

To: General Secretariat of AIPPI (StandingCommittees@aippi.org)

Standing Committee on Patents

Questionnaire on the Publication of Patent Applications

HUNGARY

I. Analysis of current law and case law

1. Please provide a brief description of your law concerning publication of patent applications and identify the statute, rule or other authority that establishes this law.

Art. 70 of Act No. XXXIII of 1995 on the Protection of Inventions by Patents (Hungarian Patent Act – HUPA) relates to the publication of patent applications. Particulars of the provisions are given in the following answers.

2. Does publication of patent applications occur automatically in your jurisdiction? If so, when does publication take place? If not, what are the requirements to effect publication?

Publication of patent applications occurs automatically; Art. 70(1) of HUPA: “A patent application shall be published after the expiry of 18 months from the earliest priority date.”

3. If a patent application claims priority from or the benefit of an earlier application how, if at all, does this affect the timing of publication?

See above; publication period is counted from the earliest priority date.

4. Is there a specific point in time up to which the applicant can withdraw its application without it being published?

Yes; it is the 5th day before the publication date (which is timely communicated to the applicant beforehand). After this deadline but before the publication date the publication of the abstract and of the corresponding figure cannot be usually avoided, however, publication of the remaining parts of the application can be blocked.

5. What parts of a pending patent application are published?

Title, abstract and the corresponding figure (if any) are published in the Official Gazette, and the whole application becomes accessible online or by accessing the paper file in the Office.

6. Does a published pending patent application give rise to provisional rights (or any type of interim protection) in your jurisdiction and, if so, to what extent?

Yes, provisional patent protection allowing a limited enforcement. Art 36(1) of HUPA: "An applicant whose invention enjoys provisional protection may also institute proceedings for patent infringement; however, the proceeding shall be suspended until the decision to grant the patent has become final."

7. Does an unpublished pending patent application give rise to provisional rights (or any type of interim protection) in your jurisdiction and, if so, to what extent?

No.

8. Is 'early publication' allowed in your jurisdiction? If so, what are the conditions for such early publication? How is the request for early publication made? What is the effect of an early publication on a pending patent application?

Yes, at a simple request of the applicant, the application may be published at an earlier date if it satisfies the formality requirements (Art. 70(2) HUPA). An early publication has the same effect as a normal one.

9. Is non-publication possible in your jurisdiction? In other words, can a pending patent application remain confidential? If so, under what conditions is such allowed? How is the request for non-publication made?

Non-publication is only possible under the following conditions:

If national defense or national security so require, the President of the Hungarian Intellectual Property Office may classify a patent application in a procedure under specific legislation and on the proposal of the minister competent under the provisions of the specific legislation. On the basis of obligations arising from international treaties, the President of the Hungarian Intellectual Property Office classifies the patent application without following the procedure referred to above. (Art. 53 (5)(6) of HUPA)

Classified applications are not published. Classifying is independent from the applicant's acts; there is no request for non-publication.

10. Will a lapsed, abandoned or withdrawn patent application be published? If not, is that automatic or by the request of the applicant? If it would otherwise be published, can the applicant request non-publication?

No, such applications are not published. Non-publication is automatic.

11. What is the position in your jurisdiction regarding the publication of continuation, continuation-in-part and divisional applications?

There are only divisional applications in Hungary which are not separately published if the parent application was already published – otherwise the general provisions apply.

II. Policy considerations and proposals for improvements to your current system

12. Should there be a requirement for automatic publication of pending applications by a particular deadline?

Yes.

13. Should there be a right for the patentee to request early publication? If so, on what basis and with what consequence?

Yes, if formality provisions are met.

14. If your answer to question 13 is yes, should all the applications deriving from the same priority application be subject to the early publication if one application is published early?

No.

15. Should there be a right for the patentee to withdraw the application before publication?

Yes.

16. If your answer to question 15 is yes, what should be the consequence of such withdrawal:
- a. with respect to the patentee's own subsequent patent applications; and
 - b. with respect to third party patent applications?

There should be no consequences with respect to points a) and b).

17. If your answer to question 15 is yes, should the patent office be required to provide its initial assessment of the validity of the patent (if granted) before the applicant is required to decide whether to withdraw?

Yes, preferably.

18. In light of your answers to the previous policy questions, what would be appropriate time limits for:
- a. the patent office to provide the results of its initial assessment?; **at least 2 months before publication**
 - b. the applicant to decide whether to withdraw the application?; **5 days before publication** and
 - c. the application to be published? **18 months from the earliest priority date**
19. Should there be any exceptions to automatic publication, and if so what on what grounds, for example:
- a. on the initiative of the patentee; **No.**
 - b. on the initiative of the patent office; **No.** or
 - c. on the initiative of third parties (such as other governmental agencies)? **Only if national defense or national security so requires.**
20. If your answer to question 19 is yes, who should decide on whether such exception is applied?
21. Should there be different rules for the publication of continuation, continuation-in-part and divisional applications?

No.

22. What proposals would you make to improve your current system?

III. Proposals for harmonization

Groups are invited to put forward proposals for the adoption of harmonized rules in relation to the publication of patent applications. More specifically, the Groups are invited to answer the following questions:

23. Should patent offices be required to provide examination results or at least search results prior to publication so that applicants can make an informed decision whether to pursue obtaining a patent or to withdraw the application and protect the invention idea as a trade secret?

Yes, definitely

24. Should there be any exception to publication of applications, for example by the applicant's opt-out?

There should be no applicant's opt-out.

25. How should exceptional circumstances be defined, e.g., public order, morality or national security where the patent office delays or suppresses publication? To what extent should these exceptional circumstances be specifically defined?

Clear definitions should be made under national considerations.

26. What is an appropriate period for publication after filing an application or after the priority date? Is 18 months an appropriate period?

18 months is appropriate.

27. Please make any other comments or proposals for harmonization in relation to publication of patent applications that you consider appropriate.