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?

According to Article 2 of Patent Act, the state of the art shall be held to comprise everything made available to the public by means of a written communication or oral description, by use, or in any other way, before the date of priority.
Legal provisions:
- primary legislation: Act XXXIII of 1995 on the Patent Protection of Inventions (hereinafter referred to as: Patent Act), URL: https://sztnh.gov.hu/sw/static/file/Patent_Act_XXXIII_1995_EN_20260101.pdf ; in English
- secondary legislation: ---

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

The prior art is assessed against the earliest priority date. If different earliest priority dates belong to different claims, then for every claim the corresponding earliest priority date is applied.

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?

Only the main types of information which may constitute prior art are determined by the Patent Act (written, oral, practice, other). In the Guidelines* examples are presented for the different types:
- written communication: book, magazine, drawing, patent document, catalog, brochure, electronic data carriers, internet source (including film and video),
- oral presentation: at a public performance, through radio or television, sharing on internet,
- practice: the placing on the market of a product produced according to the invention, exhibition, any public form of presentation or utilization of the product.

Written material can be considered to be part of the state of the art if it has become accessible before the earliest priority to anyone in principle. This means that confidential documents, such as confidential documentation or technical descriptions that are not available to the wider public, are not considered to be part of the state of the art.
An oral presentation can only be considered prior art if the technical solution can be known or deduced from it to anyone. If a presentation is given at a private, invited lecture, it does not constitute prior art.
The practice or prior use cannot be considered public if the invention is used within a closed facility. The putting into practice is not public if it takes place within a specific circle of persons and under an obligation of confidentiality.
The prior use is considered public if the solution has become accessible to anyone. To become prior art, the possibility of access is sufficient. Even the object's specific features cannot be ascertained from an external examination, but only by further analysis, those features are nevertheless to be regarded as having been made available to the public. The starting point is not whether someone actually had access to the structure in question, but whether the implementation was of such a nature that the solution could have become accessible to anyone at all.
An exhibition or a presentation is essentially nothing else than a way of public prior use since the public is a conceptual requisite of the exhibition or presentation. Nevertheless, presentation at an exhibition cannot be considered as public if, for example, switching arrangements or precision mechanical structures are presented in a closed instrument (black box) and thus, the specific solution cannot be known by simple viewing. Similarly, a solution does not become part of the state of the art despite public presentation (exhibition, commercialization) if the invention cannot be reproduced on the basis of the product (the product cannot be analyzed).

According to Article 3 of Patent Act, a disclosure of the invention that occurred no earlier than six months preceding the date of priority shall not be taken into consideration as part of the state of the art if
(a) it was the due to an abuse of the rights of the applicant or his predecessors in title or
(b) it was due to the fact that the applicant or his predecessors in title have displayed the invention at an exhibition specified in an announcement by the President of the Hungarian Intellectual Property Office published in the Hungarian Official Gazette.

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. : Extended prior art: The content of any national patent application or utility model application having an earlier priority shall also be considered as comprised in the state of the art, provided that it was published or announced in the course of the patent granting procedure at a date following the date of priority. The content of such a European patent application and international patent application shall only be considered as comprised in the state of the art on special conditions laid down in the Patent Act. The above section shall apply to European patent applications designating Hungary and to European patents granted with effect extending to Hungary and to international patent applications if the Hungarian Intellectual Property Office acts as a designated or selected office. For the purposes of the above section, the publication of a European patent application in proceedings before the European Patent Office, or the publication which, under the European Patent Convention, replaces the publication in proceedings before the European Patent Office in this respect, shall be deemed to have the same effect as the publication in proceedings before the Hungarian Intellectual Property Office. For the purposes of the above section, the publication of an international patent application shall be deemed to have the same effect as publication in proceedings before the Hungarian Intellectual Property Office.

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.

Guidelines for patent examination (hereinafter referred to as: Guidelines), URL: https://sztnh.gov.hu/en/services/patent/guidelines-for-patent-examination ; only in Hungarian; especially Chapters II.9.2. and III.3.2.

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

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.

