



## **Standing Committee on Patents**

### **Questionnaire on the Publication of Patent Applications**

#### **Report from the Swedish AIPPI-group**

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#### **Introduction**

1. Many of the world's national and regional patent systems provide a time limit by which a patent application is made public. This is commonly set at 18 months after the date of filing or priority.
2. In return for (possible) patent protection, the inventor(s) and/or any other entitled parties (collectively referred to as the "applicant") must disclose the alleged invention so that it can be made public. This allows third parties to be made aware of the (alleged) contribution to the state of the art.
3. The main purpose of the publication of patent applications is thus to strike a fair balance between the interests of the applicant and those of third parties. Specific considerations in relation to the legal principle of publicizing patent applications within a certain timeframe are set out below.

#### **Background and discussion**

4. The publication of patent applications allows third parties to take note of technological developments and to make informed decisions about their own strategy (and perhaps their own research and development efforts) in relation thereto.
5. By providing a timeframe for publication of applications after filing, an applicant can decide whether or not to pursue the application (so as to retain the possibility to protect the invention as a trade secret).

*History*

6. A discussion of the origin of the 18 month publication period can be found in the WIPO records of the 1970 Washington Conference on the PCT. On page 243 of the Conference Documents<sup>1</sup>, reference is made to a 1956 preliminary report by a patent law revision committee in The Netherlands as a likely origin of the 18 month publication term. This report<sup>2</sup> suggested that patent applications be made public within eight months after completion of initial searching (which then took about 18 months), but in any event not earlier than 18 months after the date of filing or priority. The maximum term for making public patent applications would accordingly be 26 (18+8) months. It was also suggested that, prior to deciding on the term for publication, the practices of Germany and the Scandinavian countries in relation to pre-grant publication should be assessed.
  
7. The elements of the Dutch proposal were referenced by a joint patent law review committee of the Scandinavian (Nordic) countries in 1961. The Nordic report<sup>3</sup> references an 18 month pre-grant publication period in The Netherlands (as opposed to the proposed 26 month publication period). Reference to the Dutch proposal was also made in the final report.<sup>4</sup> After discussions between (committees of) The Netherlands, Germany and the Nordic countries, The Netherlands was the first country to include the 18 month term in its patent law in 1964.<sup>5</sup> By the time of the WIPO conference in 1970, the 18 month term had been introduced into the patent laws of 7 European countries (The Netherlands, Denmark, Finland, Norway, Sweden, Germany and France).

### *Europe*

8. Under the European Patent Convention (the "EPC"), (European) patent applications are published (as soon as possible) after expiry of 18 months from the filing or priority date. The applicant, however, may request early publication so that its application is part of the state of the art (this is relevant because under the EPC, patent applications filed but not published may comprise 'fictional' prior art that can only be invoked to attack the novelty of a patent).
  
9. Under the EPC, the publication of a patent application also confers

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<sup>1</sup> Available at <[http://www.wipo.int/export/sites/www/pct/en/texts/pdf/washington\\_p171\\_to\\_538.pdf](http://www.wipo.int/export/sites/www/pct/en/texts/pdf/washington_p171_to_538.pdf)>

<sup>2</sup> Bijblad bij de Industriële Eigendom 1956, no. 5, p. 54 - 61

<sup>3</sup> Preliminaer betenkning angående nordisk patentlovgivning. Avgitt av samarbeidende danske, finske, norske og svenske komitéer. (December 1961) p. 219

<sup>4</sup> Betenkning angående nordisk patentlovgivning: Avgitt av samarbeidende danske, finske, norske og svenske komitéer. (NU 1963:6) p. 246 and p. 248-249.

<sup>5</sup> Dutch Patent Act 1910, Article 22C (Stb. 1963, 260)

'provisional' protection, which may not be less than that which the laws of the respective European Member State attaches to the compulsory publication of unexamined national patent applications (including the right to claim reasonable compensation from any party that makes use of the invention such that they would be liable under national law for infringing a national patent).

