

GERMANY
Design Regulations
(DesignV)

as last amended by the Order on 10.8.2021

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Section 1 General Information

§ 1 Scope of application

The provisions of this ordinance apply to the proceedings before the German Patent and Trademark Office regulated in the Design Act, in addition to the provisions of the Design Act and the Ordinance on the German Patent and Trademark Office Ordinance (DPMA Ordinance).

§ 2 Forms

Forms referred to in this ordinance can be requested from the German Patent and Trademark Office or downloaded from the Internet page of the German Patent and Trademark Office (www.dpma.de).

Section 2 Registration procedure

§ 3 Content of the application

(1) The application for registration of a design in the Design Register, pursuant to § 11 para. 2 and 3 Design Act, must include:

1. The application for registration (§ 5),
2. Information that enables determination of the applicant's identity (§ 6 para. 1 to 3)
3. The representation of the design (§ 7) or in the event of § 11 para 2 sentence 2 Design Act, a specimen of a two-dimensional design (§ 8) and
4. Information on products into which the design is incorporated or in which it is intended to be used (§ 9).

(2) The application may also include:

1. A description to explain the representation (§ 10),
2. An application for postponement of announcement of the representation pursuant to § 21 para. 1 sentence 1 of the Design Act,
3. Information on class of goods into which the design must be classified (§ 9),
4. Information on a representative (§ 6 para. 4),
5. Information on the designer (§ 6 para. 5),
6. A statement claiming the priority of an earlier foreign application the same design or claiming exhibition priority (§ 11), and
7. A non-binding statement of the applicant on whether there is interest in awarding licenses.

§ 4 Submission of the application

(1) The application may be filed in writing or electronically. Electronic filing is governed by the Ordinance on Electronic Legal Transactions at the German Patent and Trademark Office. § 7 paragraph 5 and § 10 paragraph 3 remains unaffected.

(2) In deviation from § 11 para. 1 of the German Patent and Trademark Office Ordinance, submission by fax of representations of a design for purposes of application or subsequent submission by fax (§ 16 para. 3 sentence 1 Design Act) are not allowed.

§ 5 Application for registration

(1) For written application for registration of a design pursuant to § 11 para. 2 sentence 1 no. 1 Design Act, the form published by the German Patent and Trademark Office must be used.

(2) The application for registration of designs in a multiple application (§ 12 Design Act), must include, in addition to the content stipulated in § 11 para. 2 and 3 Design Act, the following:

1. A statement on for how many designs the registration in the design register being applied for and

2. An appendix sheet with the following information:

a) A list consecutively numbered with Arabic numerals of the designs that the application comprises

b) The number of the representations submitted of the individual designs and

c) A statement that the product indication applies for all designs, or the indication for each design of the products into which it is incorporated or for which it is intended to be used.

The form published by the German Patent and Trademark Office must be used as appendix sheet.

(3) If the application requests postponement of the announcement of the representation (§ 21 para. 1 sentence 1 Design Act), then the application refers to all designs incorporated into the multiple application.

§ 6 Information on applicant, representative and designer

(1) The application must include the following information on the applicant:

1. If the applicant is an individual: first and last names or, if the application is to be made under the company name of the applicant: the company name as it is registered in the Register, as well as the address of the residence or company headquarters with indication of street, house number, postal code and location.

2. If the applicant is a legal entity or a partnership:

a) the name or business name, legal form and address, with indication of street, house number, postal code and location of registered office.

the name of the legal form may be abbreviated in the usual way.

if the legal person or partnership is registered in the register, the information must correspond to the entry in the register.

b) in the case of a partnership under civil law, the name and address with indication of street, house number, postal code and location of at least one partner authorized to represent the company.

If the applicant has residence or registered office abroad, the state must be indicated in addition to the location when stating the address in accordance with (1). Additional information on the county, province or state in which the applicant has residence or has its registered office or the legal jurisdiction to which the applicant is subject, are voluntary.

(2) In addition, a postal address deviating from the applicant's address, a post office box, as well as telephone numbers, fax numbers, email addresses may be stated.

(3) If an application is submitted by several persons or partnerships, then (1) and (2) apply for all persons or partnerships in the application.

(4) If a representative is appointed, then (1) and (2) apply accordingly with regard to the information on the representative.

(5) For designation of the designer, the first section of (1)1., 2. and 3., as well as (2) and (3) apply accordingly.

