

Austria

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Patent enforcement proceedings

1 Lawsuits and courts

What types of legal or administrative proceedings are available for enforcing patent rights against an infringer, and are there specialised courts in which a patent infringement lawsuit can or must be brought?

The Commercial Court of Vienna (Handelsgericht Wien; the court) is exclusively competent for civil proceedings based on the Austrian Patent Act (Patentgesetz, the PatG), such as for patent infringement, involving claims for injunction, destruction, rendering of accounts, payment and publication of the judgment.

Criminal action may be brought against an infringer. This remedy is rarely used, but might be advisable in some cases. As the applicant may apply for a premises search and seizure, criminal proceedings may be helpful for gathering evidence. The Criminal Court of Vienna (Landesgericht für Strafsachen Wien) has exclusive jurisdiction.

The Austrian Patent Office (Österreichisches Patentamt) decides upon request for declaratory decisions against a person, who uses a product or applies a process in Austria, where the product or process in question entirely or partially falls within the scope of a patent (positiver Feststellungsantrag). This is a mere 'documentary proceeding' based on submitted descriptions and results in a declaratory ruling. Any claims based on the actual use of the declaratory matter (patent infringement) are subject to court proceedings.

Customs measures are available against import of products which infringe a patent or SPC according to European Council Regulation 1383/2003 and pursuant to the Product Piracy Act (Produktpirateriegesetz 2004). Applications for action by the customs authorities must be lodged with the Customs Office at Villach (Zollamt Villach).

2 Trial format and timing

What is the format of a patent infringement trial, to what extent are documents, affidavits and/or live testimony relied on, is cross-examination of witnesses permitted, are experts (court appointed or private) utilised, are disputed issues decided by a judge or a jury, and how long does a trial typically last?

Civil proceedings for patent infringement are subject to the general procedural rules, in particular the Code of Civil Procedure (Zivilprozessordnung, the ZPO), and special procedural provisions contained in the PatG.

In general, the parties are free to dispose of the subject matter of the proceedings, are entitled to initiate civil proceedings, to apply for taking of evidence and to withdraw or settle the matter. The proceedings are oral and direct before the appropriate court

and shall be open to the public (all of this subject to exceptions in certain cases). The principles of fair trial and the right of being heard must be complied with. The findings of fact are based on the court's free assessment of evidence.

The Commercial Court of Vienna, in its three competent chambers, sits in senates of three judges: two professional judges (one of whom is the presiding judge) and one technical judge (an appointed patent attorney). Party representation by an attorney is mandatory; support by a patent attorney is advisable and common practice.

For the proceedings on the merits, the ZPO provides a (non-exhaustive) list of acceptable forms of evidence, ie documents, opinions of a court expert, inspection and interrogation of witnesses and the parties. Affidavits of witnesses are generally not permissible, but are accepted occasionally. Opinions of private experts are regarded as mere documents. Cross-examination of witnesses is permitted. Patent infringement litigation in Austria may last from approximately two to five years at first instance, subject to whether the infringement proceedings are suspended to await a decision of the Patent Office on the validity of the patent in suit. A final decision may take from three to seven years.

Preliminary injunctions are available. The provisional proceedings are handled expeditiously. Owing to the summary character of the proceedings, only readily available means of evidence are permissible, such as documents, affidavits, prepared private expert opinions, interrogation of parties or witnesses without the presence of attorneys (no formal hearing is provided). According to established court practice, the appointment of an independent expert to render an expert opinion is not permissible in provisional proceedings. Invalidity arguments will not serve as grounds for suspension of the provisional proceedings and in most cases may not be grounds to have the preliminary injunction rejected. However, recently the court has dealt with nullity arguments substantively. The court may order a plaintiff to deposit a security payment for safeguarding the damages and costs of the defendant. The plaintiff is liable, irrespective of fault, to compensate all damages resulting from a preliminary injunction initially being granted and subsequently rejected by a higher court or overruled in the main proceedings. The proceedings in provisional matters in patent litigation at first instance normally take between three weeks and two months, and six months to one year for a final decision.

3 Proof requirements

What are the respective burdens of proof for establishing infringement, invalidity, and unenforceability of a patent?

Basically, the plaintiff has to prove that he/she is the rights holder (or is otherwise entitled, eg exclusive licence) to the patent and the validity of the patent. A certified excerpt of the patent register regularly serves as prima facie evidence of these facts. The plaintiff must prove that its patent is infringed or infringement is imminent.

