

## *How to obtain a Belgian patent*



Are you interested in obtaining a Belgian patent? Filing a patent application in Belgium has several advantages. For example, Belgian patents are automatically granted without substantive examination, wherefore a granted IP right in Belgium can first easily be obtained. In particular, Belgian patents are comparatively granted very fast due to the fact that there is no substantive examination and a Belgian patent can be used as a “first filing” which provides a priority right to file a patent request in other countries within the priority period of 12 months. Further, the official fees that have to be paid with respect to a Belgian patent application are comparatively very low and Belgian patent applications may under certain circumstances be used for the patent box system.

If you are now also interested in obtaining a Belgian patent, we would like to support you and to give appropriate guidance by providing answers to some frequently asked questions in this regard in the following. We hope that the following information is helpful. However, if you have any additional questions and/or require further information, please let us know, wherein we would be delighted to answer your questions and/or to provide you with the further information.

### *What documentation is required for a Belgian patent?*

To request a Belgian patent, a request form has to be filled out and filed with the Belgian Office for Intellectual Property (OPRI). The request form can be found under <https://economie.fgov.be/sites/default/files/Files/Forms/2014-FORM-BREVET-DE.pdf> (German version) or <https://economie.fgov.be/sites/default/files/Files/Forms/2014-FORM-BREVET-FR.pdf> (French version).

Further, it is mandatory to file a description of your invention as well as at least one claim. One or more drawings used to explain your invention, an abstract and, where

applicable, a notice on the geographical origin of biological material used to develop your invention, should also be filed, wherein, however, only the filled out request form including the applicant's contact information, the description and one or more claims are required in order for a filing date to be attributed. If you have any questions in this regard or require support, please let us know, wherein we would be delighted to support you.

The documents may be filed electronically, in person, sent by fax, or by post. However, if the request form is sent by fax, an original version of the request form must arrive at the OPRI within 14 days.

*What fees have to be paid with respect to a Belgian patent application?*

One of the advantages of Belgian patents is that the fees that have to be paid with respect to a Belgian patent application are comparatively relatively low. There is only an official filing fee of currently **EUR 50.00** and an official fee for drawing up a search report of currently **EUR 300.00**. The official filing fee has to be paid within one month of filing of the application. For the sake of good order, please be informed that the filing fee can also still be paid at a later point of time, wherein however also an additional surcharge of currently **EUR 25.00** has to be paid, and wherein these fees can be paid within 3 months after receipt of an invitation to pay the filing fee and the additional fee for late payment from the OPRI. However, we recommend to pay the filing fee directly with filing the application, to avoid unnecessary fees. Further, the official fee for drawing up a search report has to be paid within 18 month of the filling of the application or, if a priority is claimed, the earliest priority date. However, please keep in mind that a search is first carried out after the official fee for drawing up a search report has been filed, wherefore we recommend to also pay the official fee for drawing up a search report directly with filing the application.

*What are the official filing languages of the Belgian Office for Intellectual Property?*

The request form and the text accompanying the request form need to be filed in one of the official languages of Belgium, in particular either in Dutch, French or German. However, the request form and the text accompanying the request form can also be filed in any other language, provided that a translation into one of these three official languages is submitted within 3 months from the filing date.

Further, please be careful when choosing one of these three official languages. In particular, while individuals and applicants from outside Belgium can freely choose any of these three languages, individuals and companies located in Belgium that act as applicant are at least in part required to use the official language of the region where they are based. For example, a company based in Flanders at least in part has to use Dutch, while a company based in Wallonia at least in part has to use French. If you require further information in this regard, please let us know, wherein we would be delighted to provide you with the further information.

*What is the procedure for obtaining a Belgian patent?*

As stated above, there is no substantive examination of Belgian patent applications and a Belgian patent is granted without prior examination of patentability of the inventions, without guarantee of the value of the inventions or the exactness of their description and at the applicant's own risk. However, a prior art search is carried out by the European Patent Office, which prepares a search report and written opinion about patentability of the invention for the applicant's informational purposes. Thereafter, the applicant is provided with an opportunity to amend the application or to submit comments. Therein, we recommend to do so to strengthen your patent's enforceability, at least if the search report is negative or if you are interested in a strong IP right in Belgium. However, the search report is not binding and provides no definite guarantee as to the patent's validity. Even if the invention is, according to the search report, not new or if another patentability condition is not met, a Belgian patent may still be issued for this invention.

In particular, once all formalities have been accomplished and all fees paid, the patent is issued, respectively granted as soon as possible after the end of an 18 month period from the filing date or, if a priority has been claimed, the earliest priority date. However, the applicant may request that the patent be issued more quickly if all

conditions are met, in particular already after a few months. Therefore, if you are interested in that your patent is issued very quickly, we recommend to pay the official fee for drawing up a search report directly with filing the application. Upon grant, the final text of the patent is further published.

