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# Novelty Grace Periods: A National Law Survey

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# Novelty Grace Periods: A National Law Survey

Updated January 23, 2013  
Frederik W. Struve

This survey includes all national law statutes (known to the author), conveying broader rights when compared with Article 55 of the European Patent Convention. The statutes provided in this survey have primarily been retrieved from the World Intellectual Property Organization (WIPO) and from national patent offices where appropriate. Links to the materials used are provided after each statute.

The survey first lists EPC Article 55. The national laws included for comparison, convey broader rights to applicants, e.g. by allowing publication to a learned society, allowing certain enumerated disclosures, or allowing all acts disclosing the invention either within six or twelve months.

Briefly, the survey documents that 72 countries offer broader rights to applicants, when compared with EPC Article 55. Of those countries, 46 include the right to claim priority under the Paris Convention. In all, 61 contracting states to the Patent Cooperation Treaty have national law with a broader grace period when compared to EPC Article 55.

## Countries with Novelty Grace Periods Including Right to Priority

Albania	Ecuador	Mauritius
Algeria	El Salvador	Mexico
Andorra	Estonia	Mozambique
Angola	Ethiopia	Nicaragua
Antigua & Barbuda	Gambia	Panama
Argentina	Georgia	Papua New Guinea
Armenia	Ghana	Paraguay
Bahrain	Guatemala	Peru
Belize	Honduras	Philippines
Bhutan	Iraq	Rwanda
Bolivia	Jordan	Saint Kitts & Nevis
Botswana	Kenya	Tonga
Brazil	Kyrgyzstan	Turkey
Colombia	Lesotho	Ukraine
Costa Rica	Liberia	Uruguay
Dominica		

PCT Contracting States with a Broader Grace Period under National Law when Compared with EPC Article 55

Albania	Estonia	Papua New Guinea
Algeria	Gambia	Peru
Angola	Georgia	Philippines
Antigua & Barbuda	Ghana	Russia
Armenia	Guatemala	Rwanda
Australia	Honduras	Saint Kitts & Nevis
Bahrain	India	Saint Vincent & Grenadines
Belarus	Indonesia	Singapore
Belize	Israel	South Africa
Brunei Darussalam	Japan	South Korea
Botswana	Kenya	Spain
Brazil	Kyrgyzstan	Sri Lanka
Canada	Lesotho	Thailand
Chile	Liberia	Tonga
China	Malaysia	Turkey
Colombia	Mexico	Uganda
Costa Rica	Mozambique	United States
Dominica	New Zealand	Ukraine
Dominican Republic	Nicaragua	Uzbekistan
Ecuador	Panama	Vietnam
El Salvador		

European Patent Convention

Part II, Chapter I, Article 55 – Non-prejudicial Disclosures

(1) For the application of Article 54, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:

- (a) an evident abuse in relation to the applicant or his legal predecessor, or
- (b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972.

(2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Implementing Regulations.

European Patent Convention (2010), available at

[http://documents.epo.org/projects/babylon/eponet.nsf/0/7bacb229e032863dc12577ec004ada98/\\$FILE/EPC\\_14th\\_edition.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/7bacb229e032863dc12577ec004ada98/$FILE/EPC_14th_edition.pdf).

## 1. Albania

### Article 11 – Period of Immunity,

1) The disclosure of information that would affect the patentability of an invention shall not be taken in consideration, if it occurred no earlier than 6 months preceding the filing date or the priority date of the claimed invention, when:

- a) the publication is made by the applicant or his predecessor in title;
- b) the publication is made by a third party who has received the information directly or indirectly from the applicant or his predecessor in title;
- c) the applicant or his legal predecessor has displayed the invention at an official, or officially recognized, international exhibition.
- ç) the publication is made by a an office and the information is found:
  - i) in another application filed by the applicant or his predecessor in title and which should not have been published by the office;
  - ii) in an application filed by a third party without the knowledge and the permission of the applicant or his predecessor in title, although the party received the information directly or indirectly from the applicant or his predecessor in title.

2. In the case of paragraph 1(c), paragraph 1 shall apply only if the applicant states, when filing the patent application with GDPM that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Implementing Regulation.

Law No. 9977 dated 07.07.2008 On Industrial Property (2008), *available at* <http://www.alpto.gov.al/foto/pdf/LAW%20NO%209947%20DATE%2007%2007%202008%20ON%20INDUSTRIAL%20PROPERTY.pdf>

## 2. Algeria

### Chapter 1, Article 4

An invention shall be considered novel if not included in the state of art. This case includes all that is offered to the public by a written or oral description, by use or any other means around the world one day prior to filing the application for protection or the date of claiming priority thereof.

An invention shall not be considered publicly circulated once it is introduced within 12 months prior to the date of filing the patent or the priority date as a result of an act carried out by the applicant or his predecessor in right in accordance with Article 14 below, or an abusive act taken by a third party against the applicant or his predecessor in right.

Order No. 03–07 dated 19 Jumada I 1424 corresponding to July 19, 2003 related to patents of invention (2003). English translation from The Association for the Protection of Industrial Property in the Middle East and North Africa (APPIMAF), available at <http://appimaf.org/english/download.asp?myfile=../uploads/laws/ALGERIA%20Patent%20Law>

[%20no.%2003-07%20of%202003.pdf](#). Official French language version available at <http://www.inapi.org/PDF/Textes/ord%20relative%20aux%20brevets%20d'invention.pdf>

### 3. Andorra

#### Article 6 - Grace period

(1) Disclosure of information of an invention claimed in an application shall not affect the patentability of that invention where the information was disclosed no earlier than 6 months prior to the filing date or, where priority is claimed, the priority date of the application:

(a) by the inventor or any person who, at the filing date of the application, had the right to the patent;

(b) by a Patent Office and the information was contained:

(i) in another application filed by the inventor and should not have been disclosed by the Office, or,

(ii) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information direct or indirectly from the inventor;

(c) by a third party which obtained the information direct or indirectly from the inventor.

(2) The effects of paragraph (1) may be invoked at any time.

Patent Law, dated 10/06/1999 (1999), available at

[http://www.omp.ad/images/stories/Documents/angles/llei\\_patents.pdf](http://www.omp.ad/images/stories/Documents/angles/llei_patents.pdf)

### 4. Angola

#### Article 3 – Patentable Inventions

1. An invention shall be patentable if it is new, involves an inventive step and is capable of being applied industrially.

2. An invention that is not included in prior art shall be regarded as new.

3. Prior art shall include everything that became accessible to the public, inside or outside the country, before the date of deposit or before the priority of the patent application, by means of oral or written description or any other means deemed suitable for this purpose.

4. For the purposes referred to in the preceding article, disclosure to the public shall not be taken into consideration where it occurs within the six months preceding the date of deposit or, where applicable, of the priority of the patent application, or where it directly or indirectly concerns acts committed by the depositor or his legitimate predecessor.

Law No. 3/92 on Industrial Property of February 28, 1992 (1992), available at

[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=202194](http://www.wipo.int/wipolex/en/text.jsp?file_id=202194).

### 5. Antigua and Barbuda

#### Part I, 3 – Patentable Inventions

- (1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.
- (2) An invention is new if it is not anticipated by prior art.
- (3) Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention.
- (4) For the purposes of subsection (3), disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application, and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

The Patents Act 2003 (2003), available at <http://laws.gov.ag/acts/2003/a2003-23.pdf>.

## 6. Argentina

Chapter I, Article 5.

Disclosure of an invention shall not affect the novelty thereof where, within ONE (1) year prior to the filing date of the patent application, or the date of recognized priority where applicable, the inventor or his/her successors in title have made the invention known by any means of communication or have displayed it at a national or international exhibition. The application shall in such a case be accompanied by documentary supporting evidence under such conditions as may be laid down in the regulations under this Law.

Law No. 25.859 issued on January 8, 2004, amending the Law No. 24.481 on Patents and Utility Models (as amended by Law 24.572 Consolidated Text of 1996 - BO 03/22/1996) (2004). English text of 1996 law (article 5 unamended in most recent revision) available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=225503](http://www.wipo.int/wipolex/en/text.jsp?file_id=225503). Original language version available at <http://www.inpi.gov.ar/pdf/LeyPatentesyModelos.pdf>.

## 7. Armenia

Chapter 2, Article 12 - Public Disclosures of Invention Contents Non-prejudicial to Patent  
For the purposes of Article 11 of this Law disclosure of contents of the invention shall not be taken into consideration if it has occurred within 12 months before the filing of the application on invention, and in case of request on priority date, within 12 months before the date of priority by the inventor (applicant) or any person having obtained the information on the contents of the invention directly or indirectly from him (the burden of proof of the foregoing shall be on the applicant).

Law on Inventions, Utility Models and Industrial Designs, Adopted on 10 June 2008 (2008), available at <http://www.aipa.am/en/legislation/11/2/#pin>.

## 8. Australia

Division 2, 24 - Validity not affected by certain publication or use

- (1) For the purpose of deciding whether an invention is novel or involves an inventive step or an innovative step, the person making the decision must disregard:
- (a) any information made publicly available, through any publication or use of the invention in the prescribed circumstances, by or with the consent of the nominated person or patentee, or the predecessor in title of the nominated person or patentee; and
  - (b) any information made publicly available without the consent of the nominated person or patentee, through any publication or use of the invention by another person who derived the information from the nominated person or patentee or from the predecessor in title of the nominated person or patentee;  
but only if a patent application for the invention is made within the prescribed period.
- (2) For the purpose of deciding whether an invention is novel or involves an inventive step or an innovative step, the person making the decision must disregard:
- (a) any information given by, or with the consent of, the nominated person or the patentee, or his or her predecessor in title, to any of the following, but to no other person organisation:
    - (i) the Commonwealth or a State or Territory, or an authority of the Commonwealth or a State or Territory;
    - (ii) a person authorised by the Commonwealth or a State or Territory to investigate the invention; and
  - (b) anything done for the purpose of an investigation mentioned in subparagraph (a)(ii).

Patents Act 1990 (2011), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=203130](http://www.wipo.int/wipolex/en/text.jsp?file_id=203130).

