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Part 1 Requirements for Protection

Section 1 Definitions
For the purpose of this Act
1. 'design' means the appearance of the whole or a part of a product resulting especially from the features of the lines, contours, colors, shape, texture or materials of the product itself or its ornamentation;
2. 'product' means any industrial or handicraft item, including packaging, get-up, graphic symbols, typographic typefaces and parts intended to be assembled into a complex product, but excluding computer programs;
3. 'complex product' means a product composed of multiple components that can be replaced, permitting disassembly and reassembly of the product;
4. 'normal use' means use by the end user, excluding maintenance, servicing or repair work;
5. the 'right holder' shall be deemed to be the person who is recorded in the Register as the owner of a registered design.

Section 2 Design protection
(1) A design shall be protected as a registered design if it is new and has individual character.

(2) A design shall be considered new if no identical design has been disclosed before the date of filing of an application for registration. Designs shall be deemed to be identical if their features differ only in immaterial details.

(3) A design has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been disclosed before the date of filing of an application for registration. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

Section 3 Exclusion from design protection
(1) The following are excluded from design protection:
1. features of appearance of a product that are solely dictated by its technical function;
2. features of appearance of a product that must necessarily be reproduced in their exact form and dimensions in order to permit the
product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function;

3. designs that are contrary to public policy or morality;

4. designs that constitute an improper use of any of the items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property, or of armorial bearings, flags and emblems that are of public interest.

(2) Features of appearance within the meaning of subsection (1), item 2 shall not be excluded from design protection if they serve the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

Section 4 Component parts of complex products
A design applied to or incorporated in a product which constitutes a component part of a complex product shall be considered to be new and to have individual character only if the component part, once it has been incorporated into the complex product, remains visible during normal use of the complex product, and to the extent that those visible features of the component part fulfill in themselves the requirements as to novelty and individual character.

Section 5 Disclosure
A design is disclosed if it has been published, exhibited, used in trade or otherwise made available to the public, except where such disclosure could not reasonably have become known in the normal course of business to the persons carrying on business within the Community and specializing in the sector concerned, before the date of filing of an application for the registration of the design. A design shall not be deemed to have been disclosed if it has merely been made known to a third person under explicit or implicit conditions of confidentiality.

Section 6 Grace period
A disclosure shall not be taken into consideration for the purpose of applying Section 2, subsections (2) and (3) if a design was made available to the public by the designer, his/her successor in title, or a third party in consequence of information provided or an act performed by the designer or his/her successor in title during the period of 12 months preceding the date of the date of filing of the
application for registration. The same shall apply if the design was made available to the public as a consequence of an abuse in relation to the designer or his/her successor in title.
Part 2 Entitled Parties

Section 7 Right in a registered design
(1) The right in a registered design vests in the designer or his/her successor in title. When two or more persons have jointly created a design, the right in the registered design shall vest in them jointly.

(2) Where a design is created by an employee in the course of his/her employment or on the instructions of his/her employer, the right in the registered design shall vest in the employer, except insofar as otherwise agreed by contract.

Section 8 Formal entitlement
The applicant for registration and the right holder shall be deemed the bearers of rights and obligations in proceedings concerning a registered design.

Section 9 Rights against non-entitled parties
(1) Where a design has been registered in the name of a party who was not entitled to it under Section 7, the party entitled to the design may, without prejudice to any other rights, claim the transfer of the registered design or the consent to the cancellation of the registered design. If consent to its cancellation is given, the registered design shall accordingly be deemed from the outset not to have had any protective effects. Where two or more parties are entitled to a registered design, and one of these parties has not been registered as a right holder, this party may demand to be recognized as a joint owner.

(2) Rights under subsection (1) may be asserted only by an action brought within a period of limitation of three years from the publication of the registered design. This provision shall not apply if the right holder was acting in bad faith when the registered design was applied for or transferred.

(3) In the event of a complete change of ownership under the first sentence of subsection (1), all licenses and other rights shall lapse when the party entitled to the design is entered in the Register. If the previous right holder or a licensee has exploited the registered design or made effective and serious preparations to exploit it, he/she may continue to exploit it, provided that he/she requests, within a
period of one month after the new right holder is entered in the register, a non-exclusive license from the new right holder. This license shall be granted for a reasonable period of time and upon reasonable terms. The second and third sentences shall not apply if the right holder or the licensee was acting in bad faith when the licensee began to exploit the design or make preparations to do so.

(4) The initiation of a court proceeding in virtue of subsection (2), a final decision or any other termination of this proceeding, and any change in ownership in consequence of this proceeding shall be entered in the Registered Designs Register (the Register).

**Section 10 Citation as designer**
The designer shall have the right, against the applicant for or the right holder of a registered design, to be cited as the designer in proceedings before the German Patent and Trade Mark Office and in the Register. If the design is the result of teamwork, any one of the designers may claim to be named as a designer.
Part 3 Registration Procedure

Section 11 Applications

(1) Applications for registration of a design in the Register shall be filed with the German Patent and Trade Mark Office. Applications may also be filed through a Patent Information Center if the Federal Ministry of Justice and Consumer Protection has designated said Center in an announcement in the Federal Law Gazette as an office to receive design applications.

(2) An application shall contain
1. a request for registration;
2. information identifying the applicant;
3. a representation of the design suitable for reproduction.
   Where an application is made under the first sentence of Section 21, subsection (1), the reproduction may be replaced by a two-dimensional specimen of the design.

(3) The application must contain an indication of the products in which the design is to be incorporated or to which it is to be applied.

(4) The application must meet the further requirements stipulated by a statutory order under Section 26.

(5) In addition, applications may contain
1. an explanatory description of the reproduction;
2. a request for deferment of publication of the reproduction under the first sentence of Section 21, subsection (1);
3. the class, or a list of the classes, of goods in which the design is to be classified;
4. information identifying the designer or designers;
5. information identifying a representative.

(6) The information referred to in subsections (3) and (5), item 3 shall have no influence on the scope of protection of the registered design.

(7) The applicant may withdraw the application at any time.

Section 12 Multiple applications

(1) Several designs may be combined in one application (multiple
application). A multiple application may not contain more than 100 designs.

(2) The applicant may, on making notification to the German Patent and Trade Mark Office, divide a multiple application. Division of an application shall not affect the date of application. If the sum of the fees to be paid for each divisional application is greater than the application fees already paid, the difference shall be payable in addition.

**Section 13 Date of filing of an application**

(1) The date of filing of an application for a registered design shall be the date on which the documents with the information referred to in Section 11, subsection (2) have been received

1. at the German Patent and Trade Mark Office; or
2. at a Patent Information Center, if this Center has been designated for this purpose in an announcement by the Federal Ministry of Justice and Consumer Protection in the Federal Law Gazette.

(2) If priority under Section 14 or 15 is successfully claimed, the priority date shall replace the date of filing of the application for the purpose of applying Sections 2 through 6, Section 12, subsection (2), second sentence, Section 21, subsection (1), first sentence, Section 33, subsection (2), first sentence, item 2, and Section 41.

**Section 14 Foreign priority**

(1) Any person who, under an international treaty, claims the priority of an earlier foreign application for the same registered design shall, before the end of the 16th month after the priority date, state the date, country and file number of the earlier application, and file a copy of the earlier application. This information may be amended within the said period.

(2) Where the earlier foreign application was filed in a State with which no treaty on the recognition of priority exists, the applicant may claim a right of priority corresponding to the right of priority under the Paris Convention, provided that, after an announcement by the Federal Ministry of Justice and Consumer Protection in the Federal Law Gazette, the other State affords, on the basis of an initial filing of an application for registration at the Patent
Office, a right of priority whose conditions and content are comparable with those of the right of priority under the Paris Convention; subsection (1) shall apply.

(3) If the information referred to in subsection (1) is provided in good time and the copy is filed in good time, the German Patent and Trade Mark Office shall enter the priority in the Register. If the applicant claimed priority only after the publication of the registration of a design, or if the applicant has amended any information, the publication shall be correspondingly updated. Where the information under subsection (1) is not provided in good time or the copy is not filed in good time, a declaration of a claim to priority shall be deemed not to have been made, and a finding to this effect shall be made by the German Patent and Trade Mark Office.

