

Regulation on the implementation of the Design Act (Design Regulation – DesignV)

DesignV

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Footnote

(+++ Proof of text from: 10.1.2014 +++)

(+++ For application cf. § 27 +++)

The V was adopted as Article 1 of V of 2.1.2014 I 18 by the Federal Ministry of Justice and Consumer Protection. It entered into force on 10.1.2014 in accordance with the first sentence of Article 6(1) of that V.

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Section 1 General

§ 1 Scope

The provisions of this Ordinance shall apply to proceedings governed by the Design Act before the German Patent and Trademark Office in addition to the provisions of the Design Act and the DPMA Ordinance.

§ 2 Forms

Forms referred to in this Regulation can be requested from the German Patent and Trademark Office or downloaded from the website of the German Patent and Trademark Office (HYPERLINK "<http://www.dpma.de>"www.dpma.de).

Section 2 Registration procedure

§ 3 Content of the application

(1) The application for registration of a design in the design register must contain in accordance with § 11(2) and (3) of the Design Act:

1. the application for registration (§ 5),
2. information enabling the applicant to be identified (Section 6(1) to (3));
3. the reproduction of the design (§ 7) or, in the case of Section 11(2) sentence 2 of the Design Act, the area-based design section (§ 8) and
4. the indication of the products in which the design is to be incorporated or in which it is to be used (§ 9).

(2) The application may also include:

1. a description for the explanation of the reproduction (§ 10),
2. an application for deferment of the publication of the communication in accordance with the first sentence of Section 21(1) of the Design Act,
3. the indication of the class of goods in which the design is to be classified (§ 9);
4. the indication of a representative (Section 6(4)),
5. the indication of the designer (§ 6(5)),
6. a declaration that the priority of a previous foreign application of the same design or an exhibition priority is claimed (§ 11), and
7. the applicant's non-binding declaration as to whether there is an interest in issuing licences.

§ 4 Submission of the application

(1) The application can be submitted in writing or electronically. For electronic filing, the Ordinance on Electronic Legal Transaction at the German Patent and Trademark Office is decisive. Sections 7(5) and 10(3) remain unaffected.

(2) By way of derogation from Section 11(1) of the DPMA Regulation, the submission of reproductions of a design for the purpose of filing an application or subsequent filing (section 16(3) sentence 1 of the Design Act) is not permitted by fax.

Footnote

(+++ § 4 para. 2: For the application, see § 27(1) +++)

§ 5 Application for registration

(1) The form issued by the German Patent and Trademark Office must be used for the written application for registration of a design pursuant to Section 11(2), first sentence, number 1 of the Design Act.

(2) The application for registration of designs in a single application (Section 12 of the Design Act) must contain in addition to the content prescribed in Section 11(2) and (3) of the Design Act:

1. a statement of the number of designs requested to be entered in the design register; and
2. an attachment sheet containing the following information:
 - a) a list of designs summed up in Arabic numerals,
 - b) the number of presentations submitted for each design; and
 - c) the declaration that the product indication applies to all designs or, for each design, an indication of the products in which it is intended to be incorporated or used.

The form issued by the German Patent and Trademark Office must be used as an investment sheet.

(3) Requests with the application to postpone the publication of the communication (Section 21(1) sentence 1 of the Design Act), this application relates to all designs summarised in the single application.

§ 6 Details of the applicant, representative and designer

(1) The application must contain the following information about the applicant:

1. if the applicant is a natural person: First names and names or, if the registration is to be made under the applicant's company name, the company as entered in the trade register, as well as the address of the residence or registered office with indication of street, house number, postal code and city,
2. if the applicant is a legal person or a partnership:
 - a) Name or company name, legal form and address indicating street, house number, postal code and place of registered office; the designation of the legal form may be abbreviated in the usual manner; where the legal person or partnership is registered in a register, the information shall correspond to the register entry;
 - b) in the case of a company under civil law, additionally name and address with indication of street, house number, postal code and place of at least one authorised partner.

If the applicant is domiciled or domiciled abroad, the State shall also be indicated when specifying the address referred to in sentence 1, in addition to the place of residence. Further information about the district, province or state in which the applicant is domiciled or domiciled or whose legal system he is subject to is voluntary.

(2) The application may also include a mailing address different from the address of the applicant, a mailbox address as well as telephone numbers, fax numbers and e-mail addresses.

