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KEI Briefing Note 2024:8 The Basic Proposal for the Design Law Treaty (DLT) and its inappropriate restrictions on transparency

James Love

Knowledge Ecology International, james.love@keionline.org

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KEI BRIEFING NOTE 2024:8

THE BASIC PROPOSAL FOR THE DESIGN LAW TREATY (DLT) AND ITS INAPPROPRIATE RESTRICTIONS ON TRANSPARENCY

*James Love*¹

NOVEMBER 12, 2024

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¹ Director, Knowledge Ecology International.

INTRODUCTION

The World Intellectual Property Organization (WIPO) is holding a diplomatic conference from November 11 to 22, 2024 in Riyadh, Saudi Arabia, to conclude and adopt a Design Law Treaty (DLT). The negotiators will be working from the documents dated May 10, 2024: a thirty-one page “Basic Proposal For The Design Law Treaty” (DLT/DC/3), and a sixteen page “Basic Proposal For The Regulations Under The Design Law Treaty” (DLT/DC/4), both documents submitted by the Director General of WIPO, as well as a nineteen page, “Notes On The Basic Proposal For The Design Law Treaty” (DTL/DC/5), prepared by the WIPO Secretariat.

While the proposed treaty has been presented as one addressing formalities rather than substantive law, it contains several provisions which shape substantive law. This note examines the provisions in the proposal that would provide inappropriate restrictions on transparency. Of particular concern are the provisions in Article 3 of the treaty, which would limit the types of disclosures that can be included in an application for design protection, and the provisions in Article 15, which prohibit the disclosure of the financial terms of recorded licenses.

ARTICLE 3 LIMITS THE INFORMATION THAT CAN BE REQUIRED IN AN APPLICATION FOR DESIGN PROTECTION

Article 3 of the basic proposal includes four numbered paragraphs and several sub-paragraphs and sub-subparagraphs. The purpose of the article is to set out a limited and closed list of the information that can be required by a member state, in an application for design protection.

The closed list is set out in Article 3(1)(a), which states that “A Contracting Party may require that an application contain some, or all, of the following indications or elements” that are set out in ten sub-subparagraphs, numbered (i) through (x).

(1) [*Contents of Application; Fee*] (a) A Contracting Party may require that an application contain some, or all, of the following indications or elements:

- (i) a request for registration;
- (ii) the name and address of the applicant;
- (iii) where the applicant has a representative, the name and address of that representative;

(iv) where an address for service or an address for correspondence is required under Article 4(3), such address;

(v) a representation of the industrial design, as prescribed in the Regulations;

(vi) an indication of the product or products which incorporate the industrial design, or in relation to which the industrial design is to be used;

(vii) where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration that may be required pursuant to Article 4 of the Paris Convention;

(viii) where the applicant wishes to take advantage of Article 11 of the Paris Convention, evidence that the product or products which incorporate the industrial design or in relation to which the industrial design is to be used have been shown at an official, or officially recognized, international exhibition;

ALTERNATIVE A

[(ix) a disclosure of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources utilized or incorporated in the industrial design;]

ALTERNATIVE B

[(ix) an indication of any prior application or registration, or of other information³, of which the applicant is aware, that is relevant to the eligibility for registration of the industrial design;]

(x) any further indication or element prescribed in the Regulations.

/Footnote 3/ Other information could include, among other things, information relating to traditional knowledge and traditional cultural expressions.

The two alternatives for (ix) address different issues. Alternative A adds a permitted element for the “disclosure of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources utilized or incorporated in the industrial design,” a topic of considerable interest to several countries. Alternative B is broader in some ways and narrower in others.

Alternative B would include both “an indication of any prior application or registration,” and importantly, “other information.” but only when the information is “relevant to the eligibility for registration of the industrial design.” Information about the design, its owners, or use that is not relevant to its eligibility for registration is outside of Alternative B for Article 3(1)(a)(ix).

The sub-subparagraph 3(1)(a)(x) allows the list to be expanded by indications or elements “prescribed in the regulations.” Rule 2 of the regulations currently sets out elaborations and additions to the allowed indications or elements set out in Article 3 of the treaty text.

Article 3(a)(2) of the treaty makes it clear that this is a closed list.

- (2) [*Prohibition of Other Requirements*] No indication or element, other than those referred to in paragraph (1) and in Article 10, may be required in respect of the application.

The Notes on the Basic Proposal prepared by the Secretariat explain that this is a “closed list . . . establishing a maximum content,” in order to create “a predictable framework.” The Secretariat states the closed list is “of the outmost importance, with a view to simplifying and streamlining such procedures.”

Secretariat Notes on Article 3: Application

3.01. This Article and the corresponding Rules of the Regulations propose a closed list of indications or elements that may be required in an application. While paragraph (1) sets out the maximum contents of an application that may be required by a Contracting Party (including indications and elements prescribed in the Regulations), paragraph (2) makes it clear that no further element may be required by a Contracting Party in an application, except those elements that may be required under Article 10 (“Communications”). Establishing a closed list of elements contributes to create a predictable framework for industrial design procedures, and is therefore of the outmost importance, with a view to simplifying and streamlining such procedures.

3.02. This provision does not aim at creating a uniform content of applications, but at establishing a maximum content, so that anyone wishing to file an application knows exactly what are the elements that may be required. However, a Contracting Party may require some only, rather than all, of the elements listed. For instance, no Contracting Party would be obliged to require a claim (see Rule 2(1)(ii)). A claim would presumably not be required by a Contracting Party that protects industrial designs under a registration system, as opposed to a system of protection under patent law.

