

## Respondent Information

China

China National Intellectual Property Administration (CNIPA)

Program Officer

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

## A. Prior Art

According to Article 22.5 of the Patent Law of the People's Republic of China, the date for assessing prior art is the filing date. Meanwhile, according to Article 12 of the Implementing Regulations of the Patent Law of the People's Republic of China, if the priority is claimed, the date for assessing prior art shall be the priority date.

**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?**

根据《专利审查指南》第二部分第三章2.1节的规定,现有技术公开方式包括出版物公开、使用公开和以其他方式公开三种,根据其公开日确定是否属于现有技术。对于公开日的确定方式请参见《专利审查指南》第二部分第三章2.1.2节。According to Section 2.1, Part II, Chapter 3 of the Guidelines For Patent Examination, the means of disclosure of prior art includes disclosure by publications, disclosure by use, and disclosure by other means. Whether such disclosure constitutes prior art is determined based on the date of disclosure. For the method of determining the date of disclosure, please refer to Section 2.1.2, Part II, Chapter 3 of the Guidelines For Patent Examination.

**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.** : 根据《专利法》第二十二条第二款的规定,在发明或者实用新型的判断中,由任何单位或者个人就同样的发明或者实用新型在申请日以前向专利局提出并且在申请日以后(含申请日)公布的专利申请文件或者公告的专利文件损害该申请日提出的专利申请的新颖性。这种损害新颖性的专利申请称为抵触申请。According to Article 22.2, when novelty of an invention or utility model application is examined, the applications relating to the identical invention or utility model which have been filed by any entity or individual prior to the filing date of the application being examined with the Patent Office and published or announced on or after said filing date, will take away the novelty of the application being examined. This kind of application that are prejudicial to the novelty of the application being examined are called "conflicting applications".

**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.**

请参见《专利审查指南》第二部分第三章2.1节。  
Please refer to Section 2.1, Part II, Chapter 3 of the Guidelines For Patent Examination.

**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.**

无。  
No.

## **B. Novelty**

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

新颖性,是指该发明或者实用新型不属于现有技术;也没有任何单位或者个人就同样的发明或者实用新型在申请日以前向专利局提出过申请,并记载在申请日以后(含申请日)公布的专利申请文件或者公告的专利文件中。  
Novelty means that, the invention or utility model does not form part of the prior art, nor has any entity or individual filed previously before the date of filing with the Patent Office an application relating to the identical invention or utility model disclosed in patent application documents published or patent documents announced on or after said filing date.

**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?**

现有技术的时间界限是申请日,享有优先权的,则指优先权日。广义上说,申请日以前公开的技术内容都属于现有技术,但申请日当天公开的技术内容不包括在现有技术范围内。  
As regards an invention or utility model application, the temporal demarcation of prior art is its filing date or the priority date where applicable. Broadly speaking, all of the technical contents disclosed before the filing date are within the scope of prior art; however, those disclosed on the filing date are not in the scope of prior art.

**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?**

中国专利法采用绝对新颖性标准，而不是相对新颖性。

The Patent Law of China adopts an absolute novelty standard and does not provide for relative 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?**

现有技术公开方式包括出版物公开、使用公开和以其他方式公开三种，均无地域限制。

存在于互联网或者其他在线数据库中的资料的公开日一般以发布日为准，有其他证据证明其公开日的除外。

The means of disclosure of prior art includes disclosure by publications, disclosure by use, and disclosure by other means, without limitation on territory.

The publication date of materials on the Internet or in other online databases is generally determined by the date on which the materials are published online, except where the date of publication can be evidenced otherwise.

**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.**

《专利审查指南》第二部分第三章专门规定了新颖性有关内容。

被审查的发明或者实用新型专利申请与现有技术或者申请日前由任何单位或者个人向专利局提出申请并在申请日后（含申请日）公布或者公告的发明或者实用新型的相关内容相比，如果其技术领域、所解决的技术问题、技术方案和预期效果实质上相同，则认为两者为同样的发明或者实用新型。

如果要求保护的发明或者实用新型与对比文件的区别仅仅是所属技术领域的惯用手段的直接置换，则该发明或者实用新型不具备新颖性。例如，对比文件公开了采用螺钉固定的装置，而要求保护的发明或者实用新型仅将该装置的螺钉固定方式转换为螺栓固定方式，则该发明或者实用新型不具备新颖性。

Chapter 3 of Part II of the Patent Examination Guidelines specifically stipulates the content related to novelty.

