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.

> **Nepal (PDTA):** Jurisdiction: Nepal. Legal basis: Patent, Design and Trade Mark Act, 2022 (1965) (PDTA). The PDTA does not expressly establish a pre-filing disclosure grace period, its duration, or special prior-art exclusions. Nepal is a party to the Paris Convention but is not a Contracting State of the Patent Cooperation Treaty (PCT); PCT national-phase entry in Nepal is therefore not available. Accordingly, PCT national-phase questions are marked not applicable. Nepal may receive direct national patent applications, including applications relying on Paris Convention priority under section 21C of the PDTA.

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

Nepal (PDTA): No express grace-period provision is mentioned in the PDTA. Section 5(1) directs the Department/examiner to examine whether the proposed patent is a new invention and useful to the public; section 6(1) specifies circumstances barring registration. Neither establishes a time-limited exception for disclosure before filing.

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: Not applicable: the PDTA contains no grace-period system).

Nepal (PDTA): The PDTA contains no grace-period system**.** There is therefore no identifiable statutory rationale to characterize among the listed grace-period models (PDTA, sections 3-7).

III. Duration

1) How long is the grace period? (Multiple answers permitted.)
□ 6 months
□ 1 year
☑ Other (Not applicable: no duration prescribed by the PDTA.)

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

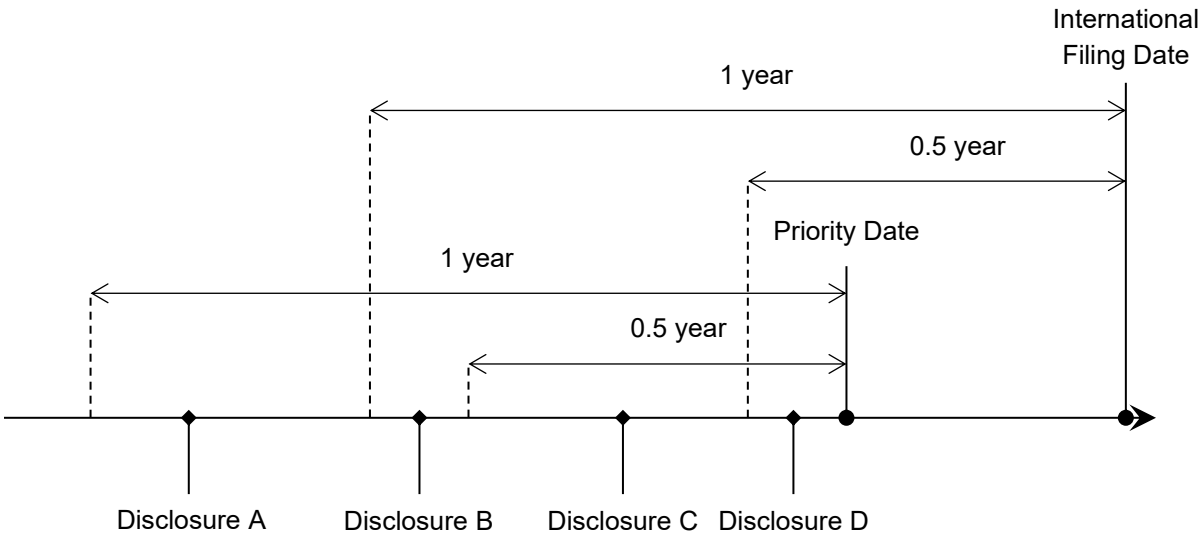
2) Assume that a national phase application is derived from an international application claiming priority from a foreign patent application or utility model application.

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)
- ☐ All disclosures are considered during examination

Nepal (PDTA): Not applicable. Nepal is not a PCT Contracting State, and a PCT international application cannot enter the national phase in Nepal. Consequently, the hypothetical national-phase examination of Disclosures A-D does not arise. No disclosure option has been selected. Separately, the PDTA does not prescribe a patent grace period; section 21C recognises Paris Convention priority but does not create a pre-filing disclosure exception.



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

Nepal (PDTA): Not applicable. Nepal is not a PCT Contracting State, so there can be no Nepal national-phase examination of Disclosures A-D.

IV. Disclosures Eligible for Grace Period

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

- ☐ Yes
- ☑ No (not applicable because no statutory grace period exists)

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.

Nepal (PDTA): None of the forms of pre-filing publication, testing, exhibition, marketing or Patent Office publication listed in IV(2-1) or IV(2-2) is expressly exempted by a grace-period provision. Section 7A concerns publication of patents already registered, not a pre-filing grace-period exception.

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

Nepal (PDTA): No protection is expressly provided for pre-filing disclosure by an authorized third party.

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

Nepal (PDTA): No special grace-period exception is prescribed for unauthorized or involuntary disclosures.

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
□ Evidence specifically showing that the requirements for application are satisfied

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

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

Nepal (PDTA): Questions V(1)-V(4): Not applicable. The PDTA provides no procedure for invoking a pre-filing grace period; consequently, it specifies no declaration, evidence requirement or submission deadline for that purpose. The ordinary patent application particulars and supporting material are instead governed by section 4 and Schedule 1(a).

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 (Not applicable; no grace period is prescribed by the PDTA.)

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

Nepal (PDTA): Not applicable. Nepal is not a Contracting State of the PCT; an international application cannot enter the PCT national phase in Nepal. Accordingly, no PCT declaration concerning non-prejudicial disclosures can be relied on in a Nepal national-phase application.

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

Nepal (PDTA): Not applicable. Nepal is not a PCT Contracting State and does not accept PCT national-phase entry, whether or not a declaration of non-prejudicial disclosures accompanied an international application. The PDTA separately provides no express pre-filing disclosure grace period.

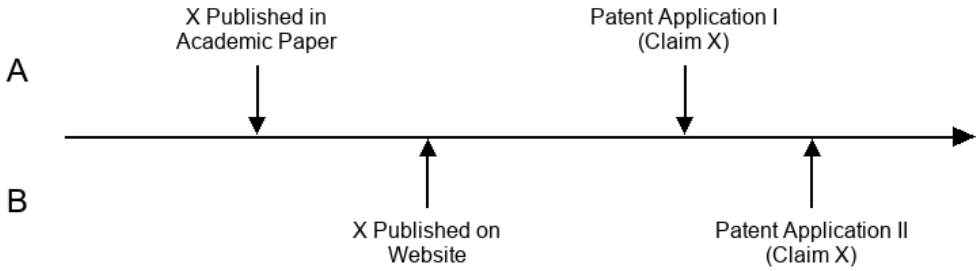
Nepal - legislative note: The six scenarios presuppose an "applicable grace period", which the PDTA does not prescribe. Section 5(1) requires a determination of whether the subject is a new invention and is useful to the public. Section 6(1)(a) bars registration where a patent is already registered in another person's name, not merely because another application was filed. The Act provides neither a detailed prior-publication test nor a stand-alone inventive-step standard.

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?

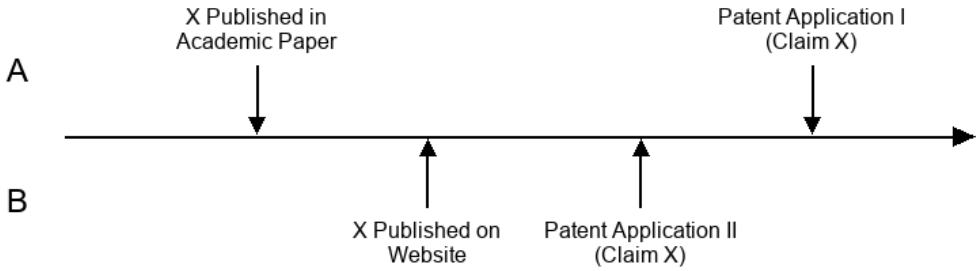
1-1) Will Patent Application I be rejected?
□ Yes
□ No

1-2) Will Patent Application II be rejected?
□ Yes
□ No

Nepal (PDTA): Questions 1-1 and 1-2: Not determinable under the PDTA on the stated facts. The timing of competing disclosures and applications alone does not establish the timing of registration or the Department's section 5(1) findings. No grace-period exclusion is available; section 6(1)(a) concerns an existing registration in another person's name. Also, an international person cannot initiate independent patent filings in Nepal as it has to be based on foreign filings.

Hypothetical 2

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



Will either patent application be rejected?

