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## Patents, Industrial Designs, and the Trans-Pacific Partnership: Articles 18.37–18.46 and 18.55–18.56

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# Patents, Industrial Designs, and the Trans-Pacific Partnership: Articles 18.37–18.46 and 18.55–18.56

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## I. INTRODUCTION

Many incentive-based economic theories have been used to justify patent systems. One such theory holds that patents are necessary to incentivize the creation of inventions. According to that theory, patents provide inventors the right to exclude the use of their inventions, which enables them to recoup their research and development costs. In the absence of patent protection, those inventors would not be able to recoup those costs.<sup>1</sup> Another theory emphasizes the need to incentivize disclosure of inventions to foster technological growth—specifically, without patents, inventors would choose to keep their inventions as closely-held secrets, which would not allow others to improve upon those inventions.<sup>2</sup> A third theory focuses on incentivizing not just the creation of inventions but also the commercialization of products and methods that actualize or utilize inventions—in the absence of the right to exclude, products and methods would not incorporate new technology because of various factors such as free-riding.<sup>3</sup>

Each theory has its flaws, but the economic benefits of adopting patent systems exist for both developed and developing nations. Businesses have less incentive to invest in economies that lack strong patent protection to prevent copycats from undercutting profits.<sup>4</sup> For developing nations in particular, patents foster economic growth by attracting foreign investment in manufacturing, sales, and distribution networks,<sup>5</sup> but they also support the

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1. CRAIG ALLEN NARD, *THE LAW OF PATENTS* 33 (3d ed. 2014).

2. *Id.* at 34.

3. *Id.*

4. See Jacob A. Schroeder, *So Long As You Live Under My Roof, You'll Live by . . . Whose Rules?: Ending the Extraterritorial Application of Patent Law*, 18 *TEX. INTELL. PROP. L.J.* 55, 69 (2009) (“Strong intellectual property protection assures businesses and owners of IP that their investment in technology will be free from piracy and theft.”).

5. *Id.* at 69.

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development of home grown, technology-based industries.<sup>6</sup> Patent systems in developing countries also attract investment in areas of research and development related to technologies that would have unique use and benefits in those countries.<sup>7</sup>

As a result of the benefits that patent law can provide in terms of incentivizing the creation, disclosure, and use of technology both for developed and developing nations—as well as the efficiencies that flow from having similar patent laws around the world—for many years countries have sought to develop and harmonize their patent laws. In 1996, the World Trade Organization (WTO) and, in particular, the General Agreement on Tariffs and Trade (GATT), began to dictate the contours of international intellectual property (IP) protection.<sup>8</sup> The WTO's efforts ultimately resulted in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which sought to harmonize international IP law by establishing minimum standards of IP protection for all WTO members.<sup>9</sup>

To build upon the foundation laid by TRIPS, one stated goal of the Trans-Pacific Partnership (TPP)—the proposed international agreement under consideration here—was to further harmonize IP law requirements in its member nations.<sup>10</sup> In this article, we discuss TPP Articles 18.37–18.46,

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6. *Id.* (“[S]trong intellectual property protection makes developing nations more attractive to foreign investors from developed nations, thus fostering economic growth. Furthermore, strong intellectual property protection will encourage the growth of high value, high wage industries built on intellectual property.”).
  7. Kate H. Murashige, *Harmonization of Patent Laws*, 16 HOUS. J. INT’L L. 591, 595 (1994) (“If the developing country’s market represents a marginal profit once the R&D is completed, only generic manufacturers may find it profitable to continue operation beyond R&D. However, this approach inspires no interest in R&D for products that would uniquely interest such countries.”).
  8. GATT marked the first time that international IP law was decided by a trade organization. Previously, these standards were set by the World Intellectual Property Organization (WIPO) and earlier non-trade-related organizations. G. GREGORY LETTERMAN, *BASICS OF INTERNATIONAL INTELLECTUAL PROPERTY LAW* 27, 30 (2001).
  9. *Id.* at 9; *see also* PETER JOHN WILLIAMS, *A HANDBOOK ON ACCESSION TO THE WTO* at 10 (2008), *available at* [https://www.wto.org/english/thewto\\_e/acc\\_e/cbt\\_course\\_e/c1s1p1\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c1s1p1_e.htm) (“[T]he percentage of world trade accounted for by Members of the organization has risen from 86.8 percent to 96.4 percent and the percentage of GDP from 89.4 percent to 96.7 percent.”).
  10. *See TPP: Made in America, Intellectual Property*, OFFICE OF THE U.S. TRADE REP., <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Intellectual-Property.pdf> (last visited Feb. 14, 2018) (“This will promote high standards of protection, safeguard U.S. exports and consumers against IP infringement, and provide fair access to legal systems in the region to enforce those rights. Drawing from and building on other bilateral and regional trade agreements . . .”).

which deal with so-called general patents (utility patents), and TPP Articles 18.55–18.56, which deal with industrial designs (*e.g.*, design patents).