IT MAY BE CHALLENGING TO ADD ADDITIONAL ELEMENTS THROUGH CHANGES IN THE REGULATIONS

While Article 3(1)(a)(x) provides that additional indications or elements may be prescribed in the regulations, there is a significant challenge involved in doing so. The provisions in the Basic Proposal for a treaty set out the rules for changing regulations in Article 23. Paragraphs (2) and (3) describe the voting requirements for changing regulations.

Article 23, Regulations

...

(2) [Amending the Regulations] Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.

(3) [Requirement of Unanimity] (a) The Regulations may specify provisions of the Regulations which may be amended only by unanimity.

...

In this regard, it is useful to note that the European Union is asking that it be allowed to vote on behalf of all of its members, making it highly likely the EU could block any amendments to the regulations it does not favor.

THE BRACKETS ON THE ORIGIN OR SOURCE OF TRADITIONAL CULTURAL EXPRESSIONS, TRADITIONAL KNOWLEDGE OR BIOLOGICAL/GENETIC RESOURCES REFLECT A DESIRE BY SOME STATES TO PROHIBIT DISCLOSURE OBLIGATIONS

Negotiators are aware of the significance of requiring disclosures of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources utilized or incorporated in the industrial design, and this will be resolved at the diplomatic conference. Alternative A for subparagraph (1)(a)(ix) would allow this, and Alternative B for (ix) provides an opening for this or other topics that could be included in regulations. However, Alternative B limits the disclosure to information related to the “eligibility for registration of the industrial design.”

If disclosures on applications are limited to information relevant to eligibility for protection, this may preclude disclosures that serve other purposes including, in the case of traditional cultural expressions, traditional knowledge or biological/genetic resources, disclosures relating to benefit sharing obligations.

THE PROPOSED CLOSED LIST IS INCONSISTENT WITH REQUIREMENTS IN THE UNITED STATES TO DISCLOSE FEDERAL FUNDING OF DESIGN OR UTILITY PATENT APPLICATIONS

The United States Bayh-Dole Act requires recipients of federal funding for design and utility patents to include, in the specification of a patent application, “a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention”.

35 USC 202 - - Disposition of rights

(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

...

(6). An obligation on the part of the contractor, in the event a United States patent application is filed by or on its behalf or by any assignee of the contractor, to include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention.

This obligation has subsequently been extended to firms of any size.

The U.S. Patent and Trademark regulation for the arrangement of elements for a design patent application, [37 CFR § 1.154](#), includes Paragraph (b)(3), which is a requirement for a “Statement regarding federally sponsored research or development.”

The disclosures in patent applications for inventions made with government support are important. A possible sanction for failing to disclose federal funding can result in the U.S. government taking ownership of the patent. The disclosure of federal funding signals that the federal government has a “nonexclusive, nontransferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world.”² Additionally, it grants the government a march-in right that can be used whenever a patent holder does not make the benefits of patent available to the public on reasonable terms,³ or when the march-in action is necessary to alleviate health or safety, or necessary to meet requirements for public use specified by federal regulations, or to ensure that a product is manufactured substantially in the United States.

² 35 USC 202(c)(4).

³ 35 USC 201(f).

Attached as an Annex are 100 example US design patents that provide a disclosure of federal funding.

ARTIFICIAL INTELLIGENCE

The recent improvements in generative artificial intelligence (AI) services are leading to significant re-examinations of traditional legal frameworks for intellectual property rights. Intellectual property authorities around the world are considering a wide range of policies to deal with the impact of generative AI. Among the many complex questions and challenges are issues relating to the extent that AI-assisted creations qualify for protection, and the rights or exceptions to rights regarding the use of third-party information to train AI.

One response has been to require disclosures regarding the role of AI services in the registration of works protected by copyright, patent or design protections. The United States Patent and Trademark Office (USPTO) has indicated that if the use of an AI tool is material to patentability, the use of the AI tool must be disclosed in applications for patent protection.

In a 2022 decision, *Thaler v. Vidal*,⁴ the U.S. Court of Appeals for the Federal Circuit upheld the USPTO's decisions to deny two petitions seeking to name an AI system as an inventor.

This case presents the question of who, or what, can be an inventor. Specifically, we are asked to decide if an artificial intelligence (AI) software system can be listed as the inventor on a patent application. At first, it might seem that resolving this issue would involve an abstract inquiry into the nature of invention or the rights, if any, of AI systems. In fact, however, we do not need to ponder these metaphysical matters. Instead, our task begins – and ends – with consideration of the applicable definition in the relevant statute.

The United States Patent and Trademark Office (PTO) undertook the same analysis and concluded that the Patent Act defines “inventor” as limited to natural persons; that is, human beings. Accordingly, the PTO denied Stephen Thaler's patent applications, which failed to list any human as an inventor. Thaler challenged that conclusion in the U.S. District Court for the Eastern District of Virginia, which agreed with the PTO and granted it summary judgment. We, too, conclude that the Patent Act requires an “inventor” to be a natural person and, therefore, affirm.

⁴ *Thaler v. Vidal*, No. 21-2347 (Fed. Cir. 2022)
https://cafc.uscourts.gov/opinions-orders/21-2347.OPINION.8-5-2022_1988142.pdf

On February 13, 2024, the USPTO issued inventorship guidance for AI-assisted inventions and a request for public comments ([89 FR 10043](#)). In discussing the Duty of Disclosure, the guidance noted:

Because improper inventorship is a ground of rejection under 35 U.S.C. 101 and 115, parties . . . have a duty to disclose to the USPTO information that raises a prima facie case of unpatentability due to improper inventorship or that refutes, or is inconsistent with, a position an applicant takes in opposing an inventorship rejection or asserting inventorship. For example, in applications for AI-assisted inventions, this information could include evidence that demonstrates a named inventor did not significantly contribute to the invention because the person's purported contribution(s) was made by an AI system.

