

AUSTRIAN PATENT OFFICE

AS

DESIGNATED (OR ELECTED) OFFICE

CONTENTS

THE ENTRY INTO THE NATIONAL PHASE—SUMMARY

THE PROCEDURE IN THE NATIONAL PHASE

ANNEXES

Fees	Annex AT.I
Power of attorney	Annex AT.II

List of abbreviations:

Office:	Austrian Patent Office
PatG:	Patent Law [<i>Patentgesetz</i>]
PatV:	Law for the Introduction of the Patent Treaties [<i>Patentverträge-Einführungsgesetz</i>]
GMG:	Law on the Protection of Utility Models [<i>Gebrauchsmustergesetz</i>]
PAG:	Law on Charges of the Austrian Patent Office [<i>Patentamtsgebührengesetz</i>]

SUMMARY**Designated
(or elected) Office****SUMMARY****AT****AUSTRIAN PATENT OFFICE****AT****Summary of requirements for entry into the national phase**

Time limits applicable for entry into the national phase:	Under PCT Article 22(1): 30 months from the priority date Under PCT Article 39(1)(a): 30 months from the priority date
Translation of international application required into: ¹	German
Required contents of the translation for entry into the national phase: ¹	Under PCT Article 22: Description, claims (if amended, both as originally filed and as amended, together with any statement under PCT Article 19), any text matter of drawings, abstract Under PCT Article 39(1): Description, claims, any text matter of drawings, abstract (if any of those parts has been amended, both as originally filed and as amended by the annexes to the international preliminary examination report)
Is a copy of the international application required?	No
National fee: ^{1, 2}	Currency: Euro (EUR) For patent: Fee for entry into the national phase: EUR 50 Search and examination fee, including 10 claims: EUR 180 Claims fee, from the 11 th claim, for each group of up to 10 claims: EUR 100 For utility models: Fee for entry into the national phase: EUR 50 Search fee, including 10 claims: EUR 50 Claims fee, from the 11 th claim, for each group of up to 10 claims: EUR 100
Exemptions, reductions or refunds of the national fee:	No fee for entry into the national phase is payable if the international application was filed with the Austrian Patent Office as receiving Office.
Special requirements of the Office (PCT Rule 51 <i>bis</i>): ²	Appointment of an agent if the applicant has neither a residence nor his principal place of business within the territory of the European Union or in a State party to the Agreement on the European Economic Area

[Continued on next page]

¹ Must be furnished or paid within the time limit applicable under PCT Article 22 or 39(1).

² If not already complied with within the time limit applicable under PCT Article 22 or 39(1), the Office will invite the applicant to comply with the requirement within a time limit fixed in the invitation.

SUMMARY**Designated
(or elected) Office****SUMMARY****AT****AUSTRIAN PATENT OFFICE****AT***[Continued]*

Who can act as agent?

Any patent attorney, attorney at law or notary, entitled to professional representation in Austria. The list of patent attorneys may be obtained from the Österreichische Patentanwaltskammer, Museumstr. 3, A-1070 Wien, Austria (www.patentanwalt.at). The list of attorneys at law may be obtained from the Österreichischer Rechtsanwaltskammertag, Rotenturmstr. 13, A-1010 Wien, Austria (www.oerak.or.at). The list of notaries may be obtained from the Österreichische Notariatskammer, Landesgerichtsstr. 20, A-1010 Wien, Austria (www.notar.at).

If the applicant has a residence or his principal place of business in a member State of the European Union or in a State party to the Agreement on the European Economic Area, he may be represented by any natural person having a residence or his principal place of business in Austria. If the residence or the principal place of business of the applicant is outside of Austria, he has – at least – to mention a person having residence in Austria for the reception of documents.

Does the Office accept requests for restoration of the right of priority (PCT Rule 49*ter*.2)?

Yes, the Office applies both the “unintentional” and the “due care” criteria to such requests

THE PROCEDURE IN THE NATIONAL PHASE

AT.01 TRANSLATION (CORRECTION). Errors in the translation of the international application can be corrected with reference to the text of the international application as filed (see National Phase, paragraphs 6.002 and 6.003). If the translation furnished to the Office contains only the description, the Office will invite the applicant to furnish the missing part and will excuse the late furnishing provided that the scope of the disclosure contained in the translation furnished to the Office is not broadened thereby.