## II. ANALYSIS

We have divided our analysis of the TPP into two parts. The first part covers general patents (utility patents), and the second part covers industrial designs (*e.g.*, design patents).

### A. General Patents

This section discusses Articles 18.37–18.46 of the TPP.

#### 1. Article 18.37: Patentable Subject Matter

Paragraph 1 of Article 18.37 requires that, subject to some express exceptions, patents be made available “for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.”<sup>11</sup> A footnote clarifies that “inventive step” means “non-obvious” and “capable of industrial application” means “useful,” with both elements being considered from the viewpoint of a person having ordinary skill in the art.<sup>12</sup> This paragraph is identical to a provision in TRIPS<sup>13</sup> and, given the footnote, aligns with current U.S. patent law.<sup>14</sup>

Paragraph 2 requires, again subject to the rest of the Article, that signatories make patents available “for inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product.”<sup>15</sup> Unlike Paragraph 1,

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11. Trans-Pacific Partnership, OFFICE OF THE U.S. TRADE REP., art. 18.37, ¶ 1, Feb. 4, 2016, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text> [hereinafter TPP].

12. *Id.* art. 18.37, ¶ 1 n.30.

13. Agreement on Trade-Related Aspects of Intellectual Property Rights, pt. II, § 5, art. 27, ¶ 1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round, 1869 U.N.T.S. 299 (1994), [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf) [hereinafter TRIPS] (“[P]atents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.”).

14. See 35 U.S.C.A. §§ 101–103 (Westlaw through Pub. L. No. 115-30).

15. TPP, *supra* note 11, art. 18.37, ¶ 2.

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this part of the TPP exceeds the former TRIPS requirements;<sup>16</sup> it does, however, match current U.S. patent law.<sup>17</sup>

Consistent with TRIPS, Paragraph 3 permits a country to exclude certain inventions from patentability “to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment.”<sup>18</sup> A TPP country could possibly use this exception to deny a wide variety of patents it considers culturally immoral.<sup>19</sup> While U.S. patent law includes no such exception,<sup>20</sup> the European Patent Convention does.<sup>21</sup> Due to its abstract nature, the European Patent Office has found it necessary to rely on various legal tests to determine compliance.<sup>22</sup> Paragraph 3 also expressly identifies some specific things (certain methods of treatment, animals, and biological processes) that may be excluded from patentability.<sup>23</sup>

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16. See generally TRIPS, *supra* note 13.
17. 35 U.S.C.A. § 100(b) (Westlaw through Pub. L. No. 115-30) (defining a process to include “a new use of a known process, machine, manufacture, composition of matter, or material”).
18. TPP, *supra* note 11, art. 18.37, ¶ 3; see TRIPS, *supra* note 13, pt. II, § 5, art. 27, ¶ 2–3.
19. See TPP, *supra* note 11, art. 18.37, ¶ 3.
20. See *Juicy Whip, Inc. v. Orange Bang, Inc.*, 185 F.3d 1364, 1366–67 (Fed. Cir. 1999) (stating that “the principle that inventions are invalid if they are principally designed to serve immoral or illegal purposes has not been applied broadly in recent years”).
21. Convention on the Grant of European Patents, art. 53, Oct. 5, 1973, 1065 U.N.T.S. 199 (“European patents shall not be granted in respect of: (a) [I]nventions the publication or exploitation of which would be contrary to ‘ordre public’ or morality[.]”).
22. Margo A. Bagley, *Patent First, Ask Questions Later: Morality and Biotechnology in Patent Law*, 45 WM. & MARY L. REV. 469, 519–24 (2003) (“Balancing competing interests is not the only approach the EPO has taken when evaluating the applicability of the Article 53(a) exception. In two later cases, different bodies within the EPO articulated two additional morality tests: (1) the unacceptability test and (2) the public abhorrence test.”).
23. TPP, *supra* note 11, art. 18.37, ¶ 3 (“A Party may also exclude from patentability . . . (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; [and] (b) animals other than microorganisms, and essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes.”). Notably, U.S. patent law includes some analogous limitations on patent rights, albeit not always in the context of patentability. See, e.g., 35 U.S.C.A. § 287(c) (Westlaw through Pub. L. No. 115-30) (“With respect to a medical practitioner’s performance of a medical activity that constitutes an infringement under Section 271(a) or (b), the provisions of Sections 281, 283, 284, and 285 shall not apply against the medical practitioner or against a related health care entity with respect to such

