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# Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

# Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

# Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# BALANCING FAIRNESS AND CERTAINTY: US AND EPC PERSPECTIVES ON GRACE PERIOD EXCEPTIONS IN INDIAN PATENT LAW

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## I. ABSTRACT

This paper examines the role, scope, and policy implications of patent grace periods, with a comparative focus on the United States, the European Patent Convention (EPC), and India. Grace periods serve as temporal exceptions to the novelty requirement, allowing certain inventor-originated disclosures to be made prior to filing without destroying patentability. They balance fairness, protecting inventors, academics, and SMEs from inadvertent disclosure, with legal certainty for third parties. The US adopts a fairness-oriented approach with a broad 12-month grace period under the America Invents Act, supporting academic publication and commercial testing, whereas the EPC emphasizes absolute novelty, permitting only narrowly defined exceptions to safeguard predictability and third-party reliance. India occupies a hybrid position: Section 31 offers a 12-month inventor-focused grace period, formalized by the 2024 Patent Rules through Form-31, but remains limited in substantive scope. Comparative analysis highlights the resulting challenges for global patent strategies, cross-border novelty, and innovation ecosystems. The paper concludes by proposing calibrated reforms for India, a narrowly defined statutory grace period, mandatory transparent declarations, and precise statutory definitions, to enhance fairness for bona fide inventors while maintaining legal certainty and international compatibility.

## II. INTRODUCTION

Patent systems worldwide follow the fundamental principle that only genuine novel inventions are to be granted patents. This is called the novelty requirement. It ensures that patent exclusivity is granted only as a reward for disclosing information that is unknown to the public.[1] Novelty is assessed against 'prior art', comprising all the information available in the public domain, before the filing date or priority date. In patent systems following absolute novelty, even an inventor's

own disclosure may destroy novelty and preclude patentability.[2] To balance out this rigid principle, many patent jurisdictions adopt the concept of a 'grace period', which functions as an exception to the principle of absolute novelty.

However, grace periods give rise to the prominent debate of fairness versus certainty. On the one hand, the grace period supports fairness by ensuring that inventors, researchers, and emerging enterprises do not lose their patent rights due to unintentional or early disclosures made for practical reasons.[3] It further promotes openness in research by allowing academics to publish their findings or test their products in the market before filing for a patent.[4] On the other hand, it also creates uncertainty for third parties, who may not be able to tell whether a disclosed invention is genuinely open for public use or might later be patented.[5]

The contrast between the United States and European Patent Convention (EPC) frameworks highlights the policy debate over grace periods. The US adopts a fairness-oriented approach, providing a 12-month grace period under the Leahy–Smith America Invents Act (AIA) to protect inventors from losing rights due to inadvertent or deliberate pre-filing disclosures. In contrast, the EPC maintains an almost absolute novelty standard, allowing only narrowly defined exceptions, such as disclosures from evident abuse or recognized exhibitions, emphasizing legal certainty. India occupies a hybrid position: it offers a 12-month grace period like the US, but with a more restrictive scope and procedural requirements, aligning it more closely with the EPC. Comparing the US and EPC approaches is thus essential for assessing India's stance and potential need for reform to balance fairness and certainty.

## III. LITERATURE REVIEW-

The patent grace period (GP) constitutes a temporal exception to the novelty requirement, allowing certain pre-filing disclosures by inventors or related parties to be disregarded when assessing patentability. Conceptually, the GP balances the system's novelty requirement with practical innovation needs, functioning as a safety mechanism against inadvertent disclosures, promoting research dissemination, and enabling early-stage evaluation or commercialisation.[6] Scholars distinguish between a broad general GP and a narrower Safety-Net GP, the latter limited

to essential disclosures and designed to minimize legal uncertainty while protecting unsophisticated applicants, such as SMEs and academic researchers. Empirical evidence suggests that jurisdictions with a GP, notably the US, exhibit faster academic publication and knowledge transfer relative to strict-novelty systems like Europe.[7]

Comparative analysis reveals marked global divergences. The US, under the Leahy-Smith America Invents Act (AIA), retains a one-year GP but narrows its scope: only disclosures identical to the inventor's prior disclosure qualify.[8] US academics and SMEs frequently rely on this safety net, with approximately 27.4% of relevant patents invoking the GP. In contrast, the European Patent Convention (EPC) adheres to absolute novelty, allowing minimal exceptions, limited to evident abuse or officially recognized international exhibitions.[9] This rigid framework constrains European universities and Public Research Organisations, often delaying publication or preventing patent filings, with 7.8% of university applications reportedly affected. Other jurisdictions, including Japan, South Korea, Australia, and China, implement intermediate approaches with variable coverage and formal declaration requirements.

