



Patent/Utility model – differences

1. Duration

The term of a patent is up to 20 years.

The term of a utility model is up to 10 years.

2. Protection

Patents can seek protection for an apparatus as well as for a method.

A utility model can seek protection for an apparatus only. Methods cannot be protected with an utility model.

3. Procedure

The main difference between patents and utility models is the examination procedure for a patent application and the registration procedure for a utility model application.

A patent application is examined in an examination procedure by the German Patent and Trademark Office. At the end of this examination procedure it is granted. An infringement procedure can be based on a granted patent only but not on a patent application.

A utility model is registered without substantive examination. The registered utility model can be the base for litigation against an infringer. The infringer can defend himself with the argument that the utility is not examined and has been registered wrongly. Typically, a request for cancellation will be filed as an answer for litigation.

It has to be mentioned that a patent can be attacked after grant with nullity proceedings.

4. Novelty

A patent requires absolute novelty on the filing or on the priority date.

The utility model grants the applicant a six-month grace period. This means that his own publications will not be considered within 6 months prior to the filing or priority date.

5. Costs

For a patent application annuity fees have to be paid, starting with the 3rd year.

For a utility model renewal fees have to be paid in the 3rd, 6th and 8th year.

The costs of preparing and filing a utility model and a patent are almost identical, since the preparation is very similar. The patent is more expensive, since additional costs arise for the examination procedure.