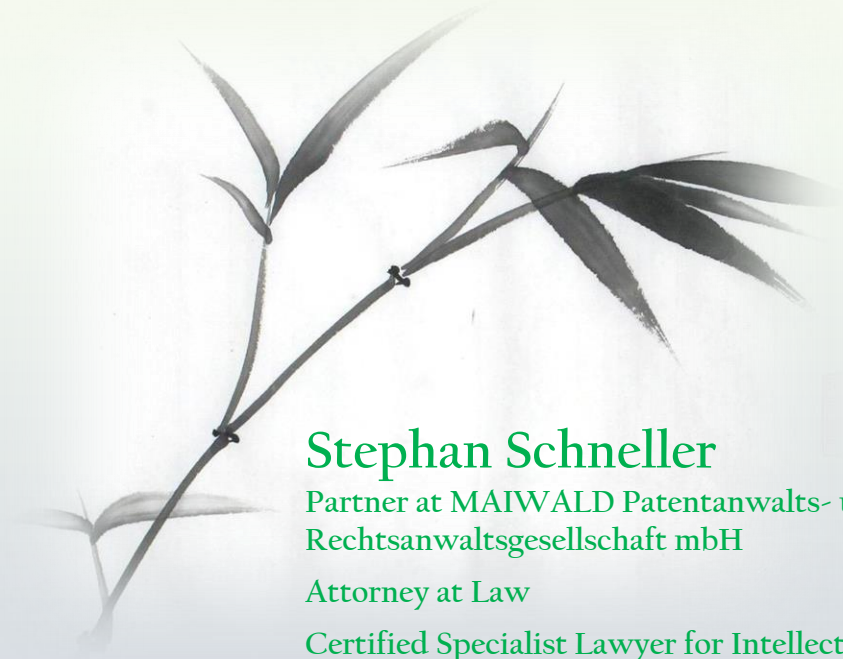


**XXXIX** **abpi**  
**2019**  
INTERNATIONAL CONGRESS ON  
INTELLECTUAL PROPERTY | ABPI

**25|27**  
AUGUST  
**RIO | BRAZIL**



┌ **Contemporary Themes on Industrial Designs:**  
*protection of dynamic graphic interfaces and  
the partial protection of objects*  
*Europe and Germany*



**Stephan Schneller**

Partner at MAIWALD Patentanwalts- und  
Rechtsanwalts-gesellschaft mbH

Attorney at Law

Certified Specialist Lawyer for Intellectual Property

ggg



# ┌ Contemporary Themes on Industrial Designs: *protection of dynamic graphic interfaces and the partial protection of objects* *Europe and Germany*



1. Protection of dynamic graphic user interfaces



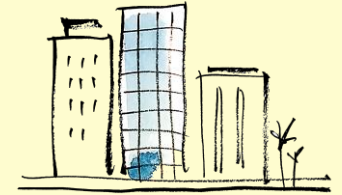
2. Functionality of designs



3. Broken lines in design applications

# Contemporary Themes on Industrial Designs

## 1. Protection of dynamic graphic user interfaces (dGUIs)



**no protection right sui generis → different aspects of dGUIs can be protected under different IP rights**

- **patents:**

- technical aspects, Art. 52 II, III EPV, § 1 I German Patent Act (PatG) (e. g. slide-to-unlock-mechanism)*

- **designs:**

- *movements, screen transitions, icons, slide buttons, § 1 German Act on the Legal Protection of Designs (DesignG)*
  - *EU Directive 98/17/EC, Community Design Regulation*
  - *→ animated designs must be represented in snapshots/ stills*
  - *→ each still enjoys protection on its own ("what you see is what you get")*

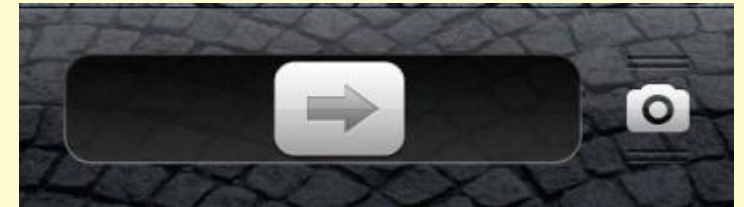
- **copyright:**

- *program code, § 69a UrhG*
  - *movements / screen transitions, Art. 2 I, II UrhG → a human creative act is necessary*