Policy debates centre on harmonization and the tension between fairness and certainty. Critics argue that GPs increase legal uncertainty, complicating prior art searches and freedom-to-operate analyses, potentially chilling investment. Proposals to address this include introducing a limited Safety-Net GP focused on research-related disclosures, instituting mandatory declaration requirements to enhance transparency, and adopting prior user rights to protect parties who act on public disclosures before filing. Empirical evidence indicates that combining declaration requirements with safeguards for third parties reduces misuse of the GP while preserving a measure of certainty. Strategically, applicants navigate these divergences by tailoring filing practices to domestic law: US entities rely on provisional applications and continuation filings to preserve priority, while Indian applicants prioritize innovations with strong patentability prospects, divisional applications, and active working of key patents to mitigate legal risks. Overall, literature underscores the persistent challenge of balancing inventor protection, innovation promotion, and legal certainty in an increasingly globalized patent landscape.[10]

## IV. RESEARCH GAP AND PROBLEM-

While India's Patents Act, 1970, provides a very narrow grace period under Section 31, most scholarship has either focused on international norms, such as the US and EPC regimes, or examined Indian patent law in isolation. Limited research considers how India's restrictive grace period affects inventors' ability to publish, collaborate, and commercialize innovations in a global context. In particular, few studies systematically compare the broad US grace period with the limited EPC provision to identify practical advantages or disadvantages for inventors, and little analysis exists on whether India's current approach appropriately balances inventors' rights (fairness) with legal certainty for third parties. Moreover, existing literature does not fully explore the implications of India's narrow grace period for contemporary innovation practices, including early academic publication, open collaboration, or market testing, which are increasingly critical in today's research environment. This paper seeks to address these gaps by conducting a comparative assessment of the US and EPC grace period regimes, evaluating their relevance to Indian patent law, and recommending reforms that better harmonize fairness for inventors with legal certainty for third parties.

## V. RESEARCH OBJECTIVE AND QUESTIONS-

To critically examine how the United States and European Patent Convention (EPC) frameworks approach the balance between fairness to inventors and legal certainty for third parties within the grace period exception, and to evaluate how these comparative insights can inform a more coherent and equitable reform of India's patent disclosure regime under Section 31 of the Patents Act, 1970.

CORRESPONDING RESEARCH QUESTIONS-

1. How do the US (AIA) and EPC systems differ in their treatment of inventor disclosures under grace period provisions, particularly in reconciling fairness to inventors with the need for third-party legal certainty?
2. What lessons can India draw from these comparative models to design a balanced and transparent grace period framework that aligns with both innovation incentives and market predictability?

## VI. CONCEPTUAL AND THEORETICAL FRAMEWORK-

MEANING AND PURPOSE OF GRACE PERIOD-

A grace period is defined as a specific duration of time (typically 6 or 12 months) preceding the filing date or priority date during which certain disclosures of the invention do not constitute prejudicial prior art against the subsequent patent application.[11] Thus, such disclosures are considered "non-prejudicial disclosures".[12] Numerous policy justifications exist for implementing a grace period. A grace period allows inventors to avoid losing patent rights due to unintentional disclosures, facilitates earlier dissemination of technologies and research, and enables market assessment or securing venture capital before bearing the costs of filing.[13]

THE FAIRNESS-CERTAINTY DICHOTOMY-

The fairness and certainty dichotomy lies at the heart of the argument regarding the implementation and structure of grace periods across various patent systems worldwide. The grace period in the patent system entails a fundamental trade-off between the gains it may generate for the applicants who use it and the increased legal uncertainty and complexity that third parties would experience as a result of such use.[14]

