

**SUMMARY:** The SEDAR Steering Committee will meet via webinar to discuss the SEDAR assessment schedule and progress on SEDAR projects. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR Steering Committee will meet from 1 p.m. to 3 p.m. on Monday, May 9, 2016.

**ADDRESSES:**

*Meeting address:* The Steering Committee meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact John Carmichael at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) at least 24 hours in advance to request webinar access information.

*SEDAR address:* South Atlantic Fishery Management Council (SAFMC), 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; [www.sedarweb.org](http://www.sedarweb.org).

**FOR FURTHER INFORMATION CONTACT:** John Carmichael, Deputy Director for Science and Statistics, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: [john.carmichael@safmc.net](mailto:john.carmichael@safmc.net).

**SUPPLEMENTARY INFORMATION:** The items of discussion are as follows:

**SEDAR Steering Committee Agenda, Monday, May 9 2016, 1 p.m.–3 p.m.**

1. Review and consideration of ongoing SEDAR projects including data best practices, identification of priority stocks to address MRIP data revisions, SSC and Council feedback on the research track process, and the NMFS stock assessment prioritization.

2. Review and consideration of the SEDAR assessment schedule, including updates on 2016 assessment projects, 2017 workshop schedules and data deadlines, and future assessment priorities.

Although non-emergency issues not contained on this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC

office (see **ADDRESSES**) at least 10 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 12, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-08743 Filed 4-14-16; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Gulf of Mexico Fishery Management Council; Public Meeting**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will hold a meeting of its Ad Hoc Reef Fish Headboat Advisory Panel (AP).

**DATES:** The meeting will convene Tuesday, May 3, 2016, from 9 a.m. to 5 p.m. and Wednesday, May 4, 2016, from 9 a.m. to 12 p.m.

**ADDRESSES:** The meeting will take place at the Gulf of Mexico Fishery Management Council's office, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348-1630.

**FOR FURTHER INFORMATION CONTACT:** Dr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; [assane.diagne@gulfcouncil.org](mailto:assane.diagne@gulfcouncil.org); telephone: (813) 348-1630.

**SUPPLEMENTARY INFORMATION:** The items of discussion on the agenda are as follows:

1. Adoption of Agenda
  2. Summary of April Council Meeting
  3. Management Goals and Objectives for the Headboat Component
  4. Review of Management Alternatives
  5. Recommendations to the Council
  6. Other Business
- Meeting Adjourns—

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is <https://public.gulfcouncil.org:5001/webman/index.cgi>, or go to the Council's Web site and click on the File Server link in the lower left of the Council Web site: <http://www.gulfcouncil.org>. The username and password are both

“gulfguest”. Click on the “Library Folder”, then scroll down to “Ad Hoc Reef Fish Headboat AP”.

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, <http://www.gulfcouncil.org>.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: April 12, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-08742 Filed 4-14-16; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

[Docket No.: PTO-P-2016-0001]

**Request for Comments on the Application of the Written Description Requirement to Specific Situations in Design Applications**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO” or “Office”) is evaluating how the written description requirement applies to certain design applications. In particular, the USPTO has developed a proposed approach for design examiners to apply general principles governing compliance with the written description requirement to specific situations in design applications. The USPTO is seeking public comment on the

proposed approach as well as examples that the public believes would be helpful to illustrate the proposed approach or any suggested approach for applying the written description requirement in design applications.

**DATES:** Written comments must be received on or before June 14, 2016.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet (email) addressed to: *DesignWrittenDescription2016@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Nicole D. Haines.

Although comments may be submitted by postal mail, the USPTO prefers to receive comments by email in order to facilitate posting on the USPTO's Internet Web site. Plain text is preferred, but comments may also be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper, and will be digitally scanned into ADOBE® portable document format.

The comments will be available for public inspection, upon request, at the Office of the Commissioner for Patents, currently located at Madison Building East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the USPTO's Internet Web site (<http://www.uspto.gov>). Because comments will be made available for public inspection, information that the submitter does not desire to be made public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information may be directed to Nicole D. Haines, Senior Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy, by telephone to (571) 272–7717, or to Erin M. Harriman, Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy, by telephone to (571) 272–7747. Alternatively, mail may be addressed to: United States Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Nicole D. Haines.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The USPTO held a roundtable on March 5, 2014 (“Roundtable”), to solicit public opinion regarding the written

