



The Riyadh Design Law Treaty: Harmonizing Global Design Procedures with Mixed Implications

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ABSTRACT

The Riyadh Design Law Treaty (DLT), adopted on November 22, 2024, aims to harmonize and simplify the global registration procedures for industrial designs. By standardizing procedural requirements across jurisdictions, the treaty seeks to create a more predictable and accessible system for designers, particularly benefiting small-scale designers and small and medium-sized enterprises (SMEs). However, the DLT can have implications for developing countries, as many lack significant design-intensive industries. Key provisions in the DLT include a 12-month grace period, deferred publication, divisional applications, and the option to require disclosures regarding traditional knowledge and cultural expressions used in a design. While the treaty enhances global design protection, concerns persist regarding its impact on local designers, market competition, and procedural fairness. The immediate advantages of the DLT for developing countries are limited, highlighting the need for continued technical assistance and capacity-building efforts.

KEYWORDS: Design Law Treaty (DLT), industrial design protection, World Intellectual Property Organization (WIPO), grace period, deferred publication, traditional knowledge and cultural expressions

Le Traité de Riyad sur le droit des dessins et modèles, adopté le 22 novembre 2024, vise à harmoniser et à simplifier les procédures d'enregistrement des dessins et modèles industriels à l'échelle mondiale. En normalisant les exigences procédurales entre les juridictions, le traité vise à créer un système plus prévisible et plus accessible pour les créateurs, qui profitera en particulier aux petits créateurs et aux petites et moyennes entreprises (PME). Toutefois, le traité peut avoir des implications pour les pays en développement, car beaucoup d'entre eux ne disposent pas d'industries à forte intensité de conception. Les principales dispositions du traité sur le droit des dessins et modèles comprennent un délai de grâce de 12 mois, la publication différée, les demandes divisionnaires et la possibilité d'exiger des divulgations concernant les savoirs traditionnels et les expressions culturelles utilisés dans un dessin ou modèle. Si le traité renforce la protection mondiale des dessins et modèles, des inquiétudes persistent quant à son impact sur les créateurs locaux, la concurrence sur le marché et l'équité procédurale. Les avantages immédiats du traité pour les pays en développement sont limités, ce qui souligne la nécessité de poursuivre les efforts d'assistance technique et de renforcement des capacités.

KEY MESSAGES

- “The Riyadh DLT marks a significant milestone in harmonizing global design registration procedures, but its benefits remain skewed toward developed countries with robust design-intensive industries.”
- “The inclusion of a 12-month grace period introduces significant uncertainty for competitors, particularly SMEs and designers in developing countries, who may struggle with legal ambiguity.”
- “While the treaty simplifies registration processes, it also allows for divisional applications and deferred publication, which could prolong uncertainty for competitors and favor established industry players.”
- “Developing countries successfully secured the option to require disclosures regarding traditional knowledge and cultural expressions, a major step for ensuring design protection aligns with local interests.”

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MOTS-CLÉS: *Le Traité de Riyad sur le droit des dessins et modèles, la protection des dessins et modèles industriels, l'Organisation Mondiale de la Propriété Intellectuelle (OMPI), le délai de grâce, la publication différée, les savoirs traditionnels et les expressions culturelles*

El Tratado de Riad sobre el Derecho de los Diseños (DLT), adoptado el 22 de noviembre de 2024, tiene como objetivo armonizar y simplificar los procedimientos mundiales de registro de diseños industriales. Al estandarizar los requisitos de procedimiento en todas las jurisdicciones, el tratado pretende crear un sistema más predecible y accesible para los diseñadores, beneficiando especialmente a los pequeños diseñadores y a las pequeñas y medianas empresas (PYMEs). Sin embargo, el DLT puede tener implicaciones para los países en desarrollo, ya que muchos de ellos carecen de industrias intensivas en diseño. Entre las principales disposiciones del DLT figuran un periodo de gracia de 12 meses, la publicación diferida, las solicitudes divisionales y la opción de requerir la divulgación de los conocimientos tradicionales y las expresiones culturales utilizadas en un diseño. Si bien el tratado fortalece la protección mundial de los diseños, persiste la preocupación por su impacto en los diseñadores locales, la competencia en el mercado y la equidad procesal. Las ventajas inmediatas del DLT para los países en desarrollo son limitadas, lo que resalta la necesidad de continuar con la asistencia técnica y los esfuerzos de desarrollo de capacidades.

