

**Utility Models, an IP Right 4.0 ? –  
The Actual Significance of Utility Models in times of shortened product life-cycle  
lengths**

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**[Abstract]**

*Germany and many other countries of the world have a two-tiered system of technical intellectual property rights (IP rights) consisting of patents and utility models. Where it is available, this system allows an inventor seeking protection for a technical invention, in principle, to choose between the two options, albeit in some countries with certain restrictions for the utility model with regard to the protectable subject matter (in Germany processes and biotechnological inventions are excluded). Utility models are considered a simple, fast and inexpensive means of protection, chosen for inventions of less relevance and used predominantly by small and medium-sized enterprises (SMEs) and by local applicants. However, the decision between utility model and patent should not be made based on stereotypical assumptions about these IP rights, but on the actual needs of the applicant. In this article, we show that in today's time of the fourth industrial revolution, where available utility models frequently can be the intellectual property right of choice in order to secure adequately the research and development results of an undertaking. The filing of parallel patent applications can be dispensed with, which has a positive effect on the costs of this approach.*

**[Keywords]**

Utility model, product life-cycle length, Industry 4.0, fourth industrial revolution, Europe

**[Academic field / Research field]**

Comparative study of technical intellectual property rights

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## 1. Introduction

Utility models are, next to the patent, a long established intellectual protection right for technical inventions that has been adopted by many countries, including Japan, Australia and Germany. There are, however, industrial countries like the US, Canada and the UK where this type of intellectual property right is not available. The German utility model was already introduced in 1891 to meet the need for protecting "smaller inventions" that do not quite meet the strict patentability requirements<sup>1</sup>. As in Germany, many countries within and outside of Europe today have a two-tiered patent system where applicants may choose a patent, a utility model, or even both, to protect a technical invention. Although there are some differences between the jurisdictions, utility models are usually regarded as a simpler, faster and cheaper way of protection than patents. As will be demonstrated in detail below, this statement is still valid. Up to date, utility models are moreover considered particularly suited for protecting inventions that make small improvements to and adaptations of existing products, are of less commercial relevance or that have a shorter commercial life. In advanced economies, utility models are often seen as important in particular for small and medium-sized enterprises (SMEs) and it is assumed that they are used predominantly by local inventors. Against this background, it is understandable that e.g. a potential is seen that utility models can foster innovation in developing countries<sup>2</sup>. In contrast, there is hardly any indication of using utility models as the sole IP application in the context of an IP strategy for innovative key technologies.

Overall, there is very little empirical data on why applicants choose a particular intellectual property right in a specific situation. When looking at the actual statistical data for German utility models and patents shown in Table 1, published by the German Patent and Trademark Office (GPTO)<sup>3</sup>, the described cliché is confirmed only in part. It is true that the total number of utility models is remarkably lower than the total number of patents. However, a significant proportion of utility models is not filed in the traditional technology fields of apparatuses and

machines, working equipment, everyday technical objects and tools. In the field of mechanical engineering, the percentage of applications is almost the same for utility models (35.9% in 2020) and patents (41.8% in 2020). After all, 13% of all utility models filed and registered in 2020 come from electrical engineering, 12% from optics and 7.4% from chemistry. In addition, the percentage of domestic applicants is only slightly higher for utility models (72% in 2020) in comparison to patents (68% in 2020). Looking at the four non-European countries with the most German utility model applications per year, an interesting trend can be seen. While between 2017 and 2020, the number of applications from the USA has fallen to one third and from Taiwan has decreased by 33%, in the same period the number of applications from Japan has increased significantly and the number from China has almost doubled. Obviously, the latter countries regard the German utility as an attractive IP right of today. It is further noticeable, that in Germany the number of both, applications for patents (- 8.5%) and utility models (- 7.4%) has decreased between 2017 and 2020. This effect is only for the last year attributable to the pandemic. During the same period, the overall number of European patent applications increased significantly between 2017 (165 590) and 2019 (181 532) and in 2020 (180 250) was nearly on a par with the previous year's, decreasing only by 0.7%. As will be shown in the following, if shorter terms of protection are aimed at and the choice of countries fits, it could be quite attractive for cost reasons to prefer several national utility models to a European patent application with subsequent nationalization.

