4

Utility Models in Danish Law

Tine Sommer, Timo Minssen[*] and Jens Schovsbo

In Denmark, a specific Act for the protection of utility models was introduced by Act No. 130 of 26 February 1992. The regulation of utility models in Danish law has been elaborated in close connection with Danish patent law. Even though the rules are enacted separately, the wording of the Patent Act and the Utility Model Acts is very similar. The close interaction between the two systems is built into the design of the Acts. For example, branching-off from a patent application or patent under opposition to a utility model application is permitted. The core area for utility models is the protection via registration of "minor inventions", so-called *creations* (Danish: *frembringelser*). These differ from "real patents" (Danish: *opfindelser*) mainly by having a lower threshold for "inventive step". Whereas a patentable "invention" must differ "essentially" (Danish: *væsentligt*) – a "creation" should only differ "distinctly" (Danish: *tydeligt*) from the state of the art. Moreover, utility model protection can be obtained without substantive examination whereas patent protection always requires a full evaluation both of the formal and substantive requirements. The term of protection for utility models is less than that of a patent. Since 1998, there has been a decline in the demand for utility model protection in Denmark.

4.1 THE REGULATION OF UTILITY MODELS IN DENMARK: BACKGROUND

The first Danish act for the legal protection of utility models was adopted in 1992.[1] Prior to this, Danish law only provided protection for the technical features of

[*] Minssen's research for this chapter was supported by a Novo Nordisk Foundation Grant for a scientifically independent International Collaborative Bioscience Innovation & Law Programme (Inter-CeBIL programme – grant no. NNF23SA0087056).

[1] Act No. 130 of 26 February 1992 and Consolidated Act No. 367 of 9 June 1998. An English language version of the Act can be found at https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/dk/dk174en.html

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

products or useful and technical methods, etc. via the Patent Act. Moreover, it was generally assumed almost as a *dogma* that utility could not be protected against imitation via any of the existing legal systems otherwise aimed at promoting innovation in product designs such as the Industrial Designs Act, the Copyright Act or the (liberal) protection afforded by the Marketing Practices Act. It was therefore quite a novelty when the Utility Model Act was introduced and an extra dish of exclusivity was added to the already quite impressive Danish smorgasbord (Danish: *smørrebrødsbord*) of exclusivity provisions.

The Utility Model Act basically aims at serving the needs of small and medium sized enterprises (SMEs) which were active in certain areas of innovation, for example hand tools and kitchen utensils.[2] Protection was lacking, in this area. For hand tools and other such types of invention made by SMEs, patent protection would often be overly burdensome in terms of costs and effort, and a shorter term of protection might well suffice. Moreover, the Act was intended to filling the gap between industrial designs law (focused at a the shape of products) and utility patent law (focused at a product's technical function (utility)). The perceived gap between a product's "form and function" was most likely exacerbated by the tradition in Denmark (indeed in the Nordic countries) for "functional design" where – as it is normally stated – "form follows function". The protection of minor technological advances and minor inventions featured highly on the statutory rationale for the utility model protection in Denmark as did the lack of substantive examination. In addition, utility models can be obtained more rapidly and at lower cost than patents. In short, utility models are a cost-efficient, faster and easier way to obtain sui generis protection aimed at the needs of SMEs.

The 1992 Act was amended in 2007.[3] At first blush, the changes appear to be substantial, but in fact they had more to do with form than content. Whereas the 1992 Act simply referred to the Danish Patent Law Act, the 2007 Act abandoned this approach. Since 2007 the Utility Models Act has been an independent Act in addition to the Patent Act. In terms of content, most of the provisions of the Consolidated Utility Models Act No. 91 of 29 January 2019 and the Danish Consolidated Patents Law Act No. 90 of 29 January 2019 have identical wording. The Utility Models Act is supplemented by a Ministerial Order on the examination and other processing of utility model applications and registered utility models.[4]

