

Inputs from Member States and Regional Patent Offices to the Thirty-Eighth Session of the Standing Committee on the Law of Patents

Respondent Information

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Disclaimer:

The information provided in response to this questionnaire is understood to be submitted on behalf of the Member State or regional organization concerned, through its competent authority and in accordance with its applicable official internal procedures.

It is assumed that the person completing and submitting the questionnaire is duly authorized to do so and that the information reflects the official position or practice of the Member State or organization, to the extent possible.

I confirm that I have read and understood the statement above and that I agree with its contents.

A. Prior Art

1. How is prior art defined under the applicable national or regional law?

The prior art includes any information that became public in the world before the priority date of the invention. When the novelty of the invention is established, the prior art also include all applications, provided that they have an earlier priority date, filed, and not withdrawn, in the Republic of Belarus by other persons for patents for an invention and utility model, and inventions and utility models patented in the Republic of Belarus (Law of the Republic of Belarus No. 160-Z of December 16, 2002, on Patents for Inventions, Utility Models, and Industrial Designs).

For the purposes of determining prior art, information contained in a source is considered publicly available if any person can access it directly or be informed of its content by lawful means (paragraph 440 of the Regulations on the Procedure for Filing an Application for the Grant of a Patent for an Invention, Conducting an Examination, and Issuing a Decision Based on the Results of the Examination, approved by the Resolution of the Council of Ministers of the Republic of Belarus No. 119 of February 2, 2011).

2. Against which date is prior art assessed under the applicable law?

The prior art is assessed in accordance with the Law as of the priority date of the invention.

3. Which types of information may constitute prior art under the applicable law, and how is it determined whether such information is considered to form part of the prior art?

The prior art may consist of the following types of information:

published patent documents;
applications for inventions or utility models;
printed publications;
manuscripts of articles, reviews, monographs, and other materials;
reports on research work, explanatory notes to experimental design works and other design, technical, and project documentation held by bodies of scientific and technical information;
normative and technical documentation;
materials of theses and thesis abstracts published as manuscripts;
competition entries;
visually perceptible sources of information (posters, models, products, and other items);
exhibits placed on exhibition;
oral presentations, lectures, or speeches;
broadcasts by radio, television, or in films;
information about a technical device that has become known as a result of its use;
information received in electronic form.

The date determining the inclusion of information about a source in the prior art, in accordance with the Regulations on Inventions, is as follows:

for published patent documents – the publication date indicated therein;
for applications for inventions or utility models filed with the patent authority and available for inspection by any person – the date of publication of the information on the invention application or of the information on the utility model patent, respectively, in the official bulletin of the patent authority;
for printed publications – the date of publication indicated therein;
for printed publications on which the publication date is not indicated, as well as for other printed publications – the date of their issue, and, if this cannot be established – the last day of the month or December 31 of the year indicated in the publication, if only the month or the year of issue is provided;
for deposited manuscripts of articles, reviews, monographs, and other materials – the date of their deposit;
for reports on research work, explanatory notes to experimental design work and other design, technological, and project documentation held by bodies of scientific and technical information – the date of their receipt by these bodies;
for normative and technical documentation – the date of its registration by the authorized body;
for materials of theses and thesis abstracts published as manuscripts – the date of their deposit in a library;
for works accepted for a competition – the date of their public display, confirmed by documents relating to the conduct of the competition;
for visually perceptible sources of information (posters, models, products, and other items) – the documented date on which such sources became available for viewing;
for exhibits placed on exhibition – the documented date of their first public display;
for oral presentations, lectures and speeches – the date of the presentation, lecture, or speech, the date of the presentation, lecture, or speech, provided that they were recorded using sound-recording equipment or by stenographic transcription in accordance with the established procedure in force on that date;
for broadcasts by radio, television or in films – the date of such a broadcast, provided it was recorded on the relevant medium in accordance with the established procedure in force on that date;
for information about a technical device that has become known as a result of its use – the documented date on which such information became publicly available;
for information received in electronic form – either the date of publication of the documents made available via electronic media, or, if that date is not available, the date on which the information was placed on electronic media, provided that this date is documented.

4. Does the applicable law provide for any category of prior art that is taken into account for patentability purposes notwithstanding that it was not publicly available before the relevant filing or priority date (sometimes referred to as “secret prior art”)?

Yes

If yes, please indicate, where applicable, the types of information or documents concerned (for example, earlier-filed patent applications), the relevant date(s) for determining such prior art, as well as any limitations, exclusions, or special rules applicable to such prior art. : For the purposes of assessing the novelty of the claimed invention, the prior art shall additionally include, subject to an earlier priority date, all unwithdrawn applications for inventions and utility models filed in the Republic of Belarus by other persons, as well as inventions and utility models patented in the Republic of Belarus, including those patented by the same persons in the Republic of Belarus, and registered in the Register of Inventions and in the State Register of Utility Models of the Republic of Belarus (paragraph 453 of the Regulations on Inventions).

