Inputs from Member States and Regional Patent Offices to the Thirty-Eighth Session of the Standing Committee on the Law of Patents

Respondent Information

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Disclaimer:

The information provided in response to this questionnaire is understood to be submitted on behalf of the Member State or regional organization concerned, through its competent authority and in accordance with its applicable official internal procedures.
It is assumed that the person completing and submitting the questionnaire is duly authorized to do so and that the information reflects the official position or practice of the Member State or organization, to the extent possible.

I confirm that I have read and understood the statement above and that I agree with its contents.

A. Prior Art

1. How is prior art defined under the applicable national or regional law?

Under the Patent Law of Georgia, prior art is defined in Article 12.

According to Article 12(5) of the Patent Law of Georgia, the state of the art comprises everything made available to the public, by means of written or oral description, by use, or in any other way, before the priority date.

In addition, pursuant to Article 12(6), for the purpose of determining novelty, the state of the art also includes all patent applications for inventions and utility models filed with Sakpatenti, as well as European patent applications for which the validation fee has been paid, provided that they have an earlier priority date than the application under examination and are published after the priority date of that application.

Thus, under Georgian law, prior art encompasses:

all publicly available information disclosed before the priority date, regardless of the form of disclosure; and

earlier-filed national and validated European patent applications meeting the conditions set out in Article 12(6).

2. Against which date is prior art assessed under the applicable law?

Under Article 12(5) of the Patent Law of Georgia, prior art is assessed with reference to the priority date of the application.

Where no priority is claimed, the priority date corresponds to the filing date of the application, in accordance with Article 27 of the Patent Law of Georgia.

3. Which types of information may constitute prior art under the applicable law, and how is it determined whether such information is considered to form part of the prior art?

Pursuant to Article 12(5) of the Patent Law of Georgia, the state of the art comprises everything made available to the public before the priority date by means of:

written description;

oral description;

use; or

any other form of disclosure.

This wording covers all forms of public disclosure, including, but not limited to:

printed publications;

patent documents;

public use;

sale or other forms of commercial availability;

public oral disclosures;

digital and online publications; and

any other publicly accessible information.

The determining criterion is whether the information was made available to the public before the priority date. Georgian law does not restrict prior art to specific media or formats; the key element is public accessibility.

In accordance with Article 15 of the Patent Law of Georgia, certain disclosures made within six months prior to the priority date shall not be taken into account in determining patentability where:

they resulted from bad faith actions of a third party; or

the invention was displayed at an officially recognized international exhibition.

Apart from these specific exceptions, no limitation applies based on the form or medium of disclosure.

4. Does the applicable law provide for any category of prior art that is taken into account for patentability purposes notwithstanding that it was not publicly available before the relevant filing or priority date (sometimes referred to as "secret prior art")?

Yes

If yes, please indicate, where applicable, the types of information or documents concerned (for example, earlier-filed patent applications), the relevant date(s) for determining such prior art, as well as any limitations, exclusions, or special rules applicable to such prior art. : According to Article 12(6) of the Patent Law of Georgia, in the course of determining novelty, the state of the art, in addition to the criteria defined in Article 12(5), includes all patent applications for inventions and utility models filed with Sakpatenti, as well as European patent applications for which the validation fee has been paid, provided that they have an earlier priority as compared to the application the novelty of which is being determined and were published after the priority date of that application.

5. Please provide any additional information that may be relevant to the understanding or application of prior art under the applicable law, including where applicable, any guidance (for example, patent office manuals or guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

Please upload any document that may be relevant to the understanding or application of prior art under the applicable law.

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6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

The Patent Law of Georgia does not establish separate or distinct legal provisions for utility models in relation to the subject matter of this section.

B. Novelty

1. How is the requirement of novelty defined under the applicable national or regional law?

The requirement of novelty is defined in Article 12(2) of the Patent Law of Georgia. According to Article 12(2), an invention shall be considered new if it does not form part of the state of the art.

The state of the art is defined in Article 12(5) and (6) of the Patent Law of Georgia and comprises:
everything made available to the public, by means of written or oral description, by use, or in any other way, before the priority date; and
patent applications for inventions and utility models filed with Sakpatenti, as well as European patent applications for which the validation fee has been paid, provided that they have an earlier priority date and are published after the priority date of the application under examination.

