

# Thinking about interpretation and not lose its novelty grace period

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Abstract : Article 24 of China's Patent Law does not lose its novelty in the three cases . From the public 's time and other aspects of the grace period does not lose its novelty explained , introduces novelty grace period to obtain the necessary formalities to fulfill , and the effectiveness of the grace period described , and finally gives himself Reflections .

Keywords : novelty grace period

## I. Introduction

Accordance with the provisions of Article 22 of the Patent Law , all in the filing date ( priority there , referring to the priority date ) previously known to the public at home and abroad ( already open ) inventions , it becomes art part , not novel and can not be patentable . But the inventor, designer or other owner of inventions for some legitimate reason to apply before their inventions public , or a third person in a lawful or unlawful means from the inventor , designer , or invention created by everyone else learned inventions, without their consent prior to the disclosure of the application , shall be in accordance with the above principles , if considered to have lost its novelty, everyone else inventor , designer , or inventions , it is unjust, for scientific and technological exchanges will have a negative impact. Therefore, many countries patent laws provide that the filing date ( or priority date ) before certain inventions disclosed under certain conditions, can not affect the novelty of invention .

Article 24 of China's Patent Law conducted a requirement that patented inventions within six months before the date of application , any of the following circumstances, does not lose its novelty : ( a ) sponsored or recognized by the Chinese government the first international exhibition on display ; (b ) in the academic or technological meeting requirements for the first time published ; (c ) any person without the consent of the applicant disclose its contents.

Second, do not lose the novelty grace explanation

Below, I will open the time , public identity , international exhibitions , conferences , or other technical -level meetings to explain several aspects .

1 open time

About not lose its novelty open time ( grace ) , Article 24 of the Patent Act is six months . That these three cases have occurred in the six months prior to application. In other words, even if the identity of the public , international exhibitions , conferences , or other technical -level meeting of

all meet the requirements, but only after the public after a six-month patent is not in line with Article 24 of the Patent Law regulations, thereby lose its novelty .

2 discloses the identity of the

For public identity , or that anyone can enjoy the Article 24 of the Patent Act does not lose its novelty grace period , Article 24 of the Patent Law does not specify the implementation of Article 30 of the Patent Law also not given instructions. The second part of the patent examination guidelines in Chapter III Section 5 and when talking about novelty grace period , twice cites " the applicant ( including inventor ) " this statement , namely, " the applicant ( including the inventor ) of Some public "and" the applicant ( including inventor ) publicly . "

In fact , China 's patent law does not lose its novelty on the grace period provisions are concerned for the same subject , namely the public body must , and later patented the subject is the same. In other words, the Chinese government sponsored or recognized international exhibition debut of corporate or individual , or individuals at academic conferences or technical meetings on the first published regulations , shall be the later patent applicants . However, if the individual was first exhibited in the Chinese government 's international exhibition sponsored or recognized or prescribed academic or technical meeting was first published on the inventor , the patent application is a service invention , this situation also can enjoy the novelty grace period .

As to not lose the novelty of the third case , the applicant can not leak , but the staff unit of the applicant , including inventors and designers , it can be any third party , including directly from the applicant or indirectly inventions of man.

3 -level international exhibition

Here, for the first time at the international exhibition of inventions disclosed to give some novelty grace period is a certain level , only "The Chinese government sponsored or recognized international exhibition ." According to the provisions of Article 30 of the Patent Law Implementing Rules of the first paragraph , the Chinese government recognized international exhibition , refers to a registered or accredited by the International Exhibitions Bureau international exhibition under international conventions exhibition. International exhibitions organized by the Chinese government , including the State Council ministries international exhibition sponsored or approved by the State Council or other bodies held by local governments . The so-called international exhibitions, namely the exhibits of products in addition to the host country , should also have exhibits from other countries.

. Level academic or technological meeting of 4

Here, the prescribed academic or technological meeting is a certain level . According to China 's patent law to implement the provisions of the second paragraph of Article 30 of the Articles , academic or technological meeting , refers to the relevant department of the State or national academic society organized academic or technological meeting , excluding the following

provinces or by the State Council commissioned by ministries or national academic bodies or on its behalf organized academic or technological meeting . In the latter the public meeting will lead to loss of novelty , unless they have a confidentiality agreement the conference itself . The publication includes oral and written papers.

5 person without consent of the applicant disclose its contents

Others without the consent of the applicant caused by leaking its contents public , including non-compliance with others , express or implied, and confidential information about the contents of the inventions disclosed , including others with threats, espionage, fraud , or other means from the inventor or the applicant learned of the invention to create content and then caused public . These methods may be legitimate may also be illegal , as long as its a flagrant violation of the applicant's willingness to patent law have given the applicant a certain novelty grace period.

Third, get novelty grace period to fulfill the formalities

Implementing Rules of the Patent Law Article 30 provides access to the novelty grace period to fulfill the formalities. The first part of the first patent examination guidelines Chapter 6.3 also illustrates this .

