APAA PATENTS COMMITTEE-SPECIAL TOPIC (GRACE PERIOD) - INDIA

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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

India provides a limited, category-specific grace period by way of statutory exceptions to anticipation under Chapter VI of the Patents Act, 1970.

The following specific exceptions to anticipation are available:

- **Section 29:** Anticipation by previous publication i.e. protection where the disclosure was obtained from the inventor and published without consent, or where a third party filed an application in fraud of the inventor.
- **Section 30:** Anticipation by previous communication to Government i.e. disclosure to Government or its authorized persons for investigation purposes does not constitute anticipation.
- **Section 31:** Anticipation by public display at officially notified exhibitions or by reading/publishing a paper before/in a learned society. The application must be filed within 12 months of the exhibition opening or paper reading/publication.
- **Section 32:** Anticipation by public working in India for the purpose of reasonable trial only i.e. working must have occurred within one year before the priority date.
- **Section 33:** Anticipation by use and publication after provisional specification or convention application i.e. matter disclosed in a provisional specification or in a convention application's basic application does not constitute anticipation after its filing date.

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: _____).

> Note: India's approach to the grace period is founded on the general principle that any public disclosure of an invention prior to the filing date of a patent application will, as a default, constitute prior art and be taken into account in assessing the novelty of the claimed invention. This principle reflects a deliberate legislative choice to provide clarity and certainty for third parties and the public. Within this framework, however, the Patents Act, 1970 recognizes specific and well-defined circumstances in which a pre-filing disclosure will not be treated as anticipation against the applicant's own patent application. These exceptions are set out in Sections 29 to 33.
>
> Section 34 gives these exceptions their operative legal force, directing that the Controller shall not refuse a patent, and a patent shall not be revoked or invalidated, solely by reason of a disclosure falling within any of these protected categories.

The practical significance of this framework lies in its specificity: protection is available only where the facts of the disclosure correspond to the defined statutory categories.

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.)

Note: The duration depends on the applicable section:

- **Section 31** (notified exhibitions; learned society papers): Application must be filed not later than 12 months after the opening of the exhibition or the reading or publication of the paper, as the case may be.
- **Section 32** (public working for reasonable trial): The working must have occurred within one year before the priority date of the relevant claim of the specification.
- **Section 29** (wrongful/unauthorized publication): No fixed period; the applicant must have filed "as soon as reasonably practicable" after learning of the publication.
- **Section 30** (communication to Government): No time limit; the exception applies to any such communication regardless of when it occurred relative to the filing date.
- **Section 33** (provisional specification / convention application): Covers use and publication occurring after the date of filing of the provisional specification (Section 33(1)) or after the date of the basic application in a convention country (Section 33(2)).

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

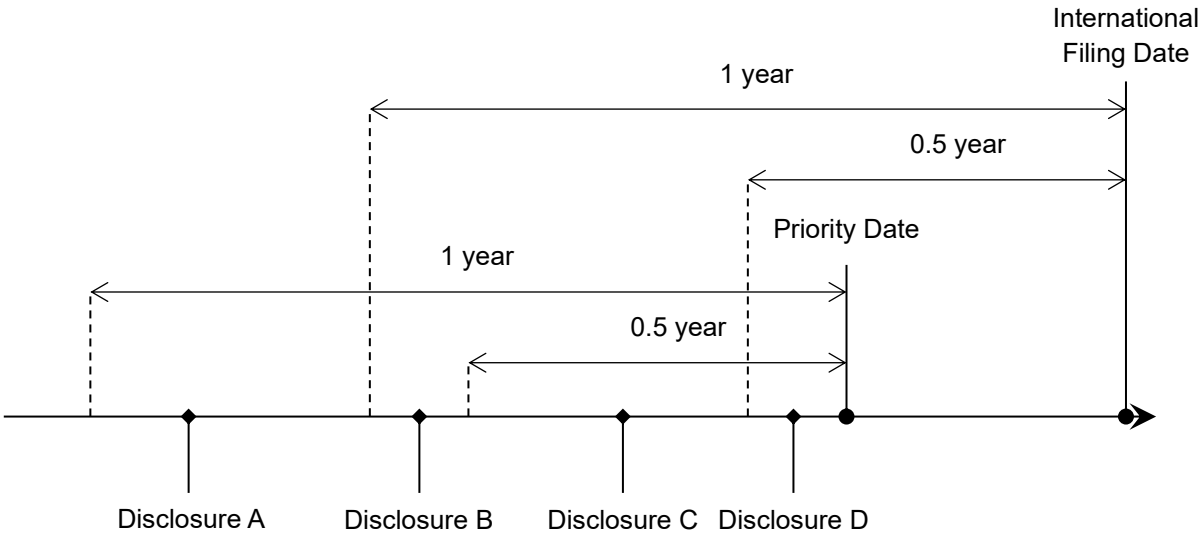
In the case of examination of such a national phase application, which of the disclosures made at time points A to D in the figure below would be excluded from prior art for determining novelty and the like? In this connection, the disclosure is eligible for the grace period in your country, and if any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

(Multiple answers permitted.)