A March 5, 2024 USPTO slide deck titled “Inventorship guidance for AI-assisted Inventions”⁵ provides additional guidance and context. What is clear is that the USPTO has determined that the Duty to Disclose includes information on a significant contribution by an AI tool in creating a patented invention.

Similarly, on March 16, 2023, the US Copyright Office issued a rule, “Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence.” (Document: 2023-05321, ([88 FR 16190](#))). From the guidance:

The Office has received other applications that have named AI technology as the author or co-author of the work or have included statements in the “Author Created” or “Note to Copyright Office” sections of the application indicating that the work was produced by or with the assistance of AI. Other applicants have not disclosed the inclusion of AI-generated material but have mentioned the names of AI technologies in the title of the work or the “acknowledgments” section of the deposit.

Based on these developments, the Office concludes that public guidance is needed on the registration of works containing AI-generated content. This statement of policy describes how the Office applies copyright law's human authorship requirement to applications to register such works and provides guidance to applicants.

. . .

⁵ Kim, Charles, et. al, *Inventorship guidance for AI-assisted inventions*. USPTO. (Mar. 5, 2024) <https://www.uspto.gov/sites/default/files/documents/inventorship-guidance-for-ai-assisted-inventions.pdf>

Consistent with the Office's policies described above, applicants have a duty to disclose the inclusion of AI-generated content in a work submitted for registration and to provide a brief explanation of the human author's contributions to the work. As contemplated by the Copyright Act, such disclosures are “information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright.”

There is every reason to believe that intellectual property offices around the world will benefit from the ability to require applicants for design protection to disclose information about the inclusion of AI-generated content in a work submitted for registration and protection.

One might argue that Rule 2 of the regulations provides some space to require information about the use of AI, specifically as regards 1(v) and 1(vi) of the rule.

Rule 2 -Details Concerning the Application

(1) [Further Requirements Under Article 3] In addition to the requirements provided for in Article 3, a Contracting Party may require:

...

(v) indications concerning the identity of the creator of the industrial design;

(vi) a statement that the creator believes himself/ herself to be the creator of the industrial design;

However, this seems inadequate to cover cases where a person clearly qualifies as a creator, despite having used AI tools, or where the Contracting party monitors or has policies relating to the use of third party data to train the AI tools.

LICENSE OF RIGHT REGIMES

A license of right (LOR) system for intellectual property is where an applicant for, or holder of a right such as a patent, registered design, utility model or trademark, has the option to register a declaration that permits anyone to obtain a license on reasonable terms. Licensing may occur through direct negotiations, or on terms determined by a third party, such as the intellectual property office. The incentive to make such a declaration is a reduction in fees for the registration and maintenance of the intellectual property right.

A study titled, *Report On Present Situation Of “Licence Of Right” System In Selected EPC Member States*⁶ has chapters on the LOR regimes in Albania, Bulgaria, Czech Republic, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, San Marino, Slovakia, Spain, Turkey and the UK. LOR systems also exist in several countries outside of the European Patent Convention.

The license of right systems depend upon a transparent registry of the endorsements in order to achieve the objective of making the open licensing opportunity known to the public. Since licenses of right can be important for designs, the Design Law Treaty needs to ensure that such endorsements on applications for protection are a permitted element in an application for protection.

STANDARDS ESSENTIAL DESIGNS

Governments are struggling to deal with policies on standards essential patents (SEPs), which can also involve designs. For example, standards may involve unique shapes, connectors or cables, such as those used in charging technology for electric vehicles, or the shapes of medical implants that have specific contours or surface textures.

Of particular interest are standards for graphical user interfaces (GUIs). Canada, Israel, Japan, the Republic of Korea, the United Kingdom, the United States of America and the European Union and its member states have proposed a Joint Recommendation on the Industrial Design Protection for Designs for Graphical User Interfaces to WIPO’s Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications ([SCT/44/6 REV.4](#)). Additionally, there is a Proposal by the African Group for a Study on the Impact of Design Protection for Graphical User Interface (GUI) Designs on Innovation ([SCT/46/5](#)).

For example, a standard for the designs of a patient monitoring systems in intensive care units (ICUs) could specify a particular layout and visual design for displaying vital signs (heart rate, blood pressure, oxygen saturation), in a manner that would ensure that the information is presented clearly and consistently across different devices from various manufacturers, reducing the risk of misinterpretation by medical professionals in high-pressure situations.

A design patent protecting the specific arrangement of elements (graphs, numerical displays, color-coding) within this standardized GUI could be considered essential to the standard. The standardized design minimizes cognitive

⁶ Report On Present Situation Of “Licence Of Right” System In Selected Epc Member States.
https://www.jetro.go.jp/ext_images/world/europe/ip/pdf/Report_on_Present_Situation_of_Licence_of_Right_systems_in_selected_EPC_member_states.pdf

load for healthcare providers, allowing them to quickly assess a patient's condition and make informed decisions.

When there is an application for a design, intellectual property offices should be able to ask, on the application, if the design is implicated to any relevant standard, and if so, are there any obligations on licensing.

