

AIPPI – ASSOCIATION INTERNATIONALE POUR LA PROTECTION DE LA PROPRIÉTÉ INTELLECTUELLE

QUESTIONNAIRE Q170 - GRACE PERIOD

ANSWERS OF THE BRAZILIAN GROUP

Does your country have a grace period system?

yes (please provide answers in both the left and right columns for the Questions below)

no (please provide answers in the left column for the Questions below)

When answering each Question below, please provide your recommendations for the SPLT in the left column, and for the NRGs that have responded “yes” to the above Question (i.e. that already have grace periods) please provide the existing situation in your country in the right column.

1.- Delay available to file patent applications following public disclosure:

<u>Proposal for SPLT</u>	<u>Existing situation</u>
1.1 - Length of grace period? <input type="checkbox"/> one year <input type="checkbox"/> six months <input type="checkbox"/> other, please specify:	1.1 - Length of grace period? <input type="checkbox"/> one year <input type="checkbox"/> six months <input type="checkbox"/> other, please specify:

<p>1.2 - When grace period ends on <i>dies non</i>, should filing be possible until the next working day?</p> <p><input type="checkbox"/> yes</p> <p><input type="checkbox"/> no</p>	<p>1.2 - When grace period ends on <i>dies non</i>, can filing be delayed until next working day?</p> <p><input type="checkbox"/> yes</p> <p><input type="checkbox"/> no</p> <p>Brazilian Law has no provision on this matter</p>
<p><u>Proposal for SPLT</u></p>	<p><u>Existing situation</u></p>
<p>1.3 - Should the Paris Convention priority term be available to extend the grace period, i.e. is only the priority date required to be within the grace period (as opposed to the actual filing date also having to fall within grace period)?</p> <p><input type="checkbox"/> yes</p> <p><input type="checkbox"/> no</p>	<p>1.3 - Can the Paris Convention priority term be used to extend the grace period, i.e. is only the priority date required to be within the grace period (as opposed to the actual filing date also having to fall within grace period)?</p> <p><input type="checkbox"/> yes</p> <p><input type="checkbox"/> no</p>

2.- Types and origin of disclosures for which grace period applies:

For the following two (2) sub-questions, please tick off all of the boxes that correspond to the scenarios where the grace period should apply.

<p><u>Proposal for SPLT</u></p>	<p><u>Existing situation</u></p>
--	---

2.1 - Types of public disclosures:
p all types (e.g. published patent application, “typical” printed publication, oral, sale, offer for sale, use, exhibition, etc)
o published patent publications
o “typical” printed publications
(e.g. trade magazines, newspapers, sales catalogs, printed conference abstracts
or more, etc.)
o publications via telecommunication means (e.g. Internet disclosures)
o reasonable trial, experimentation
o oral presentation held at conference held by recognised scientific body
o any oral presentation
o recognised exhibitions
o any exhibition
o sale
o offer for sale
o other, please specify:

2.1 - Types of public disclosures:
p all types (e.g. published patent application, “typical” printed publication, oral, sale, offer for sale, use, exhibition, etc)
o published patent publications
o “typical” printed publications
(e.g. trade magazines, newspapers, sales catalogs, printed conference abstracts
or more, etc.)
o publications via telecommunication means (e.g. Internet disclosures)
o reasonable trial, experimentation
o oral presentation held at conference held by recognised scientific body
o any oral presentation
o recognised exhibitions
o any exhibition
o sale
o offer for sale
o other, please specify:

<p>o other, please specify:</p> <p>o other, please specify:</p>	<p>o other, please specify:</p> <p>o other, please specify:</p>
<p><u>Proposal for SPLT</u></p>	<p><u>Existing situation</u></p>
<p>2.2 - Origin of disclosure:</p> <p> p by inventor</p> <p> p by person/entity having the right to obtain patent</p> <p> p by third party who derived the information from inventor or from person/entity having the right to obtain patent and who disclosed without the consent thereof (e.g. breach of confidential disclosure)</p>	<p>2.2 - Origin of disclosure:</p> <p> p by inventor</p> <p> p by person/entity having the right to obtain patent</p> <p> o by third party who derived the information from inventor or from person/entity having the right to obtain patent and who disclosed without the consent thereof (e.g. breach of confidential disclosure)</p>

