

Intellectual Asset Management

International reports



Upcoming changes to the Design Act

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14 Aug 2013

Unlike the EU Community Design Regulation, the German Design Act does not provide that a revocation request be filed with the German Patent and Trademark Office (GPTO). Rather, under the existing German system, a revocation action must be filed with a civil court. Upon the judgment of the civil court, the plaintiff may then request cancellation of the registration with the GPTO. This system is time consuming and costly, especially since each party must be represented by a lawyer before the civil court, and may also appoint a patent attorney as additional counsel.

To solve this problem, the new Design Act will provide that a revocation request be filed with the GPTO, a procedure comparable to the revocation process set out in the Community design system. The act is not yet in force but has been approved by Parliament. It is expected that this act will enter into force by the end of the year. The official fee will be €300 for each registered design.

The GPTO will forward the revocation request to the rights holder. The registered design will be revoked if the rights holder does not challenge the request within one month of receipt. Such procedure is well known from revocation requests filed against German utility models.

If the rights holder challenges the revocation request, the GPTO will decide in written proceedings, unless oral proceedings are requested by at least one of the parties. Decisions of the GPTO Revocation Division may be appealed to the Federal Patent Court.

Together with the new Design Act, the criminal punishment of trademark infringement will be increased if the infringement is committed commercially or by an organised criminal organisation or gang. In such case, the minimum punishment will be imprisonment of between three months and five years (instead of imprisonment for up to three years or a fine).

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