The fairness imperative is justified through various arguments. The grace period is said to serve as a protective measure to avert the irreversible forfeiture of patent rights resulting from unintentional, careless, or accidental public disclosures by the inventor.[15] In the absence of a grace period, such disclosures lead to disproportionate punishment.[16] Grace periods benefit less-experienced applicants, including innovators, SMEs, and university researchers. These groups may not understand patent formalities or have the means to enforce confidentiality rules like larger enterprises do.[17] A grace period for universities and public research organizations addresses the tension between the imperative to publish for career progression and the necessity of obtaining patent protection.[18] This speeds up the distribution of research in open science, promoting transparency and collaboration. Lack of a grace period delays or cancels scientific publications in Europe, according to research.[19] A grace period gives applicants time to develop their invention, conduct market research, raise funds, or improve it before filing, thereby improving patent applications.

The certainty argument, however, focuses on third-party perspectives. The primary contention

against a grace period is that it significantly heightens legal uncertainty for third parties. This uncertainty arises because a third party observing a disclosure cannot ascertain for an extended period whether the disclosure will subsequently be protected by a later-filed patent application or whether the invention has entered the public domain.[20] A grace period, generally 6 to 12 months, extends the period of uncertainty. In first-to-file systems, third parties face uncertainty for up to 18 months before a patent application is published. A 12-month grace period can extend this uncertainty to 30 months, comprising 12 months of grace and 18 months of confidentiality prior to publication.[21] Blocked business planning, FTO assessments, and higher costs result from the "black box" phase. Discouraging Third-Party Innovation: The uncertainty surrounding the prior art state may prevent third parties from investing in related ideas since their products or advancements may infringe on a later-granted, "graced" patent. The grace period complicates the patent system, extending search and examination times and increasing legal and administrative costs. Determining whether a disclosure is inventor-derived or third-party independent complicates legal matters.[22]

INTERNATIONAL DISCOURSE-

WIPO's Standing Committee on the Law of Patents and related WIPO materials show that member states disagree on the scope and purpose of a grace period. Some want broader protections to safeguard disclosure and innovation, while others want to limit exceptions to preserve third parties' legal certainty. The TRIPS Agreement also allows Members to tailor patent regulations to domestic innovation priorities.[23] The US maintains a twelve-month inventor-friendly exception under AIA/35 U.S.C. §102, while the EPC restricts non-prejudicial disclosures to specific cases, such as abuse or display at recognized exhibitions (Article 55 EPC). The institutional and doctrinal variations, and WIPO's catalogue of country methods, explain why a specific comparison of the US and EPC models is necessary to assess the suitability of India's restricted grace-period laws.[24]

## VII. COMPARATIVE ANALYSIS: US AND EPC APPROACHES

THE US APPROACH UNDER THE AMERICA INVENTS ACT(AIA)-

The Leahy-Smith America Invents Act (AIA) fundamentally transformed the United States patent system, shifting from the historical "first-to-invent" (FTI) rule to a "modified first-to-file" (FTF)

system. The core of the US grace period system under the AIA is articulated in 35 U.S.C. §102(b)(1), which provides a one-year (12-month) period during which certain inventor-originated disclosures are shielded from constituting prior art. This period runs prior to the effective filing date of the claimed invention. [25] The AIA provision goes beyond a simple inventor-only exclusion; it also provides an exception for certain intervening third-party disclosures, provided the inventor/joint inventor publicly disclosed the subject matter first within the grace period. This feature allows the inventor to overcome prior art created by an independent third party in the intervening period. [26] This third-party disclosure protection is less than the "robust" grace period before the AIA. Third-party disclosures covering the same subject matter as the inventor's previous disclosure are not prior art under the existing system. The inventor's innovation may be invalidated by minor deviations. Thus, the US grace period under the AIA is a "safety net" for the revealed subject matter rather than comprehensive protection against identical later inventions.[27]

35 U.S.C. §102(b) protects innovators against early disclosure and prioritizes fairness. A "safety net," it protects innovators from accidental publication and promotes urgent academic and scientific communication. The grace period allows universities and research institutes to balance patent protection with the speedy publication of research in journals, conferences, and posters to share information. Innovators and SMEs have one year to market-test discoveries, seek financing, refine technology, and analyze economic feasibility before filing a patent application. Legal protection, academic flexibility, and commercial opportunity promote the U.S. approach, notably in medicine, where clinical trial transparency is vital but novelty-destroying.[28]

