WITTEWELLER NEWS II/2026

Client Information and News

In this issue

AI and Patents

When does an algorithm become a technical solution?

VIEW ARTICLE

From opt-out to coercive detention

When patent strategy has personal consequences

VIEW ARTICLE

Not all inconsistencies are the same

Decision G 1/25 on the adaptation of the description before the EPO

VIEW ARTICLE

Biotechnology in Germany

Cutting-edge research – but can technology transfer succeed?

VIEW ARTICLE

WITTEWELLER recognised

Three rankings – a strong position in IP law

VIEW ARTICLE

AI and Patents: When does an algorithm become a technical solution?

AI-based inventions raise many questions in patent law. Two of them are particularly relevant in practice: When does an algorithm make a technical contribution – and how precisely must an AI-based invention be described so that a person skilled in the art can carry it out? The following focuses on these two aspects.

When does AI become technical?

Artificial intelligence and machine learning are based on computational models and algorithms, such as artificial neural networks. According to the Guidelines for Examination of the European Patent Office (EPO), such models and algorithms are, in themselves, of an abstract mathematical nature. However, this does not mean that AI-based solutions are generally excluded from patent protection.

What matters is whether the algorithm contributes to a technical solution to a technical problem. This may be the case, for example, where AI is used in a technical field or adapted for a specific technical implementation.

The EPO Guidelines provide an illustrative example. A neural network used in a heart-monitoring device to detect irregular heartbeats makes a technical contribution. The classification of digital images, videos, and audio or speech signals on the basis of technical features may likewise serve a technical purpose. By contrast, the classification of text documents solely according to their linguistic content does not, in itself, serve a technical purpose, but rather a linguistic one.

For patent protection, therefore, it is not enough simply **that** AI is used. What matters is **what it is used for and how it is used**.

The technical contribution may lie in the training itself

Under certain circumstances, the training of an AI system may itself contribute to the technical character of an invention. For example, where AI-based classification serves a technical purpose, the generation of the training dataset and the training of the classifier may also be technically relevant under the EPO Guidelines if they support the achievement of that technical purpose.

For a patent application, it should therefore be clearly set out what is technically distinctive about the solution and which features are decisive in this respect. Merely stating that a particular task is solved "using AI" is not sufficient without further detail.

What must be disclosed about the black box?

In addition to the technical contribution, a second question plays an important role in AI-based inventions: Is the invention sufficiently disclosed in the patent application?

Under Article 83 EPC, an invention must be disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. **With complex AI models, the path from the input data to the result may be difficult to trace, which is why they are often described as a "black box".** For a patent application, however, this does not mean that every internal process of an AI model must be explained. What matters is that the features essential for carrying out the invention are disclosed in such a way that a person skilled in the art can understand and implement the technical solution.

The importance of this is illustrated by decision T 161/18 of an EPO Board of Appeal. The case concerned an artificial neural network intended to convert a peripherally measured blood pressure curve to the corresponding aortic pressure. Although the application contained general information on the training data, it did not specify which input data were suitable for training the network, nor did it identify a dataset suitable for the technical problem. The Board of Appeal therefore found that the invention had not been sufficiently disclosed.

The case shows that, for AI-based inventions, it may be crucial to describe not only the desired result but also the information required for training the system.

Do the training data have to be disclosed?

This does not mean, however, that the complete training dataset must always be disclosed for an AI-based invention.

Where the technical effect depends on certain characteristics of the training dataset, the EPO Guidelines require those characteristics to be disclosed if they are necessary to reproduce that effect. This does not apply if the person skilled in the art can determine them on the basis of common general knowledge without undue burden. **The specific training dataset itself generally does not need to be disclosed.**

The information required therefore depends on the particular invention. Relevant factors may include the type of data required, the criteria used to select suitable training data, or the characteristics of those data that are decisive for the technical effect.

Conclusion

For AI-based inventions, it should be established at an early stage **what the technical contribution of the solution is and what information is required to disclose the invention sufficiently.**

This is also important because significant gaps in the original disclosure cannot simply be filled by adding information after the patent application has been filed. Under Article 123(2) EPC, amendments may not add subject-matter extending beyond the content of the application as filed.

In practice, it is therefore important to **identify the technical effect of an AI-based solution at an early stage and to include the essential technical information in the patent application from the outset.**

Christoph Lütkebohmert, Partner
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TOP OF PAGE

From opt-out to coercive detention – when patent strategy has personal consequences

The long-running patent dispute between Silimed and Polytech shows how closely patent ownership, UPC strategy and the enforcement of court decisions can be intertwined. In May 2026, the Munich I Regional Court **ordered coercive detention against one of Polytech's managing directors** – because it considered a coercive fine insufficient in the circumstances of the case.

