

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

Respondent Information

First Name:

[REDACTED]

Last Name:

[REDACTED]

Country:

Russian Federation

IP Office

Eurasian Patent Office

Job title

Deputy Director, Examination Department

Email address:

[REDACTED]

Email address confirmation:

[REDACTED]

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?

Patent Regulations under EAPC

Rule 3. Criteria of Patentability of an Invention

The prior art shall consist of any kind of information made available to the public in the world before the date of filing of the Eurasian application or, where priority is claimed, before the priority date of the application.

The prior art includes anything made available to the public by written or oral disclosure, by use< online disclosure or in any other way.

For the purpose of determining the novelty of an invention, prior art shall also be considered to include the subject matter of any application for the grant of a Eurasian patent as originally filed, provided that the application or the Eurasian patent granted on the basis of this application is subsequently published in the prescribed manner and that the filing date of such an application or, where priority is claimed, its priority date precedes the corresponding filing/priority date of the application. The content of the international application shall comprise the prior art as from the filing date of the application, or, where priority is claimed, as from the priority date, where the requirements of Rule 71(1) of the Regulations are satisfied (for entering into regional phase).

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

The prior art is assessed on the filing date of the application, or if a priority is validly claimed - on the priority date. If multiples alternatives are claimed having different priority dates, the prior art is assessed on the corresponding priority date for each alternative.

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?

Specific requirements for determining the date on which a disclosure has been made available to the public and the fact of public availability of the disclosure are provided in EAPO's documents as follows:

Rules for filing and examining Eurasian patent applications (Rule 5.6)

<https://www.eapo.org/wp-content/uploads/2026/01/pravila-sostavleniya-podachi-i-rassmotreniya-zayavok-na-vydachu-evrazijskih-patentov-na-izobreteniya-2026.pdf>

Guidelines for examining Eurasian patent applications (Chapter 9)

<https://www.eapo.org/wp-content/uploads/2024/12/rukovodstvo-po-ekspertize-evrazijskih-zayavok-na-izobreteniya.pdf>

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")?

No

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. :

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.

Rules for filing and examining Eurasian patent applications (Rule 5.6)

<https://www.eapo.org/wp-content/uploads/2026/01/pravila-sostavleniya-podachi-i-rassmotreniya-zayavok-na-vydachu-evrazijskih-patentov-na-izobreteniya-2026.pdf>

Guidelines for examining Eurasian patent applications (Chapter 9)

<https://www.eapo.org/wp-content/uploads/2024/12/rukovodstvo-po-ekspertize-evrazijskih-zayavok-na-izobreteniya.pdf>

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

[patent-regulations-inventions-part-i-2025-eng.pdf](#)

[pravila-sostavleniya-podachi-i-rassmotreniya-zayavok-na-vydachu-evrazijskih-patentov-na-izobreteniya-2026.pdf](#)

[rukovodstvo-po-ekspertize-evrazijskih-zayavok-na-izobreteniya.pdf](#)

B. Novelty

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

Eurasian Patent Convention (EAPC)

Article 6. Patentable Inventions

The Eurasian Office shall grant a Eurasian patent for any invention that is new, involves an inventive step and is industrially applicable.

Patent Regulations under EAPC

Rule 3. Criteria of Patentability of an Invention

(1) In accordance with Article 6 of the Convention, a Eurasian patent shall be granted for any invention that is novel, involves an inventive step and is industrially applicable.

An invention shall be considered novel if it is not anticipated by prior art. Separate items of the prior art may only be taken into account separately for the purpose of determining the novelty of the invention.

Rule 47. Substantive Examination of the Eurasian Application

In verifying the compliance of the claimed invention with the patentability criterion relating to "novelty," it shall be established whether the claimed invention constitutes part of the prior art.

The invention shall be recognized as not meeting the requirement of novelty if information is disclosed in the prior art regarding the subject matter which has features identical to all features of the invention.

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?

In assessing the novelty, the subject matter of any Eurasian application (including international applications regularly entered into EAPO's regional phase) with the earlier filing / priority date published on or after the date of the application under consideration, may anticipate the novelty of that application.

In assessing the novelty it is important to determine the content of the claimed subject-matter and the content of the prior art disclosure in order to judge the relevance and extent of the disclosure. It is taken into account not only explicitly disclosed subject-matter, but also features unambiguously derived from the disclosure and/or implicitly belonging to the subject-matter.

Details are provided in Guidelines for examining Eurasian patent applications (attached)

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?

Absolute novelty requirement - no limitation to the territory of disclosure, type of disclosure, mode to make available to the public and the number of persons which constitutes the public. No evidence if a person had access to the subject-matter, it is sufficient if the person could/would have access.

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?

For online disclosure it is important to determine the real date of the disclosure, in such case using the web.archive machine.

