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

Respondent Information

First Name:

[redacted]

Last Name:

[redacted]

Country:

Other

Please specify which entity you represent:

ARIPO

IP Office

ARIPO

Job title

Head Search and Examination

Email address:

[redacted]

Email address confirmation:

[redacted]

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?

Section 10(2) of the Harare Protocol define the prior art as everything made available to the public anywhere in the world by means of a written disclosure, including drawings and other illustrations, or an oral disclosure, by use or by display at an exhibition, provided that such publica-tion occurred before the date of filing of the ARIPO patent application or, where, priority is claimed, before the priority date

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

If the publication of the prior art occurred before the date of filing of the ARIPO patent application or, where, priority is claimed, before the priority date.

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?

Everything made available to the public anywhere in the world by means of a written disclosure, including drawings and other illustrations, or an oral disclosure, by use or by display at an exhibition.

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. : Section 10(3) provides that, the contents of ARIPO patent applications filed prior to the date referred to in paragraph 2 and published on or after that date shall be considered as comprised in the prior art.

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.

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.

B. Novelty

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

Section 10(1) of the Harare Protocol provides that an invention shall be considered to be new if it is not anticipated by 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?

Section 11 of the Harare Protocol provides that disclosure of the invention shall not be taken into consideration if it occurred not more than six (6) months before the date of filing of the ARIPO patent application and if it was due to or in consequence of an evident abuse in relation to the applicant or his legal predecessor or the applicant or his legal predecessor displayed the invention at an official or officially recognized international exhibition falling within the terms of the Convention on International Exhibitions, 1928.

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?

Absolute novelty requirement

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

C. Inventive Step

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

Section 12 of the Harare Protocol provides that an invention shall be considered as involving an inventive step if, having regard to the State of the art, it is not obvious to a person skilled in the art.

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?

If the publication the prior art occurred before the date of filing of the ARIPO patent application or, where, priority is claimed, before the priority date

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?

Problem-Solution-Approach

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.*:** Section 12(2) of the Harare Protocol provides that the content of an earlier ARIPO patent application filed prior to the filing date of an application and published after the filing date of the application shall not be considered in the assessment of the inventive step.

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.

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.

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.: Section 11(1) of the Harare Protocol provides that the disclosure of the invention shall not be taken into consideration if it occurred not more than six (6) months before the date of filing of the ARIPO patent application and if it was due to or in consequence of an evident abuse in relation to the applicant or his legal predecessor; or the applicant or his legal predecessor displayed the invention at an official or officially recognized international exhibition falling within the terms of the Convention on International Exhibitions, 1928

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?

Six (6) months before the date of filing of the ARIPO patent application

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

An abuse in relation to the applicant or his legal predecessor; or the applicant or his legal predecessor displayed the invention at an official or officially recognized international exhibition falling within the terms of the Convention on International Exhibitions, 1928.

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 the invention has been displayed at an official or officially recognized international exhibition, when filing the ARIPO patent application, the applicant is required to file a supporting certificate within 4 months from the date of filing of an ARIPO application.

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.

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.

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

E. Sufficiency of Disclosure

Sufficiency_of_Disclosure.pdf

F. Exclusions from Patentable Subject Matter

Exclusions_from_Patentable_Subject_Matter.pdf

G. Exceptions and Limitations to Patent rights

Exceptions_and_Limitations_to_Patent_Rights.pdf

Final review before submission

Confirmation of submission

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