From the dispute over the patent to coercive detention

Silimed and Polytech originally worked together on the distribution of silicone implants. In 2011, Polytech filed an application for European patent EP 2 581 193, relating to a process for manufacturing implants. Silimed argued that Polytech had learned of the invention through their cooperation and had subsequently filed the patent application in its own name. **In 2017, Silimed therefore brought an action seeking transfer of the patent.**

The **Frankfurt Higher Regional Court ruled in Silimed's favour at the end of 2024.** After the Federal Court of Justice dismissed Polytech's complaint against the refusal to allow an appeal, the decision became final in early January 2026.

While this dispute was still ongoing, **Silimed had obtained a preliminary injunction** from the Munich I Regional Court. The injunction was intended to prevent Polytech from taking or arranging measures that could impair the validity or enforceability of the patent. This injunction later became decisive for the order of coercive detention.

At the same time, the question arose as to whether Silimed could enforce the patent against Polytech before the Unified Patent Court (UPC). Polytech had already opted the patent out of the UPC's jurisdiction in 2023. After Silimed had won the dispute over patent ownership, it attempted to withdraw that opt-out.

However, a holding company affiliated with Polytech brought a nullity action before the Federal Patent Court against the German part of the patent. As a result, Silimed was unable to withdraw the opt-out effectively. The Hamburg Local Division therefore held the withdrawal to be invalid and dismissed the infringement action brought before it for lack of jurisdiction.

This brings the discussion back to the 2024 injunction. In the specific circumstances, the Munich I Regional Court considered the filing of the nullity action through the affiliated company to constitute a breach of the prohibition on impairing the enforceability of the patent. The nullity action itself was not considered inadmissible. What mattered to the court was the course of action taken in these specific circumstances.

Why was coercive detention ordered immediately?

The most unusual step came in the enforcement proceedings.

Under Section 890 of the German Code of Civil Procedure (ZPO), a breach of a court injunction may be sanctioned by a coercive fine of up to EUR 250,000 or by coercive detention. As a rule, proportionality considerations mean that a coercive fine will generally be considered first.

The Munich I Regional Court, however, did not consider this sufficient in the present case. In its assessment, the breach was particularly serious. The economic dimension was also relevant. According to the information taken into account by the court, Polytech generated monthly profits from the products concerned that exceeded the maximum possible coercive fine many times over. **In the court's view, a coercive fine would therefore not have been sufficient to compel Polytech to comply with the injunction.**

The court therefore ordered coercive detention against one of the managing directors **for the first breach of the injunction established by the court**. At the same time, the decision allowed enforcement to be avoided if the nullity action in question was withdrawn and a declaration was made that no corresponding rights would be derived from the action or the opt-out.

What the case shows for patent practice

The coercive detention order makes the case particularly striking. For patent practice, however, the interaction between the different proceedings is especially significant.

An opt-out, a national nullity action and existing obligations under an injunction cannot be considered in isolation from one another. A procedural step may affect other proceedings and the choice of available forum.

The case therefore also illustrates the importance of an overarching litigation strategy where national courts and the UPC may both come into play and several companies within the same group are involved. Existing court-imposed obligations must be taken into account from the outset.

Conclusion

The dispute between Silimed and Polytech is not yet over. The Munich decision ordering coercive detention is nevertheless noteworthy. If a court considers that even the maximum coercive fine constitutes an unsuitable method of enforcing an injunction, coercive detention may, in exceptional circumstances, be ordered immediately.

Further Information
Polytech Patent EP 2 581 193

TOP OF PAGE

Not all inconsistencies are the same
Decision G 1/25 on the adaptation of the description before the EPO

When patent claims are amended during examination or opposition proceedings, the question regularly arises as to the extent to which the description must also be adapted. With its decision **G 1/25 of 3 September 2026**, the Enlarged Board of Appeal has set the framework for future practice regarding the adaptation of the description following a claim amendment.

The decision places limits on a purely formal "clean-up" of the description:

> **The mere fact that, following a claim amendment, an embodiment described in the description no longer falls within the scope of the claim does not in itself constitute an inconsistency that must be removed within the meaning of G 1/25.**

Rather, the decisive question is whether, when considering the claim in the light of the description and any drawings, the skilled person is left in serious doubt as to the meaning or scope of the claim.

The facts of the case

The starting point was opposition appeal proceedings T 697/22 concerning a patent with claim 1 directed to a hydroponic growth medium comprising mineral fibres and an organic binder. Following the preceding opposition proceedings, the claim was maintained in amended form. The amendment limited the claim by requiring the binder to be based on reaction products of citric acid, dextrose and ammonia.