<u>Proposal for SPLT</u>	<u>Existing situation</u>
<p>2.3 - In a given country where application is filed, should grace period be calculated from date of disclosure having taken place:</p> <p><input type="radio"/> in said given country (where application is filed), or</p> <p><input type="radio"/> anywhere in the world</p>	<p>2.3 - In your country, is grace period calculated from date of disclosure having taken place:</p> <p><input type="radio"/> in your country, or</p> <p><input type="radio"/> anywhere in the world</p>
<p>2.4 - Following above sub-question 2.1, should published patent applications be part of allowable disclosures?</p> <p><input type="radio"/> yes, exception made to those made in the very same country</p> <p><input type="radio"/> no</p>	<p>2.4 - Following above sub-question 2.1, should published patent applications be part of allowable disclosures?</p> <p><input type="radio"/> yes, exception made to those of Brazilian applications</p> <p><input type="radio"/> no</p>

3.- Related additional filing requirements:

<u>Proposal for SPLT</u>	<u>Existing situation</u>
--------------------------	---------------------------

<p>3.1 - Should there be a special official fee?</p> <p><input type="radio"/> yes</p> <p><input checked="" type="radio"/> no</p> <p>There should be no obligation to inform</p>	<p>3.1 - Is there a special official fee?</p> <p><input type="radio"/> yes</p> <p><input checked="" type="radio"/> no</p> <p>There is no obligation to inform</p>
<p><u>Proposal for SPLT</u></p>	<p><u>Existing situation</u></p>
<p>3.2 - Should there be a requirement for a statement by person/entity having the right to obtain patent declaring that public disclosure has occurred and requesting provisions of grace period?</p> <p><input type="radio"/> yes, at filing</p> <p><input type="radio"/> yes, within months of filing</p> <p><input checked="" type="radio"/> no</p> <p>You may also tick the following box:</p> <p><input type="radio"/> yes, within months of discovery, if discovery is made after filing</p>	<p>3.2 - Is there a requirement for a statement by person/entity having the right to obtain patent declaring that public disclosure has occurred and requesting provisions of grace period?</p> <p><input type="radio"/> yes, at filing</p> <p><input type="radio"/> yes, within months of filing</p> <p><input checked="" type="radio"/> no</p> <p>You may also tick the following box:</p> <p><input type="radio"/> yes, within months of discovery, if discovery is made after filing</p>

3.3 - Should there be a requirement that the details of the public disclosure be identified?

- yes, at filing
- yes, within _____ months of filing
- no

You may also tick the following box:

- yes, within _____ months of discovery, if discovery is made after filing

Yes, but only at the request of the Examiner

3.3 - Is there a requirement that the details of the public disclosure have to be identified?

- yes, at filing
- yes, within _____ months of filing
- no

You may also tick the following box:

- yes, within _____ months of discovery, if discovery is made after filing

Yes, upon request within the term designated by the Examiner

Proposal for SPLT

Existing situation

3.4 - Following above sub-question 3.3, which details should be provided on the declared public disclosure (tick off all applicable boxes)?

- date of public disclosure
- location of public disclosure
- type of public disclosure (see sub-question 2.1)
- origin of public disclosure (see sub-question 2.2)
- technical contents of public disclosure

3.4 - Following above sub-question 3.3, which details must be provided on the declared public disclosure (tick off all applicable boxes)?

