



Questionnaire on the Publication of Patent Applications

National Group: ESTONIA

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Questions

Groups are invited to answer the following questions under their national laws:

I. Analysis of current law and case law

1. Please provide a brief description of your law concerning publication of patent applications and identify the statute, rule or other authority that establishes this law.

The Estonian patent application is published after expiry of 18 months from filing or priority date. See Art. 24 of Patents Act -

<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/527012015002/consolide>

Patents Act is adopted by Paliament.

Regulation - Rules for the publication of patent applications -

<https://www.riigiteataja.ee/akt/131052013010?leiaKehtiv>

Issued by Ministry of Justice

2. Does publication of patent applications occur automatically in your jurisdiction? If so, when does publication take place? If not, what are the requirements to effect publication?

YES.

The publication date is the first issue date of the Estonian Patent Gazette after expiry of 18 months from filing or priority date of the patent application. The patent application will be published later on:

- if there is less than 15 days to issue of Patent Gazette or
- some of the bibliographic data is missing or
- specification or patent claim does not correspond to the conditions laid down in the Art 17.1 of the Rules of the filing of the patent application or
- drawing or illustrative material does not correspond to the Art. 17.6.1 to 17.6.8, 17.6.15, 17.6.18 and 17.6.19 of the Rules.

3. If a patent application claims priority from or the benefit of an earlier application how, if at all, does this affect the timing of publication?

YES. If the priority is claimed the publication will be made after expiry of 18 months from filing date of the earlier patent application.

4. Is there a specific point in time up to which the applicant can withdraw its application without it being published?

The Patent Office will publish the patent application based on documents that were in force 15 days before the deadline for the publication of the patent application, i.e. the applicant must withdraw the patent application effectively at least 16 days before expiry of 18 months from filing or priority date.

Art 19 of the Rules for the publication of patent applications.

5. What parts of a pending patent application are published?

Bibliographic data, description, patent claims, illustrations or drawings, abstracts.

6. Does a published pending patent application give rise to provisional rights (or any type of interim protection) in your jurisdiction and, if so, to what extent?

YES.

The extent of provisional protection is determined by scope of the protection of the published patent claim. After issuing patent the extent of provisional protection will be adjusted.

7. Does an unpublished pending patent application give rise to provisional rights (or any type of interim protection) in your jurisdiction and, if so, to what extent?

If there is classified patent application said application will be deemed published after expiry of 18 months from filing or priority date.

The patent application will have provisional protection from filing date up to publishing date of the issuing the patent.

The person who has started to use invention between filing date and publishing date is not considered infringer if the person does not know that the patent application was filed or the applicant has not informed said person about filing of the patent application.

8. Is 'early publication' allowed in your jurisdiction? If so, what are the conditions for such early publication? How is the request for early publication made? What is the effect of an early publication on a pending patent application?

YES. The applicant must request earlier publication and all conditions for publishing are fulfilled (see point 2). The request can be made with filing of patent application or later in writing. The earlier publication takes place in date asked by applicant or in publishing date of the Patent Gazette taking into account 15 days preparation for publication.

9. Is non-publication possible in your jurisdiction? In other words, can a pending patent application remain confidential? If so, under what conditions is such allowed? How is the request for non-publication made?

YES, if the patent application is classified patent application. Normal pending patent application will be published when conditions for publishing patent applications are fulfilled. It is not possible to file request for non-publication for normal patent applications.

The patent application is published if:

- the patent application is withdrawn or deemed to be withdrawn or
- the patent application is rejected or
- there are deficiencies in the content of the patent application documents or
- the patent application is classified

10. Will a lapsed, abandoned or withdrawn patent application be published? If not, is that automatic or by the request of the applicant? If it would otherwise be published, can the applicant request non-publication?

NO, if the patent application has lapsed, abandoned or withdrawn before expiry of 18 months from filing or priority date. If the patent application is withdrawn by applicant less than 15 days before the publishing Patent Gazette then the patent application is published.

In normal conditions when patent application is lapsed, abandoned or withdrawn more than 15 days before expiry of 18 months from filing or priority date the Patent Office will not publish the patent application automatically.

11. What is the position in your jurisdiction regarding the publication of continuation, continuation-in-part and divisional applications?

The divisional application will be published after expiry of 18 months from filing or priority date of the parent application or if the divisional patent application is filed after 18 months then as soon as possible considering that all requirements for publishing patent application are fulfilled.

II. Policy considerations and proposals for improvements to your current system

12. Should there be a requirement for automatic publication of pending applications by a particular deadline?

YES

13. Should there be a right for the patentee to request early publication? If so, on what basis and with what consequence?

YES. At the request of the applicant only so that the applicant can benefit from provisional patent protection without requirements to inform about filing of the patent application every competitors, i.e. if the earlier publication is made all persons who will start using the invention after publishing date will be considered possible infringers.

14. If your answer to question 13 is yes, should all the applications deriving from the same priority application be subject to the early publication if one application is published early?

YES

15. Should there be a right for the patentee to withdraw the application before publication?

YES

16. If your answer to question 15 is yes, what should be the consequence of such withdrawal:

a. with respect to the patentee's own subsequent patent applications; and
The withdrawn application should not be taken into account when determining prior art

b. with respect to third party patent applications?
see point a

17. If your answer to question 15 is yes, should the patent office be required to provide its initial assessment of the validity of the patent (if granted) before the applicant is required to decide whether to withdraw?

YES

18. In light of your answers to the previous policy questions, what would be appropriate time limits for:

a. the patent office to provide the results of its initial assessment?;

Within 6-10 months from filing date if no priority is claimed or 13-16 months from priority if possible

b. the applicant to decide whether to withdraw the application?; and

Within 17 months from filing or priority date

c. the application to be published?

as it is now in Patent Act, 18 months from filing or priority date

19. Should there be any exceptions to automatic publication, and if so what on what grounds, for example:

a. on the initiative of the patentee;

NO

b. on the initiative of the patent office; or

NO

c. on the initiative of third parties (such as other governmental agencies)?

NO

20. If your answer to question 19 is yes, who should decide on whether such exception is applied?

N/A

21. Should there be different rules for the publication of continuation, continuation-in-part and divisional applications?

NO

22. What proposals would you make to improve your current system?

The current system in Estonia as it works fine, no need for improvement as Patent Act is in lines of harmonization and we are looking that in other countries the harmonization is taken more seriously.

III. Proposals for harmonization

Groups are invited to put forward proposals for the adoption of harmonized rules in relation to the publication of patent applications. More specifically, the Groups are invited to answer the following questions:

23. Should patent offices be required to provide examination results or at least search results prior to publication so that applicants can make an informed decision whether to pursue obtaining a patent or to withdraw the application and protect the invention idea as a trade secret?

YES

24. Should there be any exception to publication of applications, for example by the applicant's opt-out?

NO. Only if the patent application is withdrawn or lapsed before of 18 months from filing or priority date

25. How should exceptional circumstances be defined, e.g., public order, morality or national security where the patent office delays or suppresses publication? To what extent should these exceptional circumstances be specifically defined?

N/A

26. What is an appropriate period for publication after filing an application or after the priority date? Is 18 months an appropriate period?

YES

27. Please make any other comments or proposals for harmonization in relation to publication of patent applications that you consider appropriate.

N/A