Certain parts of the description, however, were not adapted to this more limited wording of the claim. In particular, the description continued to state that the binder could, but did not have to, be based on the following combination: a polycarboxylic acid, such as citric acid; a sugar, such as dextrose; and an ammonia source, such as an ammonia solution.

The reaction products that had now become mandatory under the claim therefore continued to be described in the description merely as examples within broader classes of substances.

The opponent challenged this inconsistency in its statement of grounds of appeal on the basis of a lack of clarity under Article 84 EPC.

On that basis, the Board of Appeal found that a mere discrepancy between the claim and the description does not in itself give rise to a clarity objection. Rather, the decisive question for the merits of such an objection is whether the reaction products identified as examples in the description could affect the interpretation of the corresponding mandatory claim features in such a way that it becomes unclear what falls within the scope of protection and what does not.

Against this background, and in view of diverging lines of case law, the question was referred to the Enlarged Board of Appeal as to whether, and under what circumstances, an inconsistency resulting from a claim amendment must be removed by adapting the description.

G 1/25 essentially considers two questions when determining whether an inconsistency must be removed:

1. Do the description or drawings contain statements that are incompatible with the understanding of the claim?
2. Could those statements cause the skilled person to understand the claim differently from what its wording suggests, or leave the skilled person in serious doubt as to its meaning?

An inconsistency requiring correction may in particular concern Article 84 EPC (clarity), where it remains unclear whether an embodiment falls within the scope of the claim. However, it may also affect patentability under Articles 52 to 57 EPC. Other provisions, such as Articles 83, 76(1), 123(2) and 123(3) EPC, may in principle also be relevant, although this is likely to occur only rarely.

Example:
An original claim was directed to the combination of features **AB**. During examination or opposition proceedings, the claim was limited to the combination of features **ABC**.
Case A: **The description does not necessarily have to be adapted despite the inconsistency**

As we currently understand it, the description relating to the above set of claims would not necessarily have to be adapted if, for example, it included the broader original embodiment **AB** and/or an alternative, obviously unclaimed embodiment **ABD**.

The reason is that neither **AB** nor **ABD** gives rise to serious doubt as to the interpretation of the now-claimed combination of features **ABC**. Rather, both embodiments can clearly be distinguished from **ABC**. It therefore remains clear to the skilled person that only the embodiment **ABC** falls within the scope of protection, whereas **AB** and **ABD** no longer do.

Case B: **An inconsistency between the set of claims and the description must be removed**

The situation may be different if, for example, the description includes an embodiment in which features **AB** are described as mandatory and feature **C** as an optional refinement of **AB**.

If the claim (**ABC**) is interpreted in the light of this description (**AB** and optional **C**), it may become unclear to the skilled person whether feature **C** is in fact mandatory. This could also create uncertainty as to whether embodiments comprising only the combination of features **AB** or only those comprising the complete combination of features **ABC** fall within the scope of protection.

Accordingly, in Case B, a description that differs from the set of claims could, as we currently understand it, cause the skilled person to interpret the claim differently from what its wording suggests, or at least leave the skilled person in serious doubt as to its meaning.

Conclusion

With decision G 1/25, the Enlarged Board of Appeal has developed a nuanced standard for adapting the description following claim amendments:

> **The description must be adapted whenever there is an inconsistency between the set of claims and the description and that inconsistency results in a breach of a provision of the EPC.**

In practice, this may mean that the description no longer needs to be adapted merely to achieve purely formal consistency with the set of claims.
Following a claim amendment, however, careful review remains necessary, particularly of those parts of the description that are relevant to the **interpretation** of the claims and to understanding the claimed subject-matter.

Lisa Alena Raimund
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TOP OF PAGE

Biotechnology in Germany: Cutting-edge research – but can technology transfer succeed?

Germany's **biotechnology sector** is growing. According to the German Biotechnology Report 2026 by audit and consulting firm EY, the sector generated **revenue of around EUR 12 billion in 2025**. At the same time, **Germany remains among the international leaders** in biotechnology research. Universities and research institutions benefit from scientific excellence, strong infrastructure and highly qualified specialists.

The greater challenge lies in technology transfer. Scientific findings need to be translated into marketable products, successful companies and economic value creation. There is still considerable room for improvement in this area. **Financing, regulation and technology transfer are regarded as key bottlenecks** for Germany's biotech sector. Germany's IP transfer structures are also often described as not yet sufficiently efficient or market-oriented.

Stuttgart and Tübingen: strong research, strong ecosystem

The potential of our region is considerable. **The BioRegion STERN**, comprising Stuttgart, Tübingen, Reutlingen and the Neckar-Alb region, is home to around 260 life sciences companies, accounting for almost 26,000 jobs. Universities, the university hospital, Max Planck and Fraunhofer institutes form part of a strong biotechnology, diagnostics and medical technology ecosystem.