#### *North America*

10. Under the laws of the United States, pending utility applications are published promptly after the expiration of a period of 18 months from the earliest priority date unless subject to a secrecy order. The applicant can request that the utility application be published earlier than the 18 month date. The applicant can also file a non-publication request if "the application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at 18 months after filing". Provisional and design applications are not published, but the provisional application is publicly available via the USPTO website after any utility application claiming priority from the provisional is published.
11. In the United States, the applicant is entitled to "provisional rights" based on the published patent application. Specifically, these "provisional rights" provide the applicant with a reasonable royalty for infringement of the published claims if: (i) the invention as claimed in the resulting patent is "substantially identical" to the invention as claimed in the published patent application; and (ii) the infringer had "actual notice" of the published patent application and, where this right arises from an international application that was published in a language other than English, a translation of the international application into English.
12. In Canada, pending applications are published after a confidentiality period of 18 months from the earliest priority date. The applicant can request early publication. An application will not be published if withdrawn by 16 months of the earliest priority date. The Minister of National Defense can request an application or patent to remain secret in the public interest (similar provisions are found in the United States and various other countries). Unpublished domestic applications are only considered for novelty, not obviousness. A person is liable to pay reasonable compensation to a patent owner for acts from the date of publication that would have constituted an infringement if the patent had been granted on the date of publication. The courts have clarified that the issued claims must be essentially identical to the claims of the published application, and reasonable compensation is a reasonable royalty.

### *Asia*

13. In Japan and Korea, for example, procedures have been adopted to address delay in examination of patent applications, such as patent applications that have not been made public for long term, redundant researches and investments by industries and destabilized industrial activities. A patent application is published after expiry of 18 months from the filing or priority date. It is said that the 18 month term was decided upon for equal treatment of both domestic and foreign applicants taking into consideration a 12 month priority period, a 4 month period for the submission of priority documents and a 2 month period for the preparation of publication. The applicant may request earlier publication. Patent applications relating to defense matters filed under the US-JP bilateral agreement remain secret until cancellation of secrecy. Further, parts of patent applications that contravene public morality or public order are excluded from publication.

### *Latin America*

14. In the Andean legislation (Decision 486), applicable in Peru, Bolivia, Colombia and Ecuador for example, the term for publication of a patent application is set out in Article 40: within 18 months after the filing date in the Member Country concerned or, where priority is claimed, after the date of application, the file assumes a public nature and shall be open for consultation. The competent national office must order the publication of the application. The applicant may in any event request publication of the application at any time after the examination has been concluded, in which case, the competent national office must order publication. An application filed and not made public is kept confidential and may not be consulted other than by the applicant or persons authorized by the applicant.

### **Previous work**

#### *AIPPI*

15. Publication of patent applications was studied in Q89 (Amsterdam ExCo of 1989), which is part of the series of resolutions related to a WIPO draft Patent Law Treaty concerning the harmonization of substantive provisions of patent law that never became final. Article 6 of the draft Patent Law Treaty *inter alia* provided that patent applications would automatically be made public 18 months after the date of filing of the application or the priority date.
16. In the resolution on Q89, it was set out that AIPPI (in general) supported the

WIPO draft. AIPPI also resolved that:

- the requirement of publication should also be considered fulfilled if the application is 'laid open' for public inspection;
- publication should not occur if there is no intent by the applicant to pursue the application;
- no publication should occur if the application is finally rejected without the possibility of an appeal;
- there should be a specific point in time up to which the applicant can withdraw its application without it being published, which period for withdrawal should be as long as possible (but no shorter than 17 months after filing or after the priority date);
- any deviations from these principles in relation to "national security" should be limited;
- if a patent is granted prior to the expiration of 18 months, the original application should be laid open for public inspection;
- in case of an internal priority or a continuation-in-part (hereinafter referred to as a "CIP") filed in time for publication at the expiration of 18 months, the completed, modified application should be published and the file should be made available for public inspection, so that third parties have access to the original application;
- in the case of a continuation in part (CIP) filed after the expiration of 18 months or so shortly before that it can no longer be taken into consideration, publication of the CIP should occur as soon as possible;
- rules should also be in place in relation to the publication of divisional applications; and
- information obtainable from the respective patent office should be possible by any technical means, but for the convenience of small- and medium-sized companies at least also on paper.

#### *Objectives and Principles of the B+ Sub-Group*

17. On 27 May 2015, the B+ Sub-Group (comprising representatives from the European patent office and the patent offices of Canada, Denmark,

Germany, Japan, Korea, Spain and the United States of America) presented its Objectives and Principles, *inter alia* in relation to the issue of the publication of applications. In its report, the B+ Sub-Group stated the following principles:

- there should be a clear time limit by which information about a potentially patented invention will be made public;

- the timing of publication should provide for prompt dissemination of knowledge from all pending patent applications wherever filed;

- pending patent applications should be published promptly after the expiry of a globally agreed timeframe;

- the timeframe should balance the interests of inventors/applicants and those of third parties;

- Patent offices should be able to delay or suppress publication of a pending application in exceptional circumstances; and

- applicants should be able to request publication of an application prior to the globally agreed timeframe if they wish, as long as the requirements for publication under the applicable law are met.

