

GERMAN PATENT VS. GERMAN UTILITY MODEL

Strategic Handout for Chinese In-House Counsel & R&D Decision-Makers

This comparison matrix outlines the critical legal, procedural, and economic differences between the standard German Patent (*Patent*) and the unexamined German Utility Model (*Gebrauchsmuster*). Designed specifically for Chinese enterprises launching technologies in Europe, it highlights how to coordinate these parallel rights to achieve maximum market protection while minimizing litigation risks and budget overhead.

Feature / Parameter	German Patent (<i>Patent</i> / PatG)	German Utility Model (<i>Gebrauchsmuster</i> / GebrMG)
Protectable Subject Matter	- Technical inventions of any kind. - Includes both products and processes/methods (manufacturing, data-processing, etc.).	- Technical inventions excluding processes and methods (products only). - Excludes biotechnological inventions.
Excluded from Protection	- Ideas, schemes, computer programs, aesthetic creations, discoveries, scientific theories, and mathematical methods <i>as such</i>. - Commercial exploitation contrary to public order or morality.	Identical exclusions to patents (ideas, schemes, computer programs, aesthetic creations, discoveries, scientific theories, mathematical methods <i>as such</i>).
Prior Art Definition	Worldwide absolute novelty: any public disclosure (written, oral, or by prior use) anywhere in the world. - Older unpublished patent applications with effect in Germany.	Relative novelty: publications worldwide count. Prior public use counts only if it occurred in Germany. - Older unpublished patent applications do not count.
Novelty Grace Period	No grace period; any disclosure prior to the filing/priority date destroys novelty ("<i>File first, then talk</i>").	6-month grace period for disclosures directly originating from the inventor or their predecessor in title.
Inventive Step Standard	- Required. - Assessed under standard European/German technical contribution criteria.	- Required. Standard is identical to patents (established by Federal Court of Justice "<i>Demonstrationsschrank</i>" decision).
Substantive Examination	Obligatory substantive examination prior to grant (§ 44 PatG). - Examination request can be deferred for up to 7 years from filing.	None prior to registration (unexamined right). - Validity is assessed defensively during cancellation or infringement proceedings.
Prior Art Search	Obligatory prior art search carried out by the patent office (§ 43 PatG).	Voluntary search of the state of the art available upon request (official fee: 250 EUR).
Maximum Protection Term	Max. 20 years from the filing date.	Max. 10 years from the filing date.

PROCEDURAL AND ENFORCEMENT MATRIX (CONTINUED)

Feature / Parameter	German Patent (<i>Patent</i> / PatG)	German Utility Model (<i>Gebrauchsmuster</i> / GebrMG)
Filing and Renewal Fees	• Application fee: 40 EUR. • Search fee: 300 EUR; Examination fee: 350 EUR. • Renewal fees due **annually** starting from the 3rd year (e.g., 3rd year: 70 EUR, 10th year: 350 EUR, 20th year: 1,940 EUR).	• Application fee: 40 EUR. • Search fee (voluntary): 250 EUR. • Maintenance fees due **after 3, 6, and 8 years** (e.g., after 3 years: 210 EUR, 6 years: 350 EUR, 8 years: 530 EUR).
Duration of Proceedings	• Slow; typically **2 to 4 years** after an examination request is lodged.	• Extremely fast; **6 to 12 weeks** from filing to registration.
Post-Registration Challenge	• Opposition before GPTO within 9 months after grant. • Separate Nullity Action at the Federal Patent Court at any time after.	• Request for cancellation before the GPTO (§§ 15-17 GebrMG) can be lodged at any time after registration.
Litigation Enforcement	• Specialized civil courts. • Assumption of validity: Infringement court is bound by the patent; invalidity must be argued in separate nullity proceedings ("bifurcation").	• Specialized civil courts. • No assumption of validity: Infringement court is not bound and can directly assess invalidity defenses.
Preliminary Injunction (PI)	• Possible and common. • Requires high stability (typically having survived first-instance opposition or nullity proceedings).	• Possible, but significantly less likely. • High risk of strict liability damages if the injunction is later found unjustified (§ 945 ZPO).
PCT National Phase in Germany	• Yes (via direct entry or Euro-PCT route).	• Yes (utility model explicitly requested upon national phase entry).
Special Filing Strategies	• **Divisional applications** possible any time until a final decision on grant or refusal is made.	• ***Branching off*** (<i>Abzweigung</i>) from a pending national, European, or international patent application is possible, retaining the parent filing/priority date.
Major Strategic Utility	• Strongest, fully examined protection for core technology and processes. • High presumption of validity deterring competitors.	• ***"Small patent" for rapid market entry**: fast protection before trade fairs (e.g., consumer electronics). • Fast defensive injunctions while a patent application is pending.

PRACTITIONER STRATEGY: COORDINATING GERMAN PATENTS & UTILITY MODELS

- 1. Execute the Double Strategy (*Doppelstrategie*):** For critical product launches in Germany, file a standard European or German patent application to secure robust, long-term (20-year) protection. Concurrently, "branch off" (*Abzweigung*) a German Utility Model from the pending application. The utility model is registered within 6 to 12 weeks, giving your client an immediately enforceable right to secure preliminary injunctions or customs seizures at trade exhibitions while the main patent slowly winds through examination.
- 2. Leverage Prior Art Rules:** Because public prior use only destroys novelty for a German Utility Model if it occurred ***within Germany***, Chinese clients can still secure registered protection in Germany for products already publicly demonstrated or launched in China, provided no written descriptions have been published worldwide.
- 3. Mitigate Strict Liability Risks:** Since the utility model is unexamined, always conduct a voluntary prior art search before initiating enforcement. This mitigates the risk of facing severe strict liability damages under Section 945 ZPO if the utility model is subsequently declared invalid or cancelled.