Section 15 Exhibition priority
(1) Where the applicant has displayed a design
1. at an official or officially recognized exhibition falling within the terms of the Convention on International Exhibitions signed in Paris on 22 November 1928; or
2. at any other exhibition held in Germany or abroad,
he may, if the applicant files the application within a period of six months from the date on which the design was first displayed, claim a right of priority from that date onward.

(2) The exhibitions referred to in subsection (1), item 1 shall be announced by the Federal Ministry of Justice and Consumer Protection in the Federal Gazette.

(3) The exhibitions referred to in subsection (1), item 2 shall be specified in each case by the Federal Ministry of Justice and Consumer Protection and shall be announced in the Federal Gazette.

(4) Any person who claims priority under subsection (1) shall, before the end of the 16th month after the date on which the design was first displayed, state this date and the name of the exhibition together with evidence that the design was displayed. Section 14, subsection (3) shall apply mutatis mutandis.

(5) Exhibition priority under subsection (1) shall not extend the periods of priority under Section 14, subsection (1).
Section 16 Examination of the application

(1) The German Patent and Trade Mark Office shall check whether
1. the application fees prescribed by the first sentence of Section
   5, subsection (1) of the Patent Costs Act have been received;
2. the requirements for accordance of a date of filing of the
   application under Section 11, subsection (2) have been satisfied; and
3. the application fulfills the remaining requirements for application.

(2) Where sufficient fees are not paid within a period set by the
German Patent and Trade Mark Office and the applicant fails to pay
additional fees for a multiple application, or if the applicant does
not stipulate which designs shall be covered by the application fees
that he/she has paid, the German Patent and Trade Mark Office shall
determine which designs shall be considered. In respect of any
remaining designs, the application shall be deemed to have been
withdrawn, and the German Patent and Trade Mark Office shall make a
finding to this effect.

(3) Where the German Patent and Trade Mark Office has identified any
deficiencies referred to subsection (1), items 2 and 3, this Office
shall request the applicant to remedy these deficiencies within a
specified period. If the applicant complies with the request from this
Office, this Office shall recognize the date on which any identified
deficiencies referred to in subsection (1), item 2 were remedied as
the date of filing of the application under Section 13, subsection
(1). If these deficiencies are not remedied within the specified period,
the German Patent and Trade Mark Office shall decide to refuse the
application.

Section 17 Further processing of the application

(1) When an application for a registered design is refused after a
time limit set by the German Patent and Trade Mark Office has not
been observed, the decision to refuse the application shall become
ineffective without expressly having to be set aside if the
applicant requests the further processing of the application and
completes the omitted act.

(2) The request for further processing of the application shall be
filed within a period of one month after service of the decision to
refuse the application for a design. The omitted act must be completed within this period.

(3) Reinstatement of the application shall not be possible if the said request is not filed within the period prescribed by subsection (2) or if the further processing fee is not paid within the period prescribed by the first sentence of Section 6(1) of the Patent Costs Act.

(4) The Section responsible for a decision on the act to be completed shall decide on the request.

Section 18 Grounds for refusal
If the subject matter of the application is not a design within the meaning of Section 1, item 1, or if a design is excluded from design protection under Section 3, subsection (1), item 3 or 4, the German Patent and Trade Mark Office shall refuse the application.

Section 19 Keeping of the Register, registration and design information
(1) The Registered Designs Register shall be kept by the German Patent and Trade Mark Office.

(2) The German Patent and Trade Mark Office shall enter in the Register the required information about the applicant, without checking applicant’s entitlement to file an application or the accuracy of the information provided in the application.

(3) The German Patent and Trade Mark Office may transmit the particulars entered in the Register to third persons in electronic form for further processing or use for the purposes of providing design information. Such transmission shall not be made where inspection is ruled out pursuant to section 22(3).

Section 20 Publication
(1) Registration in the Register shall be published by the German Patent and Trade Mark Office together with a representation of the registered design. The publication shall be done without guarantee for the completeness of the representation and the recognisability of the features of appearance of the design.
(2) Publication may be made in electronic form.

Section 21 Deferment of publication

(1) When filing the application, the deferment of publication of the representation may be requested for a period of thirty months following the date of filing of the application. Upon such request, the publication shall be confined to the registration of the design in the Register.

(2) The protection may be extended to the term of protection referred to in section 27(2) if the right holder pays the extension fee in accordance with section 5(1), first sentence, of the Patent Costs Act within the deferment period. Where use has been made of the possibility referred to in section 11(2), second sentence, a representation of the design shall also be submitted within the deferment period.

(3) At the expiry of the period of deferment, or at an earlier date on request, publication of a reproduction under Section 20 shall be effected together with a reference to publication under the second sentence of subsection (1).

(4) The term of protection shall end at the expiry of the period of deferment, unless the protection is extended under subsection (2). Where designs have been registered under a multiple application, the deferred publication can be limited to some of the registered designs.

Section 22 Inspection of the Register

(1) Any person may inspect the Register. The right to inspect the representation of a registered design and the files held by the German Patent and Trade Mark Office in respect of the registered design shall exist where

1. the representation has been published;
2. the applicant or right holder has given consent to the inspection;
or
3. a legitimate interest in the inspection has been satisfactorily shown.

(2) Where files are held in electronic form, the inspection of these files under subsection (1), sentence 2 may be allowed over the Internet.

(3) Inspection of the files under subsections 1 and 2 shall not be
permitted if it would contravene any statutory provision or if any interest warranting protection of the party concerned, as referred to in Section 3(1) of the Federal Data Protection Act obviously prevails.

Section 23 Procedural provisions, appeals, and appeals on a point of law

(1) One or more Design Sections and Design Divisions shall be established within the German Patent and Trade Mark Office for the conduct of proceedings in design matters. The Design Sections shall be competent for decisions in proceedings under this Act, with the exception of invalidity proceedings under Section 34a, and shall include a legal member as referred to in the second sentence of Section 26(2) of the Patent Act. Section 47 of the Patent Act shall apply mutatis mutandis.

(2) Decisions in invalidity proceedings under Section 34a shall be taken by one of the Design Divisions of the German Patent and Trade Mark Office, each of which shall include three legal members as referred to in the second sentence of Section 26(2) of the Patent Act. If a case involves special technical questions, a technical member as referred to in the second sentence of Section 26(2) of the Patent Act shall be consulted. The decision whether to consult a technical member shall be taken by the presiding member of the competent Design Division, and this decision shall not be independently appealable.

(3) Sections 41 to 44, section 45(2), second sentence, and sections 47 to 49 of the Code of Civil Procedure on the exclusion of and objection to court personnel shall apply mutatis mutandis to the exclusion of and objection to members of the Design Units and Design Divisions. Where a decision is required, such decision on the objection request shall be taken by another legally qualified member of the German Patent and Trade Mark Office whom the President of the German Patent and Trade Mark Office has generally appointed to take decisions of this nature. Section 123(1) to(5) and(7) and sections 124, 126 to 128a of the Patent Act shall apply mutatis mutandis.

(4) The decisions of the German Patent and Trade Mark Office in proceedings under this Act may be appealed to the Federal Patent Court. A Board of Appeal at the Federal Patent Court sitting in a composition of three legally qualified members shall take the decision on the appeal. Subsection (2), second and third sentences, shall apply, with
the proviso that the Board of Appeal sitting in a composition of three legally qualified members shall take a decision by non-appealable order as regards enlarging the panel; section 100(3) no. 1 of the Patent Act shall not apply to the enlargement or non-enlargement of the panel. Sections 69, 70(2), 73(2) to(4), section 74(1), section 75(1), sections 76 to 80 and sections 86 to 99, section 123(1) to(5) and (7), and sections 124, 126 to 128b of the Patent Act shall apply mutatis mutandis. Section 84(2), second and third sentences, of the Patent Act shall apply mutatis mutandis in appeal proceedings against decisions issued in invalidity proceedings in accordance with section 34a.