PALABRAS CLAVES: *El Tratado sobre el Derecho de los Diseños (DLT), la protección del diseño industrial, la Organización Mundial de la Propiedad Intelectual (OMPI), el periodo de gracia, la publicación diferida, los conocimientos tradicionales y las expresiones culturales*

Introduction

Member States of the World Intellectual Property Organization (WIPO) successfully concluded a Diplomatic Conference and adopted a Design Law Treaty (DLT) on November 22, 2024, in Riyadh, Saudi Arabia. In the context of a great diversity of procedures for registration of industrial designs among WIPO Member States, the treaty ambitiously aims to harmonize and simplify global procedural rules for the registration of industrial designs.

While celebrated as a step forward in reducing procedural barriers, the treaty has also sparked discussions about balancing the interests of developed and developing countries in the global design landscape.

The treaty advances harmonization in key areas such as filing requirements and mandatory representation, and also incorporates optional provisions allowing Member States to maintain policy space to address issues relevant in the local context, such as designs that are based on the use of traditional knowledge and cultural expressions.

The treaty garnered early support from 18 contracting States that signed the treaty at the Diplomatic Conference. These are – Bosnia and Herzegovina, Central African Republic, Congo, Costa Rica, Cote d'Ivoire, Democratic People's Republic of Korea, Gambia, Ghana, Lebanon, Morocco, Paraguay, Philippines, Republic of Moldova, Sao Tome and Principe, Saudi Arabia, Sudan, Uzbekistan and Zimbabwe.

The context and objectives of the DLT

Industrial designs are a vital aspect of intellectual property, encompassing the aesthetic aspects of products that drive consumer preferences. From automotive designs to mobile devices and fashion, industrial designs significantly contribute to economic activities, especially in industries reliant on aesthetic characteristics, innovation and branding.

The Riyadh DLT aims to standardize procedural requirements for filing and processing design registration applications across jurisdictions. The primary goal of the DLT is to create a more accessible and efficient system for design protection worldwide by making the framework for design protection procedures more predictable with legal certainty, less complex and more affordable. Therefore, the DLT is a particularly welcome development for countries where design-intensive industries play a crucial role in the economy. According to the WIPO Secretariat, “The Riyadh Treaty will make it significantly easier for designers, especially smaller scale designers and micro, small and medium-sized enterprises (SMEs), to register their work.”

To that end, the DLT does the following:

- sets a maximum list of indications or elements that designers must submit with an application;

- allows applicants to choose how they represent the design in an application (drawings, photographs or, if admitted by the intellectual property office, video);
- allows applicants to include several designs in a single application, under certain conditions;
- sets out requirements for the granting of a filing date;
- provides for a grace period of 12 months following a first disclosure of the design during which such disclosure will not affect its novelty for registration;
- allows applicants to keep their designs unpublished for at least six months after having secured a filing date (deferred publication);
- provides relief measures and offer some flexibility to applicants to prevent them from losing their rights if they miss a deadline;
- simplifies the procedure for requesting the renewal of a design registration;
- furthers the introduction of e-filing systems for designs and the electronic exchange of priority documents.

Limited benefits for developing countries

However, while the DLT may make it more affordable, speedy and predictable for designers, including smaller scale local designers and SMEs to register their designs in multiple jurisdictions, only a few countries can effectively reap its benefits currently. This is because very few developing countries have design-intensive economies. According to WIPO statistics, the top countries of origin of industrial design registration applications in 2022 (China, Republic of Korea, the United States, the European Union and Japan) accounted for three-quarters of the global industrial design activity in 2022. In the same year, the combined share of Africa, Latin America and the Caribbean and the Oceania regions in global design registration applications was 2.9 per cent.