The strength of the region's research is particularly evident in **Tübingen**. Since 2026, **six Clusters of Excellence** have received funding there. Research areas range from infection biology and oncology to plant research, evolution and machine learning.

The region therefore also offers excellent conditions for **spin-offs**. This raises a key question: how can scientific excellence be translated into patents, spin-offs, collaborations and economic value creation? The crucial factor is to position research results at an early stage so that they can be developed into commercially viable technologies.

Good research needs an early IP strategy

In biotechnology in particular, **intellectual property protection** should not become an issue only once investors or industry partners become involved.

Scientific publication and patent protection follow different rules. A publication, presentation or public disclosure of research results may prevent subsequent patent protection. Anyone seeking to commercialise research should therefore establish **as early as possible** which results may be eligible for protection and when filing a patent application makes sense.

This is not just about a single patent. In biotechnology, a protection strategy may cover **active substances, targets, therapeutic uses, biomarkers, manufacturing processes or platform technologies**. It is equally important to clarify at an early stage who owns the rights to research results and how those rights can be made available for spin-offs, licensing and research collaborations.

Patents strengthen negotiating power

Patents are often particularly important for young biotechnology companies. A product may still be years away from market approval, there may be no revenue yet, and capital requirements may be high.

At this stage, a strong patent portfolio can demonstrate the technological position a company holds and how effectively that position can be protected against competitors. IP rights therefore also become relevant for **funding rounds, licensing agreements** and **collaborations.**

A sound patent strategy should therefore develop alongside the scientific and commercial progress of the business: Which markets are important? Which new research results should be protected? And who owns the rights in collaborations between universities, researchers and spin-offs?

From cutting-edge research to commercial success

Germany – and the **Stuttgart/Tübingen region** in particular – offers excellent conditions for successful biotechnology. The key task is to translate scientific excellence more consistently into companies, products and economic value creation.

Patents alone cannot solve the challenges of technology transfer. However, an **IP strategy developed at an early stage** can contribute significantly to presenting innovations as attractive options to investors, suitable for collaboration and competitive over the long term.

WITTEWELLER advises companies, research institutions and spin-offs on the development and implementation of IP protection strategies in the life sciences and biotechnology – from the early research phase through to an international patent portfolio.

Further information
German Biotechnology Report 2026 – EY
BioRegio STERN – Facts and figures on the life sciences location
University of Tübingen – Excellence Strategy and Clusters of Excellence

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TOP OF PAGE

Three rankings – a strong position in IP law

WirtschaftsWoche, Handelsblatt / Best Lawyers and Best Law Firms recognise WITTEWELLER in their latest rankings

WITTEWELLER has been recognised in three recent rankings in the field of intellectual property law. The recognition encompasses both individual patent attorneys and WITTEWELLER as a firm.

WirtschaftsWoche: Top firm in the patent attorney category

The German newspaper WirtschaftsWoche ranks WITTEWELLER among the top law firms in patent law. Stephan Keck was singled out as a highly recommended patent attorney.

More than 2,000 lawyers from 250 law firms were questioned to recommend particularly renowned colleagues. The final decision was taken by a panel of experts. In total 17 firms were recognised in the category "patent attorney".

Handelsblatt 2026 / Best Lawyers 2027: eight WITTEWELLER patent attorneys recognised

Once again this year, eight WITTEWELLER patent attorneys have been recognised in "The Best Lawyers in Germany 2027". The results were published in June 2026 and presented in the German business newspaper Handelsblatt under the title "Deutschlands beste Anwälte 2026".

Eight WITTEWELLER patent attorneys are listed in the field of **Intellectual Property Law**: David Dobler, Dr Marco Findeisen, Christian Gembruch, Dr Volker Heuckeroth, Markus Hössle, Dr Gabriele Laufer, Christian Steil and Mark Wegener.

The Best Lawyers ranking is based on a peer-review process. Lawyers recommend colleagues in their respective fields; self-nominations are excluded.

Best Law Firms: Tier 1 for Intellectual Property Law

WITTEWELLER is also recognised in the **"Best Law Firms – Germany 2027"** ranking. The firm has achieved **"Regional Tier 1"**, the highest regional ranking level, for **Intellectual Property Law in Baden-Württemberg**.

While Best Lawyers recognises individual lawyers, Best Law Firms assesses law firms and their work in the respective areas of law. Tier 1 is the highest level in the regional ranking.

Recognition from different perspectives

The three rankings focus on different aspects and together provide a broad view of WITTEWELLER's work: from recommendations of individual patent attorneys and the firm's reputation in patent law to its standing in the regional IP market.

We are delighted to receive this recognition and consider it as a confirmation and motivation to continue providing our clients with top quality.

Further information
Overview of all recent awards on wwp.de

TOP OF PAGE

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