5. Please provide any additional information that may be relevant to the understanding or application of prior art under the applicable law, including where applicable, any guidance (for example, patent office manuals or guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

No additional information has been identified.

Please upload any document that may be relevant to the understanding or application of prior art under the applicable law.

6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

The system applicable to utility models is similar to that for patents for inventions, except that inventive step is not assessed.

B. Novelty

1. How is the requirement of novelty defined under the applicable national or regional law?

An invention is novel if it does not form part of the prior art (paragraph 451 of the Regulations on Inventions).

The novelty of the claimed invention is assessed with respect to the entire set of features contained in the independent claim of the invention as filed, or as amended or corrected by the applicant(s) on their own initiative or at the request of the patent authority, and taken into account in the examination of the invention application (paragraph 452 of the Regulations on Inventions).

2. For the purposes of assessing novelty under the applicable law, are there any novelty-specific considerations regarding the relevant date or the scope of information taken into account, beyond those addressed in the Prior Art section of this survey?

For the purposes of assessing the novelty of the claimed invention, the prior art shall additionally include, subject to an earlier priority date, all unwithdrawn applications for inventions and utility models filed in the Republic of Belarus by other persons, as well as inventions and utility models patented in the Republic of Belarus, including those patented by the same persons in the Republic of Belarus, and registered in the Register of Inventions and in the State Register of Utility Models of the Republic of Belarus (paragraph 453 of the Regulations on Inventions).

The information contained in these sources is not required to be publicly available as of the priority date of the invention in question.

3. Does the applicable law apply an absolute novelty requirement, or does it provide for any limitations or qualifications to novelty (for example, relative novelty or other restricted approaches), apart from any grace period mechanisms addressed separately in this survey?

The law applies an absolute novelty requirement (worldwide novelty).

4. Apart from the approach described in question 3, are there any specific rules or contextual factors that affect what is taken into account as prior art for the purposes of assessing novelty under the applicable law?

There are no such factors.

5. Please provide any additional information relevant to the requirement of novelty under the applicable law, to the extent not already addressed in questions 1 to 4, including, where applicable, any guidance (for example, patent office manuals or guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or other interested parties, captured by patent office practice.

No additional information has been identified.

6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

No additional information has been identified.

C. Inventive Step

1. How is the criterion of inventive step or non-obviousness defined under the applicable national or regional law?

An invention is considered to involve an inventive step if it does not follow in an obvious manner from the prior art for a person skilled in the art.

The assessment of inventive step is carried out in relation to the invention as defined in the independent claim of the application for an invention, or as amended by the applicant(s) on their own initiative or at the suggestion of the patent authority and taken into account in the examination of the application for an invention (paragraphs 466, 468 of the Regulations on Inventions).

Inventions based, in particular, on the following shall not be recognized as meeting the requirement of inventive step: the addition of a known part (or parts) to a known means, attached thereto in accordance with known rules, to achieve a technical result in respect of which the effect of precisely such additions has been established, except in cases where, in addition to the known technical result, another result is achieved which is not known from the prior art;

the replacement of any part(s) of a known means with another known part to achieve a technical result in respect of which the effect of precisely such a replacement has been established;

the exclusion of any part(s) of a means (element, action) with the simultaneous exclusion of the function resulting from its (their) presence, while achieving the result customary for such an exclusion (simplification, reduction in mass, dimensions, material consumption, increased reliability, reduction in process duration, and the like); however, if, upon the exclusion of any element(s), its function is not eliminated but is transferred to another element(s) of the object, and the object functions with the same or better performance and in the same field as before the exclusion of this element (or elements) from it, such an invention is recognized as meeting the requirement of inventive step, provided that it does not follow from the prior art concerning the remaining elements of the object that any of them is capable of performing the function of the excluded element;

increasing the number of elements of the same type or actions to enhance the technical result resulting from the presence of precisely such elements or actions in the means;

the manufacture of a known means or part(s) thereof from a known material to achieve a technical result resulting from the known properties of that material;

the creation of a means consisting of known parts, the selection of which and the connections between which are made on the basis of known rules and recommendations, and the technical result thereby achieved is due solely to the known properties of the parts of that means and the connections between them;

the application of a known device, method, substance or strain to a new purpose, provided that the new purpose is determined by its known properties, structure and performance, and it is known that precisely such properties, structure and performance are necessary for the realization of this purpose;

a change in a quantitative feature (or features), the presentation of such features in relation to one another, or a change in their form, provided that the influence of each of them on the technical result is known and the new values of these features or their interrelationship could have been derived from known dependencies and regularities (paragraph 472 of the Regulations on Inventions).

2. For the purposes of assessing inventive step or non-obviousness under the applicable law, what is the relevant date and what prior art or information is taken into account?

Prior to the priority date, any information forming part of the prior art may be used to assess inventive step.