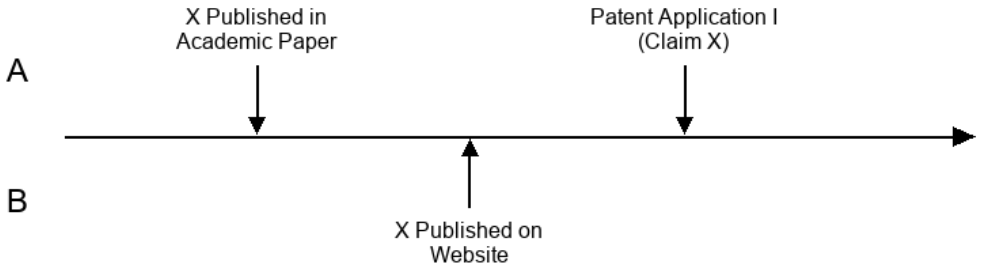
2-1) Will Patent Application I be rejected?
□ Yes
□ No

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

Nepal (PDTA): Questions 2-1 and 2-2: Not determinable from filing sequence alone. A first-filed application is not, without more, a patent already registered for the purpose of section 6(1)(a). Each application remains subject to the Department's examination under section 5(1) and to section 6(1). Also, an international person cannot initiate independent patent filings in Nepal as it has to be based on foreign filings.

Hypothetical 3

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



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

□ Yes
□ No
☑ Other

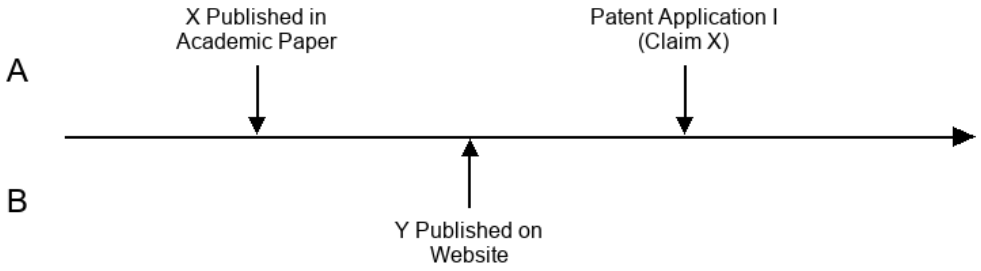
3-2) If B's disclosure is not regarded as being derived from A's disclosure, will Patent Application I be rejected?

□ Yes
□ No
☑ Other

> **Nepal (PDTA):** Questions 3-1 and 3-2: Other — not determinable as a categorical yes/no. The PDTA does not define an exemption for disclosure derived from an inventor's prior publication. Whether publication or subsequent independent/derived disclosure affects the Department's finding of a "new invention" is not specified (section 5(1)); section 6 does not create a disclosure-based grace-period rule. Also, an international person cannot initiate independent patent filings in Nepal as it has to be based on foreign filings.

Hypothetical 4

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



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

□ Yes
□ No
☑ Other

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

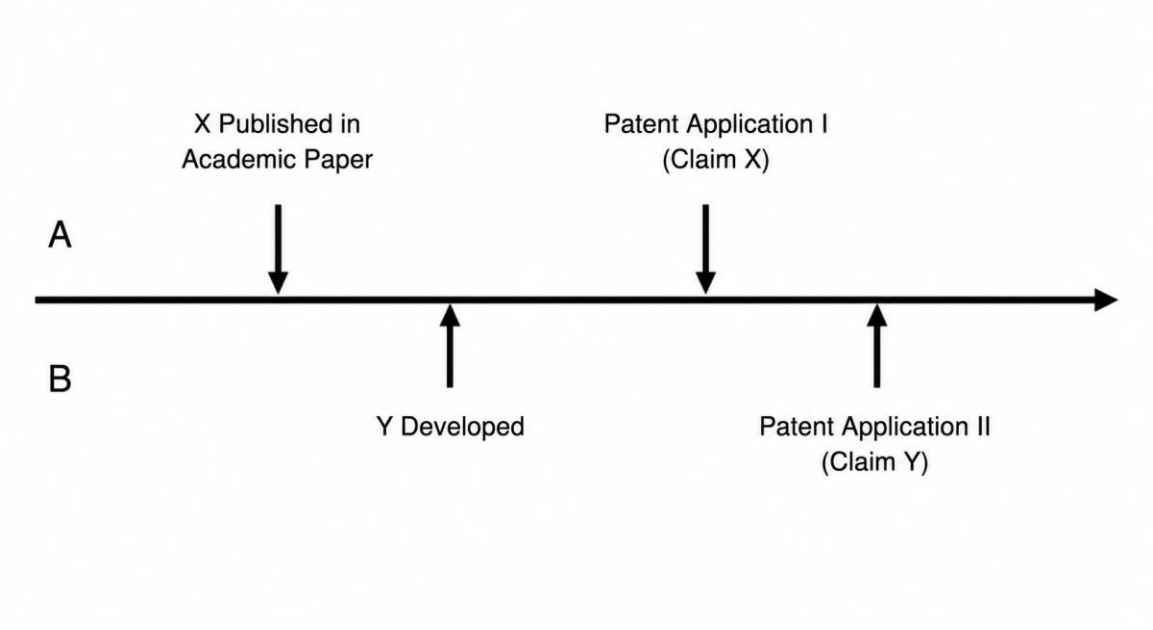
□ Yes
□ No
☑ Other

Nepal (PDTA): Questions 4-1 and 4-2: Other — the result is not determinable under the stated assumptions. The PDTA does not specify how a third party's improvement publication, derivation, or lack of inventive step affects patentability of X. Sections 5 and 6 govern the Department's assessment. Also, an international person cannot initiate independent patent filings in Nepal as it has to be based on foreign filings.