- ☒ Disclosure A (earliest disclosure, predating the grace period - not excluded; constitutes prior art)
- ☑ Disclosure B
- ☑ Disclosure C
- ☑ Disclosure D
- ☑ Additional conditions are required (please explain)
- ☐ All disclosures are considered during examination

Note: (A) For Disclosure B to be excluded under Section 31, the disclosure must be at an officially notified exhibition or a paper read before a learned society, and the application must be filed within 12 months of the event. For Section 32, the working must be in India for the purpose of reasonable trial only, within one year before the priority date.

(B) For Disclosures C and D to be excluded under Section 33(2), the Indian application must be a convention application or PCT national phase application properly claiming priority from the basic application. Disclosure A (predating the grace period by more than 12 months before the priority date) is not excluded and constitutes prior art under Section 13(2).



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 (earliest disclosure, predating the grace period - not excluded; constitutes prior art).

☑ Disclosure B (within 12 months before priority date - excluded if it qualifies under Section 31 (notified exhibition / learned society paper, application filed within 12 months) or Section 32 (public working for reasonable trial within 1 year before priority date)).

☑ Disclosure C

☑ Disclosure D

☑ Additional conditions are required (please explain)

☐ All disclosures are considered during examination

Note: (A) For Disclosure B, the same conditions as in question (2) apply (Section 31 or Section 32).

(B) For Disclosures C and D to be excluded under Section 33(1), a provisional specification must have been filed and the complete specification must be filed in pursuance of that provisional application. Disclosure A (predating the grace period) is not excluded.

IV. Disclosures Eligible for Grace Period

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

☐ Yes

☒ No

Note: The grace period under Indian Patent law does not apply irrespective of the manner of disclosure. The exceptions to anticipation under Sections 29–33 are strictly limited to the specific categories of disclosure enumerated in those sections.

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: *NOT covered as a general rule*; covered only where the description of the invention is in a paper read by the true and first inventor before a learned society, or published with his consent in the transactions of such a society, and the application is made by the true and first inventor (or a person deriving title from him) not later than 12 months after the reading or publication of the paper (Section 31(d)). Ordinary journal articles and the proceedings of conferences that are not held by a learned society do not qualify.

☒ Publication in books or pamphlets - NOT covered, except where the publication is in the transactions of a learned society made with the consent of the true and first inventor (Section 31(d)), or is a description published in consequence of the display or use of the invention at a notified exhibition, e.g. an exhibition catalogue or brochure (Section 31(b)), in each case subject to the 12-month filing requirement.

☒ Publication on websites containing academic papers or conference abstracts - NOT covered, unless the online publication can be shown to be publication, with the inventor's consent, in the transactions of a learned society (Section 31(d)), subject to the 12-month filing requirement.

☒ Publication on the applicant's own website - NOT covered

☒ Publication on e-commerce websites - NOT covered

☒ Publication on social networking services (SNS) - NOT covered

☒ Presentation at meetings (e.g., academic conferences, seminars, presentations for investors or customers) - NOT covered, except where a paper describing the invention is read by the true and first inventor before a learned society and the application is filed not later than 12 months after the reading of the paper (Section 31(d)). Seminars, and presentations to investors or customers, do not fall within Section 31(d) (although a disclosure made under an obligation of confidence would not ordinarily make the invention available to the public).

☑ Disclosure through public trial or testing - covered under Section 32 (public working of the invention in India within one year before the priority date of the relevant claim, by the applicant or a person from whom he derives title, or by any other person with their consent, provided the working was effected for the purpose of reasonable trial only and it was reasonably necessary, having regard to the nature of the invention, that the working be effected in public). Trials or testing outside India are not covered.

☑ Disclosure at an official or officially recognized international exhibition (Art. 11 of the Paris Convention) - covered under Section 31(a) (display, or use for the purpose of the exhibition, with the consent of the true and first inventor or a person deriving title from him) and Section 31(b) (publication of a description in consequence of such display or use), only if the Central Government has extended the provisions of Section 31 to that exhibition by notification in the Official Gazette and the application is made not later than 12 months after the opening of the exhibition. Recognition of the exhibition under Art. 11 of the Paris Convention is not by itself sufficient. (Section 31(c) separately protects use of the invention by another person without the inventor's consent during the period of the exhibition.)

☒ Disclosure through public display (e.g., other exhibitions, trade fairs, expositions) – NOT covered, unless the exhibition, trade fair or exposition has been notified by the Central Government under Section 31 (Section 31(a) extends to any "industrial or other exhibition" so notified, and is not limited to international exhibitions), in which case the conditions stated above apply.

☒ Disclosure through advertising, sale or distribution of products embodying the invention – NOT covered. Further, commercial working of the invention in India before the priority date (otherwise than for reasonable trial) by or with the consent of the applicant also takes away the protection of Section 29(2) (proviso to Section 29(2)).

☒ Disclosure through press conferences or appearances on live television or radio programs – NOT covered

2-2) Disclosure by Patent Office

☒ Publication in the laid-open patent publication or patent gazette of the applicant's own patent application. - NOT covered under any of Sections 29 to 33. Publication by the Patent Office (under Section 11A) of the applicant's own earlier application forms part of the prior art against a later application of the applicant for the same invention. Section 29(2) does not apply, since such a publication is not of matter obtained from the inventor and published without his consent; and Section 29(3) concerns an application made by another person in contravention of the inventor's rights (see 2-4 below), not the applicant's own application. Section 29(1) exempts only publication in a specification filed in India and dated before 1 January 1912.

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 - to the extent the disclosure falls within the categories covered by Sections 31 and 32 (e.g., display at a notified exhibition with the inventor's consent under Section 31(a); publication in transactions of a learned society with the inventor's consent under Section 31(d); public working with the consent of the applicant under Section 32(b)); (provisional specification / convention application): Covers use and publication occurring after the date of filing of the provisional specification (Section 33(1)) or after the date of the basic application in a convention country (Section 33(2)).

☐ No

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 -Section 29(2) protects against publication obtained from the inventor without consent (provided the applicant files as soon as reasonably practicable after learning of the publication). Section 29(3) protects against use or publication by a person who filed a patent application in contravention of the inventor's rights, or by any other person in consequence of any disclosure by that wrongful applicant.

☐ No

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

Note: The Patents (Amendment) Rules, 2024 (G.S.R. 211(E), dated 15 March 2024) introduced Rule 29A and Form 31, which now require an applicant seeking to invoke the grace period under **Section 31** (which covers: (a) display or use at an officially notified exhibition; (b) publication of the invention at such an exhibition; (c) use of the invention without the consent of the true and first inventor at such an exhibition; and (d) a paper read before a learned society or published in its transactions) to file **Form 31** in connection with the patent application, together with the prescribed fee) and supporting documentary evidence. This is a mandatory upfront procedural requirement; failure to file Form 31 may preclude reliance on Section 31. The separate **12-month filing deadline** under Section 31 running from the date of the exhibition opening or the date the paper was read or published remains a hard statutory condition that must independently be satisfied.

For the remaining exceptions **Sections 29, 30, and 32** no equivalent upfront form is prescribed. Those exceptions continue to be invoked and substantiated during examination (in response to a First Examination Report) or in opposition proceedings under Section 25, as before. Under Section 29(2) in particular, the burden remains on the applicant to prove both derivation of the published matter from the inventor without consent and timely filing of the application.

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

☑ Yes

☐ No

With effect from 15th March 2024, for Section 31 (all sub-sections (a)–(d)), Form 31 must be filed along with documentary evidence as specified in Form 31 itself. Form 31 requires submission of documentary evidence specific to the applicable sub-section, including (for Section 31(a)) evidence

of the earliest date of display or use, consent of the true and first inventor, and that the exhibition was officially notified; (for Section 31(d)) evidence of the date the paper was read before a learned society or published in its transactions, and the identity of the true and first inventor. Evidence may also include an affidavit. For Section 29(2), the applicant must prove that the matter published was obtained from the inventor and published without consent, and that the application was made as soon as reasonably practicable after learning of the publication. For Section 32, evidence of the public working date may be required if the Controller or an opponent raises a requirement/challenge

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 – required under Section 31 (all sub-sections) via Form 31, which mandates submission of documentary evidence (including affidavits) specific to the applicable sub-section at the time of filing the Form 31 claim; required under Section 29(2) to prove derivation and timely filing; evidence of public working date under Section 32 may be required, if challenged. Affidavit evidence under Rule 126 of the Patents Rules, 2003 or documentary evidence (e.g., copies of Official Gazette notifications, society records, publication records) may also be submitted during examination or opposition proceedings for Sections 29 and 32.

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 - for Section 31 (all sub-sections): Form 31, along with the prescribed fee and documentary evidence, must now be filed in connection with the patent application under Rule 29A (Patents (Amendment) Rules, 2024). This is a mandatory upfront procedural requirement for claiming the grace period benefit under Section 31.

☑ Other (Please specify the deadline.) - For Sections 29 and 32: Evidence is typically submitted during examination in response to a First Examination Report (within the period allowed for response under Rule 24B of the Patents Rules, 2003), or during opposition proceedings under Section 25. For Section 31, the 12-month period for filing the application runs from the event date and is a hard deadline that must be complied with before filing.

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 - The Act does not explicitly define a standard of identity. Based on the language of Sections 29–32, the exception applies to the specific "invention claimed in a complete specification." In practice, the Indian Patent Office applies a standard requiring that the prior disclosure must relate to the same invention as claimed; minor variations within the scope of the claim may be tolerated, but the exception will not save a disclosure of a materially different embodiment from constituting prior art against a broader claim.

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

☐ Other (Please briefly explain.)

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

Note: India does not give automatic effect to a PCT Rule 4.17(v) declaration. The applicant must independently satisfy the requirements of the applicable exception under Sections 29–32 of the Patents Act, 1970. A PCT declaration does not substitute for compliance with Indian statutory requirements; additional procedures (e.g., separate application in Form 31 with fee and evidence under for Section 31, proving derivation under Section 29(2), or satisfying the 12-month filing deadline under Section 31) must still be completed.

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 - The absence of a PCT declaration does not preclude the applicant from invoking the applicable exceptions under Sections 29–32 of the Patents Act, 1970 during national phase examination or opposition proceedings, provided the statutory conditions for each exception are independently satisfied. The PCT declaration is not a prerequisite for the Indian grace period exceptions.

☐ No

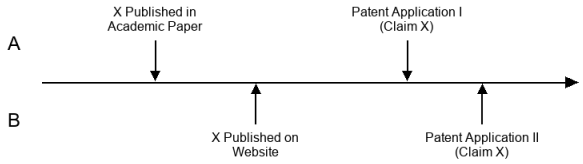
B. HYPOTHETICAL CASES

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.

HYPOTHETICAL 1

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

Note: A's academic paper, if read before a learned society or published in its transactions, may qualify for the Section 31(d) exception, protecting A's own paper from being prior art against A's Application I. However, B's independent publication on a website is not protected by any grace period exception available to A. B's website publication, being independent of A's paper, constitutes prior art under Section 13(2) and anticipates A's claimed invention. A's Section 31(d) exception only neutralizes A's own paper; it does not neutralize B's independent prior disclosure. Unless A can establish that B's publication was derived from A's paper (invoking Section 29(3)), Application I will be rejected for lack of novelty over B's independent prior publication.

Under Indian Patent law, a website publication is not itself protected by any grace period exception. B's independent publication therefore remains prior art against A.

1-2) Will Patent Application II be rejected?

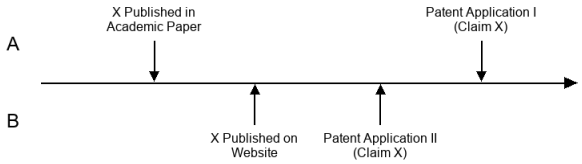
☑ Yes

☐ No

Note: A's academic paper (presented before a learned society) constitutes a publication of Invention X predating B's filing date. B's Application II claims the same invention; A's paper is prior art against B's Application II under Section 13(2). B cannot invoke any grace period exception with respect to A's paper, as the paper was not B's own disclosure. Application II is rejected for lack of novelty over A's prior academic paper.

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

Note: B published X on a website and filed Application II before A filed Application I. B's website publication is prior art against A's Application I under Section 13(2). B's Application II, filed before A's Application I, may also constitute prior art under Section 13(1)(b) (prior claiming). A's Section 31(d) exception, if invoked, for A's own paper protects A's paper from being prior art against A's own application, but it does not neutralize B's independent prior publication or prior application. Application I is rejected for lack of novelty over B's independent prior publication (and potentially prior claiming by B's Application II).

2-2) Will Patent Application II be rejected?

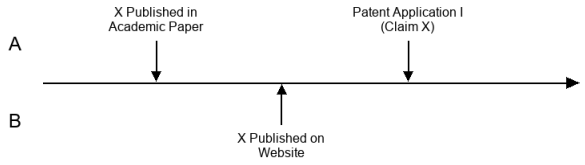
☑ Yes

☐ No

Note: A's academic paper, if presented before a learned society before B's filing date, is prior art against B's Application II under Section 13(2). B cannot invoke any grace period exception against A's prior paper. Application II is rejected for lack of novelty over A's prior academic paper.

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

Note: If B's disclosure was derived from A's paper without A's consent, A can invoke Section 29(2) to exclude B's disclosure from being prior art, provided: (a) the matter published was obtained from A and was published without A's consent; and (b) A filed the application as soon as reasonably practicable after learning of B's publication. Section 29(3) further protects against use or publication by any person in consequence of any disclosure by a wrongful applicant. Application I is not rejected, provided A can prove derivation and timely filing.

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

☑ Yes

☐ No

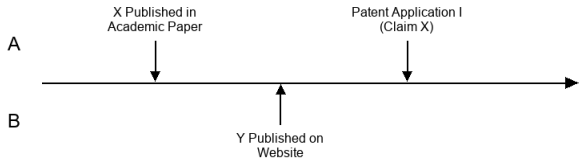
☐ Other

Note: If B's disclosure was independent (not derived from A), Sections 29(2) and 29(3) do not apply. B's independent prior publication constitutes prior art against A's Application I under Section 13(2). A's Section 31(d) exception for A's own paper does not neutralize an independent prior disclosure by B.

Application I is rejected for lack of novelty over B's independent prior publication.

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

Note: If B derived Improvement Y from A's disclosure and published it without A's consent, A can argue under Section 29(2) that B's publication was obtained from A's paper and published without A's consent. If derivation is established, Application I is not rejected with respect to Invention X under the Section 29 exception. B's publication of Improvement Y (which lacks inventive step over X) also does not independently anticipate A's claims to Invention X, since Y is substantially different from X. Application I is not rejected.

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

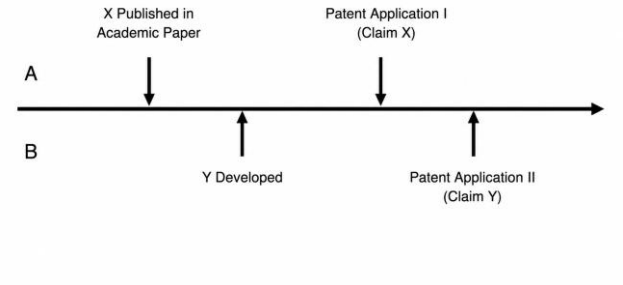
☐ Other

Note: If B independently developed Improvement Y and published it before A's filing date, B's publication constitutes prior art against A's Application I under Section 13(2). Since Y does not have sufficient differences from X to establish an inventive step over X, B's prior publication of Y may be used to attack the inventive step of A's claims to Invention X (under Sections 25(1)(e)/25(2)(e)). Sections 29(2) and 29(3) do not apply to independent disclosures. Application I may be rejected for lack of inventive step based on B's independent prior publication of Y.

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

Note: A's academic paper is protected under Section 31(d) from being prior art against A's own Application I (provided A files within 12 months of the paper reading/publication and the paper was read before a learned society). B's Application II was filed after A's Application I; therefore it cannot be prior art against A's Application I under Section 13(1)(b). Y was not disclosed before B's filing, so there is no prior publication of Y to constitute prior art against A. Application I is not rejected.

5-2) Will Patent Application II be rejected?

☑ Yes

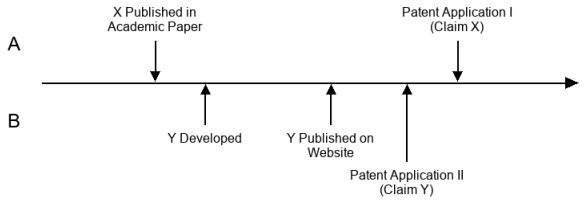
☐ No

☐ Other

Note: A's academic paper, published before B's filing date, discloses Invention X and is prior art against B's Application II under Section 13(2). Invention Y is an improvement of X that lacks inventive step over X. If Invention Y is obvious in light of Invention X as disclosed in A's paper, B's Application II lacks inventive step under Section 2(1)(ja) and may be opposed under Sections 25(1)(e)/25(2)(e). B cannot invoke any grace period exception against A's prior paper. Application II is rejected for lack of inventive step over A's prior academic paper.

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

Note: B published Improvement Y (which lacks inventive step over X) on a website before A filed Application I. B's publication is prior art against A's Application I under Section 13(2). B's Application II, filed before A's Application I, may also constitute prior art under Section 13(1)(b). A's Section 31(d) exception, if invoked, protects A's own paper from being prior art against A but does not neutralize B's independent prior publication and prior application. Application I may be rejected for lack of inventive step (since B's prior publication of Y, combined with A's own paper as the base, could be used in an inventive step attack) and/or prior claiming by B's Application II.

6-2) Will Patent Application II be rejected?

☑ Yes

☐ No

☐ Other

Note: A's academic paper, if presented at a learned society before B's filing date, discloses Invention X and is prior art against B's Application II under Section 13(2). Invention Y is an improvement of X that lacks inventive step over X. A's paper discloses the base invention (X), which is the closest prior art for assessing the inventive step of Y. If Y lacks inventive step in view of A's paper, B's Application II can be rejected or opposed under Sections 25(1)(e)/25(2)(e). B cannot invoke any grace period exception against A's prior paper. Application II is rejected for lack of inventive step over A's prior academic paper.

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.

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

☐ No

☑ Conditionally Yes

(Please provide reasons.)

It is appropriate to allow a patent to be obtained where the inventor disclosed the invention before filing, provided the grace period is subject to a reasonable time limit (e.g., 12 months from the priority date) and covers disclosures by the inventor or derived from the inventor. A grace period that is too broad (e.g., covering all disclosures regardless of source or time) would undermine legal certainty for third parties. For disclosures against the inventor's will, protection should be available without any time restriction, as the inventor should not be penalized for unauthorized disclosures. India's current system (Sections 29–32) is too narrow and should be expanded to cover all disclosures by the applicant/inventor within 12 months before the priority date, irrespective of the manner of disclosure.

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.)

India's grace period framework, as currently structured under Sections 29–32 of the Patents Act, 1970, provides protection in carefully defined circumstances, namely: display or use at an officially notified exhibition, papers read before or published in the transactions of a learned society, public working for the purpose of reasonable trial, communication to the Government, and disclosures made without the consent of the inventor. While this targeted approach reflects a deliberate legislative choice to provide certainty within well-defined boundaries, it does not extend to several forms of disclosure that have become increasingly common in modern research and innovation practice. For instance, a presentation at a general academic conference, a publication on a preprint server, a post on an institutional or personal website, or a social media announcement all of which are routine means of sharing research findings today would fall outside the protected categories and constitute prior art against the applicant's own patent application. This gap is of particular relevance to academic researchers, startups, and individual inventors, who, as a matter of established practice in the research community, frequently share their findings publicly before a patent application is filed. A considered expansion of the grace period to cover all disclosures made by the applicant or inventor within a defined period ideally 12 months measured from the priority date, irrespective of the manner or medium of disclosure would bring India's framework more closely into alignment with the approach adopted in several other major patent jurisdictions and would better serve the needs of India's growing innovation ecosystem.

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

While India's grace period framework reflects a considered legislative approach aimed at providing targeted protection in specific and well-defined circumstances, the current categories of eligible disclosures may not fully address the practical realities faced by all categories of applicants, particularly academic inventors, research institutions, and small and medium enterprises. Inventors who publish research results in good faith for example, on preprint servers, at general academic conferences, or through institutional websites may find that such disclosures fall outside the protected categories and therefore constitute prior art against their own applications. This outcome, though consistent with the statutory framework, can result in an unintended loss of patent rights for applicants who are not fully aware of the limitations of the grace period at the time of disclosure. A considered expansion of the grace period, with a reasonable and clearly defined time limit and transparent procedural requirements, would serve to better align the interests of applicants with the broader public interest in encouraging early dissemination of technical knowledge, while maintaining the legal certainty that third parties and the patent system require.

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

The current grace period framework, by limiting protection to specific categories of disclosure, may not fully incentivize early publication of research results. Inventors and applicants who are mindful of patent protection may, as a practical matter, choose to defer publication until after a patent application has been filed, in order to avoid the risk of an unprotected pre-filing disclosure constituting prior art against their own application. While this approach is entirely understandable given the existing statutory framework, it may have the incidental effect of delaying the dissemination of technical information to the wider research and industrial community. A thoughtfully expanded grace period one that covers all disclosures made by the applicant or inventor within a defined period before the priority date, irrespective of the manner of disclosure would provide inventors with greater

confidence to publish early, thereby fostering a culture of open knowledge-sharing and enabling others in the same field to build upon and advance the disclosed technology in a timely manner.

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

The divergence in grace period provisions across jurisdictions is a matter of practical significance for Indian applicants pursuing international patent protection. An inventor who relies on the Section 31(d) exception in India for example, by presenting a paper before a learned society and filing a patent application within the prescribed 12-month period may find that the same pre-filing disclosure constitutes a novelty-destroying prior art in jurisdictions that do not recognize a comparable grace period, such as those within the European Patent Convention system. Conversely, an Indian applicant filing in jurisdictions such as the United States or Japan may benefit from a broader grace period abroad than is available under Indian law, creating an asymmetry that can be difficult to navigate in practice. These differences in substantive grace period provisions mean that a disclosure strategy that is entirely safe under Indian law may inadvertently prejudice patent rights in one or more foreign jurisdictions. This risk is particularly pronounced for academic inventors, research institutions, and small and medium enterprises, who may not always have access to specialist international patent counsel at the time of making a disclosure and may therefore be unaware of the varying standards that apply across jurisdictions. Greater harmonization of grace period provisions at the international level would significantly reduce this risk and provide applicants with greater certainty when planning their disclosure and filing strategies across multiple jurisdictions.

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.)

The divergence in grace period provisions across patent jurisdictions presents a practical challenge for applicants seeking protection in multiple countries, and the development of a common international standard in this area would be a welcome and constructive step. A harmonized framework, one that recognizes all disclosures made by the applicant or inventor within a defined period of, for example, 12 months before the earliest priority date, irrespective of the manner or medium of disclosure, would provide applicants with a consistent and predictable basis upon which to plan their disclosure and filing strategies across jurisdictions. Such a standard would also reduce the risk that an applicant who has complied fully with the grace period requirements of their home jurisdiction inadvertently loses patent rights in a foreign jurisdiction due to differences in the scope or nature of protection available there. The Indian Group is of the view that greater convergence in this area is both achievable and desirable, and notes that international forums such as WIPO and the APAA provide an appropriate and constructive platform through which member countries can engage in dialogue, share their respective experiences, and work collaboratively towards the development of a common minimum standard that serves the interests of applicants, third parties, and the patent system as a whole.

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.)

