



12 October 2023

(23-6853)

Page: 1/3

**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLE 63.2 OF THE TRIPS AGREEMENT**

GERMANY: ACT ON THE LEGAL PROTECTION OF DESIGNS
(DESIGNGESETZ – DESIGNG)

Notifying Member	GERMANY
-------------------------	----------------

Details of the notified legal text

Title	Act on the Legal Protection of Designs (Designgesetz – Designg)
Subject matter	Industrial designs
Nature of notification	<input checked="" type="checkbox"/> Main dedicated intellectual property law or regulation <input type="checkbox"/> Other law or regulation
Link to legal text*	https://ip-documents.info/2023/IP/DEU/23_12519_00_e.pdf
Notification status	<input type="checkbox"/> First notification <input type="checkbox"/> Amendment or revision to notified legal text <input checked="" type="checkbox"/> Replacement or consolidation of notified legal text(s)
Previous notification(s) referred to	IP/N/1/DEU/D/1/Add.5

Brief description of the notified legal text

The legal reform mainly introduced the invalidity proceedings and changes the designation of the property right to design.

- Invalidity proceedings

The German Patent and Trade Mark Office (DPMA) registers the design without examination of all substantive requirements. Should it become apparent, after registration, that, for example, the design lacks novelty or individual character, a third party can file an application for the determination of invalidity. If the registered design is invalid, it will be cancelled from the Design Register after conclusion of invalidity proceedings. The registration will be deemed not to have had any protective effect as from the outset.

What kind of applications can be filed?

The Design Act (Designgesetz) distinguishes between an "application for the determination of invalidity" and an "application for the declaration of invalidity".

- The "application for the determination of invalidity" relates to absolute grounds for invalidity (the appearance of the product does not constitute a design, lack of novelty/individual character, exclusion from design protection). Anybody may file this application.

- The "application for the declaration of invalidity" relates to relative grounds for invalidity (works protected by copyright, registered designs or distinctive signs with an earlier filing or priority date). The application can only be filed by the right holder concerned.

The application for the determination or declaration of invalidity is subject to a fee and must be filed in writing including a statement of grounds. Please note that you must indicate all the facts and evidence in support of the statement of grounds. The grounds of invalidity on which the application is based must be clearly stated. The application for the determination or declaration of invalidity determines the matter to be examined in a way that the German Patent and Trade Mark Office is bound by the grounds stated in the application. In addition, the conflicting earlier designs or other rights cited against the challenged registered design must be indicated precisely.

Before filing such an application you should consider the financial risk because in the case of a dispute, the losing party must usually also bear the costs of the opposing party.

The DPMA informs the holder of the registered design about the application for the determination or declaration of invalidity. If the right holder does not contest the application within one month, invalidity will be determined or declared. Where the applicant contests the application, the Design Division continues invalidity proceedings and decides on the application on the basis of the submitted facts and evidence - after a hearing, if necessary. If the registered design is invalid, it will be cancelled from the Design Register. Such a design does not have had any protective effect as from the outset.

Action brought before the competent regional court

The regional court will decide on question of invalidity only if a "counterclaim" is filed. If, for example, a design holder is sued because of infringement of another design right, they can file a counterclaim, arguing that the registered design of the claimant does not fulfil the requirements of protection. Otherwise, the court will presume in such infringement proceedings that the registered design of the claimant is legally valid.

- Change of designation

The German designation of the registered property right, the "Geschmacksmuster", was initially based on the French usage "dessins et modèles", which was translated as "patterns and models". With the increasing internationality the need to protect intellectual property at international level is also growing. For the resulting international regulations on intellectual property, the term "design" has become increasingly common in the past.

Language(s) of notified legal text	English
Entry into force	16 March 2004; Design Act in the version published on 24 February 2014 (Federal Law Gazette I, p. 122), as last amended by Article 10 of the Act of 10 August 2021 (Federal Law Gazette I, p. 3490) This Act serves to implement Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ L 289, 28.10.1998, p. 28). It was adopted by the Bundestag as Article 1 of the Act of 12 March 2004 (Federal Law Gazette I, p. 390). Pursuant to Article 6 (1) of that Act, it enters into force on 1 June 2004. Pursuant to Article 6 (2), section 26, section 52 (2) and section 63 (2) enter into force with effect from 19 March 2004.
Other date	

Notification details

Submission date of notification	17 August 2023
Other information	IP/N/1/EU/D/1 <i>(Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs)</i>
Agency or authority responsible	Federal Ministry of Justice - III B 5 Mohrenstr. 37 10117 Berlin Germany Email: IIIB5@bmj.bund.de

* Links are provided to texts of laws and regulations notified under the TRIPS Agreement in the form supplied by the Member concerned; the WTO Secretariat does not endorse or revise their content.