For more on standards and designs, see:

- ISO 9241-210:2019, Ergonomics of human-system interaction Part 210: Human-centred design for interactive systems
- W3C's Web Content Accessibility Guidelines (WCAG) outline how to make web content accessible to people with disabilities.

BENEFICIAL OWNERS OF DESIGNS, SIZE OF FIRMS, EMPLOYMENT, GENDER

Contracting parties seeking to evaluate their intellectual property systems have an interest in knowing more about the geographic and demographic characteristics of the beneficial owners of IP rights. This includes factors such as the nationality or the size of the beneficial owners of rights, as measured by company revenues, domestic employment, or other relevant metrics.

Both the USPTO and the EPO have periodically published reports studying the economic impact of the intellectual property systems on their domestic economy.

Many patent regimes currently offer fee reductions to small entities. In the United States, for example, the basic filing fee of \$320 to file a patent is reduced to \$128 for small entities and \$64 for micro entities, and similar discounts apply to other fees.⁷

The European Patent Office (EPO) also provides fee reductions, which are not the same for all applicants. Reductions are available for SMEs, individual inventors, and applicants from certain countries.

In 2023, WIPO published a report titled “The Global Gender Gap in Innovation and Creativity: An International Comparison of the Gender Gap in Global Patenting over Two Decades.”⁸ This report seeks to track the role of gender

⁷ *USPTO Fee Schedule*. USPTO. (Nov. 1, 2024).

<https://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule>

⁸ Invent Together and World Intellectual Property Organization, *The Global Gender Gap in Innovation and Creativity: An International Comparison of the Gender Gap in Global Patenting over Two Decades*. (2023).

<https://www.wipo.int/publications/en/details.jsp?id=4653>

in patenting and advocates for policies aimed at achieving gender parity. As such, contracting parties may want to collect information on the gender of the creators or owners of designs.

Countries may also want to require more detailed information about the beneficial owner's identity or business activities for a variety of reasons. These may include efforts to identify or control entities engaged in fraud, inequitable conduct, or duty of disclosure failures,⁹ or to evaluate the development aspects of the design law protection regime.

LITIGATION

Contracting parties may find it useful to require applicants to provide timely and updated information on global litigation over design rights. KEI has frequently urged WIPO to consider repositories of information about administrative and judicial challenges to a variety of intelligent property rights, and this would also be appropriate for design protection .

The different alternatives for sub-subparagraph (1)(x) of Rule 2 of the regulations are relevant to this, but could also be clarified to remove any doubt about inclusion of such information.

Several member states use patents to protect designs. Article 29 of the WTO TRIPS agreement on the conditions of patent applicants clearly says in paragraph 2 that WTO members “may require an applicant for a patent to provide information concerning the applicant’s corresponding foreign applications and grants.”

RELATIONSHIP BETWEEN THE WIPO PATENT LAW TREATY, THE WIPO PATENT COOPERATION TREATY AND DISCLOSURE REQUIREMENTS FOR GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE

The WIPO Patent Law Treaty (PLT) and the WIPO Trademark Law Treaty (TLT) both feature a closed list of elements that can be included in an application for protection. The rationale for the closed list was that a streamlined application and limited list of maximum elements would lower the costs for applicants seeking protection.

The PLT provides a limited number of elements that could be included in an application for a patent, and this includes items that are required by another WIPO agreement, the Patent Cooperation Treaty (PCT).

⁹ Berkeley Technology Law Journal, Volume 36, Design Patents Symposium (Feb. 8, 2022) <https://btlj.org/2022/02/volume-36-design-patents-symposium/>.

Prior to 2024, several countries implemented requirements to require the disclosure of the origin of genetic resources in applications for patent protection. There was considerable debate over the consistency of these disclosure obligations with a restrictive closed list of allowed elements in an application in the PLT.

The conflict between the PLT and the genetic resources disclosure obligations was often defended on the grounds that the disclosure could be considered a matter of substantive patent law, and not a procedural formality, but the distinction between procedural and substantive requirements is not considered clear by several experts.

On May 24, 2024, WIPO Member States adopted a new Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (GRATK).¹⁰ This treaty mandates that, where the claimed invention in a patent application is based on genetic resources, the applicant must disclose the origin of the genetic resources and traditional knowledge associated with the genetic resources.

Recognizing the view that some considered this obligation to be in conflict with the PLT, the WIPO GRATK treaty included two footnotes, where read as follows:

4 Agreed Statement: The Contracting Parties request the Assembly of the International Patent Cooperation Union to consider the need for amendments to the Regulations under the PCT and/or the Administrative Instructions hereunder with a view towards providing an opportunity for applicants who file an international application under the PCT designating a PCT Contracting State which, under its applicable national law, requires the disclosure of genetic resources and traditional knowledge associated with genetic resources, to comply with any formality requirements related to such disclosure requirement either upon filing of the international application, with effect for all such Contracting States, or subsequently, upon entry into the national phase before an Office of any such Contracting State.

5 Nothing in this Treaty shall derogate from or modify any other international agreement.

¹⁰ World Intellectual Property Organization, *GRATK/DC/7 – Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources*. (May 24, 2024). https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf

The experience with the new WIPO GRATK treaty illustrates the shortcomings of a closed list of application elements. To add a new required element to applications, countries either have to make the case that the desired disclosure is a substantive requirement for patent protection or find a way to expand the closed list by amending the PLT or PCT treaty text or regulations. The two footnotes in the GRATK treaty can be read as covering both approaches without explicitly acknowledging existing conflicts between the new disclosure requirement and the PLT's closed list.