(3) Where the application is submitted by several persons or partnerships, paragraphs 1 and 2 shall apply to all notifying persons or partnerships.

(4) Where a representative is appointed, paragraphs 1 and 2 shall apply mutatis mutandis with regard to the particulars of the representative.

(5) The designation of the designer shall apply mutatis mutandis to paragraph 1 sentence 1 number 1, sentences 2 and 3 and paragraphs 2 and 3.

§ 7 Reproduction of the design

- (1) The design is reproduced using photographic or other graphic representations. Up to ten representations are permitted per design, any further representation shall not be taken into account.
- (2) Several representations are to be divided according to the decimal classification and numbered continuously with Arabic numerals. The numeral to the left of the point denotes the number of the design and the digit to the right of the point the number of the representation. The numbering shall be affixed to the forms in addition to the representations. The numbering by the applicant is decisive for the order of representations.
- (3) The design shall be displayed on a neutral background in an image size of at least 3 × 3 centimeters. The representations are intended to show the design applied for protection without ancillary and must not contain any explanation, numbering or dimensional indication. A representation may only show a view of the design. The representations must be permanent and indelible.
- (4) The representations must be printed or pasted on the forms issued by the German Patent and Trademark Office. In the case of multiple applications (Section 12 of the Design Act), a separate form shall be used for each design. No text, designations, symbols or dimensions may be placed on the forms in addition to the representations for explanation.
- (5) The presentations can be submitted on a digital medium instead of on a form. The data carrier must be readable by the German Patent and Trademark Office. The data carrier types and formatting readable by the German Patent and Trademark Office will be announced on the website www.dpma.de. If the data carrier is not readable, the reproduction shall be deemed not to have been submitted. Each representation must be stored in the graphic format JPEG (*.jpg) as a separate file in the root directory of an empty disk. The resolution of the display shall be at least 300 dpi. A file must not be larger than 2 megabytes. The file names shall be selected in accordance with the first and second sentences of paragraph 2. The fourth sentence of paragraph 2 shall apply mutatis mutandis.
- (6) Where the application concerns a design consisting of a repetitive surface design, the reproduction must show the complete design and a sufficiently large part of the area with the repetitive design.
- (7) Where the application concerns a design consisting of typographic characters, the reproduction of the design must include a complete set of characters and five lines of text, each in font size 16 dots.

§ 8 Area-based design sections

- (1) Area-based design sections (Section 11(2) sentence 2 of the Design Act) must be submitted in two identical copies.
- (2) If several design sections are submitted, they must be numbered on the back side. A design section should not exceed the format of 21 x 29.7 centimeters (DIN A4). A larger design section shall not exceed a format of 50 × 100 × 2.5 centimeters or 75 × 100 × 1.5 centimeters and shall be such that it can be combined to 21 x 29.7 centimeters (DIN A4). The design sections filed with an application must not be heavier than 15 kilograms in total, including packaging. No design sections may be submitted that are perishable or whose storage is dangerous, in particular because they are highly flammable, explosive, toxic or contaminated with pests.
- (3) Where an application for registration of a design consisting of a repetitive surface design is requested, the design section shall, in addition to the requirements set out in paragraphs 1 and 2, show the complete design and one of the length and width according to sufficient part of the area with the repetitive design.

§ 9 Product indication and classification

- (1) The indication of the products in which the design is to be incorporated or used (Section 11(3) of the Design Act) is based on the official list of goods for registered designs on the basis of the Locarno Convention on the Establishment of an International Classification of Industrial Designs (Federal Law Gazette 1990 II, p. 1677, 1679). The classification of the design to be registered depends on the classification of the classes and subclasses for registered designs. The current versions of the list of goods and the classification of classes and subclasses are published by the German Patent and Trade Mark Office in the Federal Gazette.
- (2) The indication of the product must allow a proper search of the design represented by the reproduction. It should not cover more than five terms of the goods. If, in the context of the examination pursuant to Section 16 of the Design Act, the German Patent and Trade Mark Office finds that the indication of the product contained in the application does not allow a proper search, the German Patent and Trade Mark Office may add an additional concept of goods to the product indication.

(3) If the class classification changes after the registration of the design, the classification of the products shall be adapted of its own motion at the request of the rightholder or upon registration of the maintenance of the protection and communicated to the rightholder.

