

Question Q233

National Group: Hungary

Title: **Grace period for patents**

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Questions

Questions

The Groups are invited to answer the following questions under their national laws. If both national and regional laws apply to a question, please answer the question separately for each set of laws.

Please number your answers with the same numbers used for the corresponding questions.

I. Analysis of current law and case law

- 1) Does your country or region provide a grace period of any kind for patent applicants? As used in these questions, “grace period” includes any situation where a disclosure prior to a patent filing date that would normally qualify as prior art to the patent application is disqualified as or removed from the prior art.

Yes.

The answers below cover Hungarian national patents (HPs), European patents valid in Hungary (EPs) and additionally Hungarian utility models (HUs), being a ‘patent-like’ protection. (The answers do not cover Hungarian industrial designs also having grace period provisions.)

The same answers are applicable for HPs, EPs and HUs, unless indicated separately.

2) If the answer to Question (1) is yes, please answer the following sub-questions:

a) What is the duration of the grace period?

6 months.

b) From what date is the grace period calculated? Please indicate the effect, if any, of an international filing date and/or a Paris Convention priority date.

HPs: From the priority date.

EPs: From the filing of the application.

HUs: From the priority date.

c) What types of intentional acts, disclosures, or exhibitions by the applicant (including the inventor or co-inventor) qualify for the grace period?

HPs and EPs: Display at an exhibition by the applicant or his legal predecessor (in the following: "exhibition grace period").

The exhibition has to meet the following requirements:

- HPs: The exhibition should be specified in an announcement published in the Hungarian Official Gazette by the President of the Hungarian Intellectual Property Office.
- EPs: The exhibition should be an official, or officially recognized, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972.

HUs: Any written disclosure or public use made by or with the consent of the applicant or his legal predecessor.

d) What types of unintentional acts, disclosures, or exhibitions by the applicant (including the inventor or co-inventor) qualify for the grace period?

None.

e) What types of acts, disclosures, or exhibitions by a third party who is not the applicant, inventor, or co-inventor qualify for the grace period?

Disclosures due to abuse of rights (in the following: "abuse grace period"), with the following requirements:

HPs and HUs: The disclosure was due to an abuse of the rights of the applicant or his legal predecessor.

EPs: The disclosure was due to, or in consequence of an evident abuse in relation to the applicant or his legal predecessor.

f) To the extent not already answered in Question 2) e) above, is there any situation where a disclosure by a third party who did not learn of or derive the invention from the inventor(s) can be covered by the grace period?

No.

- g) Is any type of statement or declaration by the applicant required to invoke the grace period? If yes:

What are the requirements for the statement/declaration?

When must the statement/declaration be filed?

Only for exhibition grace period (HPs and EPs): a statement and a certificate are to be submitted.

HPs:

- The statement should be filed within 2 months after the filing date;
- the certificate should be filed within 4 months after the filing date;
- the certificate should be issued by the directorate of the exhibition attesting to the display and date of the exhibition;
- the certificate must be accompanied by a description and, if necessary, drawings bearing the authentication of the directorate;
- the certificate may only be issued during the exhibition and only while the invention or its disclosure can be seen at the exhibition.

EPs:

- The statement should be filed at filing;
- the certificate should be filed within 4 months of filing the European patent application;
- the certificate should be issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition;
- the certificate should state that the invention was in fact displayed there;
- the certificate should state the opening date of the exhibition and, where the invention was disclosed later than on that date, the date on which the invention was first disclosed; and
- the certificate should be accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.

- h) Is the grace period defined by a statute or regulation? If so, please provide a copy of the relevant portion of the statute or regulation.

The grace period is defined by a statute. The relevant portions can be found at:

HPs:

http://www.sztnh.gov.hu/English/jogforras/Patent_Act_XXXIII_1995_EN.pdf

Art. 3 and 64

EPs:

<http://www.epo.org/law-practice/legal-texts/html/epc/2010/e/ma1.html>

Art. 55 and Rule 25

HUs:

http://www.sztnh.gov.hu/English/jogforras/UtilityModels_Act_XXXVIII_1991_EN.pdf

Art. 2(4)

- i) Is there any special situation where only certain types of applicants/inventors are allowed to benefit from graced disclosures? (such applicants/inventors may include SMEs, universities, individuals, etc.)

No.

Policy

- 3) If your country or region provides a grace period for patents, please answer the following sub-questions:

- a) What are the policy reasons behind this grace period?

The grace period is considered to be a protection for the applicants and for their legal predecessors in the cases of disclosures specified in point 2 above.

- b) Is the grace period, as it currently exists in your country or region, considered useful?

Yes.

