

ID5 Project Proposal

Title: **Deferment of Publication of Industrial Designs**
Lead Office USPTO & KIPO
Introduced ID5 Annual Meeting (October 30, 2020)

Background

Since design is about the aesthetic appearance, not the function of an item or the way it works, it is easily imitated or stolen by others as soon as seen and is quickly in fashion. If the registered design (or application design) is published before the product sale, counterfeit goods by others might be distributed on the market before the design right holder commercializes them, which may cause jumping irrecoverable damages. In terms of sales strategy, therefore, it may be necessary to adjust the timing of design publication according to the point of the product sale.

Many jurisdictions provide a system that allows protecting the design by not publishing the contents of the registration design (or application design) during the product preparation period according to the design management strategy and control the timing of publication of registered designs.

On the other hand, since each jurisdiction has a different method of delaying publication, applicants need to understand the system of each country well and establish a design publication strategy. Therefore, this project is intended to help users to establish a strategy for design application and registration by thoroughly examining the design publication deferment system in each country.

Project Definition

This project compares the provisions and practices of the ID5 Partner Offices and the Hague System regarding specific tools and legal effects that can postpone the publication of designs and restrictions on enforcement of the rights under the unpublished condition.

How the applicant decides when to publish the design varies by jurisdiction: Deferment of initiation of examination at the application stage, deferment of publication after registration, providing predictable examination period provided by the office. In this project, we take into account all the methods that can delay the aforementioned publication of industrial design applications or industrial design rights.

The purpose of this catalogue is to promote users' understanding of each jurisdiction's design publication deferment system and use it in design management strategies.

Project Scope

In scope:

- Establishment of research structure to perform the comparison of design publication deferment related legislations and practices
- Preparation of research draft based on inputs from the Partners
- Prepare the final report of the study to the 2021 annual meeting
- Publication of research results for users on the ID5 website

Out of scope:

- This project is intended to collect the current status of Partner practice in this area and does not seek to involve input of external users.
- The project does not aim to make proposals for legal amendments of the legislations of the Partners.

Desired Outcome

A Catalogue of the legislations and practices of the Partners and the Hague system on specific methods to delay the publication of industrial design applications or industrial design rights

Expected Resources

The leading office plans to be in charge of all the required resources involved in planning and coordinating the project. Unless specifically otherwise identified, each office is to take care of their own cost and resources which include personnel, IT and other resources needed to collect and share necessary information in order to complete this project.

Project Lead Contact

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APPENDIX A

Deferment of Publication of Industrial Designs

1. Introduction

2. Procedure for Deferment of Publication

2.1 Means of deferment of publication

2.2 Subjects for deferment of publication

2.3 Targets for deferment of publication

2.3.1 Possibility to choose to publish any or all designs when operating multiple design system

2.3.2 Other restrictions on application for deferment of publication

2.4 Period of deferment of publication

2.4.1 Initial date in reckoning deferment of publication

2.4.2 Adjustment and adjustment method of publication deferment period (annual/monthly, etc.)

2.5 Publication deferment application form, amount of fees and timing of payment of fees, etc.

3. Effects of Deferment of Publication

3.1 Confidential items (drawings, indication of product, etc) during the publication deferment period

3.2 Exceptional permission of access during the publication deferment period

3.3 Infringement during the publication deferment period

4. Utilization of deferment of publication (Need discussion whether open to public)

4.1 Statistics & Proportion of publication deferment cases

4.2 Statistics & Proportion of publication deferment according to Locarno classification

4.3 Average period of publication deferment according to Locarno classification

4.4 Ranking of utilization of publication deferment by company

4.5 Related case studies

APPENDIX B

Proposed Project Timeline

Deferment of Publication of Industrial Designs	
July 2020	The Lead office prepares and submits a project proposal to the Partners by July 15, 2020.
August 2020	The Partners submit observations of the proposal made by the lead office by August 4, 2020
September 2020	The lead office reviews the observations made by the Partners, prepares revisions of the project proposal, and provides them by email by September 15th.
October 2020 (Tentative)	The lead office submits the final draft of the project proposal to the Partners by October 1, 2020.
2020 Annual Meeting	The lead office prepares and submits the project proposal and the structure and outline of the project.
January 2021 (Tentative)	The lead office prepares and submits to the Partners the basic draft of the project catalogue reflecting the results of the annual meeting by January 31, 2021.
February 2021 (Tentative)	The Partners review the format and structure of the catalog and submit it to the leading office by February 28, 2021.

March 2021 (Tentative)	<p>The lead office distributes the final catalog form to the Partners by March 31, 2021.</p> <p>Deliverable: Agreement on format, structure of the Catalogue</p>
July 2021 (Tentative)	<p>The Partners prepare their contributions to the study and provide it to the lead office by July 31, 2021.</p> <p>Deliverable: Contributions by the Partners</p>
August 2021 (Tentative)	<p>The lead office edits the content provided and provides it to the Partners by August 15, 2021.</p> <p>Deliverable: First draft by Lead Office</p>
August 2021 (Tentative)	<p>The Partners will submit a review of the draft prepared by the lead office by August 31, 2021</p>
September 2021 (Tentative)	<p>The lead office reviews the observations made by the Partners and submits revisions of the research report to the Partners by September 30, 2021.</p> <p>Deliverable: Final draft by Lead Office</p>
October 2021 (Tentative)	<p>The Partners submit a review of the revision of the research report and analysis format submitted by the lead office by October 31, 2021.</p>
2021 Annual Meeting	<p>The lead office submits a final proposal for approval of the research report.</p> <p>Deliverable: Approval of final draft at 2021 annual meeting of ID5 or sooner upon agreement by the Partners</p>