Comparing the application being examined with the relevant contents of the prior art or of the applications for invention or utility model filed previously by any entity or individual with the Patent Office and published or announced on or after the filing date of the application being examined, if their technical fields, technical problems to be solved, technical solutions, and their expected effects are substantially the same, they shall be regarded as identical inventions or utility models.

If the difference between the claimed invention or utility model and a reference document is merely a direct substitution of customary means employed in the art, the invention or utility model does not possess novelty. For example, if a reference document disclosed a device using screw fastening, and the claimed invention or utility model only replaces the screw fastening with bolt fastening, the invention or utility model does not possess novelty.

**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.**

实用新型采用初步审查制度，在涉及新颖性的审查中，我们主要判断是否具有明显的新颖性。

As for utility models, we take the preliminary examination. That is, when we judge the matter of novelty, we just check the application to see whether the novelty is obviously or not.

## C. Inventive Step

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

根据《中华人民共和国专利法》第二十二条第三款的规定，创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。

According to Article 22.3, inventive step of an invention means that, as compared with the prior art, the invention has prominent substantive features and represents a notable progress; inventive step of a utility model means that, as compared with the prior art, the utility model has substantive features and represents progress.

**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?**

根据创造性的定义，创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。《中华人民共和国专利法》第二十二条第五款规定，现有技术是指申请日以前在国内外为公众所知的技术。因此，评估创造性的相关日期是专利申请日（有优先权的，指优先权日）。

According to the criterion of inventive step, inventive step of an invention means that, as compared with the prior art, the invention has prominent substantive features and represents a notable progress; inventive step of a utility model means that, as compared with the prior art, the utility model has substantive features and represents progress. According to Article 22.5, the prior art means any technology known to the public before the date of filing in China or abroad. Therefore the relevant date for assessing inventiveness is the date of filing (or the priority date where priority is claimed).

**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?**

所属技术领域的技术人员，也可称为本领域的技术人员，是指一种假设的“人”，假定他知晓申请日或者优先权日之前发明所属技术领域所有的普通技术知识，能够获知该领域中所有的现有技术，并且具有应用该日期之前常规实验手段的能力，但他不具有创造能力。如果所要解决的技术问题能够促使本领域的技术人员在其他技术领域寻找技术手段，他也应具有从该其他技术领域获知该申请日或者优先权日之前的相关现有技术、普通技术知识和常规实验手段的能力。

The person skilled in the art refers to a fictional "person" who is presumed to be aware of all the common technical knowledge and have access to all the technologies existing before the filing date or the priority date in the technical field to which the invention pertains, and have capacity to apply all the routine experimental means before that date.

However, he is not presumed to have creativity. If the technical problem to be solved impels that person to seek technical means in other technical field, he should also be presumed to have access to the relevant prior art, common technical knowledge, and routine experimental means in the other technical field before the filing date or the priority date.

**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?**

Yes

***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.*** 审查发明是否具备创造性，应当审查发明是否具有突出的实质性特点，同时还应当审查发明是否具有显著的进步。判断发明是否具有突出的实质性特点，就是要判断对本领域的技术人员来说，要求保护的发明相对于现有技术是否显而易见。判断要求保护的发明相对于现有技术是否显而易见，通常可按照以下三个步骤进行。（1）确定最接近的现有技术；（2）确定发明的区别特征和发明实际解决的技术问题；（3）判断要求保护的发明对本领域的技术人员来说是否显而易见。在评价发明是否具有显著的进步时，主要应当考虑发明是否具有有益的技术效果。以下情况，通常应当认为发明具有有益的技术效果，具有显著的进步：（1）发明与现有技术相比具有更好的技术效果，例如，质量改善、产量提高、节约能源、防治环境污染等；（2）发明提供了一种技术构思不同的技术方案，其技术效果能够基本上达到现有技术的水平；（3）发明代表某种新技术发展趋势；（4）尽管发明在某些方面有负面效果，但在其他方面具有明显积极的技术效果。 To determine whether an invention has prominent substantive features is to determine, to the person skilled in the art, whether the claimed invention is non-obvious as compared with the prior art. Usually the following three steps are followed to determine whether a claimed invention is obvious as compared with the prior art. Determining the closest prior art Determining the distinguishing features of the invention and the technical problem actually solved by the invention Determining whether or not the claimed invention is obvious to a person skilled in the art When evaluating whether or not an invention represents notable progress, the examiner shall primarily consider whether or not the invention produces advantageous technical effects. Usually, an invention shall be regarded as producing advantageous technical effects and therefore representing notable progress in any of the following circumstances: where, as compared with the prior art, the invention produces a better technical effect, such as quality improved, output increased, energy saving, and environmental pollution prevented or controlled; where the technical solution provided by the invention is of a different inventive concept and can produce a technical effect of substantially the same level as in the prior art; where the invention represents a new trend of technical development; or where, despite negative effect in some respect, the invention produces outstanding positive technical effects in other respects.