PROVIDING MORE FLEXIBILITY FOR INCLUDING NEW INDICATIONS OR ELEMENTS IN APPLICATIONS

Negotiators could change the requirements in Article 3 in a variety of ways. One option would be to refashion the list as a set of minimum elements, rather than a maximum. However, this approach would be a direct conflict with the approach in the PLT or TLT and the rationale for the treaty, as set out in this WIPO video: https://www.youtube.com/watch?v=Od5fbJjZ_PA.

Another option is for negotiators to add operative language, footnotes, and agreed statements that expand the maximum list for specific topics. For example, Article 3 could include a new sub-subparagraph with language addressing any number of elements that should not be prohibited by the treaty:

- (1)(a)(xii) Information regarding:
 - A. The role of artificial intelligence tools in creating the design,
 - B. Government funding and associated rights, if any,
 - C. Beneficial ownership of the rights,
 - D. The revenues, number of employees or other metrics relating to the size of entities that are the beneficial owners of rights,
 - E. The extent to which the design is implicated in a standard, and any obligations on licensing related to its use for that standard,
 - F. Any license of right endorsements,
 - G. ...

Instead of an expanded list of elements to the closed list, negotiators should consider providing a more general but somewhat bounded possibility of additional elements. For example:

- (1)(a)(xii) other information that is considered essential for the protection of the public interest, the prevention of fraud, or to enhance transparency.

Such additional elements could also be accompanied with a notification to WIPO.

To be clear, if nothing is done to modify the text, the treaty will be used to block the ability of contracting states to require the disclosure of information that is considered essential for the protection of the public interest, the prevention of fraud, or to enhance transparency.

ARTICLE 15 OF THE BASIC PROPOSAL DOES NOT ALLOW A REQUEST FOR RECORDING OF A LICENSE OR A SECURITY INTEREST TO INCLUDE AN INDICATION OF THE FINANCIAL TERMS OF THE LICENSE CONTRACT.

Article 15 of the Basic Proposal on request for recording of a license or a security interest does not permit a Contracting Party to include an indication of the financial terms of the license contract.

- (1). [Requirements Concerning the Request for Recording of a License]
Where the law of a Contracting Party provides for the recording of a license, that Contracting Party may require that the request for recording:
- (i) be filed in accordance with the requirements prescribed in the Regulations, and
 - (ii) be accompanied by the supporting documents prescribed in the Regulations.

...

- (4) [Prohibition of Other Requirements] (a) No requirement other than those referred to in paragraphs (1) to (3) and in Article 10 may be demanded in respect of the recording of a license. In particular, the following may not be required:

- (i) the furnishing of the registration certificate of the industrial design which is the subject of the license;

(ii) an indication of the financial terms of the license contract.

- (b) Subparagraph (a) is without prejudice to any obligations existing under the law of a Contracting Party concerning the disclosure of information for purposes other than the recording of the license.

Paragraph 15.05 of the *Notes on the Basic Proposal* from the Secretariat clarifies that the restrictions on requiring disclosures of financial terms of licenses does not prevent Contracting Parties from any request to furnish information for other purposes. However, the provisions of Article 15(4)(ii) clearly narrow considerably the policy space for making the design protection system more transparent.

15.05 This provision does not prevent any authorities of a Contracting Party, for example tax or monetary authorities or authorities establishing statistics, or anti-monopoly or authoritative competition bodies, from requiring the parties to a license to furnish information in accordance with the applicable law of that Contracting Party.

The examples given in paragraph 15.05 of the Secretariat's notes refer to actions that are often confidential, such as collecting information for statistics or for tax purposes. Additionally, requests from competition authorities are typically rare and often treated as confidential.

The likely far reaching precedent for eliminating the policy space to make the financial terms of licenses transparent will frustrate efforts to better understand how the protection system works in practice. The lack of transparency undermines the public's ability to evaluate fair and reasonable terms in licensing agreements, and will block more useful implementations of license-of-right regimes.

CONCLUDING COMMENTS

The basic proposal is to create a closed and restrictive list of elements that can be included in applications, and to prohibit requirements to disclose financial terms of licenses to those rights in the recording of licenses. The basic proposal is one that favors potential rights holders, but does so in a way that is needlessly unbalanced as regards private and public interests.

Transparency is important in many areas, and certainly important when governments grant and enforce intellectual property rights. A design law treaty can achieve objectives of greater harmonization of applications without imposing such severe restrictions on information collected and available to the public.

