

AUSTRIA

Status as of October 2005

FEATURES	STATUS	CHANGES IN LAWS SINCE 1990
Types of protection for inventions	<ul style="list-style-type: none"> • Patents • Utility models 	April 1, 1994 – Before that date, it was not possible to file utility models.
Term of protection	<ul style="list-style-type: none"> • Patents: 20 years • Utility models: 10 years • Extension of patent term is possible on the following grounds: <ul style="list-style-type: none"> - Supplementary protection certificate for pharmaceuticals and agricultural chemicals 	January 1, 1996 – Before that date, the term of protection for patents was 18 years from the date of publication (20 years from the date of filing at least) for patent applications filed before December 1, 1984; and 20 years from the date of filing for patent applications filed on or after December 1, 1984.
Subject matters excluded from patentability or not considered to be inventions	<ul style="list-style-type: none"> • The following subject matters are excluded from patentability: <ul style="list-style-type: none"> - Plant and animals varieties - Diagnostic, therapeutic and surgical methods for the treatment of humans and animals - Inventions contrary to morality/public order • The following subject matters are not considered to be inventions: <ul style="list-style-type: none"> - Discoveries - Scientific theories/mathematical methods - Aesthetic creations - Mental acts - Presentation of information - Computer programs - Business methods 	June 10, 2005 – The law has been updated and cleared regarding biotechnical inventions.
Filing language	<ul style="list-style-type: none"> • Filing an application in English and French in addition to the official language (German) is possible. The time limit to provide a translation into German is at least 2 months after the invitation by the office. 	July 1, 2005 – Before that date, the time limit to provide a translation into German was 3 months from the filing date.

Certain requirements relating to filing	<ul style="list-style-type: none"> • It is not possible to file provisional applications. 	No
Link between different inventions in the same application	<ul style="list-style-type: none"> • No figures are available regarding how often the inventor waives his right to be mentioned in the patent, nor on the most frequent route used for foreign applicants to file patent applications (Patent Cooperation Treaty vs. Paris Convention). 	
Publication	<ul style="list-style-type: none"> • The applicable law allows that the claims in a patent application relate to a group of inventions. The applicable standard is the unity of invention. 	April 1, 1994 – Harmonization with Rule 30 of the Implementing Regulations to the European Patent Convention.
Classification system	<ul style="list-style-type: none"> • The information related to the application is published or open for public access 18 months from the date of filing or from the priority date. 	July 1, 2005 – Before that date, the information related to the application was published or open for public access when the patent was granted.
Search and examination	<ul style="list-style-type: none"> • The patent classification system used is the International Patent Classification (IPC) system 	N.A
	<ul style="list-style-type: none"> • The applicable law establishes a substantive search and examination system. • Search and examination are combined. The filing of an application automatically implies a search and examination. • During the examination procedure, the following criteria are examined: <ul style="list-style-type: none"> - Novelty - Inventive step/non obviousness - Industrial applicability/utility 	N.A

<p>Specific legal provision regarding ownership of patents derived from public (government) research funding</p>	<ul style="list-style-type: none"> • 2002 Law concerning Universities: when a person is employed by an University, the University may claim the inventions or the right to use the inventions of the latter, if the inventions of the person fall within the activities of the University. 	<p>2002 – Before that date, there was no specific provision concerning universities; general provisions of patent law were applicable as follows: Employees are entitled to the grant of a patent for inventions they have made during their employment relationship, unless otherwise provided by contract. In any way where a person is employed under public law, the employer (for instance the government) may, even in the absence of an agreement with the employee, claim the invention.</p>
<p>Exceptions to exclusive rights conferred by a patent</p>	<ul style="list-style-type: none"> • There are exceptions to the exclusive rights conferred by a patent as follows: <ul style="list-style-type: none"> - Private use - Compulsory licenses - Research and/or experimental exception - Prior user's right 	<p>January 1, 1996 – Harmonization with TRIPS Agreement of the compulsory licenses and governmental use exceptions.</p>
<p>Options to challenge a patent</p>	<ul style="list-style-type: none"> • There are the following options to challenge: <ul style="list-style-type: none"> A patent: <ul style="list-style-type: none"> - Post-grant administrative procedure (opposition procedure): within 4 months after the publication of the grant of the application - Post-grant administrative/quasi judicial procedure (nullity procedure): within no time limit - Court procedure A utility model: <ul style="list-style-type: none"> - Post-grant administrative/quasi judicial procedure within no time limit - Court procedure 	<p>July 1, 2005 – Before that date, there was a pre-grant administrative procedure.</p>