AT.02 FEES (MANNER OF PAYMENT). The manner of payment of the fees indicated in the Summary and in this Chapter is outlined in Annex AT.I.

PatG Sec. 21
77 **AT.03 POWER OF ATTORNEY.** An agent must be appointed by filing a power of attorney. An attorney-at-law, a patent attorney or a notary may replace a power of attorney by a reference to his authorization. A model of a power of attorney is given in Annex AT.II.

PatG Sec. 20 **AT.04 MENTION OF INVENTOR.** The name of the inventor is mentioned by the Office in the Patent Register and in the publication of the patent upon express request only. That request may be made by the applicant or the inventor at any time, even after the publication of the patent. Where several persons are entitled to make such request, the requestor must produce proof that the other persons entitled agree, unless the request is made jointly by all those entitled.

PAG Sec. 6 **AT.05 ANNUAL FEES.** Annual fees for patents are only payable after publication in the Patent Gazette [*Österreichisches Patentblatt*] of the granting of the patent. In general, annual fees are only payable for the sixth year and the following years (calculated on the basis of the last day of the month in which the application was filed). However, no payment of annual fees is due before the granting of the patent.

The annual fees must be paid within three months preceding the due date (the last day of the month which corresponds to the month in which the application was filed), but not later than six months after the due date. Payments made after the due date will be subject to a late payment surcharge of 20% of the applicable fee.

The amounts of the annual fees for national patents and utility models are indicated in Annex AT.I.

PCT Art. 28
41
PatG Sec. 91(3) **AT.06 AMENDMENT OF THE APPLICATION; TIME LIMITS.** The applicant may make amendments to any part of the application up to the decision to grant a patent, provided that the scope of the subject matter of the application is not broadened thereby. It is to be noted that, during the opposition procedure following the grant of the patent, amendments to the description, claims or drawings may still be made, but only within the scope of the patent as granted.

PCT Art. 25
PCT Rule 51
PatG Sec. 70
PatV Sec. 16(3) **AT.07 REVIEW UNDER ARTICLE 25 OF THE PCT.** The applicable procedure is outlined in paragraphs 6.018 to 6.021 of the National Phase. If, upon review under PCT Article 25, the Office denies an error or omission on the part of the receiving Office or the International Bureau, an appeal against this decision may be lodged within two months from the date of receipt of the decision. Within the same two-month time limit, a fee for appeal must be paid (for the amount, see Annex AT.I). The Board of Appeal will then decide on the appeal.

- PCT Art. 24(2)
48(2)
PatG Sec. 129
to 136
- AT.08 EXCUSE OF DELAYS IN MEETING TIME LIMITS.** Reference is made to paragraphs 6.022 to 6.027 of the National Phase. Reinstatement may be requested where the applicant, due to an unforeseeable or unavoidable event or in spite of due care required by the circumstances, has failed to comply with a time limit before the office and non-observance of the time limit is detrimental to his rights. A request for reinstatement must be presented in writing within two months after the removal of the cause of the failure to perform the act but not later than one year from the expiration of the time limit which has not been observed. Within these two months, the omitted act must be completed, the procedural fee for reinstatement indicated in Annex AT.I must be paid, and the request must state the facts which justify the reinstatement and procedure evidence of those facts, unless they are well known to the Office.
- PCT Art. 4(3)
43
44
PCT Rules 4.12
49bis.1
(a), (b)
76.5
GMG Sec. 3(4)
13 to 17
- AT.09 UTILITY MODEL.** If the applicant wishes to obtain utility model registration in Austria on the basis of an international application
- (i) instead of a patent, or
(ii) in addition to a patent,
- subject to what is said in paragraph AT.13, the applicant, when entering the national phase, shall so indicate to the Office. Utility model applications must fulfill basically the same requirements as patent applications. However, unlike patent applications, utility model applications enjoy a grace period in which disclosure of the invention by the applicant or his legal predecessor is not prejudicial to novelty provided that it did not take place more than six months prior to the date of filing.
- GMG Sec. 6
18(1)
19
27
- AT.10** The term of protection of the utility model commences with its publication and registration; the maximum term of protection for a utility model is 10 years from the end of the month in which the application is filed. In normal proceedings and where possible, if there are no objections to the publication and registration of the utility model, the Office compiles a search report within six months of the date of filing—the application procedure for utility models does not involve substantive examination. The applicant may amend the claims on receipt of the search report. Once proof of payment of the required fees has been received, the utility model is registered and published on the same date. Additionally, applicants may request accelerated proceedings (immediate publication and registration of their utility model) when filing their application. Under that procedure, where no objections arise from the formal examination and the proof of payment is received, the utility model is published and registered within one to three months from filing.
- PatV Sec. 16
- AT.11** If the international application is for both a utility model and a patent, the applicant must, within the time limit applicable for the entry into the national phase, pay two fees for entry into the national phase (for the patent application and the utility model application) and, where the international application was not filed in the German language, furnish a translation into German, and file a power of attorney (if any) in duplicate.
- PAG Sec. 16
- AT.12** Annual fees are payable from the fourth year onwards, as from the last day of the month of the filing date. In case the utility model is not published and registered before three years from the last day of the month of the filing date, annual fees are payable only for the years following the publication and registration of the utility model. The amounts of the annual fees are indicated in Annex AT.I.
- PatG Sec. 92b
GMG Sec. 21
- AT.13 CONVERSION.** An international application for a patent may be converted into a utility model application, and vice versa, after the applicant has complied with the requirements for the entry into the national phase as indicated in the Summary. Conversion may be effected up to the date on which the decision is taken to publish or reject the application. However, once a conversion has taken place, a conversion back to the original status will not be possible.

