# 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 ( section 43 & 44 of our patent law )
□ No

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: _ Article 65 of TRIPS agreement for WTO member country _____).

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.)

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.

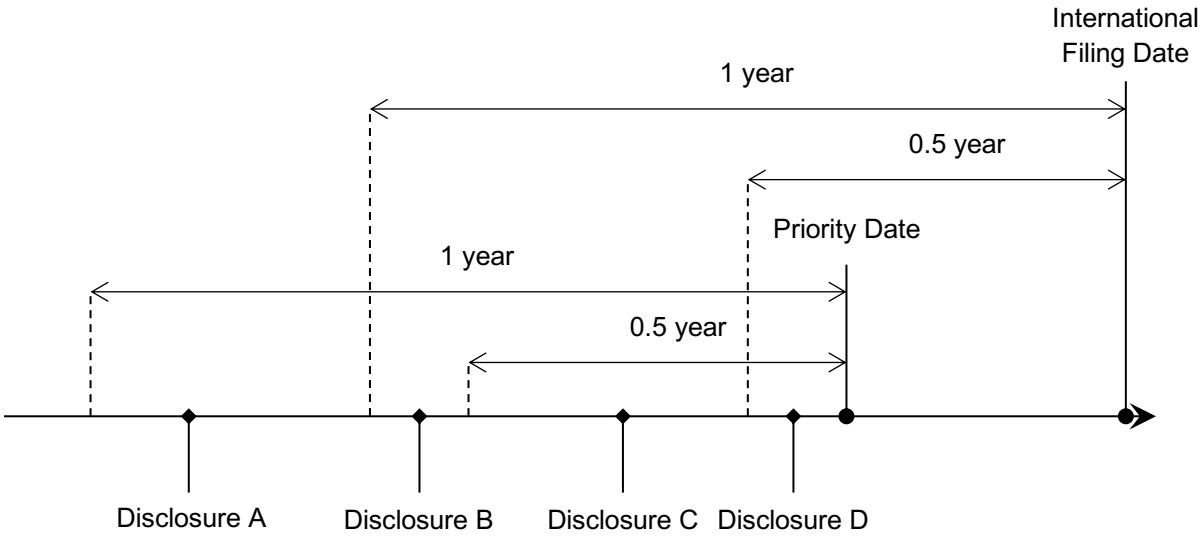
(Multiple answers permitted.)

□ Disclosure A
□ Disclosure B
□ Disclosure C

□ Disclosure D

□ Additional conditions are required (please explain)(according to section 44 of our patent law)(section 89 to 92 after the State has become a member of the Patent Cooperation Treaty) *Note: Myanmar law specifically limits non-prejudicial disclosure to official international exhibitions under Section 44. Under Section 45, exhibition priority does not extend the Paris Convention priority period.*

□ All disclosures are considered during examination




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) **Section 20(b)(v), Section 44**
*Note: Exhibition priority must be claimed within 1 year from the exhibition date, accompanied by supporting declaration and evidence at filing.*

□ All disclosures are considered during examination

## IV. Disclosures Eligible for Grace Period

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

□ Yes
□ No **Section 13(a), Section 44** *Note: Prior art encompasses all public disclosures worldwide; grace period exceptions are narrowly restricted to official exhibitions.*

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

2-1) Disclosure by a person having the right to obtain a patent
□ Publication in academic journals or conference proceedings
□ Publication in books or pamphlets
□ Publication on websites containing academic papers or conference abstracts
□ Publication on the applicant's own website
□ Publication on e-commerce websites
□ Publication on social networking services (SNS)
□ Presentation at meetings (e.g., academic conferences, seminars, presentations for investors or customers)
□ Disclosure through public trial or testing

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

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

2-2) Disclosure by Patent Office

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

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 *Section 44 Note: Applicable if displayed under authority at a recognized international exhibition.*

□ 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 *Statutory Citation:* ***Statutory Citation: Section 15, Section 77(d)/(f), Section 78(c)*** *Note: Fraudulent, misrepresentative, or unauthorized disclosures/filings do not deprive the legitimate inventor of rights.*

□ 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

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 (***Statutory Citation: Section 20(b)(v)*** )

□ Evidence specifically showing that the requirements for application are satisfied(***Statutory Citation: Section 20(b)(v)*** )

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 ***Statutory Citation: Section 20(b)(v)***

□ Other (Please specify the deadline.) ( will be attached within three months from the filing date of the application.)

