



Invalidation Of Patents And Utility Models

专利和实用新型的无效



Beate Schmidt
贝亚特·施密特

President of the Federal Patent
Court

联邦专利法院院长



*Four things belong to a judge:
法官需要具备四项素质:
to hear courteously,
谦恭地听审
to answer wisely,
机智地答复
to consider soberly,
冷静地思考
and to decide impartially.
公正地判决*

SOCRATES (470/469 -399 BC)
苏格拉底 (公元前470/469年 -399年)
classical greek philosopher
古希腊哲学家



FEDERAL PATENT COURT

联邦专利法院

ACTIONS

诉讼

nullity of:
判定以下内容无效:

- ✓ national patents
国家专利
- ✓ European patents
欧洲专利
- ✓ supplementary protection certificates
补充保护证书

compulsory licences
强制许可

APPEALS

上诉

- ✓ patents
专利
- ✓ trade marks
商标
- ✓ utility models
实用新型
- ✓ topographies
拓扑图
- ✓ designs
设计
- ✓ plant varieties
植物品种



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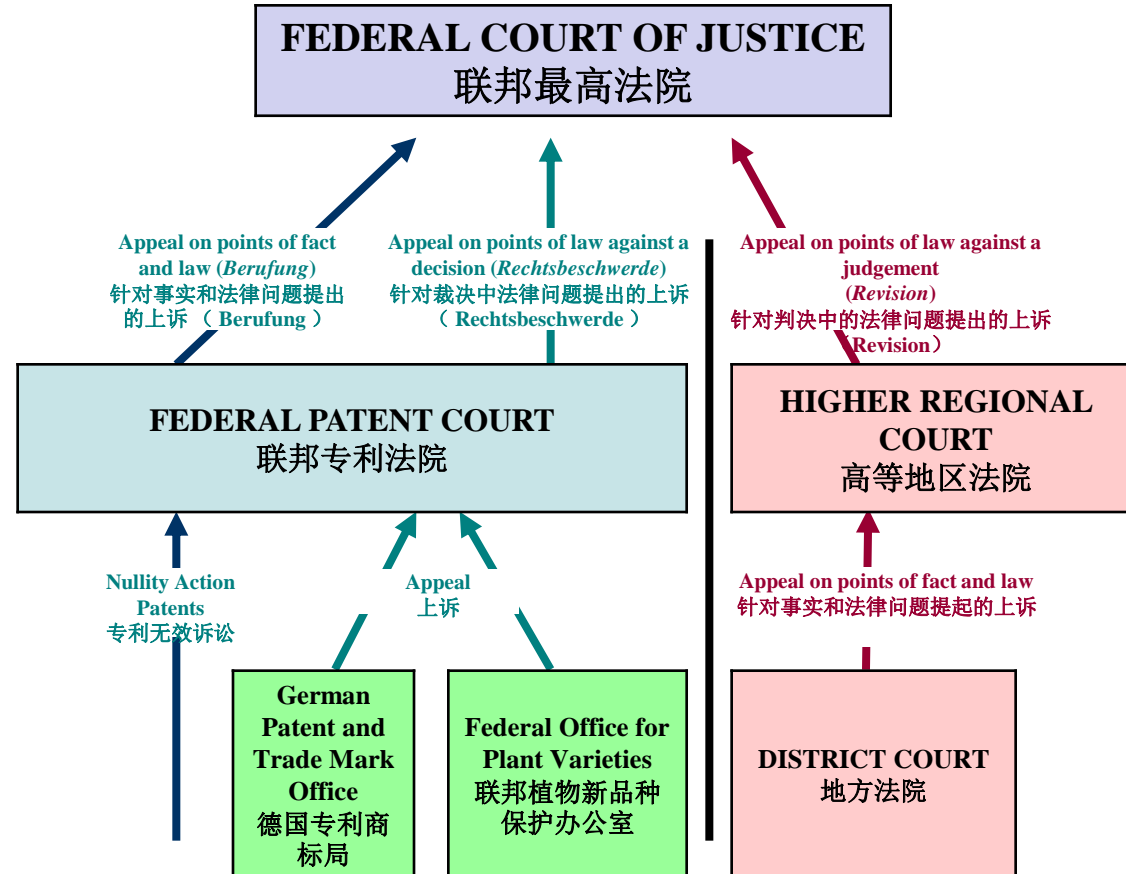
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Legally qualified members 具备法律资质的成员

qualification to exercise the functions of a judge in accordance with the **Judiciary Act** working for many years in the profession in another branch of jurisdiction or as an examiner at the Patent Office.