## 2.2 Publication or use: prescribed circumstances

### (1) In this Regulation:

Paris Convention means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as in force for Australia on the commencing day.

recognised exhibition means:

- (a) an official or officially recognised international exhibition within the meaning of Article 11 of the Paris Convention or Article 1 of the Convention relating to International Exhibitions done at Paris on 22 November 1928, as in force for Australia on the commencing day; or
  - (b) an international exhibition recognised by the Commissioner by a notice published in the Official Journal before the beginning of the exhibition.
- (1A) For paragraph 24 (1) (a) of the Act, the circumstance that there was a publication or use of the invention within 12 months before the filing date of the complete application, is a prescribed circumstance.
- (2) For paragraph 24 (1) (a) of the Act the following are also prescribed circumstances:
- (a) the showing or use of the invention at a recognised exhibition;
  - (b) the publication of the invention during a recognised exhibition at which the invention was shown or used;
  - (c) the publication of the invention in a paper written by the inventor and:
    - (i) read before a learned society; or
    - (ii) published with the inventor's consent by or on behalf of a learned society; or

- (d) the working in public of the invention within the period of 12 months before the priority date of a claim for the invention:
  - (i) for the purposes of reasonable trial; and
  - (ii) if, because of the nature of the invention, it is reasonably necessary for the working to be in public.
- (3) Paragraphs (2) (a) and (b) are prescribed circumstances only if:
  - (a) at the time the application is made for a patent for the invention, the applicant has filed a notice stating that the invention has been exhibited; and
  - (b) the applicant has filed a statement issued by the authority responsible for the exhibition in which:
    - (i) the invention and the exhibition are identified; and
    - (ii) the date of the opening of the exhibition is given; and
    - (iii) if the first disclosure of the invention during the exhibition did not take place on that date — the date of that disclosure.
- (4) For paragraph (3) (b), the statement must be filed:
  - (a) for an application for a standard patent — before the complete specification in respect of the application is open to public inspection; or
  - (b) for an application for an innovation patent — within 6 months from the filing date of the complete specification in respect of the application.

### 2.3 Publication or use: prescribed periods

- (1A) For information of the kind referred to in paragraph 24 (1) (a) of the Act, if the applicant relies on the circumstance in subregulation 2.2 (1A), the prescribed period is the period of 12 months after the information was first made publicly available.
- (1) For information of the kind referred to in paragraph 24 (1) (a) of the Act, if the applicant relies on a circumstance in subregulation 2.2 (2), the prescribed period is:
  - (a) in the case of a circumstance mentioned in paragraph 2.2 (2) (a) or (b):
    - (i) if the application claims priority from a basic application made within 6 months of the date of the first showing or use of the invention at a recognised exhibition — 12 months from the making of the basic application; and
    - (ii) in any other case — 6 months after the first showing or use of the invention at the exhibition; and
  - (b) in the case of the circumstance mentioned in paragraph 2.2 (2) (c):
    - (i) if the application claims priority from a basic application made within 6 months of the date of the first reading or publication referred to in that paragraph — 12 months from the making of the basic application; and
    - (ii) in any other case — 6 months after the first reading or publication; and
  - (c) in the case of the circumstance mentioned in paragraph 2.2 (2) (d) — 12 months from the start of the first public working of the invention referred to in that paragraph.
- (2) For the purposes of subsection 24 (1) of the Act, in the case of information of the kind referred to in paragraph 24 (1) (b) of the Act, the prescribed period is 12 months from the day when the information referred to in that paragraph became publicly available.
- (3) Subregulation (4) applies:
  - (a) if an application for a patent is a divisional application:

- (i) under section 79B of the Act for an invention disclosed in the specification filed with a previous application for a standard patent (the original application); or
  - (ii) under section 79C of the Act for an invention disclosed in the specification filed in respect of an application for an innovation patent (the original application); and
- (b) only to information disclosed in the divisional application that was disclosed in the original application.
- (4) For determining the prescribed period for subsection 24 (1) of the Act, the filing date of the divisional application is taken to be the filing date of the original application.

Patents Regulations 1991 (compilation prepared 12 December 2009), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=182746](http://www.wipo.int/wipolex/en/text.jsp?file_id=182746).

## 9. Bahrain

### Article 2

- (a) An invention shall be considered new if not contained in previous industrial technology state.
- (b) An invention shall be considered as involving an inventive step if it would not have been obvious to a person having ordinary skills in the art, subject of the patent.
- (c) An invention shall be considered as industrially applicable if it is possible to apply it in agriculture, fishing, services, handicrafts or any kind of industry in the broadest sense of the word.
- (d) The patent shall not be granted if the Invention subject was disclosed to the public in the Kingdom of Bahrain or abroad in writing or verbally or by use or by any other method of realizing contents of the invention prior to the date of submitting the application for purpose of granting a patent or date of priority on request.
- (e) For the purposes of clauses (A), (B), (C) and (D) of this Article, the following shall not be considered a Disclosure:
  - 1- Disclosure of the invention to the public shall be inconsiderable if it took place at official international exhibitions or officially recognized exhibitions, pursuant to Article (34) of this law, subject to disclosure in the patent request of all details related to the said disclosure.
  - 2- Disclosure of an invention shall also be inconsiderable, if it was disclosed by the applicant or by his permission or through him all of which the disclosure was conducted within the 12 months preceding submitting a patent applications or date of priority upon request.

Act No. 14 of 2006 amending some provisions of Law No. 1 of 2004 in respect of Patents and Utility Models (2006), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=125339](http://www.wipo.int/wipolex/en/text.jsp?file_id=125339).

## 10. Bangladesh

### Article 40.

The exhibition of an invention at an industrial or other exhibition to which the provisions of this section have been extended by the Government by notification in the official Gazette, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention or the publication of any description thereof, during or after the period of the holding of the exhibition, by any person elsewhere without the privity or consent of the inventor or the reading of a paper by an inventor before a learned society, or the publication of that paper in the society's transactions shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention, or the validity of any patent granted on the application: Provided that- (a) the exhibitor exhibiting the invention or the inventor reading the paper or authorising the publication thereof, as the case may be, gives to the Registrar previous notice in the prescribed form; and (b) the application for a patent is made before or within six months from the date of first exhibiting the invention or of the reading of the paper, as the case may be, or when it has not been so read, of the said publication.

The Patents and Designs Act (Act No. II of 1911) (2003), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=191604](http://www.wipo.int/wipolex/en/text.jsp?file_id=191604).

## 11. Belarus

### Article 2 - The Conditions of Granting the Legal Protection to the Invention

1. The present Law the invention in any sphere of mechanics is granted the legal protection, if it is referred to the product or means being new, has invention level and industrial application.

For the purposes of the present Law the "product" is the subject as the result of the human work, the "means"—the process, way or method of carrying out the inter-connected actions at the object(s) and also the application of the process, way, method or product for the certain purpose.

The invention is new, if it is the part of the technical level.

The invention has the invention level, if it is vividly does not derive from the technical level for the specialist.

The technical level includes any information being public in the world before the priority of the invention. At establishing the new character of the invention to the technical level all not recalled applications on inventions and industrial models submitted by other persons on the territory of the Republic of Belarus or the inventions or industrial models patented in the Republic of Belarus are also included on the condition of their earlier priority.

The invention is industrially applicable, if it can be used in the industry, agriculture, healthcare and other spheres of activity.

The disclosure of information relating to the invention by the author, applicant or any other person that has received the information from them directly or indirectly at which the information of the essence of the invention become publicly known, if the application on the invention is submitted to the patent body not later than 12 months form the date of disclosure of information. At that the burden of evidence of the given fact is laid on the applicant.

Law of the Republic of Belarus No. 160-Z of December 16, 2002 on Patents for Inventions, Utility Models and Industrial Designs (2010). English text of 2007 law (article 2 unamended in most recent revision) available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=184258](http://www.wipo.int/wipolex/en/text.jsp?file_id=184258).

Original language version of 2010 law available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=230304](http://www.wipo.int/wipolex/en/text.jsp?file_id=230304).

## 12. Belize

### Section 9 - Novelty

- (1) An invention is considered to be new if it does not form part of prior art.
- (2) For the purpose of this Act, prior art in relation to an invention means anything which has, at any time prior to the filing date or, where priority is claimed, the priority date, of the application claiming the invention, been disclosed to the public anywhere in the world by oral or written description, by use, or in any other way.
- (3) For the purpose of subsection (2), the disclosure to the public of matter constituting an invention shall not be taken into consideration if it occurred within twelve months immediately preceding the filing date or, where priority is claimed, the priority date of the application, and the disclosure was due to or in consequence of:
  - (a) acts committed by the applicant or his predecessor in title; or
  - (b) an abuse committed by a third party with regard to the applicant or his predecessor in title.

Patents Act - Cap. 253 (amended by Patents (Amendment) Act, No. 40 of 2005) (2005), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=125470](http://www.wipo.int/wipolex/en/text.jsp?file_id=125470).

## 13. Bhutan

### Part II, Article 5 – Patentable Invention

- (1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.
- (2)(a) An invention is new if it is not anticipated by prior art.
- (b) Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention.
- (c) For the purposes of paragraph (b), disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application, and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

The Industrial Property Act of the Kingdom of Bhutan, 2001 (2001), available at <http://www.wipo.int/wipolex/en/details.jsp?id=5211>.

## 14. Bolivia

### Article 17.

For the purposes of determining patentability, no account shall be taken of any disclosure of the contents of the patent during the year prior to the filing date of the application in the Member Country or during the year before the date of priority, if claimed, providing that the disclosure was attributable to:

- a) the inventor or the inventor's assignee;
- b) a competent national office that publishes the contents of a patent application filed by the inventor or the inventor's assignee in contravention of the applicable provision; or,
- c) a third party who obtained the information directly or indirectly from the inventor or the inventor's assignee.

Decision No. 486 of September 14, 2000 - Common Regime on Industrial Property (2000), available at <http://www.wipo.int/wipolex/en/details.jsp?id=9451>.