**ANNEX: EXAMPLES OF US DESIGN PATENTS WITH GOVERNMENT FUNDING AND
RIGHTS DISCLOSED**

Patent Number	Title	Funding Disclosure
USD1032623S1	Display screen with animated graphical user interface	This invention was made with U.S. Government support under Agreement No. W912CG20C0013, awarded by Defense Advanced Research Projects Agency. The Government has certain rights in the invention.
USD1031034S1	Inferior turbinate elevator	This invention was made with government support under grant number 5R25EB021894 awarded by The National Institutes of Health. The government has certain rights in the invention.
USD1022185S1	Medicament infusion pump device	This invention was made with U.S. Government support under Contract No. DK120234, awarded by the National Institutes of Health. The Government has certain rights in the invention.
USD993443S1	Microfluidic glass chip interface bracket	The invention was made with government support under Contract No. DE-AC05-00OR22725 awarded by the U.S. Department of Energy. The government has certain rights in the invention.
USD989342S1	Microfluidic polymer chip interface bracket	The invention was made with government support under Contract No. DE-AC05- 00OR22725 awarded by the U.S. Department of Energy. The government has certain rights in the invention.
USD973969S1	Helmet face shield	The invention described herein may be manufactured and used by or for the Government of the United States of America for governmental purposes without the payment of any royalties thereon or therefor.
USD971964S1	Display screen with an animated graphical user interface	This invention was made with government support under contract FA8649-19-9-9004 awarded by the United States Air Force. The government has certain rights in the invention.
USD971963S1	Display screen with an animated graphical user interface	This invention was made with government support under contract FA8649-19-9-9004 awarded by the United States Air Force. The government has certain rights in the invention.
USD961746S1	Lightweight portable heating device	This invention was made with government support under W911QY-18-9-0017 awarded by U.S. Department of the Army. The government has certain rights in the invention.
USD952553S1	Drone battery pack	The invention was made with Government support under Agreement No. W15QKN-19-9-0044 awarded by USACC-NJ. The Government has certain rights in the invention.
USD950061S1	Multi detector radiological source jig	The invention was made with government support under Contract No. DE-AC05-00OR22725 awarded by the U.S. Department of Energy. The government has certain rights in the invention.

Patent Number	Title	Funding Disclosure
USD946745S1	Filtered face mask	The invention described herein may be manufactured and used by or for the Government of the United States of America for governmental purposes without the payment of any royalties thereon or therefor.
USD946743S1	Filtered face mask respirator with cap	The invention described herein may be manufactured and use by or for the Government of the United States of America for governmental purposes without the payment of any royalties thereon or therefor.
USD945413S1	Device for training and instruction	This invention was made with government support under Contract No. W15QKN1930003 awarded by the U.S. Army Contracting Command. The government has certain rights in the invention
USD929431S1	Display screen or portion thereof with animated graphical user interface	This invention was made with government support under Contract No. W56HZV-07-C-0256 awarded by the United States Army. The United States Government has certain rights in the inventions.
USD928903S1	Muzzle brake	The invention described herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD928804S1	Display panel of a programmed computer system with a graphical user interface	This invention was made with government support under Award No. 1738479 awarded by National Science Foundation's Division of Industrial Innovation and Partnerships (IIP). The government has certain rights in the invention.
USD928803S1	Display panel of a programmed computer system with a graphical user interface	This invention was made with government support under Award No. 1738479 awarded by National Science Foundation's Division of Industrial Innovation and Partnerships (IIP). The government has certain rights in the invention.
USD928177S1	Display panel of a programmed computer system with a graphical user interface	The invention was made with government support under Award No. 1738479 awarded by National Science Foundation's Division of Industrial Innovation and Partnerships (IIP). The government has certain rights in the invention.
USD928069S1	Marine vehicle with top lens	The invention described herein may be manufactured and used by or for the Government of the United States of America for governmental purposes without the payment of any royalties thereon or therefor.
USD926662S1	Marine vehicle with lens	The invention described herein may be manufactured and used by or for the Government of the United States of America for governmental purposes without the payment of any royalties thereon or therefor.
USD914589S1	Solar panel	This invention was made with government support under DE-EE0007190 awarded by The U.S. Department of Energy. The

Patent Number	Title	Funding Disclosure
		government has certain rights in the invention.
USD912270S1	Sample holder	This invention was made with government support under grant number CA206937 awarded by the National Institutes of Health. The government has certain rights in the invention.
USD898859S1	Semiautonomous weapon mount	This invention was made with Government support under Contract No. W15QKN-14-9-1001, awarded by U.S. Department of Defense. The Government has certain rights in this invention.
USD892721S1	Tire	This invention was made with Government support under DE-EE0007761 awarded by DOE. The Government has certain rights in this invention.
USD891335S1	Windshield for a truck vehicle	This invention was made with U.S. Government support under DE-EE0003303 awarded by The U.S. Department of Energy. The U.S. Government has certain rights in this invention.
USD888269S1	Capillary blood collector device	This invention was made with government support under contract number HDTRA1-17-C-0011 awarded by the Defense Threat Reduction Agency and grant number W81XWH-17-1-0694 awarded by the U.S. Army Medical Research Acquisition Activity. The government has certain rights in the invention.
USD888267S1	Diagnostic instrument	This invention was made with government support under contract number HDTRA1-17-C-0011 awarded by the Defense Threat Reduction Agency and grant number W81XWH-17-1-0694 awarded by the U.S. Army Medical Research Acquisition Activity. The government has certain rights in the invention.
USD882503S1	Tire	This invention was made with Government support under DE-EE0007761 awarded by DOE. The Government has certain rights in this invention.
USD881202S1	Display screen with graphical user interface for negative pressure unit	This invention was made with government support under Contract FA8650-13-2-6372 awarded by the Department of the Air Force. The government has certain rights in the invention.
USD879544S1	Multipurpose solar drying tray assembly	This invention was made with government support under Contract No. AID-OAA-L-14-00003 awarded by the U.S. Agency for International Development. The government has certain rights in the invention.
USD877889S1	Negative pressure unit	This invention was made with government support under Contract FA8650-13-12-6372 awarded by the Department of the Air Force. The government has certain rights in the invention.
USD872842S1	Filter support	The invention described may be manufactured and used by or for the United States Government for government purposes without payment of any royalties.

