

# BELARUS

## 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.**  
Provisions regarding publication of patent applications are contained in the Law of the Republic of Belarus No. 160-3 of 16.12.2002 "On Patents for Inventions, Utility Models and Industrial Designs" (as amended on 22.12.2011), Article 20. It is the law that was adopted and may be amended by the Belarusian Parliament (National Assembly). The Law reads that the list of publishable application particulars shall be defined by the Patent Office. This list is contained in the Regulations regarding official editions of the Patent Office, approved by the Order of the State Committee on Science and Technologies No. 12 of 26.09.2005.
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, provided that preliminary examination of the application has been successfully completed. Publication takes place after 18 months from the filing date or the earliest priority date.
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?**  
Publication term (18 months) is calculated from the earliest priority date.
4. **Is there a specific point in time up to which the applicant can withdraw its application without it being published?**  
The Law reads that particulars of the application shall not be published if the application has been withdrawn **prior to the expiration of the time limit for publication**, i.e. at any time within the said 18 months. In practice, official bulletin of the Patent Office is issued every two months and for technical reasons a withdrawal should take place at least one month before expiration of a 18-month term.
5. **What parts of a pending patent application are published?**
  - Bibliographic data;
  - claims;
  - main drawing (if there is one), –as they were submitted on the filing date.
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. Article 22 of the Patent Law reads:  
"1. An invention shall, as from the date of publication of the particulars of the application and up to the date of publication of the particulars of the patent grant, enjoy provisional legal protection within the limits of the published claims.  
[...]  
3. If the application is withdrawn or if a final decision refusing the grant of a patent is taken and possibilities to appeal against this decision have been exhausted, the provisional legal protection shall be deemed never to have existed."
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?**  
No.

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, early publication is possible upon the applicant's request filed to the Patent Office, provided that preliminary examination of the application has been successfully completed and official fee of 50 USD has been paid. Since provisional legal protection starts from the date of publication, early publication means earlier provisional protection.

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?**

It is possible only for "secret patent applications", which are either initially filed as secret ones through authorized state bodies, or acknowledged to be secret ones by these state bodies upon request of the Patent Office.

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, it is automatically not published.

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

There are no continuation and continuation-in-part applications in Belarus. Divisional applications are not separately published, only initial ones.

## 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. The consequence should be an earlier start of provisional legal protection.

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**  
b. **with respect to third party patent applications?**

Withdrawn unpublished application should not be included in the prior art during assessment of the patentee's own subsequent patent applications or third parties' patent applications.

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?**

Belarusian Patent Office currently does not provide such an assessment, but it is a good and reasonable requirement.

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?;** 12 months after a filing date
  - b. **the applicant to decide whether to withdraw the application?;** at least 2 months before expiration of the publication term
  - c. **the application to be published?** 18 months after a 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;**
  - b. **on the initiative of the patent office; or**
  - c. **on the initiative of third parties (such as other governmental agencies)?**
- Only upon initiative of authorized governmental agencies on the grounds of national security and similar reasons to keep invention in secrecy.

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

Authorized state agencies in accordance with criteria of state secrets provided by corresponding legislation.

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

We consider that automatic publication of such applications is not necessary since particulars of the invention have been disclosed to the public in the publication of the initial application, which is a basis for the said ones.

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

We do not have proposals for substantial amendment of the current system in Belarus. Some years ago claims were added to the list of publishable parts of a pending patent application, which was a big advancement to the system. At the moment it is more or less in line with the international standards.

### **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, this is fair and reasonable.

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

Generally no, at least there should not be other possibility for an applicant to opt-out except withdrawal of an application.

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?**

Exceptional circumstances must be clearly defined and exhaustively listed in the legislation. National security is a good example. As to public order and morality, according to Belarusian legislation they are obstacles for granting protection to an invention, but their implementation

requires much assessment. So, it is unlikely they can be fairly implemented in deciding whether to publish a patent application or not.

- 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.**