Paragraph 4 allows for the exclusion of plant patents, but it does not allow for the exclusion of patents for microorganisms or inventions derived from plants.<sup>24</sup>

## 2. Article 18.38: Grace Period

When the United States recently transitioned from a first-to-invent to a first-inventor-to-file patent system, it maintained a one-year grace period for certain events, including public disclosures made by the inventor.<sup>25</sup> The TPP imports this approach, requiring each of its signatories to disregard a public disclosure that: “(a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and (b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party.”<sup>26</sup> Under this rule, the public disclosure cannot be used to show a lack of novelty or inventive step.<sup>27</sup> TRIPS contains no corresponding requirement,<sup>28</sup> and many TPP partner nations will need to update their laws to comply with this new requirement.<sup>29</sup> For example, Vietnam’s current grace period applies only to novelty determinations and is limited to six months prior to filing.<sup>30</sup> Proponents of the grace period argue that allowing some flexibility for pre-filing disclosures permits inventors to test and commercialize technology earlier, which helps to improve the quality of patent disclosures for successful technologies and eliminate unnecessary patent filing for unsuccessful technologies.<sup>31</sup> The grace period also avoids punishing inventors by eliminating patentability for honest mistakes.<sup>32</sup>

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medical activity.”); Leahy-Smith America Invents Act § 33 (2011), [https://www.uspto.gov/aia\\_implementation/bills-112hr1249enr.pdf](https://www.uspto.gov/aia_implementation/bills-112hr1249enr.pdf) (“Notwithstanding any other provision of law, no patent may issue on a claim directed to or encompassing a human organism.”).

24. TPP, *supra* note 11, art. 18.37, ¶ 4.
25. 35 U.S.C.A. § 102(b) (Westlaw through Pub. L. No. 115-30).
26. TPP, *supra* note 11, art. 18.38.
27. *Id.*
28. See TRIPS, *supra* note 13, pt. II, § 5, art. 29.
29. Jeremiah B. Frueaf & Matthew A. Smith, *Public Disclosure Grace Periods and the Trans-Pacific Partnership: Member States Seek Harmonization with the America Invents Act*, 91 PAT. TRADEMARK & COPYRIGHT J. 1144, at 1 (2016).
30. VIETNAM CODE CIVIL, No. 50/2005/QH11, art. 60(3) (Viet.) (Law on Intellectual Property).
31. William G. Giltinan, *The Disclosure Function, Academic/Private Partnerships, and the Case for Affirmatively Used, Multinational Grace Periods*, 22 TEX. INTELL. PROP. L.J. 109, 111–12 (2014). Those who disfavor the grace period argue that it “contribute[s] to legal uncertainty, promote[s] sloppy practice, and can be abused to gain unwarranted patent term extensions.” *Id.*
32. *Id.*

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Further, TPP advocates point out that extending the grace period to all signatories will benefit applicants currently burdened by disparate systems, and they argue it may even encourage the European Patent Organization to follow suit to further eliminate differences between countries.<sup>33</sup>

### 3. Article 18.39: Patent Revocation

Each TPP signatory must provide that “a patent may be cancelled, revoked or nullified only on grounds that would have justified a refusal to grant the patent.”<sup>34</sup> Outside of litigation, patent revocation may be accomplished through administrative proceedings similar to the ones created by the United State in the Leahy-Smith America Invents Act.<sup>35</sup> In the United States, Inter Partes Review (IPR) proceedings, which are the most popular,<sup>36</sup> allow for challenges for lack of novelty or non-obviousness on the basis of prior patents and printed publications.<sup>37</sup>

