

# The German Utility Model

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Protection of Innovation:  
fast, flexible, cost efficient



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Registergericht: Amtsgericht Bremen PR 393 HB

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# Executive Summary

The German utility model is a sharp weapon, since it conveys the same rights as a patent and can usually be obtained in less than 3 months. The quick registration of the German utility model relies on the fact that there is no substantive examination with regard to novelty and inventive step. Due to the lack of examination proceedings, only low costs up to the registration of the utility model are incurred, and even after registration, only low fees are due for its maintenance.

In comparison to patent protection, the German utility model only lags behind in terms of the shorter term of protection of 10 years and the exclusion of protection for method claims. However, the protection of

product and system claims is possible, as is the protection of use claims. Thus, in practice there are many ways to circumvent the exclusion of protection for method claims.

As a result, the German utility model belongs in every property right portfolio, since it is an ideal instrument to protect innovations at low cost parallel to patent protection. The flexibility of the German utility model is particularly useful for litigation and offers utility model owners many interesting advantages.

(19)  Deutsches Patent- und Markenamt

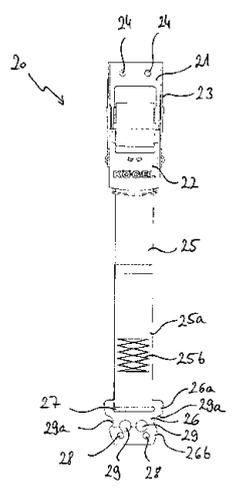
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Recherchantrag gemäß § 7 GbmG ist gestellt.  
**Die folgenden Angaben sind den vom Anmelder eingereichten Unterlagen entnommen.**  
 (54) Bezeichnung: **Seitenplaneinheit für einen Nutzfahrzeugaufbau und Nutzfahrzeugaufbau sowie Nutzfahrzeug mit einer solchen Seitenplaneinheit**



(57) **Hauptanspruch:** Seitenplaneinheit für einen Nutzfahrzeugaufbau mit einer Seitenplane (10), wobei an der Seitenplane (10) wenigstens eine Spannvorrichtung (20) zum vertikalen Spannen der Seitenplane (10) vorgesehen ist, die einen Spannungsgurt (25), ein Gurtschloss (21) mit einer Spannmechanik und eine Halteplatte (26) aufweist, und wobei die Halteplatte (26) einerseits fest mit dem Spannungsgurt (25) und andererseits fest mit der Seitenplane (10) verbunden, insbesondere verschraubt und/oder verklebt, ist.

(19)  Deutsches Patent- und Markenamt

(10) **DE 20 2010 018 160 U1** 2014.07.10

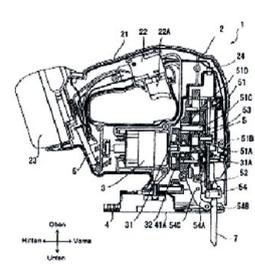
(12) **Gebrauchsmusterschrift**

(51) Int. Cl.: **H02P 6/08** (2006.01)  
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 (45) Bekanntmachungstag im Patentblatt: **10.07.2014**

(73) Name und Wohnsitz des Inhabers: **ITACHI KOKI CO., LTD., Tokyo, JP** (74) Name und Wohnsitz des Vertreters: **Meissner, Bolte & Partner GbR, 80538, München, DE**

Recherchantrag gemäß § 7 GbmG ist gestellt.  
**Die folgenden Angaben sind den vom Anmelder eingereichten Unterlagen entnommen.**  
 (54) Bezeichnung: **Oszillierendes elektrisches Werkzeug**



(57) **Hauptanspruch:** Oszillierendes elektrisches Werkzeug, ist: **bürstenloser Motor; Stößel, der von dem bürstenlosen Motor angetrieben wird und sich zwischen einem oberen Totpunkt und einem unteren Totpunkt hin- und her bewegt; Auslöseschalter, der von einem Benutzer betätigt werden kann, und eine Steuerungseinrichtung zur Steuerung der Drehzahl des bürstenlosen Motors auf Grundlage einer Position des Stößels, wobei die Steuerungseinrichtung den bürstenlosen Motor steuert, um den Stößel an einer vorbestimmten Position zu stoppen, wenn die Steuerungseinrichtung ein Stoppsignal über den Auslöseschalter empfängt.**

(19)  Deutsches Patent- und Markenamt

(10) **DE 21 2013 000 023 U1** 2014.07.10

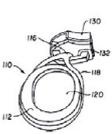
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(73) Name und Wohnsitz des Inhabers: **Meissner, Bolte & Partner GbR, 80538, München, DE** (74) Name und Wohnsitz des Vertreters: **Meissner, Bolte & Partner GbR, 80538, München, DE**