While 35 U.S.C. §102(b) establishes the statutory framework for the 12-month grace period, judicial interpretation, most notably in *Helsinn v. Teva*[29], has been pivotal in defining its practical scope and limitations. The Supreme Court's 2019 opinion in Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc. clarified the AIA's grace period under 35 U.S.C. § 102(b). The Court ruled that confidential commercial sales trigger the one-year statutory bar, confirming that the AIA did not change the "on-sale" provision: an invention is "on sale" if it is subject to a commercial offer and ready for patenting, even if confidentiality is maintained. This verdict shows that the AIA's equitable grace period protects true public disclosures, such as scholarly articles or unintended leaks, not deliberate commercial operations. Helsinn emphasizes the importance of timely filing and limits dependence on the 12-month grace period for marketing or financing,

especially in the pharmaceutical and biotechnology sectors, by holding that secret commercial exploitation does not prolong an inventor's monopoly.[30]

The AIA grace period enhances fairness by protecting inventors from unintentional disclosures and allowing time for commercialization or academic publication, but it creates legal ambiguity and imposes burdensome evaluations for small inventors. Additionally, its limited international recognition, particularly in jurisdictions such as Europe that follow absolute novelty, limits its practical utility for global patent protection.

THE EPC APPROACH (CERTAINTY ORIENTED)-

The foundation of the EPC system is the requirement of strict absolute novelty, as already established before. the EPC operates under a default assumption that any disclosure of the invention to the public before the patent application filing date (or priority date) will inherently destroy the novelty of the invention, rendering it unpatentable.[31] The narrowness of the EPC's grace period is also evident in its novelty provision, which expressly includes in the state of the art types of disclosures that fall within the grace period boundary of other countries.[32] The implication of the strict rule under Article 55 of the EPC is profound, having a destructive effect on novelty.[33]

In lieu of a general grace period that excuses an inventor's pre-filing disclosures, the EPC provides only two types of non-prejudicial disclosures (often termed a "near absolute" novelty requirement), defined under Article 55 EPC. Those circumstances are 'evident abuse' and 'official international exhibition'[34]. These exceptions apply only if the disclosure occurred no earlier than 6 months before the filing date. The interpretation of "evident abuse" is quite limited. Proof of actual intent to cause harm or constructive knowledge that harm could result from the disclosure is typically required.[35] Unless accompanied by a deliberate intention to harm, mere negligence or a simple breach of a confidentiality agreement may not be sufficient to meet this high standard. This stringent standard requires applicants seeking protection for a confidentially disclosed invention to surmount considerable evidentiary challenges. The limited purview group also encompasses Official International Exhibitions, as only a small number of exhibitions have historically received this designation (e.g., only 10 recognised from 2002-2013).[36] Furthermore, applicants must adhere to strict formalities, including declaring the display upon filing and submitting a supporting certificate within four months.[37] Given the extreme difficulty of applying Article 55 EPC in

practice due to its narrowly defined exclusions, it is reasonable to conclude that the provision has become largely obsolete.

The EPC's rigid adherence to absolute novelty reflects a deep-seated philosophical commitment to legal certainty. This policy prioritises the interests of third parties and the stability of the patent system over the flexibility offered to inventors.[38] Various arguments support its philosophies. A revealed but unfiled innovation becomes public in a stringent first-to-file regime. A grace period prolongs uncertainty regarding whether a pre-filing revelation is prior art or patentable, reducing transparency. A grace period could extend legal ambiguity from 18 months (before application publication) to 30 months (12 months' grace period plus 18 months' secrecy before publication).[39] This uncertainty heightens the risk of inadvertent infringement, as third parties may invest in technologies presumed public, only to face later patent claims filed within the grace period. The first-to-file system, by contrast, offers greater legal clarity by treating all pre-filing disclosures as unpatentable. The EPO has repeatedly dismissed the proposal to implement grace periods, frequently citing legal certainty as the rationale. The case of G 3/98 (EPO Enlarged Board of Appeal, 2001)[40]. The EPO's strict interpretation of "disclosure" under the EPC requires that prior art negate novelty only if all elements are directly and unequivocally derivable by a skilled person, reinforcing absolute novelty and legal certainty. This approach prioritizes predictability for third parties over fairness to inventors, in stark contrast to the more flexible U.S. AIA framework.

