

# INVENTOR GUIDANCE NOTES

(White papers published by the IP Group provide simple and accurate guidelines for inventors/ scientists)



<b>TOPIC:</b> <b>PUBLIC DISCLOSURE OF INVENTION</b>	<b>AUTHOR:</b> <b>SNEHA KANITKAR</b> <b>A207, PAML</b> <b>National Chemical Laboratory</b> <b>Pune – 411008</b> <b>Phone: +91-20-2590-2757</b> <b>Email: <a href="mailto:sv.kanitkar@ncl.res.in">sv.kanitkar@ncl.res.in</a></b>
<b>IGN Number:</b> <b>ING-06</b>	<b>VERSION:</b> <b>02</b>
<b>SCOPE:</b> <b>This Inventor Guidance Notes provides information for scientists regarding Public Disclosure of Inventions.</b>	<b>DATE:</b> <b>10<sup>th</sup> January 2012</b>
<b>TABLE OF CONTENTS:</b> <b>A. Summary</b> <b>B. Relevant legal extracts</b> <b>C. Interpretation of the law and explanations</b> <b>D. Examples and cases</b> <b>E. References</b>	<b>Reviewer:</b> <b>Nitin S Tewari</b> <b>V. Premnath</b>

## A. SUMMARY:

Points to Remember:	Details:	Take home message:
Novelty of the invention.	Novelty is -The most important parameter for determining patentability, -Assessed in a global context, -Determined through extensive literature and patent searches An invention is novel if it does not form a part of the global state of the art. Novelty, Non-obviousness & Utility will lead to Patentability.	<b>Safeguard your invention's novelty till a patent is filed.</b>
Destruction of Novelty = Loss of Patentability.	What amounts to destruction of Novelty: Public Disclosure / Prior Publication/ Prior Commercial Use	<b>Do not publish or disclose publicly your invention before priority filing of the patent application.</b>
Public disclosure:	Public disclosure/prior art includes:	
Theoretically: Any written or oral disclosure, even to a single person, counts as a "public disclosure".  In Practice: Any document dated before the filing date of the patent application which can be searched in public domain amounts to public disclosure.	Articles in newspapers, newsletters, bulletins, textbooks, journals, theses, reports, letters to the editor , oral presentations , distribution of a paper at a public meeting, disclosure through electronic communications such as e-mail, placing of a thesis or dissertation on the library shelves or on the Internet , the cataloguing of a thesis or dissertation for microfilm distribution ,the submission of an abstract as a proposal for a book or journal, a poster presentation, participation in a television or radio interview, the submission of a proposal to a federal agency, making a report to a public or private research sponsor etc Prior Public use doesn't include the use of the invention done for further research/experimental studies. Public disclosure doesn't include the disclosure to work place colleagues/fellow scientists/research students/technical staff etc. Verbal disclosures although difficult to trace, shouldn't be done to a large group of people without prior precautions like non-disclosure agreements.	
Priority Filing: File a provisional specification- publish the paper- file a complete specification within 12 months.	We do not have to file in all the countries before disclosing the invention publicly. We only have to file a patent application in one country before you make the public disclosure. We then have another 12 months after that "priority filing" to file a complete specification in all the other countries in which you want patent protection.	<b>IP Group will secure a priority date for your invention in one country and you are free to publish.</b>
Disclosure to a third party outside NCL before patent filing:	If you want to discuss the invention with others, outside NCL, before you have filed a patent application, discuss only the non-confidential part of the subject matter. We can then decide whether it is worth entering a confidentiality agreement with the third person (or company), for non-disclosure of your invention.	<b>Consult IP Group for a confidentiality agreement [only if necessary].</b>
If you accidentally make a public disclosure:	In the US you have a one year grace period after the public display/ public disclosure within which to file a complete specification. But In Europe, a public disclosure is an absolute bar to patentability. In India, section 31 of the Act has ambiguous interpretations and it is advised not to publish before securing a priority date.  The key test is that the publication should be 'enabling' i.e. it must describe the invention in sufficient detail that it could be duplicated or put into use. Don't assume that all patent rights are lost simply because a public disclosure has already occurred. Your "public disclosure" may not have been enabling, or there may be some residual valuable, patentable information that you did not disclose; or it may be within the grace period allowed in some countries.	<b>Check with the IP Group before despairing or deciding not to try for a patent.</b>
<sup>16</sup> The "Donald Duck as prior art" case: There is a famous story about a Donald Duck story being used as prior art against a patent on a method of raising a sunken ship. A 1949 Donald Duck story used the same technique.	Danish inventor Karl Krøyer came up with a method of quickly raising this sunken ship by filling it with buoyant bodies fed through a tube. Krøyer received patents for this method in the United Kingdom (GB 1070600) and Germany (DE1247893). According to the patent claim, buoyant bodies are inserted into a sunken vessel through a tube from a salvage ship. This story is usually told as relating to the Dutch patent (NL 6514306) Krøyer had applied for. This application was not approved. According to the story, the Dutch Patent Office found an old issue of the Donald Duck magazine which showed the same invention. Since an invention has to be new to be patentable, the application was refused. *	<b>It doesn't matter whether the relevant prior art was a part of a scholarly scientific paper, a sci-fi movie or a high school text book. Any disclosure which gives enabling/workable details of the invention constitutes prior art.</b>