§ 7 Representation of the design

(1) The representation of the design is carried out using photographic or other graphic images. For each design, up to ten representations are allowed; any representation exceeding this number will not be taken into account.

(2) Various representations must be separated according to the decimal classification and numbered consecutively with Arabic numerals. The numeral to the left of the decimal point designates the number of the design, and the numeral to the right of the decimal point is the number of the representation. The numbering must be recorded on the forms. The applicant's numbering is decisive for the sequence of the representations.

(3) The design must be represented on a neutral background with an image size of at least 3 x 3 centimeters. The representations must

show the design applying for protection without additional features, and they cannot include any explanation, numbering or measurements. A representation may show only one view of the design. The representations must be permanent and indelible.

(4) The representations must be printed on or affixed to the forms published by the German Patent and Trademark Office. For multiple applications (§ 12 Design Act) a separate form must be used for each design. No text, diagrams, symbols or dimensions may be applied to the forms in explanation.

(5) The representations can be submitted on a digital data carrier instead of on a form. The data carrier must be readable for the German Patent and Trademark Office. The data carrier types and formats that can be read by the German Patent and Trademark Office are published on the Internet page www.dpma.de. If the data carrier is not readable, then the representation is considered as not submitted. Every representation must be stored in the graphics format JPEG (*.jpg) as a separate file in the root directly of an empty data carrier. The representation must have a resolution of at least 300 dpi. One file may not exceed 2 megabytes. The file names must be selected pursuant to para. 2 sentences 1 and 2, para. 2 sentence 4 applies accordingly.

(6) If the registration is for a design that consists of a repeating two-dimensional design, then the representation must show the complete design and a sufficiently large part of the surface with the repeating design.

(7) If the registration is for a design consisting of typographical characters, then the representation of the design must include a complete character set as well as five rows of text, each in 16-point font.

§ 8 Specimen of a two-dimensional design

(1) Specimens of a two-dimensional design (§ 11 para. 2 sentence 2 Design Act) must be submitted in two copies.

(2) If several specimens of a design are submitted, then these must be numbered consecutively on the reverse side. A specimen of a design must not exceed the format of 21 x 29.7 centimeters (DIN A4).

A larger specimen of design may not exceed a format of 50 x 100 x 2.5 centimeters or 75 x 100 x 1.5 centimeters, and it must be collapsible to a format of 21 x 29.7 (DIN A4). The specimen of a two-dimensional design submitted with the application may not exceed a total weight of 15 kilograms including packaging. No specimens of designs may be submitted that are perishable or dangerous to store especially due to being easily flammable, explosive, poisonous or laden with pests.

(3) If application is made for a design that consists of a repeating two-dimensional design, then the specimen of the design must show the complete design, in addition to the requirements pursuant to paras. 1 and 2, together with a sufficiently long and wide part of the surface with the repeating design.

§ 9 Product information and classification

(1) The information on the products into which the design is intended to be incorporated or in which it is intended to be use (§ 11 para. 3 Design Act) is regulated by the official product list for registered designs based on the Locarno Agreement for setting up an international classification of industrial designs (Federal Law Gazette 1990 II p. 1677, 1679). The classification of the applying design is regulated according to the classification into classes and sub-classes for registered designs. The versions of the product list and of the classification into classes and sub-classes that are in force at any time are published by the German Patent and Trademark Office in the German Federal Gazette.

(2) The product information must enable a proper enquiry into the design represented in the representation. The information must not comprise more than five product concepts. If the German Patent and Trademark Office determines during the inspection pursuant to § 16 Design Act that the product information contained in the application does not permit a proper enquiry, then the German Patent and Trademark Office may attach an additional product concept to the product information.

(3) If the classification into classes is modified after registration of the design, then the classification of products is adjusted either at the rights holder's request or adjusted by the Office on registration of the renewal of protection and communicated

to the rights holder.

§ 10 Description to explain the representation

(1) If a description is submitted to explain the representation (§ 11 para. 5 no. 1 Design Act), then it may only refer to the features that are visible in the representation of the design or the specimen of the two-dimensional design. In specific, it may not include information on the novelty or uniqueness of the design or its technical function.

(2) The description to explain the representation of the design may only include up to 100 words, and it must be submitted on a separate sheet. The description must consist of continuous text and may not include any graphic or other design elements. In the case of multiple applications (§ 12 Design Act) the descriptions can be placed in order by design numbers and combined in one document.

