Questionnaire on Special Topic (Grace Period)

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

Korea recognizes a grace period system under Article 30 of the Korean Patent Act. An invention disclosed by the inventor or by a person entitled to obtain a patent may, subject to certain requirements, be excluded from the prior art considered in assessing novelty and inventive step. Disclosures made against the will of the person entitled to obtain a patent may also be protected under certain conditions.

However, under Korean patent law, there is no separate or independent grace period provision that broadly replaces or supplements the system established under Article 30.

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 other foreign jurisdictions.
☐ Other (please specify: _____).

The Korean system is not a U.S.-style 'comprehensive safe harbor,' but is instead structured as a statutory exception to novelty (Article 29). That is, even where an invention has been disclosed and has thereby lost novelty, the structure is such that—provided certain requirements are met—the disclosure is 'deemed not to have been publicly known.' As such, it belongs to the civil-law family (particularly Japan) of the 'exception to loss of novelty.'

The reason it is not the first option (the U.S.-style broad safety net) is that the Korean system does not apply automatically but requires the procedural steps of assertion and proof, and it does not comprehensively shield even intervening third-party disclosures derived from the inventor's own disclosure. The reason it is not the third option either (the European type—limited to strictly narrow cases such as abuse or official/officially recognized exhibitions) is that Korea imposes no restriction on the type of disclosure (recognizing all forms, including publications, exhibitions, sales, and testing), making it far broader than Europe (Article 55 EPC).

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 IVbelow.)

The grace period in Korea is 12 months from the date of disclosure. If a Korean patent application or a PCT application is filed within 12 months from the disclosure date, the disclosure may be disregarded for novelty and inventive-step purposes.

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

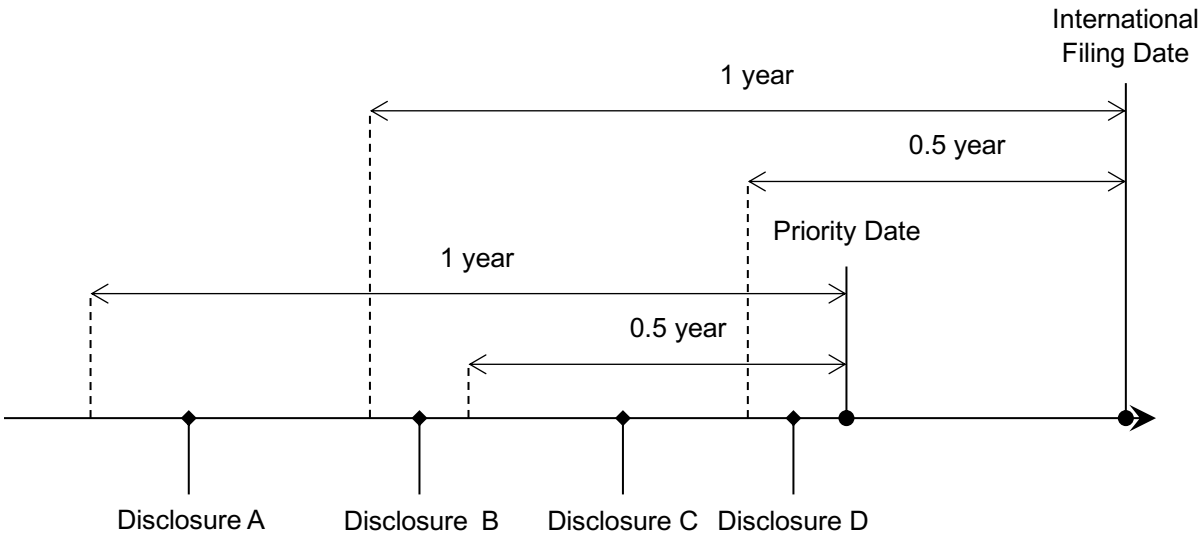
■ Disclosure D

□ Additional conditions are required (please explain)

□ All disclosures are considered during examination

In Korea, the grace period is generally calculated from the actual filing date (including the PCT international filing date), rather than the priority date. Therefore, disclosures made within 12 months before the international filing date may qualify for the grace period. Based on the timeline shown, Disclosures b, c, and d would likely be excluded, whereas Disclosure a would normally fall outside the 12-month grace period.