*Is it mandatory that a search report is drawn up for each Belgian patent application?*

Yes, it is mandatory and a search report is nowadays drawn up for each Belgian patent application.

In the past, if no search fee was paid within 18 months from the filing date or, if a priority is claimed, the earliest priority date, a so-called “small patent” was issued without a prior art search. The lifetime of such a small patent was limited to 6 years as from the filling date. Since January 8, 2009 however, it is mandatory for all Belgian patent applications that a search is carried out.

However, as the search is carried out by the European Patent Office, wherein the European Patent Office was able to greatly reduce its pendencies, there is no big delay and a search report can nowadays be issued already a few months after the filing date, provided that the official fee for drawing up a search report is paid directly with filing the application.

*How is a Belgian patent renewed?*

As for its maintenance in force, renewal fees have to be paid for any Belgian patent application or patent as from the secondary anniversary of the filing of the application. These renewal fees must be paid in advance. Payment is due on the last day of the month containing the anniversary of the filing of the patent. Further, renewal fees may not be validly paid more than 6 months before they fall due. When the renewal fee has not been paid by its due date, it may still be paid (a) without an additional fee, within 1 month following the due date, or (b) with an additional fee, within 6 months from the due date of the renewal fee if that fee has not been paid within one month following the due date.

*How can Belgian patent applications and Belgian patents be challenged?*

Please be informed that Belgian patent law provides no opposition or other possibilities to appeal prior to the issuance of the patent.

However, a third party can challenge the validity of a Belgian patent in patent invalidity proceedings. For example, an alleged patent infringer will usually challenge validity of the patent, wherein, unlike for example in Germany, Belgian courts can deal with invalidity defences in the same proceedings that involve the actual infringement.

For the sake of good order, please be informed that in such patent invalidity proceedings, the burden of proof lies on the third party. Further, in Belgium legal expenses are only partially reimbursed by the losing party. Therefore, it is at least not unlikely that the third party may refrain from such invalidity proceedings, wherefore, although there is no substantive examination of patent applications, an issued Belgian patent may be a strong IP right, too. On the other hand, the search report and the written opinion have a useful informative role and allow the applicant to withdraw or adapt a request for a Belgian patent.

*Are there specialized IP courts in Belgium?*

In Belgium the Brussels Enterprise Court (formerly called the Brussels Commercial Court) has exclusive competence in patent litigation matters. Although there is no official patent chamber within the Brussels Enterprise Court, several judges are known to have a preference for dealing with patent cases and will in principle also handle those cases. These judges typically have a purely legal, not scientific, background. However, in patent litigation cases, the Patent Court therefore often relies on a court-appointed expert to provide technical/scientific advice.

## About us

*The trust of our longstanding clients in our competence, our quality standards and our precise and well-structured way of working is our recommendation.*

What is most important for us is to look after our clients, to provide them with more than just the requested information and to always try to achieve the best results for each individual client. In particular, we always develop a strategy for each individual client in line with the latest case law and the client's (business) interests that seems to have the best prospects of success. At the same time, it is our general policy to avoid unnecessary costs as much as possible.

Therein, if you have any questions or require further information regarding Belgian patents or any other patent, trademark, or design matters in Europe, Germany, the UK or Belgium, please let us know, wherein we would be delighted to support you and to answer your questions, or to provide you with the further information.

Patentanwaltskanzlei Leffers was founded by Mr. Thomas Leffers, LL.M. Thomas is a German patent attorney, a Belgian patent attorney and also qualified as representative before the European Patent Office (EPO) as well as the European Union Intellectual Property Office (EUIPO). After qualifying as a patent attorney, he further obtained an LL.M. in the field of „European Intellectual Property Law“ with a strong focus on international patent infringement proceedings from the University of Hagen. Thomas studied industrial mathematics with the application subjects medical technology, electrical engineering and mechanical engineering. After having started his career in a leading German law firm, he became managing partner in a medium-sized German IP law firm.

He supports national and international start-ups, medium-sized firms and large corporations in all kinds of Intellectual Property (IP), including patent, trademark and design issues. He has extensive experience in opposition, infringement and nullity proceedings as well as in drafting and prosecuting German, European, UK, PCT- and US- patent applications in a wide variety of technical fields, particularly in the area of electrical engineering, computer-implemented inventions (software and hardware), telecommunications and medical technology. Therein, Thomas has deep knowledge

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regarding the case law with respect to software patents in Germany, the UK, Europe and the US and also deep knowledge regarding the case law with respect to surgery, therapy and diagnostic methods. Further, Thomas has published articles about the advantages of the EU's patent reform agenda on international civil procedure law and software patents in Germany, Europe, the UK and the US.

