

**SWITZERLAND**  
**Industrial Design Regulations**  
**(232.121 DesV)**

as of January 1, 2017

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## **Chapter I: General Provisions**

### **Art. 1 Competence**

(1) The discharge of the administrative tasks derived from the Design Act and from this Ordinance is a matter for the Swiss Institute for Intellectual Property (IGE).

(2) The implementation of Arts. 46-49 Design Act and Arts. 37-40 of this Ordinance is a matter for the Swiss Customs Administration.

### **Art. 2 Deadlines**

If a deadline period is calculated in months or years, then it ends on the last month on the date that bears the same number as the date when it commences. If there is no corresponding day, then the deadline ends on the last day of the last month.

### **Art. 3 Language**

(1) Submissions to the IGE must be drawn up in one of the official languages of Switzerland.

(1-2) The official language chosen by the applying party when application is the language of the proceedings.

(2) The IGE may demand a translation of documentary evidence that is not drawn up in an official language or a certification of its validity. If the translation or the certification is not submitted in spite of being requested, then the document will not be taken into account.

### **Art. 4 Multiple applicant or holders of one design**

(1) If multiple persons are applicants of one design or holders of rights to one design (rights holders), then they must either designate one of them to receive notifications from the IGE with effects for all of them, or appoint a common representation.

(2) Until they do either the former or the latter, the IGE chooses a person as recipient of notifications in the sense of para. 1. If one of the other persons objects, then the IGE demands that all involved parties negotiate pursuant to para. 1.

**Art. 5 Power of attorney**

(1) If an applicant or a rights holder has a representative before the IGE, then the IGE may demand a written power of attorney.

(2) The person empowered by the applicant or rights holder to submit to the IGE in their name all declarations provided for in the Design Act or in this Ordinance and to receive all notifications of the IGE will be entered in the Register pursuant to Art. 25 as representation. If the IGE is not notified of a limitation on the power of attorney, then it will be considered as comprehensive.

**Art. 6 Signature**

(1) Submissions must be signed.

(2) If there is no legally valid signature on a submission, then the original submission date is recognized if a signed submission with identical content is handed in up to one month later at the IGE's request.

(3) The request for registration need not be signed. The IGE can establish additional documents for which the signature is not necessary.

**Art. 6a Evidence**

(1) The IGE may demand that evidence on a submission be submitted if it has a justified doubt of its validity.

(2) It communicates the reasons for its doubt, allows opportunity for making a statement and sets a deadline for submission of evidence.

**Art. 7 Electronic communication**

(1) The IGE may permit electronic communication.

(2) It sets out the technical details and publishes them in an appropriate manner.

## **Chapter II: Application and registration**

### **Section I: Registration proceedings**

#### **Art. 8 Application**

(1) For the application, an official form or a private form approved by IGE must be used.

(2) If an application in valid form in other respects includes all requested information, then the IGE can waive the submission of the form.

#### **Art. 9 Registration request**

(1) The registration request includes:

- a. The request for registration of the design;
- b. The last and first names or the company name, as well as the address of the applicant;
- c. The number of designs included in the application;
- d. A serial number for each design applied;
- e. At least one representation of each design applied;
- f. The information on the products in which the designs are intended to be used;
- g. The last name, first name and residence of the persons who have drawn up the design.

(2) The registration request must be supplemented, when appropriate, by:

- a-1. The applicant's domicile for notifications in Switzerland;
- a-2. If there are multiple applicants: the designation of the recipient of notifications pursuant to Art. 4 para. 1, as well as, when appropriate, their domicile for notifications;
- a-3. The name and address of the representation and when relevant their domicile for notifications in Switzerland;
- b. The declaration of priority pursuant to Art. 23 Design Act;
- c. The application for postponement of publication pursuant to Art. 26 para. 1 Design Act;
- d. A description of the design of up to 100 words in length pursuant to Art. 19 para. 4 Design Act; the text must be machine-readable.

(3) If an application is made, in the case of a two-dimensional design

(pattern), for postponement of publication pursuant to Art. 26 Design Act, then, instead of a representation, a copy of the design can be submitted (Art. 19 para. 3 Design Act).

(4) The representations are released for publication five working days after receipt of the registration request, if by this time no request for postponement of publication has been received at the IGE.