- **trademarks:**

- *distinctive & non-descriptive, Art. 3 I, 8 German Act on the Protection of Trade Marks and other Signs (MarkenG)*
  - *Art. 4, 7 European Trade Mark Regulation*
    - precise stills and a detailed textual description are necessary for registration*
    - (e. g. Windows or SONY start screens)*

- **competition law**



<https://www.faz.net/aktuell/wirtschaft/recht-steuern/bgh-urteil-zum-apple-patent-slide-to-unlock-ep1964022-13768753/dieser-wisch-ist-nicht-mehr-12138308.html>

# Contemporary Themes on Industrial Designs

## 2. Functionality of designs



- no protection if the essential features of the design are dictated by function, Art 8 I CDR, § 3 I 1 DesignG
- functionality can be determined by:
  - I. multiplicity-of-forms-test: favored by German Courts
  - II. no-aesthetic-consideration-test: favored by the Third Board of Appeal of the EUIPO
  - III. important court cases:



<https://www.inta.org/Search/SearchResults.aspx?k=nontraditional%20marks>



[https://www.ippt.eu/sites/default/files/2018/IPPT20180308\\_CJEU\\_Doceram\\_v\\_CeramTec.pdf](https://www.ippt.eu/sites/default/files/2018/IPPT20180308_CJEU_Doceram_v_CeramTec.pdf)

➤ Philips vs. Remington, C-299/99:

*„if it is established that the essential functional features of that shape are attributable only to the technical result. [...] cannot be overcome by establishing that there are other shapes which allow the same technical result to be obtained.”*

➤ DOCERAM vs. CeramTec, C-395/16:

*“to determine whether the features of appearance of a product are exclusively dictated by its technical function, it must be established that the technical function is the only factor which determined those features, the existence of alternative designs not being decisive in that regard. [...] in order to determine whether the relevant features of appearance of a product are solely dictated by its technical function, [...] the court must take account of all the objective circumstances relevant to each individual case.”*

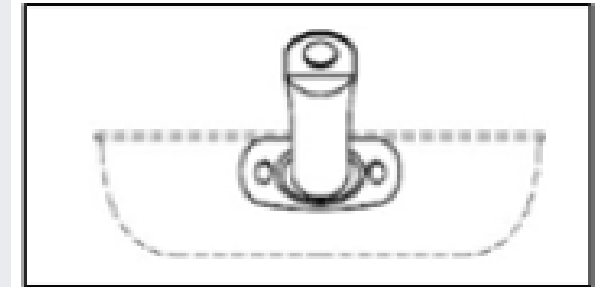
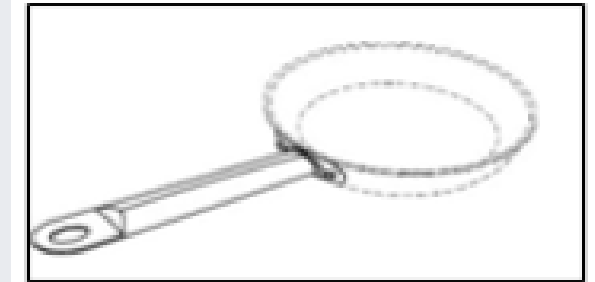
- declared invalid if the design is mainly functional, § 33 I DesignG

# Contemporary Themes on Industrial Designs

## 3. Broken lines in design applications



- German/ European law:
  - design protection can be granted for the whole product or just a part of it
  - unprotected part needs to be clearly marked by:
    - I. broken lines (= the recommended form of visual disclaimers) as a visual disclaimer for unprotected parts of a product
    - II. alternatives to broken lines: colour shading, boundaries



RCD No. 002322644-0001 (07.02) (pan handles) Owner: ACTERVIS, GMBH



RCD No. 000910146-0004 (12.08) (Automobiles (part of-)) Owner: TOYOTA MOTOR CORPORATION



RCD No. 001873688-0003 (02.04) (soles for footwear) Owner: Mjartan s.r.o.



CP6 Example (12.16) (Air-intake grilles for vehicles)

# Contemporary Themes on Industrial Designs

## 3. Broken lines in design applications

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- Brazilian law:  
no use of broken lines
- possible solutions:
  - German/ European design applications could use another form of visual disclaimer  
→ e. g. color shading, boundaries
  - whole product could be represented in solid lines  
→ problems in infringement proceedings ?
  - only the part of a product could be represented in the application, which is intended for protection  
→ conflict under the Brazilian definition of „single-piece-article“ ?

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Thank you  
very much!

Any  
questions?

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Contact *Stephan Schneller:*  
[schneller@maiwald.eu](mailto:schneller@maiwald.eu)

