

GERMANY PATENT SYSTEM – AN OVERVIEW

Available online at www.ijdra.com

REVIEW ARTICLE

Budime Priyanka*, Agarwal Pooja

Faculty in Department of Pharmaceutical Management And Regulatory Affairs , Geethanjali College of Pharmacy, Cheeryal(V), Medchal Dist., Hyderabad, Telangana, India 501 301.

*Corresponding Author's E-mail: budimepriyanka@gmail.com

DOI: <https://doi.org/10.22270/ijdra.v5i2.197>

ABSTRACT

Patent is one of the intellectual property rights, by which the innovator gets exclusive rights or legal monopoly granted to an individual or a firm to make use or sell or reproduce and excluding others from doing so. The Germany patent act came into existence on June 21st 1976, which was taken from the European patent convention of October 5, 1973. Germany stands in 2nd place in filing patents and it shares 16% of total application in 2016 and 25,086 application are filed, grant of patent applications are 18,728. In this paper discussed about Germany patent system.

Keywords: Germany, Patent filing, Monopoly rights, Federal court.

INTRODUCTION

Patent is one of the intellectual property right, by which the innovator gets exclusive rights or legal monopoly granted to an individual or a firm to make use or sell or reproduce and excluding others from doing so.(1,2) The Germany patent act came into existence on June 21st 1976, which was taken from the European patent convention of October 5, 1973.(3) Germany stands in 2nd place in filing patents and it shares 16% of total application in 2016 and 25,086 application are filed, grant of patent applications are 18,728. In this paper discussed about Germany patent system . (4)

Germany patent law came into effect from June 21st 1976, is has become a member of PCT on 24th January 1978. (5) It was stipulated in the patent law in 25 May 1877 and named as the Kaiserliches Patentamt (imperial patent office) started to operate in Berlin on July 1st 1877 and the first Germany patent granted for the “production process of red ultramarine color” invented by Johann Zeltner of Numberger Ultramarine Fabrik. After a lot of changes now, it became as Deutsches patent-und markenamt (DPMA) on November 1st 1998. It celebrated its 60th anniversary in Munich on October 1st 2009.(6) German intellectual property law mainly consists of the Copyright Act (UrhG),

Patent Act (PatG), Trademark Act (MarkenG), Utility Model Act (GebrMG) and Design Rights Act (GeschMG), flanked by some provisions of the Civil Code (BGB) and the Act Against Unfair Competition (UWG).(7) Generally, Patent term is 20 years.

GERMANY PATENT SYSTEM

A patent grants exclusive rights to a new process (or) product (or) invention in order to reproduce, sell, make etc., to the inventor. It is generally governed by Germany patent system and European patent convention. Germany patent system is one of the few system in this patent infringement and patent validity are dealt with different courts or routes. The patent infringement is dealt with Federal Patent Court and it is known as bifurcation system.