3. What is the standard applied under the applicable law to determine whether an invention involves an inventive step or is non-obvious, in particular as reflected in the concept of the “person skilled in the art”, focusing on how the standard is understood or applied, rather than its formal legal definition?

An invention is considered not to be obvious to a person skilled in the art, in particular, if no prior art solutions have been identified possessing features identical to its distinguishing features, or if such solutions have been identified but the prior art does not establish the effect of the distinguishing features on the technical result indicated by the applicant(s) (paragraph 471 of the Regulations on Inventions).

4. Are there any specific rules, limitations, or contextual factors that apply to the assessment of inventive step or non-obviousness under the applicable law?

Please indicate, where relevant, whether such rules or factors include geographic or territorial considerations affecting the relevance of prior art (for example, distinctions between domestic and foreign disclosures, uses, or publications, or territorial conditions applicable to particular categories of prior art) or any other particular considerations relevant to the assessment.

Responses should be limited to such contextual factors as they relate to the assessment of inventive step or non-obviousness, without restating general rules on what constitutes prior art. : No information available.

5. Please provide any additional information relevant to the requirement of inventive step or non-obviousness under the applicable law, to the extent not already addressed in questions 1 to 4, including, where applicable, any guidance (for example, patent office manuals or guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

No additional information has been identified.

Please upload any document relevant to the requirement of inventive step or non-obviousness under the applicable law.

6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

No information available.

D. Grace Period Mechanisms and Pre-Filing Disclosures

1. Does the applicable law provide for any mechanism under which certain disclosures made before the filing or priority date do not prejudice the patentability of an invention, in particular with respect to novelty and/or the legal effect on prior art?

Yes

If yes, please identify the relevant legal provisions (in primary and/or secondary legislation) and describe their operation.: Under the Law, a disclosure of information concerning the invention by the inventor/author, applicant, or any person who has received such information from them, whether directly or indirectly, whereby information on the essence of the invention became publicly available, shall not be regarded as a circumstance preventing the patentability of the invention, provided that the application for the invention is filed with the patent authority no later than twelve months from the date of such disclosure of the information.

2. What is the duration of the mechanism referred to in question 1, during which the covered disclosures do not prejudice the patentability of the invention?

The duration of the grace period is twelve months from the date of disclosure.

3. Where such a mechanism exists, which categories of disclosures are covered by it?

See answer to question 1.

4. Are there any formalities or procedural requirements that must be fulfilled in order to rely on the mechanism identified in question 1?

Yes

Please describe any such requirements, where applicable, including, for example, the need to file statements, declarations or notices, to submit certificates or other supporting evidence, or to comply with any timing or notification requirements or any information relating to the burden of proof. : Applicants may submit such sources of information themselves during the patent examination process.

5. Does the applicable law provide for prior user rights or other protections for third parties who may be affected by an invention that has benefited from a graced pre-filing disclosure?

Yes

If yes, identify the relevant legal provisions (including any provisions in primary and/or secondary legislation), and describe the conditions under which such rights or protections arise (for example, good-faith use of the invention prior to the filing or priority date), as well as how such rights or protections operate. : Yes. Under the Law, any natural or legal person who, before the priority date of an invention, utility model or industrial design, has in good faith used in the territory of the Republic of Belarus an identical solution created independently of its author, or has made necessary preparations for such use, shall retain the right to further use it free of charge without expanding the scope of such use (right of prior use). The scope of the permitted use of the invention, utility model or industrial design by a person having the right of prior use, as established before the priority date or resulting from preparations made before that date, shall be determined in an agreement concluded between such person and the patent owner, and, failing agreement, by a court. The right of prior use may be transferred to another natural or legal person only together with the enterprise as a property complex in which the use of the identical solution took place or in which the necessary preparations were made (Article 39 of the Law of the Republic of Belarus No. 160-Z of 16 December 2002 "On Patents for Inventions, Utility Models and Industrial Designs"). Any natural or legal person who, from the date of termination of the validity of a patent for an invention, utility model or industrial design until the date of its restoration in accordance with paragraph 1 of this Article, has used in the territory of the Republic of Belarus an identical solution or has made necessary preparations for such use, shall retain the right to further use it free of charge without expanding the scope of such use (right of subsequent use). The scope of the permitted use of the invention, utility model or industrial design by a person having the right of subsequent use, as established before the date of restoration of the patent or resulting from preparations made before that date, shall be determined in an agreement concluded between such person and the patent owner, and, failing agreement, by a court (Article 35 of the Law of the Republic of Belarus No. 160-Z of 16 December 2002 "On Patents for Inventions, Utility Models and Industrial Designs").

6. Please provide any additional information that may be relevant, including, where applicable, any guidance (e.g. patent office manual/guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

No additional information has been identified.

Please upload any document that may be relevant to grace period mechanisms and/or pre-filing disclosures.

7. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

No information has been identified.

Final review before submission

Confirmation of submission

I am aware that by clicking "Submit" below, my responses will be sent to the SCP Secretariat.