

# Substantive Requirements for Protection of the Patent

According to Sec. 1 (1) PatG, an invention is patentable if it is new, involves an inventive step and is susceptible of industrial application.

## 1. Novelty, Sec. 3 PatG

An invention is considered new if it does not form part of the state of the art, Sec. 3 (1) (1) PatG.

### a) State of the art

The state of the art includes

- the *pre-published* state of the art

= all knowledge made available to the public in any way prior to the priority of the application, Sec. 3 (1) (2) PatG.

- the *non-pre-published* state of the art

= older German patent applications, Sec. 3 (2) PatG.

### b) Procedure

The examination of novelty is carried out by comparing the subject-matter of the patent claim individually with each individual publication ("citation" or also "printed publication") in the state of the art.

=> Novelty exists if the subject-matter of the patent differs even in one of its technical features.

### c) Non-prejudicial disclosure

aa) Evident abuse, Sec. 3 (5) No. 1 PatG

bb) Exhibition protection, Sec. 3 (5) No. 2 PatG

## 2. Inventive Step, Sec. 4 PatG

An invention is deemed to involve an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art, Sec. 4 (1) PatG.

### a) Procedure

In contrast to the examination of novelty, no individual comparison takes place here; rather, the entire prior art to be combined is contrasted (mosaic work).

=> Citations may be combined

- with each other and
- also with prior use and general expertise.

### b) Evidence sign

Certain circumstances may support a *prima facie case* for inventive step:

- Long lasting need
- Overcoming a technical prejudice
- Combination of a variety of citations

## 3. Industrial Applicability, Sec. 5 PatG

An invention is considered to be susceptible of industrial application if it can be made or used in *any* kind of industry, including agriculture.