**Table 1: Utility Models and Patents Filed in Germany 2017 and 2020**

	Total number of applications		Filed by applicants having their seat in Germany		Filed by applicants having a seat outside Germany	
	2020	2017	2020	2017	2020	2017
<b>Utility models</b>	12 323	13 301	8 897 (= 72%)	9 481 (= 71%)	3 426 CN:1 052 TW: 403 US: 347 JP: 179	3 820 CN: 555 TW: 602 US: 1 019 JP: 103
<b>Patents</b>	62 105	67 905	42 249 (= 68%)	46 633 (= 69%)	19 856	21272

(GPTO and PCT national phase)

## 2. Shortening of Product Life-Cycle Lengths and the Impact on IP Rights

Due to the rapid digitalization in the last decade, society as a whole and industry in particular was subject to a fundamental change, which is continuing. The transformation of the world of

work in the sense of Industry 4.0<sup>a</sup> and the Internet of Things (IoT) has led to a significant shrinkage of product life cycles<sup>4</sup>. In an increasing number of economic sectors long-term product "cash cows", which stay in a company's portfolio for many years, belong to the past. If a company fails to develop new products at high speed and bring them to market, it risks launching goods that have already been superseded by competitors. The classic examples of an increasingly rapid succession of new product series are electrical appliances, like smartphones, computer and consumer electronics, and the automotive sector, but the speed is also accelerating in mechanical and plant engineering, cosmetics, agricultural chemicals, etc. In the developed countries, e.g. the life of an average car model has shortened by about half from approximately eight to four years<sup>5</sup> in the last decade. Of course, the shortened life cycles are not always a leap forward in innovation, such as the introduction of the first personal computer, but the short-term launch of new products is nowadays part of the marketing strategy of many companies<sup>6</sup>.

Said development cannot be without impact on the IP management, neither for large-scale industry nor for small and medium-sized enterprises. Based on the consideration, that copying becomes less profitable and trade secrets less likely to be discovered when a technology can be used only for a shortened span of time one could expect that shorter product cycles lead to a preference of trade secrets over intellectual property rights applications. In an interesting analysis<sup>7</sup>, it was shown that under certain conditions exactly the opposite occurs and shorter product cycles can generate incentives to apply for more patents. The underlying mechanism for more intensive patenting activity is that if one firm starts to raise its number of patent applications, the most obvious reaction of other firms is then to match this behavior. Otherwise, the extensive patenting of one firm would drive the other firms out of the market or cut their profits significantly. Extensive filing has the effect that many ideas are filed that are not yet fully developed, but where the potential is seen to be successful in the future. This model even sees the risk of the formation of patent thickets<sup>8</sup> and sees licensing as a regulator to this ultimately ruinous competition.

In light of the foregoing, the following will explain why, in the authors' view, it does in many cases not make sense to acquire an examined property right in the form of a patent in order

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<sup>a</sup> Industry 4.0, also known as the Fourth Industrial Revolution, is a new era of digital integration throughout the supply chain that will enable the real-time use of data from product development and design to manufacturing, sales, and even product usage through the Internet of Things (IoT). The product lifecycle will be shortened by reflecting the data in the design process, and the product will be diversified by enabling individual manufacturing through the direct supply of customer order data to the production line. For details of the Industry 4.0 concept, please refer to the "Industry 4.0 Realization Strategy" of German industry, which was translated into Japanese by the translator of this paper at the request of JETRO (<https://www.jetro.go.jp/world/reports/2015/01/c982b4b54247ac1b.html>).

to maintain one's own competitive position in times of short product cycles. Accordingly, a utility model registered without a substantive examination for protectability can be the better alternative.

### **3. Advantages of Utility Models in Times of Shorter Product Life-Cycle using the Example of Germany**

Especially in times of short product lifetimes, the property profile of the utility model can be advantageous. This is also the result of a recent scientific study on the extent of use of the utility model in the German two-tier patent system, published in 2018 by University of Jyväskylä, Finland, Hasselt University, Belgium and Technische Universität Berlin, Germany<sup>9</sup>. It has been shown that a short life cycle of products is associated with an increased likelihood to use utility models. In the following we summarize the main arguments why utility models are not only interesting for applicants with "small" inventions but also are a strategic option in every IP management system.