§ 10 Description for explanation of the reproduction

(1) If a description is submitted for explanation of the reproduction (Section 11(5)(1) of the Design Act), it may only refer to those features which are apparent from the reproduction of the design or the area-based design section. In particular, it must not contain any information about the novelty or peculiarity of the design or its technical function.

(2) The description explaining the representation of a design may contain up to 100 words and must be submitted on a separate sheet. The description shall consist of continuous text and shall not contain any graphic or other design elements. In the case of multiple applications (Section 12 of the Design Act), the descriptions can be summarised according to design numbers in a document.

(3) If a digital data carrier is used to submit the reproduction (§ 7(5)), the description can be stored in the format “*.txt” on the data carrier. In the case of multiple applications, the descriptions shall be summarised by design number in an electronic document.

§ 11 Information on the use of a priority

(1) If the application declares the claim of priority of a previous foreign application, the time, country and file number of this application must be indicated and a copy of this application must be submitted (Section 14(1) sentence 1 of the Design Act).

(2) If the use of an exhibition priority is declared, the date of the first exhibition and the name of the exhibition shall be indicated. In order to prove the display (Section 15(4) sentence 1 of the Design Act), a certificate issued during the exhibition by the body responsible for the protection of intellectual property at the exhibition must be submitted. The certificate must certify:

1. that the design was revealed at the exhibition,
2. the day of the opening of the exhibition and
3. the day on which the design was first revealed when the first revelation does not coincide with the opening day of the exhibition.

For the certificate, the form issued by the German Patent and Trademark Office shall be used. The certificate must contain a representation of the actual disclosure of the design, certified by that body.

(3) The possibility to amend the information pursuant to Section 14(1) sentence 2 of the Design Act or to issue the declaration of priority within 16 months after the priority date or the date of the first display (Section 14(1) sentence 1 and § 15(4) sentence 1 of the Design Act) remains unaffected.

§ 12 Division of a single application

(1) Pursuant to Section 12(2) of the Design Act, a single application may be divided into two or more applications.

(2) The declaration of division shall include:

1. the reference number of the single application; and
2. the numbers of designs to be divided.

(3) The division shall be effected as soon as the difference to be paid pursuant to Section 12(2) sentence 3 of the Design Act has been paid.

(4) If the information referred to in Section 6(1) and (4) changes as a result of a change in the information relating to the applicant or representative with regard to individual designs, the single application shall be shared ex officio.

§ 13 Follow-up of the notification

An application for further processing of the application refused as a result of time-limits (Section 17(1) of the Design Act) must contain the following information:

1. the file number of the application,
2. the applicant's name, and
3. the date of the decision to which the application relates.

§ 14 German translations

(1) If a foreign-language document is filed, the German Patent and Trade Mark Office may request the applicant to

submit a German translation within a reasonable period of time. The translation must be certified by a lawyer or patent attorney or by a publicly appointed translator.

(2) If the translation is submitted after the deadline, the foreign-language document shall be deemed to have been received at the time of receipt of the translation. If no translation is submitted, the foreign-language document is deemed not to have been received.

Section 3

Design register, procedure after registration

§ 15 Content of the design register

(1) When the application is registered, the following shall be included in the design register:

1. the file number of the application,
2. the reproduction of the registered design,
3. the respective design number, in the case of multiple applications in accordance with the sequentially numbered list pursuant to § 5(2) sentence 1 no. 2 letter a;
4. the name, where applicable the company name, including the legal form, and the place of residence or registered office of the applicant, in the case of foreign places also the State (§ 6(1) and (3)),
5. the address of the declarant, indicating the person entitled to receive it;
6. the filing date (Section 13(1) and Section 16(3)(2) of the Design Act),
7. the date of registration,
8. the product indication (§ 9) and
9. the classes of goods (Section 19(2) of the Design Act), consisting of the indication of the classes and subclasses.

(2) Where applicable, the following information will be added to the design register in addition to the registration:

1. that a non-binding declaration of the applicant's interest in the award of licences has been made (Section 3(2)(7)),
2. the name and domicile of all designated members entitled to represent a company under civil law (Section 6(1), first sentence, point 2(b),
3. the name and address of the representative (§ 6(4)),
4. the name and address of the designer (§ 6(5)),
5. the description to explain the reproduction of the design (§ 10),
6. a reference to the replacement of the reproduction by a design section in terms of area (Section 11(2) sentence 2 of the Design Act),
7. an indication as to whether the registration relates to the application of a single design or a single application (Section 12 of the Design Act), as well as, in the case of a single application, the number of designs summarised in the application (§ 5(2), first sentence, number 1),
8. Time, country and file number of the earlier application of the same design when claiming a foreign priority pursuant to § 14 of the Design Act,
9. the date of the first exhibition and the designation of the exhibition if an exhibition priority is claimed in accordance with § 15 of the Design Act,
10. that an application for deferment of the publication of the communication has been made (Section 21(1) sentence 1 of the Design Act),
11. that there are rights in rem to the registered or registered design (Section 30(1)(1) and § 32 of the Design Act),
12. that the design applied for or registered has become the subject of a measure of foreclosure (Section 30(1)(2) and § 32 of the Design Act); and
13. that the right to the registered design has been covered by insolvency proceedings (Sections 30(3) and 32 of the Design Act).

(3) In the case of transfers before the registration of the design already applied for, only the one who is the holder of the right established by the application at the time of registration will be entered in the design register.

(4) If a request has been made to defer the publication of the communication in accordance with the first sentence of Paragraph 21(1) of the Design Act, the registration of the application shall be limited to the information referred to in subsection 1(1), (4) to (7), in accordance with subsection (2) numbers 1 to 3, 10 to 13, and to the priority date referred to in subsection (2) numbers 8 and 9. If the protection is extended to the term of protection pursuant to

Section 27(2) of the Design Act (Section 21(2) sentence 1 of the Design Act), the remaining information shall be included in the design register in accordance with paragraphs 1 and 2.

§ 16 Further entries in the design register

In addition to the entries pursuant to Section 15, the following information shall be included in the design register if necessary:

1. that the protection was extended to the term of protection pursuant to Section 27(2) of the Design Act (Section 21(2) sentence 1 of the Design Act),
2. in the case of a subsequent publication of the communication (Section 21(3) of the Design Act), the date of the publication and the reference to the notice pursuant to Section 21 (1) sentence 2 of the Design Act,
3. Amendments to the information referred to in Section 15(1)(4) and (5) and (2) (3) and (4),
4. that an application for reinstatement has been made beforehand (Section 23(3) sentence 3 of the Design Act) and the result of this procedure,
5. that a collective entry has been shared (§ 18),
6. that judicial proceedings have been initiated pursuant to Section 9(1) of the Design Act and the further information pursuant to Section 9(4) of the Design Act,
7. that an application for a declaration of invalidity has been made (Section 34a(1) of the Design Act) and the outcome of the invalidity proceedings;
8. the date of filing the counterclaim for a declaration of invalidity and the outcome of the proceedings (Section 52b(4) of the Design Act); and
9. the date and reason for the deletion of the registered design (Section 36(1) of the Design Act).

§ 17 Certificate of registration

The proprietor of the registered design receives a certificate of registration of the design from the German Patent and Trademark Office, unless he has expressly waived it.

§ 18 Division of a collective entry

- (1) Section 12(1), (2) and (4) shall apply mutatis mutandis to the division of a collective entry.
- (2) If an application for registration of a transfer pursuant to Section 28 of the DPMA Regulation concerns only part of the designs registered on the basis of a single application, the respective design numbers shall be indicated in the application. The registered designs, which are covered by the transfer, are separated and continued in a division file.

§ 19 Information on extension and maintenance

- (1) When paying the fee to extend the protection to the term of protection pursuant to Section 27(2) of the Design Act (Section 21(2) sentence 1 of the Design Act), indicate:
 1. the reference number of the registration,
 2. the purpose of the payment; and
 3. the name of the rightholder pursuant to Section 6(1).
- (2) If the extension of the protection is to be effected only for individual registered designs within a collective registration, an application shall be submitted containing the following information:
 1. the reference number of the registration,
 2. the name of the rightholder referred to in Section 6(1); and
 3. the number of registered designs whose protection is to be extended.
- (3) If the rightholder requests the publication of the communication (Section 21(3) of the Design Act) before the expiry of the period referred to in Section 21(1) sentence 1 of the Design Act, the application shall specify:
 1. the reference number of the registration,
 2. the name of the rightholder referred to in Section 6(1); and
 3. the date on which the announcement is to be made.

(4) When paying the maintenance fee, paragraphs 1 and 2 shall apply mutatis mutandis.

§ 20 Waiver of the registered design

- (1) The declaration on the waiver of the registered design pursuant to Section 36 (1) sentence 1 number 2 and paragraph 2 of the Design Act shall state:

1. the number of the registered design that is omitted; and
2. the name and address of the rightholder referred to in Section 6(1).