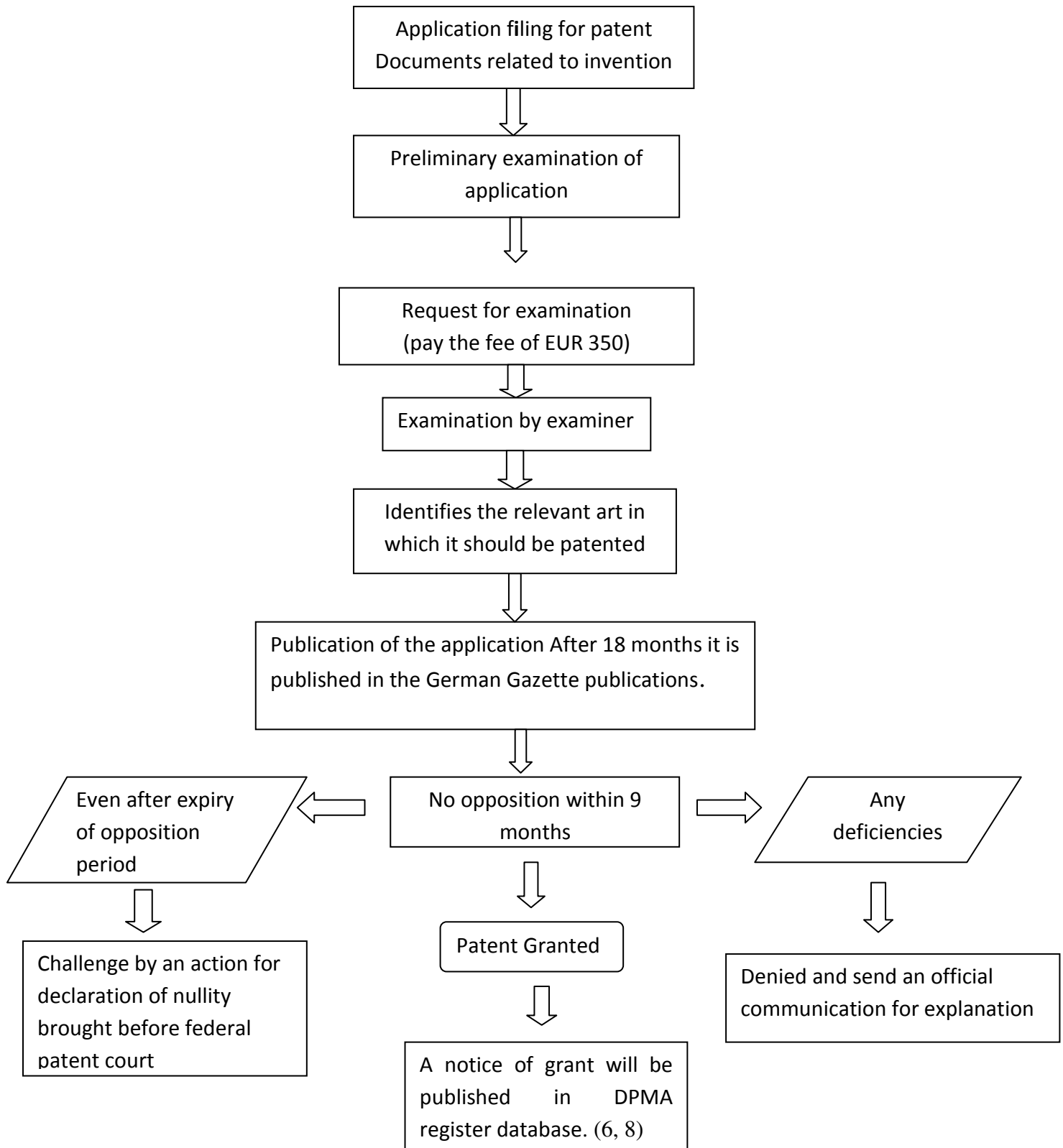
Types of Patent applications

- National patent application: It is a direct application done with German Patent and Trademark Office i.e., DPMA (Deutsches Patent- und Markenamt). Patent granted by DPMA have effect on the Federal Republic of Germany.
- European Patent application: it is a single direct national filing and it is applicable in European member states and granted by European Patent office.

- Patent Convention Treaty: it is a single International patent filing and it is applicable in all countries followed by either in national patent or European patent filing within 30 months.

PATENT PROCEDURE IN GERMANY

The patent is the only intellectual property right is granted by DPMA that should be novelty and the application should be in Germany official language.



Documents required for application

1. Name and address of applicant information on invention.
2. Description, patent claims and associated drawings
3. Power of attorney is generally not required, only exceptional at request of GPTO

Documents required after filing

- German translation of application i.e., 3 months from filing date
- Abstract of invention i.e., 15 months from filing date or earliest priority date
- Naming of inventors i.e., 15 months from filing date or earliest priority date
Names and addresses of inventors
Date and manner of transfer of rights to applicant
- If priority is claimed (16 months from earliest priority date
Date, country and reference number of prior application
Priority document (copy/ies of prior application). (9, 10)

PATENT INFRINGEMENT SYSTEM

Patents are probabilistic property rights: there is inherent uncertainty regarding a patent's validity and scope. Although patents are granted by patent office only after undergoing substantive examination, there is no guarantee that a granted patent is in fact valid. In a bifurcated legal system such as in Germany, in contrast, separate courts decide on infringement and validity independently from one another. In practice, the infringement action is often decided and enforced before validity has been determined. In Germany, jurisdiction for patent infringement lies with twelve regional courts, while patent validity is decided solely by the patent office's (European Patent Office – EPO – or German Patent and Trademark Office – DPMA) during the opposition phase, or by the German Federal Patent Court (BPatG). Generally, federal patent court follows infringement action in most cases in response to alleged infringement. This means a patent may be found infringed and hence an injunction granted – that is often preliminary, yet fully enforceable – before the validity of the patent has been determined. The duration of this

so-called, 'injunction gap' can be considerable. (11)

In Germany, patent enforcement is typically commenced by requesting from the alleged infringer "the entitlement for right of use of the invention" or by issuing a cease-and-desist warning. By a cease-and-desist warning, the alleged patent infringer can be requested to stop infringing subject to a penalty clause and he has to pay the costs of the cease-and-desist warning, if it is justified. If the warning is justified. However, in case the cease-and-desist warning is unjustified, the patentee has to pay the expenses of the alleged infringer incurred by rejecting the unjustified cease-and-desist warning. In a patent infringement, action in Germany the party who loses the case has to bear the costs of both parties. Generally, a patent infringer has to bear the costs of the case only, if he received a cease-and-desist warning prior to the patent infringement action.