(5) Appeals on a point of law from decisions of the Chamber of Appeal concerning an appeal under subsection (2) shall lie to the Federal Court of Justice, provided that the Chamber of Appeal has given leave to appeal on that point of law. Sections 100(2) and (3), 101 to 109, 123(1) through (5) and (7), and Sections 124 and 128b of the Patent Act shall apply mutatis mutandis.

Section 24 Legal aid
In proceedings in accordance with section 23(1), the applicant shall receive legal aid upon request subject to the application, mutatis mutandis, of sections 114 to 116 of the Code of Civil Procedure where there is sufficient prospect of the design being registered in the Register. Upon request, a party to the proceedings in accordance with section 34a shall be granted legal aid subject to the application, mutatis mutandis, of section 132(2) of the Patent Act. Upon the request of the right holder, legal aid may also be granted for the costs of extending protection in accordance with section 21(2), first sentence, and for the renewal fees in accordance with section 28(1), first sentence. Section 130(2) and (3) as well as sections 133 to 138 of the Patent Act shall apply mutatis mutandis.

Section 25 Electronic conduct of proceedings, power to issue ordinances
(1) To the extent that, in proceedings before the Patent Office, the written form is required for applications, requests or other acts, the provisions of Section 130a(1), first and third sentences, and (3) of the Code of Civil Procedure shall apply mutatis mutandis.*1
(2) The case records of the Patent Court and of the Federal Court of Justice may be kept in electronic form. Further, the provisions of the Code of Civil Procedure regarding electronic documents, electronic files and the electronic conduct of proceedings shall apply unless this Act provides otherwise.

(3) The Federal Ministry of Justice and Consumer Protection shall determine the following matters by statutory order not requiring approval by the Bundesrat:
1. the date from when electronic documents may be submitted to the German Patent and Trade Mark Office and to the courts, the appropriate form for processing the documents, whether an electronic signature shall be used and the form of such signature;
2. the date after which the case records under subsection (2) may be kept electronically, as well as the general organizational and technical conditions to be applied for the purpose of the formation, processing and storage of electronic case records.

Section 26 Powers to issue ordinances
(1) The Federal Ministry of Justice and Consumer Protection shall regulate the following matters by statutory order not requiring approval by the Bundesrat:
1. the establishment and the business procedure of the German Patent and Trade Mark Office, and the form of proceedings in design matters, except insofar as provided by law;
2. the form of the application for a registered design, the form of the representation of the design, and related requirements;
3. the admissible dimensions of any design specimen accompanying the application under the second sentence of Section 11(2);
4. the content and scope of any explanatory description accompanying the representation;
5. the classification of goods;
6. the keeping and form of the Register, the particulars to be entered in the Register and the details for publication;
7. the treatment of any products accompanying an application for a registered design for the purpose of representation of the design, after cancellation of the registration;
8. the procedure before the German Patent and Trade Mark Office for the protection of designs under the Hague Agreement and
9. the procedure before the German Patent and Trade Mark Office on the determination or declaration of invalidity of a registered design
pursuant to section 34a.

(2) The Federal Ministry of Justice and Consumer Protection shall have power to entrust, by statutory order not requiring approval by the Bundesrat, civil servants of the higher and intermediate grades as well as comparable employees with duties in proceedings in matters concerning the Register that in themselves present no special legal difficulties, with the exception of
1. the refusal of an application under Section 18 and the refusal of protection for an international registration under Section 69;
2. decisions in invalidity proceedings under Section 34a; and
3. interlocutory revision or the submission of an appeal (Section 23(4), fourth sentence) from a decision issued in proceedings under this Act.

(3) The second and third sentences of Section 23(3) shall apply mutatis mutandis to the exclusion and challenge of a person entrusted in accordance with the first sentence of Section 23(2).

(4) The Federal Ministry of Justice and Consumer Protection may, by statutory order not requiring approval by the Bundesrat, delegate the powers under subsections (1) and (2) entirely or in part to the German Patent and Trademark Office.
Part 4 Commencement and Term of Protection

Section 27 Commencement and term of protection
(1) Protection shall commence on registration in the Register.

(2) The term of protection shall be 25 years starting on the date of filing of the application.

Section 28 Maintenance
(1) Protection shall be maintained by payment of a maintenance fee for, respectively, the 6th through the 10th, the 11th through the 15th, the 16th through the 20th, and the 21st through the 25th year of the term of protection. Any maintenance of protection shall be recorded in the Register and published.

(2) In the case of designs registered as part of a multiple application, if the maintenance fee has been paid for only a portion of the registered designs, and no further information has been provided, the designs shall be considered in the order for which the application for their registration was made.

(3) The term of protection shall expire if protection is not maintained.
Part 5 Registered Designs as Assets

Section 29 Legal succession

(1) The right in a registered design may be assigned or pass to others.

(2) Where the registered design belongs to a company or portion of a company, the assignment or transfer of the registered design shall, in case of doubt, be included with assignment or transfer of the company or portion of the company to which the registered design belongs.

(3) At the request of the right holder or the legal successor, the transfer of the right in the registered design shall be recorded in the Register, if proof of this transfer is furnished to the German Patent and Trade Mark Office.

Section 30 Rights in rem; levy of execution; insolvency proceedings

(1) The right in a registered design may

1. be the subject of rights in rem, in particular the right to pledge as security; or
2. may be levied in execution.

(2) The rights referred to in subsection (1), item 1 or the measures referred to in subsection (1), item 2 shall, at the request of a creditor or other entitled party, be recorded in the Register, if proof of these rights or measures is furnished to the German Patent and Trade Mark Office.

(3) Where the right in a registered design falls within the scope of insolvency proceedings, an entry to this effect shall be made in the Register at the request of the receiver or of the insolvency court. Where a registered design is jointly owned by several persons, sentence 1 shall apply mutatis mutandis to a joint owner’s share. In the case of self-administration (Section 270 of the Insolvency Code), the administrator shall act in place of the liquidator.

Section 31 Licensing

(1) The right holder may grant licenses for the whole or part of the Federal Republic of Germany. A license may be exclusive or non-exclusive.
(2) The right holder may invoke the rights conferred by a registered design against a licensee who contravenes any provision in a licensing contract with regard to
1. the period of the license;
2. the manner in which the registered design shall be used;
3. the range of products for which the license is granted;
4. the territory for which the license has been granted; or
5. the quality of the products manufactured by the licensee.

(3) Notwithstanding the provisions of the license agreement, the licensee may bring proceedings for infringement of a registered design only if the right holder consents thereto. This provision shall not apply to the owner of an exclusive license if the right holder in the Community design, having been requested to do so, does not himself bring infringement proceedings within an appropriate period.

(4) Any licensee may, for the purpose of obtaining compensation for damages suffered by him, participate as a joint litigant in an action for infringement brought by the right holder.

(5) Legal succession under Section 29 or the grant of a license as referred to in subsection (1) shall not affect licenses previously granted to third parties.

Section 32 Registered designs
The provisions of this Part shall apply mutatis mutandis to rights conferred by design applications.
Part 6 Invalidity and Cancellation

Section 33 Invalidity

(1) A registered design shall be invalid if
1. the appearance of the product is not a design within the meaning of Section 1, item 1;
2. the design is not new or does not have individual character; or
3. the design is excluded from design protection under Section 3.

(2) A registered design shall be declared invalid if
1. it constitutes an unauthorized use of a work protected by copyright;
2. it is included within the scope of protection of a registered design of earlier date, even if this registered design was disclosed only after the date of filing of the application for the design that is to be declared invalid;
3. a distinctive sign with an earlier filing or priority date is used in it and the holder of the sign is entitled to prohibit the use.

(3) Invalidity shall be found or declared by a decision of the German Patent and Trade Mark Office or by a judgment on a counterclaim in infringement proceedings.

(4) Once an unappealable decision of the German Patent and Trade Mark Office or a final judgment finding or declaring invalidity has been issued, the registration of a design shall be deemed from the outset not to have had any protective effects.

(5) Invalidity can also be found or declared after expiry of the term of protection of the registered design, or after a registered design is surrendered.

(6) In the case of invalidity pursuant to subsections (1) and (2), the holder of the registered design may consent to cancellation by making a declaration to the German Patent and Trade Mark Office. The registration of a design which is to be cancelled shall be deemed not to have had any protective effects as from the outset.