**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.**

《专利审查指南》第二部分第四章对创造性审查进行了详细规定，包括创造性的定义、“所属技术领域的技术人员”的概念、非显而易见性的判断步骤等。

发明是否具备创造性，通常应根据上述审查标准进行审查。应当强调的是，当申请属于以下情形时，审查员应当予以考虑：

- (1) 发明解决了人们一直渴望解决但始终未能获得成功的技术难题；
- (2) 发明克服了技术偏见；
- (3) 发明取得了预料不到的技术效果；
- (4) 发明在商业上获得成功。

Chapter IV of part II of the Guidelines for Patent Examination stipulates in detail the examination of inventiveness, including the definition of inventiveness, the concept of a "person skilled in the art", the step of determining non-obviousness, etc. It should be stressed that where an application falls into one of the following circumstances, the examiner shall take the corresponding factors into account and avoid making a rash determination that the invention does not involve an inventive step.

Solving a Long-Felt but Unsolved Technical Problem

Overcoming a Technical Prejudice

Producing Unexpected Technical Effect

Achieving Commercial Success

**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.**

《专利审查指南》第四部分第六章对实用新型的创造性审查做出了具体规定，实用新型专利的创造性标准与发明专利存在差异：

法律规定不同：专利法第二十二条第三款的规定了，发明专利要求“突出的实质性特点和显著的进步”，而实用新型专利仅要求“实质性特点和进步”。因此，实用新型专利创造性的标准应当低于发明专利创造性的标准。

现有技术的领域考虑范围不同：实用新型专利一般着重于考虑其所属的技术领域，但是现有技术中给出明确启示的，可以考虑其相近或者相关的技术领域；发明不仅要考虑该发明专利所属的技术领域，还要考虑其相近或者相关的技术领域，以及该发明所要解决的技术问题能够促使本领域的技术人员到其中去寻找技术手段的其他技术领域。

现有技术的引用数量不同：对于发明专利而言，可以引用一项、两项或者多项现有技术评价其创造性；实用新型专利创造性评价中，一般情况下可以引用一项或者两项现有技术，对于由现有技术通过“简单的叠加”而成的实用新型专利，可以根据情况引用多项现有技术评价其创造性。

Chapter VI of Part IV of the Guidelines for Patent Examination provides specific provisions on the examination of inventiveness for utility models. The standard of inventiveness for utility model patents differs from that for invention patents:

Different legal provisions:

Paragraph 3 of Article 22 of the Patent Law stipulates that an invention patent requires "prominent substantive features and remarkable progress", whereas a utility model patent only requires "substantive features and progress". Therefore, the inventiveness standard for utility model patents shall be lower than that for invention patents.

Different scope of fields of prior art to be considered:

For utility model patents, emphasis is generally placed on the technical field to which the utility model pertains; however, if the prior art provides explicit enlightenment, similar or related technical fields may be taken into account. For invention patents, consideration shall be given not only to the technical field to which the invention pertains, but also to its similar or related technical fields, as well as other technical fields in which a person skilled in the art would be motivated to seek technical means by the technical problem to be solved by the invention.

Different number of prior art documents that may be cited:

For invention patents, one, two or more prior art documents may be cited to evaluate inventiveness. In the evaluation of inventiveness for utility model patents, generally one or two prior art documents may be cited. For utility model patents formed by "simple combination" of prior art, multiple prior art documents may be cited to evaluate inventiveness as appropriate.

## **D. Grace Period Mechanisms and Pre-Filing Disclosures**

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**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.:** 专利法第二十四条规定：申请专利的发明创造在申请日以前六个月内，有下列情形之一的，不丧失新颖性：

（一）在国家出现紧急状态或者非常情况时，为公共利益目的首次公开的；（二）在中国政府主办或者承认的国际展览会上首次展出的；（三）在规定的学术会议或者技术会议上首次发表的；（四）他人未经申请人同意而泄露其内容的。

Article 24 of the Patent Law provides for the grace period : Within six months before the filing date, an invention-creation for which a patent application is filed does not lose its novelty under any of the following circumstances: (1) where it was made public for the first time for the purpose of the public interests when a state of emergency or an extraordinary situation occurred in the country. (2) where it was exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government; (3) where it was published for the first time at a prescribed academic or technological conference; (4) where its contents are divulged by another person without the consent of the applicant.

