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## Comment 2 (full text)

Publication of design patents and provisional protection provided by the Hague Agreement are important provisions. Pre-grant publication of applications should be open and transparent like utility patent applications, which are published 18 months after filing. Through publication, advancements are made public earlier than at issuance and competitors can design around inventions, spurring innovation. Through publication, provisional rights to damages will begin to accrue from the publication date. This will enable the patent owner to collect royalties for infringement if infringement occurs after publication but before the patent issues. This should serve as an added deterrent to potential infringers. Hopefully the Hague Agreement will have an effect on the U.S. design patent laws. U.S. lawmakers should consider adopting these provisions in the U.S. design patent application process.

I wonder, however, why the design patent term is calculated from grant of the patent rather than from the filing date of the application. In the U.S., prior to 1995, the term of a utility patent was 17 years from the date of issuance of the patent. This term, however, led to abuse. Specifically, patents known as “submarine patents” would be prosecuted for extended periods of time, hiding out in the Patent Office until the optimum moment to issue through the use of the continuation application process, all the while, being amended to cover competing technologies. To curb this tactic, the U.S. patent laws were amended to change the term of a utility patent to 20 years from the date of filing of the application. Further, this provision placed the U.S. in conformity with TRIPS. To avoid similar abuses, drafters of The Hague Agreement should consider amending the design patent term from 15 years from issuance of the patent to a term calculated from the date of filing the application.

3<sup>RD</sup> Comment Attached.