具备根据《法官法》履行法官职能的资质
多年来一直在其他司法机构任职或担任专利局审查员



Technically qualified members 具备技术资质的成员

degree in one of the natural sciences or a technical subject
拥有某类自然科学或技术领域的学位

practical professional experience and legal expertise in the
field of patent law

在专利法领域拥有专业经验和法律专业知识

status: professional judges, not only technical experts or
lay/ jury judges

身份：专业法官，不仅是技术专家或非专业/陪审法官





Article 97 Basic Law

《基本法》第97条

[Judicial independence]

【司法独立】

Judges shall be independent and subject only to the law.

法官应是独立的，只遵从法律





Substantive independence:

实质独立:

not bound in their decision-making by any instructions or recommendations but only by the law.

在做出判决时，除受法律约束外，不受任何指示或建议的约束



Personal independence:

身份独立:

no disadvantage on account of the content of their decisions, thus they cannot be removed from office and may not be transferred without their consent


法官不得由于判决内容获得不利对待，因此未经本人同意不得被免职或调任

Technical Judges versus Expert Witnesses 技术法官与专家证人



professional combination of technical and juridical expert knowledge

技术和司法专业知识的专业组合




experts have high specialization, technical judges have special knowledge in patent law and practical juridical experience

专家拥有深入的专业知识，技术法官则具备专利法领域的特别知识和司法经验



overall importance of exchange on technical views during proceedings and the final oral session of the court

在法庭程序和最后的口头庭审中交流技术观点的重要性



Technical Judges versus expert witnesses

技术法官与专家证人




mixed panels with technically qualified judges assure intensive exchange of information and opinions

具有技术资质的法官参加的综合裁判小组可以加强信息和观点的交流


responsibility of technical judges for the final decision and the drafting of the written decision

技术法官对做出最终判决和撰写书面判决的责任

Technical Judges versus expert witnesses 技术法官与专家证人




qualified experts are difficult to find, may lack special experience in the field of patent law