- c) Is the grace period considered more useful for a certain class of stakeholders (for example, individuals, universities, small businesses, or large businesses)?

No.

- d) How often is the grace period used? If you are unable to provide a quantitative answer to this question, please indicate one of: often; occasionally; or almost never.

5 times in the last 10 years.

- ~~4) If your country or region does not provide a grace period for patents, please answer the following sub-questions:~~

~~a) What are the policy reasons behind not providing a grace period?~~

~~b) Would a grace period be useful for stakeholders in your country or region?~~

~~c) Would a grace period be considered more useful for a certain class of stakeholders (for example, individuals, universities, small businesses, or large businesses)?~~

- 5) What are the positive aspects of the grace period law of your country or region?

See our reply to point 3a) above.

- 6) What are the negative aspects of the grace period law of your country or region?

There are no negative aspects.

- 7) As a practical matter, are the procedures and strategies of patent applicants in your jurisdiction affected by the grace period laws of other countries or regions? If so, in what way?

Yes. Disclosures covered by grace period in other countries may be novelty-destroying for a corresponding Hungarian application.

II. Proposals for harmonisation

The Groups are invited to put forward proposals for the adoption of harmonized laws in relation to grace periods for patents. More specifically, the Groups are invited to answer the following questions *without* regard to their national laws.

- 8) In your view, and assuming a proper balance is struck between the rights of the applicant and the rights of the public at large, is a grace period for patents desirable?

Only exhibition and abuse grace periods are desirable for patents.

- 9) Is harmonization of laws relating to grace periods for patents desirable?

Yes, without a pressure to extend grace period coverage.

- 10) Please provide a standard that you consider to be best in each of the following areas relating to grace periods:

- a) The duration of the grace period

6 months.

- b) The date from which the grace period is calculated

From the priority date.

- c) The types of intentional acts or disclosures by the applicant (including the inventor or co-inventor) that should be covered by the grace period

Exhibition disclosures.

- d) The types of unintentional acts or disclosures by the applicant (including the inventor or co-inventor) that should be covered by the grace period

None.

- e) The types of acts or disclosures by a third party who learned of or derived the invention from the applicant that should be covered by the grace period

Disclosures being a consequence of an abuse in relation to the applicant or his legal predecessor.

- f) The types of acts or disclosures by a third party who did not learn of or derive the invention from the applicant that should be covered by the grace period

None.

- g) The requirement for and content of any statement/declaration by the applicant to invoke the grace period

The Hungarian Group is in favour of the requirements and content as listed above in point 2g) for EPs.:

- 11) The Groups are invited to comment on any additional issue concerning grace periods for patents that they deem relevant.

The Hungarian Group notes the following additional issues.

(i) Need for harmonization between countries

Different laws in different countries may result in that a particular disclosure is covered by a grace period in one country and not covered in another country. Also in the light of the general trend of worldwide patenting, and of the grace period statements/declarations (being clear evidences of prior disclosure), grace period – without international harmonization – is considered to have little practical value.

(ii) Need to raise awareness about grace period drawbacks

The Hungarian Group is of the opinion that awareness about the drawbacks concerning the use of grace period (see e.g. point (i) above) should be enhanced among applicants. Applicants should not be encouraged to use grace periods but to file patent applications timely.

(iii) Information for the public

The Hungarian Group is in favor of including the existence of the exhibition statement and of the exhibition certificate in the bibliographic data of the IP protection.

Summary

Only exhibition and abuse grace periods are considered desirable by the Hungarian Group. A period of 6 months from the priority date is suitable. Harmonization between countries – without a pressure to extend grace period coverage –, as well as informing the public in patent documents and databases about the use of an exhibition grace period are also desirable.

Zusammenfassung

Die ungarische Gruppe findet die Schonfrist nur für Ausstellungen und im Falle von Missbrauch für wünschenswert. Eine Frist von 6 Monaten ab Priorität ist angemessen. Harmonisierung zwischen Ländern – jedoch nur ohne irgendwelchem Druck mehr Schonfrist-Arten einzuführen – sowie Informierung der Öffentlichkeit über die Inanspruchnahme einer Ausstellungs-Schonfrist sind sowohl in den Patentdokumenten, als auch in den Datenbanken erwünscht.

Résumé

Le Groupe Hongrois considère qu'un délai de grâce n'est souhaitable que pour l'exposition et les divulgations abusives. Un délai de grâce de 6 mois, calculé à partir de la date de priorité, est convenable. Il est également souhaitable d'effectuer une harmonisation entre les pays et entre les différents types de protection de la propriété intellectuelle, ainsi que d'informer le public sur l'utilisation du délai de grâce dans les documents de brevets ainsi que dans les banques de renseignements.