

**Federal Law on the Protection of Designs (BGBl. no. 497/1990)
as amended by BGBl. nos. 772/1992 and 143/2001**

I. General Provisions

Subject of Design Protection

Section 1

- (1) For the purposes of this Federal Law, design shall mean a pattern for the appearance of an industrial product.
- (2) Design protection under this Federal Law may be obtained for new designs that are neither liable to cause offense nor contrary to public policy or the prohibition on double protection.

Novelty

Section 2

- (1) A design shall not be considered new if it is identical or confusingly similar to the appearance of an article that was available to the public before the priority date of the design and if it appears obvious that such appearance could be applied to the products mentioned in the list of goods of the design.
- (2) Subsection (1) shall not apply to a disclosure that occurred no earlier than six months before the priority date of the design and was directly or indirectly due to:
1. evident abuse to the disadvantage of the applicant or his predecessor in title or
 2. the fact that the applicant or his legal predecessor had displayed the design at official or officially recognized exhibitions within the meaning of the Convention on International Exhibitions, BGBl. No. 445/1980.
- (3) Subsection (2), item 2, shall only apply if the applicant states, on filing his application, that the design has been displayed at the exhibition and submits within four months of filing a confirmation from the organizers of the exhibition. The confirmation must state the date of opening of the exhibition and, where first disclosure did not occur on the same date, also the date of disclosure. The confirmation shall be accompanied by a representation of the design bearing a certification by the organizers of the exhibition.

Prohibition of Double Protection

Section 3

A design shall be excluded from design protection if it is identical or confusingly similar to a design that is published after its priority date (Section 17), but which has an earlier priority, and if transfer of the design with the earlier priority from the products contained in its list of goods to the products contained in the list of goods of the design with later priority appears obvious.

Effects of Design Protection

Section 4

Design protection shall entitle the owner of the design to prohibit others from manufacturing by way of business, putting on the market, offering for sale or utilizing products that are identical or confusingly similar to his design where it appears obvious, with regard to the products contained in the list of goods, to apply the design to them.

Right of Prior User

Section 5

- (1) Design protection shall not have effect against a person who already at the time of filing had in good faith used a design identical or confusingly similar to the protected design in Austria on the priority date or had made the necessary arrangements for doing so (prior user).
- (2) A prior user may continue to use the design for those products concerned by such use for the needs of his own business in his own workshops or in those of others.
- (3) This right may be inherited or transferred only together with the business.
- (4) The prior user may require that the owner of the design give written recognition of his right. The recognized right shall be entered in the Design Register at the request of the prior user.
- (5) If recognition is refused, a decision thereon shall be taken by the Patent Office, on request, and, where appropriate, entry of the right in the Design Register shall be ordered.

Term of Protection

Section 6

Design protection shall begin on the day of publication (Section 17) of the design and shall expire five years after the end of the month in which the design was filed. It can be extended for two five-year periods on prompt payment of a renewal fee (Section 41). The new term of protection shall be calculated as from the end of the preceding term.

Right to Design Protection

Section 7

- (1) The right to design protection shall belong in principle to the creator of the design or to his successor in title.
- (2) However, where the design of an employee falls within the field of activity of the enterprise in which he is employed and if the activity that has led to the design forms part of the duties of the employee or if the design has been created not under an employment relationship but on a commission, the right to design protection shall belong, where not otherwise agreed, to the employer or the commissioner or his successor in title.

Naming as Creator of the Design

Section 8

- (1) The creator of a design shall be entitled to be named as the creator in the Design Register on publication in accordance with Section 17 and in the priority documents to be issued by the Patent Office.
- (2) The right may be neither assigned nor inherited. Renunciation of the right shall be without legal effect.
- (3) The request to be named as creator may be submitted by the creator of the design, by the applicant or by the owner of the design. Where more than one person is entitled, and the request is not submitted jointly by all entitled persons, the consent of the remaining entitled persons shall be proved. If a person is to be named as creator in addition to the person already named as creator or in place of such person, the consent of the person hitherto named as creator shall be proved.
- (4) Where the applicant, the owner of the design or the person already named as creator refuses his consent, the Patent Office shall decide, on request, as to the right to be named as creator. The creator shall be named in accordance with subsection (1) on the basis of the final decision admitting the request.