Section 34 Authority to make requests

Any person may request a finding of invalidity under Section 33(1). Only the holder of the right concerned may request a declaration of invalidity under Section 33(2). The ground for invalidity provided for
in Section 33(1), item 3 in conjunction with Section 3(1), item 4 may be asserted only by a party affected by the use of the design; this provision shall, however, not prevent an ex officio assertion of invalidity by the competent authority.

Section 34a Invalidity Proceedings before the German Patent and Trade Mark Office

(1) The request shall be filed in writing at the German Patent and Trade Mark Office. Facts and evidence to support the request shall be provided. Sections 81(6) and 125 of the Patent Act shall apply mutatis mutandis. The request shall not be admissible if an unappealable decision or a final judgment has been rendered concerning the relevant matter at issue between the parties.

(2) The German Patent and Trade Mark Office shall serve the application on the holder of the registered design and shall invite him to comment on the application within a period of one month of service of the application. If the right holder does not contest the application within this period, the invalidity shall be determined or declared. Where the parties declare the proceedings in the main action terminated or the applicant withdraws his application, the proceedings shall be terminated by decision; the decision, with the exception of the decision on the costs of the proceedings pursuant to subsection (5), shall be non-appealable.

(3) Where the application is contested in due time, the German Patent and Trade Mark Office shall inform the applicant that the application has been contested and shall make the orders necessary in preparation of the decision. A hearing shall be held upon request of a party or where the German Patent and Trade Mark Office deems it to be expedient. For the purposes of taking evidence, the examination of witnesses and experts as well as the examination or hearing of parties may be ordered, visual inspection may be made or the probative value of a submitted document assessed; the provisions of Book 2 of the Code of Civil Procedure regarding such evidence shall apply mutatis mutandis. Minutes shall be drawn up of the hearings and taking of evidence containing the essential course of the proceedings and the relevant statements made by the parties; sections 160a, 162 and 163 of the Code of Civil Procedure shall apply mutatis mutandis.

(4) The decision shall be issued by way of an order. The substance of
the decision may be delivered at the end of the hearing. The decision shall be reasoned and a copy served on the parties ex officio; the copy need not be certified. Execution copies shall be made only upon the application of one of the parties and only in paper form. Section 47(2) of the Patent Act shall apply mutatis mutandis.

(5) The decision shall include a decision on the costs of the proceedings; section 62(2) and section 84(2), second sentence, of the Patent Act shall apply mutatis mutandis. Section 23(3), second sentence, and section 33(1) of the Act on the Remuneration of Lawyers shall apply mutatis mutandis to the determination of the value in dispute. The decision regarding the value in dispute may be linked to the decision referred to in the first sentence. In the cases referred to in subsection (2), second and third sentences, the German Patent and Trade Mark Office shall decide on the costs of the proceedings upon application only; the decision on the costs may be issued by separate decision. Such application may be made as follows:
1. in the case referred to in subsection (2), second sentence, up until the expiry of one month after the decision on the determination or declaration of invalidity has become non-appealable,
2. in the case referred to in subsection (2), third sentence, up until the expiry of one month following service of the decision to terminate the proceedings.
Where no decision is taken as to costs, each party shall bear his own costs arising.

Section 34b Suspension
Where a legal action is or becomes pending during invalidity proceedings, if the decision in this action depends on the legal status of the registered design, the court may order the legal action to be suspended. A suspension shall be ordered if the court considers the registered design to be invalid. Where the request for invalidity is refused with no possibility of appeal, the court shall be bound by this decision only if it was issued in respect of the same parties. The third sentence of Section 52b shall apply mutatis mutandis.

Section 34c Participation in invalidity proceedings
(1) A third party may participate in an invalidity proceeding provided that an unappealable decision concerning an application for a finding or declaration of invalidity has not been issued, and if the party can satisfactorily show that
1. a proceeding for infringement of the same registered design is pending against him/her; or
2. the party has been requested to cease and desist an alleged infringement of the same registered design.
Notice of participation in the proceeding may be given within three months from the date that the proceeding referred to in the first sentence, item 1 commenced or from receipt of the request to cease and desist referred to in the first sentence, item 2.

(2) The third party may file a request to participate in the proceeding; Sections 34 and 34a shall apply mutatis mutandis. Where a third party participates in an appeal proceeding before the Federal Patent Court, he/she shall be granted the status of an appellant.

Section 35 Partial maintenance
(1) A registered design may be maintained in a modified form
1. through a finding of partial invalidity or by means of a partial surrender by the right holder, if a finding of invalidity under Section 33(1), due to a lack of novelty or individual character (Section 2(2) or (3)), is made, or because a design is found to be excluded from design protection (Section 3); or
2. through a declaration of partial invalidity, together with consent to partial cancellation or a declaration of partial surrender, provided that a declaration of invalidity can be claimed under the first sentence of Section 33(2), item 1 or 3; insofar as in the modified form the registered design complies with the requirements for protection, and that the identity of the design is retained.

(2) A representation of the design, as referred to in Section 11(2), first sentence, item 3, in the modified form shall be filed at the German Trade Mark and Patent Office.

Section 36 Cancellation
(1) A registered design shall be cancelled
1. at the expiry of the term of protection;
2. through surrender of the design by the right holder, at his/her request, provided that the consent of any other registered holders of rights in the registered design, together with that of the plaintiff in the event of a proceeding under Section 9, is submitted;
3. at the request of a third party who submits with the request an
official or officially certified document containing the declarations referred to in item 2;
4. by consent to cancellation under Section 9 or the first sentence of Section 33(6); or
5. on the basis of an unappealable decision or final judgment concerning a finding or declaration of invalidity.
the German Patent and Trade Mark Office shall issue a decision concerning any challenge to cancellation.

(2) Where, under subsection (1), items 2 and 3, the right holder surrenders the design only partially, or, under subsection (1), item 4, declares his/her consent to the cancellation of a part of the registered design, or, under subsection (1), item 5, a finding of partial invalidity is made, a corresponding entry shall be made in the register in lieu of the cancellation of the registered design.
Part 7 Protective Effects and Limitation of Protection

Section 37 Object of protection
(1) Protection shall be accorded to those features of the appearance of a registered design that are visibly reproduced in the application for registration.

(2) Where for the purpose of deferment of publication, an application contains a two-dimensional design specimen, as referred to in the second sentence of Section 11(2), and, at the end of the deferment, protection is duly extended under Section 21(2), the object of protection shall be determined using the representation of the registered design that has been filed.

Section 38 Rights conferred by the registered design, scope of protection
(1) A registered design shall confer on its right holder the exclusive right to use it and to prevent any third party from using it without the right holder’s consent. Use in this case shall cover, in particular, the production, offering, putting on the market, importing, exporting or use of a product in which the registered design is incorporated or to which it is applied, or stocking such a product for these purposes.

(2) The protection conferred by a registered design shall include any design that does not produce on the informed user a different overall impression. In assessing the scope of protection, the degree of freedom of the designer in developing the design shall be taken into consideration.

(3) During the period of deferment of publication (first sentence of Section 21(1)), protection under subsections (1) and (2) shall be granted on the assumption that this design is the result of imitation of the registered design.

Section 39 Presumption of validity
There shall be a presumption that the right holder has complied with the requirements for validity of a registered design.

Section 40 Limitation of the rights conferred by a registered design
Rights conferred by a registered design shall not be asserted in respect of
1. acts done privately and for non-commercial purposes;
2. acts done for experimental purposes;
3. acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source;
4. the equipment on ships and aircraft that are registered in a foreign country and that temporarily enter German territory;
5. the importation of spare parts and accessories for the purpose of repairing the ships and planes referred to item 4.

Section 41 Right of prior use

(1) The rights under Section 38 may not be asserted against a third party who, before the date of filing of the application, has in good faith commenced use in Germany, or has made serious and effective preparations to that end, of an identical design developed independently from a registered design. The third party shall be entitled to exploit the design. However, he/she shall not be entitled to grant licenses (Section 31) in respect of the design.