"Furthermore, the Korean Utility Model Act provides no standalone provision governing the novelty exception (grace period); rather, Article 11 thereof applies Article 30 of the Patent Act mutatis mutandis, thereby producing identical treatment. The grace period under the Utility Model Act and the Patent Act is therefore identical in its substantive scope, requirements, and duration."



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

Where a priority claim is based on an earlier Korean patent application, the applicability of the exception to loss of novelty under Article 30(1) of the Korean Patent Act is assessed with reference to the filing date of the priority application. Accordingly, the grace period is calculated from the filing date of the priority application rather than the international filing date. As a result, not only Disclosures b through d, but also Disclosure a, which was made within one year prior to the filing date of the priority application, would not be taken into consideration as prior art for the purposes of assessing novelty and inventive step. However, in order to benefit from the grace period, supporting evidence must be submitted within 30 days from the date of entry into the Korean national phase of the international application.

IV. Disclosures Eligible for Grace Period

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

□ Yes
■ No (Generally Yes)

Korean law broadly recognizes various forms of disclosure. Academic publications, conference presentations, internet postings, exhibitions, sales activities, SNS postings, and similar disclosures may all qualify for grace period protection. However, disclosures appearing in patent publications or patent gazettes generated from the applicant's own earlier patent applications are generally not treated as grace-period disclosures.

2) If the form or manner of disclosure is relevant, which of the following are cover ed? (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 fo r 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

2-2) Disclosure by Patent Office

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

Korea generally recognizes almost all forms of self-disclosure as eligible for grace period protection. However, disclosures appearing in patent publications or patent gazettes generated from the applicant's own earlier patent applications are generally not treated as grace-period disclosures.

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

Yes. Where a third party discloses the invention at the request or authorization of the person entitled to obtain a patent, the disclosure is generally treated in the same manner as a disclosure made by the applicant and may qualify for the grace period.

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

Yes. Korea recognizes a grace period for disclosures made against the will or without the authority of the person entitled to obtain a patent. The applicant must demonstrate that the disclosure occurred without authorization or contrary to the applicant's intention.

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

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 (But if the invention was disclosed against the will of the person entitled to obtain a patent, such a written statement/declaration is not required)
■ Evidence specifically showing that the requirements for application are satisfied (Even if the invention was disclosed against the will of the person entitled to obtain a patent, such evidence is required)

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.)

1. At the time of filing a new application: State the intent to claim the grace period when filing the new application. And submit evidence within 30 days from the application filing date.

2. During Examination: Even if you did not state the claim for the grace period when filing the new application, you can still state the claim along with evidence during the following periods:

- You can state the grace period claim along with evidence before the first Notice of Preliminary Rejection is issued.
- Once a Notice of Preliminary Rejection has been issued, you can state the grace period claim along with evidence by the deadline of the Notice of Preliminary Rejection.

- Once a Notice of Final Rejection has been issued, you can state the grace period claim along with evidence when filing a Request for Reexamination.

3. After Notice of Allowance: You can still state the grace period claim along with evidence (i) within three months from receiving the Notice of Allowance and (ii) before the patent is registered upon paying registration fee.

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.)

The recent decision by the Korean Supreme Court held that to invoke the grace period (the exception to loss of novelty), it is not required that the prior invention be strictly identical to the invention under examination. This decision is based on the reasoning that subsequent research, development, or improvements made after the prior disclosure may result in differences in the configuration or effects of the invention under examination.

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

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?

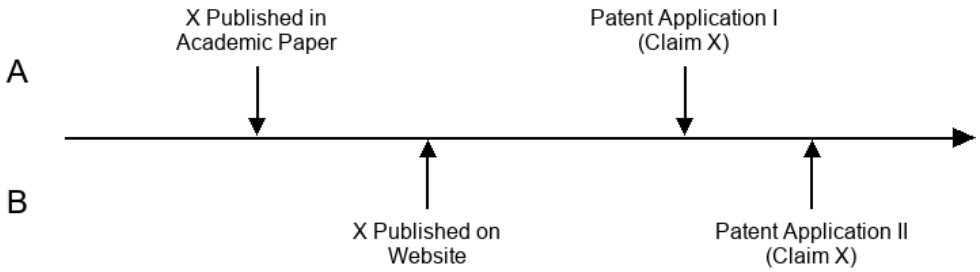
■Yes, for all forms of available grace period
□ Yes, for some forms of available grace period
□ No

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

☞ Under the Korean Patent Examination Guidelines, where, between the date of the grace-period disclosure and the filing date of the grace-period application, a third party discloses the same invention, the grace-period application shall be rejected for lack of novelty — unless it is evident that the third party's disclosure was made on the basis of knowledge derived from the applicant's grace-period disclosure. Therefore, Patent Application I will be rejected on the ground of lack of novelty due to B's disclosure.

