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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Job title

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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?

Within the Maltese legislation, specifically the Patents and Designs Act, CAP 417, prior art is defined in Article 5 (2) and (3), reproduced hereunder for ease of reference:

(2) The prior art means everything which was available to the public in writing or in other graphic form by an oral description, by use or in any other way anywhere in the world before the filing date or, where priority is claimed, before the priority date of the application:

Provided that only the filing date shall be taken into consideration for the purpose of determining prior art, when the claim for priority had been withdrawn or refused or revoked.

(3) The prior art includes also the content of any patent application as filed in, or with effect for, Malta to the extent that such application or the patent granted thereon is published subsequently by or for the Office of the Comptroller:

Provided that the filing date or, where priority is claimed, the priority date of such application is earlier than the date referred to in subarticle (2).

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

Prior art is evaluated based on anything made available to the public, whether in writing, in another graphic form, through an oral description, by use, or in any other manner, anywhere in the world before the filing date or, if priority is claimed, before the priority date of the application.
However, if the priority claim is withdrawn, refused, or revoked, only the filing date shall be considered when determining the prior art.

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?

Under Maltese Patent law, prior art encompasses any information that was made available to the public in any form, whether in writing, in graphic form, through an oral description, by use, or in any other manner, anywhere in the world before the filing date of the application or, where a valid priority claim exists, before the priority date.
This includes written publications, patent documents, images, diagrams, oral presentations, public demonstrations, sales, digital or online disclosures and any other publicly accessible material, with no distinction based on the medium of disclosure. Information is considered part of the prior art if it could be accessed by the public without confidentiality restrictions prior to the relevant date and this assessment focuses on the possibility of access rather than proof of actual access. Additionally, the content of any earlier-filed patent application in or with effect for Malta becomes prior art once it is published, provided its filing or priority date is earlier than that of the application under examination.
If a priority claim is withdrawn, refused, or revoked, only the filing date is considered when determining prior art. The law contains no exclusions based on the form of disclosure, and unpublished or confidential information does not qualify as prior art.

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")?

No

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. :

B. Novelty

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

Under the applicable national law, the requirement of novelty is defined by reference to the concept of prior art.
An invention is considered novel if it does not form part of the prior art, meaning it must not have been made available to the public in any manner, whether in writing, in graphic form, through an oral description, by use, or in any other way, anywhere in the world before the filing date of the application, or, where priority is validly claimed, before the priority date.
If a priority claim is withdrawn, refused, or revoked, only the filing date is taken into account when assessing novelty.
The law further provides that the content of any earlier patent application filed in or with effect for Malta also forms part of the prior art once published by or for the Comptroller, provided that its filing or priority date precedes the relevant date.
Additionally, the Act clarifies that even if a substance or composition itself is known in the prior art, it may still be patentable for a new use under the specific provisions relating to medical methods, provided that such use is not already disclosed in the prior art.

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?

For the purposes of assessing novelty under the applicable law, there are no additional novelty-specific considerations regarding the relevant date or the scope of information beyond those already captured in the definition of prior art.
The Act makes clear that novelty is assessed strictly against all information made available to the public before the filing date, or, where a valid priority claim exists, before the priority date and, where a priority claim is withdrawn, refused, or revoked, only the filing date is used.
The scope of information considered is exhaustive in that it includes any form of public disclosure (written, graphic, oral, by use, or in any other manner) anywhere in the world, as well as the content of earlier patent applications filed in or with effect for Malta once they are published, provided their filing or priority date is earlier.
No additional exceptions, extensions, or special timing rules apply specifically to novelty beyond those explicitly stated.
The only refinement is the special provision preserving patentability for a known substance or composition when claimed for a new medical use, provided that such use is not already in the prior art. However, this does not alter the general framework for determining novelty dates or the scope of information considered.

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, under the applicable law, there are no limitations or qualified forms of novelty, the system applies strict absolute novelty.
Novelty is lost by any public disclosure made anywhere in the world before the filing date (or valid priority date), regardless of the source, medium, or location. The only qualifications relate to how the relevant date is determined (e.g., where a priority claim is withdrawn, refused, or revoked, the filing date becomes the decisive date) but these do not alter the absolute nature of the novelty requirement.
Likewise, the inclusion of earlier Maltese patent filings as prior art once published and the special rule allowing a known substance or composition to remain patentable for a new medical use, do not introduce relative or restricted novelty concepts. They simply clarify how prior art is defined and applied.
Therefore, the law does not provide any relative novelty standard or restricted novelty approach beyond the mechanisms already addressed in the prior art section

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, apart from the provisions already addressed in the discussion on prior art, the applicable law does not introduce any additional rules or contextual factors that modify, limit, or condition what is taken into account as prior art for the purposes of assessing novelty.
The statute applies a uniform, globally oriented standard with no territorial distinctions between domestic and foreign disclosures, and it does not differentiate between forms of disclosure, i.e., written publications, oral disclosures, use, sale, commercialization, or any other means of making information public are treated equivalently for novelty purposes.
Likewise, there are no special contextual conditions affecting particular categories of prior art and no sector-specific, medium-specific, or geography-specific factors alter the assessment.
The only supplementary considerations, such as the inclusion of earlier Maltese Patent applications once published and the rule on substances or compositions being patentable for new medical uses, do not introduce separate contextual filters for determining what counts as prior art but simply clarify how the general prior-art framework applies.