The defendant must prove the objections he/she raises directed to non-infringement, invalidity of the patent, prior use, licence to the defendant, exhaustion, expiry, unfair practices, time limits, etc.

In exceptional cases, a reversal of the burden of proof applies, if the plaintiff, owing to lack of knowledge of the factual circumstances, has difficulties in proving the facts, whereas it is reasonable for the defendant, according to the principles of good faith, to provide such evidence.

In cases where a patent is directed to a process for the protection of a novel product, any product having the same composition shall be regarded as produced according to the patented process until the contrary is proved.

4 Standing to sue

Who is entitled to sue for patent infringement (patent owner, exclusive licensee, non-exclusive licensee, distributor), and under what conditions, if any, can an accused infringer bring a lawsuit to obtain a judicial ruling or declaration on the accusation?

According to Austrian court practice, the patent owner, an exclusive licensee or an assignee are entitled to sue. Non-exclusive licensees and mere distributors have no standing to sue. According to a decision of the Austrian Supreme Court in a trademark infringement matter, a non-exclusive licensee who was authorised by the trademark owner to pursue trademark infringements was entitled to sue. It is still unclear whether this also applies to patent infringement proceedings.

5 Inducement/contributory infringement

To what extent can someone be liable for inducing or contributing to patent infringement by someone else?

Introduced with amendment 2004, effective 1 July 2005, the PatG stipulates that a patent shall confer to its proprietor the right to prevent all third parties from offering or supplying to a person, other than the one entitled to exploit the patented invention, with means related to an essential element of the invention, putting it into effect therein, when the third party knows, or it is obvious in the circumstances that these means are suitable and intended for putting that invention into effect. Therefore, 'contributory infringement' is incorporated into Austrian Patent Law.

In addition, any person deliberately inducing, assisting or supporting a direct infringer is also liable for patent infringement under Austrian law.

6 Infringement by foreign activities

To what extent, if any, can activities which take place outside of the country support a charge of patent infringement?

The principle of territoriality applies. The acquisition, validity and determination of infringement of patent rights are restricted to the territory of Austria. As far as is evident, there is no court practice on the question of whether activities outside Austria can support a charge of patent infringement in Austria.

According to the PatG, a patent confers on its owner the exclusive right to exclude others from, inter alia, importing the

subject matter of invention for marketing, offering it for sale or using it in Austria.

Council Regulation 44/2001 and the Lugano Convention allow cross-border litigation, although it is rarely made use of in Austria.

7 Infringement by equivalents

To what extent, if any, are 'equivalents' of the claimed subject matter (not literally covered by the claims) liable for infringement?

According to court practice, confirmed by the Supreme Patent and Trademark Senate, equivalent use of a patented invention occurs if a person skilled in the art at the priority date, equipped with general technical knowledge and considering the state of the art, takes the exchanged features without inventive effort as a method of functioning in the same way as the claimed patent. What would not be an equivalent is the use of features having equal effect while altering the protected idea in essence or contradicting the fundamental idea of the invention.

8 Discovery of evidence

What mechanisms are available for obtaining evidence from an adverse party, from third parties and/or from outside the country, for proving infringement, damages or invalidity?

In civil proceedings there is no procedure for having documents seized (such as the French *saisie-contrefaçon*) and there is no such procedure such as US discovery. However, under amendment 2004 to the PatG, effective 1 July 2005, an infringer is liable to reveal the contact details of the person supplying him/her with the infringing goods, including information of previous owners and quantities produced. Parties are obliged to produce the evidence for those facts they have to prove. In detail, the ZPO provides for a set of additional measures, for example:

- the court may order the defendant to produce a document to which the plaintiff has referred in the proceedings (see also Article 43 of the TRIPS Agreement), or may order a third party to produce a document, where the third party is liable to hand out or produce this document according to the provisions of the General Civil Act or if it is a joint document;
- the plaintiff may file a motion for 'preservation of evidence', if the taking of evidence (ie inspection or testimony of a witness or an expert) is at risk or evidence will be lost when taken in due course in the proceedings;
- any decision of an Austrian court for obtaining or safeguarding evidence is enforceable throughout the European Union, all member states of the Lugano Convention, if duly delivered, and all other countries, subject to a bilateral agreement;
- inspections may be ordered and conducted abroad by legal assistance, subject to a bilateral agreement;
- in addition, the infringed party may initiate criminal proceedings, in the course of which it may apply for premises search and seizure.