Relationship Between Several Owners

Section 9

The legal relationship between several owners of a design shall be governed by civil law. The right to permit third parties to use a protected design shall belong, in case of doubt, only to all owners jointly; however, each individual owner shall be entitled to take action against infringers of the design right.

Transfer

Section 10

- (1) The rights deriving from an application for a design and from the design right may be transferred with respect to all or single products in the list of goods as a whole or in conceptual shares.
- (2) Such rights shall not pass to the State (Section 760 of the General Civil Code [*Allgemeines Bundesgesetzbuch* (ABGB)]).

II. Filing Procedure and Design Register

Filing Offices

Section 11

- (1) Applications for protection of designs shall be filed with the Patent Office or with a Chamber of Commerce at which a Filing Office has been set up.
- (2) The Filing Offices of the Chambers of Commerce shall forward to the Patent Office on the first and sixteenth day of each month the designs that have been filed with them together with the submissions concerning priority declarations and priority corrections (Section 20(2)).

(3) Where a Chamber of Commerce has an interest in setting up its own Filing Office, it shall be established by means of an order. The procedure at the Filing Offices and the lists to be kept by such offices shall also be laid down by order, taking into consideration the public need for information as also optimum simplicity and practicality.

Formal Requirements of Filing

Section 12

(1) Applications shall be filed in writing. The filing date shall be the day of submission of the application to the Filing Office (Section 11(1)).

(2) The design shall be disclosed on filing by submitting a representation or a copy of the design. Where a copy of the design is submitted, a representation of the design shall also be furnished for publication (Section 17) and registration (Section 18(1), item 4) that shall reproduce the copy of the design as clearly as possible, but that shall not be taken into consideration for the disclosure.

(3) A description may be filed to explain the design.

(4) The products for which the design is intended shall be stated in the order of the sequence of classes and subclasses of the Locarno Agreement Establishing an International Classification for Industrial Designs, BGBl. No. 496/1990 (list of goods).

Section 13

Designs belonging to the same class may be grouped together in a multiple filing. A multiple filing may not contain more than 50 designs. However, the faculty afforded by Section 14 may only be availed of jointly for all designs comprised in a multiple filing.

Section 14

The copy and the representation of the design as also the description may be filed openly or in a sealed envelope (secret design). The envelope shall be opened:

1. at the request of the **applicant** of the design;
2. at the request of a third party if he proves that the **applicant** of the design has invoked the design with respect to him;
3. *ex officio* 18 months after the priority date of the design.

Section 15

The detailed requirements for the description and the list of goods, the number of copies thereof to be submitted and the number, nature and dimensions of the representations and copies of the design to be submitted shall be laid down by order of the President of the Patent Office, taking into consideration the requirements of the filing procedure, printing and publication of the design.

Examination for Compliance with the Law

Section 16

(1) The Patent Office shall examine each design application for compliance with the Law, on filing in the case of openly-submitted designs and following opening of the envelope (Section 14) in the case of designs submitted with a seal where not possible on filing. However, the filing procedure shall not comprise examination for novelty (Section 2), with respect to double protection (Section 3) or to ascertain whether the applicant has a right to design protection (Section 7).

(2) Where examination results in objections to registration of a design, the applicant shall be invited to comment thereon within a reasonable period of time. Where the inadmissibility of registration is ascertained following comments made in good time or after expiry of the time limit, the design application shall be rejected.

(3) Where there exist no objections to registration of a design, its publication (Section 17) and registration (Section 18) shall be ordered.

Publication of the Design

Section 17

The design shall be published in the Austrian Designs Gazette [*Österreichischer Musteranzeiger*] (Section 33). The content and scope of the publication of the design shall be determined by order of the President of the Patent Office, taking into consideration the public need for information.

Registration

Section 18

(1) The following particulars shall be entered on registration in the Design Register kept by the Patent Office:

1. the registration number;
2. the filing date and, where appropriate, any claimed priority;
3. the starting date of the term of protection (Section 6);
4. the representation of the design;
5. where appropriate, notice that a copy of the design or a description has also been submitted;
6. the products for which the design is intended (list of goods);
7. the name and address (registered offices) of the owner of the design and, where appropriate, his representative;
8. where appropriate, the person named as creator (Section 8).