(3) If a digital data carrier is used to submit the representation (§ 7 para. 5), then the description may be stored on the data carrier in "*.txt" format. For multiple applications, the descriptions must be ordered by design numbers and combined in an electronic document.

§ 11 Information for claiming a priority

(1) If the application makes a claim to priority of an earlier foreign registration, then the time, country and reference number of this application must be stated, and a copy of this application must be submitted (§ 14 para. 1 sentence 1 Design Act).

(2) If a claim of exhibition priority is made, then the date of the first exhibition and the name of the exhibition must be stated. A certificate must be submitted to give proof of the exhibition (§ 15 para. 4 sentence 1 Design Act), which has been issued by the Office competent for protection of intellectual property at this exhibition during the exhibition. The certificate must confirm,

1. That the design was displayed at the exhibition,
2. The date of the opening of the exhibition and
3. The date when the design was displayed for the first time, if the first display does not coincide with the opening day of the exhibition.

The form published by the German Patent and Trademark Office must be

used for the certificate. The certificate must include a representation certified by the aforementioned body of the actual display of the design.

(3) This does not affect the possibility of modifying the information pursuant to §14 para. 1 sentence 2 Design Act or submitting the statement of priority within 16 months after the priority date or the date of the first display of the design (§ 14 para. 1 sentence 1 and § 15 para. 4 sentence 1 Design Act).

§ 12 Separation of a multiple application

(1) A multiple application can be separated pursuant to § 12 para. 2 Design Act into two or more applications.

(2) The statement of separation must include the following information:

1. The reference number of the multiple application and
2. The numbers of the designs that are to be separated.

(3) The separation is carried out as soon as the difference owed pursuant to § 12 para. 2 sentence 3 Design Act has been paid.

(4) If the information pursuant to § 6 para. 1 and 4 is modified due to a modification in the information on the applicant or representative for individual designs, then the multiple application is separated by the Office.

§ 13 Further processing of the application

A request for further processing of the application that was rejected for missing the deadline (§ 17 para. 1 Design Act) must include the following information:

1. The reference number of the application,
2. The name of the applicant and
3. The date of the resolution to which the application refers.

§ 14 German translations

(1) If a document in a foreign language is submitted, then the German Patent and Trademark Office can demand that the applicant make a subsequent submission of a German translation within an appropriate period. The translation must be certified by an attorney or a patent attorney or prepared from an officially authorized

translator.

(2) If the translation is submitted after expiry of the deadline, then the document in a foreign language is considered as received at the moment of receipt of the translation. If no translation is submitted, then the document in a foreign language is considered not to have been received.

Section 3 Design Register, procedure after registration

§ 15 Content of the Design Register

(1) When the registration is entered, the following information is incorporated into the Design Register:

1. The reference number of the application,
2. The representation of the registered design,
3. The respective design number, which for multiple applications corresponds to the consecutively numbered list pursuant to § 5 para. 2 sentence 1 no. 2 letter a,
4. The name, when relevant, of the company name including legal form, and the residence or headquarters of the applicant, for foreign locations also the country (§ 6 paras. 1 and 3),
5. The address of the applicant, stating the person authorized to receive communications,
6. The date of application (§ 13 para. 1 and § 16 para. 3 sentence 2 Design Act),
7. Date of registration,
8. The product information (§ 9) and
9. The goods class (§ 19 para. 2 Design Act), which consists of information on class and sub-class.

(2) When relevant, the following information is into the Design Register, in addition to the application:

1. That a non-binding statement from the applicant on the interest in awarding licenses has been submitted (§ 3 para. 2 no. 7),
2. The name and address of all partners of a civil-law company designated as authorized representatives (§ 6 para. 1 sentence 1 no. 2 letter c),
3. The name and address of the representative (§ 6 para. 4),
4. The name and address of the designer (§ 6 para. 5),
5. The description to explain the representation of the design (§ 10),
6. An indication of substitution of the representation by a specimen of a two-dimensional design (§ 11 para. 2 sentence 2 Design Act),
7. An indication of whether the registration refers to the application of an individual design or a multiple application (§ 12 Design Act), and also for multiple applications, the number of designs combined in the application (§ 5 para. 2 sentence 1 no. 1),
8. Time, country and reference number of the earlier application for the same design when claiming foreign priority pursuant to § 14

Design Act,

9. The date of the first display and the name of the exhibition if claiming exhibition priority pursuant to § 15 Design Act,
10. That a request for postponement of publication of the representation has been lodged (§ 21 para. 1 sentence 1 Design Act),
11. That there are rights *in rem* to the applying or registered design (§ 30 para. 1 no. 1 and § 32 Design Act),
12. That the applying or registered design has been subject of a measure of levy of execution (§ 30 para. 1 no. 2 and § 32 Design Act) and
13. That the right to the applying or registered design has been included in an insolvency proceeding (§ 30 para. 3 and § 32 Design Act).