[2] Lovforslag nr. L 119 af 20. november 1991, L 49 Forslag til lov om brugsmodeller af 9. november 2005, Lise Østerborg, Indledende bemærkninger til indførelse af brugsmodelbeskyttelse i Danmark, NIR 1984, pp. 18–24, Roth and Niels Holm Svendsen, Lov om Brugsmodeller m. v. i U 1992B223, and Niels Holm Svendsen in NIR 1993/2, p. 237 ff., Jens Schovsbo, Ny dansk lov om brugsmodeller: En oversigt i NIR 5/2006, 489 ff., Jens Schovsbo, Morten Rosenmeier, Clement Salung Petersen, Immaterialret, 2024, p. 427 ff. DJØF, Palle Bo Madsen, Immaterialret, Jurist- og Økonomforbundets forlag, 2020, p. 183 ff.

[3] Act No. 1431 of 21 December 2005 and Act No. 538 of 8 June 2006.

[4] Danish Ministerial Order (2006).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

4.2 PROTECTABLE SUBJECT MATTER AND SUBSTANTIVE CRITERIA

Today, the protection of a utility model is not only relevant to those areas of innovation that were anticipated when the first Act was adopted in 1992. The scope of the Act has expanded beyond its original focus on hand tools, etc. Today, the subject matter for which protection can be obtained is open ended, as in the Patent Act: "Any creations" can be protected (unless specifically exempted, see below). Thus, apart from physical products, protection is open within every field of technology including chemistry, pharmaceuticals and mechanical and electrical engineering.

The substantive criteria for obtaining protection for utility models are novelty, "inventiveness" ("distinctly" different), and industrial application. The Consolidated Danish Utility Models Act states:

> Any creation which is susceptible of industrial application and which provides a solution to a technical problem [. . .] can be registered as a utility model.[5]

As mentioned above, the word *creations* reflects the intent – from a linguistic viewpoint – to distinguish the subject matter from that of "inventions" in patent law. Importantly, the word "creation" should not be understood as suggesting an element of "creativity" (or "originality") in copyright's sense as a precondition for obtaining protection. "Creation" in the Utility Model Act is simply meant to differentiate between "real inventions" (which may be protected by patents) and "small inventions" which may be protected only as utility models.

"Novelty" should be understood in the same way in both the Patent and the Utility Model Acts. Thus, whether something is "novel" is assessed on the principles of universal (absolute) novelty. It is against this that the creation must "differ distinctly" to be protectable. Even if it differs "essentially" from the state of the art, the doors to the Patent Act open, too.

The inventive step criterion in the Patent Act implies that inventions differ *essentially* from the state of the art. Creations on the other hand need only differ *distinctly* therefrom to qualify for utility model protection.[6] It can be difficult to measure the exact content of this requirement but trivial, obvious or insignificant differences from the state of the art will not be sufficient.

Some doubt remains as to the exact profile of "the person skilled in the art", and whether one should apply the same standards as in patent law or different ones. Precedent is scarce. However, administrative practice and case law from the Danish Maritime and Commercial High Court seem to suggest that for the assessment in utility model law, the person skilled in the art should be expected to have a more narrow focus when compared to patent law and to include only the exact scope of

[5] Section 1(1) of the Consolidated Utility Models Act No. 91 of 29 January 2019.

[6] Paragraph 2, subsection 1 of the Consolidated Danish Patents Law Act No. 90 of 29 January 2019, and paragraph 5, subsection 1 of the Consolidated Utility Models Act No. 91 of 29 January 2019.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

the claimed creation and (very) little beyond. The combination of a "narrow" scope of the person skilled in the art with a "low" threshold may lead to a very broad scope of protection and might be hard to align with the starting point that "trivial, obvious, or insignificant differences" from the state of the art do not suffice. Also, it would seem to depart from the starting point of parallelism with patent law to rely on a different type of skilled person in utility model law. So far, the Danish Supreme Court has not decided on the matter, so the nature of utility model law's "person skilled in the art" remains unclear at the moment.[7] The assessment of inventiveness regarding utility models is based on the problem-and-solution-approach (known from patent law).