Patented inventions in the past six months on the date of filing the internal Chinese government sponsored or recognized international exhibition for the first time exhibited , or academic or technological meeting requirements published for the first time , the applicant asked not to lose its novelty wide deadline shall apply when a statement in the request ( without loss statement select a novelty grace period ) , and from the filing date to submit evidence within two months. International Exhibition of evidence, shall be issued by the exhibition organizers . Proof materials display at the exhibition shall be indicated date, location, name , and the inventions exhibition on display date , form and content , and seal .

Evidence of academic and technical meetings shall be issued by the competent authorities of the State Council , or the organizational meeting of the national academic community . Date of evidence shall be indicated in the meeting , place, name of the meeting and the publication date of invention and creation , form and content, and official seals.

Patented inventions within six months before the date of filing of others without consent of the applicant disclose its contents , if the applicant has been informed before the filing date , shall, when filing the patent application at the request statement ( not lose its novelty select one statement of grace ) , and from the filing date to submit evidence within two months. Applicants who apply after that date , it shall be made within two months after the declaration that the situation does not lose its novelty requires grace , and accompanied by supporting materials. Examiner deems it necessary, require the applicant to submit evidence within a specified period , which occurred earlier confirmed the date and substance of the case . Others apply content on leaked evidence submitted by the applicant shall indicate the date of disclosure , disclosure of the way , the leaked contents , signed or sealed by the certifier .

Implementation of fourth paragraph of Article 30 of the Patent Law provides that the applicant did not make a declaration and supporting documents submitted in accordance with the provisions of paragraph 3 of this Article, or fails to submit documents in accordance with the fourth paragraph of this section within the specified time limit, Not applicable requirements of the application of Article 24 of the Patent Law .

Fourth, the effectiveness of the grace period

Unlike the effect of grace priority. Grace period is only open to certain applicants ( including inventor ) of certain public or a third person from the applicant or inventor where to legal means or illegal means to get to the inventions , considered to be without prejudice to the novelty and inventive step of patent applications open . In fact , after the inventions disclosed in the prior art has become , but this is disclosed in the patent application within a certain period the applicant is not considered as prior art affect its novelty and creativity , not the inventions disclosed day as the date of filing the patent application . Therefore , the period from the date of the public to make an application , if a third party independently made the same invention , and filed a patent application before the applicant filed a patent application , then , according to the first application that the applicant can not be patented right . Thus, the grace period is only in the case of unavoidable or unintentional disclosure of invention , patent law gives a remedy , the protection is limited. Of course, since the applicant ( including the inventor ) is open, so that the inventions become art , so there is no third party application for novelty, could not get a patent .

## V. Notes

1 For the exhibits on display at the same time, the exhibition introduces the issue of publications related to the exhibits , the inventions disclosed in the publication describes the exhibits can also enjoy the provisions of Article 24 of the Patent Law novelty grace period . However, this does not destroy the novelty of the grace period limited to publications and exhibits related publications issued in the international exhibition sponsored or recognized by the Chinese government , in addition to the exhibition of publications issued during the exhibition , or independent publications and exhibits in the exhibition can be issued will destroy novelty constitute prior art . In addition , the exhibition on display only a simple display , not including sales practices , sales practices also makes novelty lost.

"Academic or technical conference " 2. Refers to the meeting should be held in public , that is, the participants did not have the obligation of confidentiality of the meeting. Academic or technological meeting of a confidential nature , the content does not reach the level of disclosure of " public knowledge " in the second paragraph of Article 22 of the Patent Law stipulated , does not belong to the prior art , does not affect the novelty, and therefore it is not necessary to consider the question of novelty grace period .

3 . Were inventions of the public must directly or indirectly from the applicant ( the applicant is an entity , must come from the unit ) , if it is made the same invention independently from another entity or individual creation , the applicant is not entitled to a grace period .

4 within six months from the date of the occurrence of any of the circumstances specified in Article 24 of the Patent Law , before the application is made , inventions again open as long as the public does not belong to the above three cases , the application Since this will be lost in the public novelty . Belonging to the public again three cases , the application will not result in a loss of novelty , but the grace period from the date of the first public inventions calculated . For ease of understanding, the following few examples illustrate this .

Case 1: The filing date for an invention created for September 1, 2010 , the inventions on March 15, 2010 for the first time on display at the Chinese government sponsored or recognized international exhibitions, and May 15, 2010 sell on the Chinese government at an international exhibition sponsored or recognized , the application will open and the loss due to the novelty .

Case 2 : Item filing date of invention for the September 1, 2010 , the inventions on March 15, 2010 for the first time on display at the Chinese government sponsored or recognized international exhibitions, and on May 15, 2010 academic or technological meeting requirements for the first time published. From the foregoing description , the application will not lose novelty .

Case 3: Item filing date of invention for the September 1, 2010 , the inventions on March 15, 2010 for the first time on display at the Chinese government sponsored or recognized international exhibitions, others on August 1, 2010 public sale of its independent development of the same inventions, the application will open and the loss due to the novelty .

#### Six Thinking

As noted above, the applicant can provide a grace period of protection is limited. Therefore , if the concept under the above-mentioned international exhibitions and conferences or technical meetings of the situation is not very clear , preferably before the article was published or exhibited before the first patent application , so get the notice of acceptance before exhibited or published articles