(3) In the event of transfers of rights before registration of the already applying design, the only person entered into the Design Register is the person who at the time of registration is the holder of rights as justified by the application.

(4) If a request is made to postpone the announcement of the representation pursuant to § 21 para. 1 sentence 1 Design Act, then the registration of the application is restricted to the information pursuant to para.1 nos. 1, 4 to 7, pursuant to para. 2 nos. 1 to 3, 10 to 13, and also to the priority date pursuant to para. 2 nos. 8 and 9. If the protection is extended to the period of protection pursuant to § 27 para. 2 Design Act (§ 21 para. 2 sentence 1 Design Act), then the remaining information pursuant to paras. 1 and 2 is incorporated into the Design Register.

§ 16 Further entries into the design register

In addition to the entries pursuant to § 15, the following information, when relevant, must be incorporated into the Design Register:

1. That the protection was extended to the period of protection pursuant to § 27 para. 2 Design Act (§ 21 para. 2 sentence 1 Design Act),
2. In the case of subsequent remediation of announcement of the representation (§ 21 para. 3 Design Act) the date of announcement and a reference to the announcement pursuant to § 21 para. 1 sentence Design Act,
3. Modifications of the information stated in § 15 para. 1 no. 4 and

- 5, as well as para. 2 nos. 3 and 4,
4. That an application has been made for *restitutio in integrum* has been made (§ 23 para. 3 sentence 3 Design Act), together with the result of this proceeding,
5. That a multiple application has been separated (§ 18),
6. That a court proceeding pursuant to § 9 para 1 Design Act has been initiated, together with the additional information pursuant to § 9 para 4 Design Act,
7. That an application has been made for ruling or declaration of invalidity (§ 34a para. 1 Design Act), together with the result of the invalidity proceeding,
8. The date of the submission of the counterclaim to declaration of invalidity, as well as the result of the proceeding (§ 52b para. 4 Design Act) and
9. The date and the reason for deletion of the registered design (§ 36 para. 1 Design Act).

§ 17 Registration document

The holder of the registered design will receive from the German Patent and Trademark Office a document on the registration of the design if he has not expressly waived this.

§ 18 Separation of a multiple registration

(1) For the separation of a multiple registration, § 12 paras. 1, 2 and 4 apply accordingly.

(2) If an application to register a transfer of rights pursuant to § 28 of the Ordinance on the German Patent and Trademark Office affects only a part of the registered designs due to a multiple application, then the respective design numbers must be stated in the application. The registered designs, which have been included in the transfer of rights, are separated and processed further in a separation file.

§ 19 Information for extension and renewal

(1) When paying fees for extension of protection to the period of protection pursuant to § 27 para. 2 Design Act (§ 21 para. 2 sentence 1 Design Act) it is necessary to state:

1. The reference number of the registration,
2. The purpose of use of the payment and
3. The name of the holder of rights pursuant to § 6 para. 1.

(2) If the extension of protection is initiated only for individually registered designs within the multiple registration, then an application must be submitted that includes the following information:

1. The reference number of the registration,
2. The name of the holder of rights pursuant to § 6 para. 1, as well as
3. The numbers of the registered designs, the protection of which is to be extended.

(3) If the holder of rights applies for subsequent remediation on the announcement of the representation (§ 21 para. 3 Design Act) before the expiry of the deadline pursuant to § 21 para. 1 sentence 1 Design Act, then the following must be stated on the application:

1. The reference number of the registration,
2. The name of the holder of rights pursuant to § 6 para. 1 and
3. The time when the announcement is to take place.

(4) For payment of renewal fees, paragraphs 1 and 2 must be applied accordingly.