(2) The rights of this third party cannot be transferred unless the party is the operator of a company, and these rights are transferred together with that part of the company in which the design was used or preparations for use of the design were made.
Part 8 Infringements

Section 42 Removal, ceasing and desisting, and compensation for damages

(1) Any person who uses a registered design in breach of the first sentence of Section 38(1) (the infringer) may be required by the right holder or another entitled party (the injured party) to remove the infringement, and, where there is a risk of repetition of the infringement, this person may be required by the injured party to cease and desist. A claim to prohibit the infringer from future infringement shall also exist if there is the risk that an infringing act will be committed for the first time.

(2) Where the infringer has acted intentionally or negligently, the infringer shall be liable to pay compensation for the damage incurred thereby. When assessing the compensation for damages, any profit that the infringer has made by infringing the right may also be taken into account. The claim for compensation of damages may also be calculated on the basis of the amount that the infringer would have had to pay as fair remuneration if the infringer had obtained the authorization to use the registered design.

Section 43 Destruction, recall and relinquishment

(1) The injured party may require the infringer to destroy any unlawfully manufactured or distributed products, or any products intended for illegal distribution, that are in the infringer’s possession or ownership. The first sentence shall apply mutatis mutandis to any devices in the infringer’s ownership that served primarily to manufacture these products.

(2) The injured party may require the infringer to recall products that were unlawfully manufactured or distributed, or are intended for unlawful distribution, or to remove them permanently from the channels of commerce.

(3) In lieu of the measures provided for in subsection (1), the injured party may demand that products in the ownership of the infringer be relinquished to the injured party in return for fair remuneration, which shall not exceed the costs of manufacturing these products.

(4) Claims under subsections (1) through (3) shall be precluded in any
case where they would be disproportionate. When assessing proportionality, the legitimate interests of third parties shall also be taken into account.

(5) Essential parts of buildings under Section 93 of the Civil Code and removable parts of products and devices that may be lawfully manufactured and distributed shall not be subject to the measures provided for in subsections (1) through (3).

Section 44 Liability of a company owner
Where a registered design is illegally infringed within a company by that company’s employee or agent, the injured party shall be entitled to assert the claims based on Sections 42 and 43 against the owner of the company, with the exception of the claim to compensation for damages.

Section 45 Compensation
Where the infringer acts neither intentionally nor negligently, the infringer may, in order to avoid the assertion of the claims under Sections 42 and 43, pay pecuniary compensation to the injured party, provided that the satisfaction of these claims would cause disproportionate harm and the injured party can be expected to accept pecuniary compensation. The amount of compensation to be paid shall be the amount that would have constituted equitable remuneration if the right had been contractually granted. On payment of such compensation by the infringer, the injured party shall be deemed to have granted the infringer permission to exploit the right to the customary extent.

Section 46 Information
(1) The injured party may require the infringer to provide without delay information concerning the origin and the distribution channel of the infringing products.

(2) In cases of manifest infringement or in cases where the injured party has brought an action against the infringer, the claim shall also apply, subsection (1) notwithstanding, against any person who, on a commercial scale,

1. was in possession of infringing products;
2. made use of infringing services;
3. provided services used for infringing acts; or
4. participated, according to the statement of any person referred to in item 1, 2 or 3, in the manufacture, production or distribution of such products, unless this person would, under Articles 383 to 385 of the Code of Civil Procedure, be entitled to refuse testimony as a witness in the proceedings against the infringer. In the event of the assertion of a claim under the first sentence before a court, the court may, upon request, suspend the legal action pending against the infringer until disposition of the legal action in respect of the claim to information. The party obligated to provide information may claim reimbursement from the injured party of the expenses necessarily incurred in providing the information.

(3) The party required to provide information must state
1. the names and addresses of the manufacturers, suppliers and other previous holders of the products or services as well as the commercial customers and sales outlets for which said products were intended; and
2. the quantities of products manufactured, delivered, received or ordered, as well as the prices paid for the relevant products or services.

(4) Claims under subsections (1) and (2) shall be precluded in any case where they would be disproportionate.

(5) Where the party obligated to provide information intentionally or through gross negligence provides incorrect or incomplete information, this party shall be obligated to compensate the injured party for the resulting damage.

(6) A person who has provided correct information without being obligated to do so under subsection (1) or (2) shall be liable towards third parties only if the person knew that he/she was not obligated to provide the information.

(7) In cases of manifest infringement, the obligation to provide information may be imposed by a temporary injunction under Sections 935 through 945 of the Code of Civil Procedure.

(8) In criminal proceedings or in proceedings under the Regulatory Offenses Act against the person obligated to provide information or against the person’s dependent as referred to in Section 52(1) of the
Code of Criminal Procedure, in respect of an act committed before the information was provided, such information may be used only with the consent of the party obligated to provide information.

(9) Where the information can be provided only by using traffic data (Section 3, item 30 of the Telecommunications Act), a prior court order allowing use of the traffic data, which shall be applied for by the injured party, shall be required for the provision of this information. The regional court in the district where the party required to provide information has a domicile, seat or registered office shall have exclusive jurisdiction for the issuance of this order, irrespective of the value in dispute. The decision shall be rendered by the civil division. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall apply mutatis mutandis to the proceedings. The costs of the court order shall be borne by the injured party. Appeals shall lie from the decision of the Regional Court and shall be filed within two weeks. Further, provisions concerning the protection of personal data shall not be affected hereby.

(10) The basic right to secrecy of telecommunications (Article 10 of the Basic Law) shall be limited by subsection (2) read in conjunction with subsection (9).

Section 46a Presentation and inspection

(1) If sufficient probability exists that an infringement has occurred, the right holder or another entitled person may require the alleged infringer to present a document or permit the inspection of an object in the infringer’s possession if this is necessary to substantiate the right holder’s or other entitled party’s claims. Where there is sufficient probability that an infringement has been committed on a commercial scale, a claim to the presentation of banking, financial or commercial documents shall also exist. If the presumed infringer asserts that the information in these documents is confidential, the court shall take the necessary measures to ensure the appropriate protection in each case.

(2) A claim under subsection (1) shall be precluded in any case where it would be disproportionate.

(3) The obligation to present a document or permit the inspection of
an object may be ordered by a temporary injunction under Articles 935 to 945 of the Code of Civil Procedure. The court shall take the measures necessary to ensure the protection of confidential information. This shall apply in particular to cases where the temporary injunction is issued without a prior hearing of the opposing party.

(4) Article 811 of the Civil Code and Article 46(8) shall apply mutatis mutandis.

(5) If there was no infringement or risk of infringement, the alleged infringer may demand compensation for the damage caused by the request for presentation or inspection under subsection (1) from the person who made the request.

Section 46b Securing claims for damages

(1) In the event of an infringement committed on a commercial scale in the cases referred to in Article 42(2), the injured party may require the infringer to present, or arrange appropriate access to, banking, financial or commercial documents that are in the infringer’s possession and are necessary to enforce the claim for damages, provided that, without presentation of such documents, recovery of damages would be endangered. Should the infringer assert that the information in these documents is confidential, the court shall take the necessary measures to ensure the appropriate protection in each case.

(2) A claim under subsection (1) shall be precluded in any case where it would be disproportionate.

(3) The obligation to present a document or permit the inspection of an object may be ordered by a temporary injunction under Articles 935 to 945 of the Code of Civil Procedure if there is a manifest claim to damages. The court shall take the measures necessary to ensure the protection of confidential information. This shall apply in particular in cases where the temporary injunction is issued without a prior hearing of the opposing party.

(4) Article 811 of the Civil Code and Article 46(8) shall apply mutatis mutandis.
Section 47 Publication of judgment
Where an action has been brought on the basis of this Act, the judgment may grant the prevailing party authority to publish the judgment at the expense of the losing party, provided that the prevailing party demonstrates a legitimate interest in the publication. The nature and extent of the publication shall be determined in the judgment. The authorization to publish shall expire if use is not made thereof within three months after the judgment attains legal validity. Any declaration under the first sentence shall not be provisionally enforceable.

Section 48 Exhaustion
The rights conferred by a registered design shall not extend to acts relating to a product in which a design included within the scope of protection of the design right is incorporated or to which it is applied, when the product has been put on the market in the Community by the right holder or with the right holder’s consent.