(2) If a registered design is partially waived, a representation of the modified design in accordance with § 7, in the case of Section 11(2) sentence 2 of the Design Act of the amended area design section pursuant to § 8, must be submitted with the declaration. The partial waiver should not contain more than 100 words. It is entered in the design register and made known with the reproduction of the modified design. In the case of collective registrations, a separate partial waiver must be made for each registered design, which is partially waived.

(3) For the consent of a holder of a right to the registered design registered in the Design Register pursuant to Section 36 (1) sentence 1 number 2 of the Design Act, the submission of a declaration of consent signed by that person or his representative is sufficient. Certification of the declaration or signature is not required.

Section 4

Procedure for establishing or declaring invalidity

§ 21 Submission

(1) The form issued by the German Patent and Trademark Office shall be used for the application for a declaration of invalidity of a registered design (Section 34a(1) of the Design Act).

(2) The application shall specify:

1. the registered design number,
2. the name and address of the applicant;
3. the ground for invalidity pursuant to Section 33(1) or (2) of the Design Act,
4. the facts and evidence used for the purpose of substantiating;
5. in the case of an application for partial invalidity (Section 35(1) of the Design Act), the scope of the application for annulment.

(3) An application may be based on several grounds for invalidity referred to in Section 33(1) or (2) of the Design Act. The application may include information on the subject-matter value if it is to be determined in accordance with Section 34a(6) of the Design Act.

§ 22 Procedural principles

(1) The German Patent and Trade Mark Office may combine invalidity proceedings pending before it for joint treatment and decision. It may suspend invalidity proceedings if this is relevant. A suspension may be considered, in particular, if it considers the same registered design to be invalid in another procedure. The German Patent and Trade Mark Office may repeal an order issued by it concerning the combination of several proceedings or the suspension of proceedings.

(2) The German Patent and Trade Mark Office draws the parties' attention to factors that are likely to be of particular importance for the decision or which are useful in concentrating the proceedings on the issues which are essential for the decision. This notice shall be made as soon as possible, in the case of a hearing pursuant to Section 34a(3) sentence 2 of the Design Act, at the latest with the summons for consultation. There is no need to provide guidance if, according to the arguments put forward by the parties, the elements to be discussed appear obvious.

(3) The German Patent and Trade Mark Office shall endeavour to ensure that the parties explain themselves in good time and in full about all significant facts, in particular to supplement insufficient information on facts and evidence and to submit relevant requests. The German Patent and Trade Mark Office may take into account facts and evidence that have otherwise become known to it or which are taken into account in the public interest if it has indicated this and granted the parties a reasonable period of time to submit observations.

(4) (disappeared)

Footnote

(+++ § 22: For application, see § 27(2) +++)

Section 5

International registrations

§ 23 Opinion on refusal of protection in the case of international registrations

The holder of an international registration pursuant to Section 66 of the Design Act may submit observations to the German Patent and Trademark Office on the notification of refusal of protection (Section 69(2) of the Design Act) within a period of four months from the date on which the International Bureau of the World Intellectual Property Organisation sends the notification.

§ 24 Rewriting of international registrations

At the request of the new owner of the registered design, the German Patent and Trade Mark Office confirms the registration of the change of proprietor under Rule 21(1)(b)(ii) of the Common Implementing Regulations to the versions of the Hague Convention of 1999, 1960 and 1934 (Federal Law Gazette 2008 II, p. 1341, 1342) for the conversion of the international registration, provided that the new owner proves the succession. Section 28(3) of the DPMA Regulation shall apply mutatis mutandis to proof of transfer.

§ 25 Subsequent deprivation of protection

§§ 21 and 22 shall apply mutatis mutandis to the application for a declaration that an international registration is invalid for the territory of the Federal Republic of Germany (Section 70(1) sentence 1 of the Design Act).

Section 6

Final provisions

§ 26 Retention of reproduction of the registered design

The German Patent and Trade Mark Office retains the reproduction of the registered design (§ 7) permanently even after the cancellation of the registration in the design register.

§ 27 Transitional arrangements

- (1) Section 4(2) shall not apply to reproductions received until 9 January 2014.
- (2) Section 22 shall apply to all applications for the declaration or declaration of invalidity of a registered design received by the German Patent and Trademark Office from 1 January 2014.