According to Section 2(1) and subsection 2 (ii), creations cannot be registered as utility models if they relate to war material or to *methods*.[8] At this point, the scope of the Act differs from the Patent Act where methods can be (and to a large degree are) protectable. The modification on methods is further qualified in subsection 3, which states:

> Notwithstanding subsection 2 (ii) it shall be possible to register a utility model for products for use in any such methods, including substances and compositions for use in methods for the treatment of the human or animal body by surgery or therapy or diagnostic methods practiced on the human or animal body, or products obtained by microbiological process or other technical processes.

It is not quite clear why the Act does not follow the lead of the Patent Act on the issue of methods. For some technologies – chemical and computer programs – the effect of the limitation is to reduce the scope of protection offered significantly. Arguably, method claims might be much more complicated to draft when compared to product claims. Many of the SME creators envisaged by the Act would therefore find it hard to draft the claims themselves. Furthermore, even if they did succeed in drafting them, such claims might not provide a suitable basis for future infringement suits. It was probably to avoid such complications that the legislator simply decided to shut the door on method claims and to leave it only for patent law.

4.3 UTILITY MODEL STATISTICS

During the first 10 years after the act came into force (1992–2002), approximately 4,500 utility model applications were filed in total. In 1994, with a total of 471 applications, interest in the newly instituted legal protection peaked. Since then, interest in utility model applications has declined, and it reached a low ebb in 2022 with only 85 applications. More than 60 percent of applicants are Danish (Table 4.1 and Figure 4.1).[9] From 2013 to 2022 the average was 118 utility model grants per year (Table 4.2 and Figure 4.2).[10]

[7] Schovsbo et al. 2024, 437 ff.
[8] Schovsbo et al. 2024, 435 on the allowability of product-by-process claims.
[9] DKPTO 2023.
[10] 164 in 2013 and 90 in 2022.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

TABLE 4.1 *Utility model applications (DKPTO 2023)*[11]

Submission year	Utility model applications in total	Danish applications	Percentage Danish applications (%)
2013	197	157	80
2014	185	146	79
2015	158	120	76
2016	146	113	77
2017	132	100	76
2018	92	70	76
2019	110	78	71
2020	140	105	75
2021	118	76	64
2022	85	53	62

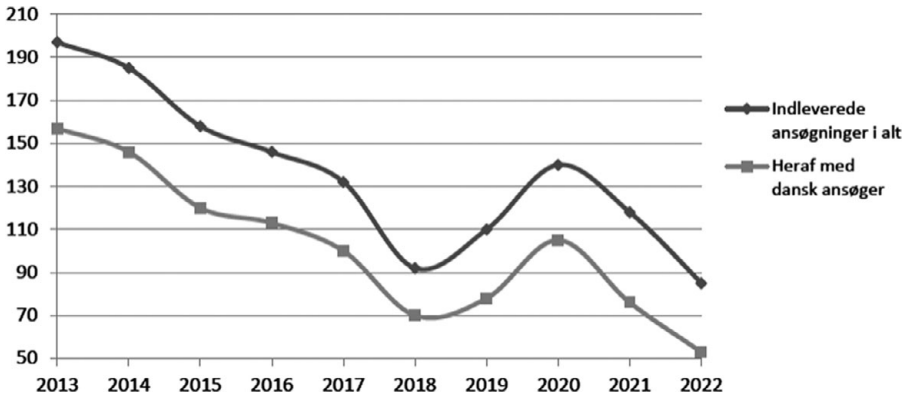


FIGURE 4.1 Number of utility model applications (total number of applications and applications with a Danish applicant)

The Danish empirical data from IPLytics on utility models from 1992 to 2009 and the empirical data from the DKPTO from 2010–2012 made up a total of 7,416 grants (Table 4.1 and Table 4.3). The data therefrom also clearly verifies a sheer decline in the demand of utility model protection.