## 15. Botswana

### Part II, Section 8 – Patentable Inventions

- (1) An invention shall be patentable if it is new, involves an inventive step, and is capable of industrial application.
- (2) An invention may be or relate to a product or a process.
- (3) An invention is considered to be new if it does not form part of the state of the art.
- (4) For the purposes of this Act, the state of the art in relation to an invention, means anything which has been disclosed to the public, whether in Botswana or outside Botswana, in a tangible form, orally, by use or in any other way, prior to the filing or priority date of the application claiming the invention.
- (5) For the purpose of determining the novelty of a claimed invention, a matter contained in another application filed with the Office and having an earlier filing or priority date shall form part of the state of the art, if the application is published under this Act.
- (6) Disclosure of information which would otherwise affect the patentability of an invention claimed in the application shall not affect the patentability of that invention where the information was disclosed by —
  - (a) the applicant or his or her predecessor in title; or
  - (b) a third party that obtained the information directly or indirectly from the applicant or his or her predecessor in title, if the disclosure took place —
    - (i) during the twelve months preceding the filing date; or
    - (ii) where priority is claimed, during the twelve months preceding the priority date of the application.
- (7) An invention shall be considered as involving an inventive step if, having regard to the state of the art relevant to the application claiming the invention as defined in subsection (4), it would not have been obvious to a person having ordinary skill in the art.
- (8) An invention shall be considered as being capable of industrial application if it can be used in trade, or in any kind of industry including handicraft, agriculture, fishery and other services.

Industrial Property Act, 2010 (2010), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=224951](http://www.wipo.int/wipolex/en/text.jsp?file_id=224951).

## 16. Brazil

### Article 12.

The disclosure of an invention or utility model shall not be considered to be state of the art if it occurred during the 12 (twelve) months preceding the date of filing or of priority of the patent application, if made:

- I. by the inventor;
- II. by the Instituto Nacional da Propriedade Industrial—INPI (National Institute of Industrial Property), by means of official publication of the patent application filed without the consent of the inventor, based on information obtained from him or as a consequence of actions taken by him; or
- III. by third parties, based on information obtained directly or indirectly from the inventor or as a consequence of actions taken by him.

Law No. 9.279 of May 14, 1996 (Industrial Property Law) (amended by Law No. 10.196 of February 14, 2001) (2001), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=125397](http://www.wipo.int/wipolex/en/text.jsp?file_id=125397).

## 17. Brunei Darussalam

### Part III, Section 14 – Novelty

- (1) An invention shall be taken to be new if it does not form part of the state of the art.
- (2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in Brunei Darussalam or elsewhere) by written or oral description, by use or in any other way.
- (3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied -
  - (a) that matter was contained in the application for that other patent both as filed and as published; and
  - (b) the priority date of that matter is earlier than that of the invention.
- (4) For the purposes of this section, the disclosure of matter constituting an invention shall be disregarded in the case of a patent or an application for a patent if occurring later than the beginning of the period of 12 months immediately preceding the date of filing the application for the patent and either
  - (a) the disclosure was due to, or made in consequence of, the matter having been obtained unlawfully or in breach of confidence by any person
    - (i) from the inventor or from any other person to whom the matter was made available in confidence by the inventor or who obtained it from the inventor because he or the inventor believed that he was entitled to obtain it; or
    - (ii) from any other person to whom the matter was made available in confidence by any person mentioned in sub-paragraph (i) or in this sub-paragraph or who

- obtained it from any person so mentioned because he or the person from whom he obtained it believed that he was entitled to obtain it;
- (b) the disclosure was made in breach of confidence by any person who obtained the matter in confidence from the inventor or from any other person to whom it was made available or who obtained it, from the inventor;
- (c) the disclosure was due to, or made in consequence of, the inventor displaying the invention at an international exhibition and the applicant states, on filing the application, that the invention has been so displayed and also, within the prescribed period, files written evidence in support of the statement complying with any prescribed condition; or
- (d) the disclosure was due to, or made in consequence of, the inventor describing the invention in a paper read by him or another person with his consent or on his behalf before any learned society or published with his consent in the transactions of any learned society.
- (5) In subsection (41(d)), "learned society" includes any club or association constituted in Brunei Darussalam or elsewhere whose main object is the promotion of any branch of learning or science.
- (6) In this section, references to the inventor include references to any proprietor of the invention for the time being.
- (7) In the case of an invention consisting of a substance or composition for use in a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body, the fact that the substance or composition forms part of the state of the art shall not prevent the invention from being taken to be new if the use of the substance or composition in any such method does not form part of the state of the art.

Patents Order, 2011 (2012), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=253996](http://www.wipo.int/wipolex/en/text.jsp?file_id=253996).

## 18. Canada

### Section 28.2 – Subject Matter of Claim Must not be Previously Disclosed

- (1) The subject-matter defined by a claim in an application for a patent in Canada (the “pending application”) must not have been disclosed
- (a) more than one year before the filing date by the applicant, or by a person who obtained knowledge, directly or indirectly, from the applicant, in such a manner that the subject-matter became available to the public in Canada or elsewhere;
- (b) before the claim date by a person not mentioned in paragraph (a) in such a manner that the subject-matter became available to the public in Canada or elsewhere;
- (c) in an application for a patent that is filed in Canada by a person other than the applicant, and has a filing date that is before the claim date; or
- (d) in an application (the “co-pending application”) for a patent that is filed in Canada by a person other than the applicant and has a filing date that is on or after the claim date if
- (i) the co-pending application is filed by

- (A) a person who has, or whose agent, legal representative or predecessor in title has, previously regularly filed in or for Canada an application for a patent disclosing the subject-matter defined by the claim, or
- (B) a person who is entitled to protection under the terms of any treaty or convention relating to patents to which Canada is a party and who has, or whose agent, legal representative or predecessor in title has, previously regularly filed in or for any other country that by treaty, convention or law affords similar protection to citizens of Canada an application for a patent disclosing the subject-matter defined by the claim,
- (ii) the filing date of the previously regularly filed application is before the claim date of the pending application,
- (iii) the filing date of the co-pending application is within twelve months after the filing date of the previously regularly filed application, and
- (iv) the applicant has, in respect of the co-pending application, made a request for priority on the basis of the previously regularly filed application.

Patent Act (R.S.C., 1985, c. P-4) (2006), available at <http://laws-lois.justice.gc.ca/eng/acts/P-4/page-17.html#docCont>.

## 19. Chile

### Article 42

The disclosures made within twelve months prior to the filing of the application will not be considered for the purpose of determining the novelty of the invention nor the inventive level when said disclosure:

- a) was made, authorized or derives from the applicant of the patent;
- b) has been made on account or deriving from abuses or disloyal practices affecting the applicant or its heirs

Law No. 20.160 amending Law No. 19.039 on Industrial Property (2007), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=175348](http://www.wipo.int/wipolex/en/text.jsp?file_id=175348). (English translation provided by Alessandri & Compañia at <http://www.alessandri.cl/newsletter/news1-feb07a.htm>).

## 20. China

### Chapter II, Article 24

Within six months before the date of application, an invention for which an application is filed for a patent does not lose its novelty under any of the following circumstances:

- (1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;

- (2) It is published for the first time at a specified academic or technological conference; and
- (3) Its contents are divulged by others without the consent of the applicant.

Patent Law of the People's Republic of China (2008), available at [http://english.sipo.gov.cn/laws/lawsregulations/201101/t20110119\\_566244.html](http://english.sipo.gov.cn/laws/lawsregulations/201101/t20110119_566244.html).

## 21. Colombia

### Article 17.

For the purposes of determining patentability, no account shall be taken of any disclosure of the contents of the patent during the year prior to the filing date of the application in the Member Country or during the year before the date of priority, if claimed, providing that the disclosure was attributable to:

- a) the inventor or the inventor's assignee;
- b) a competent national office that publishes the contents of a patent application filed by the inventor or the inventor's assignee in contravention of the applicable provision; or,
- c) a third party who obtained the information directly or indirectly from the inventor or the inventor's assignee.

Decision No. 486 of September 14, 2000 - Common Regime on Industrial Property (2000), available at <http://www.wipo.int/wipolex/en/details.jsp?id=9451>.

## 22. Costa Rica

### Article 2 – Patentable Inventions

1. Inventions may be patented if they are new, involve an inventive step and are industrially applicable.

2. REPEALED

3. Inventions shall be considered new if they do not form part of the prior art. Prior art shall any means, prior to the date of filing of the patent application in Costa Rica or, as the case may be, prior to the applicable date of priority. The state of the art shall also be deemed to include the content of another patent application pending with the same Industrial Property Registry, whose date of filing or, as the case may be, priority, is earlier than that of the application under consideration, but only to the extent that such content is included in the application from an earlier date, where it has been published.

Prior art shall not be considered to include material that has been disclosed within the year prior to the date of filing of the application in Costa Rica or, as the case may be, within the year prior to the applicable priority, provided that such disclosure flows directly or indirectly from acts performed by the inventor himself or his successor in title or from the non-enforcement of the contract or any illicit act committed against any of them.

Law No. 6867 on Patents, Industrial Designs and Utility Models (2008), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=276484](http://www.wipo.int/wipolex/en/text.jsp?file_id=276484).

## 23. Dominica

### Part III, Article 9 - Novelty

- (1) An invention is considered to be new if it does not form part of prior art.
- (2) For the purpose of this Act, prior art in relation to an invention means anything which has, at any time prior to the filing date or, where priority is claimed, the priority date, of the application claiming the invention, been disclosed to the public anywhere in the world by oral or written description, by use, or in any other way.
- (3) For the purposes of subsection (2), the disclosure to the public of matter constituting an invention shall not be taken into consideration if it occurred within twelve months immediately preceding the filing date or, where priority is claimed, the priority date of the application, and the disclosure was due to or in consequence of-
  - (a) acts committed by the applicant or his predecessor in title; or
  - (b) an abuse committed by a third party with regard to the applicant or his predecessor in title.

Patents Act of 1999 (2008), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=126419](http://www.wipo.int/wipolex/en/text.jsp?file_id=126419).