1-2) Will Patent Application II be rejected?

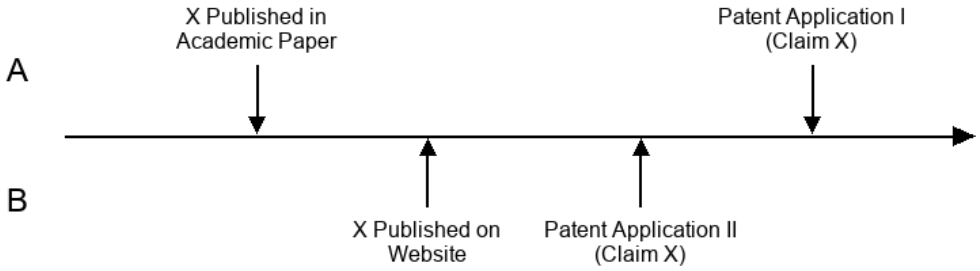
■Yes

□ No

☞ Patent Application II will be rejected on the ground of lack of novelty due to A's disclosure.

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

☞ Under the Korean Patent Examination Guidelines, where, between the date of the grace-period disclosure and the filing date of the grace-period application, a third party discloses the same invention, the grace-period application shall be rejected for lack of novelty — unless it is evident that the third party's disclosure was made on the basis of knowledge derived from the applicant's grace-period disclosure. Therefore, Patent Application I will be rejected on the ground of lack of novelty due to B's disclosure.

2-2) Will Patent Application II be rejected?

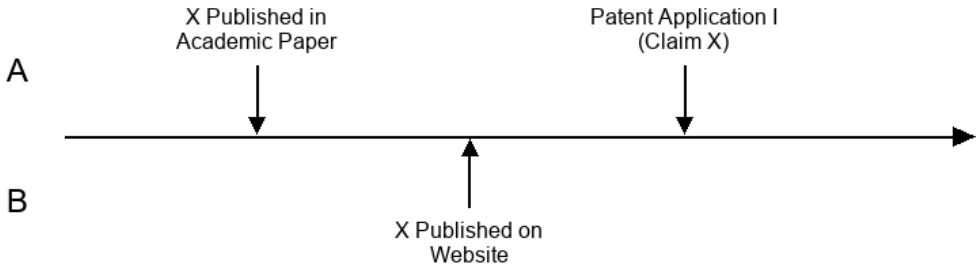
■Yes

□ No

☞ Patent Application II will be rejected on the ground of lack of novelty due to A's disclosure.

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

☞ Where it is clear that the third party's disclosure was derived from the disclosure that is the subject of the grace-period claim, KIPO does not treat that third-party disclosure as destroying novelty.

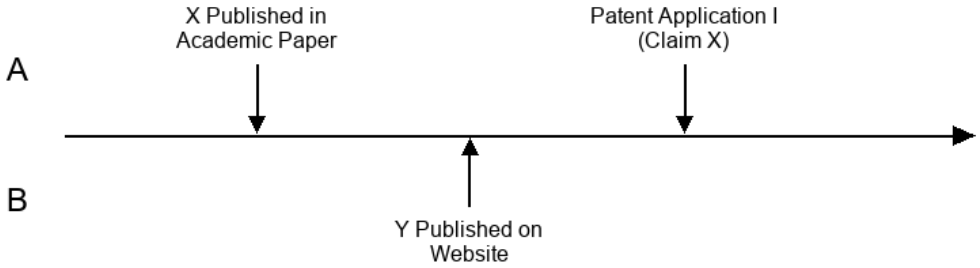
3-2) If B's disclosure is not regarded as being derived from A's disclosure, will Patent Application I be rejected?

■Yes
□ No
□ Other

☞ If derivation cannot be established, B's website publication is ordinary prior art under Art. 29(1)(ii), predating Application I. It falls outside both limbs of Art. 30(1), and the grace period does not shift Application I's effective date. Application I is rejected for lack of novelty. The burden of establishing derivation (or absence of consent) rests on the applicant.

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

→ X and Y are "substantially different" inventions, and therefore no identity can be recognized between A's disclosure of X and B's disclosure of Y. Accordingly, A cannot rely on the grace period under Korean patent law with respect to Y. As a result, Y constitutes prior art that was disclosed before the filing date of Patent Application I, and Patent Application I will therefore be rejected for lack of inventive step in view of Y.

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?

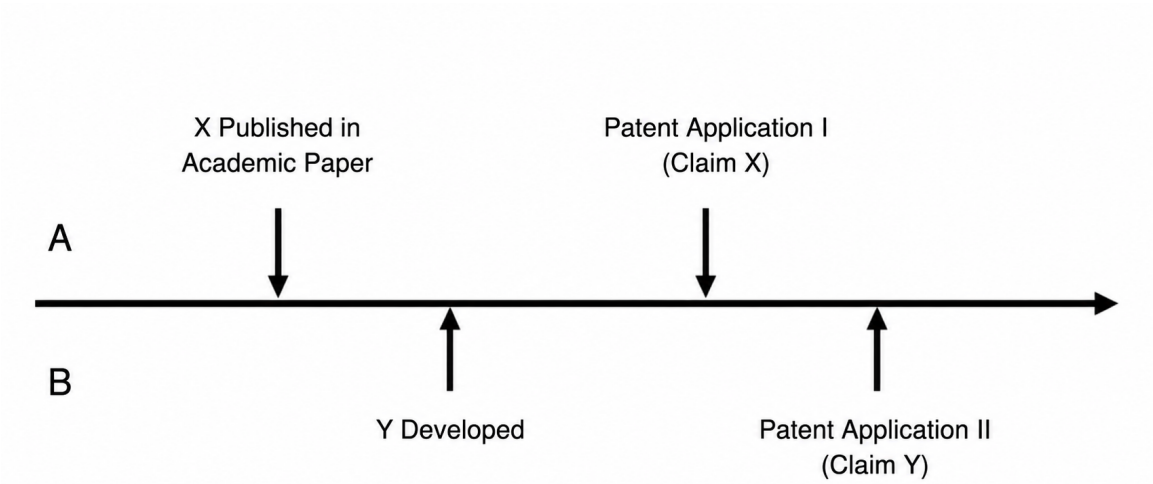
■ Yes
□ No
□ Other

→ If B's disclosure of Y is not regarded as being derived from A's disclosure of X, A cannot rely on the grace period under Korean patent law with respect to Y. Accordingly, Y constitutes prior art that was disclosed before the filing date of Patent Application I, and Patent Application I will therefore be rejected for lack of inventive step in view 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

→ Since the disclosure of X was made by the inventor's own will within the applicable grace period before the filing date of Patent Application I, it is eligible for the grace period under Korean patent law and can therefore be excluded from the prior art relevant to Patent Application I. In addition, Y was not disclosed before the filing date of Patent Application I and thus cannot be considered prior art against Patent Application I. Accordingly, Patent Application I will not be rejected.

5-2) Will Patent Application II be rejected?

■Yes

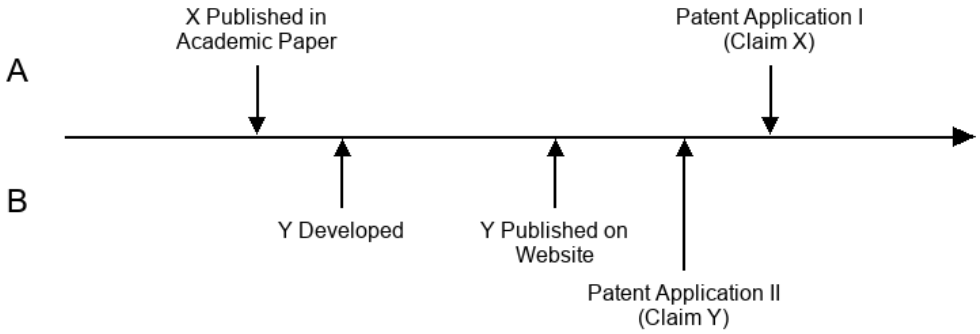
□ No

□ Other

→ Since the disclosure of X was made by A, B cannot rely on the grace period under Korean patent law with respect to X. Accordingly, X constitutes prior art that was disclosed before the filing date of Patent Application II, and Patent Application II will therefore be rejected for lack of inventive step in view of X.