description requirement of 35 U.S.C. 112(a), or pre-America Invents Act (“AIA”) 35 U.S.C. 112, para. 1 (“35 U.S.C. 112(a)”) as applied to design applications in certain limited situations. Specifically, the USPTO sought comments on the application of the written description requirement to an amended claim or a claim in a continuing design application (“later-claimed design”) that includes only a subset of originally disclosed elements (the later-claimed design does not introduce any new elements that were not originally disclosed). See *Request for Comments and Notice of Roundtable Event on the Written Description Requirement for Design Applications*, 79 FR 7171 (Feb. 6, 2014) (“the Notice”). As discussed in the Notice, it has been the experience of the USPTO that in the vast majority of cases there is no question that a later-claimed design, composed of only a subset of originally disclosed elements, satisfies the written description requirement. In certain limited situations, however, the subset of originally disclosed elements, although visible in the original disclosure, composes a later-claimed design that an ordinary designer might not have recognized in the original disclosure. In those certain limited situations, a question arises as to whether the later-claimed design satisfies the written description requirement.

In the Notice, the USPTO requested input on its proposed factors-based approach, in which design examiners would consider certain enumerated factors when evaluating a claim for compliance with the written description requirement. The Roundtable featured public presentations and discussion of the topics identified in the Notice. The USPTO also received written comments on the topics identified in the Notice and discussed at the Roundtable. Details of the Roundtable, as well as the public presentations, the USPTO's examples presented for discussion, the webcast recording, and the written comments received are available at <http://www.uspto.gov/patent/contact-patents/roundtable-written-description-requirement-design-applications>.

The USPTO considered all of the comments, both those expressed at the Roundtable and those received in writing. Responsive to these comments, the USPTO has decided not to pursue the factors-based approach set forth in the Notice. Also, in view of the comments, it became clear that there exists a need to supplement the current provisions in the *Manual of Patent Examining Procedure* (“MPEP”) relating to 35 U.S.C. 112 for design applications.

A majority of the comments urged that the USPTO focus on precedent from the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) pertaining to written description issues in the context of design patents and applications. Specific emphasis was placed on *Racing Strollers Inc. v. TRI Industries Inc.*, 878 F.2d 1418 (Fed. Cir. 1989) (*en banc*) and *In re Daniels*, 144 F.3d 1452 (Fed. Cir. 1998). Most comments suggested that these cases establish “a simple visual test” for determining compliance with the written description requirement; that is, the written description requirement is satisfied because the elements of the later-claimed design are visible in the original disclosure. Several comments also addressed *In re Owens*, 710 F.3d 1362 (Fed. Cir. 2013). In developing the proposed approach set forth in section III of this notice, the USPTO considered these Federal Circuit design cases, along with other seminal Federal Circuit cases concerning the written description requirement.

**II. General Principles Governing Compliance With the Written Description Requirement for Design Applications**

35 U.S.C. 112(a) provides that “[t]he specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same . . . .” The Federal Circuit has explained that “requiring a written description of the invention plays a vital role in curtailing claims . . . that have not been invented, and thus cannot be described.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010) (*en banc*). Further, “the purpose of the written description requirement is to ‘ensure that the scope of the right to exclude, as set forth in the claims, does not overreach the scope of the inventor’s contribution to the field of art as described in the patent specification.’” *Id.*, 598 F.3d at 1353–54 (citations omitted).

In evaluating written description, “the test for sufficiency is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Id.*, 598 F.3d at 1351 (citations omitted). See also *Daniels*, 144 F.3d at 1456. With respect to showing possession, the Federal Circuit has emphasized that “the hallmark of written description is disclosure” and “[t]hus, ‘possession as

shown in the disclosure' is a more complete formulation." *Ariad*, 598 F.3d at 1351. Accordingly, "the test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art" and "[b]ased on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed." *Id.*

The test for sufficiency of written description is the same for design and utility patents. *Daniels*, 144 F.3d at 1456. For designs, "[i]t is the drawings of the design patent that provide the description of the invention." *Id.* (stating, "Although linguists distinguish between a drawing and a writing, the drawings of the design patent are viewed in terms of the 'written description' requirement of Section 112.").

In *Racing Strollers*, the Federal Circuit stated, "[a]s a practical matter, meeting the [written description] requirement of § 112 is, in the case of an ornamental design, simply a question of whether the earlier application contains illustrations, whatever form they may take, depicting the ornamental design illustrated in the later application and claimed therein . . . ." *Racing Strollers*, 878 F.2d at 1420. Subsequent cases explain that the written description analysis must be conducted from the perspective of an ordinary designer. For example, in finding that the inventor in *Daniels* had possession of a later-claimed design to a leecher without leaf ornamentation where an earlier design application depicted the leecher with leaf ornamentation, the Federal Circuit stated, "The leecher as an article of manufacture is clearly visible in the earlier design application, demonstrating to the artisan viewing that application that [the inventor] had possession at that time of the later claimed design of that article . . . ." *Daniels*, 144 F.3d at 1456–57 (citations omitted) (emphasis added).

