When does public display become prior art: Anticipation under the Patents Act, 1970

News & Updates • March 16, 2026

'First published on Asia IP'

By: Ritika Ahuja

Patents in India are governed by the Patents Act, 1970. A patent is a statutory right granted to the inventor or assignee for a limited time period of 20 years from the date of filing of the application. The rights include making, selling, licensing, assigning, and also preventing others from unauthorized use.

While novelty is a key requirement for patentability, the act provides limited exceptions. One such exception is provisioned under Section 31, which permits anticipation by public display, allowing an inventor to disclose the invention for a specified period before filing a patent application.

Patentability criteria in India

An article or a process can only be patented in India if it accomplishes the following three essential criteria under the Patents Act, 1970.

Novelty. Novelty, is defined as "a new invention" under Section 2(1)(l), as an invention or technology that has not been anticipated by publication of any document or used in any country elsewhere before the date of filing of the patent application.

In Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, AIR 1982 SC 1444.3, India's Supreme Court adjudicated that the fundamental principle of patent law is that a patent is granted only for an invention which must have novelty and utility. Therefore, any prior disclosure of an article or process to the general public defeats the requirement of novelty.

Inventive step. An invention that leads to the advancement in the existing technology, or having an economic significance, or having both, is considered to have inventive step as per Section 2(1)(ja) of the act.

Industrial applicability. Section 2(1)(ac) defines "capability of industrial application" as an invention capable of being made or used in any industry.

Legal framework

Patent Amendment Rules. Rules 29A and Form 31 were introduced by the recent amendments in Rules, 2024, thereby establishing a formal procedure for claiming the benefit of grace period of 12 months, provided under Section 31. The new rules require the applicant to avail such grace period by filing a Form 31 with the Indian Patent Office, along with details of prior disclosure and supporting evidence. A fee of Rs2,500 (US$26) is payable for a large entity.

Section 31 – Anticipation by public display. Section 31 provides an exception to novelty, by providing a one- year grace period in certain circumstances. While Section 13 mandates the examination of anticipation through prior publication or prior claims, Section 31 mitigates the effect of pre-filing disclosure, if it falls within the specified exceptions. This provision recognizes certain exceptions for disclosures made with the consent of the true and first inventor for academic or institutional purposes. The four clauses working as exceptions under Section 31 are as follows –

1. **Government-notified exhibition.** Clause (a) permits display of an invention at exhibitions notified by the Central Government, provided such disclosure is made with the consent of the true and first inventor or their assignee. Protection is limited, as it applies only to notified exhibitions, thereby discouraging disclosure at private or unnotified forums and restricting the purpose to visibility.
2. **Publication of description consequent to the exhibition.** This clause applies to the display or use of an invention at exhibitions notified by the Central Government under clause (a). It operationalizes clause (a) by extending protection to disclosures arising from such exhibitions, particularly publications, during the patent filing process.
3. **Unauthorized use in exhibition.** Clause (c) safeguards against unauthorized use of the invention without the consent of the true and first inventor or their assignee. This protection extends during and after the exhibition, addressing risks of misuse, including espionage and reverse engineering, while limiting anticipation.
4. **Disclosure before learned society.** This clause carves an exception for disclosure of an invention in a paper read by the true and first inventor before a learned society, though the term remains undefined in the act. It also protects description published with the inventor's consent in the transaction of a society, broadly covering publications such as proceedings, journal or blog posts, etc.

Learned society

The term "learned society" used in Section 31(d) derives from the UK's Patent Act 1949. Section 31 of the Indian Patents Act is largely identical to that of the United Kingdom, except for the grace period, i.e., six months from the date of exhibition or disclosure in the UK, whereas India provides a 12-month grace period.

The UK statute had also not defined the term "learned society" and left it open for interpretation.

Only once, this was defined in *Ralph's Application* as a duly constituted society with the objective of promoting the study of a specific subject, and providing related discussions.

The reason for not defining a learned society precisely appears to reflect the legislative intent of avoiding a rigid or quantitative threshold for determining what constitutes the word "learned". The legislation also included the term "transaction" to limit the scope of interpretation.

The term "learned society" has been proposed by countries like Australia, and it is defined in the *Australian Patent Manual of Practice and Procedure*. This definition includes a non-commercial entity that promotes academic or professional discourse and the advancement of a particular field of study.

Transaction of such society

The definition of "transaction," like "learned society", originates from the UK Patents Act 1949 and is not defined in the statute. The definition is also derived through interpretation by the UK Patent Office as "publications issued under the auspices and responsibility of the society."

"Transactions" serve primarily as a record of proceedings of learned society, circulated among its members.

The Appeal Tribunal of the UK has clarified the meaning of a transaction in *Ethyl Corporation's Patent* by defining it as a published record of the proceedings of a learned society.

Comparative analysis (country-wise)

The provisions for the anticipation by public display have been widely used by multiple nations with slight difference in grace periods, stated as follows:

- **United States:** Allows a similar 12-month grace period as India
- **United Kingdom:** Similar framework (shorter grace period, historically)
- **Europe & ARIPO**: No grace period; strict novelty rule applies

Conclusion

Section 31 of the Patents Act provides a statutory exception to anticipation by disclosure, allowing a grace period of 12 months to file a patent application following such disclosure. The provision contains four circumstances in which the exemption may apply, including clause (d) which addresses disclosures made in the transactions of a learned society.

The definitions of both expressions "learned society" and "transactions of a learned society" are not defined under the Indian law. Their interpretation relies primarily on foreign

judicial decisions such as *Ralph's Application* (1978) and *Ethyl Corporation's Patent* (1963). In the absence of statutory or authoritative Indian guidance, the scope of these terms remains subject to discretion of the Controller of Patents.

KEY CONTACT



Ritika Ahuja

Partner

View Bio of Ritika Ahuja

RELATED PRACTICES

PATENTS