## 24. Dominican Republic

### Title I, Chapter I, Section I, Article 5 – Novelty

- 1) An invention is novel when it does not exist previously in the state of the art.
- 2) The state of the art includes everything that has been disclosed or made accessible to the public, in any place in the world, by means of a publication in tangible form, oral disclosure, marketing, use or any other means, before the date of filing of the patent application in the Dominican Republic or, as the case may be, before the date of filing of the foreign application the priority of which is claimed according to Article 135. Also included within the state of the art are the contents of an application being processed by the General Agency for Industrial Property (Dirección General de Propiedad Industrial) given that the date of filing or, as the case may be, of priority is prior to that of the application being examined, but only to the degree to which those contents are included in the application of prior date upon being publishing.
- 3) For the determination of the state of the art, that which may have been disclosed within the year preceding the filing date of the application in the Dominican Republic shall not be taken into account, so long as such disclosure was the direct or indirect result of actions of the inventor himself or herself or his or her assignee, or of an abuse of confidence, violation of contract or illegal act committed against any of them.
- 4) Disclosure as a result of a publication made by an office of industrial property within the procedure of the granting of a patent is not included in the exception of the preceding paragraph, unless the application had been filed by someone who did not have a right to the patent, or if the publication have been carried out unduly.

Law No. 20-00 on Industrial Property (2007), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=175154](http://www.wipo.int/wipolex/en/text.jsp?file_id=175154).

## 25. Ecuador

Art. 122. – An invention shall be new where it is not included in the prior art.

Prior art shall consist of everything that has been made available to the public by means of written or oral description, use or any other means prior to the filing date of the patent application or, where appropriate, the recognized priority date. Solely for the purpose of determining novelty, the content of a patent application pending before the National Directorate of Industrial Property and having a filing date or priority date earlier than the priority date of the patent application under examination shall likewise be considered part of the prior art.

For the purpose of determining patentability, no account shall be taken of any disclosure of the content of the patent during the year preceding the filing date of the application in Ecuador or during the year preceding the date of priority, if claimed, where such disclosure is attributable to:

- (a) the inventor or his successor in title;
- (b) an office responsible for granting patents in any country that, in infringement of the applicable legal provisions, publishes the content of a patent application filed by the inventor or his successor in title;
- (c) a third party, including public officials or State bodies, that obtained the information directly or indirectly from the inventor or his successor in title;
- (d) an official order;
- (e) an obvious violation committed against the inventor or his successor in title; or
- (f) the fact that the applicant or his successor in title has displayed the invention at officially recognized exhibitions or fairs or where, for academic or research purposes, it was necessary to make it public in order to continue with development. In this case, the interested party shall, at the time of filing his application, provide a declaration in which he shall state that the invention has actually been displayed and shall file the relevant certificate.

Intellectual Property Law (Consolidation No. 2006-13) (2006), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=281172](http://www.wipo.int/wipolex/en/text.jsp?file_id=281172).

## 26. El Salvador

Title 3, Chapter II, Art. 113. Any invention which is not included in the prior art shall be considered novel.

Prior art shall mean all the technical knowledge which has been made public anywhere in the world, by means of an oral or written description, sale, marketing, use, or any other means of dissemination or information, prior to the patent application filing date in the country or, where appropriate, before the filing date of the foreign application for which priority will be claimed. The contents of a patent application pending before the Registry and having a filing date or priority application date earlier than the date of the patent or patent priority application under

examination, shall likewise be considered part of the state of the art, provided that said contents are included in the earlier application when published.

For the purposes of determining loss of novelty, any disclosure that may have happened during the year prior to the date of filing of the application in the country or, where appropriate, during the year prior to the date of application for which priority will be claimed, shall not be taken into consideration, provided that such a disclosure was the direct or indirect result of acts carried out by the inventor him/herself or his/her successors or from a breach of trust, breach of contract or unlawful acts committed against any of them.

Legislative Decree No. 912 of December 14, 2005, Amendment of the Law on the Promotion and Protection of Intellectual Property (2005), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=178096](http://www.wipo.int/wipolex/en/text.jsp?file_id=178096).

## 27. Estonia

### Chapter II, § 8. Criteria of patentability

(1) An invention is patentable if it is new, involves an inventive step and is susceptible to industrial application.

(2) An invention is considered to be new if it does not form part of the state of the art. The state of the art is held to comprise all the technical information made available to the public means of written or oral description, by use, or in any other way, in any part of the world before the filing date of a patent application or before the date of priority if priority is claimed. In determining novelty, the contents of patent applications and the contents of registration applications of utility models which were filed with the Patent Office earlier pursuant to the Utility Models Act shall also be taken into consideration according to their filing dates or, if priority is claimed, dates of priority provided that the patent applications are published or deemed to be published pursuant to § 24 of this Act and registration applications of utility models are published pursuant to § 33 of the Utility Models Act.

(3) In determining the state of the art, any information disclosing the subject matter of an invention is not taken into consideration, provided that a corresponding request is submitted, if such information is disclosed by a person who is entitled to the patent pursuant to § 12 of this Act or another person with the knowledge of the said person within twelve months before the filing date of the first patent application or registration application of a utility model containing the invention in the Republic of Estonia or abroad. The request shall be filed together with the patent application or not later than two months before the publication of the patent application pursuant to § 24. If another person acquired the information unlawfully or the information was published unlawfully or without the knowledge of the person who has the right to apply for the patent, the request may be filed in the course of examination of the patent application or in case the patent is contested. Evidence supporting the request shall be appended to the request.

Patents Act, 1994 (2012), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=257515](http://www.wipo.int/wipolex/en/text.jsp?file_id=257515).

## 28. Ethiopia

## Chapter 2, Section 1, Article 3. Patentable Inventions

1. An invention is patentable if it is new, involves an inventive step and is industrially applicable.
2. An invention shall be considered new if it is not anticipated by prior art. Prior art shall consist of everything disclosed to the public, any where in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate the priority date, of the application claiming the invention.
3. Notwithstanding the provisions of sub-article (2) of this article the disclosure to the public of the invention shall not be taken into consideration if it occurred within 12 months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or an abuse committed by a third party with regard to the applicant or his predecessor in title.

Inventions, Minor Inventions and Industrial Designs Proclamation No. 123/1995 (1995), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=174797](http://www.wipo.int/wipolex/en/text.jsp?file_id=174797).

### 29. Gambia

#### Part II, Section 4. – Patentable Invention

- (1) An invention is patentable if it is new, involves an inventive step, and is industrially applicable.
- (2) (a) An invention is new if it is not anticipated by prior art.  
b) Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or, in The Gambia, by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention.  
(e) For the purposes of paragraph b) of this subsection, disclosure to the public of the invention shall not be taken into consideration if it occurred within six months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason, or in consequence, of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

Industrial Property Act, 1989 (2007), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=222509](http://www.wipo.int/wipolex/en/text.jsp?file_id=222509).

### 30. Georgia

#### Chapter III, Article 15. Disclosure of Information

Data related to the inventive step shall not have an influence on patentability of the object of application where, before the date of filing an application or within 12 months before establishing the date of priority, such data became publicly accessible:

- a) by action of an inventor or his/her successor;

- b) if information for the third party is disclosed, directly or indirectly, on the condition of confidentiality;
- c) as a result of third person's action in bad faith against the inventor or his/her successor.

Law on Patents (2010), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=208973](http://www.wipo.int/wipolex/en/text.jsp?file_id=208973).

### 31. Ghana

#### Part I, Section 3 – Patentability

- (1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.
- (2) An invention is new if it is not anticipated by a prior art.
- (3) Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention. 20
- (4) For the purposes of subsection (3), disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application, and if it was by reason or in consequence of acts committed by the applicant or the applicant's predecessor in title or of an abuse committed by a third party with regard to the applicant or the applicant's predecessor in title.

Patent Act, 2003 (Act 657) (2003), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=223077](http://www.wipo.int/wipolex/en/text.jsp?file_id=223077).

### 32. Guatemala

#### Title III, Section 1, Article 94 – Novelty

An invention if it is Considered novel is not found in the prior art.

The state of the art Comprises everything that has been made available or Disclosed to the public anywhere in the world in any way before the filing date of the patent application in the country or, if Appropriate, before priority date applies. Also be Understood Within the state of the art content of another patent application filed With The registry, filing date or, where applicable, Earlier than the priority of the application under consideration, provided the Latter was published.

To determine the state of the art does not take into account what has been Disclosed Within the year prior to the filing date of the patent application or, where Appropriate, the applicable priority date, provided That Such disclosure would result Directly or Indirectly from acts done by the inventor or his successor in title, or a breach of contract by a third party or an unlawful act against any of them Committed.

Nor Will Consider disclosure Resulting from a publication made by an IPO abroad, following a procedure for Granting a patent, if the application was made under That publication by a person

not Entitled to Obtain patent, or That the publication had been made by an error Attributable to the IPO.

Ley de Propriedad Industrial (2000) (translation provided by WIPO), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=127666](http://www.wipo.int/wipolex/en/text.jsp?file_id=127666).

### 33. Honduras

Chapter I, Section 1, Article 9.

In order to grant the patent, the disclosure that occurred within the year preceding the date of filing in Honduras or, where appropriate, within the year preceding the date of the application whose priority will be claimed under Article 141 of this Law, is not taken into consideration provided that such disclosure resulted directly or indirectly from acts committed by the applicant or his successor, or abuse, breach of contract or wrongful act committed against any of them.

Industrial Property Law (1999) (as translated by author). Original language version available at <http://digepih.webs.com/Leyes%20y%20Tratados/Ley%20de%20Propiedad%20Industrial.pdf>.

### 34. India

Chapter IV

29. Anticipation by previous publication.

(1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in a specification filed in pursuance of an application for a patent made in India and dated before the 1st day of January, 1912.

(2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published before the priority date of the relevant claim of the specification, if the patentee or the applicant for the patent proves -that the matter published was obtained from him, or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and where the patentee or the applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent, or, in the case of a convention application, before the date of the application for protection in a convention country, that the application or the application in the convention country, as the case may be, was made as soon as reasonably practicable thereafter: Provided that this sub-section shall not apply if the invention was before the priority date of the claim commercially worked in India, otherwise than for the purpose of reasonable trial, either by the patentee or the applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or the applicant for the patent or any person from whom he derives title.