18. The report noted that 18 months is an appropriate timeframe and that patent offices should be able to delay publication of a pending application beyond 18 months, or suppress publication of information within an application, in exceptional circumstances, namely (i) if publication would be prejudicial to public order, morality, or national security, (ii) if the application contains offensive or disparaging material and/or (iii) if a court order specifies that an application should not be published.
19. In its comments on these Objectives and Principles, AIPPI agreed with the above principles, noting that AIPPI in Q89 supported a proposal for extending the time limit for publication to 24 months. AIPPI also stated that publication should not occur when an application has lapsed due to failure to prosecute in a timely fashion (without a pending application to resume prosecution) or when the application is rejected (and no appeal of the decision to reject is pending). AIPPI also stated its opinion that the patent system should not be an instrument for censorship and therefore questioned the use of vague concepts such as “morality” or “offensive or disparaging” material as the basis for suppressing the content of a patent application.

20. *Tegernsee Group*

21. During the second meeting of the “Tegernsee Group,” attended by heads of offices and representatives from Denmark, France, Germany, Japan, the UK, the USA and the EPO in April, 2011, the publication of patent applications was one of four topics identified as being key to harmonization (along with the grace period, prior user rights, and the treatment of conflicting applications). The Tegernsee Group mandated the Tegernsee experts group to prepare reports on each of these topics. The report on 18-month publication was published in September, 2012, and is available on the EPO website. The third meeting of the Tegernsee Group took place in October, 2012, during which it was agreed that the next step in the process would be to conduct broad surveys of stakeholders in each region. In September, 2013, at its fourth meeting, the Tegernsee Group approved the Reports on the Tegernsee User Consultation drawn up by the individual delegations. In April, 2014, the Tegernsee Group approved the Tegernsee Final Consolidated Report, concluding the work cycle of the Tegernsee Experts on the four topics including 18-month publication. The Final Consolidated Report is available on the EPO website.
22. In its report of 8 April 2014, the Tegernsee Group presented, *inter alia*, the following conclusions:
- the majority of the respondents agree that there should be no opt-out exception to the 18-month publication of applications and have not been negatively affected as a result of another party opting out;
  - a large majority of the European and U.S. respondents agreed that if a jurisdiction requires publication at 18 months, the competent authority should also be required to provide the applicant with search and/or examination results sufficiently in advance of publication to allow the applicant to decide whether or not to withdraw the application prior to publication; and
  - the majority of respondents also agree that 18 months is a reasonable period of secrecy from the standpoint of applicants.

## 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.

Article 22, Paragraph 2 of the Swedish Patents Act stipulates that if the patent has not been granted 18 months from the date when the patent application was filed or, where priority is claimed, the date from which priority is claimed, the documents shall be made publicly available to all.

Article 25 of the Swedish Patents Decree stipulates that if the application has been made publicly available, the Swedish Patent and Registration Office shall publish the abstract of the application as soon as it has been finalized, and that such publication also shall include information on the application number, the patent classification, the application's filing date, the title of the invention and the name(s) and address(es) of the applicant and the inventor. If priority has been claimed, information regarding the priority application shall also be published. The patent office may publish other documents from the application, together with the abstract.

If the application has been dismissed or rejected, the application shall be made publicly available only if the applicant requests the application to be resumed, or lodges an appeal or files a request of *restitutio in integrum*.

At the request of the applicant, the documents shall be made publicly available earlier than what follows from above.

Ergo, the Swedish Law distinguishes between an application being publicly available and then being published. The application will be published after having become publicly available. Bearing in mind that the principle of public access to official records is very strong in Sweden, the main view and standpoint is that any document or application submitted to a Governmental Agency is public. By explicit exception in the law, patent applications are to be kept secret at the patent office until 18 months from the date of filing or first priority date or any time before that by request of the applicant. At that time, the application shall be publicly available, meaning that all documents are available upon request. When the application is publicly available, it shall be published as described above.

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?

Publication occurs automatically as soon as the patent office has established the abstract and prepared the publication documents and the Official Patents' Gazette. Presently, the process from the date when the application is publicly available to the date when the application is published in the Gazette, takes around four weeks. For example, an application which becomes publicly available on June 11, 2016, will be published in the Official Patents' Gazette on July 12, 2016.

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?

The application will be publicly available 18 months 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?