The Indian Group is of the view that a well-designed grace period should, ideally, extend to all forms of disclosure made by the applicant or inventor or by a third party deriving the disclosure from the applicant or inventor within the prescribed period before the priority date. In practical terms, this would encompass the full range of disclosure modalities that are commonly employed in contemporary research and innovation practice, including: oral disclosures such as presentations, lectures, and demonstrations at academic or professional gatherings; written disclosures such as journal publications, preprints, theses, technical reports, and conference papers; electronic disclosures such as publications on institutional or personal websites, social media platforms, and online academic databases; and use or working disclosures such as public demonstrations, exhibitions, and field trials. India's current framework, which limits the grace period under Section 31 to papers read before or published in the transactions of a learned society, and to display or use at an officially notified exhibition, reflects the legislative context in which those provisions were originally enacted. However, given the significant evolution in the ways in which research findings and technical innovations are shared and communicated in the modern era, a considered review of the scope of eligible disclosures, with a view to bringing the framework into closer alignment with the broader, disclosure-neutral approaches adopted in several other major patent jurisdictions, would be a constructive and forward-looking

step that would better serve the needs of India's diverse community of inventors and applicants.

8) What duration of grace period do you consider appropriate?

☐ 6 months

☑ 12 months

☐ More than 12 months

☐ Other

(Please provide reasons if any.)

The Indian Group considers a 12-month grace period to be the most appropriate and workable duration, for several reasons. First, a 12-month period aligns naturally with the 12-month priority period established under the Paris Convention, thereby providing a coherent and consistent framework for applicants who intend to file patent applications in multiple jurisdictions following an initial disclosure. Second, a period of 12 months affords inventors and applicants a reasonable and realistic window within which to evaluate the commercial potential of their invention, explore funding or licensing opportunities, engage with potential partners or investors, and prepare a well-considered patent application. This is particularly relevant for academic researchers and institutions, for whom the publication process including peer review, editorial consideration, and formal publication may itself occupy a significant portion of the available time before a filing decision can be made. A shorter period, such as 6 months, may in practice prove insufficient to accommodate these steps, particularly where the applicant is an individual inventor or a small enterprise without dedicated patent management resources. Third, and importantly, the Indian Group is of the view that the 12-month period should be measured from the earliest priority date that is, the date of the first patent application filed in any jurisdiction in respect of the invention rather than from the date of filing in India. This approach would ensure that an applicant who makes a disclosure, files a priority application abroad, and subsequently files in India within the Paris Convention priority period does not find the grace period has been partially or wholly consumed by the time the Indian application is filed, thereby preserving the practical utility of the grace period for applicants engaged in international filing strategies.

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.)

The Patents (Amendment) Rules, 2024 represent a welcome development in the procedural landscape for grace period claims in India, with the introduction of Rule 29A and Form 31 providing, for the first time, a formal and structured mechanism for applicants to claim the benefit of the grace period under Section 31 at the time of filing their patent application. The Indian Group regards this as a constructive step towards greater procedural clarity and transparency in the grace period framework.

Looking at the broader picture, the Indian Group is of the view that the most effective and applicant-friendly procedural approach both domestically and in the context of international harmonization would be one that adopts a tiered structure. At the point of filing, a simple and straightforward declaration identifying the prior disclosure, its date, and its relationship to the applicant or inventor should be sufficient to preserve the grace period claim. This approach would place a minimal burden on applicants at the filing stage while still providing the patent office and third parties with the notice they require. Detailed supporting evidence such as affidavits, copies of publications, official gazette notifications, or proof of derivation would then be required only in cases where the grace period claim is specifically challenged, whether during examination or in opposition proceedings. This tiered approach would ensure that the procedural requirements remain proportionate to the circumstances of each case.

In this context, while the introduction of Form 31 under Rule 29A is a positive and meaningful step, the Indian Group notes that the current requirement under Form 31 to submit documentary evidence including affidavits at the time of filing the grace period claim may, in practice, impose a degree of administrative burden on applicants, particularly individual inventors, academic researchers, and small enterprises, in cases where the grace period claim is unlikely to be contested. Similarly, the requirement under Section 29(2) to prove both derivation and timely filing places a substantive evidential burden on the applicant from the outset, which may benefit from reconsideration in the context of a broader review of the grace period framework. A declaration-based approach at the filing stage, with evidence reserved for contested cases, would strike a more proportionate balance.

Finally, greater consistency in grace period procedures across jurisdictions would be of significant practical benefit to applicants filing internationally, reducing the administrative complexity and cost associated with navigating differing procedural requirements in each jurisdiction in which protection is sought.

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)

The establishment of a single international procedure for claiming the benefit of a grace period for example, through a declaration filed in connection with a PCT application that would be recognized and given effect in all designated states is an idea that merits serious and constructive consideration. Such a mechanism would offer meaningful practical benefits to applicants pursuing international patent protection: it would simplify the administrative process of claiming the grace period across multiple jurisdictions, provide greater certainty as to the procedural steps required at the international filing stage, and reduce the risk that an applicant inadvertently fails to preserve their grace period rights in one or more designated states due to unfamiliarity with the specific procedural requirements of each jurisdiction.