Thus, novelty is assessed by determining whether the claimed subject-matter forms part of the state of the art as defined above.

2. For the purposes of assessing novelty under the applicable law, are there any novelty-specific considerations regarding the relevant date or the scope of information taken into account, beyond those addressed in the Prior Art section of this survey?

No

3. Does the applicable law apply an absolute novelty requirement, or does it provide for any limitations or qualifications to novelty (for example, relative novelty or other restricted approaches), apart from any grace period mechanisms addressed separately in this survey?

The Patent Law of Georgia applies an absolute novelty standard.

4. Apart from the approach described in question 3, are there any specific rules or contextual factors that affect what is taken into account as prior art for the purposes of assessing novelty under the applicable law?

No

Please upload any relevant document to question 5.

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6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

The Patent Law of Georgia applies the same definition of the state of the art and novelty to both inventions and utility models.

Article 12(6) explicitly refers to applications for inventions and utility models when defining prior art under paragraph 6.

No separate standard of novelty applies to utility models unless expressly provided by law.

C. Inventive Step

1. How is the criterion of inventive step or non-obviousness defined under the applicable national or regional law?

The requirement of inventive step is defined in Article 12(3) of the Patent Law of Georgia.

According to Article 12(3), an invention shall be considered to involve an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

The state of the art is defined in Article 12(5) of the Patent Law of Georgia as everything made available to the public before the priority date.

Thus, inventive step is assessed by determining whether the claimed invention would have been obvious to a person skilled in the art in light of the state of the art as defined by statute.

2. For the purposes of assessing inventive step or non-obviousness under the applicable law, what is the relevant date and what prior art or information is taken into account?

Inventive step is assessed with reference to the priority date of the application, in accordance with Article 12(5) of the Patent Law of Georgia.

For the purposes of assessing inventive step, the relevant state of the art comprises everything made available to the public before the priority date, by means of written or oral description, by use, or in any other way.

Unlike the assessment of novelty, earlier-filed but later-published applications referred to in Article 12(6) are taken into account solely for novelty purposes and are not relevant for the assessment of inventive step.

3. What is the standard applied under the applicable law to determine whether an invention involves an inventive step or is non-obvious, in particular as reflected in the concept of the “person skilled in the art”, focusing on how the standard is understood or applied, rather than its formal legal definition?

The applicable standard is whether the claimed invention would have been obvious to a person skilled in the art at the priority date, having regard to the state of the art.

According to the Instruction (article 2 (i) - "Instruction on Procedures Related to Drafting and Filing Applications for Inventions and Utility Models and Granting Patents," approved by Order No. 1 of the Chairman of the LEPL National Intellectual Property Center of Georgia – Sakpatenti, dated January 12, 2024) defines a "person skilled in the art" as a hypothetical person possessing standard and general knowledge in the relevant field at a given point in time. It is assumed that this person has access to the state of the art, in particular to the documents cited in the search report, and has the means and ability to carry out routine experimentation.

According to the Instruction (article 36.9) the assessment of inventive step follows a problem–solution approach, which involves: identifying the closest prior art; determining the objective technical problem; and assessing whether the claimed invention would have been obvious to the skilled person in light of the closest prior art and the objective technical problem. The assessment is objective and based on publicly available information at the priority date.

4. Are there any specific rules, limitations, or contextual factors that apply to the assessment of inventive step or non-obviousness under the applicable law?

No

Please indicate, where relevant, whether such rules or factors include geographic or territorial considerations affecting the relevance of prior art (for example, distinctions between domestic and foreign disclosures, uses, or publications, or territorial conditions applicable to particular categories of prior art) or any other particular considerations relevant to the assessment.

***Responses should be limited to such contextual factors asthey relate to the assessment of inventive step or non-obviousness, without restating general rules on what constitutes prior art.*:** There are no geographic or territorial limitations affecting the assessment of inventive step. All publicly available prior art, irrespective of its origin, may be taken into account. No distinctions are made based on: domestic or foreign disclosures; the form of disclosure; or territorial considerations. Inventive step is assessed solely with reference to the state of the art as defined in Article 12(5) of the Patent Law of Georgia.