有资质的专家很难找到，很多缺乏专利法领域的专门经验



experts may prolong proceedings and are expensive
专家可能延长法庭程序的时间，并且费用较高



experts may not be impartial
专家可能无法做到公正



experts do not take responsibility
专家不承担责任



Proceedings before the Federal Patent Court are based on special provisions

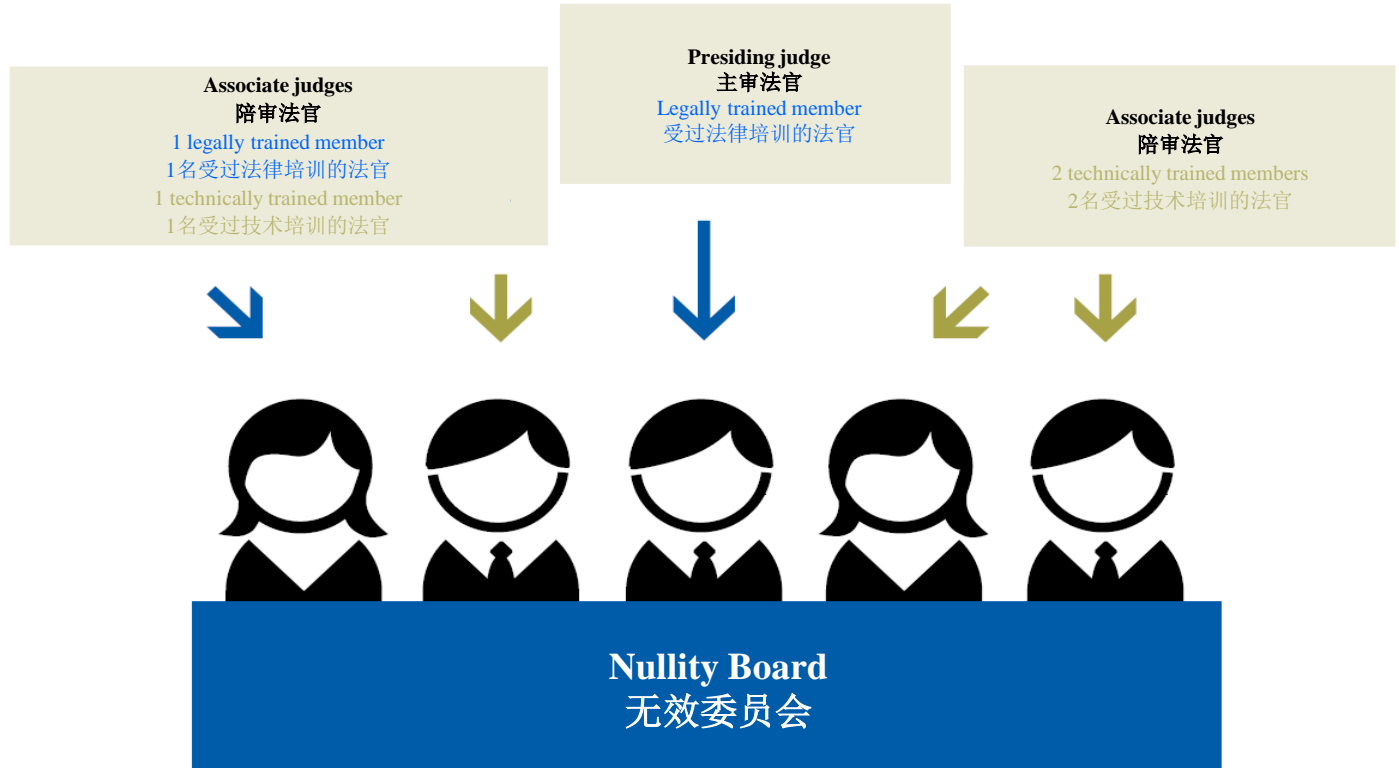
联邦专利法院的审理程序依据特别规定



The provisions of the Code of Civil Procedure are also applicable where relevant and when the specifics of the patent law proceedings do not provide otherwise.

在相关情况下，以及在专利法程序未做具体要求时，同样适用《民事诉讼法》的规定







Rejection of the application:
驳回申请
Associate judge
陪审法官
1 legally trained member
1名受过法律培训的法官

Cancellation:
撤销
Associate judge
陪审法官
1 technically trained member
1名受过法律培训的法官

Other:
其他
Associate judge
陪审法官
1 legally trained member
1名受过法律培训的法官

Presiding judge
主审法官
Legally trained member
接受法律培训的法官


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Board of Appeal for Utility Models
实用新型上诉委员会




for all IPRs the same procedural principles and safeguards – especially the right to be heard – apply
所有知识产权均适用相同的程序原则和保护措施，特别是听审权

the rules for taking and evaluating evidence are the same

证据录取和证据评估的规则相同


the court has great discretion concerning case management

法院对案件管理拥有很大的自行决定权




no *ex officio* proceedings without filing of the statement of claim by the claimant

如果原告未提交诉状，即不存在依职权程序




claimant may terminate proceedings at any time by withdrawing its application

原告可随时撤回申请，终止程序



the statement of claim and the reaction of the defendant whether to defend the whole or only part of the IPR determine the subject-matter of the proceedings



诉状以及被告的回应，即是对全部还是部分知识产权进行抗辩，决定了程序的标的

decisions to be taken by the court are limited by the request by the parties: ne ultra petita

法院作出的判决只能为当事方请求的内容：当事方处分权原则

in appeal proceedings: **prohibition of a reformatio in peius** (no change for the worse)

上诉程序：禁止不利益变更原则（没有更为不利的变更）



representation before the Federal Patent Court by a lawyer or a patent attorney

由律师或专利代理人作为代表在联邦专利法院出庭

under certain conditions other natural or legal persons are authorised to take the place of a legal representative.