The Indian Group acknowledges, however, that the realization of such a system would necessarily depend upon a sufficient degree of convergence in the substantive grace period provisions of participating jurisdictions. At present, the scope, duration, eligible disclosure types, and procedural requirements of grace period frameworks vary considerably across major patent jurisdictions, and bridging these differences would require sustained engagement and goodwill among the relevant national and regional patent authorities. This is a complex undertaking, and the Indian Group recognizes that progress in this area is likely to be incremental rather than immediate.

Nonetheless, the Indian Group is of the view that these practical challenges, while real, should not preclude meaningful dialogue and collaborative effort towards this goal. A phased approach beginning with agreement on a common minimum standard for substantive grace period provisions, and thereafter developing a harmonized procedural framework would provide a constructive pathway towards the eventual establishment of a single international procedure. The Indian Group would welcome and actively support such efforts through appropriate international forums, including WIPO and the APAA, on the understanding that any agreed international procedure would be underpinned by a substantive framework that provides a consistent and adequate level of protection for applicants across all participating jurisdictions.

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?

☐ Yes

☐ No

☑ Conditionally Yes

(Please describe the procedures you consider appropriate.)

The Patents (Amendment) Rules, 2024 have introduced a formal and structured procedure for claiming the grace period benefit under Section 31 of the Patents Act, 1970, through the insertion of Rule 29A and the introduction of Form 31. Under this framework, an applicant seeking to rely on any of the sub-sections of Section 31 is now required to file Form 31 in connection with their patent application, identifying the specific provision being invoked Section 31(a), 31(b), 31(c), or 31(d) and submitting supporting documentary evidence, which may include affidavits, together with the prescribed fee. The Indian Group welcomes this development as a meaningful and constructive step towards greater procedural transparency and certainty in the grace period framework, providing applicants, the patent office, and third parties with a clear and formal mechanism through which grace period claims are identified and recorded at the outset of the application process.

At the same time, the Indian Group respectfully notes that the requirement to submit full documentary evidence including affidavits at the time of filing the grace period claim may, in certain circumstances, place a degree of administrative and practical burden on applicants, particularly individual inventors, academic researchers, and small enterprises, in cases where the grace period claim is straightforward and unlikely to be the subject of any challenge. In such cases, the upfront evidence requirement may not be strictly necessary to serve the underlying purposes of the procedure, namely, providing notice of the grace period claim and enabling its verification if required.

With this in mind, the Indian Group would suggest that consideration be given to adopting a proportionate, tiered approach to the evidence requirements under Form 31. Under such an approach, a concise declaration at the time of filing identifying the prior disclosure, its date, the applicable sub-section of Section 31, and the relationship between the disclosure and the applicant or inventor would be sufficient to formally preserve and record the grace period claim. Detailed supporting evidence, such as affidavits, certified copies of publications, official gazette notifications, or other documentary proof, would then be required only in cases where the grace period claim is specifically challenged or contested, whether during examination proceedings or in the context of opposition proceedings under Section 25. This tiered structure would ensure that the procedural requirements remain proportionate to the circumstances of each individual case, while preserving the clarity and transparency that the introduction of Form 31 is intended to achieve.

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)

The Indian Group is of the view that, for the purposes of international harmonization, the grace period is most appropriately measured backwards from the **earliest priority date** that is, the date of the first patent application filed in any jurisdiction in respect of the invention concerned. This approach is grounded in a practical and equitable consideration: an applicant who makes a public disclosure of their invention, subsequently files a priority application in a first jurisdiction within the prescribed period, and thereafter files a corresponding application in India within the 12-month priority period afforded by the Paris Convention, should not find themselves in a position where the benefit of the grace period has been diminished or extinguished solely by reason of the fact that the Indian filing date falls later in time than the date of the original disclosure.

To illustrate the practical significance of this point: if the grace period were measured from the Indian filing date rather than from the earliest priority date, an applicant who disclosed their invention and filed a priority application abroad would, by the time they came to file in India, have consumed a portion potentially a substantial portion of the grace period through the ordinary operation of the Paris Convention priority system. In such a scenario, a disclosure that was comfortably within the grace period at the time it was made could, by the time of the Indian filing, fall outside the protected window, resulting in an unintended loss of patent rights that the applicant could not reasonably have anticipated or avoided.

Measuring the grace period from the earliest priority date avoids this outcome and ensures that the grace period operates consistently and predictably for applicants engaged in international filing strategies. It also aligns with the approach that would be most conducive to international harmonization, as it provides a common and neutral reference point that is equally meaningful regardless of the jurisdiction in which the applicant first files. The Indian Group accordingly considers this to be the preferable approach, and one that would best serve the interests of applicants, particularly those from academic institutions and smaller enterprises who may be filing internationally for the first time and who may not be fully aware of the interplay between the grace period and the Paris Convention priority system.

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