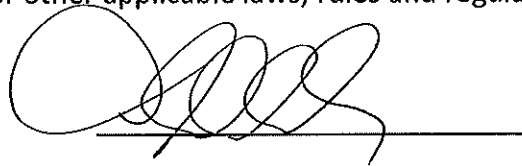


## DECISION ON AGENCY-HEAD REVIEW

Agency-head review under 5 USC 7114(c) has been completed on the **Agreement on the Implementation of the Examination of Hague Applications in TC 2900**, which was executed by the Patent Office Professional Association and the Agency on June 27, 2022. Under the authority delegated to me by the General Counsel, on July 19, 2018:

I approve this Agreement as in accordance with the Federal Service Labor-Management Relations Statute, 5 USC 7101, et seq., and other applicable laws, rules and regulations.

I disapprove this Agreement as inconsistent with the Federal Service Labor-Management Relations Statute, 5 USC 7101, et seq., and/or other applicable laws, rules and regulations.



David Shewchuk

Deputy General Counsel for General Law

United States Patent and Trademark Office

Date: 29 June 2022

Cc: Ashleigh Ferris  
Jennifer Hayward  
Ben Ahlstrom  
Kathryn Siehndel

**Agreement on the Implementation of the Examination of Hague Applications in TC 2900  
between the United States Patent and Trademark Office and the Patent Office  
Professional Association**

**Preamble:** The Hague System for the International Registration of Industrial Designs provides a practical solution for registering up to 100 designs in 77 contracting parties, covering 94 countries (as of June 2022), through the filing of a single international application, hereinafter referred to as a Hague application. Under the Geneva Treaty of 1999 (the Treaty), Hague applications require a first action within the first year from the international publication date. The USPTO has determined to implement the examination of Hague applications by all TC2900 design patent examiners as described Hague Application Examination Expansion Description and Flow Chart attached to this Agreement.

To meet our bargaining obligations, the Parties enter into this Memorandum of Understanding (MOU) between the U.S. Patent and Trademark Office (USPTO) and the Patent Office Professional Association (POPA or Union).

**Effect on Prior Agreements:** Upon the implementation of this Agreement, the 2016 Hague Implementation Pilot Program (Pilot Program) will terminate.

**Deadline Reminders:** Initially, as early as possible before the 1 year to first action Treaty deadline, examiners, if necessary, will receive an e-mail prioritizing which of their assigned Hague applications need action by a certain date in order to meet the Treaty deadline. As Hague applications are more widely distributed in TC 2900, and when automated tools are able to prioritize Hague applications, the e-mail notice may no longer be necessary.

**Requests to Change an Examiner's Docket:**

- Management may reassign Hague applications if an examiner is on extended absence or for other extenuating circumstances.
- If an examiner is overburdened by the timelines of the Hague applications on their special new docket and the examiner believes they will be unable to meet the Treaty deadline (e.g. due to Performance Appraisal Plan prioritized work, approved absence, etc.), the examiner may request their supervisor to reassign the application(s) or adjust other DM clocks to accommodate work on Hague applications.

**Union Data Requests:** The Union may make biannual requests to the USPTO to share data with POPA regarding the assignment and examination of Hague applications, including but not limited to, the number of Hague applications filed in a given quarter, the number of Hague applications filed in each class, the number of Hague applications assigned to each examiner (anonymized), the distribution of office action types, and issues gathered from the Hague mailbox.

**Ongoing Discussions with the Union:**

- A. Either party may request a meeting to discuss any issues related to the implementation of the examination of Hague applications. The parties agree to meet to discuss and attempt to resolve issues related to the program upon request of either party. If either party believes that changes to the program would be useful, the parties will make a good faith effort to expeditiously resolve any issues relative to the proposed changes. Changes will be implemented upon agreement of the parties.
- B. If the parties fail to reach agreement following discussions provided in the paragraph above, this agreement may be reopened at any point from the date it is signed.
- C. If, during any period of reopening, the USPTO determines to move forward with a change, it will provide notice to POPA and provide an opportunity to bargain to the extent required by law. Following notification, bargaining will be at POPA's request. Bargaining will be conducted in accordance with the parties' mid-term bargaining ground rules starting with the opportunity for meetings with affected employees. The USPTO will maintain the status quo regarding the proposed changes until resolution of the issue, or the completion of bargaining (including mediation and impasse proceedings), unless permitted by law to implement these proposed changes before this time. If agreement is not reached over a POPA-proposed change, POPA may notify the USPTO of its intent to bargain to the extent required by law pursuant to midterm ground rules, beginning with the submission of POPA proposals.

