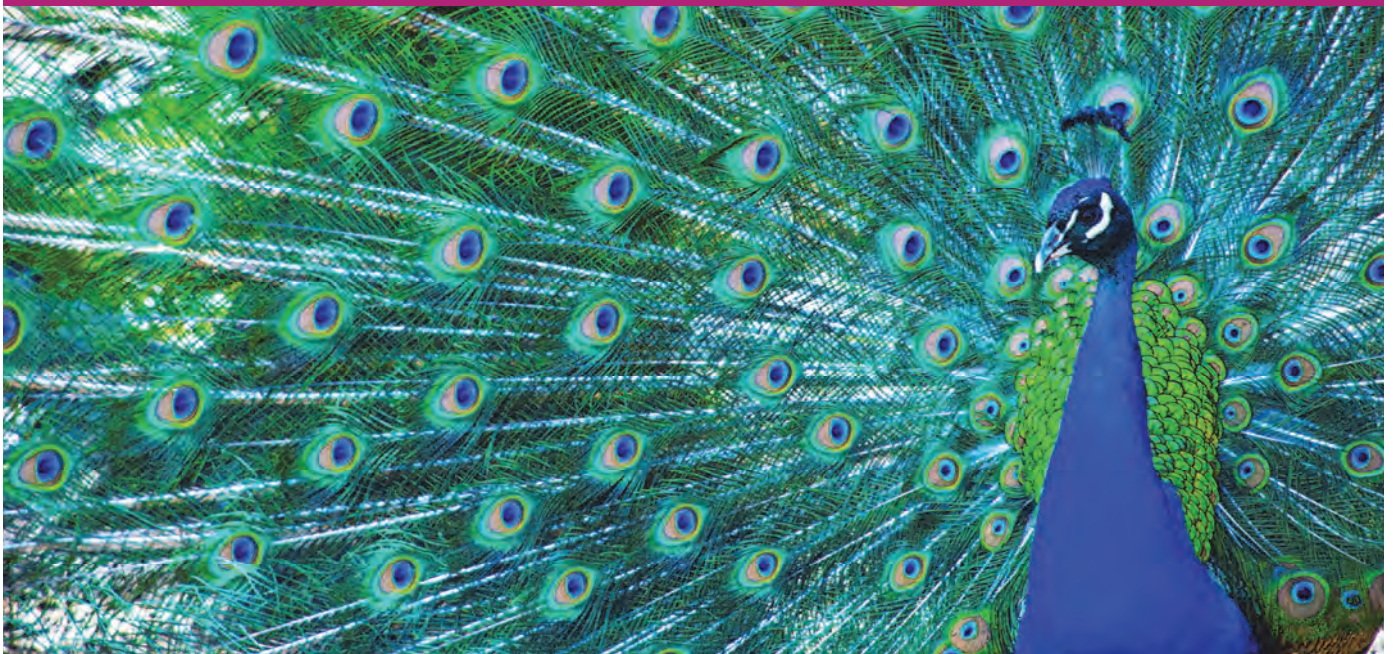


New German Design Act entered into force.



The German Design Act was reformed with effect as of 1 January 2014. The key amendments in a nutshell:

I. NEW NAME

The German design which was up to now called *Geschmacksmuster* has been renamed and is now referred to as *eingetragenes Design* (registered design). The new name is an adjustment to modern and international usage and shall be easier to understand. Right holders will probably find the new name *eingetragenes Design* more attractive for use in advertising than the somewhat unwieldy name *Geschmacksmuster* and hence might more often provide their products with a notice of their property rights as it is already common practice in trade mark law (e.g. geschützt durch ein eingetragenes Design – protected by a registered design).

II. NEW LAW

In the course of the registration proceeding it is not examined whether the requirements for the legal protection of the design, i.e. novelty and individual character, are met. Up to now, German registered designs could only be challenged by bringing an action for cancellation before German District Courts, which was time-consuming and involved high expenses. The reform act has now introduced invalidity proceedings for registered designs before the German Patent and Trade Mark Office (DPMA). In this proceeding it is reviewed whether the design meets the requirements for protection. If the proprietor of the registered design does not object the cancellation within one month from the service of the application for a declaration of invalidity the design will be cancelled without any further examination. Otherwise, the design will be examined in depth in a contentious proceeding by a department of the DPMA established particularly for this purpose.

The introduction of these proceedings will above all entail that designs whose protection is doubtful are examined more frequently than before and are cancelled, if required, in particular if the right holder no longer has an interest in their maintenance. Disputes before the District Courts which depend on the legal validity of a registered design may be suspended for the duration of the official invalidity proceedings.

However, in those disputes, the objection that a design is invalid can now only be raised by filing a counterclaim or an application for a declaration of invalidity with the DPMA.

III. NEWS FOR APPLICANTS FILING MULTIPLE APPLICATIONS

Applicants have also previously been able to save considerable costs by combining several designs in one multiple application. However, it has been required up to now that the designs were included in the same class of goods according to the so-called Locarno Classification. This is no longer required pursuant to the new German Design Act. Applicants may now combine up to 100 designs in one multiple application without having to meet the requirement that they are covered by the same Locarno Class. This possibility offers considerable cost advantages above all for companies which desire to file designs from different product areas.

IV. CONCLUSION

The new act does not only modernize the language use and makes using the property right in advertising more attractive to the right holder by renaming it *eingetragenes Design*. It also considerably reduces the expenditure of time and the costs for conducting invalidity proceedings. Against the background that the registered designs are unexamined property rights, i.e. it is not examined in the registration proceedings whether they meet the requirements for protection, this is highly welcome. Previously, third parties who were convinced of the invalidity of a registered design have often been deterred from initiating invalidity proceedings before the courts due to the high costs and expenditure of time involved. Furthermore, it is expected that the central processing of the proceedings by Design Departments of the DPMA, which have particularly been established for this purpose, will lead to the development of high professional competence.

If you have any questions or if you require more detailed information, please do not hesitate to contact us.

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