Questionnaire on Special Topic (Grace Period)

HONG KONG GROUP

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The grace period reconciles an inventor's need to disclose an invention before filing with the requirements for patentability. It serves to protect inventors and promote innovation through early information sharing. At the same time, balancing this protection with predictability and legal certainty for third parties remains a common challenge across jurisdictions.

Grace period rules, such as availability, duration, eligible disclosures, treatment of third-party disclosures, and procedural requirements, differ significantly across countries and regions. A pre-filing disclosure that is permissible in one country may constitute a loss of novelty in another, potentially causing serious disadvantage. An accurate understanding of each jurisdiction's rules and their practical operation is therefore essential.

The APAA Patent Committee has adopted the grace period as this year's Special Topic. The objectives are to compare and analyze each country's system, deepen understanding of the differences among them, and contribute to their improvement. To this end, the Committee is conducting this questionnaire with the cooperation of each regional group.

Please answer the following questions regarding the grace period as defined below.

(Definition)
A grace period refers to a specified period preceding the filing or priority date of a patent application during which certain disclosures of an invention made within that period are disregarded when determining novelty, etc. of the invention claimed in the patent application.

A. Current System

I. Availability of a Grace Period

1) Is a grace period available for patent applications in your country or jurisdiction?

☒ Yes

□ No

Hong Kong answer: Yes, but only a narrowly confined six-month non-prejudicial-disclosure exception, not a general inventor self-disclosure grace period. Patents Ordinance (Cap. 514), ss. 11A (standard patent (R)), 37B (standard patent (O)) and 109 (short-term patents).

These narrow exemptions are for:

(i) evident abuse, and

(ii) official international exhibitions at an official or officially recognised international exhibition falling under the terms of the Paris convention on international exhibitions

It should be noted that in practice, the Grace Period does not really exists. It is only in these very unusual circumstances where it can be considered. Therefore the advice given to inventors is that you should not expect a Grace Period to be available.

Note, such disclosure occurring anywhere in the world shall be prejudicial to the novelty of any patent ultimately pursued in Hong Kong.

As such, in Hong Kong, there is no general grace period for self- disclosure or public commercial use for an intervention before the filing of the patent application in Hong Kong.

Should patent rights be ultimately required in Hong Kong, irrespective of where priority is established, applicants should ensure that there is no public disclosure prior to the establishment of priority.

II. Legal basis of the Grace Period

1) What is the underlying legal rationale of the Grace Period in your jurisdiction? Please select the option that best describes its primary characterization:

□ Broad protection for inventors (acting as a general safety net against pre-filing disclosures, e.g., the U.S.).
□ Statutory relief as an exception to lack of novelty (saving the inventor's own disclosures under specific procedural requirements, e.g., Japan).
☒ Ensuring legal certainty for third parties (allowing exceptions to the novelty requirement only in strictly limited circumstances, e.g., Europe).
□ Standardization with foreign jurisdictions.
□ Other (please specify: _____).

Hong Kong answer: The primary rationale is legal certainty for third parties, subject to exceptional relief for evident abuse or display at a legally qualifying exhibition/meeting. This is closer to the European narrow-exception model, not a general U.S.-style one-year grace period. [Cap. 514, ss. 11A, 37B, 109.]

Note, Hong Kong patent law is based upon traditional UK patent law, and general provisions such as grace periods as implemented then the Hong Kong patent ordinance I have replicated the provisions as previously provided in the United Kingdom patents acts, enter the implication and purpose were generally in principle follow the legal principles for which such implementations were implemented within the United Kingdom. These provisions were not implemented within Hong Kong law for specific considerations made in this regard in respect of the Hong Kong patents ordinance.

III. Duration

1) How long is the grace period? (Multiple answers permitted.)

☒ 6 months
□ 1 year
□ Other (Please specify the exact period.)

(Where multiple grace periods exist, please indicate the applicable period for each type of act listed in Section IV below.)

Hong Kong answer: Six months. For standard patent (O) and short-term patents, count back from the actual Hong Kong filing date; for standard patent (R), from the filing date of the corresponding designated patent application (the deemed HK filing date). The earlier priority date is not the statutory six-month reference date. Both qualifying categories (evident abuse and prescribed exhibitions/meetings) have the same six-month duration. [IPD Examination Guidelines, Novelty, para. 1.46.]

Again, it must be appreciated and understood that this six month grace period is not a general provision for self disclosure, but a savings provision which is interpreted under very narrow considerations of unauthorised disclosure or at recognised international exhibitions.

Hong Kong patent should be considered to have absolute novelty requirements, and self-disclosure generally prior to the filing of an application, except under the narrow savings provisions, shall be considered prejudicial under Hong Kong law.

2) Assume that a national phase application is derived from an international application claiming priority from a foreign patent application or utility model application.