Grace period and term of protection

Though the DLT was promoted as a formalities and procedures treaty, the basic proposal of the treaty contained some provisions addressing substantive matters viz. grace period and term of protection. While the provision on term of protection was not adopted in the final text, the DLT made significant changes to the international regime on grace period.

An extended and unqualified grace period of 12 months was a key demand of the design-based industries from developed countries. The International Association for the Protection of Intellectual Property (AIPPI) called the provision on grace period “the gem of the DLT” and had strongly advocated for a full grace period of 12 months, without any condition that the period

would be available, for instance, only if the design is shown in notified international exhibitions. The call for a full grace period is made on the grounds that while in the nineteenth century the predominant mode for designers to showcase their products in international exhibitions and test the market without destroying novelty for their creation, showcasing the product on the internet and social media is the predominant mode of doing so today. Hence, a grace period that is restricted to disclosure made at international exhibitions would be largely outdated.

A 12-month full grace period can have substantive implications for local designers in developing countries. Quite often design based products capture consumer interests for a limited period until new designs are introduced. Hence, a 12-month grace period could in effect allow design owners to delay registration of their designs while still enjoying exclusive marketing rights. During this extended grace period, competitors would face significant legal uncertainty, unsure if their own designs might later be challenged as infringing on the design covered by the grace period. This uncertainty could discourage competitors, particularly individual designers, start-ups and small and medium enterprises (SMEs) in developing countries.

In this regard, during the Diplomatic Conference China had specifically proposed deletion of the provision on grace period as it is a substantive issue. Though the DLT now establishes a 12-month full grace period, and does not limit the grace period eligibility criteria to disclosures made only in international exhibitions, the provision is subjected to reservation that a contracting State could make at the time of signing the DLT. Thus, article 31 of the DLT allows any State that does not provide for a grace period in accordance with article 7 of the DLT at the date it becomes a party to the DLT to declare through a reservation that it will not be bound by the grace period. This was a major safeguard that was also proposed by China and successfully pursued by developing countries.

Deferred publication

Another major demand of the design based industries was that the DLT should provide for an extended period of deferred publication of the design application. Article 10 of the DLT allows a Contracting Party to allow the publication of the application to be deferred for a period prescribed in the law, subject to a minimum period of 6 months as prescribed in Rule 6 of the Regulations. Thus, pursuant to the DLT all contracting Parties will now have to provide for a minimum deferral period of 6 months. The implication of this, and the 12-month grace period, is that a design registration will remain secret for 18 months since it is publicly demonstrated in any physical or virtual fora. However, similar to the grace period, the DLT obligation regarding deferral of publication can also be subject to a reservation. It should also be noted that the minimum deferral period of 6 months finally agreed upon in the negotiations is less than the one year period of deferral that the AIPPI had advocated.

Divisional applications and partial designs (dotted line claims)

Article 9 of the DLT provides the discretion to contracting parties to provide the applicant the option to either amend the application or file divisional applications, where the application does not meet the requirements under national law to include more than one industrial design.

Divisional applications can result in fragmented protection for similar designs and create complexity in the enforcement of design rights, as well as create challenges for third parties to understand the scope of protection. By allowing applicants to strategically delay the full disclosure of their designs through later-stage filings, divisional applications can prolong uncertainty for competitors due to lack of clarity on the full scope of the applicant's design portfolio and artificially extend the term of protection, potentially hindering market activities. For applicants and intellectual property (IP) offices to manage and oversee multiple applications on related matters, the costs and time investment would increase. Hence, divisional applications can create a more complex, costly IP landscape, favoring larger firms that are better equipped to navigate these challenges, while resource constrained SMEs, especially in developing countries, could face greater obstacles in protecting their designs and avoiding infringement, ultimately limiting their competitiveness in domestic and global markets.