This inflexible approach unfairly penalizes real or naive creators and hinders open science. The EPC's strict novelty requirement causes innovators to lose all rights for small or unintended disclosures. Poor applicants, especially SMEs, often lack protective mechanisms and struggle with pre-filing compliance. Early publication compromises 8% of university applications, causing major issues.[41] This situation highlights the tension between disseminating academic knowledge and safeguarding patent rights. The economic impact of these losses is substantial, with more than 70% of cases leading to lost commercial opportunities.[42] The system consequently advantages large organizations with established disclosure controls, thereby perpetuating structural inequities in access to innovation.

The EPC's focus on certainty makes the patent landscape very predictable. However, this predictability comes at the cost of unfairly punishing inventors, especially those in academia and small businesses, who share their work either by accident or because of systemic pressure. This

means they lose their potential patent rights and the social benefits of commercialization.

A COMPARATIVE EVALUATION OF US AND EPC PATENT FRAMEWORKS-

Building on the fairness–certainty dichotomy, the contrast between the US and EPC systems reveals how divergent policy philosophies shape the operation and purpose of the grace period. The US model prioritises fairness by protecting inventors from inadvertent disclosures and supporting academic and commercial innovation, whereas the EPC's strict adherence to absolute novelty upholds legal certainty but penalises genuine inventors, particularly SMEs and researchers, resulting in lost patent opportunities and reinforcing structural inequities within the innovation system.

## VIII. INDIAN LEGAL POSITION AND CHALLENGES

STATUTORY FRAMEWORK UNDER SECTION 31 OF THE INDIAN PATENT ACT,1970-

The Indian Patents Act, 1970, while establishing a novelty requirement, allows a limited grace period under Sections 29–33 to protect inventors from novelty loss due to certain prior disclosures, including unauthorized publications, government communications, or limited public use. Section 31 specifically permits filing within 12 months of disclosures at government-sanctioned exhibits or academic societies, while Sections 32 and 33 provide additional safeguards for testing and provisional filings. Historically, the grace period lacked explicit procedural guidance, requiring subjective affidavits, which created ambiguity in its application.[43]

The Patent (Amendment) Rules 2024 addressed procedural gaps by formalizing Section 31's grace period through Rule 29, requiring applicants to use Form 31 with fee submission to provide detailed prior disclosure information, thereby reducing uncertainty for academic and emerging business applicants.[44]

Judicial engagement with Section 31 has been sparse, leaving considerable interpretive space to patent controllers and tribunals. Historically, applicants relied on affidavits to establish the circumstances of a disclosure; the result was uneven outcomes driven by case-specific assessments of intent, timing and provenance. Ambiguities persist around core concepts such as what constitutes a "display" or a "publication" for the section's purposes: must a conference poster be formally catalogued, does an upload to a preprint server count as publication, and when does

private academic circulation become public disclosure? The Patent Office's 2024 procedural reforms, most notably the requirement to file Form-31 and pay the prescribed fee to assert the grace period, aim to reduce administrative unpredictability by recording disclosures formally at the time of filing. While this step improves procedural transparency, it does not expand the substantive ambit of protected disclosures, nor does it eliminate discretionary inquiry into factual sufficiency.

Section 31's narrow scope creates three interrelated policy issues: global asymmetry, as disclosures tolerated in India may destroy novelty in strict-novelty jurisdictions, complicating cross-border protection; strain on the innovation ecosystem, forcing academics, start-ups, and SMEs to choose between rapid dissemination and securing patent rights, especially in biotechnology and medical research; and limited harmonization, as Form-31 improves administrative transparency but the substantive narrowness of Section 31 leaves India behind jurisdictions with broader inventor protections. Overall, it enhances procedural certainty but prioritizes legal certainty over substantive fairness for bona fide inventors.

## IX. COMPARATIVE ANALYSIS

INDIA'S ANTICIPATION EXCEPTION IN CONTRAST TO THE US GRACE PERIOD-

The core similarity between US and Indian law lies in the temporal nature of the grace period: both offer a 12-month grace period to their inventors. The principal divergence between the two jurisdictions rests on the scope and definition of the disclosures afforded protection. The grace period in the United States, especially following the enactment of the Leahy-Smith America Invents Act (AIA) in 2013, is significantly more generous than that of many other countries.[45] The US system safeguards disclosures made by the inventor or by individuals who have obtained the subject matter directly or indirectly from the inventor. If the inventor publicly discloses the subject matter within a 12-month period, subsequent disclosures by third parties of the same subject matter cannot be considered prior art.[46]

In contrast, India's grace period is more limited, encompassing only disclosures related to the inventor. India's interpretation of inventor-related disclosure may be more limited than that of the United States. Unauthorized disclosures by a third party who obtained the information from the inventor may receive protection in the US, but may not be covered under the Indian Patents Act.[47]

This conceptual distinction indicates that India's system provides limited protection, especially compared to the US standard.

While the US system is broadly conceived, the AIA's shift from a "first-to-invent" to a "first-inventor-to-file" regime has complicated its robustness, leading to a narrower effective protection than its pre-AIA predecessor.

The current US grace period is limited narrowly to the subject matter actually disclosed by the inventor. If an independent intervening third party discloses similar, but not identical, subject matter (i.e., introducing minor variations), this third-party disclosure may destroy the novelty of the original inventor's subsequent application.[48] Consequently, many practitioners suggest that the US grace period primarily serves as a safety net rather than a robust strategic tool. The Indian system, being intrinsically limited to inventor-related disclosures in a narrow sense, consistently mandates a conservative approach: companies are advised to file their patent applications as early as possible to mitigate risks associated with public disclosure.[49]

India's mandatory declaration system (Form 31) reflects a policy preference for legal certainty and administrative transparency. By requiring inventors to formally disclose prior public exhibitions or communications, the Indian Patent Office enhances procedural clarity and helps third parties assess potential prior art.[50] However, this formalism imposes a significant procedural burden and risks penalizing unsophisticated inventors who may inadvertently fail to comply, thereby forfeiting protection. In contrast, the US grace period operates automatically without such formal declarations, prioritizing fairness and accessibility for inventors. Yet, this flexibility introduces uncertainty for third parties, as graced disclosures may remain undisclosed until examination or litigation, complicating prior art evaluation and undermining predictability.[51]

Divergent definitions of grace periods across jurisdictions have produced fragmented global patent strategies. As patent rights remain territorial and regimes like the EPC demand absolute novelty, disclosures permissible under the US framework can invalidate protection in Europe or India. Consequently, multinational applicants generally follow the conservative "file-first, publish-later" approach, while the grace period primarily serves academics and SMEs vulnerable to premature disclosure. For US inventors, the domestic grace period's benefits diminish internationally, as compliance with stricter standards in Europe and India necessitates costly procedural discipline. By contrast, India's narrowly circumscribed, declaration-based grace period already aligns with a globally cautious norm, easing conformity with the EPC's absolute novelty

model.[52]

INDIA AND EUROPE ON GRACE PERIODS-

The European Patent Convention (EPC) embodies a strict principle of absolute novelty, under which any public disclosure before the priority date, regardless of authorship, constitutes prior art, effectively leaving no meaningful grace period within its framework.[53] The European Patent System, based on absolute novelty, treats any pre-filing public disclosure as prior art and provides no substantive grace period, except for two narrow six-month exceptions: disclosures due to "evident abuse" or at officially recognized international exhibitions.[54] Both exceptions are narrowly construed, "evident abuse" requires proof of bad faith, and the exhibition exception mandates strict procedural compliance, reflecting the EPC's commitment to legal certainty and ensuring public disclosures remain freely usable unless explicitly protected. India's 12-month grace period, limited to inventor-related disclosures and reinforced by the 2024 Patent Rules requiring Form-31 and fee submission, provides modest protection for pre-filing communications while excluding unauthorized third-party disclosures and maintaining a cautious "file-before-disclose" approach.