This principle is articulated again in *Owens*, where the Federal Circuit found that a parent application disclosing a design for a bottle with an undivided pentagonal center-front panel did not provide written description support for a continuation claiming only the trapezoidal top portion of the center-front panel. *Owens*, 710 F.3d at 1368. Specifically, the Federal Circuit stated that "the question for written description purposes is whether a skilled artisan would recognize upon reading the parent's disclosure that the trapezoidal top portion of the front panel might be claimed separately from

the remainder of that area." *Owens*, 710 F.3d at 1368 (citing *Ariad*, 598 F.3d at 1351) (emphasis added). These design cases are consistent with the written description case law requiring that the application relied upon must reasonably convey to a person of skill in the art that the inventor had possession of the claimed subject matter. See *Ariad*, 598 F.3d at 1351 (stating, "the test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art" and "[b]ased on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.").

### III. Applying the General Principles to Specific Situations in Design Applications Where Issues of Compliance With the Written Description Requirement May Arise

A question as to whether the original or earlier disclosure of a design provides an adequate written description may arise when an amended claim is presented, or where a claim to entitlement of an earlier priority date or effective filing date (e.g., under 35 U.S.C. 120) has been made. A continuation application must comply with the written description requirement to be entitled to a parent application's effective filing date. See *Owens*, 710 F.3d at 1366 (citing *Daniels*, 144 F.3d at 1456). Similarly, an amended claim must find written description support in the original disclosure. In determining whether a claim complies with the written description requirement, an examiner would bear in mind that "the written description question does not turn upon what has been disclaimed, but instead upon whether the original disclosure 'clearly allow[s] persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.'" *Owens*, 710 F.3d at 1368 (quoting *Ariad*, 598 F.3d at 1351) (alternations in original) (emphasis added).

Issues of compliance with the written description requirement may arise where a later-claimed design is composed of only a subset of originally disclosed elements (the later-claimed design does not introduce any new elements that were not originally disclosed). In the vast majority of such situations, the fact that the subset of originally disclosed elements composing the later-claimed design is visible (claimed or unclaimed) in the original/earlier application is sufficient to demonstrate to the ordinary designer viewing the original/earlier application

that the inventor had possession of the later-claimed design at the time of filing the original/earlier application. See *Racing Strollers*, 878 F.2d at 1420 (stating "[a]s a practical matter, meeting the [written description] requirement of § 112 is, in the case of an ornamental design, simply a question of whether the earlier application contains illustrations, whatever form they may take, depicting the ornamental design illustrated in the later application and claimed therein . . . ."); see also *Daniels*, 144 F.3d at 1456 (stating "when an issue of priority arises under § 120 in the context of design patent prosecution, one looks to the drawings of the earlier application for disclosure of the subject matter claimed in the later application" and finding that "[t]he leecher as an article of manufacture is clearly visible in the earlier design application, demonstrating to the artisan viewing that application that [the inventor] had possession at that time of the later claimed design of that article [alone without the leaf ornamentation claimed in the earlier design application]"). In these situations, no further analysis by the examiner would be necessary with respect to the written description requirement.

However, as mentioned earlier, limited situations may exist where a later-claimed design, composed of only a subset of originally disclosed elements (claimed or unclaimed), raises a question as to whether the later-claimed design is supported by the original/earlier disclosure, even though the elements composing the later-claimed design are visible in the original/earlier disclosure. An example of such limited situations is the situation in which there is an original disclosure composed of a grid of one hundred blocks (or a grid of several million pixels) and a later-claimed design composed of only a subset of interior blocks (or pixels) that form patterns (e.g., a smiling face or a frowning face). In this situation, there is a question as to whether the later-claimed design is supported by the original disclosure, even though the interior blocks (or pixels) composing the patterns are visible in the original disclosure. See also, "AIPLA Comments to USPTO on Written Description," March 14, 2014, at page 3, available at [http://www.uspto.gov/patents/law/comments/dr\\_a-aipla\\_20140314.pdf](http://www.uspto.gov/patents/law/comments/dr_a-aipla_20140314.pdf), for a similar concept. In such limited situations, the examiner would determine whether an ordinary designer would recognize upon reviewing the complete original/earlier application that the inventor had possession of the later-claimed design in the original/

earlier disclosure. *See Daniels*, 144 F.3d at 1456 (stating, “In general, precedent establishes that although the applicant ‘does not have to describe exactly the subject matter claimed, . . . the description must clearly allow persons of ordinary skill in the art to recognize that [the applicant] invented what is claimed.’”) (citations omitted). *See also Owens*, 710 F.3d at 1368 (quoting *Ariad*, 598 F.3d at 1351).