#### Quick protection

Characteristic of the utility model is the short time span of 2 to 4 months until registration and full enforceability. Utility models are unexamined IP rights, i.e. during registration procedure there is no examination as to novelty, inventive step and industrial application. Provided that certain formal requirements are met, i.e. the claimed subject matter is not excluded from protection and the filed documents are complete, the utility model is registered. With the registration, the owner of the utility model receives protection for his invention, which he can enforce against third parties who use his invention (Section 11, German utility model act). The patent proprietor obtains such an extensive right of exclusion only after grant of the patent, i.e. after a possibly lengthy examination for patentability. It must be considered that because the subject matter of the utility model is not examined for protectability, there is a greater risk that an attack on the utility model will be successful and that the utility model will be cancelled as a result. To minimize this risk, it is possible to file a search request with the GPTO. This request can be filed with the application or at any time while the utility model is in force and the costs of 250 Euros are very moderate. The Patent Office then determines the prior art relevant to the question of novelty and whether the claimed subject matter is based on an inventive step.

In order to strengthen the competitive position of an enterprise in times of short product lifetimes, it is often not important that an intellectual property right is unquestionably legally valid. In many cases, the primary objective of a patent or utility model application is to create

prior art and/or to establish a time rank for an invention that is ahead of that of the competitors, irrespective whether the invention is protectable or not. The inherent legal uncertainty of an unexamined IP right can be accepted or even be of advantage. The same holds for the protection period of up to 10 years, which is only half of the maximum protection period of a patent. Utility models are the property right of choice especially if a long term of protection is not desired. If a product has already been superseded by a successor before a patent examination procedure has been successfully completed, it is no longer relevant that the maximum term of protection for utility models is shorter than for patents. A period of protection that ranges from 6 to 15 years depending on the country (Germany 10 years) is fully sufficient.

### Lower costs

The official fees for obtaining and maintaining a German utility model are cheaper than for a patent. However, as can be seen from the comparison of fees in Table 2, the differences are not dramatic. This is especially true, if the chosen conditions for utility model and patent are approximately the same, i.e. a term of only 10 years for the patent and requesting a search for the utility model. However, the patent may incur additional costs for the effort required to respond to office actions in the examination proceedings.

**Table 2: Comparison of Costs for German Utility Models vs. Patents<sup>10</sup>**

<b>Utility Model</b>		<b>Patent</b>	
Application fee for electronic filing (no claim fees)	30 €	Application fee for electronic filing (including 10 claims)	40 €
Search request (optional)	250 €	Request for examination (including search)	350 €
Maintenance fee years 4 – 6	210 €	Annual fee (3 <sup>rd</sup> year)	70 €
Maintenance fee years 7 and 8	350 €	Annual fees (4 <sup>th</sup> – 19 <sup>th</sup> year, increasing annually)	90 – 1760 €
Maintenance fee years 9 and 10	530 €	Annual fee (20 <sup>th</sup> year)	1940 €
<b>Sum (without search)</b>	<b>1 120 €</b>	<b>Sum</b>	<b>13 560 €</b>
<b>(with search)</b>	<b>1 370 €</b>	<b>(Patent held for 10 years)</b>	<b>(1 810 €)</b>

### Protectable subject matter

The German utility model protects all technical inventions with the exception of processes<sup>11</sup> and biotechnological inventions<sup>12</sup>. Many important inventions are not affected by the restrictions of the utility model because they are of a material nature. What is more, claims directed to a medical indication<sup>13</sup> (first or second medical use) are eligible for protection. The same holds for use claims if they relate to a material property<sup>14</sup> of a compound or product (e.g. the use of a chemical compound as semiconductor material). Protectable are inter alia: mechanical devices and apparatuses, chemical substances and formulations<sup>15</sup>, food and beverages, pharmaceuticals, cosmetics and cleaners, circuits, switchgear modules and chips, products obtained from microorganisms. In addition, it is often easier to prove the infringement of a substance or product claim by analysis of the potentially infringing product than to prove the infringement of a protected process.

### Filing possible in any language

It is possible to file German utility model applications in a language other than German<sup>16</sup>. This also applies to first applications and not only to applications claiming the priority of a first application filed in a foreign language. In this case, the applicant must provide a translation within three months after filing, otherwise the application will be deemed to be withdrawn. No specifications are made regarding the language in which the application can be filed. In any case, this includes all recognized national languages. The relevant disclosure is based on the documents as originally filed and not on the translation. This regulation makes it easy for foreign applicants to quickly apply for utility model protection in Germany. Corresponding regulations exist in many countries, e.g. in France a French translation must be provided within 2 months after reception of a notification from the French Patent Office.