Publication in the Official Patents' Gazette is mandatory for all applications which have become available to the public. If the application is withdrawn before it shall become available to the public, the application should immediately be dismissed by the Office. If the application is withdrawn in due time for the Office to decide on dismissal of the application, the application will never become publicly available and therefore never be published. Withdrawal may take place during office hours on the day before the application shall be available to the public, but it is subject to the risk that the Office will not notice the withdrawal during office hours and have time to decide on dismissal.

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

The abstract shall be published. The patent office may publish any other document from the patent application. The current practice is to publish the full application, i.e. the claims, the description including any drawings, and the abstract. Any sequence listings will not be published in the Official Patents' Gazette but are available via file inspection on-line or upon request.

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. Pursuant to Article 60 of the Swedish Patents Act, the provisions on patent infringement are applicable if someone, after the application is made publicly available, commercially exploits an invention of the application, but only to the extent that the application results in a patent.

There are limitations to these provisional rights in infringement situations. For the

period before the patent was granted, the patent protection extends only to what is apparent both from the patent claims as worded when the application became publicly available and from the claims of the granted patent. No punishment shall be imposed, no forfeiture must take place, and compensation for damages resulting from the exploitation that took place before the patent was granted may be adjudicated only if and to the extent that this is reasonable.

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.

A pending patent application which is not publicly available may however constitute prior art. Pursuant to Article 2 of the Swedish Patents Act, the contents of an earlier patent application filed in Sweden before the filing date of the later patent application shall be considered as known if that earlier application becomes available to the public at a later time, i.e. post the filing date of the later patent application. However, in such situations, for the later patent application to be granted, it is not required that the invention differs essentially from what was presented in the first 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 or his/her/its representative may request early publication immediately when filing the application or any time thereafter. The application must fulfill the requirements to be assigned a filing date, and the representative must submit a Power of Attorney. No other conditions apply. From the day of request of early publication, the application will be publicly available to all and the content of the application will constitute prior 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?

If the invention concerns military equipment and is deemed to be a defence invention pursuant to the Swedish Act on Defence Inventions, the patent application may not be made publicly available, may not be published and shall remain confidential until further notice by the Swedish defence authorities. Note that this means that the application can not be granted, since a granted patent must be published. The application is kept pending until it may be published, even if the Swedish Patent and Registration Office finds that the invention is patentable

and that the application as such fulfills all requirements for grant.

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. An abandoned or withdrawn application will be dismissed by a decision of the patent office. Unless the decision is appealed, the application will not become publicly available. However, if the decision is appealed, 18 months from the filing date or the earliest priority date, the application will become publicly available if the appeal is pending. If the 18 months passed while the application was dismissed, the application will become publicly available immediately upon the appeal from the applicant. The application will be published when becoming publicly available. A lapsed application cannot be appealed but the applicant may request restitutio in integrum. Just like with the appeal, if the applicant requests restitutio in integrum the application will become publicly available 18 months from the filing date or the earliest priority date, if the request is pending. If the 18 months passed while the application was lapsed, the application will become publicly available immediately upon the request for restitutio in integrum from the applicant.

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

Each application, regardless of it being a divisional application or otherwise dependent on a previous application, becomes publicly available if it is pending 18 months after its filing date or earliest priority date. Since a divisional application shares the filing date (and any priority date) of the parent application, it will be publicly available and published simultaneously with the parent application, or, if filed after 18 months from the filing or priority date of the parent application, immediately after being filed.

## **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. No specific requirements should apply and the consequence should be the same as for automatic publication. The content of the application shall by all means form part of prior art as of the date when the application becomes publicly available (which, as in the Swedish case, may be before the actual publication in a gazette or journal).

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?

No. Each application shall be treated individually.

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

Yes, if the content of the application has not been made publicly available by the patent office.

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?

The consequence of withdrawal of the application before it is publicly available/published should be that

(i) the application can not be resurrected under any circumstances, meaning that the application in itself can not constitute a right to the invention(s) which may be enforced,

(ii) the content of the application does not constitute prior art – not to the patentee's own subsequent patent applications nor to third party patent applications – if it is not otherwise known to the public,

(iii) the application may function as a priority application to other patent applications within a year from the filing date of the first (withdrawn) application, and that

(iv) if the application is used as a priority application, it shall become publicly available when the subsequent application is publicly available.

Hence,

- a. the patentee may submit an identical application and choose whether to

request priority from the previous application or not. If not, the first filed and unpublished withdrawn application shall not constitute prior art to the second application, or in any other way leave any right which may be claimed by the patentee or in itself hinder a later application, and

b. third party's patent applications will not be effected at all by an unpublished, withdrawn patent application unless the patentee within a year from the withdrawn application files a second application and requests priority from the unpublished application.