The TPP holds that a member state “may also provide that fraud, misrepresentation or inequitable conduct may be the basis for cancelling, revoking or nullifying a patent or holding a patent unenforceable.”<sup>38</sup> This provision

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33. See Frueaf & Smith, *supra* note 29, at 5; U.S. INT’L TRADE COMM’N, *Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors* 472 (2016), <https://www.usitc.gov/publications/332/pub4607.pdf>; INDUS. TRADE ADVISORY COMM. ON INTELL. PROP. RTS., *THE TRANS-PACIFIC PARTNERSHIP AGREEMENT* 12 (2015), <https://ustr.gov/sites/default/files/ITAC-15-Intellectual-Property.pdf>. The European Patent Organization currently utilizes a strict approach to the grace period. See Giltinan, *supra* note 31, at 116 (“Under this system, all public disclosure, including that from the inventor, is treated as prior art. The only exceptions are disclosures arising from wrongdoing at the expense of the applicant and disclosures at a very limited number of international exhibitions. Those exceptions only apply to disclosures occurring no more than six months prior to the filing of the European application.”).
34. TPP, *supra* note 11, art. 18.39.
35. See Leahy-Smith America Invents Act §§ 6, 18 (2011), [https://www.uspto.gov/aia\\_implementation/bills-112hr1249enr.pdf](https://www.uspto.gov/aia_implementation/bills-112hr1249enr.pdf).
36. U.S. PATENT AND TRADEMARK OFFICE, *PATENT TRIAL AND APPEAL BOARD STATISTICS 7/31/2016* (2016), <https://www.uspto.gov/sites/default/files/documents/2016-07-31%20PTAB.pdf>. Post-Grant Review and Covered Business Method proceedings also exist, but they have narrower application and are less frequently used. *Id.* Anyone other than the patent owner who has not previously filed a civil action challenging the patent’s validity, and has not been served with a complaint alleging infringement of the patent more than one year prior to the date in question, may petition for institution of an IPR. 35 U.S.C.A. § 315 (Westlaw through Pub. L. No. 115-30).
37. 35 U.S.C.A. § 311 (Westlaw through Pub. L. No. 115-30). If there is a reasonable likelihood that the petitioner is correct, a proceeding is instituted. *Id.*
38. TPP, *supra* note 11, art. 18.39, ¶ 1.

aligns with U.S. patent law, which punishes inequitable conduct with unenforceability of the entire patent and any related, tainted patents.<sup>39</sup> Due to the severe nature of the punishment for such conduct, U.S. law requires clear and convincing evidence that (1) the patentee specifically intended to deceive the patent examiner; and (2) the patent office would not have granted the patent if the deception had not occurred.<sup>40</sup>

Furthermore, the TPP allows for the revocation of a patent “in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement.”<sup>41</sup> The applicable TRIPS provisions are relatively sparse, providing little structure other than requiring that the procedures be “fair and equitable” and allowing for judicial review.<sup>42</sup> On the other hand, Article 5A of the Paris Convention permits a member to grant compulsory licenses for patentee “abuses,” such as the failure to work a patent.<sup>43</sup> It further holds that the patent may be revoked if two years of compulsory licensing is an inadequate remedy for the abuses.<sup>44</sup>

#### 4. Article 18.40: Exceptions

The TPP allows for “limited exceptions to the exclusive rights conferred by a patent.”<sup>45</sup> Like its sister provision in TRIPS,<sup>46</sup> however, the exceptions cannot unreasonably conflict with a normal exploitation of the patent or unreasonably prejudice the legitimate interests of the patent owner.<sup>47</sup> A state might decide to apply this exception for social reasons, research reasons, public interest reasons, public health reasons, or legal reasons.<sup>48</sup>

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39. *See* *Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276, 1288 (Fed. Cir. 2011) (stating that “the remedy for inequitable conduct is the ‘atomic bomb’ of patent law”).

40. *See id.* at 1290–91.

41. TPP, *supra* note 11, art. 18.39, ¶ 2.

42. TRIPS, *supra* note 13, pt. II, § 5, art. 32; pt. III, § 1, art. 41 ¶ 2–3; pt. III, § 5, art. 62 ¶ 4–5.

43. The Paris Convention for the Protection of Industrial Property, art. 5A(2), July 14, 1967, 21 U.S.T. 1583.

44. *Id.* art. 5A(3). This working requirement is a European concept that was rejected in the United States over a century ago. *See* *Cont’l Paper Bag Co. v. E. Paper Bag Co.*, 210 U.S. 405 (1908); *see also generally* Harold C. Wegner, *Injunctive Relief: A Charming Betsy Boomerang*, 4 *Nw. J. TECH. & INTELL. PROP.* 156 (2006).