(2) The owner of the design shall receive an official confirmation (design certificate) of entries in the Register in accordance with subsection (1).

(3) The Design Register may be inspected by any person. A certified extract from the Register shall be issued on request.

Priority

Section 19

The applicant shall obtain the priority right as of the day on which the application for a design is in order.

Section 20

(1) The priority rights afforded by Article 4 of the Paris Convention for the Protection of Industrial Property, BGBl. No. 399/1973, must be explicitly claimed. The date of the application whose priority is claimed and the country in which such application has been filed shall be stated (priority declaration). Additionally, the reference number of the application shall be given.

(2) The priority declaration shall be given within two months of filing of the application at the Patent Office or at the Filing Office at which the application was made. The claimed priority may be corrected within such period. Correction shall be subject to a fee amounting to half the filing fee (Section 40(1)1).

(3) Where maintenance of the design right depends on whether priority was rightfully claimed, the priority right is to be proven. Those documents required to furnish such proof (priority documents) in proceedings before the Patent Office and before the Supreme Patent and Trademark Chamber, and the times at which they are to be submitted, shall be laid down by order.

(4) If the priority declaration is not given in good time, the priority documents not submitted in good time or the reference number of the application whose priority is claimed is not provided within the time limit following an official invitation, the priority shall be determined by the filing date in Austria.

Entries in the Design Register

Section 21

There shall be entered in the Design Register, in addition to the particulars referred to in Section 18(1), the end of design protection, declarations of nullity, lack of title and transfer of design rights, liens and other rights *in rem* relating to design rights, licenses, rights of prior user, restoration of rights, decisions on requests for declarations, disputes, and references to decisions communicated in accordance with Section 36.

Section 22

(1) Rights *in rem* with respect to design rights and the design right itself in the event of a transfer (Section 10) shall be acquired on entry in the Design Register.

(2) The request for entry shall be accompanied by the document on the basis of which the entry is to be effected either in the original or a duly certified copy. If the document is not an official document, it must bear the duly certified signature of the person availing himself of his right.

(3) Legal disputes concerning design rights shall be entered in the Design Register on request (entries relating to disputes).

(4) Sections 43(2), (3), (4), (5), (7) (entry in the Patent Register), 44 (charges) and 45(2) (entries relating to disputes) of the Patent Law 1970, BGBl. No. 259,¹ shall apply *mutatis mutandis*.

(5) Subsection (2) and Section 43(5) and (7) of the Patent Law 1970 shall apply *mutatis mutandis* to the transfer of rights deriving from an application for a design.

III. Declaration of Nullity and Declaration of Lack of Title

Ex Officio Declaration of Nullity

Section 23

- (1) The Patent Office shall institute proceedings for the *ex officio* declaration of nullity of a design right if it transpires that a design is obviously not new (Section 2) or falls under the prohibition on double protection (Section 3).
- (2) The Patent Office shall declare the design right to be annulled if, after hearing the owner of the design, it continues to hold the circumstances that have led to institution of the proceedings under subsection (1) to obtain; if not, the proceedings shall be discontinued.
- (3) Where the grounds for nullity (subsection (1)) affect a part only of the list of goods, the list shall be correspondingly limited.
- (4) Final declaration of nullity shall have effect retroactively to the filing date of the design. If the design right is declared null and void for the reason that it falls under the prohibition on double protection (Section 3), the second sentence of Section 48(3) of the Patent Law 1970 shall apply *mutatis mutandis*.

Declaration of Nullity on Request

Section 24

Any person may request a declaration of nullity with respect to a design right if the design is not new (Section 2), falls under the prohibition on double protection (Section 3), is offensive or conflicts with public policy (Section 1(2)). Section 23(3) and (4) shall be of application.

Declaration of Lack of Title

Section 25

- (1) Any person who claims to be entitled to design protection for the products contained in the list of goods (Section 7) in lieu of the owner of the design or his legal predecessor, may submit a request that the owner of the design be declared to lack title to the design right and request transfer of the design right to himself. If transfer is not requested, design protection shall terminate when the decision declaring lack of title becomes final.
- (2) Where the grounds for lack of title (subsection (1)) affect a part of the list of goods only, the design right shall be terminated or transferred in part only.
- (3) A claim against a *bona fide* design owner shall become statute-barred three years from the date of entry in the Design Register. Section 49(4) and (7) of the Patent Law 1970 shall apply *mutatis mutandis*.