Recherchantrag gemäß § 7 GbmG ist gestellt.  
**Die folgenden Angaben sind den vom Anmelder eingereichten Unterlagen entnommen.**  
 (54) Bezeichnung: **ineinandergesteckte Radverschluss-Zugverrichtung**



(57) **Hauptanspruch:** In sich selbst steckerische Radverschluss-Zugverrichtung, aufweisend: **einzelne, voneinander verschiebbar angeordnete Ringe, in welchen die Radverschluss-Zugverrichtung durch ein einzelnes Radverschluss-Schloß und ein mit dem Band verbundene und um das Band des Rades während der Operation der Radverschluss-Zugverrichtung in Eingriff gebrachte Schloß, um das Band am Rade ab einer umschlossenen Struktur zu befestigen, welche von Radverschluß getrieben wird.**

# 7 facts you need to know

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## 1 Tailored enforcement of rights

Under German legal practice, it is possible to tailor the claims of a utility model to infringing embodiments of the competitor. This applies during every stage of the proceedings, which opens up a wide range of strategic possibilities.

## 2 Patent and utility model protection can be obtained cumulatively

Patent and utility model protection are not mutually exclusive. The applicant is therefore free to protect the same invention by a German (or European) patent, as well as by a German utility model. It is precisely this possibility that is lacking in other important jurisdictions (e.g. China), which, like German law, have a two-track system of patent and utility model protection.

## 3 The peculiarity of branching-off

The possibility of parallel protection is not only available during the 12-month priority period, but also afterwards. This is due to the fact that the German Utility Model Act (GebrMG) provides for the possibility of branching-off one (or several) utility models from a national, European or international patent application with effect for the territory of Germany in § 5 German Utility Model Act.

## 4 Double and triple protection possible

The possibility of branching-off utility models thus becomes a weapon, since the law does not explicitly prohibit multiple (even almost identical) or repeated branch-offs. In practice, it is therefore possible to issue a large number of branch-offs in parallel or successively, thus multiplying the number of rights to be respected by competitors.

## 5 Fast protection

The grant proceedings before the GPTO are merely formal proceedings that give the applicant the opportunity to obtain an industrial property right in a particularly fast and inexpensive way. As far as the timeline is concerned, utility model registrations can now sometimes even be achieved within a few days. Experience has shown that it takes a maximum of 3-4 months until registration is achieved.

## 6 Affordable protection

With regard to costs, first and foremost, the low registration and maintenance fees should be mentioned. In addition, it should be emphasized that the German Utility Model Law, unlike German and European Patent Law, does not provide for claim fees. Finally, a lack of unity (Sec. 4 (1) sentence 2 German Utility Model Act) is not objected to under official practice (so that no cost-incurring divisional applications are necessary).

## 7 Strong protection: novelty grace period and limited prior art

Pursuant to § 3 (1) sentence 2 German Utility Model Act, only "written publications" are considered as prior art. Acts of prior use by third parties are only relevant if they have been performed in Germany. In the case of own prior use acts, the novelty grace period applies, so that all acts by the applicant which were conducted 6 months before the priority date are disregarded for the question of protectability.

# The fundamental principles

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The German utility model is often referred to as the „little brother“ of the German patent. This term ignores the fact that the German utility model is a sharp weapon, which develops its advantages precisely when it is employed as a flanking measure to patent protection.

According to § 1 (1) German Utility Model Act, inventions are protected as utility models if they are novel, based on an inventive step and industrially applicable. The wording of the requirements for protectability in utility model law is thus essentially the same as in German Patent Law (Sec. 1 (1) of the German Patent Act) and European Patent Law (Art. 52 (1) EPC). However, there are considerable differences in the details, despite an almost identical choice of words. In particular, the exclusion of protection for method inventions should be mentioned, but its practical significance is low, since it can be circumvented in a permissible manner by means of use claims and functionally drafted product claims.

Apart from the different treatment of method claims, the 6-month novelty grace period, which applicants can claim for their own prior publications, should be mentioned in particular. The novelty grace period is of particular interest if the invention has been inadvertently disclosed. While in this case German and European patent law must be discarded (keyword: absolute novelty), the protection of the invention

remains possible by means of a German utility model (and also by means of a US patent, so that even in such a situation it is still possible to secure important countries with technical property rights).