Section 49 Limitation period
In respect of the period of limitation for claims referred to in Sections 42 through 47, the provisions of Part 5 of Book 1 of the Civil Code shall apply mutatis mutandis. If the obligated party has gained something through the infringement at the expense of the entitled party, Section 852 of the Civil Code shall apply mutatis mutandis.

Section 50 Claims based on other statutory provisions
Claims based on other statutory provisions shall not be affected hereby.

Section 51 Penal provisions
(1) A person who, contrary to the first sentence of Article 38(1), uses a registered design without the consent of the right holder shall be liable to a term of imprisonment not exceeding three years or a fine.

(2) Where the offender acts on a commercial scale, he/she shall be liable to a term of imprisonment not exceeding five years or a fine.

(3) The attempt to commit such an offense shall be punishable.

(4) Offenses under subsection (1) shall be prosecuted only on complaint,
unless the prosecuting authorities deem that there is an especial public interest justifying ex officio prosecution.

(5) Objects to which the criminal offence relates may be confiscated. Section 74a of the Criminal Code shall apply. Where the claims referred to in section 43 are upheld in proceedings pursuant to the provisions of the Code of Criminal Procedure governing compensation for the aggrieved person (sections 403 to 406c), the provisions on confiscation (sections 74 to 74f of the Criminal Code) shall not apply.

(6) Where a penalty is imposed, the court shall, at the request of the injured party, order that the sentence be published, provided that the injured party demonstrates a legitimate interest in the publication. The form of publication shall be determined in the judgment.
Part 9 Proceedings in Design Litigation

Section 52 Design litigation
(1) For all legal actions whereby a claim arising from one of the legal relationships regulated by this Act is asserted (design litigation), with the exception of finding or declaration of invalidity under Section 33, the Regional Courts shall have exclusive jurisdiction irrespective of the value in dispute.

(2) The governments of the federal states shall have the power to allot by statutory order design litigation in the areas of several regional courts to one of these regional courts insofar as this serves to facilitate or expedite the proceedings. The governments of the federal states may delegate this power to the federal state justice departments.

(3) The federal states may delegate, by agreement, the functions of the design courts of one federal state in entirely or in part to the competent design court of another federal state.

(4) Among the costs arising from the participation of a patent attorney in design litigation, the fees prescribed by Section 13 of the Attorneys at Law Remuneration Act shall be refunded, as shall the necessary expenses of the patent attorney.

Section 52a Assertion of invalidity
A party may invoke the lack of legal validity of a registered design only by filing a counterclaim for the determination or declaration of invalidity or by filing an application in accordance with section 34. The first sentence shall not apply to the assertion of invalidity of a registered design in injunction proceedings under sections 935 to 945 of the Code of Civil Procedure.

Section 52b Counterclaim for finding or declaration of invalidity
(1) The design courts shall be competent to deal with counterclaims for finding or declaration of invalidity, insofar as these are brought in conjunction with actions for infringement of the same registered design. Section 34 shall apply mutatis mutandis.

(2) No counterclaim shall be admissible if an unappealable decision has been issued in invalidity proceedings (Section 34a) concerning the
same matter at issue between the same parties.

(3) At the request of the owner of the registered design, the court may, after the hearing of any further participants, suspend the proceedings and invite the counterclaimant to file a request for establishment or declaration of invalidity of the registered design at the German Patent and Trade Mark Office within a stipulated period. If such request is not made within this period, the proceedings shall resume, and the counterclaim shall be deemed to have been withdrawn. The court may, during the period of suspension, issue temporary injunctions and take security measures.

(4) The court shall inform the German Patent and Trade Mark Office of the date on which the counterclaim was filed. The German Patent and Trade Mark Office shall record the date of filing in the Register. The court shall transmit a copy of the final judgment to the German Patent and Trade Mark Office. The German Patent and Trade Mark Office shall record the outcome of the proceedings, including the date on which the decision was taken, in the Register.

**Section 53 Forum for claims under this Act and the Act Against Unfair Competition**

The provisions of Section 14 of the Act Against Unfair Competition notwithstanding, claims concerning the legal relationships regulated under this Act and based on the provisions of the Act Against Unfair Competition may be asserted before the court competent for design litigation.

**Section 54 Reduction of the Value in Dispute**

(1) Where a party in civil litigation in which an action asserts a claim arising from one of the legal relationships regulated by this Act satisfactorily shows that awarding the costs of the case against the party according to the full value in dispute would seriously endanger the party’s financial position, the court may, at the party’s request, order that the party’s liability to pay court costs shall be in proportion to a share of the value in dispute appropriate to the party’s financial position.

(2) In consequence of the order under subsection (1), the favored party shall be required to pay his/her attorney-at-law’s fees likewise only in proportion to the said share of the value in dispute. If the
costs of the legal action are awarded against or assumed by the favored party, this party shall be required to refund the court fees paid by the opposing party and the fees of the opposing party’s attorney-at-law only in proportion to the said share of the value in dispute. If the extrajudicial costs are awarded against or are assumed by the opposing party, the favored party’s attorney-at-law may recover his/her fees from the opposing party in proportion to the value in dispute applicable to this party.

(3) The request under subsection (1) may be declared and recorded at the court registrar’s office. It shall be presented before the substance of the case is heard. Thereafter, it shall be admissible only if the presumed or fixed value in dispute is subsequently increased by the court. The opposing party shall be heard before the decision on the request is rendered.
Part 10 Provisions on Measures by the Customs Authorities

Section 55 Seizure on import or export

(1) Where an infringement in accordance with section 38(1), first sentence, has obviously been committed, the relevant product shall be subject, upon request and security being given by the right holder, to seizure by the customs authority, on import or export, in so far as there is no requirement to apply Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15), as amended. This shall apply to transactions with other Member States of the European Union and with other Contracting Parties to the Agreement on the European Economic Area only to the extent that controls are carried out by the customs authorities.

(2) Where the customs authorities order a seizure, they shall notify the person authorized to dispose of the products and the right holder without delay. The right holder shall be informed of the origin, quantity and place of storage of the products, together with the name and address of the person authorized to dispose of them. To this extent, the secrecy of correspondence and mail (Article 10 of the Basic Law) shall be restricted. The right holder shall be given the opportunity to inspect the products, provided that such inspection does not constitute a breach of commercial or trade secrecy.

Section 56 Confiscation and objection

(1) Where no objection is filed to the seizure by the end of two weeks following service of the notification under the first sentence of Section 55(2), the customs authority shall order the confiscation of the seized products.

(2) Where the person authorized to dispose of the products objects to the seizure, the customs authority shall notify the right holder without delay. The right holder shall declare to the customs authority without delay whether he/she intends to maintain the request under Section 55(1) in respect of the seized products.

(3) If the right holder withdraws his/her request, the customs authorities shall revoke the seizure without delay. If the right holder upholds the application and submits an executable court decision
ordering the seized products to be kept in custody or limiting the right of disposal, the customs authorities shall take the necessary measures.

(4) Where neither of the cases referred to in subsection (3) occurs, the customs authorities shall revoke the seizure at the end of two weeks after service of the notification on the right holder under the first sentence of subsection (2). Where the petitioner can show that a court decision under the second sentence of subsection (3) has been requested but not yet received, the seizure shall be maintained for a maximum of two more weeks.

(5) Where the seizure proves to have been unjustified from the outset and the right holder has maintained the application under Section 55(1) with respect to the seized products or has failed to file the declaration referred to in the second sentence of subsection (2), the right holder shall be obligated to compensate the party entitled to dispose of the products for the damages arising on account of the seizure.

Section 57 Jurisdictions, appellate remedies
(1) The request in accordance with section 55(1) shall be made to the Central Customs Authority (Generalzolldirektion) and shall remain in force for one year in so far as no request has been made for a shorter duration; the request may be repeated. The right holder shall be charged with the costs of official acts connected with the request subject to section 178 of the Fiscal Code.

(2) Seizure and confiscation may be challenged by means of the legal remedies against seizure and confiscation that are available in fining proceedings under the Regulatory Offences Act. The right holder shall be granted a hearing in the challenge proceedings. An immediate appeal against the decision of the local court shall be admissible and shall lie to the provincial high court.