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 ( ***Statutory Citation: Section 44*** *Note: Applies specifically to 'the same invention'.)*
*)*

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

□ Other (Please briefly explain.) all circumstances: the relationship between the disclosure and the examined invention is irrelevant

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 (not automatically)( exists in Rule 4 of PCT regulation although Myanmar is not PCT member)( ***Statutory Citation: Section 19, Section 20(b)(v), Section 119*** *Note: National phase formal requirements, including Myanmar/English translation and evidence submission, must be complied with.)*

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 ( within described time duration) ***Statutory Citation: Section 20(b)(v), Section 31, Section 46*** *Note: Provided national requirements are satisfied or reinstated under general loss of rights remedies.*

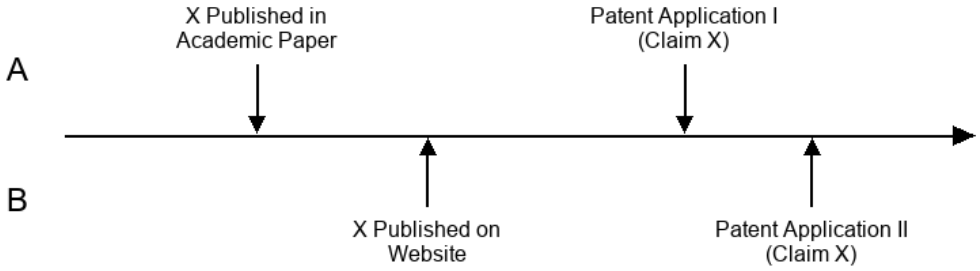
□ Yes, for some forms of available grace period
□ No

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?

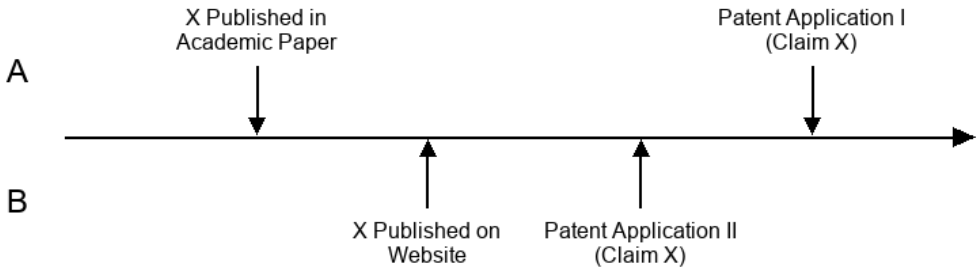
1-1) Will Patent Application I be rejected?
□ Yes
□ No (***Statutory Citation: Section 15, Section 44*** *Note: Inventor A filed Application I first within the grace period; publication X is non-prejudicial to A.)*

1-2) Will Patent Application II be rejected?
□ Yes (***Statutory Citation: Section 13(a), Section 15(b)*** *Note: Application II is rejected under first-to-file principle (Section 15(b)) and destroyed novelty via prior publication X.)*

□ No

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 (***Statutory Citation: Section 13(a), Section 15(b)*** *Note: Application II is rejected under first-to-file principle)*

□ No

2-2) Will Patent Application II be rejected?