Based on the IPLytics' data in Table 4.4, one may also notice that (major) users from 1992 to 2009 were to be found in industries limited to mechanical engineering, consumption and process engineering (civil engineering (consumption), machine tools, electrical machinery, process engineering (special equipment), medical technology (instruments), furniture games).

[11] Utility model applications for 2010 (198), 2011 (171) and 2012 (161) (DKPTO 2020).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

TABLE 4.2 *Granted utility models (DKPTO 2024 b)*

Registration year	Registered utility models in total	Danish applicants	Percentage Danish applicants (%)
2013	164	127	77
2014	159	126	79
2015	147	110	75
2016	126	91	72
2017	120	92	77
2018	108	78	72
2019	80	59	74
2020	101	69	68
2021	85	52	61
2022	90	59	66

TABLE 4.3 *Danish utility model applications by year (IPLytics)*

Year	Number of applications: total 5868
1992	276
1993 (1994) 1995 (1996) 1997 (1998)	512 (418) 427 (418) 421 (404)
1999 (2000) 2001 (2002)	382 (326) 301 (328)
2003 (2004) 2005 (2006) 2007	299 (282) 246 (263) 236
2008 (2009)	

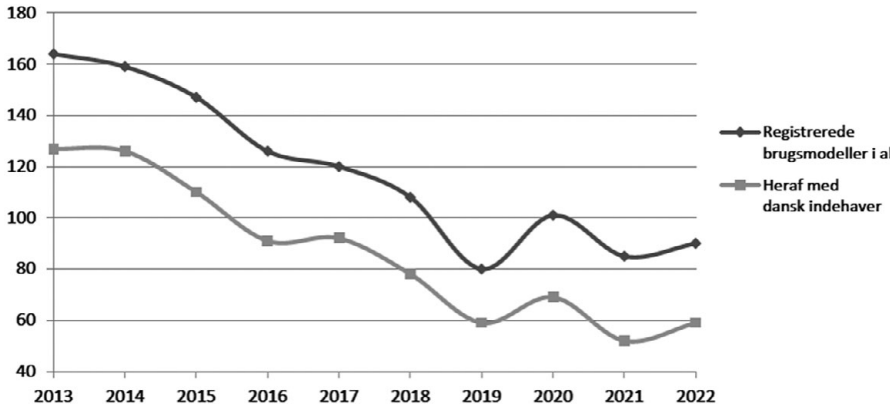


FIGURE 4.2 Total number of registrations with a Danish applicant

Utility models (issued and published applications) are searchable and accessible in a database administered by the Danish Patent and Trademark Office (DKPTO).[12]

[12] https://onlineweb.dkpto.dk/pvsonline/Patent.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

TABLE 4.4 *Number of Danish utility model patents per application year, by industry (IPLytics 1992–2009)*[13]