**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?**

6个月

6 months.

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

涵盖四种情形的公开类型，包括：

（一）在国家出现紧急状态或者非常情况时，为公共利益目的首次公开的；

（二）在中国政府主办或者承认的国际展览会上首次展出的；

（三）在规定的学术会议或者技术会议上首次发表的；

（四）他人未经申请人同意而泄露其内容的。

There are 4 circumstances of disclosure:

(1) where it was made public for the first time for the purpose of the public interests when a state of emergency or an extraordinary situation occurred in the country.

(2) where it was exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;

(3) where it was published for the first time at a prescribed academic or technological conference;

(4) where its contents are divulged by another person without the consent of the applicant.

**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.***

专利法实施细则第三十三条第三款：规定申请专利的发明创造有专利法第二十四条第（二）项或者第（三）项所列情形的，申请人应当在提出专利申请时声明，并自申请日起2个月内提交有关发明创造已经展出或者发表，以及展出或者发表日期的证明文件。专利法实施细则第三十三条第四款规定：申请专利的发明创造有专利法第二十四条第

（一）项或者第（四）项所列情形的，国务院专利行政部门认为必要时，可以要求申请人在指定期限内提交证明文件。

更为详细的证明材料和时限要求规定在《专利审查指南》第一部分第一章6.3节。 Paragraph 3 of Rule 33 of the Implementing Regulations of the Patent Law: Where any invention-creation for which a patent is applied falls under the provisions of Article 24, subparagraph (2) or (3) of the Patent Law, the applicant shall, when filing the application, make a declaration and, within a time limit of two months from the date of filing, submit certifying documents, stating the fact that the invention-creation was exhibited or published and with the date of its exhibition or publication. Paragraph 4 of Rule 33 of the Implementing Regulations of the Patent Law: Where any invention-creation for which a patent is applied falls under the provisions of Article 24, subparagraph (1) or (4) of the Patent Law, the patent administration department under the State Council may, when it deems necessary, require the applicant to submit the relevant certifying documents within the specified time limit. More detailed requirements regarding the supporting materials and time limits are stipulated in Section 6.3 of Part I, Chapter 1 of the Guidelines for Patent Examination.

**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.*** : 专利法第七十五条第(二)项规定了先用权: 有下列情形之一的, 不视为侵犯专利权: (二) 在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备, 并且仅在原有范围内继续制造、使用的; Subparagraph (2) of Article 75 of the Patent Law provides for the right of prior use: None of the following shall be deemed as infringement of the patent right: (2) where, before the filing date of the patent application, any person who has already manufactured the identical product, used the identical process, or made necessary preparations for its manufacturing or using, continues to manufacture or use it only within the original scope;

**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.**

《专利审查指南》第一部分第一章6.3节、第二部分第三章第5节涉及新颖性宽限期的审查; 专利法实施细则第124条和《专利审查指南》第三部分第一章5.4节涉及进入国家阶段的PCT国际申请的新颖性宽限期; 专利法实施细则第140条和《专利审查指南》第六部分第二章6.3节涉及外观设计国际申请的新颖性宽限期。

Section 6.3 of Part I, Chapter 1 and Section 5 of Part II, Chapter 3 of the Guidelines for Patent Examination pertain to the examination of the grace period for novelty.

Rule 124 of the Implementing Regulations of the Patent Law and Section 5.4 of Part III, Chapter 1 of the Guidelines for Patent Examination address the grace period for PCT international applications entering the national phase.

Rule 140 of the Implementing Regulations and Section 6.3 of Part VI, Chapter 2 of the Guidelines for Patent Examination concern the grace period for international design applications.

**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.**

专利法第二十四条适用于发明、实用新型和外观设计专利。

Article 24 of the Patent Law apply to invention patents, utility model patents, and design patents.

## **Submission of information concerning other aspects of national/regional patent law**

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### **E. Sufficiency of Disclosure**

[E. Sufficiency of Disclosure .docx](#)

### **F. Exclusions from Patentable Subject Matter**

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### **G. Exceptions and Limitations to Patent rights**

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## **Final review before submission**

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### **Confirmation of submission**

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