

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 statute that establishes publication of patent applications is Law No. 35 of May 10, 1996, as amended by Law No. 61 of October 5, 2012.

In Panamá, the term for publication of a patent application is set out in Article 47 (Law 35 of May 10, 1996), that is, within 18 months from the date of the application, or from the priority date that has been claimed, once the applicant complies with the formal requirements and upon request by the applicant on the report of the state of the art, the Patent Office (“DIGERPI”) will order the publication of the patent application in the Official Bulletin of Industrial Property (“BORPI”).

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?

The publication of patent applications does not occur automatically.

Patent applications must comply with the following requirements to be published:

- 1- Preliminary examination.
- 2- Request by the applicant of the report of the state of the art.
- 3- The patent applications must be 18 months, counted from the date of the application or from the priority date that was claimed for publication.

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?

No, this does not affect the timing of publication.

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

The specific point in time up to which the applicant can withdraw its

application is before the 18 month-term or not to request the report of state of the art.

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

The Patent Office publishes a summary of the particulars of the patent application. Thus, the parts that are published are: name and address of the applicant, name and address of the inventors, number and date of the priority claim, title of the invention, abstracts of the invention, and drawings.

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?

A pending patent application grants provisional rights that can be claimed against third parties because of its previous priority date.

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?

A pending unpublished patent application grants provisional rights because of its previous priority date.

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. Our patent law permits early publication. The applicant must comply with preliminary examination and request the conduction of the report of the state of the art.

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?

The applicant must request in writing the non-publication of the pending patent application and the petition must state the reasons why this patent should remain confidential. Thereafter, the Patent Office evaluates the petition and takes a decision.

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?

Our Patent Office does not publish patent applications that have lapsed or have been abandoned or withdrawn.

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

The Panamanian law only provides for divisional applications which must comply with requirements of preliminary exam and must also request the conduction of the report of the state of the art in order for the application to be published.

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, there should be requirements and a deadline for automatic publication.

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

Yes, the patentee should have the right to request early publication in order to accelerate the examination of the application. The main consequence will be the disclosure of the invention.

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?

We consider that all the applications deriving from the same priority application should have an early publication if one application is published early. However, the Panamanian Patent Office treats these applications independently.

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

Yes, the patentee should have the right to withdraw the application before publication, and the Panamanian Patent Office recognizes such right.

16. If your answer to question 15 is yes, what should be the consequence of such withdrawal:
- with respect to the patentee's own subsequent patent applications; and
 - with respect to third party patent applications?

The Panamanian Patent Office deems these patent applications as not filed and the withdrawal does not affect the state of the art of patentee's subsequent patent applications or of third parties.

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?

No, the Patent Office should not 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

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?

In accordance with our previous answer, there would not be a time limit for the Patent Office; thus, this question does not apply to our position.

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

The applicant should decide whether to withdraw the application before the publication.

c. the application to be published?

The application must comply with the requirements of the patent law to proceed to publication.

19. Should there be any exceptions to automatic publication, and if so 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)?

On the initiative of the patentee.

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

The patentee should decide if such exception is applied.

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

No. Panamanian law does not recognize the continuation and the continuation-in-part patent applications.

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

Our current system of Patents should include, at the request of the patentee, an early publication for acceleration of exam and grant.

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, the Patent Office should provide the applicant with the examination results or at least search results of prior art before the publication of the patent application, in order for the patentee to be able to take an informed decision for withdrawing or continuing with process of registration.

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

No.

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 defined as public order, morality or national security are established by our patent law as exceptions of patentability.

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

We consider that 18 months is an appropriate period.

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

Our proposal is that there should be harmonization in Patent laws in connection with early publication.

Procedure

It would be most helpful if the National Groups would fill out the Questionnaire and send in their answers to the General Secretariat of AIPPI (StandingCommittees@aippi.org) by 3 August 2016.

For inquiries, please contact either of the following members of the Standing Committee on Patents.

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