Industry	Year/number of applications
Chemistry, pharmaceuticals	(1992: 13) 1993: 15 (1994: 16) 1995: 10 (1996: 8) 1997: 12 (1998: 3) 1999: 18 (2000: 21) 2001: 13 (2002: 16) 2003: 17 (2004: 10) 2005: 8 (2006: 21) 2007: 15 (2008: 6) 2009: 8 (2010: 21) 2011: 7 (2012: 8) 2013: 20 (2014: 7) 2015: 4 (2016: 5) 2017: 5 (2018: 6) 2019: 9 (2020: 9) 2021: 4 (2022: 2)
Consumption	(1992: 49) 1993: 93 (1994: 66) 1995: 75 (1996: 69) 1997: 74 (1998: 74) 1999: 60 (2000: 69) 2001: 71 (2002: 52) 2003: 65 (2004: 56) 2005: 59 (2006: 44) 2007: 47 (2008: 36) 2009: 23 (2010: 38) 2011: 27 (2012: 31) 2013: 23 (2014: 10) 2015: 15 (2016: 10) 2017: 11 (2018: 13) 2019: 10 (2020: 13) 2021: 12 (2022: 3)
Electrical engineering	(1992: 14) 1993: 30 (1994: 33) 1995: 37 (1996: 32) 1997: 30 (1998: 38) 1999: 30 (2000: 28) 2001: 27 (2002: 34) 2003: 17 (2004: 23) 2005: 15 (2006: 21) 2007: 19 (2008: 11) 2009: 19 (2010: 16) 2011: 14 (2012: 16) 2013: 8 (2014: 11) 2015: 10 (2016: 3) 2017: 10 (2018: 6) 2019: 13 (2020: 8) 2021: 8 (2022: 2)
Instruments	(1992: 26) 1993: 38 (1994: 40) 1995: 37 (1996: 42) 1997: 31 (1998: 26) 1999: 32 (2000: 22) 2001: 19 (2002: 28) 2003: 19 (2004: 23) 2005: 17 (2006: 26) 2007: 26 (2008: 9) 2009: 18 (2010: 14) 2011: 9 (2012: 12) 2013: 15 (2014: 7) 2015: 7 (2016: 6) 2017: 8 (2018: 3) 2019: 9 (2020: 11) 2021: 7 (2022: 4)
Mechanical engineering	(1992: 37) 1993: 59 (1994: 50) 1995: 42 (1996: 34) 1997: 45 (1998: 38) 1999: 45 (2000: 28) 2001: 32 (2002: 30) 2003: 35 (2004: 32) 2005: 23 (2006: 28) 2007: 29 (2008: 27) 2009: 14 (2010: 18) 2011: 15 (2012: 17) 2013: 14 (2014: 6) 2015: 2 (2016: 4) 2017: 12 (2018: 8) 2019: 9 (2020: 9) 2021: 3 (2022: 1)
Mechanical engineering, machinery	(1992: 54) 1993: 94 (1994: 71) 1995: 83 (1996: 87) 1997: 90 (1998: 82) 1999: 74 (2000: 53) 2001: 51 (2002: 55) 2003: 52 (2004: 52) 2005: 53 (2006: 48) 2007: 35 (2008: 39) 2009: 20 (2010: 28) 2011: 25 (2012: 30) 2013: 22 (2014: 15) 2015: 5 (2016: 11) 2017: 14 (2018: 18) 2019: 16 (2020: 16) 2021: 6 (2022: 3)
Other fields	(1992: 31) 1993: 83 (1994: 66) 1995: 77 (1996: 76) 1997: 77 (1998: 93) 1999: 71 (2000: 68) 2001: 47 (2002: 61) 2003: 60 (2004: 41) 2005: 44 (2006: 41) 2007: 44 (2008: 26) 2009: 25 (2010: 23) 2011: 19 (2012: 22) 2013: 18 (2014: 5) 2015: 2 (2016: 3) 2017: 7 (2018: 13) 2019: 10 (2020: 8) 2021: 1 (2022: 1)
Process engineering, special equipment	(1992: 52) 1993: 100 (1994: 76) 1995: 66 (1996: 70) 1997: 62 (1998: 50) 1999: 52 (2000: 37) 2001: 41 (2002: 52) 2003: 34 (2004: 45) 2005: 27 (2006: 34) 2007: 21 (2008: 22) 2009: 26 (2010: 21) 2011: 15 (2012: 19) 2013: 28 (2014: 12) 2015: 10 (2016: 13) 2017: 12 (2018: 8) 2019: 12 (2020: 15) 2021: 11 (2022: 3)

[13] As Table 4.4 illustrate trends in (major) users of the system, we have used the data from IPLytics 1992–2022. However, the data from IPLytics are inconsistent with those from the DKPTO (2010–2022).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

Industry	Year/number of applications
Waste and wastewater	(1992: 0) 1993: 0 (1994: 0) 1995: 0 (1996: 0) 1997: 0 (1998: 0) 1999: 0 (2000: 0) 2001: 0 (2002: 0) 2003: 0 (2004: 0) 2005: 0 (2006: 0) 2007: 0 (2008: 0) 2009: 0 (2010: 0) 2011: 0 (2012: 0) 2013: 0 (2014: 1) 2015: 0 (2016: 0) 2017: 1 (2018: 0) 2019: 0 (2020: 0) 2021: 0 (2022: 0)

When registered, utility models are published on the digital platform https://tidender2.dkpto.dk/ (Dansk Brugsmodel Tidende), cf. Section 21(1) and below for international utility model applications under the Patent Cooperation Treaty (PCT) designating Denmark.[14]

4.4 GRANTING PROCEDURE

Utility models are granted by the Danish Patent and Trademark Office (DKPTO) by a simple registration procedure. The granting procedure requires the applicant to file an application for the registration of a utility model containing a statement of the subject matter for which protection is sought.[15] In addition, the creation must be described or shown in a manner sufficiently clear to enable a person skilled in the art to carry it out. As for creations involving the use of biological material, a sample can be deposited.[16] Additional details regarding the procedure are described in Part 3, Section 19 of the Order no. 1605 of 8 December 2006, requires that the claims contain a statement of novelty and the state of the art, which can be made in the form of a reference to the description, including drawings or photographs.[17]

The simple registration procedure entails only a cursory examination. Hence, novelty and inventiveness need not be assessed ex officio by the DKPTO.[18] In 2023, the Danish Maritime and Commercial High Court ruled that the DKPTO is not obligated to consider ex officio the risk of double

[14] Espacenet 2024.

[15] Part 2 and Section 14 of the Consolidated Danish Utility Models Act (2019). An international utility model application under the Patent Cooperation Treaty (PCT) can be filed, and in its capacity of receiving Office the DKPTO shall receive, check and transmit international applications accordingly, cf. Part 3 and Section 26(2) and Part 8, paragraph 41(1) of the Order on the Examination and Other processing of Utility Models Applications and Registered Utility Models.

[16] Sections 14(2) and 15(1) of the Consolidated Danish Utility Models Act (2019) and Part 4, Section 24 of the Order no. 1605 (2006).

[17] Sections 19(2) and 19(1)(ii)(iii) of the Consolidated Danish Utility Models Act (2019).

[18] Ibid. Section 19(1).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

patenting for utility models, cf. U 2023.2178 SHR. To file an application, the applicant shall pay a fee, and he can request an optional examination if an additional fee is paid according to Section 19(2). In doing so, the requirement of novelty and inventiveness, cf. Section 5, must be examined before registration. For a detailed description of the examination procedure, see order No. 1605 of 8 December 2006.[19]

Except for the lack of substantive examination, the granting procedure for both patents and utility models are rather similar. The applicant may also claim priority of a previous patent or utility model application according to Article 4 of the Paris Convention ('convention priority'), provided that the subsequent application is filed within 12 months from the date of filing the previous application.[20]

If the application complies with the requirements, the creation will be registered and a notification published by DKPTO, Section 21(1). As a rule, the creation will not be registered earlier than 15 months from the date of filing the application.[21] Accordingly, by then the files shall be available to the public, even if the creation has not been registered, Section 24(1). Most utility models are registered prior to the statutory 15 months of publication, but the registration is not effected prior to the publication. Upon a request by the applicant, the publication or registration may be effected earlier.[22] In contrast, the files of a patent application will be available as of the date on which the patent is granted, cf. Section 22(1) of the Consolidated Danish Patent Law Act. However, according to subsection 2, the statutory requirement for publication is 18 months from the date of filing even if a patent has not been granted. By request, the publication of the grant can be postponed until the 18 months' limit has expired. Measuring pendency for utility models and patents will have to take the above differences into account. However, there is no publicly available empirical data on the differences in pendency for utility models and patents.

4.5 FEES, DKPTO

The basic fee per application is 2,000 DKK (approx. 250 EURO), and the basic fee for subsequent filing of a Danish translation of an international application is 1,100 DKK (approx. 147 EURO).[23] The basic fee for resumption is 400 DKK (approx. 53

[19] For international (PCT) utility models applications, see Part 3 of the Consolidated Danish Utility Models Act (2019).
[20] Section 11(1) of the Consolidated Danish Utility Models Act (2019).
[21] Section 24(1).
[22] Section 24(2).
[23] When proceeding with an international utility model application designating Denmark, the applicant shall pay the prescribed fee to the DKPTO and file a translation into Danish within 33 months from the international filing date or, if priority is claimed, from the priority date.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

EURO) and for re-establishment 3,000 DKK (approx. 400 EURO). If the applicant requests substantive examination before or after a registration, the basic fee is 4,000 DKK (approx. 530 EURO).

Utility model protection lasts three years from the date of filing and may be renewed for further two periods of three or four years, respectively, against payment of the prescribed fees.[24] The maximum term of protection is ten years. The renewal fee for the first period is 2,000 DKK (approx. 267 EURO) and for the second period 3,000 DKK (approx. 400 EURO). Renewal fees paid after the expiry of the registration period concerned will be increased by 20 percent.[25] Finally, the basic fee for publication of notice of amended registration and publication of amended text amounts to 1,000 DKK (approx. 133 EURO). The basic fee for appeal is 5,000 DKK (approx. 667 EURO).

4.6 THE ADMINISTRATIVE APPEAL PROCEDURE AND REVOCATION BY A COURT DECISION

As a utility model can be registered without substantive examination, it is not possible to file an opposition with the DKPTO, as is the case for granted patents.

A utility model registration may be revoked by a court decision on the grounds listed in Section 47(1): *if* the registration has not been effected in accordance with the basic requirements in Sections 1 to 5, *if* the description of the creation is not sufficiently clear, or *if* the application has been amended after it has been filed or *if* the scope of protection has been extended after the registration. The division between DKPTO and the courts is clear as the courts cannot rephrase the claims.[26]

Revocation proceedings may be instituted by any person.[27]

After a utility model registration has been granted, any person may file a request with the DKPTO for examination of the registration, cf. Section 50(1). The request for examination may only be based on the grounds for revocation referred to above (Section 47(1)). If proceedings are instituted before the courts prior to a final decision from the DKPTO, the DKPTO will suspend the examination until the case has been finally decided unless the request has been filed by the proprietor of the utility model, Section 50(4).

Finally, the applicant may appeal the final decision of the DKPTO to the Board of Appeal for Patents and Trademarks. The same applies to the proprietor of the

If the application is written in Danish, the applicant shall file a copy of the application within 33 months.

[24] Section 38(1) of the Consolidated Danish Utility Models Act (2019) and the renewal of registration shall be advertised.

[25] Section 39 (1) payment of renewal fees.

[26] U 2019.3126 Ø.

[27] Section 47(4) of the Consolidated Danish Utility Models Act (2019).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

utility model when a utility model registration is revoked entirely or partially after a request for examination of the registration under Section 50.[28] Appeals must be filed no later than two months after the DKPTO has notified the party which is affected by the decision, cf. Section 25(2). Other parties having an interest in the decision may file a similar appeal no later than two months after the publication of the decision. The decision of the Board is final and cannot be appealed to any other administrative authority.[29]

Once the decision has been brought before the Board of Appeal, it may not be brought before the courts until the decision from the Board has been given.[30]

4.7 UTILITY MODEL INFRINGEMENT, DAMAGES AND INJUNCTIONS

Utility models may be enforced against an infringer in court. However, only the injured party may institute proceedings, unless the institution of proceedings is required in the interest of the public, cf. Section 54(4). It follows from Section 54 (1) that any person who intentionally or with gross negligence infringes the exclusive right conferred by a utility model registration shall be punished with a fine. The penalty may increase to imprisonment of up to 18 months if the infringement has been committed intentionally and under aggravating circumstances unless heavier penalty is provided for by Section 299b of the Danish Penal Code (where the range of penalty is up to 6 years). Aggravating circumstances are considered to exist if a significant and obviously unlawful profit is intended by the infringement.