Utility model protection is quickly available, since there are often only a few days between application and registration. Provided that the utility model filing meets the formal requirements of §§ 4, 4a German Utility Model Act, it is registered. An examination of the subject-matter of the application for novelty, inventive step and industrial applicability is not carried out according to the explicit stipulation of § 8 (1) sentence 2 German Utility Model Act. However, it should not be inferred from the lack of substantive examination that the legal status of the utility model is weaker in comparison to the patent. At least, the figures of the GPTO and the Federal Patent Court do not support such a conclusion.

For enforcement purposes, it should be noted that the scope of protection of a utility model and a patent are determined according to identical standards. This applies both to national German patents and to European patents that have been validated in Germany. The legal consequences of a patent and a utility model infringement are also identical. As a result, the German utility model thus offers a very effective and sharp weapon.

German Patent und  
Trademark Office, Munich  
Image source: DPMA



# The branching-off of utility models – a German peculiarity

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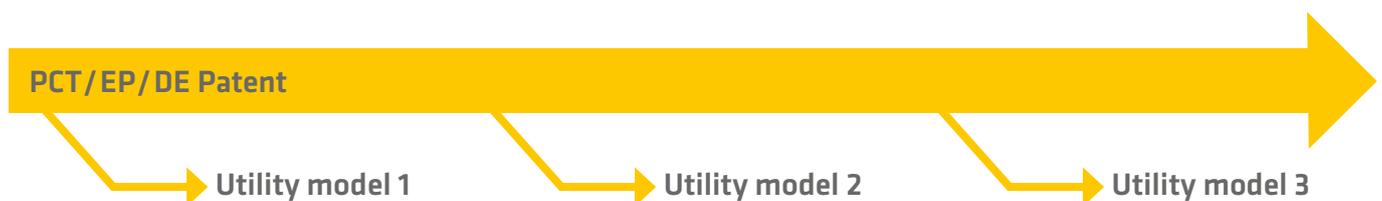
Patent and utility model protection are not mutually exclusive. Parallel protection can be obtained not only during the 12-month priority period, but also afterwards. This is due to the fact that the German Utility Model Act provides for the possibility of branching-off one (or several) utility models from a national, European or international patent application effective for the territory of Germany in § 5 German Utility Model Act.

With the right to branch off, the legislator offers the applicant the possibility to bridge the time-consuming examination proceedings of a parallel patent application. This is relevant because a pending patent application with effect for the territory of Germany does not entail any prohibitive effect. In terms of time, the right to branch-off can only be exercised until the expiry of the tenth year after the filing date of the patent application. In practice, however, it is advisable to make use of the right to branch-off a utility model when an infringing product appears on the market, so that the infringing product can be attacked with tailored claims (within the scope of disclosure).

The possibility of branching-off thus becomes a weapon, since the law does not explicitly prohibit multiple (even almost identical) or repeated branch-offs. In practice, it is therefore possible to file a large number of branch-offs in parallel or successively, thus multiplying the number of intellectual property rights to be respected by competitors. The

multiplication of rights shifts the risk further to the detriment of the potential infringer. From his point of view, he will only be successful if he succeeds in fending off all attacks by the owner of the intellectual property right. In contrast, it is sufficient for the owner of the intellectual property right to be successful with only one attack – be it from a patent or a branched-off utility model.

The institution of the branch-off also gives the intellectual property right owner the option of a (tailor-made) second chance. This is especially true if the intellectual property right owner has had to accept restrictions in the parallel patent application proceedings which were required by the patent examiner and which – as is often the case – are not directly and unambiguously derivable from the cited prior art. The strategy described above is particularly suitable for parallel European patent applications, since the hurdles – especially the formal one regarding inadmissible extensions – are higher than for national patent applications.



# Timeline, Costs, Statistics

**Time until registration** (according to experience)

German first filing: approximately

**2-4 weeks**

Branching-off from patent application: approximately

**4-10 weeks**

## Official Fees

Filing fee – electronic filing	30 €
Filing fee – paper filing	40 €
Search Fee (not mandatory for registration)	250 €
1 <sup>st</sup> maintenance fee after 3 years	210 €
2 <sup>nd</sup> maintenance fee after 6 years	350 €
3 <sup>rd</sup> maintenance fee after 8 years	530 €

## Comparison: Country of Origin of Applicants (2020)

	Applications	%-tage
Germany	8 897	72,2
China	1 052	8,5
Taiwan	403	3,3
USA	347	2,8
Switzerland	200	1,6
Austria	194	1,6
Japan	179	1,5
Italy	147	1,2
Republic of Korea	131	1,1
France	98	0,8
Other	675	5,5
<b>Total</b>	<b>11 668</b>	<b>100</b>

(Applications at the DPMA and PCT applications in the national phase)

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