When making this determination, the examiner would consider what the original/earlier application, in its totality (e.g., including the title, any descriptive statements, and the drawings), would have reasonably conveyed to an ordinary designer at the time of the invention, and how an ordinary designer in the art would have designed the article that is the subject of the design claim. Such considerations can include the nature and intended use of the article embodying the claimed design as identified by the title or description (*see, e.g.*, MPEP § 1503.01 I (9th ed. 2015)). If, based on these considerations, the examiner determines that an ordinary designer would not recognize upon reviewing the complete original/earlier application the later-claimed design in the original/earlier disclosure, the examiner would reject the claim for lack of written description (or in the case of a priority or benefit claim, the application would not be entitled to the earlier date).

Since the Office has the initial burden of establishing a *prima facie* case of lack of written description, should an examiner determine that a rejection is appropriate, the examiner must set forth express findings of fact which support the lack of written description determination (*see* MPEP § 2163 for examination guidelines pertaining to the written description requirement). Upon reply by applicant, before rejecting the claim again under 35 U.S.C. 112(a) for lack of written description, the examiner would need to review the basis for the rejection in view of the record as a whole, including amendments, arguments, and any evidence submitted by applicant, such as affidavits or declarations.

If the record as a whole demonstrates that the written description requirement is satisfied, the rejection would not be repeated in the next Office action. If, on the other hand, the record does not demonstrate that the written description is adequate to support the claim, the examiner again would reject the claim under 35 U.S.C. 112(a), fully respond to applicant’s rebuttal arguments, and properly treat any further showings submitted by applicant in the reply. When rejecting the claim again for lack

of written description, the examiner would need to thoroughly analyze and discuss any affidavits or declarations filed by applicant that are relevant to the 35 U.S.C. 112(a) written description requirement. *See In re Alton*, 76 F.3d 1168, 1176 (Fed. Cir. 1996).

#### IV. Request for Public Comments

The USPTO is requesting written public comments on the USPTO’s proposed approach for applying the written description requirement in design applications as discussed in this notice. Because the USPTO is considering providing examples after reviewing public comments on the proposed approach, the USPTO also is requesting specific examples that the public believes would be helpful to illustrate the proposed approach or any suggested approach for applying the written description requirement in design applications. In particular, the USPTO is seeking examples from the public that demonstrate adequate written description as well as examples that demonstrate a lack of written description. Additionally, examples of situations in which the presence or lack of written description is not readily apparent, *i.e.*, examples that are close to the line between adequate written description and insufficient written description, would be most helpful. Once the USPTO has considered the comments and examples received, the USPTO will determine how best to proceed in view of the public feedback on the proposed approach for applying the written description requirement in design applications.

Dated: April 8, 2016.

**Michelle K. Lee,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2016-08760 Filed 4-14-16; 8:45 am]

BILLING CODE 3510-16-P

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#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Request for Public Comment on a Commercial Availability Request Under the U.S.-Morocco Free Trade Agreement

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning a request for modification of the U.S.-Morocco Free Trade Agreement (USMFTA) rules of origin for dresses,

skirts, blouses and tops made from certain woven fabric.

**SUMMARY:** The Government of the United States received a request from the Government of Morocco, dated March 1, 2016, on behalf of ARYANS to initiate consultations under Article 4.3.3 of the USMFTA. The Government of Morocco is requesting that the United States and Morocco (“the Parties”) consider revising the rules of origin for dresses, skirts, blouses and tops to address availability of supply of certain woven fabric in the territories of the Parties. The President of the United States may proclaim a modification to the USMFTA rules of origin for textile and apparel products after the United States reaches an agreement with the Government of Morocco on a modification under Article 4.3.6 of the USMFTA to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. CITA hereby solicits public comments on this request, in particular with regard to whether certain woven fabric can be supplied by the U.S. domestic industry in commercial quantities in a timely manner.

**DATES:** Comments must be submitted by May 16, 2016 to the Chairman, Committee for the Implementation of Textile Agreements, Room 30003, United States Department of Commerce, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Maria D’Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-1550.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 203 (j)(2)(B)(i) of the United States—Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) (USMFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

**Background:** Article 4.3.3 of the USMFTA provides that, on the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. In the consultations, pursuant to Article 4.3.4 of the USMFTA, each Party shall consider data presented by the other Party that demonstrate substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner.