

Question Q233

National Group: ESTONIA

Title: Grace period for patents

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Questions

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

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.

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

- a) What is the duration of the grace period?

12 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.

The grace period is calculated from a Paris Convention 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?

Invention is made public as a result of any intentional act (including exhibitions) by the person who is entitled to obtain the patent or another person with the knowledge of the entitled person.

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

Invention is made public as a result of any unintentional act (including exhibitions) by the person who is entitled to obtain the patent or another person with the knowledge of the entitled person.

- 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?

In case the third party acquired the information unlawfully.

- 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 provision.

- 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?

The statement must include a request for a grace period.

When must the statement/declaration be filed?

The request shall be filed together with the patent application or not later than two months before the publication of the patent application. If a third party acquired the information unlawfully or the information was published unlawfully or without the knowledge of the person who has the right to apply for the patent, the request may be filed in the course of the examination of the patent application or in case the patent is contested. Evidence supporting the request shall be appended to the request.

- 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 term "grace period" as such has not been defined by any regulation.

- 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 main policy reason behind introduction this grace period is to protect the patent rights of the academic and public research institutions, individual inventors and SMEs.

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)?

The grace period is considered more useful for universities and individuals.

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.

Occasionally.

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?

The positive aspect is quicker access to scientific papers and new products.

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

The negative aspect is a longer period of uncertainty for the third parties.

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?

No.

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?

Yes.

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

Yes.

- 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

12 months.

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

The grace period should be calculated from a Paris Convention 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

Any kind of intentional acts, especially:

- 1) disclosures in printed publications;*
- 2) disclosures by displaying at exhibitions;*
- 3) tests or individual use;*
- 4) sales or distributions.*

- 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

Any kind of unintentional acts.

- 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

Disclosure against the will of applicant.

- 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

Disclosure as a result of abuse.

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

Declaration shall contain the date and form of disclosure and any other relevant information where the disclosure was the result of abuse or against the will of applicant.

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

SUMMARY

In Estonia the inventor or his/her successor is granted a grace period, during which a disclosure before filing a patent application would destroy neither the novelty nor the ability to obtain a patent. A grace period in Estonia is provided in Section 3 of paragraph 8 of the Patents Act. The duration of the grace period is 12 months and is calculated from a Paris Convention priority date. Declaration is required. Grace period is granted in case the inventor himself/herself intentionally or unintentionally disclosed his/her invention or in case disclosure was made by the third party against the will of the inventor or as a result of unlawful act. Grace period is considered more useful for universities and individuals. The positive aspect of the grace period is quicker access to scientific papers and new products. The negative aspect of the grace period is a longer period of uncertainty for third parties.

ZUSAMMENFASSUNG

In Estland wird dem Erfinder oder seinem Erbberechtigten eine Schonfrist gewährt, während der die Offenlegung des Wesens der Erfindung vor der Einreichung der Patentanmeldung weder die Neuheit der Erfindung verletzt noch die Gewährung des Patents verhindert. Die Schonfrist in Estland ist im § 8 Abschnitt 3 des Patentgesetzes festgelegt. Die Dauer der Schonfrist beträgt 12 Monate und sie wird auf Grundlage des Prioritätsdatums der Pariser Konvention berechnet. Die Einreichung der Deklaration ist erforderlich. Die Schonfrist wird gewährt, falls der Erfinder seine Erfindung absichtlich oder unabsichtlich offenlegte oder die Offenlegung durch Dritte gegen den Willen des Erfinders oder als Folge einer rechtswidrigen Handlung stattfand. Die Schonfrist kommt in erster Linie den Universitäten und Einzelpersonen zugute. Der positive Aspekt der Schonfrist ist der schnellere Zugang zu wissenschaftlichen Beiträgen und neuen Produkten. Der negative Aspekt der Schonfrist ist die längere Phase der Rechtsunsicherheit für Dritte.

RÉSUMÉ

En Estonie l'inventeur ou son successeur est acquis d'un délai de grâce pendant lequel l'exposé de l'invention avant le dépôt de la demande de brevet ne détruirait ni la nouveauté de l'invention, ni la capacité d'obtenir le brevet. Le délai de grâce en Estonie est prévu dans l'article 3 du paragraphe 8 de la Loi sur les brevets. La durée de délai de grâce est 12 mois et elle est calculée à partir de la date de priorité de la Convention de Paris. La déclaration est requise. Le délai de grâce est acquis dans le cas où l'inventeur lui-même / elle-même volontairement ou involontairement a exposé son invention ou quand l'exposé a été fait par le tiers contre la volonté de l'inventeur ou à la suite d'un acte illégal. Le délai de grâce est considéré plus utile pour les universités et les particuliers. L'aspect positif de la période de grâce est l'accès plus rapide aux articles et aux nouveaux produits. L'aspect négatif de la période de grâce est une plus longue période d'incertitude à des tiers.