Section 57a Procedure in accordance with Regulation (EU) No 608/2013
Section 56(5) and section 57(1) shall apply mutatis mutandis to the procedure under Regulation (EU) No 608/2013, unless that Regulation contains provisions which preclude this.
Part 11 Special Provisions

Section 58 Domestic representative

(1) Any person who has neither their residence nor principal place of business nor an establishment in Germany may participate in the proceedings before the German Patent and Trade Mark Office or the Federal Patent Court which are regulated under this Act and assert the rights conferred by a registered design only if he has appointed a lawyer or patent attorney as his representative who is entitled and authorised to represent him in proceedings before the German Patent and Trade Mark Office, before the Federal Patent Court and in civil litigation affecting the registered design, as well as to file an application for criminal prosecution.

(2) The place where a representative appointed pursuant to subsection (1) has his commercial premises shall be deemed, within the meaning of section 23 of the Code of Civil Procedure, to be the place where the asset is located; if there are no such commercial premises, the place where the representative is residing in Germany shall be decisive or, if there is no such place, the place where the German Patent and Trade Mark Office has its seat.

(3) The legal termination of the appointment of a representative in accordance with subsection (1) shall not become effective until the German Patent and Trade Mark Office or the Federal Patent Court has been informed of both the termination of this appointment and the appointment of another representative.

Section 59 Claim of entitlement to a registered design

Any person who uses a designation of such a nature as to create the impression that a product is protected by a registered design shall be obligated to provide, on demand, to any person having a legitimate interest in knowing the legal situation in this case, information concerning the registered design upon which the use of this designation is based.

Section 60 Registered designs under the Extension Act

(1) The provisions of this Act shall apply to all registered designs extended under the Extension Act of 23 April 1992, last amended by Article 2(10) of the Act of 12 March 2004, except as otherwise provided by Sections 2 through 7.
(2) The term of protection for registered designs that had not expired by 28 October 2001 shall expire 25 years after the end of the month of filing of the application for registration. Protection shall be maintained by payment of a maintenance fee for the 16th to the 20th year and the 21st to the 25th year, counted from the date of filing of the application.

(3) Where a claim to remuneration for use of a registered design arose under the legal provisions applicable until the entry into force of the Extension Act, the remuneration shall be paid according to these provisions.

(4) Any person who, under the provisions applicable until the entry into force of the Extension Act, legitimately used a registered design protected by an author’s certificate extended under Section 4 of the Extension Act in the version of 31 May 2004, or in respect of which an author’s certificate had been applied for, may continue to use this design anywhere on Federal territory. The property right holder may claim from the person entitled to use the design fair remuneration for the continued use thereof.

(5) Where an extended application under the Extension Act in the version of 31 May 2004 for registration of a patent for an industrial design under Section 10(1) of the Ordinance Concerning Industrial Designs of 17 January 1974, amended by the Ordinance of 9 December 1988, has been published, this publication shall be equivalent to the publication of the entry of the application in the Designs Register under Section 8, item 2 of the Designs Act in the version applicable until 31 May 2004.

(6) If registered designs that were, under the Extension Act, extended over the territory named in Article 3 of the Treaty of Unification or elsewhere on Federal territory contain identical objects of protection and, in consequence of extension, collide with each other, the property right holders or applicants for property rights, irrespective of their date, may not assert these property rights or any rights conferred by applications for property rights against each other or against persons whom the other property right holder or applicant for property rights has allowed to use the design. The use of the subject of property rights or of the application for property rights shall however be
prohibited or limited in the territory on which the property rights or the application for property rights has been extended, if the unrestricted use thereof would cause significant damage to the other owner of property rights or applicant for property rights, or to the persons whom he/she has allowed to use the subject of property rights or of the application for property rights, when such damage would, in consideration of all relevant circumstances and the legitimate interests of those concerned, be undue.

(7) A registered design that has been extended under Section 1 or 4 of the Extension Act in the version of 31 May 2004 shall not affect any person who, after the date that determined the seniority of the application for registration and before 1 July 1990, legitimately used the registered design in any territory in which the registration of the design was not applicable until the entry into force of the Extension Act. This person shall be authorized to make use of the registered design anywhere on Federal territory for the needs of his/her own business, at his/her own or others' production facilities, subject to the restrictions arising from Section 12 of the Patent Act, which shall apply mutatis mutandis, unless the unrestricted use of the design would cause significant damage to the property right holder or to those persons whom the property right holder has allowed to use the subject of property rights, when such damage would, in consideration of all relevant circumstances and the legitimate interests of those concerned, be undue. The user shall have the right under the first sentence to continue using a product manufactured abroad only if its use in Germany has established a vested right warranting protection, and if the denial of this right would, in consideration of all relevant circumstances, cause undue hardship to the user.

Section 61 Typographic typefaces

(1) Typographic typefaces in respect of which applications were made under article 2 of the Typefaces Act in the version valid until 1 June 2004 shall be afforded legal protection, unless otherwise provided by subsections (2) through (5).

(2) In respect of applications for registration under Article 2 of the Typefaces Act filed up to 31 May 2004, the provisions concerning the requirements for protectability that were applicable on this date shall continue to apply.
(3) Rights conferred by registered designs cannot be asserted against acts that began before 1 June 2004, and that the owner of the typographical typeface would not have been able to prohibit under the provisions applicable at that time.

(4) Until their registration, the typefaces referred to in subsection (1) shall have the protective effects provided for by the Typefaces Act in the version applicable until 31 May 2004.

(5) The first sentence of Section 28(1) notwithstanding, the fees for the maintenance of the term of protection for the typographical typefaces referred to in subsection 1 shall be payable only from the 11th year of protection.
Part 12 Community Designs

Section 62 Forwarding of the application
Where applications for a registered community design under Article 35(2) of Regulation (EG) No 6/2002 of 12 December 2001 on Community designs are filed at the German Patent and Trade Mark Office, this Office shall record the date of receipt of the application and forward the application without delay to the Office for Harmonisation in the Internal Market (Trade Marks and Design).

Section 62a Application of the provisions of this Act to community designs
Insofar as German law is applicable, the following provisions of this Act shall apply mutatis mutandis to claims of the owner of a community design protected under Regulation (EG) No 6/2002:
1. the provisions concerning claims to removal of an infringement (Section 42(1), first sentence), compensation for damages (Section 42(2), destruction, recall and relinquishment (Section 43), information (Section 46), presentation and inspection (Section 46a), securing of claims for damages (Section 46b) and publication of the judgment (Section 47), together with the rights under Article 89(1), items a through c of Regulation (EG) No 6/2002;
2. the provisions concerning a company owner’s liability (Section 44), compensation (Section 45), limitation period (Section 49) and claims based on other statutory provisions (Section 50);
3. the provisions on seizure on import or export (sections 55 to 57).

Section 63 Community design litigation
(1) In respect of all actions referred to Article 80(1) of Regulation (EG) No 6/2002 (Community design litigation) the regional courts, as the Community design courts of first instance, shall have exclusive jurisdiction, irrespective of the value in dispute.

(2) The governments of the federal states shall have the power to allot by statutory order Community design litigation in the areas of several Community design courts to one of these courts insofar as this serves to facilitate or expedite the proceedings. The governments of the federal states may delegate this power to the federal state justice departments.

(3) The federal states may delegate, by agreement, the functions of
the Community design courts of one federal state entirely or in part to the competent Community design court of another federal state.

(4) Sections 52(4), 53 and 54 shall apply mutatis mutandis in respect of proceedings before the Community design courts.

Section 63a Informing the Commission
The Federal Ministry for Justice and Consumer Protection shall inform the Commission of the European Communities concerning the Community design courts of first and second instance designated under Article 80(1) of Regulation (EG) No 6/2002, and of any change in the number, name or territorial jurisdiction of these courts.

Section 63b Territorial jurisdiction of the Community design court
Where German Community design courts have international jurisdiction under Article 82 of Regulation (EG) No 6/2002, the same provisions concerning territorial jurisdiction shall apply, mutandis mutandis, as would apply to an application for registration of a design filed at the German Patent and Trade Mark Office or to a design registered at this Office. Where jurisdiction cannot be established under the above provisions, the court having territorial jurisdiction shall be the court where the plaintiff has his/her general venue.

