The patent: Deserved “reward” for creativity and investment.

The patent is the best-known technical intellectual property right - and is extremely popular in Germany: in 2014, the number of patent applications filed with the German Patent and Trade Mark Office in Munich rose to about 66,000.

Fields of application of the patent

- Technical articles and methods, such as machines, appurtenances, devices and parts thereof
- Chemical products, e.g. plastic granules, artificial fertiliser or pharmaceuticals
- Methods of making products, working methods and application procedures
- Microbiological methods and their use

Exclusions

Patents are not available for aesthetic creations (designs), rules for games and computer programs (software per se), discoveries, business ideas, for example.

Duration

The patent provides a maximum period of protection of 20 years, beginning on the date of filing. In order to maintain the patent, an annual fee has to be paid as of the third year.

Requirements for patentability

The invention must satisfy three requirements: it must be "new", involve an "inventive step" and be "susceptible of industrial application".

The subject matter of an application is only deemed to be "new" if it has not been made available to the public orally or in writing before the date of filing. Even an essay in a technical journal, the distribution of brochures or a demonstration at a trade fair constitute a “prior publication” if the invention can be gathered from them; even if such a publication was made by the inventor or the applicant, it presents a barrier to a later patent application. The principle, therefore, is: file first, talk later.

The invention must also involve an "inventive step": an achievement is only rewarded with a patent if it was not obvious to the person of average skill in the art.

Continued on next page
To obtain a patent valid in Germany, an application is filed with the German Patent and Trade Mark Office in Munich. It is necessary to file a technical description of the invention (usually with drawings) and the claims, specifying the subject matter for which protection is sought.

Expert drafting of the patent application and especially the claims is of crucial importance, not least because, once the application has been filed, no further technical details can be added “as an afterthought”. Experience has shown that applications are frequently rejected because of mistakes which could have been avoided with careful drafting. As a rule, therefore, a patent attorney should be entrusted with preparing the application documents.

The patentability of the invention is only examined after a request has been submitted to the German Patent and Trade Mark Office (for which a fee is payable). That request for examination does not need to be submitted at the same time as the application is filed, but this must happen no later than at the end of seven years after filing of the application, otherwise the application lapses. The examination itself is performed according to formal and substantive criteria; the latter are concerned above all with the question of whether and to what extent the subject matter of the patent application is patentable.