As for monetary damages, it is stated that any person who intentionally or negligently commits utility model infringement shall pay (i) a reasonable compensation, and (ii) damages for any further injury, which the infringement has caused, inter alia the loss of profit suffered by the injured party and the illicit profit obtained by the infringer, cf. Section 55(1) and (2). Additional compensation may also be fixed to the injured party for non-financial injury, cf. Section 55(3).

The infringed party may also claim that a product infringing a utility model shall be (i) withdrawn from the market, (ii) removed definitively from the market, (iii) destroyed, (iv) surrendered to the injured party or (v) altered in a specified manner, all at the expense of the infringer, cf. Section 56(1) and (3).

A prohibitory or mandatory injunction may be granted according to Section 413 of the Danish Administration of Justice Act, if the party applying for the injunction

[28] Section 25(1).
[29] Section 25(4).
[30] The case law from the Board of Appeal is available at https://apv.naevneneshus.dk (in Danish). The Maritime and Commercial High Court case law can be found at https://domstol.dk/om-os/english/.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

proves on a balance of probabilities or by clear and convincing evidence: (i) that the party holds the right for which protection by way of a prohibitory or mandatory injunction is sought; (ii) that the conduct of the opposing party necessitates the granting of the injunction; and (iii) that the ability of the party to enforce its right will be lost if the party has to await a full trial.

The court may decide that the granting of a prohibitory or mandatory injunction is to be conditional on the party providing security for any detriment and disadvantage inflicted on the opposing party because of the injunction, cf. Section 415.

In connection with a temporary injunction, the party that believes it has been injured can request the bailiff's court to carry out preservation of evidence with the other party, just as the party can be required to provide information, cf. Part 29 a Responsibility for finding and presenting evidence in the case of infringement of intellectual property rights, etc. of the Danish Administration of Justice Act.

4.8 BRANCHING-OFF FROM A PATENT APPLICATION OR PATENT UNDER OPPOSITION

Utility models and patents are closely connected in Danish law. An applicant can file applications and combine protection in several ways. It is possible to file an application for the same creation/invention combining an application for a utility model with an application for a patent, which can be filed at the same time. Double protection is only possible if all requirements stated in the act are fulfilled. Hence, a registered utility model may pave the way for injunctions long before a corresponding patent is issued.

Furthermore, as a right of priority, for the purpose of Section 5(1) and (2) and Section 9, the applicant may also claim priority of previous patent or utility model applications filed in or for a state party to the Paris Convention, provided that the subsequent application is filed within 12 months from the date of filing the previous application.[31]

Finally, a patent application may be used as a basis for a utility model application. Thus, a patent application may be used in whole or in part as a basis for a utility model application in respect of the same creation. The priority date of the patent application may be relied upon for the application for the utility model, cf. Section 12(1). The branching-off is provided by Section 13 of the Ministerial Order no. 1605 of 8 December 2006 on the Examination and Other Processing of Utility Model Applications and Registered Utility Models, which states that a patent application

[31] Section 11(1) of the Consolidated Danish Utility Models Act (2019).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007

may be used as a basis for a utility model application for up to ten years from the date of filing the patent application or from the date which is deemed to be the date of filing. In this regard, a patent application for Denmark means (i) a Danish application; (ii) an international application proceeded with in Denmark; (iii) a European patent application designating Denmark and (iv) a European patent application converted into a Danish patent application.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 22:30:27, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009478113.007