



German Patent
and Trade Mark Office

Designs

An information brochure on
design protection





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Design as an economic factor

Today, modern design plays a considerable role for the commercial success of a product. Since there are very few functional differences between various objects of utility and the life cycles of products become shorter, the visual appearance of a product is often the only distinctive feature. Shape and colours combined with the intended use form a functional unit.

Companies use product design to effectively promote the corporate image for advertising purposes. Attractive colours and shapes are fascinating for consumers, appeal to their emotions and create customer loyalty. Today creative product design is a must for goods of utility and even for purely technical devices. Design registration provides the adequate IP protection for your design.

Design rights protect the colours and shapes of products – from cars to lemon squeezers.



Search

Since the German Patent and Trade Mark Office does not examine novelty and individual character of your design we recommend you to perform a search covering existing designs to gain information on registered designs prior to filing an application.

DPMAregister, the official publication and register database of the German Patent and Trade Mark Office, is available for searches for all German designs registered from 1 July 1988 onwards. **DPMAregister** is a free service of the German Patent and Trade Mark Office which enables users to conduct online searches relating to all IP publications at <http://register.dpma.de>.

You can also search the databases of the Office for Harmonization in the Internal Market (<http://oami.europa.eu>) and of the World Intellectual Property Organization (<http://wipo.int>).

Please note that other designs, if published earlier, may also conflict with the novelty and individual character of your own design. Therefore you should also use other available search options for your search.



What can be registered as a design?

The two-dimensional or three-dimensional appearance of the whole or a part of a product can be registered as a design. The design right protects the design of a flat surface – for example, of a textile or wallpaper – or the design of a three-dimensional object. In this context, the following features of a product play a role: lines, contours, colours, shape, texture or the materials.

A product is any industrial or handcraft item, including packaging, get-up, graphic symbols and typographic typefaces, as well as parts intended to be assembled into a complex product.

A design must be new on the date of filing the application. This means that no design that is identical or differing only in immaterial de-

tails from the design applied for has been published, exhibited or put on the market in any other way, before the date of filing the application.

Furthermore, the design must have individual character. To fulfil this requirement its overall impression must differ from that of already existing designs. In this context, neither the view of a layman nor the opinion of a product designer is decisive. Rather it is the overall impression produced by the design on the so-called „informed user“ that is relevant.

Novelty and individual character are not examined by the German Patent and Trade Mark Office. This is why the registered design falls within the category of unexamined IP rights. Likewise, rights of others are not examined by the DPMA. The requirements for protection will be examined by the civil courts when there is a dispute between the applicant and a third party. However, if the requirements were not met at the date of filing the application, no IP right was created from which any rights might be derived, even if the design was registered.



How to apply to register your design

You can file your design application at the German Patent and Trade Mark Office in Munich, in Jena or at the Technical Information Centre in Berlin. The respective forms are available on the website of the German Patent and Trade Mark Office at www.dpma.de.

The application must contain the following items:

- a request for registration; for a multiple application the attachment sheet must also be used (up to 100 designs can be included in one application if they have at least one common class of goods);
- information identifying the applicant;
- a photograph or drawing (graphical representation) of the design suitable for publication. The illustration must clearly and completely disclose the subject-matter for which protection is sought, and;
- a list of the products which the design is applied to.

The representation of the design consists of at least one colour or black and white photographic or other graphic illustration (for example, line drawing) of the design. You can file up to ten illustrations of the design to clearly show the features on which protection shall be based (for example, different views).

The graphical representation of the design is essential since it determines the scope and subject-matter of protection. The subject-matter of protection is restricted to the visible features of appearance in the illustration, this means that only those items are protected that can be clearly seen in the illustration. It is in your own interest to make sure that the features of the design that, in your view, are worthy of protection can be clearly seen in the illustrations.



For a paper application, you can either file the illustrations of your design on the official form or as a JPEG file on an electronic data carrier. For electronic applications via **DPMAdirekt** (online filing) you can use „drag and drop“ to directly insert your digital images in the application window.

