

# Portugal

Contributing firm  
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## **Legal framework**

The legislation applicable to designs is:

- Decree-Law 143/2008, which amended the Industrial Property Code (36/2003);
- Law 16/2008, which implemented the EU IP Rights Enforcement Directive (2004/48/EC);
- Decree-Law 15/95, which governs improvements to the organisation and administrative procedures of the Institute of Industrial Property and the official patent and trademark agent profession; and
- the EU Community Designs Regulation (6/2002), which applies to registered and unregistered Community designs.

A Portuguese design or model application is examined for formal requirements only. If no irregularities exist or if these are subsequently corrected, the application is published in the *Industrial Property Bulletin* for the purpose of opposition by third parties which consider themselves prejudiced by grant of the registration.

When an objection is filed, substantive examination is conducted based on the novelty and individual character requirements, among others.

## **Unregistered designs**

Portuguese law contains no specific provisions on unregistered designs.

Unregistered Community designs, as defined in the EU Community Designs Regulation, are enforceable in Portugal.

## **Registered designs**

The right of registration belongs to the creator of the design or his or her successors in title. Where a design or model is co-created by two or more persons, any one of them may apply for registration on behalf of them all.

Registration of a design or model is possible if the novelty and individual character requirements are met. It is possible to register industrial designs which, while not being entirely new, form a new combination of known elements in such a way as to confer individual character on their combination.

A design incorporated in a product

constituting a component of a complex product is considered to be new and to have individual character if it fulfils all of the following criteria:

- It can reasonably be expected that, after being incorporated into the complex product, the component will continue to be visible during normal use of the complex product; and
- The visible characteristics of the component meet the novelty and individual character requirements.

The following are not protected by registration:

- The visible characteristics of a product resulting exclusively from its technical function; and
- The characteristics of the appearance of a product that must necessarily be reproduced in their exact form and dimensions to allow the product into which the industrial model or design is incorporated to be mechanically connected to another product, in order for both to perform their function.

Non-prejudicial disclosures are provided for in the Industrial Property Code, under which the design or model to be registered will not be considered to have been disclosed if it was disclosed by the creator or his or her successor, or by a third party following information provided or measures taken by the creator or his or her successor, in the 12 months preceding the submission of a registration application or the priority date, if claimed. This also applies if a design or model has been disclosed to the public as a result of an abuse of the rights of the creator or his or her successor.

However, an applicant wishing to benefit from the above-mentioned provisions shall, when submitting the application or within one month thereafter, indicate the date and place where the disclosure or exhibition took place, and submit a probative document showing such date and reproducing the products in which the design or model was incorporated or to which it was applied.

On the other hand, an applicant which has exhibited products in which the design or model was incorporated or to which it was applied, at an official or officially recognised international exhibition falling within

the scope of the Convention Relating to International Exhibitions, may claim priority as of that date, if it submits the application within six months of the date of the first exhibition of these products.

An applicant that wishes to claim priority under the above-mentioned circumstances must, when submitting the application or within one month thereafter, submit a certificate issued by the exhibition organiser showing the date of first public disclosure and reproducing the products in which the design or model was incorporated or to which it was applied.

Directive 98/71/EC on the legal protection of designs was amended in 2007, but Portuguese law has not been harmonised with it as yet; thus, Portuguese design registrations extend protection to the spare parts of a complex product.

The cost of filing a design or model registration (up to five objects), including the fee for the first five-year period and publication fee, is approximately €500.

## Procedures

### Application

Applications must include the following details:

- the applicant's name, nationality and address;
- the products to which the design or model will be applied, using the Locarno Classification;
- a graphic or photographic representation of the design or model for publication purposes;
- the country in which the basic application was filed and the filing date and number, if the applicant wishes to claim priority;
- the creator's name and country of residence;
- a description of the model or design (not mandatory) of fewer than 50 words per product, referring only to the elements appearing in the representations of the design or model or the displayed sample, omitting references to possible novelty, the unique character or the technical value of the design or model;
- colours, if claimed; and
- a power of attorney signed by the applicant. No power of attorney is required if the application is filed by an official industrial property agent, lawyer or solicitor.

### Priority

According to the Paris Convention, a six-month

priority right is available for industrial models and designs.

### Multiple applications

A maximum of 100 designs or models can be included in a single registration, provided that they belong to the same Locarno class. Each of the designs or models included in a multiple application or registration may be separated or assigned individually.

### Territory

Designs are valid in Portugal (including the Azores and Madeira Islands).