- Act XXXVIII of 1991 on the Protection of Utility Models (hereinafter referred to as: Utility Model Protection Act), URL: https://sztnh.gov.hu/sw/static/file/utilitymodels_act_xxxviii_1991_en_202503011.pdf ; in English
- Guidelines for utility model examination, URL: https://sztnh.gov.hu/en/services/utility-model-protection/guidelines ; https://sztnh.gov.hu/kezdooldal/szolgaltatasok/hasznalatiminta/modszertani-utmutato ; only in Hungarian; especially Chapters VII.1.2. & 3.

B. Novelty

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

According to Article 2 of Patent Act, an invention shall be considered new if it does not form part of the state of the art.
Legal provisions:
- primary legislation: Act XXXIII of 1995 on the Patent Protection of Inventions, URL: https://sztnh.gov.hu/sw/static/file/Patent_Act_XXXIII_1995_EN_20260101.pdf ; in English
- secondary legislation: ---

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, there are not.

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?

No, it does not.

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, there are not.

5. Please provide any additional information relevant to the requirement of novelty 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 other interested parties, captured by patent office practice.

There is a lack of novelty in relation to the claimed solution only in the case if all the features of the examined claim can be identified from one single document of the discovered prior art.
A document questions the novelty of a claimed solution if it can be directly and clearly deduced from the document, including those features which, although not explicitly mentioned, are self-evident to a person skilled in the art.
An important rule in assessing novelty is that a specific embodiment is detrimental to the novelty of a generally formulated claim, but disclosure of the general form is generally not detrimental to the novelty of the specific embodiment.
Assessment of the novelty of selection inventions is dependent on the number of selections identified compared with the prior art.
According to the Patent Act, products for first or further medical use can be assessed as new, if their use in such treatment is not part of the prior art.

Guidelines for patent examination, URL: https://sztnh.gov.hu/en/services/patent/guidelines-for-patent-examination ; only in Hungarian; especially Chapter III.3.3.

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.

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- Guidelines for utility model examination, URL: https://sztnh.gov.hu/en/services/utility-model-protection/guidelines ; https://sztnh.gov.hu/kezdooldal/szolgaltatasok/hasznalatiminta/modszertani-utmutato ; only in Hungarian; especially Chapters VII.1.1. & 4.

C. Inventive Step

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

According to Article 4 of Patent Act, an invention shall be considered to involve an inventive step if, in regard to the state of the art, it is not obvious to a person skilled in the art.
Legal provisions:
- primary legislation: Act XXXIII of 1995 on the Patent Protection of Inventions, URL: https://sztnh.gov.hu/sw/static/file/Patent_Act_XXXIII_1995_EN_20260101.pdf ; in English
- secondary legislation: ---

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?

The relevant date is the priority date. Documents or disclosures that were made public before this date are taken into account. For the purpose of examining inventive step, the extended prior art must be disregarded.

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?

A person skilled in the art is an imaginary person – a single person or a group of people in certain technical fields – who is endowed with average knowledge and skills but has access to the entire state of the art.
Knowledge of other fields is expected of him/her to the extent that the state of the art itself reflects the necessity of this in relation to the solutions falling within the scope of the invention. He/she must also know the solutions falling within the scope of the basic – mandatory – technical knowledge, even if they are outside his/her field of expertise. In general, the mandatory knowledge of a skilled person should be understood as knowledge that can be learned from textbooks and technical books, or practical technical knowledge that can be put into practice during technological development and can be linked to technical development and is known to anyone. In special cases, the mandatory knowledge may also include the content of scientific articles, summaries and even patent documents. The imaginary skilled person can only be attributed with average combining and problem-solving skills.
It is assumed that the skilled person has the tools and skills necessary for professional work, including the performance of standard experiments and the routine combination of knowledge, but his/her imagination is limited. He/she is not capable of creative synthesis of knowledge, that is, activity of inventing.
The skilled person knows the needs that society expects from his or her field of expertise, but if the formulation of the task itself requires creative insight, he or she is unable to do so.
The skilled person is therefore able to create solutions that result in certain technical developments. However, his/her activity can only result in a standard technical solution, with predictable (not unexpected) effects. Such routine construction activity can essentially create solutions that can be expected from a designer, but not inventions.
If the technical level of the field is more advanced, then the skilled person's level of knowledge is also higher. However, it does not mean that he/she should be assumed to have greater (or lesser) combining and problem-solving abilities than a skilled person in another field.