You may file a request for deferment of publication of your design. This may be useful if you wish to wait and see whether the product is accepted in the market or you wish to keep the design secret for the time being. In that

case protection will initially be limited to 30 months. During that time you may decide if you wish to extend the period of protection to five years. In case of extension the design will be published subsequently.

The illustration may be accompanied by an explanatory description not exceeding 100 words.



Costs and term of protection

Individual application	70 Euro
for online filing	60 Euro
Multiple application	
per design	7 Euro
minimum fee	70 Euro
for online filing	
per design	6 Euro
minimum fee	60 Euro

The application fees must be paid within three months from the filing date. Your design will be protected from the date of registration in the Designs Register.

Application fees in case of deferment of publication of the illustration

Individual application	30 Euro
Multiple application	
per design	3 Euro
minimum fee	30 Euro

Extension fee

Individual application	40 Euro
Multiple application	
per design	4 Euro
minimum fee	40 Euro

The maximum term of protection is 25 years from the filing date. Renewal fees must be paid every five years. If you do not pay the fee the registration will be cancelled from the Designs Register.

Renewal fees

6th to 10th year of protection	90 Euro
11th to 15th year of protection	120 Euro
16th to 20th year of protection	150 Euro
21st to 25th year of protection	180 Euro

What is a priority?

Under certain circumstances, an earlier filing date may be recognised in relation to your application (so-called priority). If you have displayed your design at a public exhibition or fair and within six months have filed an application for the registration of the design with the German Patent and Trade Mark Office, you can claim the priority of the date of the first display (so-called exhibition priority).

The names of exhibitions recognised for this purpose are published by the Federal Ministry of Justice in the Federal Law Gazette. A certificate issued by the fair management must be submitted to prove the display.

If you have filed an application for the registration of your design in a Member state of the Paris Convention for the Protection of Industrial Property or in a Member state of the World Trade Organization, you can claim the priority of the earlier application for an application submitted to the German Patent and Trade Mark Office within six months from the filing date of the earlier application (so-called foreign priority). A copy of the earlier application must be furnished.



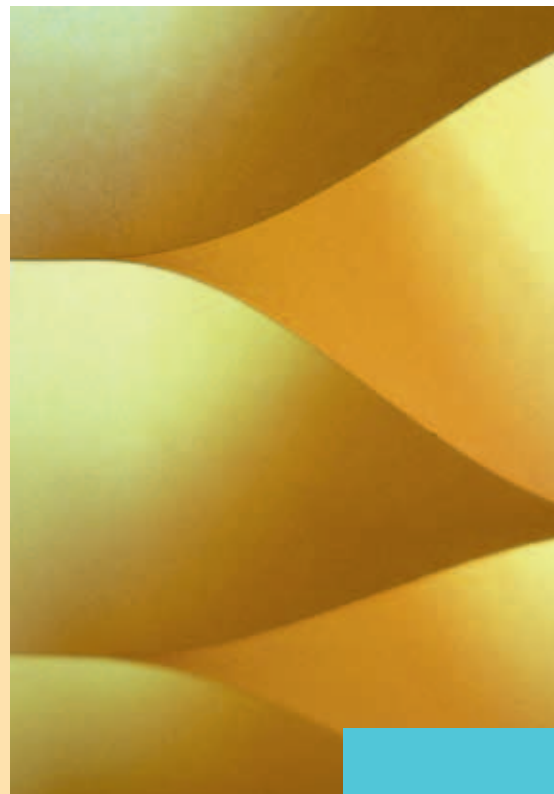
What rights does a registered design confer?

If you are the owner of a registered design you have the exclusive right to use the design (monopoly right to prevent any third party use).

You can take action against any design that produces on an informed user the same overall impression as your registered design. The degree of freedom of the designer in developing a design is taken into consideration for assessing the scope of protection.

Nobody may use your registered design without your consent. In particular, no third party may make, offer, put on the market, import, export, utilise or possess the design. It is not relevant whether or not the infringer has had knowledge of the registered design. This means that it is not only prohibited to copy the registered design, but also to manufacture and distribute independently developed objects.