IV. Competence and Procedure

General

Section 26

(1) The Patent Office shall be responsible for taking decisions and performing other acts in matters of design protection except as otherwise stipulated by this Federal Law. Within the Patent Office, responsibility shall lie with the member of the Legal Section entrusted with such matters who is competent according to the distribution of responsibilities, except where they are the responsibility of the President, the Appeal Section or the Nullity Section.

(2) Sections 52 to 56, 57 (2), 57b, 58, 58a, 58b, 60, 61, 64, 66 to 69, 76(1), (4) and (5), 79, 82 to 86, 126 to 137 and 172a (1) of the Patent Law 1970 shall apply *mutatis mutandis*. The Legal Section shall also be the competent section within the meaning of Section 130(1) of the Patent Law 1970 where the omitted action should have been taken by a Chamber of Commerce.

Examiners

Section 27

(1) Employees who are not members of the Patent Office may be authorized, by order of the President of the Office, to handle business—whose nature shall be clearly defined—in the Legal Section, insofar as this is appropriate in view of the simplicity of the business and the training of such employees (examiners) affords a guarantee of orderly handling of the business. The examiners shall comply with the instructions of the responsible member of the Legal Section. That member may at any time reserve the handling of business for himself or take over business already being handled.

(2) Section 76(1), (4) and (5) of the Patent Law 1970 shall apply *mutatis mutandis* to examiners.

(3) Decisions by examiners may be appealed against in the same way as those of the responsible member of the Legal Section. The responsible member may himself allow the appeal; where it is held that the appeal should not be allowed or only allowed in part the appeal shall be filed with the Appeal Section.

Appeals

Section 28

(1) Decisions of the Legal Section shall be subject to appeal. The appeal shall contain a petition of appeal; it shall be lodged with the Patent Office within two months of the decision and the reasons shall be given at the latest within one month of expiry of that period.

(2) Appeals lodged within the time limit shall have suspensive effect. Appeals that are lodged too late shall be refused by the Legal Section. Unallowable appeals and appeals that do not satisfy the statutory requirements shall be rejected by the Appeal Section without proceedings; however, an appeal may not be rejected for formal defect unless the appellant has been unsuccessfully invited to remove the defect.

(3) The Appeal Section shall deliberate and take its decisions in boards consisting of three members, the chairman of which shall be a legally qualified member, together with a further legally qualified member and a technically qualified member.

(4) No ordinary appeal shall lie from decisions by the Appeal Section. However, review of preliminary decisions by the rapporteur and of interim decisions may be requested from the Appeal Section itself.

(5) In all other cases, Sections 71(2) and (4), 72 and 73 of the Patent Law 1970 shall apply *mutatis mutandis*.

Proceedings Before the Nullity Section and the Supreme Patent and Trademark Chamber

Section 29

(1) Petitions for the recognition of a right of prior user (Section 5(5)), naming as creator (Section 8(4)), declaration of nullity (Section 24), lack of title (Section 25) and declaration (Section 39) or *ex officio* declaration of nullity (Section 23) shall be heard by the Nullity Section represented by a legally qualified member.

(2) The Nullity Section shall hear the petitions and claims referred to in subsection (1), with the exception of the *ex officio* declaration of nullity, in application *mutatis mutandis* of Sections 112(2) to 114a, 116(2) to (5), 117 to 120 and 122 to 125 of the Patent Law 1970. Oral proceedings shall only be held if the responsible member deems them to be necessary or they are requested by one of the parties.

Section 30

(1) Appeal from final decisions by the Nullity Section shall lie to the Supreme Patent and Trademark Chamber. The appeal shall be lodged in writing with the Patent Office within two months of service of the decision. It shall contain a reasoned petition of appeal.

(2) Appeals lodged within the time limit shall have suspensive effect. Appeals lodged too late or appeals that do not contain a reasoned petition or are not corrected within the time limit given by the Nullity Section shall be rejected by the Nullity Section.

