



# German Design Law 德国外观设计相关法律

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# Legal framework法律框架

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## Act on the Legal Protection of Designs 外观设计法律保护法

- published on 24 February 2014  
公布于2014年02月24日
- last amendment on 12 May 2017  
上次修正于2017年05月12日
- based on European Directive No. 98/71/EC on the Legal Protection of Designs of 1998  
基于1998年有关外观设计法律保护欧盟98/71/EC指令
- **Design Ordinance (Designverordnung, DesignV) 外观设计条例**
- with details concerning the implementation of the law 讲解执法相关法律的细节



# Term of protection and fees 保护期及费用

- protection starts with the date of registration 注册日起则  
获得保护
- term of protection: max. 25 years (starts with the date of  
application) 保护时期: 达25年(申请日起)
- staggered fee 错开费用:

1st – 5th year: 第一到第五年:	70 € (在线60 € if electr.)
6th – 10th year: 第六 – 第十年	90 €
11th – 15th year: 第11-15年	120 €
16th – 20th year: 第16-20年	150 €
21st – 25th year: 第21-25年	180 €

## 42,670 design applications 外观设计申请案

90% from Germany 来自德国

5% from Italy 意大利

2% from Switzerland 瑞士

1% from the USA 美国

PRC ranks tenth in the ranking of foreign applicants

中国排第十大的非德国申请者国家

## Ranking of goods (newly registered designs):

(新注册设计)主要行业

Furnishing 家具

Clothing 衣物

Graphic symbols, logos, ornamentation 图形符号、标志、装饰



# Application procedure 申请程序

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## not examined in application procedure 申请时不审查:

- novelty and individual character 新颖性及个体特征
- violation of industrial property rights with earlier filing or priority date 是否因较早提交的案件或优先日而侵犯工业拥有权

## examined in application procedure 申请程序中审查:

- formalities, esp. fees 形式议题, 尤其费用
- violation of public policy or the accepted principles of morality 违反公共政策或公认道德原则
- improper use of any emblem of public interest 涉及公共利益的标志不适当的使用



# Invalidity proceedings 无效诉讼

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## Invalidity proceedings are before the DPMA since 2014

## 2014年以来德国专利商标局负责无效诉讼

Until then, only civil courts were competent 2014年前民事法院负责相关案例

Reasons for the assignment to the DPMA 为何转交给本局:

- expertise of the DPMA, as the design applications are also examined here 外观设计申请也在本局审查, 本局专业知识雄厚
- cheaper procedure, as no lawyer is required and the fee for the DPMA is lower than the court fees 程序成本较低, 因为不需律师, 本局费用比法院费用低



## Grounds for invalidity 无效理由 (1)

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1. no design as defined in sec. 1 no. 1 and no. 2 Design Act 不符合外观设计法第1(1、2)条的外观设计定义
  2. violation of public policy or the accepted principles of morality (Sec. 3 par. 1 no. 3 Design Act) 违反公共政策或公认道德原则 (设计法第3(1.3)条)
  3. improper use of any emblem of public interest (Sec. 3 par. 1 no. 4 Design Act) 涉及公共利益的标志不适当的使用 (设计法第3(1.4)条)
1. - 3. are examined in application procedures as well as during invalidity proceedings 1—3在申请过程以及无效程序中皆被审查



## Grounds for invalidity 无效理由 (2)

4.-10. are examined only during invalidity proceedings

4-10在无效程序中才被审查

4. design is not new (Sec. 2 par. 2 Design Act)

设计不新颖 (设计法第2(2)条)

5. design does not have individual character 无个体特征  
(Sec. 2 par. 3 Design Act) (设计法第2(3)条)

6. design features are solely dictated by their technical function (Sec. 3 par. 1 Design Act)  
外观设计特点仅由技术功能而形成的 (设计法第3(1)条)

7. design is a connecting part required for a different product (Sec. 3 par. 1 no. 2 Design Act)  
设计为另一产品的相互关联而已 (设计法第3(1.2)条)





## Grounds for invalidity 无效理由 (3)

8. design unauthorised uses a work which is protected by copyright (Sec. 33 par. 2 no. 1 Design Act)

相关以非授权方式设计使用以由版权保护的作品(设计法第33(2.1)条)

9. design is in conflict with a design with an earlier filing or priority date (Sec. 33 par. 2 no. 2 Design Act)

相关设计与较早的申请人或优先日的设计发生冲突(设计法第33(2.2)条)

10. design is in conflict with a distinctive sign/trade mark with an earlier filing or priority date (Art. 33 par. 2 no. 3 Design Act)相关设计与较早的申请人或优先日的设计的一个特点或商标发生冲突(设计法第33(2.3)条)

8.- 10. and 3. shall be asserted solely by the right holder

8-10及3仅可由权利人宣示



# Opposition in context of invalidity proceedings 无效程序中的异议

opposition period for the holder of the registered design: 1 month  
注册外观设计权利人的异议期: 1个月

**if no opposition:** invalidity is agreed on without objective examination of the grounds for invalidity

若无异议: 不进行客观对无效理由的审查则同意相关设计无效

**in case of opposition:** 有异议

objective examination; 客观审查

upon request or if expedient: hearing of the parties and of witnesses; decision, including the decision on the costs of the proceedings  
应相关者要求或权宜的话: 各方及证人听审; 决定, 包含程序成本相关的决定



# Decision-making body in invalidity proceedings 无效程序中的决策机构

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**3 legally qualified members 3名法律资格成员**

and if the case raises questions of a particularly technical nature: 若案件涉及特殊技术问题情况下：

**+ 1 technically qualified member + 1名技术资格成员**

At the **Federal Patent Court** and within 1 month, an **appeal** can be filed against the decision. 可以一个月内向德国联邦专利法院上诉。

**Yearly average of 50 invalidity proceedings** against a design. About 25% of the invalidity proceedings remain without opposition 年均对外观设计的无效案件为50个案件。约25%无效程序不遭异议。