Patent Number	Title	Funding Disclosure
USD860368S1	Muzzle brake	The invention described herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD860046S1	Gunner protection turret enclosure for multiple weapons integration	The invention described herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD859197S1	Marine sensor platform	This invention was made with government support under grant no. DE-AR0000514 awarded by the U.S. Department of Energy (ARPA-E). The government may have certain rights in the invention.
USD853939S1	Aerial vehicle	This invention was made with government support under grant no. DTOS59-06-G-00047 awarded by the Department of Transportation. The government has certain rights in the invention.
USD849597S1	Gunner protection turret enclosure with adjustable forward gun shield and vehicle adapter plate	The invention described herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD822036S1	Display screen or portion thereof with graphical user interface	This invention was made with government support under HD051495 awarded by the National Institutes of Health. The government has certain rights in the invention.
USD821319S1	Rotor for a wave energy converter	This invention was made with government support under 1263196 awarded by the National Science Foundation. The government has certain rights in the invention.
USD815235S1	Magazine loader assembly	The invention described herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD814672S1	Headlight for a truck vehicle	This invention was made with U.S. Government support under DE-EE0003303 awarded by The U.S. Department of Energy. The U.S. Government has certain rights in this invention.
USD805503S1	Antenna Radome	This invention was made with Government support under contract No. 14-G-1169 awarded by the Department of Defense. The government has certain rights in this invention.
USD804479S1	Card reader enclosure	This invention was made with government support under N00019-15-C-0091 awarded by United States Navy. The government has certain rights in the invention.
USD804478S1	Card reader enclosure	This invention was made with government support under N00019-15-C-0091 awarded by United States Navy. The government has certain rights in the invention.

Patent Number	Title	Funding Disclosure
USD802680S1	Game tile	This invention was made with Government support under Award No. 1346821 awarded by the Small Business Innovation Research (SBIR) Program of the National Science Foundation (NSF). The Government has certain rights in the invention.
USD786722S1	Explosive detection package	The inventions described herein may be manufactured and used by or for the United States Government for government purposes without payment of any royalties.
USD786131S1	Vehicle gunner protection turret	The inventions described herein may be manufactured and used by or for the United States Government for government purposes without payment of any royalties.
USD776003S1	Light tactical vehicle hull	The invention described here may be made, used and licensed by and for the U.S. government for governmental purposes without paying royalty to us.
USD773681S1	Infant warming pad	The invention described and claimed herein was made in part utilizing funds supplied by the U.S. Department of Energy under Contract No. DE-AC02-05CH11231. The government has certain rights in this invention.
USD772344S1	Game tile	This invention was made with Government support under Award No. 1346821 awarded by the Small Business Innovation Research (SBIR) Program of the National Science Foundation (NSF). The Government has certain rights in the invention.
USD759803S1	Adjustable headpiece with anatomical markers	This invention was made with government support under 5R44NS080632 awarded by the National Institute of Neurological Disorders and Stroke (NINDS) of the National Institute of Health (NIH). The government has certain rights in the invention.
USD754871S1	Microscope slide-in chamber	This invention was made with government support under Contract No. DE-AC05-00OR22725 awarded by the U.S. Department of Energy. The government has certain rights in the invention.
USD754276S1	Ammunition rack	The invention described here may be made, used and licensed by and for the U.S. Government for U.S. Governmental purposes
USD753662S1	Universal serial bus (USB) plug system	This invention was supported by the National Institute of Health, Grant No. R121-CA-120128, and the National Science Foundation, Grant No. BES-03-48204. The United States Government has certain rights in the invention.
USD751947S1	Vehicle mounted gunner protective enclosure	The invention described and claimed herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD743169S1	Container with offset handle	The invention described and claimed herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD738416S1	Spotting telescope alignment lock	The invention described here may be made, used and licensed by and for the U.S. Government for U.S. Governmental purposes.

Patent Number	Title	Funding Disclosure
USD734482S1	Microfluidic analysis cartridge	The present invention was supported in part by grant number IIP-1058590 from the National Science Foundation. The U.S. Government has certain rights in the invention.
USD730216S1	Portable analytical instrument	This invention was made with government support under Contract Number N00174-13-C-0032, Contract Name: Naval Explosive Ordnance Disposal Technology Division (NAVEODTECHDIV), task Order TI 69. The government has certain rights in this invention.
USD729293S1	Three-dimensional display device	This invention was made with government support under Contract No. DE-AC05-00OR22725 awarded by the U.S. Department of Energy. The government has certain rights in the invention.
USD728400S1	Portable analytical instrument	This invention was made with government support under Contract Number N00174-13- C-0032, Contract Name: Naval Explosive Ordnance Disposal Technology Division (NAVEODTECHDIV), task Order TI 69. The government has certain rights in this invention.
USD697529S1	Portion of a display screen with an icon	Application Ser. No. 709,080 (now U.S. Pat. No. 3,433,705) was filed, prosecuted, issued and assigned to the U.S. Government by the Applicant/Inventor's Representative in this case for the benefit of the Government, and under federally sponsored research as a Registered patent attorney under Registration No. 19,240
USD693897S1	Small arms transmitter mounting bracket for a multiple integrated laser engagement system	The invention described and claimed herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD683464S1	Leg brace	This invention was made with government support under Grant No. R44-HD055019 awarded by the National Institute of Health. The government has certain rights in the invention.
USD680403S1	Handle for a tool	This invention was made with government support under Award No. 2009-33610-19668 awarded by the National Institute of Food & Agriculture. The government has certain rights in the invention.
USD677418S1	Ceiling mounted luminaire	This invention was made with U.S. Government support under DOE Cooperative Agreement No. DE-EE0003241, awarded by the U.S. Department of Energy. The U.S. Government may have certain rights in this invention.
USD672518S1	Bore swabbing tool	The invention described and claimed herein may be manufactured, used and licensed by or for the U.S. Government for U.S. Government purposes.
USD669171S1	Tongue retractor	This invention was made with government support under Grant No. W81XWH-06-10019 awarded by the Department of Defense. The federal government has certain rights in the invention.