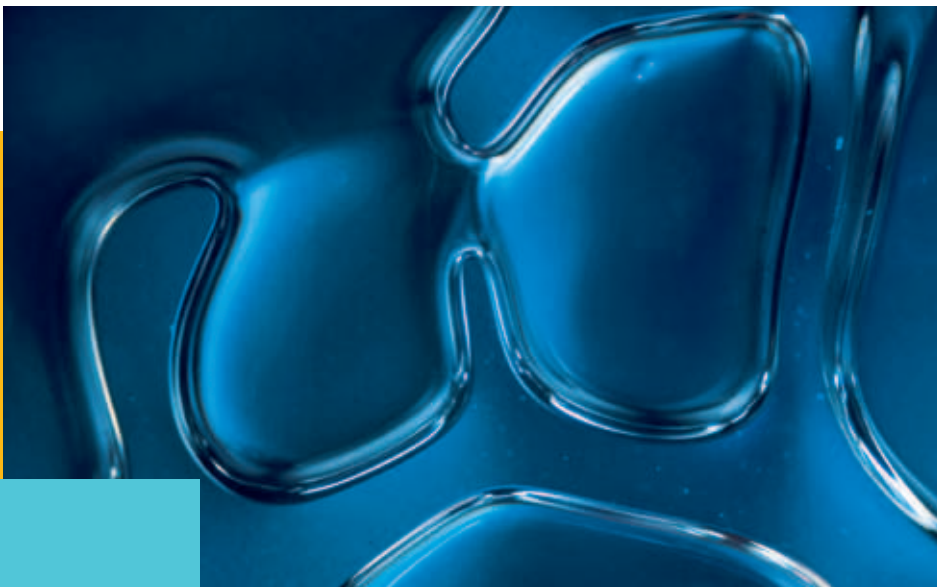
Exception: during the period of deferment of publication of the illustration, the design is only protected against copying, that means you can only take action against designs that were manufactured although the manufacturer had knowledge of the registered design. You cannot challenge independent parallel creations. If you file a request for the subsequent publication of the illustration, protection against copying is transformed into monopoly protection – however without retroactive effect.



Geographical scope of design protection

Designs registered at the German Patent and Trade Mark Office are protected in the Federal Republic of Germany. Do you also need protection outside Germany? In that case, you can apply for a community design at the Office for Harmonization in the Internal Market (<http://oami.europa.eu>), which provides protection for the whole of the European Union.

An international design registration at the World Intellectual Property Organization (www.wipo.int) provides protection in further countries.



Unregistered community design

The unregistered community design protects your design for three years. You do not have to apply to register the design. The unregistered community design only confers protection against copying. The IP right is automatically created when the design is disclosed to the circles specialised in the sector of industry concerned operating within the European Union. To disclose a design you must display it at a fair and offer it or, for example, publish a press release.

If you rely exclusively on the protection conferred by means of the unregistered community design right, you must be able to provide

proof that the protection exists in case of subsequent infringement proceedings. You should by all means keep a record about the disclosure of the design.

Through the publication of a German design registration in the Designs Gazette (Geschmacksmusterblatt) the design is made available to the public in such a way that the interested trade circles must have become aware of the design. By means of a German design registration your design automatically enjoys protection – for three years – as an unregistered community design throughout the whole of the European Union.



Service

The German Patent and Trade Mark Office sees itself as a service provider in the field of industrial property protection. We provide information on design applications, handle requests in a fast and customer-friendly manner and provide IP information to the public.

For questions on how to apply to register a design please contact the enquiry unit of the German Patent and Trade Mark Office. You can contact us by phone, fax or email. On our website at www.dpma.de you will find ample information on the German Patent and Trade Mark Office and on IP application requirements, and application forms for download.

Addresses and important telephone numbers

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This information brochure aims at providing a first insight into the field of design law. For this reason it also contains simplified and generalised information. It does not attempt to provide a complete guide to or binding information on this complex matter. More detailed information is available on the website of the German Patent and Trade Mark Office (www.dpma.de).