to file a contesting reply in due time, cancellation shall be effected.

(2) In the contrary case, the Patent Office shall notify the person making the request of such reply and shall take all measures necessary for the investigation of the matter. It may order the examination of witnesses and experts. The provisions of the Code of Civil Procedure shall apply *mutatis mutandis* to any such examination. A sworn minute-writer shall be called in for the proceedings relating to the taking of evidence.

(3) The decision on a request shall be taken on the basis of a hearing. The decision shall be pronounced at the session at which the hearing is closed or at a session to be fixed forthwith. The decision shall contain the grounds therefor, shall be in writing and shall be communicated *ex officio* to the parties. Section 47(2) of the Patent Law shall apply *mutatis mutandis*. Service of the decision is admissible instead of pronouncement.

(4) The Patent Office shall determine in what proportion the costs of the proceedings shall be borne by the parties. Section 62(2) and the second and third sentences of Section 84(2) of the Patent Law shall apply *mutatis mutandis*.

18.-(1) Appeals from decisions of the Utility Model Section and the Utility Model Divisions shall lie to the Patent Court.

(2) If an appeal lies from a decision of the Utility Model Section to reject the application for registration of a utility model or from a decision of the Utility Model Division regarding the request for cancellation, a fee as prescribed by the schedule of fees shall be paid within the period allowed for filing the appeal: if the fee is not paid, the appeal shall be deemed not to have been filed.

(3) In other respects, the provisions of the Patent Law governing proceedings on appeal shall be applicable *mutatis mutandis*. If an appeal lies from a decision given in cancellation proceedings, Section 84(2) of the Patent Law shall apply *mutatis mutandis* in respect of the decision on the costs of the proceedings.

(4) Appeals from decisions of the Utility Model Section and from decisions of the Utility Model Divisions shall be heard by a Chamber of Appeal of the Patent Court. Appeals against rejection of an application for registration of a utility model shall be heard by a Chamber of Appeal composed of two legal members and one technical member, and appeals from decisions of the Utility Model Divisions regarding cancellation requests by a

Chamber of Appeal composed of one legal member and two technical members. The presiding judge must be a legal member. Section 21g(1) and (2) of the Judiciary Law shall apply with regard to the allocation of business within the Chamber of Appeal. In the case of proceedings relating to appeals from decisions of the Utility Model Section, Section 69(1) of the Patent Law shall apply and, in the case of proceedings relating to appeals from decisions of the Utility Model Divisions, Section 69(2) of the Patent Law shall apply, *mutatis mutandis*.

(5) An appeal on a point of law from a decision of the Chamber of Appeal of the Patent Court in respect of an appeal under subsection (1) shall lie to the Federal Court of Justice if the Chamber of Appeal, in its decision, has given leave to appeal on that point of law. Sections 100(2) and (3) and 101 to 109 of the Patent Law shall apply.

19. If litigation is pending during cancellation proceedings and the decision on that litigation depends on the existence of utility model protection, the court may order that the hearing be postponed until the cancellation proceedings have been settled. It shall order such postponement if it considers the utility model registration to be invalid. If the cancellation request is refused, the court shall be bound by that decision only if it was taken in respect of the same parties.

20. The provisions of the Patent Law concerning the grant of compulsory licenses (Section 24(1)) and the procedure for the grant of compulsory licenses (Sections 81 to 99 and 110 to 122) shall apply *mutatis mutandis* in the case of registered utility models.

21.-(1) The provisions of the Patent Law concerning the giving of opinions (Section 29(1) and (2)), reinstatement (Section 123), obligation to observe the truth in proceedings (Section 124), official language (Section 126), service of documents (Section 127) and legal assistance from the courts (Section 128) shall also apply to utility model proceedings.

(2) The provisions of the Patent Law granting legal aid (Sections 129 to 138) shall apply *mutatis mutandis* in utility model proceedings and Section 135(3) shall apply with the proviso that the representative assigned under Section 133 shall have the right to appeal.

22.-(1) The right to a utility model, the right to registration of a utility model and the right derived from such registration shall pass to the heirs. Such rights may be assigned to other parties, with or without restriction.

(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 under the first sentence, the right afforded by the registration may be invoked against him.

(3) The transfer of rights or the grant of a license shall not affect licenses previously granted to third parties.

23.-(1) Utility model protection shall be for a term of three years, as from the day following the filing of the application.

