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## New Design Patent Term and Other Upcoming Changes to U.S. Patent Law

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In the wake of recent patent reform, U.S. patent law will undergo some additional changes on December 18, 2013. These changes extend design patent term to 15 years and provide applicants some procedural safety nets that may impact filing and prosecution strategies for both utility and design patent applicants.

Specifically, new rules\* adopted by the United States Patent and Trademark Office ("USPTO") include the following key provisions, for which additional details are provided below:

- i) extending design patent term to 15 years from the previous term of 14 years;
- ii) allowing unintentional delay for late claims of priority;
- iii) adopting a single standard to revive abandoned applications or lapsed patents;
- iv) easing application requirements to receive a filing date; and
- v) reducing patent term extensions for non-compliant applications.

### I. 15 Year Term for Design Patents

According to the new rules, U.S. design patent applications filed on or after December 18, 2013 will receive an extended term of 15 years upon issuance, adding one year to the previous term of 14 years. This 15 year term will apply to all design patent applications, including continuation applications and design patent applications that claim priority to international design applications. Also, consistent with the current design patent law, the 15 year term will not require payment of maintenance fees to receive the benefit to of the entire term. Ultimately, the 15 year term will place U.S. design protection in closer conformity with other countries for purposes of implementing procedures for U.S. applicants to apply for international design patents in the near future. We will provide information on these procedures as they become available.

### II. Allowing Unintentional Delay to Restore Priority Claims

The new rules also provide an applicant with some deference for unintentional delay in claiming priority to a previously filed provisional application or a foreign application. The rules previously set a hardline rule that an applicant cannot claim priority to a provisional or foreign patent application beyond 12 months from the filing date (6 months for design applications). However, these new rules make an exception to allow an applicant to petition to extend the deadline by 2 months, if the delay is unintentional. The USPTO currently provides that "delay resulting from a deliberately chosen course of action on the part of the applicant is not an 'unintentional' delay." The USPTO also warns that abusing this petition of delay as an extension of time will likely be considered inequitable conduct, effectively invalidating the underlying patent.

### III. Eliminating Unavoidable Delay for Revival and Late Action

Currently, delay by an applicant or a patent owner in different situations requires either a