Section 63c Insolvency proceedings
(1) Where it is known to the insolvency court that a Community design that has been registered or in respect of which registration has been applied for is among the insolvency assets, it shall directly request the Office for Harmonization in the Internal Market (Trade Marks and Designs) to record the following information in the Community Designs Register or, in the case of an application, in the files of the application:
1. concerning the opening of proceedings and, if not already contained in the Register, the order for any restraint on disposal;
2. concerning the release or alienation of the Community design or of the Community design application;
3. concerning the final dismissal of proceedings; and
4. concerning the final annulment of proceedings, provided that, where a debtor is under supervision, this information shall be recorded only after the termination of the supervision, and concerning any restraint on disposal.
(2) Entries in the Community Designs Register or in the files of the application may also be requested by the receiver. In the case of self-administration, the administrator shall act in lieu of the liquidator.

Section 64 Issue of an order for enforcement

The Federal Patent Court is competent to issue an order for enforcement under the second sentence of Article 71(2) of Regulation (EG) No 6/2002. An enforceable copy of the order shall be issued by the clerk of the Federal Patent Court Registrar’s Office.

Section 65 Penalty for infringement of a Community design

(1) Any person who, contrary to Article 19(1) of Regulation (EG) No 6/2002, uses a Community design without the consent of the owner shall be liable to a term of imprisonment not exceeding three years or a fine.

(2) Section 51(2) through (6) shall apply mutatis mutandis.
Part 13 Protection of registered designs under the Hague Agreement

Section 66 Application of this Act
This Act shall apply mutatis mutandis to registrations of designs (international registrations) under the Hague Agreement of 6 November 1925 Concerning the International Deposit of Designs and its amended versions signed in London on 2 June 1934, in The Hague on 28 November 1960 and in Geneva on 2 July 1999 whose protection covers the territory of the Federal Republic of Germany, unless provided otherwise in this Part, in the Hague Agreement or its amended versions.

Section 67 Filing of the international application
At the option of the applicant, the international application for designs may be filed either directly with the International Bureau of the World Intellectual Property Organization (International Bureau) or through the German Patent and Trade Mark Office.

Section 68 Forwarding of the international application
Where international applications for designs are filed with the German Patent and Trade Mark Office, the German Patent and Trade Mark Office shall make a note on the application of the date of receipt and shall forward the application, without examination and without delay, to the International Bureau.

Section 69 Examination for grounds for refusal
(1) International registrations shall be examined in respect of grounds for refusal in accordance with section 18 in the same manner as designs which have been filed for registration in the Register kept by the German Patent and Trade Mark Office. The refusal of the effects shall take the place of the refusal of the design application.

(2) Where the German Patent and Trade Mark Office finds in the course of the examination that grounds for refusal under Section 18 exist, then it shall send notice of refusal of protection to the International Bureau within six months from the publication of the international registration. The notice shall state all the reasons that protection has been refused.

(3) After the International Bureau has sent a copy of the notification of refusal of effects to the holder of the international registration, the German Patent and Trade Mark Office shall give the holder of the
international registration the opportunity to respond to the refusal of effects and to renounce protection within a period of four months. Upon expiry of this period, the German Patent and Trade Mark Office shall decide whether or not to uphold the refusal of effects. If the German Patent and Trade Mark Office upholds the refusal of effects, the right holder shall have the same legal remedies against the decision as apply to the refusal of an application for registration of a design in the Register kept by the German Patent and Trade Mark Office. If the German Patent and Trade Mark Office does not uphold the refusal of effects or if it is finally determined that the protection was wrongfully refused, the German Patent and Trade Mark Office shall withdraw the refusal of effects without delay.

Section 70 Retrospective withdrawal of protection

(1) An application or counterclaim for nullity for the territory of the Federal Republic of Germany shall serve in lieu of an application or counterclaim for a finding or declaration of invalidity under Article 33(1) or (2). An action for withdrawal of protection shall serve in lieu of an action to obtain consent to cancellation under Section 9(1). The court shall send the German Patent and Trade Mark Office a copy of the final judgment. Section 35 shall apply mutatis mutandis.

(2) Where the German Patent and Trade Mark Office has been informed of a finding of nullity in respect of an international registration for the territory of the Federal Republic of Germany, or has been informed that protection of the registration has been withdrawn, it shall immediately communicate this fact to the International Bureau.

Section 71 Effect of international registration

(1) An international registration affording protection on the territory of the Federal Republic of Germany shall, from the day of registration, have the same effect as a registered design applied for at the German Patent and Trade Mark Office and entered in its Register on the same day.

(2) If the international registration is refused protection (Section 69(2)), if a finding of nullity for the territory of the Federal Republic of Germany is made in respect of the registration (Section 70(1), sentence one), or if protection of the registration is withdrawn (Section 70(1), sentence two), the registration shall be deemed not
to have had the effect referred to in subsection (1).

(3) If the German Patent and Trademark Office withdraws the notice of refusal of protection, the international registration for the Federal Republic of Germany shall be effective retrospectively from the date of registration.
Part 14 Transitional Provisions

Section 72 Applicable law

(1) The regulations applicable on 1 July 1988 under the Designs Act, in the revised version published in the Federal Law Gazette III, classification number 422-1, last amended by Article 8 of the Law of 23 July 2002, shall continue to apply to applications for registered designs made before that date.

(2) The provisions concerning requirements for protectability applicable until 28 October 2001 shall continue to apply to registered designs that were applied for or registered before this date. Rights conferred by these registered designs may not be asserted against acts referred to in Section 38(1) that began before 28 October 2001, and that the injured party would not have been able to prohibit before this date under the Designs Act in the revised version published in the Federal Law Gazette III, Classification number 442-1.

(3) Registered designs applied for before 1 June 2004 that have not yet been registered shall, until their registration, have the protective effects provided by the Designs Act in the revised version published in the Federal Law Gazette Part III, Classification number 442-1 and applicable until 31 May 2004.

(4) Article 229, Section 6 of the Introductory Act to the Civil Code shall apply mutatis mutandis, with the proviso that Section 14a(3) of the Designs Act, in the revised version published in the Federal Law Gazette Part III, classification number 442-1 and applicable until 1 January 2002, shall have equal status with the provisions of the Civil Code concerning period of limitation, in the version applicable until 1 January 2002.

Section 73 Limitation of rights

(1) Rights conferred by a registered design cannot be asserted against acts involved in the use of a component to repair a complex product so as to restore its original appearance, provided that these acts could not have been prevented under the Designs Act in the revised version published in the Federal Law Gazette Part III, classification number 442-1 and applicable until 31 May 2004.

(2) In respect of existing licenses to a right conferred by the
application for or registration of a registered design that were issued before 1 June 2004, Section 31(5) shall apply only if the right continued after 1 June 2004, or if the license was issued after this date.

(3) Claims to be named as a designer under Section 10 can be asserted only in respect of registered designs that were applied for after 1 June 2004.

(4) The protective effect of variations of a basic design under Section 8a of the Designs Act, in the version valid until 31 May 2004, shall be as provided for by the Designs Act in the revised version published in the Federal Law Gazette III, classification number 442-1 and applicable until 31 May 2004. Section 28(2) shall apply to the maintenance of variations of a basic design with the proviso that basic designs shall be considered first of all.

Section 74 Transitional provision on the Act on the Modernization of the Designs Act and the Amendment to the Regulations Concerning Intellectual Property Rights-Related Announcements

(1) Designs applied for or registered before the entry into force of the Act of 10 October 2013 on 1 January 2014 shall be referred to as ‘registered designs’ from this date onward.

(2) As from the entry into force of the Act of 10 October 2013 on 1 January 2014, the provisions on invalidity proceedings before the German Patent and Trade Mark Office in Part 6 shall apply mutatis mutandis to registered designs within the meaning of section 72(2). Section 72(2) shall continue to apply to the assessment of the protectability of these designs.

(3) Section 52a shall apply only to design litigation that became pending after 31 December 2013.