The scope of protection of a claim of a granted patent or a claim of a registered patent comprises literal infringement and infringement under the doctrine of equivalence. In Germany, an equivalent feature has to cause the same effect as a claimed feature to the same extent, wherein the person skilled in the art must not need inventive skill to find the equivalent feature.

If no amicable arrangement or settlement out of court about ceasing the use of the invention or a license agreement can be achieved, an infringement action can be filed at a district court. In urgent cases, a patent infringement can be sued by an interlocutory injunction. For example, an interlocutory injunction is appropriate if a patent infringing product is presented on a trade fair. An interlocutory injunction can also be based on a utility model. However, courts generally only issue a cease-and-desist order or temporary injunction if the utility model has been searched.

If no patent has been granted yet for an international, European or German patent application, it is possible to branch off a German utility model for suing the patent infringer, if the subject-matter of the respective claims is novel and based on an inventive step.

Contributory infringement can be used for enforcing a patent, if the infringer only produces a part of the claimed invention, as long as such part is an essential element of the invention. (12)

CONCLUSION

Germany patent filing stands 4th place in most international patent applications in 2016 around 18,315 applications are filed. They underwent numerous changes in order to protect patent law. Germany patent system is bifurcated; it favors strongly the patentee in litigation and protection of patent. It creates a substantial number of cases where an invalid patent is held infringed and where infringement and validity are dealt with jointly.

ACKNOWLEDGEMENT

I take this opportunity to express deep sense of gratitude to IJDRA journal for publishing my article.

CONFLICT OF INTEREST

The authors declare that there are no conflicts of interest.

REFERENCES

1. World intellectual property organization, [Internet]. WIPO Publication No.450 (E) [Cited 2017 April 01]. Available From: http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf
2. Bayya Subba Rao, Appaji P V. Intellectual Property Rights in Pharmaceutical Industry: Theory and Practice; 2015.
3. Ernst K. Pakuscher. Patent Procedure in the Federal Republic of Germany, Berkeley Journal of International Law [Internet]. 1986 [Cited 2017 Mar 04]; 4(1): Available from: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1040&context=bjil>
4. European Patent Office, [Internet]. Annual Reports 2016 [Cited 2017 Mar 05]. Available from: <https://www.epo.org/about-us/annual-reports-statistics/statistics.htm>
5. World Intellectual Property Organization, [Internet], WIPO; 2017 [Cited 2017 Mar 07]. Available from: http://www.wipo.int/pct/en/pct_contracting_states.html
6. Deutsches Patent-und Markenamt, [Internet]. DPMA; 2016 [Cited 2017 Mar 21]. Available from: https://www.dpma.de/english/the_office/history/
7. World commerce review. Intellectual property Protection in Germany and EU, SZA [Internet]. WCR; 2010 Sept [Cited 2017 Mar 09]. Available from: http://www.worldcommercereview.com/publications/article_pdf/482
8. Ip-coster.com. Patent registration in Germany (non-PCT) Information is provided [Internet]. IP coster; 2017 [Cited 2017 Mar 28]. Available from: <https://www.ip-coster.com/IPGuides/patent-germany>
9. National German Patent (DE) at German Patent and Trademark Office (GPTO) [Internet]. GPTO; 2017 [Cited 2017 Mar 28]. Available from: http://www.ksnh.com/workmatrix/content.php?page_id=104&language=1
10. Deutsches Patent-und Markenamt [Internet]. DPMA; 2016 [Cited 2017 Mar 10]. Available from: <https://www.dpma.de/english/patent/application/>
11. Invalid but Infringed? An Analysis of Germany's Bifurcated Patent Litigation System [Internet]. A ZEW Mannheim b Max Planck Institute for Innovation and Competition c Santa Clara University; 2014 Aug 1 [Cited 2017 Mar 11]. Available from: https://www.law.berkeley.edu/files/Helmerts_Christian_IPSC_paper_2014.pdf
12. Wittman [Internet]. European Patent Attorney; 2017 [Cited 2017 Mar 12]. Available from: http://www.wh-ip.com/germany/patent_enforcement.html