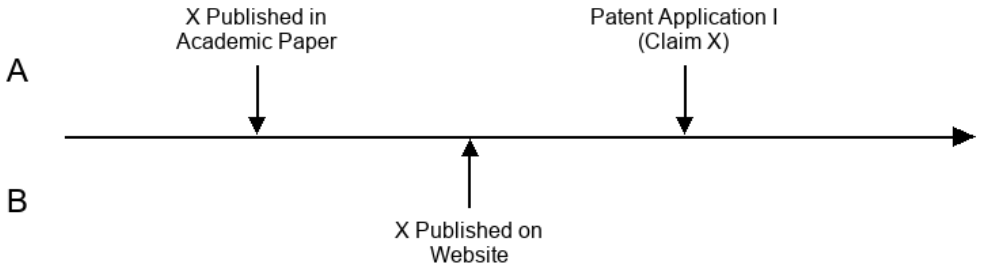
□ Yes

□ No ***(Statutory Citation: Section 15(b)*** *Note: Inventor B was the first to file Application II.)*

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 (***Statutory Citation: Section 15, Section 77(d)*** *Note: Derived disclosures from the legitimate inventor do not defeat the inventor's novelty.)*

□ Other

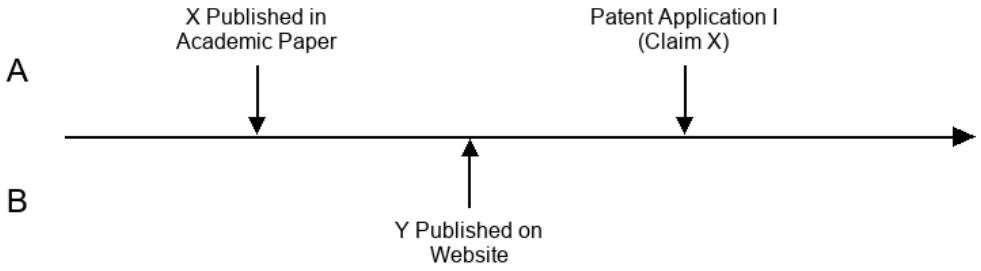
3-2) If B's disclosure is not regarded as being derived from A's disclosure, will Patent Application I be rejected?

□ Yes *(**Statutory Citation: Section 13(a)** Note: An independent third-party public disclosure prior to A's filing date constitutes destroying prior art.)*

□ No
□ Other

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 (***Statutory Citation: Section 13, Section 15*** *Note: Derived disclosures do not impair A's rights in X.*

□ Other

4-2) If B's disclosure of invention Y is not regarded as being derived from A's disclosure of

invention X, will Patent Application I be rejected?

