

Germany: New Design Act in force

By Florian Traub, Squire Sanders (UK) LLP, United Kingdom

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On 1 January 2014, a [new Design Act](#) came into force in Germany. In a major change to the former system, the German legislator introduced design invalidity proceedings before the German Patent and Trademark Office (GPTO). This will significantly reduce the costs of invalidity proceedings in Germany and thus provide easier access to such actions for small and medium sized entities.

Under the previous system, it was not possible to submit an invalidity request regarding a German registered design directly with the GPTO. Instead, such request had to be filed in a law suit at a competent Civil Court. The old system was perceived to be time consuming and costly, particularly in comparison with the European system under the registered Community design regime which provided, since its introduction, for invalidity requests to be processed before the Office of Harmonisation in the Internal Market (OHIM). With the coming into effect of the new law at the beginning of 2014, it will now be possible to submit a request for the declaration of invalidity of a national German registered design with the GPTO in procedures that are comparable to the proceedings before OHIM. The proceedings will be comparably inexpensive with the official fees set at €300 for each registered design. It is widely anticipated that the newly formed Design Invalidity Division at the GPTO will adopt a similar approach in its practice and rulings like OHIM's Invalidity Division.

The GPTO will decide in written proceedings, and oral hearings will only take place in limited circumstances. Similar to the trade marks, decisions of the GPTO may be appealed to the German Federal Patent Court in Munich.

Decision of the GPTO or the Federal Patent Court respectively will be binding for the parties. In case of parallel infringement proceedings before a Civil Court, German design law now provides that the court proceedings may or must be suspended pending the outcome of the invalidity proceedings if the court finds the design to be invalid. As a consequence, a later filed counter-claim in the Civil Court proceedings is inadmissible if a request for a declaration of invalidity of the German national design registration, involving identical parties, has been finally rejected by the GPTO. Otherwise, the defendant will be still entitled to challenge the validity of the design in Court by way of a counter claim.

In further changes, the German term "*Geschmacksmuster*" was replaced by the term "registered design ("*eingetragenes Design*"). This is thought to increase the comprehensibility of design law outside of expert groups and thereby bringing German design law in line with international practice and terminology.

The changes to the German design law will be welcomed by both practitioners and right owners alike. The changes pay tribute to the increasing importance of designs that long lived an almost forgotten existence next to copyrights, patents and trademarks.

For more information, please contact:



Florian Traub
Partner
Squire Sanders (UK) LLP
United Kingdom
florian.traub@squiresanders.com
www.squiresanders.com