9 Litigation timetable

What is the typical timetable for a patent infringement lawsuit in the trial court and in the appellate court?

The complaint is submitted to the Commercial Court of Vienna. The Commercial Court will serve the complaint to the defendant and grant the opportunity to submit a statement of defence within the statutory term of four weeks.

The first hearing is regularly scheduled within three to six months of the filing of the complaint. Parties may exchange preparatory briefs until one week prior to the first hearing.

The first hearing is for structuring the proceedings, for evaluation of the relevant means of evidence, for discussion of the factual and legal issues, and for undertaking settlement talks. Parties regularly apply for an independent court expert (usually a patent attorney), appointed by the court, who is ordered to submit an opinion regarding the technical questions of infringement. In practice, the assessment of the court expert is of utmost importance. The judges follow the expert opinion in almost all cases.

If the defendant raises invalidity of the patent in suit, the court is obliged to suspend the proceedings for initiation of nullity proceedings with the Patent Office, unless the claim for nullity is obviously to be denied. The Austrian Patent Office has exclusive competence for deciding on the nullity of an Austrian patent. The suspended civil proceedings will be resumed after a final decision on the nullity is issued.

In additional hearings, the court conducts interrogation of witnesses, parties and court experts, inspectors, etc.

The plaintiff may apply for a preliminary injunction either prior to, simultaneously with, or after the filing of the complaint. The court basically has the authority to render preliminary measures *inaudita altera parte* (ex parte), without granting the defendant the opportunity to be heard. However, the application is usually served to the defendant for reply. Nevertheless, the defendant has no right to service and being heard. In particular cases, the applicant may even counter-reply, although this is not provided by law.

An accused (but not yet sued) infringer might institute a negative declaratory proceeding, in which the Patent Office decides whether its product or process, as described, does not fall within the scope of the patent (negativer Feststellungsantrag). Such proceedings are regularly instituted by alleged infringers to accompany the marketing of their products. In the course of the patent infringement proceedings with the courts, infringers regularly request suspension of the court proceedings because of pending declaratory proceedings. Such suspension, though not mandatory, is however often granted.

10 Litigation costs

What is the typical range of costs of a patent infringement lawsuit before trial, during trial and for an appeal?

The costs of preparation of patent litigation are hard to estimate. An opinion of a patent attorney clarifying the infringement and validity situation in preparation for trial may cost between €3,000 and €10,000.

The proceedings at first instance with support of a patent attorney, including costs for private expert opinions, attorneys fees, etc may vary from €10,000 to €30,000.

The costs involved in provisional proceedings may vary between €2,000 and €7,000.

An appeal procedure may cost between €5,000 and €10,000.

11 Court appeals

What avenues of appeal are available from an adverse decision in a patent infringement lawsuit?

A decision on the merits of the Commercial Court of Vienna may be appealed with the High Court of Vienna (Oberlandes-

gericht Wien). Against its decision an ordinary or extraordinary appeal to the Austrian Supreme Court may be admissible at the discretion of the Supreme Court. The same applies to preliminary proceedings.

A decision of the criminal court may be appealed with the Supreme Court or the Higher Court of Vienna, depending on the grounds for the appeal.

12 Antitrust considerations

To what extent can enforcement of a patent expose the patent owner to liability for an antitrust violation, unfair competition, or a business-related tort?

Under the Austrian Law on Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, the UWG) one may be liable for unjust warning against infringements of a patent right, if the patent right does not exist or no longer exists, or has a narrower scope of protection than is alleged in a warning letter.

In addition, allegations or circulation of information vis-à-vis third parties, capable of damaging the operation of an enterprise (eg the allegation that one is infringing a patent), may constitute an unfair practice under the UWG, unless the information can be proved to be true.

EC and Austrian cartel and competition laws may apply to the enforcement of patent rights (eg abuse of a dominant market position). Apart from the practice of the European Court of Justice (ECJ) and Commission there is no reported practice by the Austrian authorities on competition restraints and patent rights.

13 Alternative dispute resolution

To what extent are alternative dispute resolution techniques (eg, mediation, arbitration) available to resolve patent disputes?

The parties may agree to alternative dispute resolution, eg in a licensing agreement or ad hoc.

Scope and ownership of patents

14 Types of protectable inventions

Can a patent be obtained to cover any type of invention, including software, business methods and/or medical procedures?