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.

Rules for filing and examining Eurasian patent applications (Rule 5.7)

<https://www.eapo.org/wp-content/uploads/2026/01/pravila-sostavleniya-podachi-i-rassmotreniya-zayavok-na-vydachu-evrazijskih-patentov-na-izobreteniya-2026.pdf>

Guidelines for examining Eurasian patent applications (Chapter 10)

<https://www.eapo.org/wp-content/uploads/2024/12/rukovodstvo-po-ekspertize-evrazijskih-zayavok-na-izobreteniya.pdf>

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

C. Inventive Step

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

Patent Regulations under EAPC

Rule 3. Criteria of Patentability of an Invention

(1) An invention shall be considered to involve an inventive step if, having regard to the prior art, it is not obvious to a person skilled in the art.

Rule 47. Substantive Examination of the Eurasian Application

In verifying the compliance of the claimed invention with the patentability criterion relating to "inventive step," it shall be determined whether the claimed invention is obvious for a person skilled in the art, on the basis of the prior art.

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?

The inventive step is assessed on the filing/priority date of the application. The relevant state of the art does not include later-published Eurasian applications as referred to novelty.

In assessing the inventive step several relevant prior art documents may be used in combination. The state of the art may be the relevant common general knowledge in the art.

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?

The "person skilled in the art" is presumed to be a skilled practitioner in the relevant field of technology who has average knowledge and ability. In case of applications related to several technical areas, "person skilled in the art" means a group of persons who collectively have the specified qualities.

Evaluation of the obviousness of the invention is made on the basis of an analysis of the distinguishing features of the invention, as well as of the contribution to the state of the art made by these features directly or in combination with other features of the invention.

The invention is recognized not as following obviously from the state of the art for a skilled person if no prior art with distinctive features are identified, or such solutions have been identified, but the influence of these distinctive features on the claimed technical effect(s) has not been established, and it is not obvious to the person skilled in the art that it can be achieved on the basis of the revealed information from the state of the art and common general knowledge in the art.

The following methodology for assessing inventive step is applied :

- determining the closest prior art
- identifying features distinguishing the claimed invention from the closest prior art
- identification of the prior art solutions characterized by the distinctive features of the claimed invention, taken individually or in combination
- determining whether the technical effect(s) provided by these distinctive features is known from the prior art.

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. : Secondary indicators which may contribute to the positive judge on inventive step: - long-felt need - predictable disadvantage - commercial success - use of a lot of prior art documents pertaining to different technical fields in assessing inventive step

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.

Rules for filing and examining Eurasian patent applications (Rule 5.8)

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Guidelines for examining Eurasian patent applications (Chapter 11)

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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

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.: Patent Regulations under EAPC Rule 3. Criteria of Patentability of an Invention (2) Disclosure of information relating to the invention that otherwise would affect its patentability shall not do so where the information relating to the subject matter of the invention has been made available to the public not earlier than during the six months preceding the filing date of, or the priority date claimed for, the Eurasian application, by the inventor or applicant or by any person having obtained the information directly or indirectly from them. The burden of proof of the circumstances of disclosure shall be on the applicant. The provisions of this paragraph shall not apply to the publication of patent documents.

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 months from the filing date of the application or, if a priority is claimed, from the priority date.
The disclosure in this period does not prejudice the novelty and inventive step of the claimed invention.

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

Non -prejudicial disclosures include

- any type of disclosure made by the inventor or applicant, excluding earlier patent documents, published within grace period
- disclosure by third person under the consent of the inventor/applicant
- disclosures resulting from abuse in relation to the inventor/ applicant or his legal predecessor (i.e. bound by a confidence agreement).

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

No

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. : It is acceptable any evidence justifying the applicability of the grace period.

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. : Rule 20. Right of the Prior Use (1) Any natural person, legal entity, or organization assimilated thereto, which in good faith, before the filing date of the application or, where priority has been established, before the priority date of the invention, has been using an identical invention on the territory of a Contracting State, or has made the necessary preparations for such use, shall retain the right to proceed with that use free of charge, provided that the scope thereof is not increased. The right of the prior use may only be transferred to another natural person, legal entity, or assimilated organization, together with the production unit in which the identical invention has been used, or the necessary preparations for the use thereof have been made. (2) The right of the prior use shall apply only on the territory of the Contracting State in which such prior use has occurred. The grace period is not applied for the prior use, in all case the relevant date is the filing/priority day.

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.

Guidelines for examining Eurasian patent applications (Chapter 9, p 9.6)
<https://www.eapo.org/wp-content/uploads/2024/12/rukovodstvo-po-ekspertize-evrazijskih-zayavok-na-izobreteniya.pdf>

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

Final review before submission

Confirmation of submission

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