(3) Where a complete specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, an invention claimed in that specification shall not be deemed to have been anticipated by reason only of any other

application for a patent in respect of the same invention made in contravention of the rights of that person, or by reason only that after the date of filing of that other application the invention was used or published, without the consent of that person, by the applicant in respect of that other application, or by any other person in consequence of any disclosure of any invention by that applicant.

30. Anticipation by previous communication to Government.

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to the Government or to any person authorised by the Government to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.

31. Anticipation by public display , etc.

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of -the display of the invention with the consent of the true and first inventor or a person deriving title from him at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the use thereof with his consent for the purpose of such an exhibition in the place where it is held; or the publication of any description of the invention in consequence of the display or use of the invention at any such exhibition as aforesaid; or the use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor or a person deriving title from him; or the description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society, if the application for the patent is made by the true and first inventor or a person deriving title from him not later than six months after the opening of the exhibition or the reading or publication of the paper, as the case may be.

32. Anticipation by Public working.

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in India -by the patentee or applicant for the patent or any person from whom he derives title; or by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title, if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.

33. Anticipation by use and Publication after Provisional specification.

(1) Where a complete specification is filed or proceeded with in pursuance of an application which was accompanied by a provisional specification or where a complete specification filed along with an application is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter described in the provisional specification or in the specification treated as aforesaid as a provisional specification was used in India or published in India or elsewhere at any time after the date of the filing of that specification.

(2) Where a complete specification is filed in pursuance of a convention application, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter disclosed in any application for protection in a convention country upon which the convention application is founded was used in India or published in India or elsewhere at any time after the date of that application for protection.

34. No anticipation if circumstances are only as described in Sections 29, 30 , 31 and 32. Notwithstanding anything contained in this Act, the Controller shall not refuse to accept a complete specification for a patent or to grant a patent, and a patent shall not be revoked or invalidated by reason only of any circumstances which, by virtue of section 29 or section 30 or section 31 or section 32, do not constitute an anticipation of the invention claimed in the specification.

The Patents Act, 1970 (2005) (subsequent amendment acts have not amended Sections 29-34). Available at <http://ipindia.nic.in/ipr/patent/patents.htm>.

### 35. Indonesia

#### Chapter II, Article 4

- (1) An Invention shall not be deemed to have been announced, if, within a period of at most 6 (six) months before the Filing Date;
- a. the Invention has been exhibited in an official or officially recognized international exhibition in Indonesia or abroad or in an official and officially recognized national exhibition in Indonesia;
  - b. the Invention has been exploited in Indonesia by its Inventor in relation to experimentation for purposes of research and development.
- (2) An Invention shall also not be deemed to have been announced, if, within a period of 12 (twelve) months before the Filing Date, it was announced by any other person by way of breaching an obligation to preserve the confidentiality of the relevant Invention.

Law No. 14 of August 1, 2001, regarding Patents (2001), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=174132](http://www.wipo.int/wipolex/en/text.jsp?file_id=174132).

### 36. Iraq

#### Article 4

- a) If, the invention has been publicly worked out in or outside Iraq, or if the description or drawing of the invention has been publicized in periodicals within Iraq or outside it in such a clear way that enables experts to exploit;
- b) If, letters patent had been granted to the invention or part thereof to a person other than the inventor or to whom the rights of the invention have been assigned, or that others had already applied for the same patent, or part thereof; or

c) Notwithstanding subparagraphs (a) and (b), the disclosure of the invention to the public shall not be taken into account if it occurred twelve months before the filing date of the application or its priority date, if any, and it occurred by actions taken by the applicant or applicant's predecessor or due to an abuse by third parties against the applicant or predecessor.

Order No. 81 Patent, Industrial Design, Undisclosed Information, Integrated Circuits And Plant Variety Law (2004), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=181090](http://www.wipo.int/wipolex/en/text.jsp?file_id=181090).

### 37. Israel

#### Chapter II, Section 6 - Publications not affecting right of owner of invention

The right of the owner of an invention to be granted a patent shall not be affected by publication said in section 4 –

- (1) if it is proved that the matter published was obtained from him the owner of the invention or his predecessor in title and was published without his consent, and if the patent application was filed within a reasonable time after the publication became known to the applicant; or
- (2) (a) the publication was by the owner of the invention or his predecessor in title in one of the following ways:
  - (i) display at an industrial or agricultural exhibition in Israel or at a recognized exhibition in one of the Member States, of which official notice was given to the Registrar before its opening;
  - (ii) publication of a description of the invention at the time of a said exhibition; (iii) use of the invention for the purposes of the exhibition and at the place of the exhibition;
- (b) the publication was by use of the invention, even without its owners' consent, at the time of the exhibition, at the place of the exhibition or outside it, on condition that the patent application was submitted within six months after the exhibition opened;
- (3) publication was by way of a lecture by the inventor before a scientific society or by publication of the lecture in official transactions of the society, on condition that the Registrar was given notice of the lecture before it was delivered and that the patent application is filed within six months after the aforesaid publication.

Patents Law 5727-1967 (1994), available at <http://www.wipo.int/wipolex/en/details.jsp?id=8199>.

### 38. Japan

#### Article 30

(1) In the case of an invention which has fallen under any of the items of Article 29 (1) against the will of the person having the right to obtain a patent, such invention shall be deemed not to have fallen under any of the items of Article 29 (1) for the purpose of Article 29 (1) and (2) for the invention claimed in a patent application which has been filed by the said person within six months from the date on which the invention first fell under any of said items.

(2) In the case of an invention which has fallen under any of the items of Article 29 (1) as a result of an act of the person having the right to obtain a patent (excluding those which have

fallen under any of the items of said paragraph through the publication in the bulletin pertaining to inventions, utility models, designs or trademarks), the preceding paragraph shall also apply for the purpose of applications of Article 29 (1) and (2) for the invention claimed in a patent application which has been filed by said person within six months from the date on which the invention first fell under any of said items.

(3) Any person seeking the application of the preceding paragraph shall submit to the Commissioner of the Patent Office, at the time of filing of the patent application, a document stating that fact and, within thirty days from the date of filing of the patent application, a document proving the fact that the invention which has otherwise fallen under any of the items of Article 29(1) is an invention to which the preceding paragraph may be applicable.

Japan Patent Act (2012). Most recent amendments not yet published in-full in English. However, Article 30 provided in English at [http://www.jpo.go.jp/tetuzuki\\_e/t\\_tokkyo\\_e/pdf/e\\_pae\\_paa30/e\\_tebiki.pdf](http://www.jpo.go.jp/tetuzuki_e/t_tokkyo_e/pdf/e_pae_paa30/e_tebiki.pdf).

### 39. Jordan

#### Article (3)

An invention may be granted a patent protection, if the following conditions are met

A- 1- If it is new in terms of industrial technology, previously undisclosed to the public anywhere in the world, whether in written or verbal description, or through use, or any other means which affect knowledge of the invention, prior to the date of filing a patent application, or the priority date claimed in the application, pursuant to the provisions of this Law

2- Disclosure of an invention to the public shall not be taken into account if it occurs within twelve months preceding the date of filing the patent application, or the date of claiming priority in the application, if such disclosure was a result of an act committed by the applicant, or the result of an unlawful act committed by a third party against the applicant.

Law No. 32 of 1999 on Patents (amended by Law No. 28 of 2007 Amending the Patents Law) (2007), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=128318](http://www.wipo.int/wipolex/en/text.jsp?file_id=128318).

### 40. Kenya

#### Part III, Section 23 - Novelty

(1) An invention is new if it is not anticipated by prior art.

Inventive step

(2) For the purposes of this Act, everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or, by oral disclosure, use, exhibition or other non- written means shall be considered prior art:

Provided that such disclosure occurred before the date of filing of the application or, if priority is claimed, before the priority date validly claimed in respect thereof.

(3) For the purpose of the evaluation of novelty, an application for the grant of a patent or a

utility model certificate in Kenya shall be considered to have been comprised in the prior art as from the filing date of the application, or if priority is claimed, as from the date of its validly claimed priority, to the extent to which its content is available, or is later made available, to the public in accordance with this Act or in accordance with the Patent Co- operation Treaty.

(4) For the purposes of subsection (2), a disclosure of the invention shall not be taken into consideration if it occurred not earlier than twelve months before the filing date or, where applicable, the priority date of the application and if it was by reason or in consequence of: -

- (a) acts committed by the applicant or his predecessor in title; or
- (b) an evident abuse committed by a third party in relation to the applicant or his predecessor in title.

The Industrial Property Act 2001 (2001), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=128384](http://www.wipo.int/wipolex/en/text.jsp?file_id=128384).

#### 41. Kyrgyzstan

##### Section II, Article 5. Conditions of Patentability of an Invention

An object claimed as an invention shall enjoy legal protection if it is new, has an inventive level and applicable in industry.

An invention shall be considered new if it is not known from the standard of technology.

An invention shall be considered as having an inventive level if it does not obviously follow from the standard of technology.

The standard of technology shall include any information, which has become generally available in the world before the priority date of the invention.

While establishing the novelty of an invention, the information on the standard of technology shall include non-withdrawn applications of other persons, submitted to Kyrgyzpatent with an earlier priority, as well as inventions and utility models patented in the Kyrgyz Republic.

An invention shall be considered applicable in industry if it may be used in industry, agriculture, public health service and in other branches of public economy.

No public disclosure of information shall be considered as affecting patentability if it was made by the applicant, author or by any other person who obtained it from him directly under which the information about the substance of an invention became publicly open not earlier than twelve months before the date of file of an application or before the priority date if it is sought. The obligation of proof of this fact lies with the applicant.

Law of the Kyrgyz Republic on Patents (as last amended by Law No. 200 of December 6, 2006).

Original language version available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=238912](http://www.wipo.int/wipolex/en/text.jsp?file_id=238912).

English translation provided by State Intellectual Property Service at <http://patent.kg/en/laws/patent>.

#### 42. Lesotho

##### Part II, Section 5 – Patentable Inventions

(1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.