45. TPP, *supra* note 11, art. 18.40.

46. *See* TRIPS, *supra* note 13, pt. II § 1, art. 13.

47. TPP, *supra* note 11, art. 18.40.

48. *See* Catherine Margellou, *Intellectual Property & Medical Innovation Challenges for the Future: Patent Exceptions and Limitations in the Health Context*,



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### 5. Article 18.41: Other Use without Authorization of the Right Holder

Article 18.41 clarifies that nothing in the relevant chapter of the TPP “limits a Party’s rights and obligations under Article 31 of the TRIPS Agreement, any waiver or any amendment to that Article that the Parties accept.”<sup>49</sup> The article sets out many restrictions for the use of a patented technology absent the patentee’s permission.<sup>50</sup>

### 6. Article 18.42: Patent Filing

In the event that two parties independently create an invention and file separate patent applications, the patent must be granted to the party with the earliest filing date or priority date, so long as that party’s application is patentable and not withdrawn, abandoned, or refused.<sup>51</sup> Two footnotes provide clarifying explanations, including that exceptions may be made for derivations and when “an earlier application . . . is not prior art against the subsequent application.”<sup>52</sup> There was no corresponding requirement under TRIPS to award the patent to the first inventor to file, but this article aligns with U.S. law after the America Invents Act.<sup>53</sup>

### 7. Article 18.43: Amendments, Corrections and Observations

In another departure from TRIPS, Article 18.43 requires an applicant to be provided with “at least one opportunity to make amendments, corrections and observations in connection with its application.”<sup>54</sup> A footnote clarifies that any such amendment may be restricted such that it does not result in the addition of new material beyond the scope of the originally filed disclosure, which is consistent with the new matter doctrine used in U.S. patent law.<sup>55</sup>

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WORLD INTELL. PROP. ORG. (Apr. 28, 2014), [http://www.wipo.int/edocs/mdocs/mdocs/en/wipo\\_ip\\_ath\\_14/wipo\\_ip\\_ath\\_14\\_p5.pdf](http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_ath_14/wipo_ip_ath_14_p5.pdf).

49. TPP, *supra* note 11, art. 18.41.

50. TRIPS, *supra* note 13, pt. II, § 5, art. 31. These restrictions include requiring adequate remuneration to the patent holder, the availability of judicial or other independent review, and non-exclusive and non-assignable use. *Id.*

51. TPP, *supra* note 11, art. 18.42.

52. *Id.* art. 18.42 nn.33–34.

53. *Compare id.* art. 18.42 n.33–34, with 35 U.S.C.A. § 102 (Westlaw through Pub. L. No. 115-30).

54. TPP, *supra* note 11, art. 18.43.

55. *Id.* art. 18.43 n.35; *see, e.g.*, *Glaxo Wellcome, Inc. v. Impax Labs., Inc.*, 356 F.3d 1348, 1354 (Fed. Cir. 2004) (“The new matter doctrine prevents an applicant from adding new subject matter to the claims unless the specification shows that the inventor had support for the addition at the time of the original filing.”).

### **8. Article 18.44: Publication of Patent Applications**

Citing the “benefits of transparency in the patent system,” the TPP requires signatories to endeavor to publish pending patent applications promptly after the expiration of 18 months from the filing date or, if applicable, the earliest priority date.<sup>56</sup> Alternatively, an applicant may request earlier publication.<sup>57</sup> While not a requirement of TRIPS, the 18-month publication rule is a feature of the Patent Cooperation Treaty (PCT).<sup>58</sup>

### **9. Article 18.45: Information Relating to Published Patent Applications and Granted Patents**

With respect to granted patents and published patent applications, the TPP requires signatories to make available to the public search and examination results (including relevant prior art searches), non-confidential communications from applicants, and literature citations submitted by applicants and third parties.<sup>59</sup>