Patent Number	Title	Funding Disclosure
USD664414S1	Force arm cutting and prying blade	This invention was made with government support under contract. The government has certain rights in the invention.
USD664170S1	Cleaning plate for inducing turbulent flow of a processing chamber cleaning glass	This invention was made with Government support under DE-EE0003331 awarded by DOE. The Government has certain rights in this invention.
USD663026S1	Visualization instrument	This invention was made with government support under Award W81XWH-06-1-0019 awarded by the U.S. Army. The government has certain rights in the invention
USD659220S1	Rail sight mount	The invention described and claimed herein may be manufactured, used and licensed by or for the U.S. Government for U.S. Government purposes.
USD657499S1	Earplug	This invention was made with Government support under SBIR contract N68335-09-C-0003, awarded by the US Navy. The government has certain rights in the invention.
USD655273S1	Earcup for a headset	This invention was made with Government support under SBIR contract N68335- 09-C-0003, awarded by the US Navy. The government has certain rights in the invention.
USD650319S1	Apparatus for mechanically guiding a water vehicle that is being released or retrieved	The present invention was made with Government support under STTR Program Contract No. N07-037 awarded by the United States Navy. The Government has certain rights in the invention.
USD649924S1	Buoyancy engine module for an unmanned underwater vehicle	The present invention was made with Government support under Contract Nos. STTR N08-T016 and N00014-09-C-0527 awarded by the United States Navy. The Government has certain rights in the invention.
USD638946S1	Prostate mechanical imaging probe	This invention was made with government support under SBIR grant R44CA082620 awarded by National Cancer Institute, National Institutes of Health. The government has certain rights in the invention.
USD638088S1	Adaptor for rifle fired bullet trap grenades	The invention described and claimed herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD631310S1	Multifunction tool	The invention described here may be made, used and licensed by and for the U.S. Government for governmental purposes without paying royalty to us.
USD626118S1	Bidirectional tilt antenna mount	The invention described here may be made, used and licensed by and for the U.S. Government for governmental purposes without paying royalty to me.

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USD624150S1	Artillery projectile extractor	The invention described and claimed herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD620067S1	Firearm buttstock	The invention described herein may be made or used by or for the U.S. Government for U.S. Government purposes.
USD619044S1	Gunner enclosure with overhead cover	The invention described and claimed herein may be manufactured, used, and licensed by or for the U.S. Government for U.S. Government purposes.
USD612045S1	Colonoscope handgrip assembly with force and torque monitor	This invention was made with government support under SBIR grant R44DK068936 awarded by the National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health. The government has certain rights in the invention.
USD611461S1	Antenna mount actuator adapter	The invention described here may be made, used and licensed by and for the U.S. Government for governmental purposes without paying royalty to us.
USD609801S1	Calibration chamber for prostate mechanical imaging probe	This invention was made with government support under SBIR grant R44CA082620 awarded by National Cancer Institute, National Institutes of Health. The government has certain rights in the invention.
USD609770S1	Rail mounting apparatus	The invention described and claimed herein may be manufactured, used and licensed by or for the U.S. Government for U.S. Government purposes.
USD607565S1	Visor for a visual prosthesis	This invention was made with government support under grant No. R24EY12893-01 awarded by the National Institutes of Health. The government has certain rights in the invention.
USD606910S1	Prone cart	This invention was made with the support of the Department of Veterans Affairs, Government of the United States under a merit review grant to the Milwaukee and Tampa Veterans Affairs Medical Centers. The Government retains certain rights in the invention.
USD604531S1	Coin display and business-card holder	The ornamental design described herein may be manufactured and used by or for the Government of the United States for all governmental purposes without the payment of any royalty.
USD600440S1	Traveling case	This invention was made with government support under grant No. R24EY12893-01 awarded by the National Institutes of Health. The government has certain rights in the invention.
USD599313S1	Video processing unit for a visual prosthetic apparatus	This invention was made with government support under grant No. R24EY12893-01 awarded by the National Institutes of Health. The government has certain rights in the invention.
USD590767S1	Portable fuel cell system with removable power	This invention was made with Government support under Contract No. H94003-07-C-0711 awarded by the Defense Microelectronics Activity. The Government has certain rights in the invention.

Patent Number	Title	Funding Disclosure
	adaptor	
USD588856S1	Bicyclist's water bottle with bottom drinking valve	The invention described herein may be manufactured and used by or for the Government of the United States of America for governmental purposes without the payment of any royalty thereon.
USD581988S1	Hand-held device	The invention was made with government support under government contract DAAH01-01-C-R003 awarded by DARPA via Army Aviation & Missile Command, Redstone Arsenal. The United States Government has certain rights in the invention.
USD575381S1	Condenser shroud for DC cooler	This invention was made with Government support under contract DE-FC26- 04NT42106, awarded by the United State Department of Energy. The Government may have certain rights in this invention.
USD568437S1	Firearm mount bracket	The invention described here may be made, used and licensed by and for the U.S. Government for governmental purposes without paying royalty to us.
USD565082S1	Visor for a visual prosthetic apparatus	This invention was made with government support under grant No. R24EY12893-01 awarded by the National Institutes of Health. The government has certain rights in the invention.
USD545721S1	Robot	The invention described herein may be manufactured and used by or for the government of the United States of America for governmental purposes without the payment of any royalties thereon or therefore.