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To: [CIPO Consultations / OPIC consultations \(IC\)](#)
Subject: Consultation on principles guiding the harmonization of substantive patent law
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Comment on issue 1 : Non-prejudicial disclosures / grace period

The AIPPI has looked at this issue also in 2013.

Various reports can be found here:
<http://aippi.org/committee/grace-period-for-patents/>

In particular the resolutions that resulted from 2013:
<http://aippi.org/wp-content/uploads/committees/233/RS233English.pdf>

A certain level of consensus had been reached at this meeting on issues – but that no longer seems to be the case from the Group B+ discussions. At which point do the Group B+ discussions want to reinvent the wheel when consensus has already been apparently reached at another forum (with more varied participants possibly representing a larger international consensus?)

Here are examples of some of the resolutions:

Resolves that:

- 1) *Internationally, a grace period should be established in order to exclude from the prior art against the inventor or his successor in title, any disclosure to the public by means of a written or oral description, by use, or in any other way, made:*
 - a) *by the inventor or his successor in title, irrespective of whether such disclosure is intentional or not;*
 - b) *by a third party who derived the content of the disclosure from the inventor or his successor in title, irrespective of whether such disclosure results from an abuse in relation to or was made against the will of the inventor or his successor in title.*
- 2) *The grace period shall not exclude from the prior art:*
 - a) *disclosures from a third party which are not derived from the inventor or his successor in title, even if said disclosures occur after a non-prejudicial disclosure;*
 - b) *disclosures resulting from the proper publication by an Intellectual Property Office of an application for or the grant of an intellectual property right filed by the applicant or his successor in title.*
- 3) *The duration of the grace period shall be twelve months preceding the filing date of the patent application or if priority is claimed, the earliest relevant priority date.*
- 4) *The applicant or his successor in title shall benefit from the grace period without being required to deposit a declaration of such disclosure.*
- 5) *The grace period shall have no effect on the date of publication of the patent application.*
- 6) *When a disclosure is cited the burden shall be on the party claiming benefit of the grace period to prove that the disclosure shall be excluded from the prior art.*

Best regards

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