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

→ As in Question 4), X and Y are "substantially different" inventions, and therefore no identity can be recognized between A's disclosure of X and B's disclosure of Y. Accordingly, A cannot rely on the grace period under Korean patent law with respect to Y. As a result, Y constitutes prior art that was disclosed before the filing date of Patent Application I, and Patent Application I will therefore be rejected for lack of inventive step in view of Y.

6-2) Will Patent Application II be rejected?
■Yes
□ No
□ Other

→ As in Question 5-2), Since the disclosure of X was made by A, B cannot rely on the grace period under Korean patent law with respect to X. Accordingly, X constitutes prior art that was disclosed before the filing date of Patent Application II, and Patent Application II will therefore be rejected for lack of inventive step in view of X.

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.)

Considering both that it would be unduly harsh for an inventor to lose the opportunity to obtain a patent as a result of disclosing his or her own invention, and that denying such an exception could discourage the prompt disclosure of research results and thereby hinder national industrial development, it is considered appropriate to allow patents to be granted through the grace period system.

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.)

Overall, the current grace period system appears to be satisfactory. However, views may vary depending on each party's position, such as whether the party is an applicant who has disclosed the invention or a third party using the disclosed technology.

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

Although there may be various views on the types of disclosures that should be covered by a grace period and the appropriate length of the grace period in balancing the interests of applicants who have disclosed their inventions against those of third parties, Korean patent attorneys as practitioners generally consider that the grace period system currently maintains an appropriate balance.

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

Looking strictly at the system itself, the availability of a grace period may appear to encourage the early disclosure of inventions. However, in our practical experience, inventors often prioritize publishing their research results in academic papers or other venues regardless. Rather, the actual effect of the grace period system seems to be that once a disclosure has occurred, it compels corporations to accelerate filing their patent applications within the permitted grace period window.

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

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.)

Due to the varying standards across different countries and jurisdictions, applicants face a significant risk of inadvertent loss of rights, as noted in Question 5. Establishing common standards would effectively mitigate these risks and provide applicants with greater legal certainty.

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.)

To ensure comprehensive protection, the grace period should broadly cover any disclosure made by or derived from the applicant, including: publications, online disclosures, commercial disclosures, and third-party disclosures (without consent). In a modern, fast-paced R&D environment, information spreads rapidly through diverse channels. Therefore, a broad approach is the most effective way to fulfill the system's equitable purpose.

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

It gives applicants adequate time to recover from accidental disclosures, matching the grace period to the 1-year priority period simplifies international portfolio planning, and extending the window further creates an unacceptable level of legal 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.)

Procedures That Should Be Made Consistent:

1. The Duration (12 Months from Priority Date): The grace period must be 12 months counted backward from the priority date, not the local filing date. This prevents international applications (like PCT or Paris Convention filings) from falling outside the grace window due to strict local filing timelines.

2. Scope and "Prior User Rights" Balance: Harmonization requires a compromise between pro-inventor and pro-public systems. The grace period should broadly cover all disclosure types originating from the inventor. In exchange, countries should implement robust Prior

User Rights to protect third parties who independently develop and prepare to commercialize the technology before the patent application is filed.

3. Streamlined Formalities: Procedures to invoke the grace period should be flexible. Rather than forcing strict declarations at the exact moment of filing, standardizing a post-filing mechanism would cut administrative overhead and prevent applicants from losing substantive rights due to procedural foot-faults.

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)

Expectations: elimination of administrative traps, cost reductions
Concerns (Practical Implementation Obstacles): substantive harmonization prerequisite

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 submission of formal evidence should not be an absolute prerequisite at the moment of filing, but rather a requirement that is triggered based on the procedural stage or a specific request from the examiner.

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).