**Art. 10 Requirements for representations of the design and size of a multiple application**

(1) The representations of the design must be suitable for reproduction.

(2) A multiple application, independently of the number of designs applied, may not exceed a weight of 5 kg and a size of 30 cm in any dimension.

**Art. 11 Declaration of priority and certificate of priority**

(1) The declaration of priority pursuant to the Paris Convention of 20 March 1883 on protection of intellectual property (declaration of priority) includes the following information:

- a. Date of first application;
- b. The country where the first application was made;
- c. The countries for which the first application was made.

(2) The declaration of priority can refer to multiple first application.

(3) The evidence of priority consists of a certificate of the competent authority regarding the first application, with information on the design's application or registration number. It can be submitted in English.

**Art. 12 Lapse of claim to priority**

The claim to priority lapses, if:

- a. The declaration of priority is not submitted at the time of application of the design;
- b. The certificate of priority is not submitted within a deadline set by the IGE.

**Art. 13 Certificate of priority for first application in Switzerland**

The IGE issues on request a certificate of priority for first

application in Switzerland.

**Art. 14 Date of submission for postal mailings**

The data of submission for postal mailings is considered to be the time at which a mailing sent by Swiss Post is delivered to the IGE.

**Art. 15 Examination of form**

(1) If the registration request does not meet the formal requirements of Art. 19 paras. 1 and 20 Design Act, as well as Arts. 9 and 10 of this Ordinance, then the IGE sets a deadline for the applicant to complete or improve the registration request.

(2) If the applicant does not remedy the defect within the deadline, then the IGE does not accept the registration request as a whole or in part.

**Art. 16 Examination of substance**

(1) If there is a reason for exclusion pursuant to Art. 4 letters a, d or e Design Act, then the IGE sets a deadline for the applicant to remedy the defect.

(2) If the applicant does not remedy the defect within the deadline, then the IGE rejects the registration request entirely or in part. In exceptional cases, the IGE may set further deadlines.

**Art. 17 Registration fee**

(1) The registration fee must be paid within the deadline set by IGE (Art. 19 para. 2 Design Act).

(2) The registration fee consists of:

- a. The basic fee;
- b. When relevant, the publication fee;

(4) If the registration is published before expiry of the postponement, then the publication fee must be paid before publication.

**Art. 18 Registration and publication**

(1) If there are no grounds for dismissal or rejection, then the IGE enters the design in the Register and publishes the entry, unless a postponement of publication has been requested.

(2) It confirms the registration to the rights holder.

**Art. 19** Publication after postponement of publication

(1) The IGE may remind the rights holder entered into the Register or their representation before expiry of the postponement of publication that the publication fee must be paid.

(2) If, for a two-dimensional design (pattern), publication pursuant to Art. 26 Design Act was postponed and, instead of a representation, a copy of the design was submitted, then the IGE may remind the rights holder entered into the Register or their representation before expiry of the postponement to submit at least one representation of the design.

(3) For multiple application (Art. 20 Design Act), protection may be continued on request after expiry of the postponement of publication, including only for individual designs.

(4) If the publication fee is not paid by the last day of the postponement or if the required representations are not submitted at the latest two months before expiry of postponement, then the IGE cancels the registration.

**Section II: Extension of the protection period**

**Art. 20 Notification of expiry of the protection period**

The IGE may remind the rights holder entered into the Register or their representation of the date of expiry and the possibility of an extension before the expiry of the protection period. The IGE can also send notifications abroad.

**Art. 21 Proceedings**

(1) The request for extension must be submitted to IGE within the last twelve months before expiry of the protection period, at the latest however within six months after the expiry of this period.

(2) For multiple application (Art. 20 Design Act) the extension of protection can be limited to individual designs. In this case it must be stated exactly for which designs an extension is requested.

(3) The extension fee must be paid within the periods pursuant to para.  
(1) If the fee is paid after expiry of the protection period, then a surcharge must be charged.

(4) The extension enters into force on expiry of the preceding protection period.

(5) The IGE confirms to the rights holder the extension of the protection period.

**Art. 21a Refund of extension fee**

If a request is made for extension and this does not lead to extension of the protection period, then the extension fee is refunded.

## **Chapter III: File and Register**

### **Section I: The file**

#### **Art. 22 Contents**

(1) The IGE keeps a file, in which the course of the registration proceedings and all Register entries are recorded.