Rule 3 of the Regulation also states that the representation of the design may include matter that does not form part of the claimed design if it is shown by visual means such as dotted or broken lines. This provision seeks to enable the admission of partial design claims. The concept behind partial designs, as is prevalent in jurisdictions including the United States, Japan and the European Union, is that the novelty may reside even in a portion of the entire article and thus such portions are required to be given protection. For instance, a uniquely shaped and configured knife handle is capable of being protected through designs irrespective of the shape and configuration of the blade. Such claims may lead to fragmented protections, allowing larger companies to establish extensive protections over isolated design elements.

While the DLT and Regulations enables filing of partial design claims at the discretion of the concerned national office, a resolution adopted at the Diplomatic Conference clarifies that nothing in the DLT shall be construed as obligating Contracting Parties to protect partial designs.

Disclosure of traditional knowledge and traditional cultural expressions

A major demand of developing countries, based on a proposal submitted by the African Group in 2014, was that it should be possible for a Contracting Party to the DLT to require the applicant to submit information disclosing the origin and/or source of any traditional knowledge or traditional cultural expression used in the claimed industrial design. This was particularly important

because the DLT proposed a closed list of elements, beyond which no other element or information could be required from the applicant.

A disclosure requirement was particularly opposed by developed countries and several proposals were made to remove any reference to the disclosure of traditional knowledge (TK) or Traditional Cultural Expressions (TCEs) in a design application. These included a proposal by Switzerland to clarify in a provision on principles only recognizing the freedom of Contracting Parties to take measures to protect TK and TCEs, as well as a similar proposal by Canada to just introduce a preambular text. There were also proposals to have this requirement in the Regulations. However, developing countries were able to ensure that Contracting Parties could require, in terms of the applicable law, that the design registration application provide information about TK or TCE of which the applicant is aware and which is relevant to the eligibility of design registration. To secure a provision that allows the introduction of national legislation regarding disclosure of TK and TCE in a design application is a major achievement for developing countries, notwithstanding that a mandatory obligation to disclose the origin/source would have been a superior solution in terms of transparency of the system and protection of TK and TCEs holders.

Technical assistance

Another major demand of developing countries in the DLT negotiations was the adoption of a provision on technical assistance, inspired by article 51 of the Patent Cooperation Treaty. The technical assistance and capacity-building provisions of the Riyadh DLT emphasize a development-oriented, demand-driven approach tailored to the needs of beneficiary countries. Assistance focuses on strengthening national capacities to implement the treaty effectively, addressing priorities such as establishing legal frameworks, revising administrative procedures, and training personnel. Support includes technological aid and raising awareness about design registration systems. WIPO is tasked with financing these initiatives under its regulations and encouraged to collaborate with international organizations and governments to expand resources. Additionally, Contracting Parties are urged to engage with WIPO digital libraries and share registered design data, supported by the International Bureau to enhance global information exchange.

Conclusion

In conclusion, the Riyadh DLT marks a significant milestone in harmonizing global design registration procedures, with the aim of facilitating the global protection of industrial designs. By addressing procedural barriers and introducing mechanisms like deferred publication, and the optional disclosure regarding TK and TCEs, the treaty seeks to balance the interests of diverse stakeholders. However, the inclusion of the 12-month grace period raises concerns. This provision fundamentally alters the international design regime by extending the period during which designs can remain unregistered yet still enjoy legal protection. Such substantive matters should not have been addressed in a

treaty primarily focused on procedural harmonization. The extended grace period introduces significant uncertainty for competitors, particularly for SMEs and individual designers in developing countries, who may face challenges navigating this ambiguity. This inclusion could disproportionately benefit established players in developed countries, undermining the treaty's intended balance of interests among diverse stakeholders.

Overall, the practical benefits of the DLT remain skewed toward developed countries with robust design-intensive industries, leaving developing countries with limited immediate advantages. Provisions for technical assistance and capacity building are critical steps toward addressing this disparity, ensuring that the treaty becomes a meaningful tool for inclusive economic growth in the future.

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