-
- GMG Sec. 15a(1) AT.14 **BRANCHING OFF.** A utility model application concerning the subject matter of an earlier application for a patent that is valid in Austria may claim the filing date of that earlier patent application provided the utility model application is filed before the expiration of two months after the patent application is considered withdrawn or finally rejected or after the opposition procedure, if any, is terminated.
- PCT Rule 49ter.2 AT.15 **RESTORATION OF THE RIGHT OF PRIORITY.** A declaration or other evidence in support of a request for restoration of the right of priority should be filed within the time limit set out in PCT Rule 49ter.2(b)(i).
- PCT Rule 49ter.2(e) If such a request is not accompanied by a declaration or other supporting evidence it will not be refused *prima facie* by the Office but the applicant will be requested to furnish the required declaration within a time limit which shall be reasonable under the circumstances.

FEES**(Currency: Euro)**

	Patent	Utility model
Fee for entry into the national phase ¹	50	50
Search and examination fee, including 10 claims	180	—
Search fee, including 10 claims	—	50
Claims fee, from the 11 th claim, for each group of up to 10 claims	100	100
Publication fee (for grant)	200 ²	130
Supplement for accelerated publication and registration	—	50
Annual fees:		
— for the 2 nd year	—	—
— for the 3 rd year	—	—
— for the 4 th year	—	50 ³
— for the 5 th year	—	100
— for the 6 th year	100	250
— for the 7 th year	200	300
— for the 8 th year	300	350
— for the 9 th year	400	400
— for the 10 th year	500	450
— for the 11 th year	600	—
— for the 12 th year	700	—
— for the 13 th year	800	—
— for the 14 th year	900	—
— for the 15 th year	1,000	—
— for the 16 th year	1,100	—
— for the 17 th year	1,200	—
— for the 18 th year	1,300	—
— for the 19 th year	1,500	—
— for the 20 th year	1,700	—
Fee for restoration of the right of priority	220	220
Procedural fee for reinstatement	220	220
Fee for appeal	220	220

¹ Where the international application has been filed with the Austrian Patent Office as receiving Office, the fee for entering the national phase is considered to have been paid with the payment of the transmittal fee.

² In excess of 15 pages, an additional fee of 130 euro is payable for each 15 pages (or part thereof) of the description, including the claims and drawings attached to the description.

³ Instead of paying annual fees, a single fee of 360 euro may be paid for the fourth to sixth years and EUR 1,350 for the seventh to the tenth years, which results in savings for the applicant.

How can payment of fees be effected?

PAG Sec. 28

The payment of fees must be effected in euro by transfer into the postal check account of the Office at the *Österreichische Postsparkasse* in Vienna (account No. 5160.000; address: Georg Coch Platz 2, A-1018 Wien; bank code: 60 000; BIC/SWIFT Code: OPSKATWW; IBAN: AT36 6000 0000 0516 0000). All payments must indicate the application number (national, if already known; international, if the national application number is not yet known), the name of the applicant and the type of fee being paid. Fees paid to the postal check account of the Office are regarded as being received on the date on which the money is either paid in cash at an Austrian post office or credited to the said account.