(3) The Supreme Patent and Trademark Chamber shall deliberate and take its decisions under the chairmanship of its President or—if he is unable to attend—of the Vice President in boards consisting of three members comprising the chairman, a legally qualified member and a technically qualified member. The boards shall be composed by the chairman in such a way that they contain at least one judge. The legally qualified member shall be the rapporteur; if necessary, the technically qualified member may be appointed joint-rapporteur.

(4) Preliminary decisions and interim decisions of the Nullity Section shall not be subject to separate appeal; however, a request for review may be filed with the Section itself. An appeal to the Supreme Patent and Trademark Chamber may only be lodged in those cases where they have influenced the final decision.

(5) In all other cases, Sections 74, 75(2), 138(4), 139(1), (2), (4) and (5) and 140 to 145 of the Patent Law 1970 shall apply *mutatis mutandis*.

Inspection of Files

Section 31

(1) Parties to proceedings shall be entitled to inspect the files relating to those proceedings.

(2) Any person may inspect files relating to published designs (Section 17).

- (3) Third parties may only inspect files concerning unpublished designs with the consent of the applicant. Such consent shall not be required by any person against whom the applicant has invoked his design application.
- (4) The right to inspect files shall also include the right to make copies thereof. Copies shall be certified by the Patent Office on request.
- (5) Information and official confirmation as to when, by whom and, where appropriate, by which representative a design has been filed, whether the filing is of a secret design, the serial number allocated to the application, the priority that has been claimed, the serial number of an application on which priority is based, the products for which the design is intended (the list of goods), the person named as creator, where appropriate, whether the application is still being processed and whether and to whom the rights in the application have been transferred, shall be provided to any person.
- (6) Records of deliberations and parts of files relating solely to internal business shall not be available for inspection.

Representation

Section 32

- (1) Anyone acting as a representative in design matters before a Chamber of Commerce, the Patent Office or the Supreme Patent and Trademark Chamber must have his domicile in Austria; **however, professional laws and regulations shall apply to attorneys at law, patent attorneys and notaries.** The representative shall evidence his authority by producing the original written power of attorney or a certified copy thereof. If several persons are authorized, each one of them may act individually as representative.
- (2) Where an attorney at law, a patent attorney or a notary public acts as representative, reference to the power of attorney issued to him may replace documentary proof. Power of attorney for the transfer of a design shall, however, be justified in each case by means of written powers that shall be duly certified.
- (3) Where a representative acts without power of attorney **or**, in the case of subsection (2), without making reference to the power of attorney issued to him, the procedural acts effected by him shall only have effect on condition that he submits the due power of attorney or refers to the power of attorney issued to him within the time limit stipulated to him.
- (4) **Persons having neither residence nor establishment in Austria may claim rights under this Federal Law before a Chamber of Commerce and before the Patent Office only if they have a representative, who fulfills the requirements of subsection (1). Such rights may only be asserted before the Appeal Section or the Nullity Section of the Patent Office or before the Supreme Patent and Trademark Chamber where such persons are represented by an attorney at law, patent attorney or notary public.**
- (5) **Where an attorney at law, patent attorney or notary public** has been authorized to act as a representative before the Patent Office, his power of attorney shall entitle him as of right to exercise all rights deriving from this Federal Law before a Chamber of Commerce, the Patent Office and the Supreme Patent and Trademark Chamber. In particular, he may file an application for a design, withdraw such applications, **waive published designs**, file and withdraw petitions or appeals to be dealt with by the Nullity Section, conclude settlements, accept service of documents of every kind, receive payment of official fees and of the cost of proceedings and representation from adverse parties and appoint a representative.

(6) The power of attorney under subsection (5) may be limited to a particular right or to representation in particular proceedings. The power of attorney shall not, however, expire on the death of the principal or as a result of a change in his legal capacity.

(7) If a representative other than an attorney at law, patent attorney or notary is to have also the power to waive a published design (Section 17), in whole or in part, he must be expressly authorized to do so.