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?

The notion of unpublished granted patents is completely foreign to Swedish Patent Law. A granted patent must, under all circumstances, be published and all documents relevant to the grant of the patent must be made available to the public.

It would be preferable for the applicant to have information on the patent office's initial assessment of a patent application before deciding on whether to pursue the application or not. However, with respect to divisional patent applications and patent applications claiming priority from an earlier patent application – especially if the full 12 months' priority period is utilized – it seems rather unrealistic to legislate such requirement.

Recognizing that under Swedish Law – referencing to both Patent Law and Administrative Law – a divisional patent application claiming a filing date more than 18 months prior to the date when the divisional application is submitted to the patent office will be publicly available immediately when it is submitted to the patent office, and shall therefore be published as soon as possible, it will be impossible to legislate one single standard time for the patent office to provide assessment of a patent application before publishing the application. Also with respect to patent applications claiming the full 12 months' priority period, it will prove very difficult (or impossible) for the patent office to be required to assess the application before publication, unless publication of the application is delayed (which is not desirable).

Hence, the patent office should not be required to examine the application before 18 months from the application's filing date or earliest priority date.

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?;

It is preferable that the patent office provides search and examination results within 4-8 months from the filing date of the application, if the application does not claim priority from a previous application. For divisional applications and for patent applications claiming priority, the time limit should be longer.

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

The applicant should be able to withdraw the application at any time before grant or rejection. If the applicant wishes to withdraw the application before publication, there should be a specific time limit for when such withdrawal can be made and the time limit should be as close to publication (or public availability of the application) as possible, so that the applicant may exercise the option of keeping the invention secret. With regards to the fact that on-line publication is becoming a standard, replacing publication in a paper gazette or similar, late withdrawal – close to the date of publication – should be possible. Since the patent office has a cost related to preparing the publication, it could be possible to require a fee for very late withdrawals.

- c. the application to be published?

The application should be published immediately if the content of the application is made available to the public by the patent office, and if the patent is granted. The application should also be published immediately if it is pending 18 months after the filing date or the earliest 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)?

Yes, but only if the invention concerns military equipment and is deemed to be a defense invention pursuant to a legally established definition of such invention. If so, the patent application should not be made publicly available, nor be published, and shall remain confidential until further notice. Exceptions to publication of an application should mean that the application can not be granted, but be kept pending until it may be published.

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

The defence authorities of the country/countries where the application has been deemed to be a defence invention.

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?

### **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?

There should be no such requirement.

The size, resources and priorities of patent offices around the world vary to a very large extent. The possibility to claim priority under the Paris Convention provides applicants with the option of creating a patenting strategy which provides a search and/or examination result within a reasonable time. The applicant does so by choosing a patent office for first priority filing that will deliver trustworthy office reports approximately 4-8 months from filing date of the application. For the patent offices, providing early but reliable search and examination reports is a competitive factor, along with translation requirements, application fees and annual fees. If the patent offices are required by law to provide reports within a certain time period, or before publication of the application, this would most likely have the effect that some patent offices will provide the applicant with a standard letter and certain prior art which would only remotely be relevant to the patentability of the invention. Also, it may have the effect in some jurisdictions of delaying publication of patent applications. That is not desirable.

It is certainly desirable for the applicant to receive search and examination results prior to publication of the application, to make an informed decision with respect to pursuing or withdrawing the application. However, it is absolutely necessary that



office reports on such results are reliable and that applicants are not misled in their patenting strategy to file their first priority application with a patent office which claims to provide early search and/or examination results if reports on such results are unreliable or much too preliminary to be of any actual use for the applicant's further decision.

Therefore, the Swedish AIPPI-group does not believe that it is realistic to require the patent offices to provide search and/or examination results, in order to achieve the desired effect.

Instead, other means of hastening search and examination should be used, ultimately by information to applicants on what may be expected in terms of prosecution time and reliability of search results, as well as programs such as Patent Prosecution Highway and Supplementary International Search.

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 should be narrowly defined and mainly apply to situations of national or international security. As AIPPI has previously stated, patent applications should not be instruments of censorship. Suppressing or delaying publication of a patent application for reasons other than security are not effective means of using the patent system. It is highly unlikely that patent application will be a major source for dissemination of information on, for instance, immoral behavior, and the patent legislation should not be designed or take specific measures to avoid spreading such information.

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

18 months after the filing date or the earliest claimed priority date is an appropriate period for publication. It is a period which is relevant to the priority period and to a reasonable search and examination period at the patent office.

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