5. Please provide any additional information relevant to the requirement of inventive step or non-obviousness under the applicable law, to the extent not already addressed in questions 1 to 4, including, where applicable, any guidance (for example, patent office manuals or guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

Please upload any document relevant to the requirement of inventive step or non-obviousness under the applicable law.

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6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

Under Article 35(1) of the Patent Law of Georgia, during the substantive examination of a utility model application, Sakpatenti examines whether the application complies with the requirements established by that provision, with the exception of the assessment of inventive step.

D. Grace Period Mechanisms and Pre-Filing Disclosures

1. Does the applicable law provide for any mechanism under which certain disclosures made before the filing or priority date do not prejudice the patentability of an invention, in particular with respect to novelty and/or the legal effect on prior art?

Yes

If yes, please identify the relevant legal provisions (in primary and/or secondary legislation) and describe their operation.: The grace period mechanism is provided for in Article 15 of the Patent Law of Georgia. Article 15 establishes that disclosures forming part of the state of the art shall not be taken into account in determining patentability where the disclosure occurred no earlier than six months preceding the priority date and resulted from: an act carried out in bad faith by a third party with respect to the inventor or his/her successor in title; or the display of the invention by the applicant or his/her successor in title at an officially recognized international exhibition held within the framework of the Convention Relating to International Exhibitions. This mechanism operates as an exception to novelty by excluding certain disclosures from having a prejudicial effect.

2. What is the duration of the mechanism referred to in question 1, during which the covered disclosures do not prejudice the patentability of the invention?

The duration of the grace period is six months.

The relevant period is calculated by counting backward from the priority date of the application.

Disclosures occurring within six months prior to the priority date may benefit from this exception, provided that they fall within the categories specified in Article 15 of the Patent Law of Georgia.

3. Where such a mechanism exists, which categories of disclosures are covered by it?

The grace period applies only to the following categories:

disclosures resulting from bad faith actions of a third party with respect to the inventor or his/her successor in title; and

disclosures resulting from the display of the invention by the applicant or his/her successor in title at an officially recognized international exhibition, as defined by the Convention Relating to International Exhibitions.

The law does not provide for a general grace period for voluntary disclosures made by the inventor outside the context of officially recognized international exhibitions.

Accordingly, Georgian law does not recognize a broad inventor-originated grace period; rather, the mechanism is limited in scope and applies only in specific circumstances.

4. Are there any formalities or procedural requirements that must be fulfilled in order to rely on the mechanism identified in question 1?

Yes

Please describe any such requirements, where applicable, including, for example, the need to file statements, declarations or notices, to submit certificates or other supporting evidence, or to comply with any timing or notification requirements or any information relating to the burden of proof. **:** Where exhibition priority is claimed, the applicant must comply with the formal requirements set out in Article 30 of the Patent Law of Georgia and the relevant Instruction. Specifically: the applicant shall indicate the intention to claim exhibition priority; and the applicant shall submit documentation certifying the display of the invention at the exhibition within the prescribed time limits. In the case of a disclosure resulting from bad faith, the burden of proof rests with the applicant to demonstrate that the disclosure resulted from the bad faith actions of a third party.

5. Does the applicable law provide for prior user rights or other protections for third parties who may be affected by an invention that has benefited from a graced pre-filing disclosure?

No

If yes, identify the relevant legal provisions (including any provisions in primary and/or secondary legislation), and describe the conditions under which such rights or protections arise (for example, good-faith use of the invention prior to the filing or priority date), as well as how such rights or protections operate. **:**

6. Please provide any additional information that may be relevant, including, where applicable, any guidance (e.g. patent office manual/guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

Please upload any document that may be relevant to grace period mechanisms and/or pre-filing disclosures.

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7. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

No separate or modified grace period regime is introduced for utility models.

Submission of information concerning other aspects of national/regional patent law

E. Sufficiency of Disclosure

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F. Exclusions from Patentable Subject Matter

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G. Exceptions and Limitations to Patent rights

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Final review before submission

Confirmation of submission

I am aware that by clicking "Submit" below, my responses will be sent to the SCP Secretariat.