In the case of examination of such a national phase application, which of the disclosures made at time points A to D in the figure below would be excluded from prior art for determining novelty and the like? In this connection, the disclosure is eligible for the grace period in your country, and if any procedure is required for excluding such disclosures, such procedure shall be deemed to have been duly carried out.

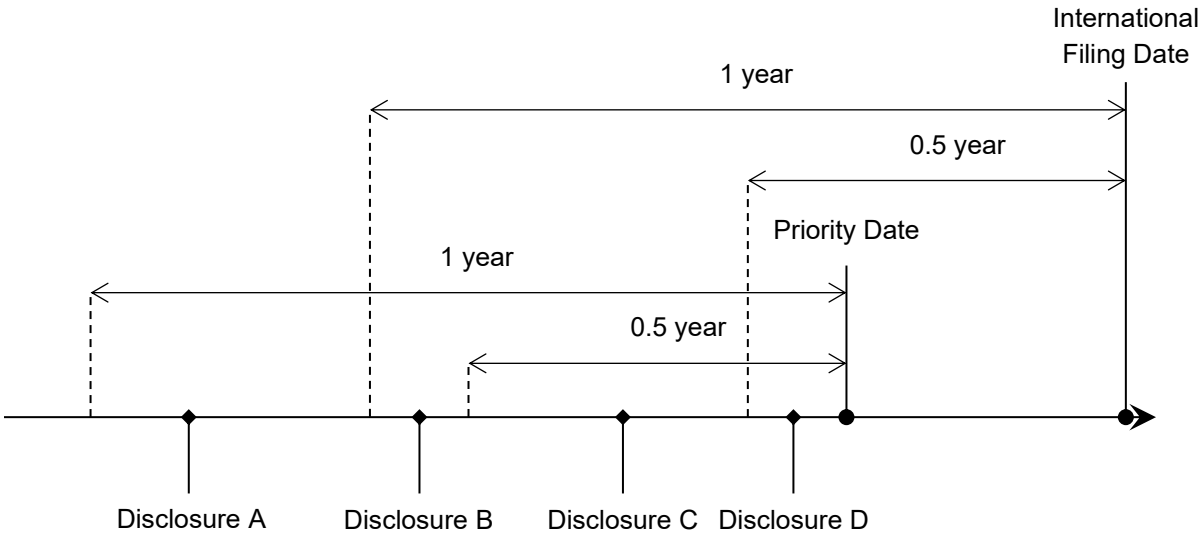
(Multiple answers permitted.)

□ Disclosure A
□ Disclosure B
□ Disclosure C
☒ Disclosure D
☒ Additional conditions are required (please explain)
□ All disclosures are considered during examination

Hong Kong answer (III.2): Strictly, Hong Kong has no direct PCT national-phase entry. For a standard patent (R) based on a designated application arising from the PCT international filing, Disclosure D alone is within the last six months before the illustrated international filing date; it can be disregarded ONLY if the disclosure is of an eligible kind (evident abuse or a prescribed exhibition/meeting) and all statutory formalities are fulfilled. A, B and C are outside that window. A direct HK standard patent (O) or HK short-term application has its own HK filing date; eligibility cannot be determined from this diagram without that date. A PCT-derived short-term filing under s. 125 occurs after China national-phase entry, so no exclusion for A-D should be assumed. [Cap. 514, ss. 11A, 37B, 109, 125; IPD Novelty Guidelines 1.46.]

In summary,

(i) All of the disclosures A, B & C would be prejudicial,
(ii) D would also be prejudicial unless the disclosure was of the narrow savings provisions for unauthorised disclosure/abuse or international exhibitions:



3)In the above question (2), if the application forming the basis of the priority claim were a patent application or utility model application filed in your country, which of the disclosures would be excluded from prior art for determining novelty and the like?

(Multiple answers permitted.)

- ☐ Disclosure A
- ☐ Disclosure B

□ Disclosure C

☒ Disclosure D

☒ Additional conditions are required (please explain)

□ All disclosures are considered during examination

Hong Kong answer (III.3): The location of the FIRST priority filing (Hong Kong rather than overseas) does not, by itself, change the statutory six-month look-back period. As in III.2, D is the only illustrated disclosure **potentially** qualifying if the relevant filing date is the shown PCT/designated filing date and the category and formality requirements are satisfied.

There is no direct HK PCT national phase, and a later, separate HK filing must be assessed using its actual filing date. A valid priority claim can independently protect matter disclosed in the first application, but that is not a grace-period exclusion for a pre-priority disclosure. [Cap. 514, ss. 11A, 37B, 37C, 109, 112.]

IV. Disclosures Eligible for Grace Period

1) Does the grace period apply irrespective of the manner of disclosure of the invention?

□ Yes

☒ No

Hong Kong answer (IV.1): No. Protection depends on the cause and legally prescribed mode of disclosure, not merely on occurring within six months. Ordinary voluntary academic publication, website publication, marketing, sale and public use generally remain prejudicial.

Again, is it is stressed that the six month grace period referred to is of the narrow savings provisions and not any general provision for self disclosure at all.

2) If the form or manner of disclosure is relevant, which of the following are covered? (Multiple answers permitted.)

2-1) Disclosure by a person having the right to obtain a patent

□ Publication in academic journals or conference proceedings

□ Publication in books or pamphlets

□ Publication on websites containing academic papers or conference abstracts

□ Publication on the applicant's own website

□ Publication on e-commerce websites

□ Publication on social networking services (SNS)

☒ Presentation at meetings (e.g., academic conferences, seminars, presentations for investors or customers)

□ Disclosure through public trial or testing

☒ Disclosure at an official or officially recognized international exhibition (Art. 11 of the Paris Convention)

□ Disclosure through public display (e.g., other exhibitions, trade fairs, expositions)
□ Disclosure through advertising, sale or distribution of products embodying the invention
□ Disclosure through press conferences or appearances on live television or radio programs

Hong Kong answer (IV.2-1): Qualifying exhibition display is restricted to an official or officially recognised international exhibition under the 1928 Convention on International Exhibitions for standard patent (O) and short-term patents.

Standard patent (R) additionally recognises prescribed Chinese-government sponsored/recognised international exhibitions and qualifying academic/technological meetings (Patents (General) Rules, r. 2D). The checked "presentation at meetings" is ONLY for that narrowly prescribed (R) category, not ordinary conferences or seminars.

No category of routine publication, sale, testing or internet posting receives a general exception. The questionnaire reference to Paris Convention Article 11 should not be confused with the distinct 1928 exhibition convention specified in Hong Kong law. [IPD Novelty Guidelines 1.49.]

2-2) Disclosure by Patent Office

□ Publication in the laid-open patent publication or patent gazette of the applicant's own patent application.

Hong Kong answer (IV.2-2): Not as a general exemption. Publication of an applicant's own earlier patent application is not independently excused by the six-month rules.

Disclosure after the valid priority date of fully supported subject matter may be neutralised by priority, which is a different doctrine. [Cap. 514, ss. 9B, 37F, 112; IPD Novelty Guidelines 1.51-1.52.]

A published patent of a patent family, whether application or granted patent, does not fall within grace period exclusions.

2-3) If a third party acting with the authority of and at the request of a person having the right to obtain a patent makes any of the disclosures listed in 2-1 and/or 2-2 above, is the grace period applicable?

☒ Yes
□ No

Hong Kong answer (IV.2-3): Yes, conditionally, only where an authorised display can legally be attributed to the applicant/proprietor at the prescribed exhibition or meeting and the other conditions are satisfied. Authorisation alone does not shelter ordinary publication, marketing or sales. [Cap. 514, ss. 11A, 37B, 109.]

Again, it is stressed and emphasised, such disclosure is very narrow.

Under Hong Kong patent law, self disclosure prior to the establishment of priority for an application for an invention shall be prejudicial except under very narrow circumstances such as described presently.

2-4) If a third party makes any of the disclosures listed in 2-1 and/or 2-2 above against the will or without the authority of the person having the right to obtain a patent, is the grace period applicable?

☒ Yes
□ No

Hong Kong answer (IV.2-4): Yes, conditionally. A disclosure by another person against the applicant's wishes may qualify only if it results from an "evident abuse" in relation to the applicant/proprietor; lack of authority on its own does not prove evident abuse. The IPD references the intentional/knowing-harm approach in EPO T 585/92. [IPD Novelty Guidelines 1.47-1.48.]

However, again, due to the very narrow provisions, under Hong Kong patent law and practise, applicants should protect unpublished inventions and technologies, as this savings provision is very narrow.

V. Procedures

1) Are any procedures required in order for the grace period to apply?

□ Yes, to enjoy all of the available forms of grace period
☒ Yes, to enjoy some but not all of the available forms of grace period
□ No

Hong Kong answer (V.1): Yes, formalities exist, but differ by route and category: exhibition/meeting claims require up-front formalities; evident abuse under the (O)/short-term routes requires a statement and evidence, which may be submitted during examination; an (R) applicant does not file such a statement/evidence for evident abuse with HK Form P4. [IPD Novelty Guidelines 1.48-1.50; Patent Applications Guidelines 13.72-13.75.]

2) If any procedures are required, is it necessary to submit documents proving the fact of disclosure?

☒ Yes
□ No

3) If yes, what is required and for which forms of grace period?
☒ A written statement/declaration indicating that the grace period requirements are satisfied
☒ Evidence specifically showing that the requirements for application are satisfied

4) By when must the statement/declaration, and/or evidence referred to in 3) above be submitted?

☒ At the time of filing the patent application
☒ Other (Please specify the deadline.)

Hong Kong answer (V.2-4): Yes, where applicable. For (O) and short-term exhibition claims, the application AS FILED must contain the exhibition statement, certificate of the organising authority specifying the invention and first disclosure date, and authenticated identification of the invention; there is no general later-filing opportunity for these requirements.

For (R) exhibitions/meetings, a claim must have been made in the designated office when filing the designated application; the HK request to record must state the prescribed exhibition/meeting details. For evident abuse in (O) or short-term cases, a statement and supporting statutory declaration/affidavit may be filed at filing or during formality/substantive examination; no uniform separate fixed deadline applies. [Cap. 514, ss. 11A(3), 15(2)(f), 37B(3), 109; Cap. 514C, rr. 10, 31A, 31ZR, 70, 74A; IPD Guidelines 1.48-1.50, 13.72-13.75.]

VI. Other

1) In what circumstances can a grace period be applied based on the relationship between the prior disclosure and the invention under examination?

□ when the disclosed invention and the invention under examination are completely identical

□ when the disclosed invention and the invention under examination are substantially identical

☒ Other (Please briefly explain.)

Hong Kong answer (VI.1): Other. The relationship must be assessed by what the qualifying disclosure actually makes available to the public and what is claimed.

The statutory exclusion removes a qualifying disclosure from the prior-art base for novelty; it is not restricted to a rigid "identical" versus "substantially identical" label, and it is not a blanket immunity for unrelated later material.

Third-party disclosures can be excluded if caused by the qualifying abuse/display, but independent intervening disclosures are not automatically sheltered. [Cap. 514, ss. 9B, 11A, 37B, 109.]

2) Where “Declaration as to Non-Prejudicial Disclosures or Exceptions to Lack of Novelty” has been made in a PCT application and the application enters the national phase in your country, can the applicant benefit from the grace period without any additional procedure?

□ Yes
☒ No

Hong Kong answer (VI.2): No, not automatically. A PCT Rule 4.17(v) declaration does not remove the need to satisfy Hong Kong-specific conditions or supply local evidence where required; WIPO guidance expressly permits Offices to demand additional evidence for that declaration.

NOTE: Hong Kong does not offer ordinary direct PCT national-phase entry. [WIPO PCT Applicant's Guide, National Phase, para. NP 5.005; Cap. 514, ss. 11A, 37B, 109.]

3) If an international application enters the national phase in your country without "Declaration as to Non-Prejudicial Disclosures or Exceptions to Lack of Novelty" having been made in the PCT application, can the applicant still benefit from a grace period?

□ Yes, for all forms of available grace period
☒ Yes, for some forms of available grace period
□ No

Hong Kong answer (VI.3): Yes, for some forms, subject to the actual HK route and conditions. Absence of a PCT Rule 4.17(v) declaration does not automatically bar proof of evident abuse; the local (O)/short-term supporting statement and evidence must still be filed.

Exhibition relief on the (R) route cannot be newly invented at HK stage if the required claim was not made with the designated application.

For (O)/short-term exhibition relief, full HK formalities must accompany the HK application as filed. The phrase "enters the national phase in Hong Kong" is technically inapplicable. [IPD Patent Applications Guidelines 13.71-13.75.]

B. Hypothetical Cases

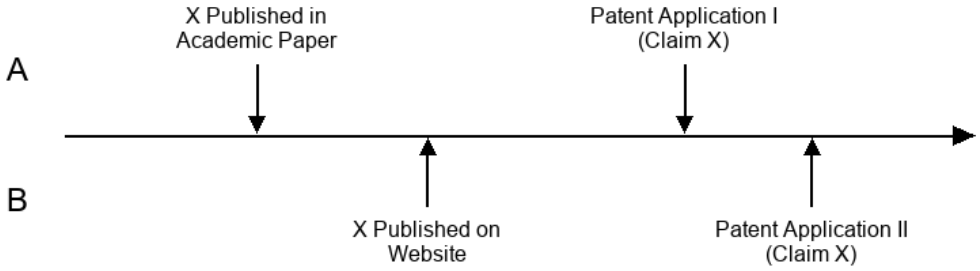
Please answer the following hypothetical cases on the assumption that all procedures required to obtain the benefit of the grace period have been duly completed.

Hong Kong analytical assumption for Section B: All hypotheses involve Inventor A voluntarily publishing an academic paper before filing, rather than evident abuse or a qualifying exhibition. Such publication is NOT sheltered by Hong Kong's six-month exception, even where the hypothetical says "within the applicable grace period". All answers below assume publication adequately discloses/enables X, valid claim dates do not precede the publication, and the relevant patentability grounds are substantively considered (for standard patent (R), HK ordinarily re-registers the designated patent rather than performing fresh substantive examination). [Cap. 514, ss. 9A-9C, 11A, 37B, 109.]

<u>Hypothetical 1</u>

1) Inventor A invented X, published an academic paper disclosing X, and filed Patent Application I within the applicable grace period after the publication of the academic paper.

Inventor B independently invented X and published X on a website between the publication of the academic paper and the filing of Patent Application I. Inventor B filed Patent Application II within the applicable grace period after Inventor B's publication and after the filing of Patent Application I.



Will either patent application be rejected?

1-1) Will Patent Application I be rejected?

☒ Yes

☐ No

1-2) Will Patent Application II be rejected?

☒ Yes

☐ No

Hong Kong answer (B.1): 1-1 YES; 1-2 YES. A's earlier voluntary academic paper anticipates both X claims, regardless of which inventor filed first or their separate subsequent website disclosures. [Cap. 514, s. 9B(2).]

NOTE: With reference to rejected, that should be understood:

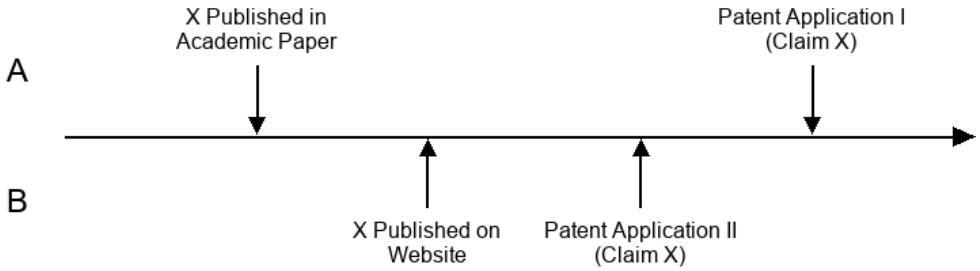
(i) if the disclosure was uncovered during examination, then it would be considered in the novelty and inventiveness assessment,

(ii) these disclosures would be considered part of the prior art base in respect of assessment of novelty and inventiveness, just as would any other prior art published prior to the establishment of priority, and

(iii) the extent of the publication would influence any finding of lack of novelty or lack of inventiveness.

Hypothetical 2

2) Inventor A invented X, published an academic paper disclosing X, and filed Patent Application I within the applicable grace period after the publication of the academic paper. After the publication of Inventor A's academic paper, Inventor B independently invented X, published X on a website before the filing of Patent Application I, and filed Patent Application II within the applicable grace period from Inventor B's publication and before the filing of Patent Application I.



Will either patent application be rejected?

2-1) Will Patent Application I be rejected?

☒ Yes

□ No

2-2) Will Patent Application II be rejected?

☒ Yes

□ No

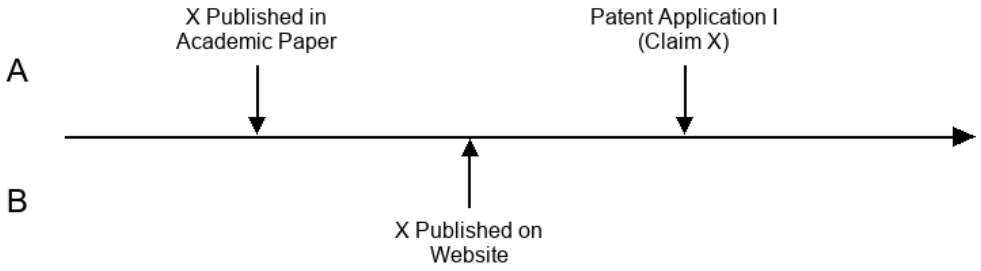
Hong Kong answer (B.2): 2-1 YES; 2-2 YES. The fact that B filed before A does not undo the publication of X by A before either filing. Both X applications lack novelty on the stated facts. [Cap. 514, s. 9B(2).]

As there are no grace periods for self-disclosure under Hong Kong patent law, except for the narrow provisions as discussed above, any published disclosure prior to the establishment of priority shall be considered part of the priority art base for assessment of novelty and inventiveness.

As novelty is absolute novelty, such publication anywhere in the world is applicable.

Hypothetical 3

3) Inventor A invented X, published an academic paper disclosing X, and filed Patent Application I within the applicable grace period after the publication of the academic paper. Mr. B saw Inventor A's publication, produced X, and published X on a website before the filing of Patent Application I.



3-1) If B's disclosure is regarded as being derived from A's disclosure, will Patent Application I be rejected?

☒ Yes
□ No
□ Other

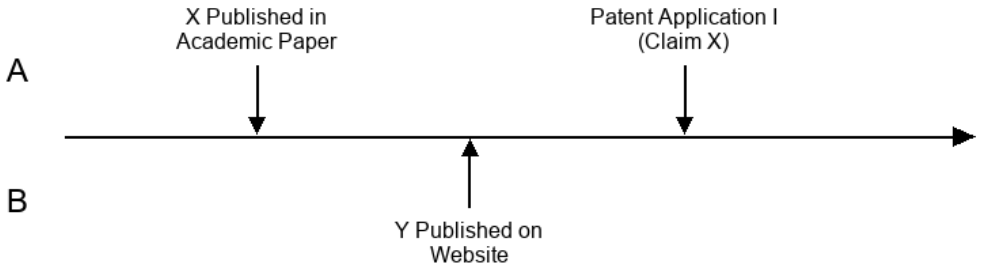
3-2) If B's disclosure is not regarded as being derived from A's disclosure, will Patent Application I be rejected?

☒ Yes
□ No
□ Other

Hong Kong answer (B.3): 3-1 YES; 3-2 YES. Whether B copied A or independently disclosed X is immaterial here: A's own earlier voluntary academic publication already anticipates application I. A derived B publication is not itself an "evident abuse" merely because B used public material. [Cap. 514, ss. 9B, 37B.]

Hypothetical 4

4) Inventor A invented X, published an academic paper disclosing X, and filed Patent Application I within the applicable grace period after the publication of the academic paper. Mr. B saw Inventor A's publication, developed Y as an improvement of X, and published Y on a website before the filing of Patent Application I. Note that Y is substantially different from X, but does not have sufficient differences from X to establish an inventive step over X.



4-1) If B's disclosure of invention Y is regarded as being derived from A's disclosure of invention X, will Patent Application I be rejected?

☒ Yes
□ No
□ Other

4-2) If B's disclosure of invention Y is not regarded as being derived from A's disclosure of invention X, will Patent Application I be rejected?

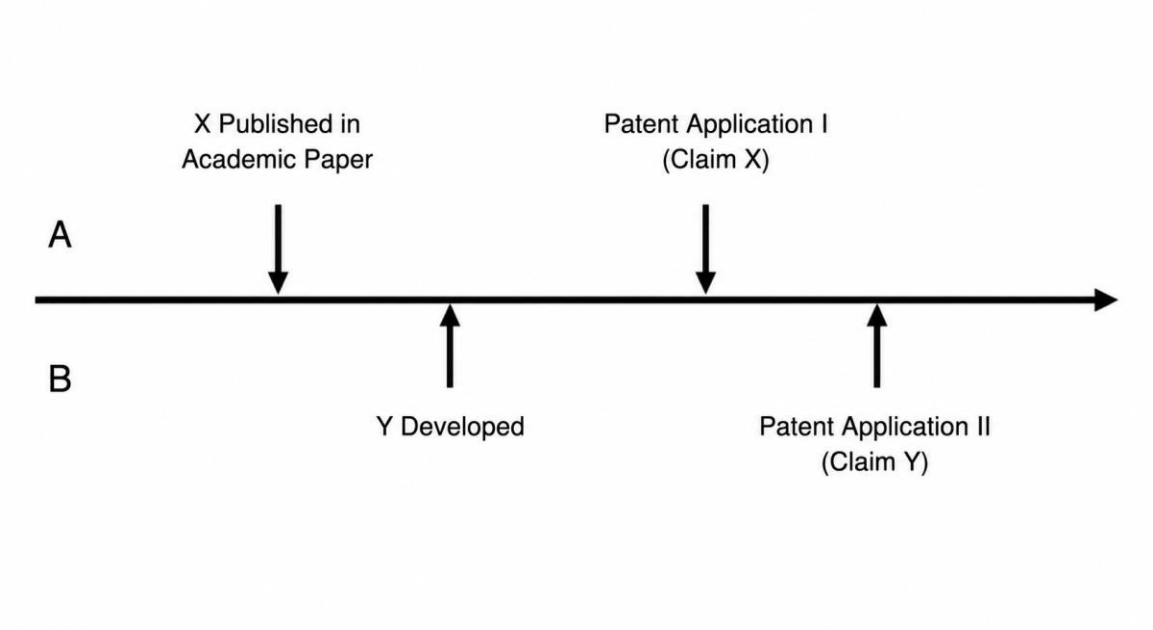
☒ Yes
□ No
□ Other

Hong Kong answer (B.4): 4-1 YES; 4-2 YES. Patent Application I claims X, which A previously published in an ordinary academic paper. It fails novelty regardless of whether B's publication of improved Y is treated as derived or independent. No inference about Y is needed to decide A's application. [Cap. 514, s. 9B.]

Hypothetical 5

5) Inventor A invented X, published an academic paper disclosing X, and filed Patent Application I within the applicable grace period after the publication of the academic paper. Mr. B saw Inventor A's publication, developed Y as an improvement of X, and filed Patent Application II for Y after the filing of Patent Application I. Note that Y is substantially different from X, but does not have sufficient differences from X to establish an inventive step over X.

Y was not disclosed before the filing of Patent Application II.



Will either patent application be rejected?

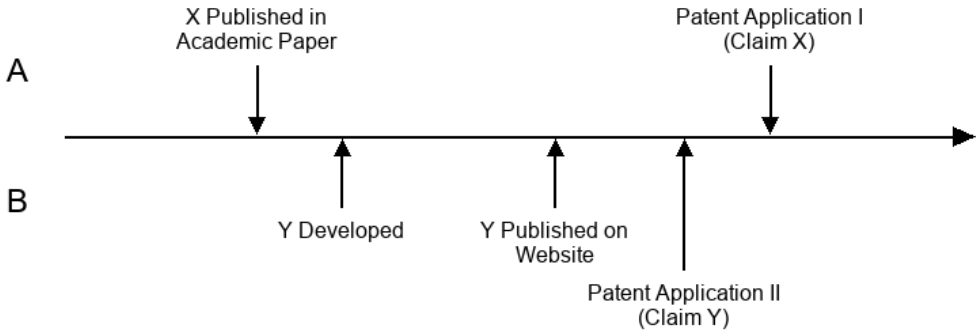
5-1) Will Patent Application I be rejected?
☒ Yes
□ No
□ Other

5-2) Will Patent Application II be rejected?
☒ Yes
□ No
□ Other

Hong Kong answer (B.5): 5-1 YES; 5-2 YES. A's X claim is anticipated by A's paper. B's later claim Y may be novel if Y was not itself disclosed, but fails inventive step as Y is stipulated to be obvious over the publicly available X. The earlier PUBLICATION of X is the relevant obviousness reference, not merely the earlier unpublished patent application. [Cap. 514, ss. 9B(2), 9C(1)-(2).]

Hypothetical 6

6) Inventor A invented X, published an academic paper disclosing X, and filed Patent Application I within the applicable grace period after the publication of the academic paper. After the publication of Inventor A's academic paper, Mr. B saw Inventor A's publication, developed Y as an improvement of X, published Y on a website, and filed Patent Application II for Y before the filing of Patent Application I. Note that Y is substantially different from X, but does not have sufficient differences from X to establish an inventive step over X.



Will either patent application be rejected?

6-1) Will Patent Application I be rejected?

☒ Yes

□ No

□ Other

6-2) Will Patent Application II be rejected?

☒ Yes

□ No

□ Other

Hong Kong answer (B.6): 6-1 YES; 6-2 YES. The voluntary paper disclosure anticipates A's X and also renders B's Y obvious, as the facts stipulate. B's earlier filing of Y does not restore novelty to A's already published X. [Cap. 514, ss. 9B(2), 9C.]

C. Opinion Survey for the Preparation of an APAA Resolution on Grace Periods

Please answer the following questions based on your views and experience as a patent practitioner in your jurisdiction. The results of this survey will be used as a basis for discussing and formulating an APAA Resolution on grace period systems.

Section C: The checked answers below are proposed practitioner policy positions for review, rather than statements of existing Hong Kong law. They may be adjusted to reflect the Hong Kong Group's agreed policy.

1) Do you think it is appropriate to allow a patent to be obtained under the grace period system for an invention that was disclosed by the inventor before filing, or disclosed against the inventor's will before filing?

□ Yes

Conditionally Yes
(Please provide reasons.)

A grace period can allow inventors who accidentally disclose their invention to continue to secure protection for their invention. Given the speed of innovation in HK, as well as the business environment that places substantial demands on inventors to commercialise, a Grace Period would provide a backup to inventors who must move quickly.

However such grace periods can create uncertainty, difficulty in searching, and ambiguity in respect of whether patent rights are valid or not.

Also grace periods an cause complacency, and create a culture of apathy in respect of establishment of patent rights, and poor policing of when priority should be established as no clear commencement date is really docketed.

Also, inventors can make the incorrect assumption that just because they've got a grace period in their own country, there must necessarily be one in other countries, and then whilst patent rights may be available in their own country or some other countries with a grace period, patent rights will be excluded in other jurisdictions which may result in significant commercial problems later.

2) Are you satisfied with the current grace period system as it applies to patents in your jurisdiction?

□ Yes
□No
☒ Cannot say either way
(Please provide reasons if any.)

Suggested reason (C.2): No. Hong Kong gives no protection for ordinary inventor-initiated academic or commercial disclosures, and the narrow exhibition regime can be difficult to invoke. A measured, transparent and harmonised reform could better support universities, start-ups and cross-border filing.

However just because there may be a grace period eventually provided in the jurisdiction, this may not protect the validity of a patent in another jurisdiction and as such, there are serious consequences.

3) Do you think that the grace period system currently maintains an appropriate balance between the rights of applicants and the interests of the public?
□ Yes
□No
☒ Cannot determine

Suggested reason (C.3): The present rules strongly favour public certainty but offer limited relief for applicants facing common disclosures. A calibrated exception could improve the balance without abolishing novelty.

Grace periods for self disclosure is a complex legal issue, and requires very detailed consideration.

4)Do you think that the grace period system promotes the early use of technical information by others in the same field by allowing inventors to disclose research results before filing a patent application?

□ Yes

☒ No

□ Cannot say either way

Suggested reason (C.4): No, not under Hong Kong's current narrow scheme. Researchers cannot generally rely on a grace period after voluntary publication; any hoped-for early sharing benefits would depend on reform and empirical outcomes.

In any event, inventors should operate that the Grace Period is exactly that, a Grace Period. They should not rely on it and other jurisdictions do not have it.

5) Do you have any concern that differences in grace period systems between jurisdictions may create risks, such as the loss of novelty in foreign patent applications, even where a grace period is available for a domestic application?

☒ Yes

□ No

□ Depending on the situation

Suggested reason (C.5): Yes. Disclosure that is disregarded in one country may still be novelty- or inventive-step-destroying in Hong Kong or another jurisdiction. Applicants pursuing international protection should normally file first and disclose later.

Importantly, the vast majority of Hong Kong patents are granted based under the re-registration system, which are based on China, European and UK patents.

All of these 3 jurisdictions do not have a general grace period for self disclosure.

It would give rise to legal uncertainty and confusion if any of these three jurisdictions had a different grace period provision in relation to self disclosure to Hong Kong.

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6) Do you think it is desirable for jurisdictions to adopt common standards regarding the availability of grace period systems, the types of disclosures covered, and the duration of the grace period(s)?

☒ Yes

□ No

□ Cannot determine

(Please provide reasons.)

Suggested reason (C.6): Yes. Common minimum standards, including a consistent start date, eligible conduct, evidence requirements and treatment of intervening disclosures, would make filing strategies less hazardous while allowing jurisdictions to add safeguards.

7) What types of pre-filing disclosures do you think should be covered by the grace period system?

☒ It is preferable to broadly cover disclosures regardless of the manner of disclosure
□ It is preferable to limit coverage to certain types of disclosures
□ Cannot determine
(Please describe the types of disclosures you consider appropriate, or the criteria for limitation if coverage should be limited.)

Suggested reason (C.7): Prefer broad coverage of disclosures attributable to an inventor or successor, irrespective of medium (journal, internet, presentation, product display or sales), with a clearly defined exception for unauthorised disclosure, subject to reasonable safeguards for independent third-party rights and disclosure-date proof.

8) What duration of grace period do you consider appropriate?
□ 6 months
☒ 12 months
□ More than 12 months
□ Other
(Please provide reasons if any.)

Suggested reason (C.8): Twelve months is a pragmatic harmonised standard, allowing time for academic dissemination and funding or commercial evaluation while placing a finite limit on uncertainty for third parties.

9) Do you think it is necessary to promote consistency in the procedures for securing grace periods across jurisdictions?
☒ Yes
□ No
□ Cannot determine
(If applicable, please describe the procedures that you consider should or should not be made consistent, and provide reasons.)

Suggested reason (C.9): Yes. Harmonise how a claim is raised, whether/when the declaration and documentary evidence must be filed, and opportunities to cure omissions. Avoid unintentionally forfeiting rights solely through inconsistent national forms.

10) Do you think it is desirable to establish a system whereby a single procedure for claiming the benefit of the grace period can have effects in as many countries and jurisdictions as possible?
☒ Yes
□ No
□ Cannot determine
(Please describe any expectations or concerns regarding such a system if any)

Suggested reason (C.10): Yes, in principle: a single PCT/international declaration would reduce repeat filing and administrative burden, but must not automatically override substantive national eligibility or deprive affected third parties of notice or challenge rights.

11) Do you think it reasonable to require applicants to submit evidence of the circumstances of the disclosure in order to benefit from a grace period?

□ No
(Please describe the procedures you consider appropriate.)

A properly understood Grace period could be invoked without substantial administrative burden. The Patent Office has enough issues to deal with, and examining for Grace Period application will be too large a burden and unnecessary.

12) In view of International grace period, which approach do you consider the most preferable starting point for measuring the grace period?

The “international grace period” provides a maximum two-year period, consisting of one year under your country’s patent law (e.g., where a one-year grace period applies) and an additional one year through the Paris Convention priority system.

☒ A grace period measured from the earliest priority date
□ A grace period measured from the filing date of the patent application
□ Other (please explain)

Suggested reason (C.12): Prefer the earliest valid priority date to avoid extending the practical grace window by a further priority year, to anchor certainty to the earliest patent claim and to reduce disagreement between jurisdictions. The questionnaire’s illustrative "two-year international grace period" is a policy construct, not a current Hong Kong right.

Selected legal and official sources: Patents Ordinance (Cap. 514; ss. 9A-9C, 11A, 37B, 109, 125); Patents (General) Rules (Cap. 514C; rr. 2D, 10, 31A, 31ZR, 70, 74A); IPD Novelty Guidelines (2025, 1.46-1.52); IPD Patent Applications Guidelines (2025, 13.70-13.75); IPD short-term patent PCT route; WIPO PCT National Phase Guide (NP 5.005)