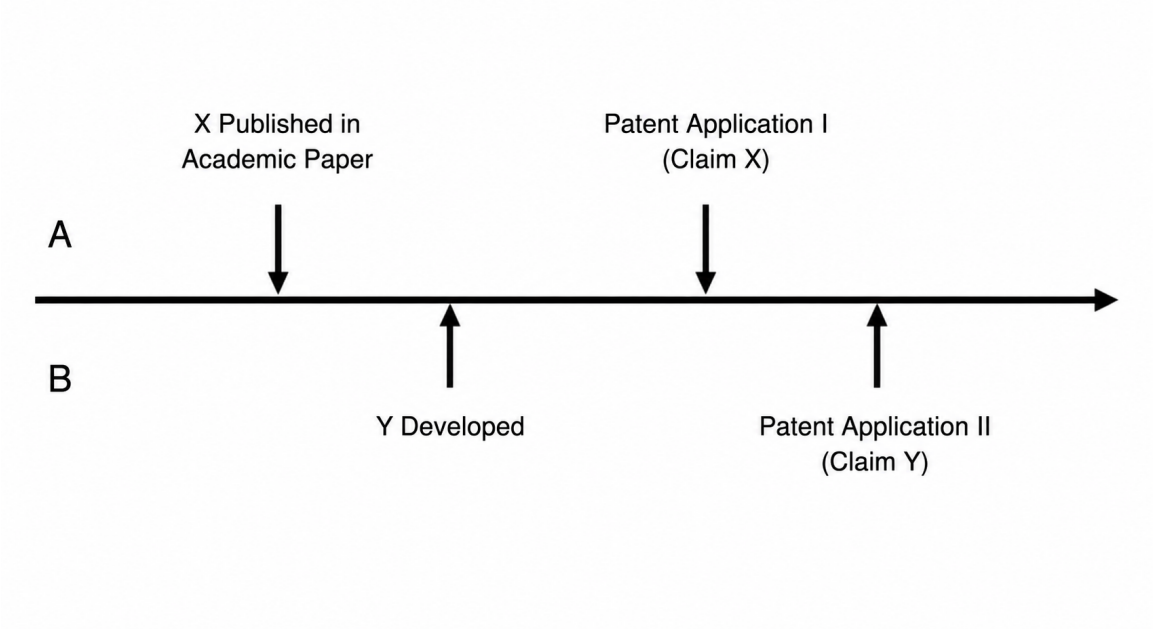
□ Yes

□ No
□ Other

Hypothetical 5

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

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



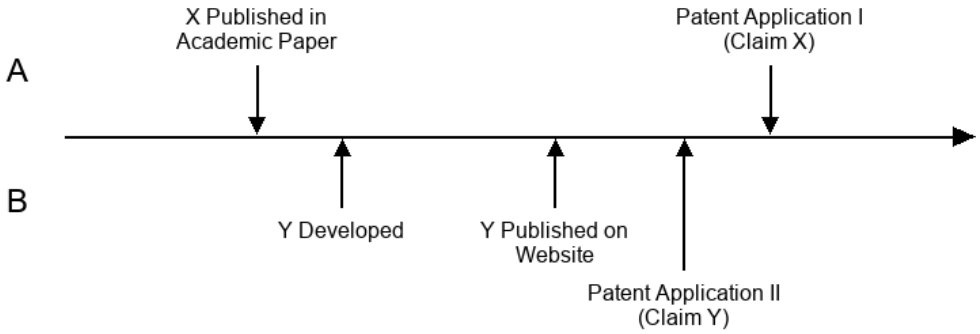

Will either patent application be rejected?

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

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

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 (***Statutory Citation: Section 13(b)*** *Note: B's prior publication of Y on a website destroys the inventive step of X prior to A's filing date.)*

□ No
□ Other

6-2) Will Patent Application II be rejected?

□ Yes (***Statutory Citation: Section 13(a), Section 13(b), Section 15*** *Note: B derived Y from A's publication X, rendering Y obvious and lacking legitimate entitlement)*

□ No
□ Other

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.)

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.)

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 (for the starting stage of patent system of Myanmar)
□ No
□ Cannot determine

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

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 ( the new criteria of some country is not the same eg: in the invention date / application date )

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.)

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

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.)

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)

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 (I think it reasonable to submit evidence of the circumstances of the disclosure for the starting stage of patent system of Myanmar)
(Please describe the procedures you consider appropriate.)

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)

References

PART VI: TRANSITIONAL ARRANGEMENTS

Article 65: Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of TRIPS Agreement 25 entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years. 5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66: Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67: Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

## Regulations under the PCT (as in force from July 1, 2025)

### Rule 4 The Request (Contents)

#### 4.1 Mandatory and Optional Contents; Signature

(a) The request shall contain:

(i) a petition,

(ii) the title of the invention,

(iii) indications concerning the applicant and the agent, if there is an agent,

(iv) indications concerning the inventor where the national law of at least one of the designated States requires that the name of the inventor be furnished at the time of filing a national application.

(b) The request shall, where applicable, contain: (i) a priority claim, (ii) indications relating to an earlier search as provided in Rules 4.12(i) and 12bis.1(b) and (d), (iii) a reference to a parent application or parent patent, (iv) an indication of the applicant's choice of competent International Searching Authority.

(c) The request may contain: (i) indications concerning the inventor where the national law of none of the designated States requires that the name of the inventor be furnished at the time of filing a national application, (ii) a request to the receiving Office to prepare and transmit the priority document to the International Bureau where the application whose priority is claimed was filed with the national Office or intergovernmental authority which is the receiving Office, (iii) declarations as provided in Rule 4.17, (iv) a statement as provided in Rule 4.18, (v) a request for restoration of the right of priority, (vi) a statement as provided in Rule 4.12(ii).

(d) The request shall be signed.

4.2 The Petition

The petition shall be to the following effect and shall preferably be worded as follows: "The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty." Regulations under the PCT (as in force from July 1, 2025) 24 4.3 Title of the Invention The title of the invention shall be short (preferably from two to seven words when in English or translated into English) and precise.