### Grace period

In contrast to the patent, for the utility model there is the possibility to rely on a grace period of a maximum of 6 months, within which a disclosure by the inventors themselves is not considered<sup>17</sup>. This also applies to a branched-off utility model application<sup>b</sup>. The grace period can be cumulated with a priority claim, even if the priority of an earlier patent application is claimed. If a utility model is branched off from a patent application which itself claims a priority, the grace period begins six months before the filing of the priority application. In other

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<sup>b</sup> Section 5 of the German Utility Model Act provides for a system of "branching-off" of patent applications in force in Germany for a period of ten years from the filing date. The filing date of the earlier patent application is applied to the branched-off utility model, and if the earlier application claims a priority, the priority date is also valid for the utility model.

words, publication of the invention prior to the first patent application less than 6 months before the filing date of the patent application is not considered as prior art for the branched-off utility model application.

**Table 3: Comparison German Utility Models / Patents<sup>3</sup>**

Utility model	Patent
Registration without substantive examination as to novelty and inventive step	Examination for patentability (novelty, inventive step, industrial applicability)
Time until registration usually 3 – 4 month (in 2020 $\varnothing$ 4.2 month)	Time until grant usually several years (in 2020 $\varnothing$ 3.0 years from examination request until grant)
For technical inventions <u>except</u> processes and biotechnological inventions	All technical inventions can be protected
Maximum 10 years of protection	Maximum 20 years of protection
Enforceable after publication	(Fully) enforceable only after grant
State of the art: - all (written) publications (worldwide) - public prior uses in Germany	State of the art: - all Publications (written, oral, worldwide) - all prior uses
6 month grace period for own publications and prior use	No grace period
Published after registration (upon request deferment of up to 15 month after filing)	Published 18 month after filing/priority date

#### 4. Utility Models in Selected EU Member States

Patent protection is available in every country in Europe, perhaps with the exception of the Vatican. However, the possibility of applying for a utility model also exists in a number of European countries other than Germany, including Albania, Austria, Bulgaria, the Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Poland, Portugal, Slovakia and Spain.

Utility model protection is also available by an international application under the PCT in more than 80 PCT Contracting States, either as national utility models issued by certain national offices, or as utility models issued by the African regional Offices of the African Regional Intellectual Property Organization (ARIPO) or the African Intellectual Property Organization (OAPI)<sup>18</sup>.

In the following, the characteristics of utility model protection are listed for some EU states (see Tables 4 to 7). A very detailed account can be found in a study on the economic impact of the utility model legislation in selected EU member states, prepared for the European Commission in 2015<sup>19</sup>. In particular, the comparative overview of the legal and political features in the individual countries, but also the core statements on the influence of the utility model system on innovation are still relevant.

**Table 4: Austria**

Maximum time of UM protection	10 years from filing date (end of month)
Time until UM is granted	On average 11 months (accelerated procedure against fee possible)
Restrictions in terms of technology fields or types of inventions that are protectable under UM law compared to national patent law	No
Extensions in terms of technology fields or types of inventions that are protectable under UM law compared to national patent law	Yes: Methods for surgery and therapy and diagnostic methods for animals
Existence of a grace period	Yes, six months
Possibility of a (preliminary) examination/search report by the patent office	Search report mandatory, costs included in the application fee
Official fees for UM protection (UM held for 10 years)	Search and application fee: 186 € Publication fee: 135 € Renewal fees payable every year for years 4 to 10: sum = 1982 €

UM = utility model

**Table 5: France**

Maximum time of UM protection	10 years
Time until UM is granted	Approx. within 21 month
Restrictions in terms of technology fields or types of inventions that are protectable under UM law compared to national patent law	No
Extensions in terms of technology fields or types of inventions that are protectable under UM law compared to national patent law	No
Existence of a grace period	No
Possibility of a (preliminary) examination/search report by the patent office	In infringement cases a prior art search must be requested from the French IP Office
Fees	Filing fee: 13 € for small entities and 26 € for large entities Claim fee: from the 11 <sup>th</sup> claim 21 €/claim for small entities and 42 €/claim for large entities