(2) An invention is new if it is not anticipated by prior art. (3) Prior art shall consist of everything disclosed to the public, (a) anywhere in the world, by publication in tangible form; or (b) in Lesotho, by oral disclosure, by use or in any other way,

prior to the filing, or where appropriate, the priority date, of the application claiming the invention.

(4) For the purposes of subsection (3), disclosure to the public of the invention shall not be taken into consideration if it occurred within six months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

Industrial Property Order, 1989 (1997), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=209920](http://www.wipo.int/wipolex/en/text.jsp?file_id=209920).

#### 43. Liberia

##### Chapter 3, Section 9 – Patentable Invention

(1) An invention is patentable if it IS new, involves an inventive step and is industrially applicable

(2)(a) An invention is new if it is not anticipated by prior art

(b) Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or III any other way, prior to the filing or, where appropriate, the priority date, or the application claiming the invention

(c) For the purposes of paragraph (b), disclosure to the public of the invention shall not be taken into consideration if it occurred with in twelves [sic] months preceding the filing date or, where applicable, the priority date of the application and if it was by reason or in consequence o f acts committed by the applicant or his predecessor in title or of an abuse committed by a third party With regard to the applicant or his predecessor in title.

Industrial Property Act of Liberia (2003), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=160455](http://www.wipo.int/wipolex/en/text.jsp?file_id=160455).

#### 44. Malaysia

##### Section 14. Novelty.

(1) An invention is new if it is not anticipated by prior art.

(2) Prior art shall consist of--

(a) everything disclosed to the public, anywhere in the world, by written publication, by oral disclosure, by use or in any other way, prior to the priority date of the patent application claiming the invention;

(b) the contents of a domestic patent application having an earlier priority date than the patent application referred to in paragraph (a) to the extent that such contents are included in the patent granted on the basis of the said domestic patent application.

(3) A disclosure made under paragraph (2)(a) shall be disregarded -

(a) if such disclosure occurred within one year preceding the date of the patent application and if such disclosure was by reason or in consequence of acts committed by the applicant or his predecessor in title;

(b) if such disclosure occurred within one year preceding the date of the patent Patents Act 1983 Intellectual Property Corporation of Malaysia application and if such disclosure was by reason or in consequence of any abuse of the rights of the applicant or his predecessor in title;

(c) if such disclosure is by way of a pending application to register the patent in the United Kingdom Patent Office as at the date of coming into force of this Act.

Patent Act 291 1983 (2006), available at

<http://www.myipo.gov.my/documents/10180/15858/Patents.pdf>.

#### 45. Mauritius

##### Part III, Section 12 – Patentable Inventions

(1) An invention shall be patentable under this Act where it-

(i) is new;

(ii) involves an inventive step;

(iii) is capable of industrial application.

(2) An invention is new where it is not anticipated by prior art.

(3) For the purposes of subsection (2), prior art shall consist of anything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where applicable, the priority date, of the application claiming the invention.

(4) For the purposes of subsection (3), disclosure to the public of the invention shall not be taken into consideration where -

(a) it occurred within 12 months preceding the filing date or, where applicable, the priority date of the application; and 28b) it was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

Patents, Industrial Designs, and Trademarks Act 2002 (2002), available at

[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=189493](http://www.wipo.int/wipolex/en/text.jsp?file_id=189493).

#### 46. Mexico

##### Chapter II, Article 18

The disclosure of an invention shall not prevent it from continuing to be considered novel where, within the 12 months prior to the filing date of the patent application or, where applicable, the recognized priority date, the inventor or his successor in title has made the invention public by

any means of communication, by putting it into practice or by displaying it at a national or international trade show. When the corresponding application is filed, the confirming documentation shall be included in the manner laid down in the Regulations under this Law. The publication of an invention contained in a patent application or in a patent granted by a foreign office shall not be regarded as corresponding to any of the situations referred to in this Article.

Industrial Property Law (2012). Available at [http://www.impi.gob.mx/work/sites/impi\\_en/resources/PDFContent/37/Law.pdf](http://www.impi.gob.mx/work/sites/impi_en/resources/PDFContent/37/Law.pdf).

#### 47. Mozambique

Title II, Chapter I, Section I, Article 29 – Invention Not Deprived of Novelty

1. An invention shall not be considered as forming part of the state of the art if it was disclosed during the twelve months preceding the date of filing or of priority of the patent application, in the following cases:
  - a) Where the disclosure of the invention was promoted by the inventor or his successors in title, to scientific or professional institutions or publications, or in competitions, exhibitions and trade fairs which are official or officially recognised by the government;
  - b) Where the disclosure was a result of obvious abuse by third parties against the inventor or his successors in title.
2. As regards the case provided for in line a) of the preceding paragraph, the inventor shall, at the time of filing of the application, make a written declaration that the invention was effectively exhibited or disclosed, and he shall provide evidence of this within three months from the date of filing.

Industrial Property Code (2006), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=128888](http://www.wipo.int/wipolex/en/text.jsp?file_id=128888).

#### 48. New Zealand

Article 60 - Previous Communication, Display, or Working

- (1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to a Government Department or to any person authorised by a Government Department to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.
- (2) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of—
  - (a) The display of the invention with the consent of the true and first inventor at an international or industrial exhibition declared as such by the Commissioner by notice in the Journal (whether the exhibition is held in New Zealand or elsewhere) , or the use thereof with the consent of the true and first inventor for the purposes of such an exhibition in the place where it is held; or

(b) The publication of any description of the invention in consequence of the display or use of the invention at any such exhibition as aforesaid; or  
(c) The use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor; or  
(d) The description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society,—  
if the application for the patent is made by the true and first inventor or a person deriving title from him not later than 6 months after the opening of the exhibition or the reading or publication of the paper, as the case may be.

(3) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that, at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in New Zealand—

(a) By the patentee or applicant for the patent or any person from whom he derives title;  
or

(b) By any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title,—

if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.

(4) Notwithstanding anything in this Act, the Commissioner shall not refuse to accept a complete specification or to grant a patent, and a patent shall not be revoked or invalidated, by reason only of any circumstances which, by virtue of this section, do not constitute an anticipation of the invention claimed in the specification.

Patents Act 1953 (2011), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=215537](http://www.wipo.int/wipolex/en/text.jsp?file_id=215537).

#### 49. Nicaragua

##### Chapter II, Article 10 – Exceptions to the Current State of the Art

The current state of the art shall not include anything that has been disclosed in the course of the year preceding the filing date of the patent application, or where applicable in the course of the year prior to the relevant priority date, insofar as such disclosure is the direct or indirect result of acts performed by the inventor himself or his successor in title, or of a breach of contract or unlawful act committed against any of them.

Law on Patents, Utility Models and Industrial Designs (2007), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=128924](http://www.wipo.int/wipolex/en/text.jsp?file_id=128924).

#### 50. Panama

##### Article 13

In order to determine the patentability of an invention, the following will not be taken into consideration: the disclosure that occurs anywhere in the world within twelve months prior to the date of filing of such application in Panama; or, if applicable, prior to the date of the recognized

priority claimed pursuant to this Law, if such disclosure has been the direct or indirect result of acts carried out by the inventor, or by his assignee, or of a breach of trust, breach of contract or illicit acts committed against any of them.

The disclosure resulting from a publication made by the office of industrial property, during the patent concession procedure is not included in the exception of this article unless the application which caused the publication had been filed by a person not entitled to the right to obtain the patent; or, that the publication had been made by mistake by the office of industrial property.

Law No. 35 of May 10, 1996 on Industrial Property (1996), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=129259](http://www.wipo.int/wipolex/en/text.jsp?file_id=129259).

## 51. Papua New Guinea

### Part III, Division I, Article 13 – New Invention

- (1) An invention is new where it is not anticipated by prior art.
- (2) For the purposes of this section, prior art shall consist of everything disclosed to the public, anywhere in the world, by -
  - (a) tangible form; or
  - (b) oral disclosure; or
  - (c) use; or
  - (d) any other way, prior to the filing, or, where appropriate, the priority date of the application claiming the invention.
- (3) For the purposes of Subsection (2), disclosure to the public of the invention shall not be taken into consideration where -
  - (a) it occurred within 12 months preceding the filing date, or, where applicable, the priority date of the application; and
  - (b) it was by reason or in consequence of acts committed by the applicant or his predecessor in title, or of an abuse committed by a third party without regard the applicant or his predecessor in title.

Patents and Industrial Designs Act (2000), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=129338](http://www.wipo.int/wipolex/en/text.jsp?file_id=129338).

## 52. Paraguay

### Title I, Chapter I, Article 7 - Novelty

An invention shall be considered novel if it is not anticipated by the prior art. The state of the art comprises everything that has been disclosed or made available to the public anywhere in the world through tangible publication, oral disclosure, sale or marketing, or use any other means, before the date of filing of the patent application in the country or, if applicable, before the date of filing of the earlier application from which priority is claimed. In order to appreciate the novelty of the invention, will also fall within the state of the art content of a patent application pending before the Industrial Property Department filing date, or where appropriate, priority is

earlier to the application being examined, but only to the extent that content was included in the earlier application when it was published.

The prior art does not understand what had been reported within the year preceding the date of filing in Paraguay or, where appropriate, within the year preceding the date of the application whose priority is invoked, provided that such disclosure would result directly or indirectly from acts done s by the inventor or his successor in title, or a breach of contract or act or crime committed against any of them. Disclosure resulting from a publication made by an IPO in a process of grant of a patent does not fall and n the exception of the preceding paragraph, unless the application under this publication was made by those who do not was entitled to the patent, or l to publication had been made by an error attributable to that office.

Law No. 1.630/2000 on Patents (as last amended by Law No. 2.593/2005) (2005).

English translation provided by automatic translation on WIPO website, available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=225599](http://www.wipo.int/wipolex/en/text.jsp?file_id=225599).

### 53. Peru

#### Article 17.

For the purposes of determining patentability, no account shall be taken of any disclosure of the contents of the patent during the year prior to the filing date of the application in the Member Country or during the year before the date of priority, if claimed, providing that the disclosure was attributable to:

- a) the inventor or the inventor's assignee;
- b) a competent national office that publishes the contents of a patent application filed by the inventor or the inventor's assignee in contravention of the applicable provision; or,
- c) a third party who obtained the information directly or indirectly from the inventor or the inventor's assignee.