Patents shall be granted for inventions which are new, are not obvious from the state of the art to a person skilled in the art, and are industrially applicable. Patents are available in all fields of technology. An idea as such is not a patentable invention. According to established court practice only inventions having a technical contribution are patentable. Mere software or business methods are therefore not patentable.

Formula protection for pharmaceuticals is now available.

Utility model protection is available for the logic of computer programs, although it has rarely been used.

15 Patent ownership

Who owns the patent on an invention made by (i) a company employee, (ii) an independent contractor, or (iii) multiple inventors, and how is patent ownership officially recorded and transferred?

Employees are entitled to the grant of a patent for any invention made by them during their employment, unless otherwise provided by contract, by a collective agreement or, under certain conditions, if a person is employed by a public authority, provided that the subject matter falls within the sphere of activity of

the enterprise in which the employee is active and if:

- either the activity which leads to the invention is part of the duties of the employee;
- the incentive for the invention is based on his/her activity within the enterprise; or
- the creation of the invention was substantially facilitated by using the experiences or utilities of the enterprise.

Basically, only the inventor or his/her legal successor is entitled to the grant of the patent. An independent inventor, therefore, is entitled to the grant of a patent.

A patent applied for by several persons for a single invention shall be granted without determination of shares. The legal relationship between the partners is governed by general civil law which can be modified by agreement; they may only dispose of the patent jointly, but each of the partners is entitled to separately prosecute patent infringement before the court.

If the title to the patent differs from the ownership of the patent, ie if a patent is granted to a person who is not the inventor or otherwise entitled, the Patent Office upon application shall deprive the patent owner of the patent.

Defences

16 Patent invalidity

How and on what grounds can a patent be invalidated?

The nullity department of the Austrian Patent Office has exclusive competence for the nullification and invalidation of patents.

On application by any third party a patent may be nullified:

- if the subject matter of the patent was not patentable (not new, not inventive, not industrially applicable, etc);
- if the patent does not disclose the invention sufficiently clearly and completely to enable a person skilled in the art to carry it out; or
- if the micro-organism deposited according to Section 87a of the PatG has not been permanently accessible with the original depository organisation.

17 Absolute novelty requirement

Is there an 'absolute novelty' requirement for patentability, and if so, are there any exceptions to the requirement?

For all patents granted on or after 1 December 1984 the 'absolute novelty concept' applies, according to which anything made available to the public by written or oral description, by use or in any other way, in any part of the world prior to the date of priority of the application, shall be considered state of the art.

An exception applies for any substance or composition, which forms part of the state of the art, for use in a method for treatment of the human or animal body by surgery or therapy and diagnostic methods, provided that its use for these methods is not state of the art (see also Article 54(5) of the European Patent Convention).

Disclosure of an invention shall not be taken into consideration in the novelty test if it occurred no later than six months prior to the filing of the application and it was the result of:

- an evident abuse in relation to the applicant or his legal predecessor, or
- a display of the invention by the applicant or his legal predecessor at an official, or officially recognised, international exhibition.

For patents applied for on or after 1 January 1994 the 'whole contents approach' applies: the state of the art shall be held to comprise the contents of Austrian patent applications, European and Patent Coordination Treaty (PCT) patent applications and utility model applications as filed, of which the dates of filing are prior to the priority date of the subsequent application and which were published on or after that date.

18 Obviousness on inventiveness test

What is the legal standard for determining whether a patent is 'obvious' or 'inventive' in view of the prior art?

An invention shall be considered as involving an inventive step, if, having regard to the state of the art, it is not obvious to a person skilled in the art. In the course of the inventiveness test, patent applications whose filing dates are prior to the priority date of the present application and which are published on or after that date, shall not be considered. Extensive and detailed court practice exists (eg regarding selection inventions, inventions by combination, etc). The state of the art is considered in general. Hindsight evaluation is not permissible. For assessment of inventiveness the 'problem-solution approach' applies. Recently the Supreme Patent and Trademark Senate has explicitly applied the 'could-would test' of the European Patent Office (EPO).

Equivalent embodiments of an invention are not patentable.

19 Patent unenforceability

Are there any grounds on which an otherwise valid patent can be deemed unenforceable due to misconduct by the inventors or the patent owner, or for some other reason?