在特定条件下，其他自然人或法人经授权也可作为法定代表人

representation not obligatory

不要求一定有代表



once proceedings have started, the Court is not limited exclusively by the

facts as submitted by the parties

程序一旦开始，法院即不再只受当事方提交的事实限制

the court must investigate the facts and arguments *ex officio* within the framework of the applications submitted.

法院必须在所提交的申请书的框架范围内，依职权对事实和论点展开调查

parties are required to assist in clarifying the subject-matter by making full and truthful statements regarding the facts and circumstances.

当事方须就事实和情况作出完整、真实的声明，协助查明主题



BGH Tretkurbeleinheit X ZR 19/12

The court has no obligation to examine documents provided by the parties without further comments on the merit of those documents

对于当事方提交的**未就是**非进行质证的文件，法院没有义务进行审查

<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/list.py?Gericht=bgh&Art=en&Sort=3>



actions and appeals are submitted to the relevant,
predetermined board

诉讼和上诉提交预先确定的相关委员会

a reporting judge is designated in line with the board-
internal rules of procedure

根据委员会内部的程序规则指定一位撰写判决书的
法官

he prepares a written opinion which is passed on to all
members of the board for comment.

该法官撰写一份意见书，并交给委员会所有成员查
看并提出意见



Article 103 [Fair trial] Basic Law

《基本法》第103条【公平审判】

In the courts every person shall be entitled to a hearing in accordance with law.

在法院，人人依法享有听审权

Section 93 Patent Law

《专利法》第93条

A decision may be based only on facts and results of evidence on which the parties were able to comment

只能根据当事方能够质证的证据的事实和结果做出判决



obligation to explain facts and legal deliberations on which to base its decision

有义务对法院在做出判决时所依据的事实和法律方面的考虑进行解释说明

obligation to take arguments of the parties into consideration and to rebut arguments in the reasoning of a decision

有义务对当事方的论点予以考虑，在判决的推理中反驳这些论点

on appeal a decision may be set aside because of failing to comment/rebut arguments of the parties
在上诉程序中，可出于未能质证/反驳当事方论点的理由驳回判决



**Art 87 Patent Law,
《专利法》第87条**

**273 Code of Civil Procedure
《民事诉讼法》第273条**


The presiding judge sets a date for consultations or for an oral hearing

主审法官确定协商或口头审理的日期

The presiding judge may take any measures he feels necessary to prepare the oral hearing in a way, that decision can be reached at the end of the oral hearing

主审法官可采取其认为必要的任何措施，为口头审理做好准备，以便在口头审理结束时达成判决





(1).. the Federal Patent Court shall indicate to the parties as early as possible those aspects which will presumably be of particular significance in respect of the decisions or which are helpful for concentrating the oral proceedings upon the issues which are essential for the decision. No such indication need be made if the aspects appear self-evident on the basis of the parties' pleadings.

(1).. 联邦专利法院应尽早向当事方指明哪些信息可能对做出判决是特别重要的，哪些信息有助于将口头程序的焦点放在做出判决所必需的问题上。如果根据当事方的诉辩状，信息本身即为不证自明，法院即不需要指明上述信息。

The Court may reject means of challenge or defense which are brought forward only after the expiry of a time limit if

出现下列情况的，法院可拒绝在时间期限届满后提交的异议或抗辩：

1. the postponement of the scheduled oral proceedings would be required
1. 需要推迟安排好的口头程序
2. the party affected does not sufficiently excuse the delay, and
2. 相关当事方未能充分地证明延期是合理的
3. there has been instruction about the consequences of failing to observe a time limit
3. 已经说明了不遵守时间期限的后果



the court is to discuss the circumstances, facts and legal ramifications with the parties

法院与当事方讨论情况、事实和法律后果

the court ensures

that parties make declarations in due time and completely
法院确保当事方在适当时间充分地说明：

that parties amend by further information incompletely asserted facts

当事方通过增加信息修改呈报不完全的事实

that parties designate the evidence and file the relevant petitions.