Decision No. 486 of September 14, 2000 - Common Regime on Industrial Property (2000), available at <http://www.wipo.int/wipolex/en/details.jsp?id=9451>.

### 54. Philippines

#### Part II, Chapter II, Section 25 – Non-Prejudicial Disclosure

1. The disclosure of information contained in the application during the twelve (12) months preceding the filing date or the priority date of the application shall not prejudice the applicant on the ground of lack of novelty if such disclosure was made by:

- (a) The inventor;
- (b) A patent office and the information was contained (a) in another application filed by the inventor and should not have been disclosed by the office, or (b) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor; or
- (c) A third party which obtained the information directly or indirectly from the inventor.

2. For the purposes of Subsection 25.1, "inventor" also means any person who, at the filing date of application, had the right to the patent.

Intellectual Property Code of the Philippines (2012), available at <http://www.ipophil.gov.ph/index.php/ip-resources/ip-code>.

#### 55. Russia

Part IV, Section VII, Chapter 72, Section 1, Article 1350 – The Conditions for Patentability of an Invention

1. A technical solution in any area is protected as an invention if it relates to a product (including a device, substance, strain of microorganisms, plant or animal cell culture) or a method (the process of carrying out actions in respect of a material object by material means). An invention is provided with legal protection if it is novel, has an inventive step and is industrially exploitable.

2. An invention is novel if it is not known from the state of the art.

An invention has an inventive step if for a specialist it does not obviously ensue from the state of the art.

The state of the art includes any information that has become available to the public in the world before the priority date of the invention.

When the novelty of an invention is being assessed the state of the art shall also include all patent applications filed for inventions and utility models by other persons in the Russian Federation if they have earlier priority dates and if any person is entitled to read the documents related thereto in accordance with Item 2 of Article 1385 or Item 2 of Article 1394 of the present Code, and the inventions and utility models patented in the Russian Federation.

3. The disclosure of information concerning an invention by the author of the invention, by an applicant or any person that has received this information from them directly or indirectly which made the essence of the invention available to the general public shall not be deemed a circumstance precluding the recognition of the invention's patentability, provided a patent application has been filed with the federal executive governmental body charged with intellectual property matters within six months after the date of the disclosure. The burden of proving the existence of the circumstance due to which the information disclosure does not preclude the recognition of the invention's patentability shall be borne by the applicant.

Civil Code of the Russian Federation (2011), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=277714](http://www.wipo.int/wipolex/en/text.jsp?file_id=277714).

#### 56. Rwanda

Part II, Title I, Chapter I, Section I, Article 15: Novelty of an invention

An invention shall be new, if it is not anticipated by the prior art. The prior art shall consist of everything that has been disclosed, anywhere in the world, by publication in tangible form, by oral disclosure, by use or in any other way, prior to the filing date or, where appropriate, the priority date of the application claiming the invention.

In accordance with paragraph (2) of this article, a disclosure of the invention shall not be taken into consideration, if it occurred within 12 months preceding the filing date or, where appropriate, the priority date of the application, and if it has resulted directly or indirectly from acts committed by the applicant or his legal predecessor, or from a violation committed by a third party with regard to the applicant or his legal predecessor.

Law No. 31/2009 of 26/10/2009 on the Protection of Intellectual Property (2009), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=194215](http://www.wipo.int/wipolex/en/text.jsp?file_id=194215).

#### 57. Saint Kitts and Nevis

##### Part III, Article 9 – Novelty

(1) An invention shall be considered to be new if the invention does not form part of a prior art.

(2) For the purposes of this Act, prior art in relation to an invention means anything which has, at any time prior to the filing date or, where priority is claimed, the priority date, of the application claiming the invention, been disclosed to the public anywhere in the world by oral or written description, by use, or in any other way.

(3) For the purposes of subsection (2) of this section, the disclosure to the public of matter constituting an invention shall not be taken into consideration if it occurred within twelve months immediately preceding the filing date or, where priority is claimed, the priority date of the application, and the disclosure was due to or in consequence of

- (a) acts committed by the applicant or his or her predecessor in title; or
- (b) an abuse committed by a third party with regard to the applicant or his or her predecessor in title.

Patents Act (2002), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=235183](http://www.wipo.int/wipolex/en/text.jsp?file_id=235183).

#### 58. Saint Vincent and the Grenadines

##### Part IV, Section 14. – Novelty

(1) An invention shall be taken to be new if it does not form part of the state of the art.

(2) The state of the art in the case of an invention shall be taken to comprise everything disclosed about the invention to the public whether in Saint Vincent and the Grenadines or elsewhere, by written or oral disclosure or any other means prior to the date of filing of the application claiming the invention.

(3) For the purposes of subsection (2), the disclosure of matter claimed to constitute an invention shall be disregarded if the disclosure occurred within the twelve months immediately preceding the date of filing the application for the patent and the disclosure was due to, or made in consequence of-

- (a) acts committed by the applicant or his predecessor in title;
- (b) an abuse committed by a third party with regard to the applicant or his predecessor in title.

Patents Act (2009), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=250495](http://www.wipo.int/wipolex/en/text.jsp?file_id=250495).

## 59. Singapore

### Part III, Section 14 - Novelty

- (1) An invention shall be taken to be new if it does not form part of the state of the art.
- (2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in Singapore or elsewhere) by written or oral description, by use or in any other way.
- (3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied:
  - (a) that matter was contained in the application for that other patent both as filed and as published; and
  - (b) the priority date of that matter is earlier than that of the invention.
- (4) For the purposes of this section, the disclosure of matter constituting an invention shall be disregarded in the case of a patent or an application for a patent if occurring later than the beginning of the period of 12 months immediately preceding the date of filing the application for the patent and either —
  - (a) the disclosure was due to, or made in consequence of, the matter having been obtained unlawfully or in breach of confidence by any person —
    - (i) from the inventor or from any other person to whom the matter was made available in confidence by the inventor or who obtained it from the inventor because he or the inventor believed that he was entitled to obtain it; or
    - (ii) from any other person to whom the matter was made available in confidence by any person mentioned in sub-paragraph (i) or in this sub-paragraph or who obtained it from any person so mentioned because he or the person from whom he obtained it believed that he was entitled to obtain it;
  - (b) the disclosure was made in breach of confidence by any person who obtained the matter in confidence from the inventor or from any other person to whom it was made available, or who obtained it, from the inventor;
  - (c) the disclosure was due to, or made in consequence of, the inventor displaying the invention at an international exhibition and the applicant states, on filing the application, that the invention has been so displayed and also, within the prescribed period, files written evidence in support of the statement complying with any prescribed condition; or
  - (d) the disclosure was due to, or made in consequence of, the inventor describing the invention in a paper read by him or another person with his consent or on his behalf before any learned society or published with his consent in the transactions of any learned society.
- (5) In subsection (4) (d), “learned society” includes any club or association constituted in Singapore or elsewhere whose main object is the promotion of any branch of learning or science.
- (6) In this section, references to the inventor include references to any proprietor of the invention for the time being.

Patents Act (2005), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=174825](http://www.wipo.int/wipolex/en/text.jsp?file_id=174825).

## 60. South Africa

Chapter V, Article 26 - Prior knowledge or publication of invention excused in certain circumstances.

A patent shall not be invalid by reason only of the fact that the invention in respect of which the patent was granted or any part thereof was disclosed, used or known prior to the priority date of the invention—

- (a) if the patentee or his or her predecessor in title proves that such knowledge was acquired or such disclosure or use was made without his or her knowledge or consent, and that the knowledge acquired or the matter disclosed or used was derived or obtained from him or her, and, if he or she learnt of the disclosure, use or knowledge before the priority date of the invention, that he or she applied for and obtained protection for his or her invention with all reasonable diligence after learning of the disclosure, use or knowledge; or
- (b) as a result of the invention being worked in the Republic by way of reasonable technical trial or experiment by the applicant or patentee or the predecessor in title of the applicant or patentee.

Patents Act No. 57 of 1978 as last amended in 2002 (2002), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=181330](http://www.wipo.int/wipolex/en/text.jsp?file_id=181330).

## 61. South Korea

Chapter II, Article 30 (Inventions not Deemed to be Publicly Known, etc.)

(1) If a patentable invention falls under any of the following subparagraphs, in applying Article 29 (1) or (2) to the invention claimed in the patent application, on condition that the patent application therefor is filed within 12 months from the applicable date, the patent shall not be deemed to fall under any subparagraph of Article 29 (1):

1. When a person having the right to obtain a patent has caused his/her invention to fall under any subparagraph of Article 29 (1): Provided, That this shall exclude cases where the relevant application is laid open, or the registration of a patent for the relevant invention is published in the Republic of Korea or a foreign country pursuant to any treaty or Act;
2. When the invention falls under any subparagraph of Article 29 (1) against the intention of the person having the right to obtain a patent;

(2) Any person intending to have paragraph (1) 1 applied shall file a patent application to that effect and then submit a document proving the relevant facts to the Commissioner of the Korean Intellectual Property Office within 30 days from the filing date of the patent application.

Patent Act (2011), available at <http://www.kipo.go.kr/upload/en/download/PatentAct.pdf>.

## 62. Spain

### Title II, Article 7

A disclosure of an invention shall not be taken into consideration in determining the state of the art if it occurred during the six months preceding the filing of the application with the Registry of Industrial Property and if it was due to, or in consequence of

- (a) an evident abuse in relation to the applicant or his legal predecessor;
- (b) the fact that the applicant or his legal predecessor has displayed the invention at an official or officially recognized exhibition.

When filing his application, the applicant shall declare that the invention has in fact been exhibited and, in support of his statement, he shall submit the corresponding certificate within the period and under the conditions laid down in the regulations;

- (c) tests carried out by the applicant or by his legal predecessor, provided that they do not imply working the invention or offering it for sale.