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?

Yes

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 as they relate to the assessment of inventive step or non-obviousness, without restating general rules on what constitutes prior art.*:** It is generally accepted that a person skilled in the art is able to combine any two, and in some cases three prior art documents that fall within or close to his/her field of expertise and whose content does not conflict with each other.

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.

Guidelines for patent examination, URL: https://sztnh.gov.hu/en/services/patent/guidelines-for-patent-examination ; only in Hungarian; especially Chapter III.4.

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

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 standard of inventive step required by patent law for the patentability of an invention is set at the level of knowledge of the person skilled in the art. In contrast, an important quality criterion of a utility model protection is a lower level of creative performance (inventive step), whose standard is given by the level of knowledge of the skilled craftsman. Although the level of theoretical knowledge of a skilled craftsman is lower than that of a person skilled in the art, his/her practical qualification is high. Therefore, the theoretical knowledge of a skilled craftsman is supplemented by the knowledge related to the implementation and practical realization and the experience gained during them. A skilled craftsman has general problem-solving skills, but is not capable of creative synthesis of knowledge.
- Act XXXVIII of 1991 on the Protection of Utility Models, URL: https://sztnh.gov.hu/sw/static/file/utilitymodels_act_xxxviii_1991_en_202503011.pdf ; in English
- Guidelines for utility model examination, URL: https://sztnh.gov.hu/en/services/utility-model-protection/guidelines ; https://sztnh.gov.hu/kezdooldal/szolgaltatasok/hasznalatiminta/modszertani-utmutato ; only in Hungarian; especially Chapters VII.2.

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.: According to Article 3 of Patent Act, a disclosure of the invention that occurred no earlier than six months preceding the date of priority shall not be taken into consideration as part of the state of the art if (a) it was the due to an abuse of the rights of the applicant or his predecessors in title or (b) it was due to the fact that the applicant or his predecessors in title have displayed the invention at an exhibition specified in an announcement by the President of the Hungarian Intellectual Property Office published in the Hungarian Official Gazette.

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 is six months before the priority date.

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

- Result of an infringement committed against the applicant or his legal predecessor,
- Result of the applicant or his legal predecessor presenting the invention at an exhibition specified in the notice of the President of the Hungarian Intellectual Property Office published in the Hungarian Gazette.

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. **:** The applicant must prove the infringement occurred or that the invention was presented at the specified exhibition.

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?

Yes

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. **:** According to Article 21 of Patent Act, the right of prior use shall belong to any person who, in good faith, before the date of priority, in the territory of the country and within the framework of his economic activities, had begun to make or use the subject matter of the invention or had made serious preparations for that purpose. A prior user shall be considered a bona fide user until it is proved that the prior use was based on the inventive step that led to the patented product. Patent protection shall have no effect against a prior user in relation to the extent of making, using or preparation existing at the priority date. The right of prior use may only be transferred together with an entitled economic organization or with that part of the economic organization in which such making, using or preparation has taken place.

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.

Guidelines for patent examination, URL: https://sztnh.gov.hu/en/services/patent/guidelines-for-patent-examination ; only in Hungarian; especially Chapter III. 3.2.3. & 4.

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

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.

According to Article 2 of Utility Model Protection Act, a written description or public use that occurred no earlier than six months preceding the date of priority shall not be taken into consideration if it was made by or with the consent of the applicant or his predecessor in title, or if it was due to an abuse of the rights of the applicant or his predecessor in title.

- Act XXXVIII of 1991 on the Protection of Utility Models, URL: https://sztnh.gov.hu/sw/static/file/utilitymodels_act_xxxviii_1991_en_202503011.pdf ; in English
- Guidelines for utility model examination, URL: https://sztnh.gov.hu/en/services/utility-model-protection/guidelines; https://sztnh.gov.hu/kezdooldal/szolgaltatasok/hasznalatiminta/modszertani-utmutato; only in Hungarian; especially Chapters VII.1.2.

Final review before submission

Confirmation of submission

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