(2) Documentary evidence that discloses manufacturing or business secrets or includes other information that the applicant has an interest worth protecting in maintaining confidential, is separated on request. The separation is noted in the file.

#### **Art. 23 Inspection of files**

(1) Before entry of the design into the Register and during the term of postponement of publication, the following persons may inspect the file:

- a. The applicant and their representation;
- b. Persons who demonstrate that the applicant accuses them of violation of rights to the design submitted or warns them of this type of violation;
- c. Other persons with express consent of the applicant or their representation.

(2) The persons named in para.1 may also inspect files of registration requests that were withdrawn or rejected or dismissed by the IGE.

(3) After entry of the design into the Register, any person may inspect the file subject to reservation for postponed publication.

(4) The IGE decides on inspection of documentary evidence separated pursuant to Art. 22 para. 2 after a hearing with the rights holder.

(5) On request the IGE grants an opportunity to inspect files by issuing copies.

#### **Art. 24 Retention of files**

(1) The IGE retains the files of completely deleted Register entries in the original or in a copy for five years after deletion.

(2) It retains the files from registration requests that were withdrawn or rejected or that were not accepted by the IGE, in the original or in a copy during five years after withdrawal, rejection or non-acceptance.

(4) On request the IGE returns to the rights holder the copies of the design submitted when the retention period has expired. The request must be made before expiry of the retention period.

## **Section II: The Register**

### **Art. 25 Register contents**

(1) The entry of the design into the Register includes:

- a. The application number;
- b. The date of application;
- c. The last name and first name or company name, as well as the address of the rights holder;
- d. The name and address of any representation;
- e. The name and residence of the persons who have drawn up the design;
- f. The information on products into which the design is intended to be incorporated;
- g. A serial number for each design applied;
- h. The reproductions of the design;
- i. The date of registration;
- j. The date of publication.

(2) The entry is supplemented, when relevant, with:

- a. Information on claim of a priority pursuant to Arts. 22 and 23 Design Act;
- b. Information that the publication has been postponed;
- c. A description of the design.

(3) In addition, the following is entered into the Register:

- a. The extension of the protection period, with information on the date on which the extension enters into force;
- b. The complete or partial deletion of the Register entry, with information on the reason for deletion;
- c. The complete or partial transfer of right to the design;
- d. The granting of a license or sub-license, with information on the last name and first name or the company name, as well as the address

of the person to whom the license is granted (licensee), when relevant with information on whether it is a case of an exclusive license or an extract from the license;

- e. The usufruct to the design and the pledging of the design;
- f. Restrictions on disposal imposed by courts and foreclosure authorities;
- g. Modifications affecting the information entered.

(4) The IGE may enter additional information of interest to the public.

#### **Art. 26 Inspection of and extracts from the Register**

(1) The Register is available to any person for inspection, except for those entries the publication of which has been postponed.

(2) The IGE issues extracts from the Register.

#### **Section III: Modifications of the design entry**

##### **Art. 27 Transfer**

(1) The request for entry of the transfer must be made by the current rights holder or by the person who acquires the right to the design (transferee).

(2) The request includes:

- a. An express declaration of the current rights holder or another sufficient document, according to which the right to the design has been transferred entirely or in part to the transferee;
- b. the last name and first name or the company name, and the address of the transferee and when relevant their domicile for notifications in Switzerland;

##### **Art. 28 License**

(1) The request for entry of a license must be made by the rights holder or by the licensee.

(2) It includes:

- a. An express declaration of the rights holder or another sufficient document, according to which the rights holder cedes use of the design to the licensee;
- b. The last name and first name or the company name, as well as the

address of the license;

c. When relevant the desire that the license be entered as exclusive license;

d. In the case of a partial license, any information on the rights licensed.

(3) For the entry of a sub-license, paras. 1 and 2 apply accordingly. Moreover, it must be demonstrated that the licensee is entitled to grant sub-licenses.

(4) As long as an exclusive license is entered in the Register, no further licenses will be entered for the same design that are incompatible with the exclusive license.

#### **Art. 29 Other modifications in the Register**

The IGE enters, based on a corresponding declaration of the rights holder or another sufficient document:

a. Usufruct to the right to the design and the pledging of the right to the design;

b. Restriction to disposal imposed by courts and foreclosure authorities;

c. Modifications that affect the information entered.