当事方指定证据并提交相关诉状



No surprise decisions

没有突袭裁判

The court may base its decision only on such aspects where it has given corresponding notice of this fact and **has allowed the opportunity to address the matter.**

法院在做出判决时只能依据其已对事实给予相应关注并且**给予了对问题进行讨论的机会**



Sec 169 Courts Constitution Act 《宪法法院法》第169条

The nullity boards always render their judgements following an oral hearing

无效委员会在举行口头审理后作出判决

Oral hearings are open to the public, recordings are not admissible

口头审理对公众开放，但禁止录音录像





presentation of the essential content of the files
陈述文件的基本内容



speeches of the parties in order to bring and reason
their motions

当事方发言，提出各自的动议和理由



discussion of facts and legal aspects of the case
对案件的事实和法律问题展开讨论



amicable resolution of the dispute
以友好方式解决争议



The board reaches its decision in secret and then **pronounces its decision directly thereafter or in a separate hearing.**

委员会秘密审议，之后当庭宣判，或者择期另行宣判

The decision is served on the parties in writing and with reasons.

向当事方送达书面判决，在判决中说明理由



Sec 88, Means of Evidence 第88条，取证方式

inspection on site
现场检查

hearing witnesses, experts, expert witnesses and parties
听取证人、专家、专家证人和当事方的证词

inspecting documents and declarations
查阅文件和声明

use any other means the court thinks adequate
利用法院认为适当的其他方式



Section 286 Code of Civil Procedure Evaluation of Evidence


《民事诉讼法》第 286条 评估证据

decision at the court's discretion and conviction
法院自行据其所信作出决定


bound by statutory rules of evidence only in the
cases designated in the present Code.

对于现行《民事诉讼法》指定的案件，受法定证据规则的约束






records and documents prepared by a public authority within the scope of its official responsibilities establish full proof



公共部门在其正式职责范围内编制的档案和文件可作为充分证据



public records and documents containing a directive, ruling or decision issued by a public authority establish full proof of their content



包含公共机构签发的指令、裁决或判决的公共档案和文件可作为对其内容的充分证据



public records and documents setting out other content establish full proof of the facts set out therein.

阐述了其他内容的公共档案和文件可作为对其中所述事实的充分证据

German public records

德国公共档案

Records and documents which appear to have been executed by a public authority or by a person or entity, are be presumed to be **authentic**

经公共机构或经人员或实体签署的档案和文件视为经过认证的了的



Foreign records and documents 国外档案和文件

discretion of the court to decide whether record or document are deemed to be authentic without further proof by supporting documents

法院自行决定档案或文件是否是真实的，无需提供支持性文件作为证明

legalisation by a consul or minister of Federal Republic of Germany shall be sufficient proof

经德国联邦共和国领事或部长公证的档案或文件应可作为充分证据



Where the action is dismissed, **the decision only has bearing for the two parties.**

