

Exhibit 1

Grace Period

Notice: Language that appears in *italic and between brackets, [example]*, is still under discussion by the Industry Trilateral. Language in adjacent brackets represents possible alternative language.

Objective and principles

- (i) **Protect All Inventors and Applicants Against Loss of Rights Due to Pre-Filing Disclosures** - If innovation is to be encouraged as the engine of economic growth, there is a clear need to protect inventors from inadvertent, unauthorized, unintentional, and even intentional disclosures of their patentable information that may later be asserted as patentability-destroying prior art against their subsequently filed applications.
- (ii) **Provide Legal Certainty for Third Parties** - A third party, who becomes aware of a pending patent application claiming an invention of interest to them, and who also is aware of a public disclosure about the invention prior to the filing date of the application, wishes to know whether the public PFD is prior art to the application. However, where a grace period is permitted and the relationship between the public PFD and the pending application is not known, there is legal uncertainty for the third party.
- (iii) **Provide a Safety-Net Grace Period That Discourages a Publish-First Policy** - A grace period is an exception to the absolute novelty standard and, as such, should be established with criteria and qualifications that encourages inventors and Applicants to "file first," while discouraging the adoption of a "publish first" policy that leads to uncertainty and unpredictability. No separate or additional patent rights should arise from the graced disclosure.
- (iv) **Provide a Global Solution** - Because patent strategies of Applicants are necessarily global in a global economy, the protections provided by a safety net grace period should be uniform and applicable world-wide. Thus, a globally harmonized approach, endorsed by all jurisdictions, will be necessary. Countries currently with no current grace period and countries currently with differing grace periods must change their laws to implement a single international grace period.

Individual elements resulting from the recommended approach:

| Feature | Details |
|-----------------------|--|
| Grace period duration | It should extend up to [6][12] months from the pre-filing disclosure (PFD) to the filing date or priority date, whichever is earlier, of the patent application. |

| Feature | Details |
|---|---|
| <p>Prejudicial effect of a disclosure arising during grace period</p> | <p>Grace Period is limited to Disclosures by/for/from the Inventor/Applicant and Includes Disclosures Derived from the Inventor/Applicant - Disclosures of a claimed invention that are made prior to the filing of a patent application may be graced only if (1) they originate with the Applicant/inventor himself, whether they are made due to inadvertence or necessity, or (2) they originate with a third party who has obtained access to the invention directly or indirectly from the Applicant/inventor or (3) they originate with a third party who has obtained access to the invention through an abuse in relation to the Applicant/inventor. All types of public disclosure by/for/from the Applicant/inventor, regardless of medium or forum, may be graced.</p> <p>No Grace Period for Independently Developed and Published Subject Matter – intervening disclosures of subject matter, which resulted from the independent work of third parties, are always considered potential prior art.</p> <p>Grace Period for Partially Re-disclosed and Partially Independently Developed and Published Subject Matter - In the case where a part of the third party intervening disclosure is derived from the Applicant/inventor and a part resulted from the independent work of a third party is different from the PFD, the redisclosed derived portion would be non-prejudicial, and the different portion would be potentially prejudicial prior art depending on how significant the difference was from the redisclosed derived portion.</p> <p>Presumptions and Burden of Proof for Derived Publications - Recognizing that it may be difficult to prove that a third party intervening disclosure was derived from a prior PFD of an Applicant/inventor, certain presumptions are made, subject to rebuttal. Notwithstanding a listing in a timely filed Statement, the qualification of a PFD to be non-prejudicial can be challenged by Offices and third parties[, <i>and the Applicant would bear the burden of proving that a particular PFD meets the requirements for it to be considered as non-prejudicial</i>].</p> |
| <p>Clarifications</p> | <p>Any third party could file a third party observation or an opposition type proceeding or raise the independent development in litigation.</p> |

| Feature | Details |
|---------------------|---|
| Statement | Applicant must file a Statement identifying the [unique] PFDs to be graced. |
| Clarifications | <p>Creates record notice to third parties that the disclosure is not prejudicial to Applicant.</p> <p>Ideally the Statement will be filed together with the patent application.</p> |
| Administrative fees | <p>There will also be other opportunities during prosecution, in response to a third party observation up to grant of a patent [<i>and throughout the life of the patent</i>] to file the Statement. The Applicant [<i>or Patentee</i>] will pay administrative fees, which may increase over time, to encourage prompt filing of the Statement claiming the benefit of a grace period. The details of such fee would be determined by the Offices.</p> |
| Clarifications | |
| Early publication | <p>[<i>Upon timely filing of a Statement, publication of the patent application will be accelerated to be 18 months after the PFD</i>].</p> |
| Clarification | <p>[<i>Early publication ensures the same notice to third parties about inchoate rights as if the application was filed the day before disclosure allowing parties to conduct freedom to operate studies and design around.</i>]</p> |