Despite institutional differences, India and the EPC share certain functions under the PCT, allowing a single worldwide application while national grace period rules govern domestic patentability. For limited non-prejudicial disclosures, Europe requires declarations for exhibitions, and India mandates Form-31 with a fee, aligning its procedures with the Japanese and South Korean models of administrative transparency.

The EPC's absolute novelty requirement restricts academic and research innovation by forcing European researchers to delay publication, whereas India's 12-month inventor-related grace period offers greater flexibility but still excludes certain third-party disclosures and requires procedural compliance. Despite India's codified system reducing administrative confusion, the lack of global harmonization means pre-filing disclosures can still jeopardize patentability in multiple jurisdictions, influencing multinational filing strategies.

## X. POLICY EVALUATION AND REFORM OPTIONS FOR INDIA

Comparative experience yields two clear lessons. The US model (post-AIA) shows that a measured grace period can protect academic and small-scale inventors, promote openness and accommodate real-world research practices; yet its non-robust form and narrow textual limits generate adjudicative complexity and international friction. The EPC exemplifies the virtue of predictability: absolute novelty minimises downstream uncertainty for third parties and streamlines freedom-to-operate determinations, but at a high cost to inventors who make inadvertent disclosures. India must therefore seek a calibrated middle way: preserve sufficient legal certainty for third-party reliance while providing pragmatic relief for genuine inventor disclosures that reflect contemporary research and commercial practice.[55]

A viable reform package could include three elements. First, introduce a limited statutory grace period of defined duration (6–12 months) applicable expressly to inventor-originated disclosures and to disclosures by third parties who can be shown to have derived the subject matter from the inventor. Narrowness of scope should be preserved; protection should not extend to routine commercial exploitation designed to circumvent filing obligations. Second, retain and refine the mandatory declaration (Form-31), but improve its evidentiary framework: require a simple, standardised affidavit template supported by documentary proof, where available (conference programmes, exhibition certificates, institutional letters).[56] Making the declaration a precondition for invoking the grace period will enhance transparency and reduce litigation over hidden disclosures. Third, codify precise statutory definitions of "disclosure," "public use," and "derivation" to reduce interpretive ambiguity, e.g., clarify whether preprints, poster sessions, repository uploads, and confidential collaborations qualify as public disclosures. A narrow, legislatively defined clause on clinical-trial disclosures could preserve regulatory transparency without automatically destroying novelty for unrelated patent claims.

Reform must be evidence-driven and incremental. India should pilot adjustments, collect data on applications invoking the grace period, and align reforms with WIPO dialogue on harmonisation. The objective is not to replicate the US or the EPC wholesale but to fashion a context-sensitive regime that protects genuine inventors, especially academics and SMEs, while safeguarding

market predictability. Procedural clarity (via Form-31) combined with a narrowly articulated substantive grace period would shift India's posture from reactive adjudication toward predictable, administrable rules that better balance fairness and certainty.

## XI. CONCLUSION

The competing demands of fairness and certainty define the contemporary grace-period debate. The United States and the European Patent Convention represent opposite poles: the US seeks remedial flexibility for inventor disclosures, while the EPC insists on absolute novelty to preserve third-party reliance. India's current position, a narrowly worded Section 31 coupled with recent procedural formalisation, leans toward certainty but fails to accommodate the practical realities of modern research and early-stage commercialisation.

Comparative analysis shows that neither extreme is ideal. Absolute novelty protects markets but penalises innocent disclosure; an unfettered grace period reduces predictability and complicates cross-border protection. India's reform opportunity lies in a calibrated response: a modest, clearly defined grace period limited to inventor or derivation-based disclosures, coupled with a mandatory, transparent declaration mechanism and statutory clarifications of core terms. Such a package would preserve third-party confidence while giving bona fide inventors a manageable, evidence-based escape from forfeiture.



In sum, updating India's law is not merely technical tinkering but a policy imperative. A transparent, narrowly tailored grace period would better reflect India's research culture and innovation needs, reduce ad hoc adjudication, and improve the country's alignment with global practice, without sacrificing the legal certainty that underpins a stable patent system.

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