Austrian Design Gazette

Section 33

The Patent Office shall publish a periodical official gazette of designs, in which, in particular, publications in accordance with Section 17, publications concerning expiry of design protection, concerning partial waiver, concerning changes to the designation of firms and the identity of the design owner and those publications to be effected in accordance with Section 26(2) in application, *mutatis mutandis*, of Sections 128 and 133(3) of the Patent Law of 1970.

V. Infringement of Design Rights and Applications for Declarations

Infringement of Design Rights

Section 34

Any person who has suffered an infringement of his design right may apply for injunction, removal, publication of judgment, appropriate compensation, damages, surrender of profit and rendering of accounts; any person who has reason to suspect such infringement may also apply for an injunction. Sections 147 to 154 of the Patent Law of 1970 shall apply *mutatis mutandis*.

Section 35

- (1) Any person who infringes a design right shall be condemned by the court to a fine of 360 daily amounts.
- (2) The same penalty shall be imposed on the owner or director of an enterprise who does not prevent the infringement of a design right by a person working for him or on his behalf in the course of the activities of the enterprise. Where the owner of the enterprise is a legal person, this provision shall apply to those organs of the enterprise that have committed such omission. The enterprise shall be jointly and equally liable with the guilty party for the fines inflicted on the organs.
- (3) Prosecution shall take place only at the request of the injured party.
- (4) In penal proceedings, Sections 148, 149 and 160 of the Patent Law 1970 shall apply *mutatis mutandis*.

Section 36

The court of first instance shall communicate to the Patent Office in respect of every judgment ruling on the validity or effectiveness of a design right a copy confirming that the decision is final, for attachment to the design files. A reference to such decision shall be entered in the Design Register (Section 21).

Section 37

Any person who designates products in such a way as to create the impression that they enjoy design protection shall be required, on request, to provide to any person information on the design right on which the designation is based.

Section 38

- (1) The Commercial Court of Vienna shall have exclusive jurisdiction for actions and injunctions under this Federal Law.
- (2) Jurisdiction in criminal matters under this Federal Law shall belong to the Vienna Provincial Court for Criminal Matters.

Requests for Declaration

Section 39

- (1) Any person who industrially manufactures, puts on the market, offers for sale or uses a product, or who intends to carry out such acts, may apply to the Patent Office for a declaration against the owner of a design right or of an exclusive license that the product is neither in whole or in part subject to the design right.
- (2) The owner of a protected design or of an exclusive license may apply to the Patent Office for a declaration against anyone who industrially manufactures, puts on the market, offers for sale or uses a product, or who intends to carry out such acts, that the product is subject in whole or in part to the design right.
- (3) Requests under subsections (1) and (2) shall be refused where the person opposing the request shows that infringement proceedings concerning the same design right and the same product, instituted prior to filing of the request for a declaration, are pending before a court or on which a final decision has been taken.
- (4) A request may only relate to a single design right. The request must be accompanied by a representation of the product in four copies: one copy shall be attached to the final decision.
- (5) Where the behavior of the opposing party has not given reason for the filing of the request and he has recognized the claim within the period of time stipulated for the countermemorandum, costs of proceeding shall be borne by the applicant.

VI. Fees

Fees to be Paid on Filing

Section 40

- (1) The following fees shall be paid on filing:

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1. Filing fee

(a) for a single filing € 43.-

- (b) for a multiple filing (Section 13) € 54.-
plus € 5.- for the 11th and each further design comprised in the application
2. Supplement for secret filing (Section 14): 50% of the filing fee payable
 3. Class fee for an individual filing for each class € 10.-
 4. Storage fee for three-dimensional designs for each copy of the design € 36.-
 5. Contribution to printing costs the amount of which is to be laid down by order (Section 43(1))

(2) The contribution to printing costs in accordance with subsection (1), item 5, shall be refunded if the application does not result in publication (Section 17).

Renewal Fee

Section 41

(1) The renewal fee for an individual design shall be € 65.- for the first extension of the term of protection and € 87.- for the second extension, for each design in a multiple filing it shall be € 21.- for the first extension of the term of protection and € 29.- for the second extension. The fee may be paid at the earliest one year before the end of the term of protection and at the latest six months after the end of such term. For each payment after the end of the term of protection, a supplement of 20% of the renewal fee shall be paid.

(2) Renewal fees may be paid by any person interested in the design.