**Bargaining Obligation Fulfilled:** POPA acknowledges that the USPTO's obligation to negotiate over the implementation of the examination of Hague applications by all TC 2900 examiners has been fully satisfied.

**Effective Date of this Agreement:** This Agreement will be effective between the Parties upon the MOU passing Agency Head Review or within 30 days of the last party signing this Agreement, whichever is sooner.

**Signatures:**

<u>K Duda</u>	<u>6/24/2022</u>	<u>Karen M. Young</u>	<u>6/27/2022</u>
Kathleen Duda	Date	Karen M. Young	Date
President		Director TC 2900	
Patent Office Professional Association		U.S. Patent and Trademark Office	

## **Hague Application Examination Expansion Description and Flow Chart**

### **Hague Application Training:**

- Management has determined that all examiners in TC 2900 will be trained/re-trained and prepared to examine Hague applications.
- The initial training will be comprised of two parts: Part 1: overview training (1 hour), and Part 2: detailed training (2 hours).
- All non-probationary examiners will receive mandatory initial training prior to examination of Hague applications under this implementation.
- Probationary examiners will receive both parts of the Hague training upon completion of their probationary year.

### **Refresher Hague Application Training:**

Since the assignment of Hague applications may not frequently or regularly occur in some docket areas, refresher training (just in time training) will be available, this may include attending the sessions offered to examiners completing their probationary year. The examiner may use training time from their annual 25-hour training bank to attend these optional refresher trainings.

### **Hague Application Assignments:**

- The goal is to assign Hague applications that correspond to the examiner's area of technology (classes/docket area).
- Examiners who have not previously examined Hague applications will only examine Hague applications after they have completed both parts of the Hague examination training.
- Examiners who previously examined Hague applications under the Pilot Program, but are not currently examining Hague applications as of the date of this Agreement, will be treated as new Hague application examiners with respect to the corresponding training and application assignment.
- Examiners who were actively examining Hague applications ("active Hague examiners"), as of the date of this Agreement, under the Pilot Program will continue during the transition to be assigned Hague applications and should reach out to their supervisor should issues arise causing concern regarding completing the assigned cases. Supervisors will work to redistribute Hague applications outside of an examiner's normal art area so that no active

Hague application examiner has a large number of Hague applications on their docket during the transition period, unless they opt to do so.

**Advisory Review and Errors:**

- Until the start of FY 2024, all examiners – including those who examined Hague applications under the Pilot Program – may submit office actions to their supervisor, or management designee, to obtain an advisory opinion as to whether the office action contains a potential error.
- Additionally, until the start of FY2024, errors will be waived for the Hague application-specific practices as outlined in the Hague application trainings. Identified major potential errors, which relate to Hague application-specific practices, may still be documented, and the examiner may receive coaching and mentoring on those identified potential errors.
- All examiners will remain fully responsible for all other examination activities under their PAP during this time period.

**Special New Status:**

- Hague applications will be given Special New status prior to the first actions on the merits (FAOM) only. Any amendments filed on these applications will be subject to regular processing thereafter.
- Examiners are responsible for moving Special New applications per the examiner's PAP. If an examiner is directed to work on a Hague application that is not identified as the oldest Special New application, management will identify that Hague application as the oldest Special New.

**Ongoing Efforts to Assist Design Examiners**

- A resource mailbox has been created to address Hague application-related questions. Examiners are encouraged to send Hague application related issues to this resource mailbox.

# USPTO Hague Application Workflow

⟨ Procedures under the Geneva Act of the Hague Agreement: Applicant – WIPO – USPTO ⟩