Law No. 11/1986 of March 20, 1986 on Patents (as last amended by Law No. 14/2011 of June 1, 2011) (2011), available at

[http://www.oepm.es/cs/OEPMSite/contenidos/NORMATIVA/NormasSobrePatentes\\_MU\\_Topo grafias\\_CCP/NSPMTCCP\\_Patentes\\_Modelos/NSPMTCCP\\_Patentes\\_Modelos\\_Nacionales/Ley\\_11\\_1986de20demarzo\\_dePatentes.htm#tit2](http://www.oepm.es/cs/OEPMSite/contenidos/NORMATIVA/NormasSobrePatentes_MU_Topo grafias_CCP/NSPMTCCP_Patentes_Modelos/NSPMTCCP_Patentes_Modelos_Nacionales/Ley_11_1986de20demarzo_dePatentes.htm#tit2).

## 63. Sri Lanka

### Part IV, Chapter XI, Article 64. - Novelty

(1) An invention is new if it is not anticipated by prior art.

(2) Prior art shall consist of—

- (a) everything disclosed to the public, anywhere in the world, by written publication, oral disclosure, use or in any other way, prior to the filing or, where appropriate, priority date of the patent application claiming the invention;
- (b) the contents of patent application made in Sri Lanka having an earlier filing or, where appropriate, priority date than the patent application referred to in paragraph (a), to extent that such contents are included in the patent granted on the basis of the said patent application made in Sri Lanka.

(3) A disclosure made under paragraph (a) of subsection (2) shall be disregarded—

- (a) if such disclosure occurred within one year preceding the date of the patent application and if such disclosure or in consequence of acts committed by the applicant or his predecessor in title;
- (b) if such disclosure occurred within six months preceding the date of the patent application and if such disclosure was by reason or in consequence of any abuse of the rights of the applicant or his predecessor in title.

Intellectual Property Act, No. 36 of 2003 (2003), available at

[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=184465](http://www.wipo.int/wipolex/en/text.jsp?file_id=184465).

## 64. Thailand

### Chapter II, Part I, Section 6

An invention is new if it does not form part of the state of the art. The state of art also includes any of the following inventions:

- (1) an invention which was widely known or used by others in the country before the date of application for the patent;
- (2) an invention the subject matter of which was described in a document or printed publication, displayed or otherwise disclosed to the public, in this or a foreign country before the date of the application for a patent;
- (3) an invention for which a patent or petty patent was granted in this or a foreign country before the date of application;
- (4) an invention for which a patent or petty patent was applied in a foreign country more than eighteen months before the date of the application and a patent or petty patent has not been granted for such invention;
- (5) an invention for which a patent or petty patent was applied for in this or a foreign country and the application was published before the date of application. A disclosure which was due to, or made in consequence of, the subject matter having been obtained unlawfully, or a disclosure which was made by the inventor, or made in consequence of, the inventor displaying the invention at an international exhibition or an official exhibition if such disclosure was done within twelve months before the filing of an application for the patent, shall not be deemed to be a disclosure under subsection (2) above.

Patent Act B.E. 2522, 1979 (1999), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=129773](http://www.wipo.int/wipolex/en/text.jsp?file_id=129773).

## 65. Tonga

### Part II, Section 5 – Patentable Inventions

- (1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.
- (2) An invention is new if it is not anticipated by prior art.
- (3) Prior art shall consist of everything disclosed to the public:
  - (a) anywhere in the world, by publication in tangible form; or
  - (b) in Tonga, by oral disclosure, by use or in any other way, prior to the filing, or where applicable, the priority date, of the application claiming the invention.
- (4) For the purposes of subsection (3), disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

Industrial Property Act 1994 (2002), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=172957](http://www.wipo.int/wipolex/en/text.jsp?file_id=172957).

## 66. Turkey

### Section II, Article 8 - Disclosures Not Affecting Patentability

In the circumstances hereunder cited, disclosure of information which otherwise would affect the patentability of an invention claimed in the application shall not affect the patentability of that invention where the information was disclosed, during the 12 months preceding the date of filing or, where priority is claimed, the date of priority of the application:

a/ by the inventor,

b/ by an office when the information was contained

(1) in another application filed by the inventor and which application should not have been disclosed by the office, or

(2) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor or,

c/ by a third party which obtained the information directly or indirectly from the inventor.

According to the paragraph one of this present Article, shall be deemed inventor any person who, at the date of filing the application, had the right to the patent.

The effects of paragraph one of this present Article are not limited to a term and may be invoked at any time.

Where the applicability of paragraph one of this present Article is contested, the party invoking that this paragraph must be applied shall have the burden of proving, that the conditions of that paragraph are fulfilled or are expected to be fulfilled.

Decree-Law No. 551 of June 24, 1995 on the Protection of Patent Rights (2009), available at [http://www.tpe.gov.tr/portal/default\\_en.jsp?sayfa=121](http://www.tpe.gov.tr/portal/default_en.jsp?sayfa=121).

## 67. Uganda

### Part III, Section 9. - Novelty

(1) An invention is new if it is not anticipated by prior art.

(2) Everything made available to the public anywhere in the world by means of written disclosure, including drawings and other illustrations, or by oral disclosure, use, exhibition or other nonwritten means shall be considered prior art if the making available is one which has occurred before the date of filing of the application or, if priority is claimed, before the priority date validly claimed in respect of it.

(3) The disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the date on which the application was filed and if it was by reason or in consequence of—

- (a) acts committed by the applicant or his or her predecessor in title; or
- (b) an abuse committed in relation to the applicant or his or her predecessor in title.

The Patents Act (2002), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=170099](http://www.wipo.int/wipolex/en/text.jsp?file_id=170099).

## 68. United States

### § 102. Conditions for patentability; novelty

(a) **NOVELTY; PRIOR ART.**—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

(b) **EXCEPTIONS.**—

(1) **DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.**—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

(2) **DISCLOSURES APPEARING IN APPLICATIONS AND PATENTS.**—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

(A) the subject matter disclosed was obtained directly or indirectly from the inventor or a joint inventor;

(B) the subject matter disclosed had, before such subject matter was effectively filed under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(C) the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

Leahy-Smith America Invents Act (to be codified at 35 U.S.C. § 102) (effective March 16, 2013), available at <http://judiciary.house.gov/issues/Patent%20Reform%20PDFS/112hr1249eh.pdf>.

## 69. Ukraine

Chapter II, Article 7. Patentability Requirements to an Invention, Utility Model

1. An invention meets the patentability requirements provided that it is new, involves an inventive step and is industrially applicable.
2. A utility model meets the patentability requirements provided that it is new and industrially applicable.
3. An invention (utility model) shall be considered to be new provided that it does not form part of the state of the art. Objects that are a part of the state of the art shall be considered only separately when determining the novelty of an invention.
4. The state of the art comprises everything made available to the public throughout the world before the date of filing of the application with the Office or, if the priority has been claimed, before the date of its priority.
5. The state of the art also includes a content of any application for granting a patent in Ukraine (including an international application, in which Ukraine is designated) in the wording, in which this application has been primarily filed, provided that the date of its filing (if the priority has been claimed, the date of the priority) is prior to the date referred to in Paragraph 4 of this Article, and that the application has been already published on or after this date.
6. The recognition of an invention (utility model) as a patentable one does not depend on the disclosure of information on the invention (utility model) by an inventor or by a person which has received such an information directly from an inventor or indirectly within 12 months before the date of filing of the application with the Office or, if the priority has been claimed, before the priority date. In this case, the person, who is interested in using this provision, is obliged to prove the circumstances of the disclosure of information.

Law on the Protection of Rights to Inventions and Utility Models (2009), available at [http://sips.gov.ua/en/laws\\_special\\_1](http://sips.gov.ua/en/laws_special_1).

#### 70. Uruguay

Title II, Section 10

Disclosure of an invention within the year preceding the date of filing of the application or of the priority claimed shall not affect its novelty, provided that it was directly or indirectly due to acts carried out by the inventor, his successors in title or third parties, on the basis of information directly or indirectly obtained from the inventor.

Law No. 17.164 of September 2, 1999 Regulating Rights and Obligations Relating to Patents, Utility Models and Industrial Designs (1999), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=130091](http://www.wipo.int/wipolex/en/text.jsp?file_id=130091).

#### 71. Uzbekistan

Title I, Article 6. Patentability requirements for an invention

Subject matter claimed as an invention shall be granted legal protection, if it is novel, involves an inventive step and is industrially applicable.

An invention shall be novel, if it is not known from the prior art.

An invention shall involve an inventive step, if it is not obvious from the prior art.

The prior art shall include any information made generally accessible in the world before the priority date of the invention.

In establishing the novelty of an invention, withdrawn applications for the grant of a patent, filed with an earlier priority, shall also be taken into account.

An invention shall be industrially applicable, if it may be used in industry, agriculture, healthcare and other sectors.

The public disclosure of information relating to an invention, by the inventor, applicant or any person who has received this information therefrom, either directly or indirectly, shall not be recognized as a circumstance influencing the recognition of the patentability of the invention, if the application for the grant of a patent for the invention has been filed with the Patent Office not later than six months from the date of disclosure of the information. In that regard, the obligation to prove the fact in question shall lie with the inventor and the applicant.

Law of the Republic of Uzbekistan No. 1062-XII of May 6, 1994 on Inventions, Utility Models and Industrial Designs (2011), available at <http://www.patent.uz/eng/izobreten.htm>.

## 72. Vietnam

Part III, Chapter VII, Section 1, Article 60.- Novelty of inventions

1. An invention shall be considered novel if it has not yet been publicly disclosed through use or by means of a written description or any other form, inside or outside the country, before the filing date or the priority date, as applicable, of the invention registration application.

2. An invention shall be considered having not yet been publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.

3. An invention shall not be considered having lost its novelty if it is published in the following cases, provided that the invention registration application is filed within 6 months from the date of publication:

a/ It is published by another person without permission of the person having the right to register it defined in Article 86 of this Law;

b/ It is published in the form of a scientific presentation by the person having the right to register it defined in Article 86 of this Law;

c/ It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it defined in Article 86 of this Law.

Law No. 50/2005/QH11 on Intellectual Property (2009), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=274445](http://www.wipo.int/wipolex/en/text.jsp?file_id=274445).