Procedural Fees

Section 42

(1) The following procedural fees shall be payable:

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1. Appeal (Section 28) € 58.-
2. For each request to be dealt with by the Nullity Section (Section 29) € 188.-
3. Appeal (Section 30) € 290.-
4.
 - (a) Request for entry of a prior user right (Section 5(4)), for transfer *inter vivos* (Section 10), for entry of a license (Section 22(4)) or a transfer of license or for any other of the entries in the Design Register under Section 22(1) € 50.-
 - (b) Request for entry of a notice of dispute (Section 22(3)) € 21.-

(2) The fees under subsection (1) are to be paid for each filed or protected design that is the subject matter of a request or an appeal.

(3) The fees under subsection (1), items 1 and 3, shall be refunded if the appeal is essentially successful and if the proceedings have been conducted without an adverse party. Half of the fees laid down in subsection (1), **item 2 and 3, shall be refunded if the petition to be dealt with by the Nullity Division or** if the appeal is dismissed or the procedure terminated without a hearing. Half of the fees laid down in subsection (1), item 4, shall be refunded if the request is withdrawn before a decision is taken.

Special Fees

Section 43

(1) **Special fees for official publications, certifications, extracts from the Register, utility model certificates, priority documents and official certificates may be laid down by ordinance.** When determining the amount of the individual fees, which may not **exceed € 79.-**, account shall be taken of the labor and material required for the official activity. Where the amount of fees depends on the number of pages or sheets, Section 166(10) of the Patent Law 1970 shall apply *mutatis mutandis*.

(2) **Petitions for official publications and petitions which may be accepted only after official publication under this Federal Act shall be refused if the relevant fees or printing costs are not paid in time.**

Payment of Fees

Section 44

(1) Fees under this Federal Law shall be paid to the Patent Office.

(2) The method of payment of such fees and the type of justification of payment shall be laid down by order in which it shall be stipulated, in particular, when a payment is deemed to have been made in good time. The order shall take into account types of payment available other than payment in cash and also the need for simple and economical verification by the Patent Office.

(3) Where a design is filed with a Chamber of Commerce, the Patent Office shall transfer 50% of the filing fee paid to the Chamber concerned. The settlement shall be effected yearly.

VII. Final and Transitional Provisions

Section 45

The Federal Law provisions cited in this Federal Law shall be applied in their currently valid version.

Section 46

(1) This Federal Law shall enter into force on January 1, 1991.

(2) **Ordinances on the basis of this Federal Act as amended may be enacted at any day following the promulgation of the Federal Act to be implemented; they shall not become effective prior to the entering into force of the provision to be implemented.**

(3) The following shall cease to apply on entry into force of this Federal Law:

1. Design Law 1970, BGBl No. 261;
2. Order of the Federal Ministry for Trade and Reconstruction of November 11, 1959, on Certain Requirements for the Deposit of Designs, BGBl No. 255;
3. Order of the Federal Minister for Commerce, Trade and Industry of November 11, 1969, on the Establishment of Design Deposit Offices and the Justification of Priority Right (Design Order), BGBl No. 387.

(4) The statutory instruments repealed under subsection (3) shall nevertheless continue to apply to designs deposited prior to January 1, 1991.

(5) Section 40, subsection 1, section 41, subsection 1 and section 43, subsection 1 in the version of the Federal Act Federal Law Gazette I, No 143/2001 shall become effective on January 1, 2002.

Section 47

The following shall be responsible for implementation of this Federal Law:

1. with respect to Section 25(2), in conjunction with Section 49(4) of the Patent Law 1970 and with respect to Sections 34 to 38, in conjunction with Sections 148 to 154 and 160 of the Patent Law 1970, the Federal Minister for Justice;
2. with respect to Section 26(2), in conjunction with Section 126 of the Patent Law 1970, and with respect to Section 30(5), in conjunction with Section 74(2) and (3) of the Patent Law 1970, where the appointment of judges is concerned, the Federal Minister for Economic Affairs and the Federal Minister for Justice;
3. with respect to Section 43(1), the Federal Minister for Economic Affairs in consultation with the Federal Minister for Finance;
4. with respect to all other provisions of this Federal Law, the Federal Minister for Economic Affairs.