如果诉讼被驳回，决定**只约束双方当事人**

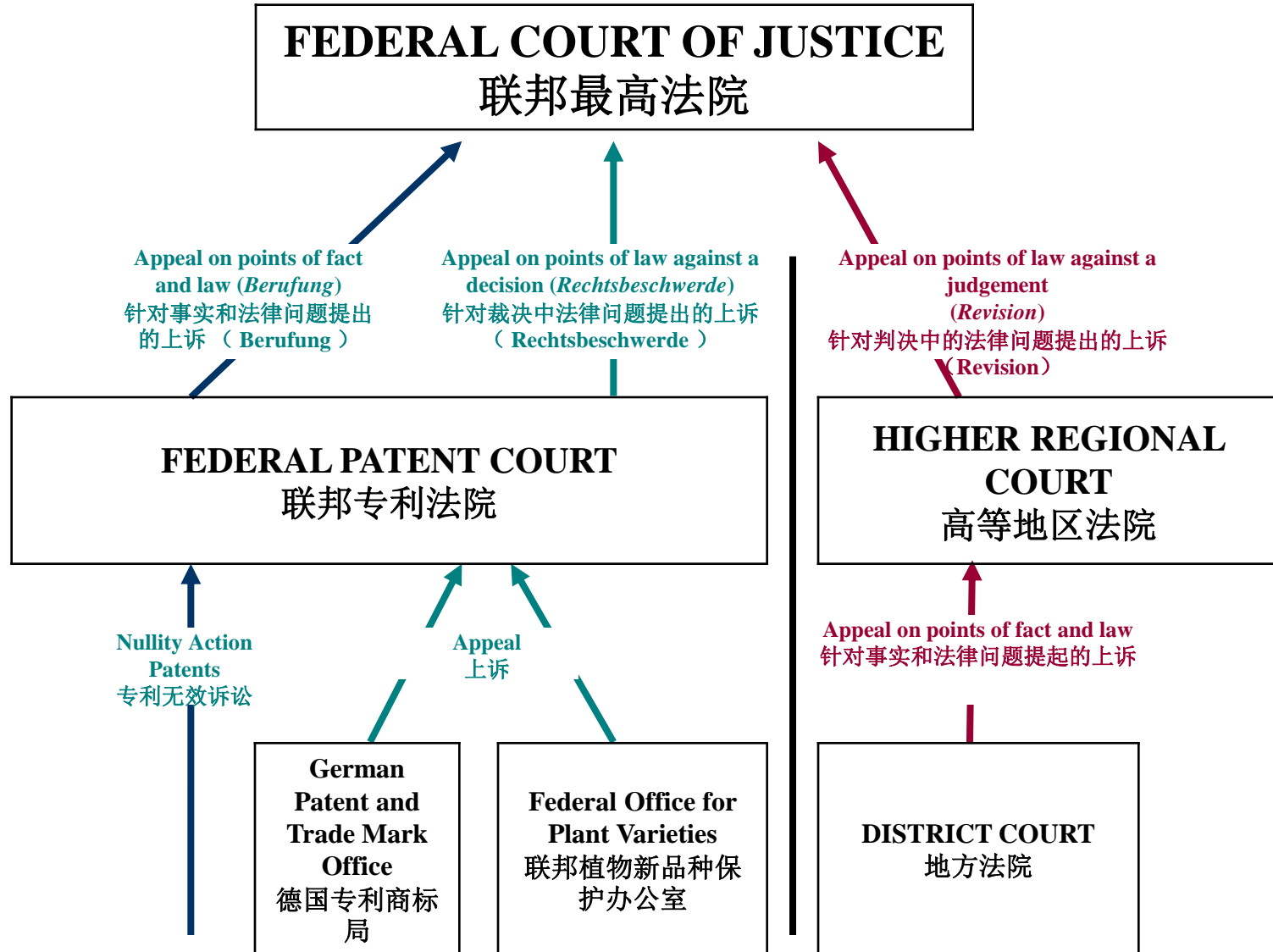
The declaration of whole or partial nullity destroys the patent or restricts it **with retrospective effect and with effect for all and against all.**

如声明专利全部或部分无效，会破坏专利，或导致专利自始、绝对及完全无效或受限。

The declaration of nullity or its restriction is recorded in the Patent Register and an announcement to that effect made in the Patent Gazette.

专利无效或专利限制的声明将录入专利登记簿，并在《专利公报》上发表相关公告





Appeal on Points of Fact and Law
针对事实和法律问题提出的上诉

An appeal on points of fact and law may be filed with the Federal Court of Justice

可向联邦最高法院针对事实^和法律问题提出上诉

No special leave to appeal is required.
不需要特别的上诉许可

In the appeal proceedings the Federal Court of Justice sits as a trial court

在上诉程序中，联邦最高法院作为初审法院开庭