#### **Art. 30 Deletion of third-party rights**

The IGE deletes on request the right entered in favor of a third party, if an express declaration of waiver from the holder of this right or another sufficient document is submitted.

#### **Art. 31 Corrections**

(1) Erroneous entries are promptly correct on request of the rights holder.

(2) If the error is based on a mistake by IGE, then the correction is made by the Office.

### **Section IV: Deletion of the design**

#### **Art. 34**

(1) The IGE deletes a design itself, if publication has been postponed and no representations have been submitted (Art. 19 para. 3 Design

Act).

(2) It notifies the rights holder of the deletion.

(3) The deletion of a design is not subject to fees.

## **Chapter IV: Publications of the IGE**

### **Art. 35 Subject of publications**

The IGE publishes subject to reservation of postponement of the publication:

- a. The entry of the design, with the information pursuant to Art. 25 paras. 1 letters a-h and 2;
- b. Information pursuant to Art. 25 paras. 3 and 4, to the extent that its publication seems expedient.

### **Art. 36 Publication medium**

(1) The IGE decides on the publication medium.

(2) On request and with compensation for costs, it issues paper copies of data published exclusively in electronic form.

## **Chapter V: Assistance of the customs administration**

### **Art. 37 Scope**

The assistance of the Swiss customs administration extends to import or export of illegally manufactured items into or from the customs area.

### **Art. 38 Request for assistance**

(1) The rights holder or the licensee entitled to lodge a claim (requester) must make the request for assistance from Swiss Customs Directorate.

(1-2) The Swiss Customs Directorate decides on the request at the latest 40 days after receipt of the complete documents.

(2) The request is valid for two years, if it is not made for a shorter period of validity. It can be renewed.

### **Art. 39 Retention of items**

(1) If the customs office retains items, then it keeps them safe itself in exchange for a fee or it entrusts them to a third party at the expense of the requesting party.

(2) The customs office notifies the requesting party of the name and address of the applicant, holder or owner, a precise description, the quantity and the sender in Switzerland or abroad of the retained items.

(3) If it is already established before expiry of the deadline pursuant to Art. 48 paras. 2 or 3 Design Act that the requesting party cannot take any precautionary measures, then the items are promptly released.

### **Art. 39a Patterns or samples**

(1) The requesting party can apply for handover or sending of patterns or samples for inspection or inspection of the items. Instead of pattern or samples, the customs administration can also hand over to the requesting party photographs of the retained items, if this enables inspection by the requesting party.

(2) The request can be made together with the request for assistance from the Swiss Customs Directorate or, during the retention of items,

directly at the customs office that is retaining the items.

**Art. 39b Protection of manufacturing and business secrets**

(1) The customs administration indicates to the applicant, holder or owner of the items that it is possible to place a justified request for refusal to extract samples or specimens. It sets an appropriate deadline for making the request.

(2) If the customs administration permits the requesting party to inspect the retained items, then it will take into account adequately the interests of the requesting party, and of the applicant, holder or owner when arranging an appointment.

**Art. 39c Preservation of evidence when destroying items**

(1) The customs administration preserves the samples or specimens extracted during one year starting from the notification of the applicant, holder or owner pursuant to Art. 48 para. 1 Design Act. After expiry of this deadline, it demands that the applicant, holder or owner take possession of the samples or specimens or pay the costs for additional preservation. If the applicant, holder or owner is not willing or does not respond within 30 days, then the customs administration destroys the samples or specimens.

(2) The customs administration can take photographs of the items destroyed instead of removing samples or specimens, to the extent that this serves the purpose of securing evidence.

**Art. 40 Fees**

The fees for assistance of the customs administration are governed by Ordinance of 4 April 2007 on the fees of the customs administration.

## **Chapter VI: Final provisions**

### **Art. 41 Repeal of previous law**

The Ordinance of 27 July 1900 on industrial patterns and models is repealed.

### **Art. 42 Modification of previous law**

The modification of previous law is governed by the Annex.

### **Art. 43 Transitional provisions on deadlines that have commenced running**

Deadlines that were set by the IGE and that have commenced running on the day that this Ordinance enters into force shall remain unchanged.

### **Art. 44 Entry into force**

This Ordinance enters into force on 1 July 2002.