(2) The term of protection may be initially renewed for a further three years on payment of a fee as prescribed by the schedule of fees, and then for a further two years each time to ten years at the most. Such renewal shall be recorded in the Register. The renewal fee shall be due on the last day of the month in which the preceding term of protection ends. If the renewal fee is not paid by the end of the last day of the second month after the due date, the surcharge prescribed by the schedule of fees shall be payable. On expiry of that time limit, the Patent Office shall notify the registered proprietor that the term of protection may not be renewed unless the fee and the surcharge are paid within four months from the end of the month of service of the notification. Where a utility model is registered only after the end of the first or a following term of protection, the surcharge prescribed by the schedule of fees shall be paid if the renewal fee has not been paid within four months from the month of service of the notification of registration; the fifth sentence shall apply.

(3) The Patent Office may postpone dispatch of the notification of the request of the registered proprietor on proof being furnished by the latter that lack of resources prevents him from paying at that time. 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 registered proprietor that the period of protection cannot be renewed unless the balance is paid within one month of service of the notification.

(4) If 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 cannot reasonably be demanded because of lack of resources, even after service of the notification, provided that a request is made within 14 days of service and the previous delay 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, demanding the whole of the balance outstanding. After service of the second notification, further deferment shall not be permitted.

(5) A notification which has been postponed on request (subsection (3)) or which must be repeated after deferment has been granted (subsection (4)) shall be dispatched not later than one year after the renewal fee falls due. Installments paid shall not be refunded if, owing to non-payment of the balance outstanding, the term of protection is not renewed.

(6) A utility model shall lapse if the registered proprietor abandons it by a written declaration made to the Patent Office.

(7) Summary lists of cancellations on grounds other than expiration of the term of protection shall be published in the Patent Gazette at regular intervals.

24.-(1) Any person who uses a utility model contrary to the provisions of Sections 11 to 14 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.

24a.-(1) In cases under Section 24, the injured party may require destruction of the product that is the subject matter of the utility model 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.

(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.

24b.-(1) Any person who uses a utility model contrary to the provisions of Sections 11 to 14 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 against the person required to give information, or against a dependent person under Section 52(1) of the Code of Criminal Procedure, 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.

24c. Actions for infringement of the rights in a utility model shall be statute-barred after three years from the time when the claimant obtains knowledge of the infringement and of the identity of the infringer and, irrespective of such knowledge, after 30 years from the infringement. Section 852(2) of the Civil Code 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.

25.-(1) Any person who, without the necessary consent of the proprietor of the utility model

1. makes, offers, puts on the market, uses or imports or stocks for these purposes a product which is the subject matter of a utility model (Section 11(1), second sentence) or
2. exercises the right deriving from a patent contrary to Section 14

shall be liable to imprisonment of up to three years or a fine.

(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* prosecution is justified in view of the particular public interest.

(5) Objects implicated in an offense may be confiscated. Article 74a of the Penal Code shall apply. Where the claims referred to in Section 24a 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.

25a.-(1) A product that infringes a utility model 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 Economic Community 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) 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), first sentence, 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 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) A 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.

(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.

26.-(1) If a party to civil litigation in which an action is brought to assert a claim arising from one of the legal relationships regulated under this Law 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) A 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 be admissible only if the presumed or fixed value in dispute is subsequently increased by the court. Before the decision is given on the request, the opposing party shall be heard.

27.-(1) For all actions whereby a claim arising out of one of the legal relationships regulated in this Law is asserted (utility model 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 utility model litigation for the areas of several regional courts to one such court insofar as this is procedurally expedient. The Governments of the *Länder* may transfer those powers to the provincial administrations of justice.

(3) Where an appeal is lodged against a decision of the court in utility model 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 allocation under subsection (2).²

² Subsection (3) will enter into force on January 1, 2000, for the following *Länder* of Germany: Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Hessen, Lower Saxony, North-Rhine Westphalia, Rhineland Palatinate, Saarland and Schleswig-Holstein; it will enter into force on January 1, 2005, for the other *Länder* (Editor's note).

(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 shall be refunded, as shall the necessary expenses of the patent attorney.

28. 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 utility model 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 litigation affecting the utility model; he may also file requests for the institution of criminal proceedings. The place where the representative has his business premises shall be deemed, within the meaning of Section 23 of the Code of Civil Procedure, 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.

29.-(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 the 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 in order to cover the expense of requests addressed to the Patent Office and may, in particular,

1. order that fees be collected for certificates, authentications, inspection 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 procedures for determining fees.

30. 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 as utility models under 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 utility model upon which the use of the marking is based.