§ 20 Waiver of the registered design

(1) In the declaration of waiver of the registered design pursuant to § 36 para. 1 sentence 1 no. 2 and para. 2 Design Act, the following must be stated:

1. The number of the registered design that is waived, as well as
2. The name and address of the holder of rights pursuant to § 6 para. 1.

(2) If a registered design is waived in part, then along with the declaration, a representation of the modified design pursuant to § 7, in the event of § 11 para. 2 sentence 2 Design Act, then a representation of the modified specimen of a two-dimensional design pursuant to § 8 must be submitted. The declaration of partial waiver must not include more than 100 words. It will be entered into the Design Register and announced with the representation of the modified design. In the case of multiple registrations, for each registered design that is partially waived, a separate declaration of partial waiver must be submitted.

(3) For the consent, required pursuant to § 36 para. 1 sentence 1 no. 2 Design Act, of a holder, registered in the Design Register, of a right to a registered design, the submission of a declaration of consent signed by this person or their representative is sufficient. It is not necessary to notarize the declaration or the signature.

Section 4 Proceeding for declaration of invalidity

§ 21 Filing an application

(1) For the application for declaration of invalidity of a registered design (§ 34a para. 1 Design Act), the form published by the German Patent and Trademark Office must be used.

(2) The application must state:

1. The number of the registered design,
2. The name and address of the applicant,
3. The reason for invalidity pursuant to § 33 para. 1 or para. 2 Design Act,
4. The facts and evidence serving to justify this,
5. For an application for partial invalidity (§ 35 para. 1 Design Act) the scope of the request for invalidity.

(3) An application can be supported by several reasons for invalidity mentioned in § 33 para. 1 or para. 2 Design Act. The application can provide information on value of the object if this must be determined pursuant to § 34a para. 6 of Design Act.

§ 22 Basic principles of the proceedings

(1) The German Patent and Trademark Office can combine the invalidity proceedings that it has pending to be handled and ruled on jointly. It can suspend an invalidity proceeding if this is expedient. A suspension must especially be considered if it considers the same registered design invalid in another proceeding. The German Patent and Trademark Office can revoke an order that it has issued affecting the combination of several proceedings or the suspension of a proceeding.

(2) The German Patent and Trademark Office indicates to the participants the aspects that are predicted to be especially significant for the decision or are conducive to concentrating the proceedings on the questions essential for the decision. This indication is given as soon as possible, in the case of the hearing pursuant to § 34a para. 3 sentence 2 Design Act at the latest with the summons to the hearing. There is no need for an indication if the aspects to be treated seem obvious according to the argument of the parties.

(3) The German Patent and Trademark Office must strive to have the participants make complete statements in a timely manner on all significant facts, especially by filling in insufficient information on facts and evidence and making expedient proposals. The German Patent and Trademark Office can take into account facts and evidence that have become known to it by other means or the consideration of which is in the public interest, if it has indicated this and has granted the participants an appropriate period to make a statement.

Section 5 International registrations

§ 23 Statement on denial of protection for international registrations

The holder of an international registration pursuant to § 66 Design Act can make a statement to the German Patent and Trademark Office on notification of denial of protection (§ 69 para. 2 Design Act) within a period of four months from the date on which the World Intellectual Property Organization has sent the notice.

§ 24 Transcription of international registrations

The German Patent and Trademark Office confirms, at the request of the new owner of the registered design, the registration of the change of rights holder pursuant to Rule 21 para. 1 letter b no. ii of the Common Regulations on the versions of The Hague Agreement from 1999, 1960 and 1934 (Federal Law Gazette 2008 II p. 1341, 1342) for transcription of international registration if the new owner demonstrates the legal succession. § 28 para. 3 of the Ordinance on the German Patent and Trademark Office applies accordingly for the evidence of the transfer of rights.

§ 25 Subsequent withdrawal of protection

For the application for declaration of invalidity of an international registration for the region of the Federal Republic of Germany (§ 70 para. 1 sentence 1 Design Act), §§ 21 and 22 apply accordingly.

Section 6 Final provisions

§ 26 Storage of the representation of the registered design

The German Patent and Trademark Office stores the representation of the registered design (§ 7), even after deletion of the registration in the Design Register, on a permanent basis.

§ 27 Transitional provision

(1) § 4 para. 2 does not apply to representations registered up to 9 January 2014.

(2) § 22 applies to all applications for declaration of invalidity of a registered design that have been received at the German Patent and Trademark Office starting from 1 January 2014.