**ÖSTERREICH
EUROPA
INTERNATIONALE VERTRÄGE**
PATENTE / SCHUTZZERTIFIKATE /
GEBRACHSMUSTER / MARKEN / MUSTER /
HALBLEITERSCHUTZ / SORTENSCHUTZ

VOLLMACHT

Der (Die) Unterzeichneter(n)
bevollmächtigt (bevollmächtigen) die

Patentanwälte
Vertreter vor dem Europäischen Patentamt

- einschließlich des Rechts auf Erteilung von Untervollmachten –
alle einem Patentanwalt zustehenden Vertretungshandlungen auf
dem Gebiet des Erfindungs-, Kennzeichen-, Muster-,
Halbleiterschutz-, und Sortenschutzwesens, insbesondere vor den
österreichischen, europäischen und internationalen Behörden.

Jeder Bevollmächtigte ist zur Beistandsleistung, insbesondere vor
Gericht und Verwaltungsbehörden ermächtigt. Ebenso ist er zu
Behebung und Empfangnahme von Geld und Geldeswert sowie zur
Unterzeichnung von Urkunden für den Vollmachtgeber,
insbesondere Übertragungserklärungen, Erfindernennungen und
dergleichen ermächtigt.

Der (die) Unterzeichneter(n) erklärt (erklären) sich zur ungeteilten
Hand, Honorare sowie Auslagen und eine allfällige Umsatzsteuer
zu bezahlen und erklären sich damit einverstanden, dass der
bezügliche Anspruch in Wien (Österreich) gerichtlich geltend
gemacht werden kann.

**GERICHTSSTAND
HAFTUNGSBEGRENZUNG**

Der (die) Unterzeichneter(n) erklärt (erklären) sich damit
einverstanden, dass für sämtliche Ansprüche aus oder in
Zusammenhang mit diesem Auftragsverhältnis das jeweils sachlich
für den Ort des Kanzleisitzes der Vollmachtnehmer zuständige
Gericht ausschließlich zuständig ist, wobei der Vollmachtnehmer
auch ein aus- oder inländisches Gericht anrufen kann.

Die Anwendung österreichischen Rechtes auf das
Auftragsverhältnis und alle damit zusammenhängenden
Rechtsstreitigkeiten wird für verbindlich erklärt.

Unterschrift mit vollem Namen (Sign full name here): _____

Place, Date
Ort, Datum

Österreichische Patentanwaltskammer
Austrian Chamber of Patent Attorneys

**AUSTRIA
EUROPE
INTERNATIONAL TREATIES**
PATENTS / PROTECTION CERTIFICATES / UTILITY MODELS /
TRADEMARKS / DESIGNS /
PROTECTION OF SEMICONDUCTORS AND PLANTS

POWER OF ATTORNEY

The undersigned
Hereby authorize(s) the

Patent Attorneys
European Patent Attorneys

to represent them - inclusive the right to grant powers of
substitution - in all matters with regard to invention, trademarks,
designs, semiconductor and plant protection, in particular before
the Austrian, European and International Authorities.

The above attorneys are authorized to assist the undersigned in
particular in proceedings before courts and administrative
authorities.

They are authorized to sign documents (in particular assignments,
declarations of inventors, subpowers or the like) on behalf of the
undersigned and to receive money and money's worth.

The undersigned hereby agree(s) to pay (solidary) the full costs of
the representation as well as expenses and taxes and with respect
to same accept(s) the jurisdiction of the pertinent courts in Vienna
(Austria).

**COURT OF COMPETENT JURISDICTION
LIMITATION OF LIABILITY**

The undersigned hereby declares (declare) his her (her, their)
consent and agrees (agree) that for all claims arising from or in
connection with this mandate, the court of competent jurisdiction
at the seat of the holder of power of attorney shall have exclusive
jurisdiction. The holders of power of attorney may, at his own
discretion, also take action before any other foreign or domestic
court of his choice.

It is stipulated that Austrian Law shall be applicable and binding
for this mandate and for all legal disputes connected therewith or
arising therefrom.

Bei Personen: Namen und Vornamen voll ausschreiben, bei Firmen,
genaue, eingetragene Firmenbezeichnung angeben. **Keine Beglaubigung!**

First names and surnames of individual persons are to be written in full,
corporate bodies are to sign in the form in which they are registered. **No
legalization!**