### **10. Article 18.46: Patent Term Adjustment for Patent Office Delays**

While largely overshadowed by the patent term extensions that compensate for delays in receiving marketing approval for pharmaceuticals,<sup>60</sup> which is a subject outside the scope of this article, the TPP also requires member states to adjust patent terms for “unreasonable delays in a Party’s issuance of patents.”<sup>61</sup> An unreasonable delay must, at a minimum, include “a delay in the issuance of a patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later.”<sup>62</sup>

When the United States altered its patent term to become compliant with TRIPS, it implemented a patent term adjustment provision.<sup>63</sup> Since the expiration date of U.S. patents is set to twenty years from the effective filing date (instead of seventeen years from the date of the grant), patent owners must be compensated for the loss of patent term resulting from patent office delays.<sup>64</sup>

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56. TPP, *supra* note 11, art. 18.44, ¶ 1.

57. *Id.* art. 18.44, ¶ 3.

58. Patent Cooperation Treaty, art. 21, June 19, 1970, 28 U.S.T. 7645, 1160 U.N.T.S. 231, <http://www.wipo.int/pct/en/texts/articles/atoc.htm>.

59. TPP, *supra* note 11, art. 18.45.

60. *See id.* art. 18.48.

61. *Id.* art. 18.46, ¶ 3.

62. *Id.* art. 18.46, ¶ 4.

63. 35 U.S.C.A. § 154(b) (Westlaw through Pub. L. No. 115-30); TRIPS, *supra* note 13, pt. II, § 5, art. 33.

64. *See* 35 U.S.C.A. § 154(a)(2) (Westlaw through Pub. L. No. 115-30).

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Thus, if Vietnamese patent law, for example, currently provides no adjustment for patent office delays, it would need to be updated to become TPP compliant. Notably, besides requiring signatories make best efforts to process patent applications to avoid unreasonable or unnecessary delays,<sup>65</sup> the TPP requires that signatories provide procedures for patent applicants to request expedited examination of their patent applications.<sup>66</sup>

## B. Industrial Designs

This section discusses Articles 18.55–18.56 of the TPP.

### 1. Article 18.55: Protection

The TPP requires “adequate and effective protection of industrial designs.”<sup>67</sup> This protection must extend to designs “embodied in a part of an article” or “having a particular regard, where appropriate, to a part of an article in the context of the article as a whole.”<sup>68</sup> Except for this new requirement to protect a part of an article, the TPP adopts the existing industrial design standards of TRIPS Articles 25 and 26.<sup>69</sup>

### 2. Article 18.56: Improving Industrial Design Systems

Article 18.56 highlights the parties’ recognition of the importance of improving the quality and efficiency of industrial design registration systems, including allowing cross-border acquisition of rights.<sup>70</sup> Without requiring its adoption, the TPP states that members must give “due consideration to ratifying or acceding to the *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs*.”<sup>71</sup> The Geneva Act is the latest addition to the Hague Agreement, which represents an international registration system for industrial designs and allows for protection in multiple countries with minimal formalities.<sup>72</sup>

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65. TPP, *supra* note 11, art. 18.46, ¶ 1.

66. *Id.* art. 18.46, ¶ 2.

67. *Id.* art. 18.55, ¶ 1.

68. *Id.*

69. *Id.* art. 18.55, ¶ 2 (“This Article is subject to Article 25 and Article 26 of the TRIPS Agreement.”); see TRIPS, *supra* note 12, pt. II, § 4, art. 25–26 (outlining the requirements for protection of industrial designs).

70. TPP, *supra* note 11, art. 18.56.

71. *Id.* art. 18.56. Of the TPP signatories, only the United States, Japan, Singapore, and Brunei have adopted the Geneva Act. See *WIPO-Administered Treaties: Geneva Act (1999)*, WORLD INTELLECTUAL PROP. ORG., [http://www.wipo.int/treaties/en/ActResults.jsp?act\\_id=7](http://www.wipo.int/treaties/en/ActResults.jsp?act_id=7) (last visited Jan. 24, 2018).

72. *Hague Agreement Concerning the International Registration of Industrial Designs*, WORLD INTELLECTUAL PROP. ORG., <http://www.wipo.int/treaties/en/registration/hague> (last visited Jan. 24, 2018).

### **III. CONCLUSION**

This article summarizes, at a high level, certain provisions of the TPP related to the law governing utility and design patents. It also highlights some of the similarities and differences between the TPP, on the one hand, and U.S. patent law, Vietnamese patent law, the PCT, and TRIPS, on the other hand.