- date of public disclosure
- location of public disclosure
- type of public disclosure (see sub-question 2.1)
- origin of public disclosure (see sub-question 2.2)
- technical contents of public disclosure

3.5 - Should there be sanctions against applicant of patent application for false declarations of consequence made with respect to above sub-questions 3.3 and 3.4, and if so, which type of sanctions would be applied (tick off all applicable boxes)?

no (no sanctions)

yes, public disclosure becomes prior art

yes, infringement damages from publication of patent application commence only at 18 months after filing

yes, immediate publication of the application

yes, other, please specify:

3.5 - Are there be sanctions against applicant of patent application for false declarations of consequence made with respect to above sub-questions 3.3 and 3.4, and if so, which type of sanctions would be applied (tick off all applicable boxes)?

no (no sanctions)

yes, public disclosure becomes prior art.

yes, infringement damages from publication of patent application commence only at 18 months after filing

yes, immediate publication of the application

There is no specific sanction in the Brazilian IP Law. However, unless the applicant succeeds in attesting that the disclosure made falls within the valid legal situations, then the matter will be deemed as part of prior art. Furthermore, misrepresentation in general is considered as a crime in Brazil.

yes, other, please specify:

<p>o yes, other, please specify:</p>	<p>o yes, other, please specify:</p>
--------------------------------------	--------------------------------------

4.- Procedural issues possibly affected by use of grace period:

<p><u>Proposal for SPLT</u></p>	<p><u>Existing situation</u></p>
--	---

4.1 - When should the publication of a patent application filed within grace period take place?

- conventionally at 18 months from filing date or earliest priority
- at 18 months from public disclosure date
- as soon as administratively possible after filing
- other, please specify:

4.2 - For a PCT application filed within the grace period, would the PCT 19, 20/21 and 30/31 months time limits be calculated:

- conventionally from filing date or earliest priority date
- from public disclosure date
- other, please specify:

4.1 - When does the publication of a patent application filed in your country within grace period take place?

- conventionally at 18 months from filing date or earliest priority
- at 18 months from public disclosure date
- as soon as administratively possible after filing
- other, please specify:

4.2 - For a PCT application filed within the grace period, are the PCT 19, 20/21 and 30/31 months time limits be calculated:

- conventionally from filing date or earliest priority date
- from public disclosure date
- other, please specify:

<u>Proposal for SPLT</u>	<u>Existing situation</u>
<p>4.3 - Would the term of the patent be calculated:</p> <p><input type="radio"/> conventionally twenty years from filing date</p> <p><input type="radio"/> twenty years from public disclosure date</p> <p><input type="radio"/> other, please specify:</p>	<p>4.3 - In your country, is the term of the patent calculated:</p> <p><input type="radio"/> conventionally twenty years from filing date</p> <p><input type="radio"/> twenty years from public disclosure date</p> <p><input type="radio"/> other, please specify:</p>

5.- Miscellaneous:

<u>Proposal for SPLT</u>	<u>Existing situation</u>
---------------------------------	----------------------------------

5.1 - The burden of proof that an application contains information disclosed previously by a third party that derived this information from inventor or from person/entity having the right to obtain patent, should be on:

- applicant/patentee
- third party
- other, please specify:

5.1 - In your country, the burden of proof that an application contains information disclosed previously by a third party that derived this information from inventor or from person/entity having the right to obtain patent, is on:

- applicant/patentee
- third party
- other, please specify:

Proposal for SPLT

Existing situation

<p>5.2 - Following sub-question 5.1, should determination that the application contains, or not, information disclosed by a third party that derived this information from inventor or from person/entity having the right to obtain patent, be carried out:</p> <ul style="list-style-type: none"> ␣ by the Patent Office ␣ by the courts ○ other, please specify: 	<p>5.2 - Following sub-question 5.1, is the determination that the application contains, or not, information disclosed by a third party that derived this information from inventor or from person/entity having the right to obtain patent, carried out:</p> <ul style="list-style-type: none"> ␣ by the Patent Office ␣ by the courts. In Brazil, there exists the constitutional right to submit any matter to appreciation of the courts. ○ other, please specify:
--	--

José Antonio B.L. Faria Correa
ABPI – The Brazilian Intellectual Property Association – President

Lélio D. Schmidt
ABPI – The Brazilian Intellectual Property Association – General Reporter

Gustavo José F. Barbosa
ABPI – Chairperson of the Patent Committee

Maria Lavínia L. Maurell
ABPI – Vice-Chairperson of the Patent Committee

Ivan B. Ahlert
ABPI – Patent Committee – Secretary *ad hoc*