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## **Ordinance on the Protection of Designs (Designs Ordinance, DesO)**

of 8 March 2002 (Status as of 1 January 2022)

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*The Swiss Federal Council,*

on the basis of Articles 20 paragraph 2, 23 paragraph 2, 24 paragraphs 2 and 4, as well as 27 paragraphs 2 and 3 of the Federal Act of 5 October 2001<sup>1</sup> on the Protection of Designs (DesA)

and on Article 13 of the Federal Act of 24 March 1995<sup>2</sup> on the Statute and Tasks of the Swiss Federal Institute of Intellectual Property,<sup>3</sup>

*ordains:*

### **Chapter 1    General Provisions**

#### **Art. 1            Responsibility**

<sup>1</sup> The Swiss Federal Institute of Intellectual Property (IPI)<sup>4</sup> is responsible for carrying out the administrative duties stipulated in the DesA<sup>5</sup> and this Ordinance.

<sup>2</sup> The Federal Office for Customs and Border Security FOCBS<sup>6</sup> is responsible for enforcing Articles 46–49 DesA and Articles 37–40 of this Ordinance.

#### **Art. 2            Time limits**

If a time limit is calculated in months or years, it shall end in the final month on the same date of the month as the date on which it started. If there is no such date, the time limit shall end on the final day of the final month.

AS 2002 1122

<sup>1</sup> SR 232.12

<sup>2</sup> SR 172.010.31

<sup>3</sup> Amended by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS 2016 4833).

<sup>4</sup> The name of this administrative unit was amended in application of Art. 16 para. 3 of the Publications Ordinance of 17 Nov. 2004 (AS 2004 4937). This amendment has been made throughout the text.

<sup>5</sup> Expression in accordance with No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS 2016 4833). This amendment has been made throughout the text.

<sup>6</sup> The name of this administrative unit was amended on 1 Jan. 2022 in application of Art. 20 para. 2 of the Publications Ordinance of 7 Oct. 2015 (SR 170.512.1) (AS 2021 589). This amendment has been made throughout the text.

**Art. 3** Language

<sup>1</sup> Submissions to the IPI must be written in an official Swiss language.

<sup>1bis</sup> The official language chosen by the applicant at the time of filing is the language of the procedure.<sup>7</sup>

<sup>2</sup> Where official documents of evidence are not written in an official language, the IPI may request a translation and a certificate confirming its accuracy. If the translation or certificate is not submitted despite being requested, the document of evidence will not be taken into account.

**Art. 4<sup>8</sup>** Several applicants or owners of a design

<sup>1</sup> Where several persons apply to register a design or hold the right to a design (right holder), they must either designate one of them to whom the IPI may send all communications with effect for all of them, or they must appoint a joint representative.

<sup>2</sup> If neither of these conditions have been met, the IPI shall designate a recipient in accordance with paragraph 1. If one of the other persons objects, the IPI shall request that all parties act in accordance with paragraph 1.

**Art. 5<sup>9</sup>** Power of attorney

<sup>1</sup> If an applicant or right holder is represented before the IPI, the IPI may request a written power of attorney.

<sup>2</sup> Any person who has been authorised by the applicant or right holder to submit all declarations provided for in the DesA or in this Ordinance to the IPI and to receive communications from the IPI on their behalf shall be entered in the Register as a representative in accordance with Article 25. If the IPI is not explicitly notified of any restriction to the power of attorney, it is deemed comprehensive.

**Art. 6** Signature

<sup>1</sup> Submissions must be signed.

<sup>2</sup> If a valid signature is missing from a submission, the original date on which it was submitted shall be recognised provided that a signed submission identical in content is subsequently submitted within one month of a request from the IPI.

<sup>3</sup> The application for registration does not have to be signed. The IPI may designate other documents that do not require a signature.

**Art. 6a<sup>10</sup>** Proof

<sup>1</sup> The IPI may request proof where it has reasonable doubt concerning the accuracy of a submission.

<sup>7</sup> Inserted by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

<sup>8</sup> Amended by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

<sup>9</sup> Amended by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

<sup>10</sup> Inserted by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

<sup>2</sup> The IPI shall disclose the reasons for its doubt, provide an opportunity to respond, and set a time limit for the submission of proof.

**Art. 7<sup>11</sup>**            Electronic communication

<sup>1</sup> The IPI may authorise electronic communication.

<sup>2</sup> It shall determine the technical details and publish them in an appropriate manner.

## **Chapter 2    Filing and Registration**

### **Section 1    Registration Procedure**

**Art. 8<sup>12</sup>**            Filing

<sup>1</sup> The official form or a form approved by the IPI must be used for filing the application for registration.

<sup>2</sup> If an application is filed that is otherwise formally valid and contains all the information required, the IPI may waive the requirement to submit the form.

**Art. 9**                Application for registration

<sup>1</sup> The application for registration shall include:

- a. the application to register the design;
- b. the surname and first name or the company name and the address of the applicant;
- c. the number of designs included in the filing;
- d. a reference number for each filed design;
- e. at least one representation of each filed design;
- f. information about the products for which the designs are to be used;
- g.<sup>13</sup> the surname, first name and domicile of the persons who created the design.