The Patent Office may, upon application of a third party, deprive the patent owner of the patent if it has been proved that the patent owner was not entitled to the grant of the patent or that the substantial content of the application has been taken from the descriptions, drawings, models, etc of a third party or from a process applied by a third party without its consent. The rights conferred by a patent may not be enforced against private use of the invention, against a prior user or against the use of the invention in vehicles which temporarily entered into the territory of Austria for transport reasons.

Remedies

20 Monetary remedies for infringement

What monetary remedies are available against a patent infringer (reasonable royalty, lost profits, or some other basis), when do damages start to accrue, and do damage awards tend to be only nominal, provide fair compensation or be punitive in nature?

In case of unauthorised use of a patent, the PatG provides claims for:

- adequate remuneration;
- in case of fault on the part of the infringer;
- damages, including lost profits of the infringed party;
- payment of profits realised by the infringer;
- in case of gross negligence or fault, independently from the proof of any damages, twice the amount of what is considered an adequate remuneration; and
- adequate compensation for any damage other than financial losses, provided that this is justified by the particular circumstances of the case.

Adequate remuneration is generally calculated based on the evaluation of an adequate contractual licence fee, taking into consideration the advantages and disadvantages the infringer has in comparison to a licensee ('licence analogy'). Damages can lie in a decline in sales (lost profit) or in lost licence fees.

21 Injunctions against infringement

To what extent is it possible to obtain a temporary injunction or a final injunction against future infringement, and is an injunction effective against the infringer's suppliers or customers?

A person whose patent right has been infringed or is at risk of being infringed may apply for a permanent injunction (cease-and-desist order). Preliminary injunctions are available under simplified conditions in patent matters: The applicant does not have to prove that its cease-and-desist claim is at risk or that the preliminary injunction is necessary for the prevention of irreparable harm to the rights holder. The court may revoke a preliminary injunction granted where reasonable grounds are given, if the adverse party provides adequate security.

Permanent and preliminary injunctions are binding only for the parties of the proceedings. However, the party bound by the injunction may be held liable for violations of the court order by third parties (eg customers), if those third parties act in the sphere of influence of the bound party and the bound party refrained from disclosure and clarification of the court order to the third party.

22 Attorneys fees

Under what conditions can a successful litigant recover its costs and/or attorneys fees?

In civil proceedings the losing party has to reimburse the costs of the successful party according to the Attorneys' Tariff. This reimbursement may not cover all the actual expenses of the successful party. In case of partial success the costs to be reimbursed are credited against each other.

23 Wilful infringement

Are additional remedies available against a deliberate or willful infringer?

Any person wilfully infringing a patent commits a criminal offence and may be fined with a penalty up to €180,000. Prosecution shall take place only upon request of the infringed party.

24 Time limits for lawsuits

What is the time limit for seeking a remedy for patent infringement?

In civil proceedings, claims for payment, for rendering of accounts and information are time-barred after three years upon knowledge of the infringement and the infringer. There are no statutory provisions regarding time limits for injunction claims. According to court practice, a three-year time limit applies.

Criminal prosecution is barred one year after the infringing activity or the infringing conduct ceased.

25 Patent marking

Is a patent holder obligated to mark its patented products in any way, and if so, how must the marking be made, and what are the consequences of a failure to mark?

The patent holder is not obliged to mark its patented products in

any way. However, any person marketing a product in a manner giving the impression that it enjoys patent protection shall supply information on demand about the protected right.

Licensing

26 Voluntary licensing

Are there any restrictions on the contractual terms by which a patent owner is permitted to licence a patent?

EC and Austrian competition law may apply to the exercise of patent rights where such restrictions are not justified for the purpose of safeguarding rights which constitute the specific subject matter of the patent right, eg exclusive licensing agreements with exclusive territory (see for detail Commission Regulation No. 772/2004). Apart from the practice of the ECJ and the Commission there is, as far as evident, no practice of the Austrian authorities on competition restraints and patent rights.

27 Compulsory licences

Are my mechanisms available to obtain a compulsory licence to a patent, and how are the terms of such a licence determined?

The Austrian patent office may, upon application of a third party, decide on the grant of a non-exclusive compulsory licence without authorisation of the rights holder, if:

- a patented invention, constituting a material technical advance, cannot be exploited without infringing an earlier patent, in which case, the patent owner of the earlier patent is entitled to cross-licensing;
- a patented invention is not used or worked in Austria to an adequate extent, where import shall constitute such use;
- the public interest demands the grant of a licence for the patented invention.

The patent owner, whose right is licensed, is entitled to receive adequate compensation. Compulsory licensing is scarcely relevant in practice.