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?

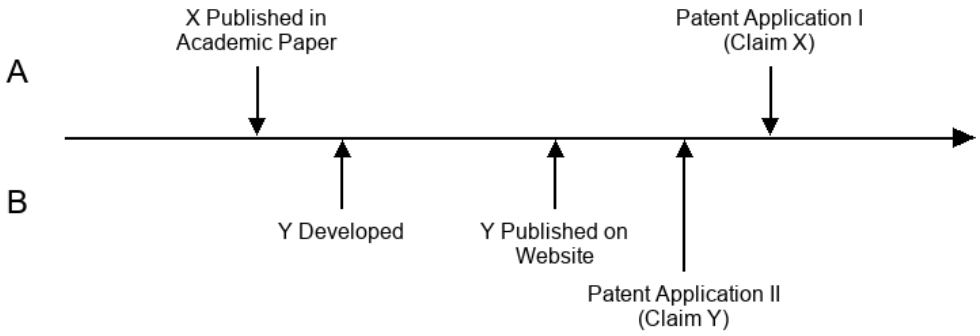
5-1) Will Patent Application I be rejected?
□ Yes
□ No
☑ Other

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

> **Nepal (PDTA):** Questions 5-1 and 5-2: Other — neither rejection outcome follows automatically. The PDTA does not prescribe the hypothetical's distinct "inventive step" threshold or a grace-period safeguard for A's paper; an earlier-filed application is not automatically a registered patent. See sections 5(1) and 6(1)(a). Also, an international person cannot initiate independent patent filings in Nepal as it has to be based on foreign filings.

Hypothetical 6

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



Will either patent application be rejected?

6-1) Will Patent Application I be rejected?
□ Yes
□ No
☑ Other

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

Nepal (PDTA): Questions 6-1 and 6-2: Other — the facts do not establish either mandatory rejection. The PDTA does not define the effect of disclosure of Y on X or provide a distinct inventive-step rule for Y. Registration chronology and examination under sections 5 and 6 would need to be established. Also, an international person cannot initiate independent patent filings in Nepal as it has to be based on foreign filings.

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.)

Response: A carefully defined grace period would protect inventors from premature self-disclosure and unauthorized disclosures while preserving legitimate third-party reliance. Nepal would need express statutory provisions to introduce it.

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.)

Response: The PDTA contains no express grace-period regime, including no certainty about duration, protected acts or required proof. Reform would offer clearer filing guidance (sections 5 and 6).

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

Response: There is no existing statutory grace-period system against which the balance can be assessed.

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

Response: The PDTA provides no grace-period mechanism, and the Act alone does not establish empirical effects on early technical disclosure.

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

Response: Cross-border filing can create uncertainty where jurisdictions treat pre-filing disclosures differently. The PDTA does not supply a domestic safe harbor.

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.)

Response: Common approaches to the duration, eligible disclosures and filing-date/priority-date reference point would improve predictability for applicants and the public.

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.)

Response: Coverage should be technologically neutral (papers, websites, demonstrations, exhibitions and other media) but limited by its source: disclosures by or authorized by the inventor and genuinely unauthorized disclosures traceable to the inventor; independent third-party disclosures need separate treatment.

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

Response: A 12-month window would give inventors a workable period to assess commercialization and file, subject to third-party safeguards. This is a reform proposal, not the current Nepalese rule.

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.)

Response: A common notice mechanism, clear filing deadlines and proportionate evidence rules would reduce procedural traps across countries.

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)

Response: An internationally reusable declaration could simplify compliance, provided jurisdictions retain a workable method to verify disputed disclosures.

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.)

Response: Evidence should be required when an applicant relies on a contested involuntary disclosure, a third-party disclosure or an exhibition; routine inventor self-disclosures could be supported by a simple declaration, subject to later verification.

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)

Response: If a grace period were introduced, measuring it from the earliest valid priority date would provide a clear and predictable reference point and better protect third-party legal certainty. The PDTA does not presently state any such rule.