### Provisional protection

No provisional protection is contemplated in the IP Code in relation to designs or models.

### Formal examination

Formal examination is conducted before publication; if deficiencies are noted, the applicant is invited to remedy them.

### Publication

Once an application has been filed (in either its original form or a revised version), it shall be published in the *Industrial Property Bulletin* – including a reproduction of the design or model, a transcript of the description (if any) and the relevant Locarno classes – for opposition by anyone that may feel prejudiced by the possible grant of the registration. The applicant may request postponement of the publication for a period not exceeding 30 months commencing from the application filing date or priority date.

Publication occurs within six months of the application date, unless the applicant has filed a request for postponement of the publication. Full copies of documents can be requested after publication.

### Opposition

Parties which consider themselves prejudiced by grant of the design or model can file an opposition within two months of publication in the *Industrial Property Bulletin*. These proceedings can be continued by the applicant by lodging a reply after notification.

Substantive examination (novelty, individual character) is conducted only if an

opposition is filed, and taking into account the arguments invoked by the opponent.

### Appeal

Any of the parties can appeal an Institute of Industrial Property decision to the Intellectual Property Court or the Arbitration Centre for Industrial Property, Domain Names, Companies and Designations within two months of publication of the decision of grant or refusal. Appeal decisions can subsequently be appealed to the Lisbon second-instance court.

### Enforcement

Registration is valid for five years from the application date, renewable for equal periods up to a maximum of 25 years.

Once registered, designs or models must remain unchanged for the period for which the registration is in effect.

While a registration is in effect, its holder may use the expression 'design or model no' or the abbreviation 'DM no' on the relevant products.

The scope of protection conferred by registration shall cover all designs or models that do not create a different overall impression in an informed user. In determining the scope of protection, the degree of freedom afforded to the creator should be taken into account.

Registration of a design or model confers on its holder the exclusive right to use it and to prohibit its unauthorised use by third parties. Such use specifically covers the manufacture, offer, commercialisation, import, export or use of a product in which the design or model has been incorporated or to which it has been applied, and the storage of such product for the same purposes.

A legal enforcement action can be initiated at any time during the validity period of the design or model, and takes up to two years at first instance.

The registration of a design or model can be annulled if the novelty and distinctive character requirements, among others, have not been met.

### Ownership changes and rights transfers

The rights resulting from designs or models can be totally or partially transferred either free of charge or against payment.

A transfer between living persons shall be

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evidenced by a written document. However, if an annotation of the transfer is requested by the transferring party, the recipient must also sign a document proving such transfer or make a statement accepting the transfer.

Designs or models may be subject to a total or partial exploitation licence, either free of charge or in return for payment, in a certain territory or throughout the country, for its entire duration or for a specific period.

Licence contracts must be drawn up in writing.

Unless otherwise expressly stipulated, for all legal purposes, a licensee enjoys the same benefits as the rights holder, with the following exceptions:

- A licence shall be understood to be non-exclusive, unless otherwise stipulated.
- Under an exclusive licence, the rights holder renounces the faculty to grant other licences for the rights covered by the licence while it remains in effect.
- The grant of an exclusive exploitation licence does not prevent the rights holder from also directly exploiting the right to which the licence relates, unless otherwise stipulated.
- Unless otherwise stipulated, a right obtained in an exploitation licence cannot be transferred without the rights holder's written consent.
- If the licensing agreement does not specifically provide for the grant of sub-licences, such sub-licences may be granted only with the rights holder's written authorisation.

### **Related rights**

Portuguese law establishes that any registered design or model also enjoys copyright protection, as of the date on which the design or model was created or defined in any form.

Overlap between design rights and trademarks is common, as Portuguese legislation provides that a trademark may consist of a sign or set of signs that can be represented graphically, (ie, drawings, the shape of a product or its packaging), provided that they adequately distinguish the products and services of one party from those of others. [WTR](#)

Contributor profiles  
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Jorge Faustino has a degree in mechanical engineering from the *Instituto Superior de Engenharia de Lisboa*.

He is a patent and trademark attorney in the patents and designs department at Raul César Ferreira (Herd), SA, advising on registration and administrative procedures, assignments, protection and prosecution of IP rights, technical analysis of patentability, validity and infringement, state-of-the-art searches and drafting of patent applications and utility models.

Mr Faustino is fluent in English, French and Portuguese. He is a member of the Portuguese Association of IP Consultants and the International Federation of IP Attorneys.