Patent Office proceedings

28 Patenting timetable and costs

How long does it typically take, and how much does it typically cost, to obtain (and maintain) a patent?

The time frame from application to registration varies widely, depending on the complexity of the invention, from one to six years and longer.

Patent application procedures with the Austrian Patent Office are usually handled by Austrian patent attorneys.

The patent application shall disclose the invention in a sufficiently clear and complete manner to enable a person skilled in the art to work the invention; an application may contain only one single invention or a group of inventions interrelated in a manner so as to realise a single general inventive concept.

The application is examined by a member of the Technical Department of the Patent Office for evaluating the patentability of the invention.

The patent application shall be published within 18 months. On the day of publication the rights conferred by the patent shall provisionally enter into force and any third party may file an objection against the (impending) grant of the patent. After grant of the patent an opposition claim may be filed within four

Update and trends

The Supreme Court recently decided in a provisional proceedings matter that "Swiss-style claims" for pharmaceutical products fall within the scope of the prohibition of substance protection, which was applicable for chemical, pharmaceutical and food patents filed prior to or on 7 October 1987. One could argue that – as a result of this ruling – Swiss-style claims protect product as such. Currently, there is a debate going

on whether any and all "Swiss-Style claim" patents (also those filed after 7 October 1987) are vulnerable to invalidation if a prior substance patent exists.

The Supreme Patent and Trademark Senate will decide on this issue in parallel (nullity) proceedings in the near future.

months after the patent specification was published. Each party must pay its own costs. The fee for an opposition claim amounts to €150.

Costs

The application fee and the publication fee for the application amounts to €180. For the publication of the patent specification an amount of €200 for the first 15 pages is due, each additional 15 pages cost €130. The annual fees increase from €65 for the second year to €1,400 for the 20th year. The fees of the patent attorney for preparation of the application normally vary between €1,500 and €3,000.

29 Prior art disclosure obligations

Does an inventor have an obligation to disclose prior art to the Patent Office examiner?

Not applicable.

30 Patent Office appeals

Is it possible to appeal an adverse decision by the Patent Office in a court of law?

Decisions of the technical department of the Patent Office on the grant or rejection of a patent application may be appealed to the appeal department of the Patent Office, decisions of which may be appealed with the Supreme Patent and Trademark Senate.

Decisions of the nullity department of the Patent Office may be appealed to the Supreme Patent and Trademark Senate.

Decisions of the Supreme Patent and Trademark Senate may only be appealed by extraordinary appeal to the Constitutional Court for infringement of constitutional rights.

No appeal to a civil court is provided by Austrian law.

31 Oppositions or protests to patents

Does the Patent Office provide any mechanism for opposing or protesting the grant of a patent?

Yes, the amended PatG now allows for filing of an opposition claim (see also question 28).

32 Priority of invention

Does the Patent Office provide any mechanism for resolving priority disputes between different applicants for the same invention, and what factors determine who has priority?

In cases where several inventors have developed the same invention, each inventor is entitled to the invention and the patent rights. However, the patent and its legal effects will only be granted to the person who filed the patent application first (first-to-file). The actual date and time of receipt of the application by the Patent Office is decisive for the right of priority for the invention.

Apart from this, an applicant who has duly filed an application for a patent may expressly claim the priority rights according to Article 4 of the Paris Convention, according to reciprocity agreements or of a prior Austrian patent or utility model application during the periods fixed in the respective provisions (eg Paris Convention, 12 months). The priority claims determine the priority rights vis-à-vis third parties, in particular other inventors of the same invention.

33 Modification of patents

Does the Patent Office provide procedures for modifying, re-examining and/or revoking a patent after it has been granted, and can a court amend the patent claims during a lawsuit?

The applicant may not broaden the wording of the patent claims in the course of the application proceedings. The Patent Office may only grant the patent as initially filed or as defined by the applicant. The Patent Office may not revoke or nullify the patent ex officio.

The court cannot amend patent claims during a lawsuit. The court is entitled to interpretation of the patent claims and may determine the scope of protection of the patent, taking into consideration equivalent embodiments. In the course of this, the

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protocol on interpretation of Article 69 of the EPC applies.

34 Patent duration

How is the duration of patent protection determined?

The maximum term of protection of a patent is 20 years from the application date (up to five years extension for pharmaceutical products possible by means of Supplementary Protection Certificates (SPCs)).