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.

N/A

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.

N/A

C. Inventive Step

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

Under the applicable law, the criterion of inventive step is set out in Article 6 of the Patents and Designs Act.
An invention is considered to involve an inventive step if, having regard to the prior art as defined in Article 5(2), it is not obvious to a person skilled in the art. The provision further specifies that documents referred to in Article 5(3) (i.e., earlier Maltese patent filings that become prior art upon publication) are not to be taken into account when deciding whether the invention involves an inventive step. This creates a deliberate legislative distinction, while such documents form part of the prior art for novelty, they are not considered in assessing obviousness.

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?

For the assessment of inventive step, the applicable law expressly refers back to the prior art as defined in Article 5(2). Thus, the relevant date is the filing date, or, where applicable, the priority date, unless a priority claim has been withdrawn, refused, or revoked (in which case only the filing date applies).
All information made available to the public before that date, written, graphic, oral, use-based, or otherwise, is included. However, the law imposes a special exclusion. Documents under Article 5(3) (earlier Maltese patent filings published after the filing date) must not be considered when assessing inventive step, even though they are part of the prior art for novelty.

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?

In practice, the assessment asks whether, at the relevant date, the invention would have been obvious to a person skilled in the art, taking into account the publicly available prior art under Article 5(2). While the statute does not elaborate on the qualities of this hypothetical person, the standard is understood in line with international patent practice, i.e. a skilled but not inventive practitioner in the relevant technical field, possessing ordinary knowledge and abilities, and capable of routine development work.
The exclusion of Article 5(3) documents means that the skilled person is assumed to have access only to the prior art made available to the public before the filing or priority date, and not to unpublished earlier Maltese applications that later become public.

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 asthey relate to the assessment of inventive step or non-obviousness, without restating general rules on what constitutes prior art.*:** There is one specific statutory limitation: documents under Article 5(3) must not be taken into account in assessing inventive step. This is the only explicit contextual factor provided by law.

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.

The law does not provide supplementary statutory guidance or interpretative rules beyond Article 6. The Maltese system does not conduct substantive examination for inventive step as part of the patent-grant procedure, which means that inventive-step issues generally arise in litigation or third-party challenges, not during routine national examination. This is also reflected in email correspondence within the Office, which confirms that examination is formal rather than substantive. No specific judicial decisions or patent-office manuals interpreting "inventive step" are reflected in the available materials.

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 questionnaire and, if so, kindly provide the relevant information and references.

There are no utility-model provisions or alternative reduced-threshold invention protection systems under Maltese law comparable to those in other jurisdictions. The Patents and Designs Act contains only the patent system (with its inventive-step requirement), which does not rely on inventive step. Accordingly, no additional legal frameworks affect 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 mechanism is found in Article 8 (Disclosure of the invention) of the Patents and Designs Act. Under this provision, a disclosure does not count as prior art if: It occurred no earlier than six months before the filing date; and It was due to: (a) an evident abuse in relation to the applicant or their predecessor, or (b) the invention being displayed at an official or officially recognised international exhibition. This means such disclosures do not destroy novelty and are legally disregarded when determining what forms part of the prior art.

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 grace-period mechanism has a duration of six months and the six-month period is measured backwards from the filing date of the Maltese patent application.
The critical cutoff is the date of filing (not publication, not examination). If priority is claimed, the provision still refers to the filing date, not the priority date (the Act does not extend the grace period by reference to priority). Only disclosures occurring within the six months prior to filing, and falling under Article 8(a) or 8(b), are excluded from prior art.

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

Article 8 provides a very narrow set of exceptions. The only categories protected are:
1. Disclosures due to "evident abuse"
Examples include:
a. Breach of confidentiality
b. Unauthorized leak
c. Misappropriation of information
2. Disclosures made at certain exhibitions
a. Only official or officially recognised international exhibitions qualify.
b. The applicant must have "displayed" the invention there.

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

No

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. **:**

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.* :** These rights arise independently of the grace-period mechanism. Malta provides prior user rights under Article 29 (Prior user). A person is protected if, in good faith and before the filing or priority date and within Malta: They were already using the invention; or They had made effective and serious preparations to use it. Such a person may continue using the invention for the purposes of their enterprise or business. This operates regardless of whether the applicant relies on Article 8's grace period.

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.

There are no Patent Office guidelines published in Malta specifically elaborating grace-period procedure. The Maltese Office conducts formalities examination only, and therefore, Article 8 issues typically arise in litigation or revocation proceedings, not during examination.

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 questionnaire and, if so, kindly provide the relevant information and references.

N/A

Final review before submission

Confirmation of submission

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