**Table 6: Italy**

Maximum time of UM protection	10 years
Time until UM is granted	Within 24 months from date of filing. The Italian patent office carries out only an examination of the formal requirements. Invalidity of the utility model may be invoked as a defence in an infringement process.
Restrictions in terms of technology fields or types of inventions that are protectable under UM law compared to national patent law	Physical form requirement, no protection possible for processes, biotechnological and electronic inventions
Extensions in terms of technology fields or types of inventions that are protectable under UM law compared to national patent law	No
Existence of a grace period	No
Possibility of a (preliminary) examination/search report by the patent office	No
Official fees for UM protection (UM held for 10 years)	€ 50 basic fee plus € 500 renewal fees for the second five years (years 6 to 10)

**Table 7: Spain**

Maximum time of UM protection	10 years
Time until UM is granted	6 months
Restrictions in terms of technology fields or types of inventions that are protectable under UM law compared to national patent law	Physical form requirement, no protection possible for processes and methods
Extensions in terms of technology fields or types of inventions that are protectable under UM law compared to national patent law	No
Existence of a grace period	No
Possibility of a (preliminary) examination/search report by the patent office	No
Official fees for UM protection (UM held for 10 years)	€ 74.92 basic fees plus € 581 renewals

Table 8 summarizes the costs of an EP regional phase application filed with a receiving office (RO) where neither the EPO nor an International Searching Authority (ISA) has drawn up the International Search Report (ISR) that enjoy a reduction of the search fee in the EP regional phase (e.g. an international application filed with the Japanese Patent Office). The same fees apply for an EP patent application claiming priority of a first application not filed with the EPO.

**Table 8: Costs arising with the entry of the EP regional phase (in Euro)<sup>20</sup>:**

Fee item	Official fee
Filing fee	125
Search fee	1350
Examination fee	1700
Designation fee (for all contracting states)	610
Sum	<b>3785</b>

For European patent applications, additional fees may arise, for example, in form of claims fee for the 16<sup>th</sup> and each subsequent claim, i.e. to the limit of 50 of 245 EUR and for the 51<sup>st</sup> and each subsequent claim of 610 EUR. If the EP application stems from an international application claiming a priority, the renewal fee for the third year falls due 6 months after entry of the EP phase. In the following table 9, the annuities for years 3 to 10 of a European patent application are summarized. The costs of the entry of the EP regional phase plus the annual fees for years 3 to 5 already exceed the total costs of utility models with a term of 10 years in AT, DE, ES, FR and IT. After grant of the European patent, annuities have to be paid with the national patent offices where the patent is validated (set into force). Those annuities are in any case remarkably higher than the renewal fees of the corresponding utility model.

**Table 9: Renewal fees for European patent applications**

Renewal fees	Euro	Accumulated fees
for the 3 <sup>rd</sup> year	490	490
for the 4 <sup>th</sup> year	610	1100
for the 5 <sup>th</sup> year	855	1955
for the 6 <sup>th</sup> year	1 090	3045
for the 7 <sup>th</sup> year	1 210	4255
for the 8 <sup>th</sup> year	1 330	5585
for the 9 <sup>th</sup> year	1 450	7035
for the 10 <sup>th</sup> year <sup>#)</sup>	1 640	8675

<sup>#)</sup> constant from year 10 on

Moreover, for EP regional phase applications where the EPO has not acted as International Searching Authority (ISA) (e.g. a Japanese PCT application), a supplementary European search is performed. As of April 1, 2018, the European search fee is no longer reduced if the international search report has been drawn up by the patent offices of Japan, USA, China, Australia, Russia or Korea, that before have enjoyed a reduction in fees.<sup>21</sup>

## 5. Summary

In Germany and many other countries with a two-tiered patent system and for many technical inventions, an inventor seeking protection has the choice between a patent application and a utility model. Utility models are the intellectual property right of choice if a long term of protection is not desired, also for important inventions in innovative fields of technology. In times when product life-cycle lengths become remarkably shorter, a period of protection that, depending on the country, ranges from 6 to 15 years is fully sufficient. In addition, national utility models, even if filed parallel in a number of countries, are significantly less expensive than

an EP patent application followed by nationalization in the same countries. Thus, it is worth considering using utility models instead of patents as the sole IP application in the context of an IP strategy for innovative key technologies.

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