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Term for U.S. design patents is now 15 years

By Richard Mescher on February 21st, 2014

You may have just recovered from all the patent law changes that have occurred since passage of the America Invents Act (AIA) a couple of years ago, but we now have a new wave of changes prompted by the Patent Law Treaties Implementation Act of 2012 (PLTIA), which became effective Dec.18, 2013. The PLTIA implements both the Patent Law Treaty and the Hague Agreement Concerning the International Deposit of Industrial Designs.

The PLTIA changes the term for U.S. design patents from 14 years after issuance to 15 years after issuance for all design patents granted from applications filed on or after Dec. 18, 2013. Design patents continue to have no requirement for maintenance fees, and the term for utility patents remains 20 years from the earliest U.S. filing date. You may recall that a design patent covers the ornamental design of an article of manufacture, such as product shape, while a utility patent covers useful, functional features of a process, machine, article of manufacture, or composition of matter.

This change is of particular interest to entities in the technology industry because design patents have increasingly become a focus of their IP protection activities in recent years. This surge in interest was at least partly prompted by the “smartphone patent wars” in which Apple Inc. obtained a judgment of more than $1 billion (later reduced to $290 million) in damages against Samsung Electronics Co., Ltd. for patent infringement of both U.S. utility and design patents. The judgment was partly based on a jury’s finding that the thin, rectangular, rounded-corner design of various Samsung Galaxy devices infringed Apple’s design patent.

Other changes stemming from the implementation of the Patent Law Treaty also have gone into effect and generally harmonize U.S. patent application filing formalities with other signatory countries. Final rules implementing the Patent Law Treaty were published Oct. 21, 2013, and apply to all patents and pending applications except patents involved in litigation initiated before Dec. 18, 2013. The changes include:

1. Allowing unintentional delay to restore priority claims from previously filed provisional applications and foreign applications;
2. Eliminating unavoidable delay as a ground to revive an abandoned application, to accept a delayed maintenance fee payment, or to accept a response in a reexamination proceeding;
3. Now having fewer filing date requirements for non-provisional patent applications; and
4. Eliminating patent term adjustment for non-compliant applications.

Further changes arising from implementation of the Hague Agreement are moving at a slower pace. Proposed rules were published Nov. 29, 2013, and the comment period closed Feb. 4, 2014. Final rules for these changes are expected in the coming months. The expected changes include:

1. Allowing a single international design application to be filed at the U.S. Patent and Trademark Office (USPTO), which may designate the U.S. and any of more than 60 other jurisdictions, rather than filing separate design applications at each of the jurisdictions;

2. Allowing the international design application to include up to 100 designs belonging to the same class; and
3. Creating provisional damage rights based on publication of the international design application.

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