<sup>2</sup> The application for registration must be supplemented, where applicable, with the following:

- a.<sup>14</sup> the address for service of the applicant in Switzerland;
- a<sup>bis</sup>,<sup>15</sup> in the case of two or more applicants, the designation of the recipient in accordance with Article 4 paragraph 1 and their address for service where applicable;

<sup>11</sup> Amended by No I of the O of 3 Dec. 2004, in force since 1 Jan. 2005 (AS **2004** 5023).

<sup>12</sup> Amended by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

<sup>13</sup> Amended by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

<sup>14</sup> Amended by No I of the O of 11 May 2011, in force since 1 July 2011 (AS **2011** 2245).

<sup>15</sup> Inserted by No I of the O of 11 May 2011 (AS **2011** 2245). Amended by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

ater.<sup>16</sup> the name and address of the representative, where applicable, and their address for service in Switzerland;

- b. the declaration of priority in accordance with Article 23 of the DesA;
- c. the application for deferment of publication in accordance with Article 26 paragraph 1 of the DesA;
- d. a description of the design in up to 100 words in accordance with Article 19 paragraph 4 of the DesA; the text must be machine-readable.

<sup>3</sup> If a deferment of publication is requested for a two-dimensional design in accordance with Article 26 of the DesA, a specimen of the design may be submitted in lieu of a representation (Art. 19 para. 3 DesA).

<sup>4</sup> The representations shall be released for publication five working days after receipt of the application for registration provided that the IPI has not received an application for deferment of publication by that date.

**Art. 10** Requirements for representations of the design and dimensions of a multiple application

<sup>1</sup> The representations of the design must be suitable for reproduction.

<sup>2</sup> A multiple application must not weigh more than 5 kg and may not exceed dimensions of 30cm in any direction, irrespective of the number of designs filed within the application.

**Art. 11** Declaration of priority and priority document

<sup>1</sup> The declaration of priority within the meaning of the Paris Convention of 20 March 1883<sup>17</sup> for the Protection of Industrial Property shall include the following information:

- a. the date of the first filing;
- b. the country in which the first filing was made;
- c. the countries for which the first filing was made.

<sup>2</sup> The declaration of priority may relate to multiple first filings.

<sup>3</sup> The priority document consists of a certificate of the first filing from the competent authority indicating the filing or registration number of the design. It may be submitted in English.

**Art. 12** Lapse of right to priority

The right to priority shall lapse where:

- a. the declaration of priority is not made at the time of filing the design;
- b. the priority document is not submitted within the time limit set by the IPI.

<sup>16</sup> Inserted by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS 2016 4833).

<sup>17</sup> SR 0.232.01, 0.232.02, 0.232.03, 0.232.04

**Art. 13<sup>18</sup>** Priority document for Swiss first filings

The IPI will prepare a priority document for a Swiss first filing on request.

**Art. 14<sup>19</sup>** Submission date for postal items

For postal items, the submission date is the date on which the item is delivered by Swiss Post to the IPI.

**Art. 15** Formality examination

<sup>1</sup> If the application for registration does not fulfil the formal requirements of Article 19 paragraph 1 and Article 20 of the DesA, as well as Article 9 and 10 of this Ordinance, the IPI shall set a time limit for the applicant to complete or correct the application.

<sup>2</sup> If the applicant does not remedy the deficiency within the time limit, the IPI shall dismiss the application for registration in its entirety or in part.

**Art. 16** Substantive examination

<sup>1</sup> If there are grounds for refusal as defined in Article 4 letters a, d or e of the DesA, the IPI shall set a time limit for the applicant to remedy the deficiency.

<sup>2</sup> If the applicant does not remedy the deficiency within the time limit, the IPI shall refuse the application for registration in its entirety or in part. The IPI may set further time limits in exceptional cases.<sup>20</sup>

**Art. 17** Registration fee

<sup>1</sup> The registration fee must be paid within the time limit set by the IPI (Art. 19 para. 2 DesA).

<sup>2</sup> The registration fee consists of:

- a. the basic fee;
- b. the publication fee, where applicable;
- c. and d.<sup>21</sup> ...

<sup>3</sup> ...<sup>22</sup>

<sup>4</sup> If the registration is to be published after expiry of the deferment period, the publication fee must be paid prior to publication.<sup>23</sup>

<sup>18</sup> Amended by No I of the O of 18 Oct. 2006, in force since 1 Jan. 2007 (AS **2006** 4481).

<sup>19</sup> Amended by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

<sup>20</sup> Amended by No I of the O of 2 Dec. 2016, in force since 1 Jan. 2017 (AS **2016** 4833).

<sup>21</sup> Repealed by No I of the O of 18 Oct. 2006, with effect from 1 Jan. 2007 (AS **2006** 4481).

<sup>22</sup> Repealed by No I of the O of 18 Oct. 2006, with effect from 1 Jan. 2007 (AS **2006** 4481).

<sup>23</sup> Amended by No I of the O of 18 Oct. 2006, in force since 1 Jan. 2007 (AS **2006** 4481).