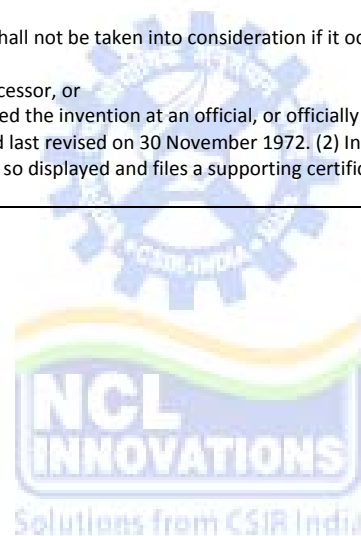
[\*Whole story with illustrations in section D of this document]

## B. RELEVANT LEGAL EXTRACTS:

COUNTRY & LAW:	LEGAL EXCERPTS:
<p><b>INDIA</b> <b>[THE PATENTS ACT,1970]</b></p>	<p><b>2.(l) "new invention"</b> means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen in public domain or that it does not form part of the state of the art;</p> <p><b>13. Search for anticipation by previous publication and by prior claim</b>            (1) The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification—            (a) has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;            (b) Is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.            (2) The examiner shall, in addition, make an investigation for the purpose of ascertaining, whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.</p> <p><b>29. Anticipation by previous publication</b>            (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—            (a) 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 (b) 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.</p> <p><b>30. Anticipation by previous communication to government</b>            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.</p> <p><b>31. Anticipation by public display, etc.</b>            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 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            (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 a person deriving title from him; 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</p>

	<p>the patent is made by the true and first inventor or a person deriving title from him [not later than twelve months] after the opening of the exhibition or the reading or publication of the paper, as the case may be.</p> <p><b>32. Anticipation by public working</b>  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—  (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.</p> <p><b>33. Anticipation by use and publication after provisional specification</b>  (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.</p> <p><b>34. No anticipation if circumstances are only as described in sections 29,30,31 and 32</b>  Notwithstanding anything contained in this Act, the Controller shall not refuse 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.</p>
<p><b>USA</b>  <b>[35 USC]</b></p>	<p><b>§ 102. Conditions for patentability; novelty</b>  (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.</p> <p>(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.</p> <p>(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.</p>

<b>EUROPE [EPC]</b>	<p><b>Article 54</b> <b>Novelty</b></p> <p>(1) An invention shall be considered to be new if it does not form part of the state of the art.</p> <p>(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.</p> <p>(3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.</p> <p>(4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any such method is not comprised in the state of the art.</p> <p>(5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in a method referred to in Article 53(c), provided that such use is not comprised in the state of the art.</p> <p><b>Article 55</b> <b>Non-prejudicial disclosures</b></p> <p>(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:</p> <p>(a) an evident abuse in relation to the applicant or his legal predecessor, or</p> <p>(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.</p>
-------------------------	--



## C. INTERPRETATION OF THE LAW & EXPLANATION:

### INDIA:

<sup>7</sup>The Indian Patent Office's suggestion to the inventors is,

"The most common mistake is to publish their inventions in newspapers or scientific and technical journals, before applying for patents. Publication of an invention, even by the inventor himself, would (except under certain rare circumstances) constitute a bar for the subsequent patenting of it. Similarly, the use of the invention in Public, or the commercial use of the invention in public or even in secrecy, prior to the date of filing patent application would be a fatal objection to the grant of a patent for such invention, thereafter. There is, however, no objection to the secret working of the invention by way of reasonable trial or experiment, or to the disclosure of the invention to other confidentially."

<sup>8</sup>Publication of an invention in any form by the inventor before filing of a patent application would disqualify the invention to be patentable. Hence, inventors should not disclose their inventions before filing the patent application. The invention should be considered for publication after a patent application has been filed.

<sup>5</sup>The invention is not anticipated i.e. novelty of an invention is not destroyed in certain exceptional conditions, specially provided in the Act in Sections 29-34.

Not Anticipations:

a) Prior Publication (S. 29)

The invention claimed in the complete specification will not be considered as anticipated by a specification accompanying an application in India, which was published before the 1st day of January, 1912.

A prior publication of an invention before its priority date will not be deemed as anticipation, if the patentee or the applicant proves that the matter was obtained from him or the inventor or assignor, and that the publication was done without their knowledge, and the application for patent was therefore made immediately after learning that the publication had happened.

This provision will not apply if the invention was commercially worked in India, otherwise for the purpose of reasonable trial before the priority date of the claim by the inventor, patentee or applicant, their assignor or assignee or someone else having their consent.

An invention claimed in an application made by the inventor or his assignee should not be deemed as anticipated by another application for patent in respect of the same invention made in contravention of the rights of that person, or its publication or use by the other applicant or any other person in consequence of its disclosure by him without the consent of the first mentioned applicant.

b) Previous communication to Government (S. 30)

The invention will not be deemed as anticipated by its communication to the government or to any person authorized by the government to investigate the invention or its merits, or of anything done in consequence of such communication for the purpose of the investigation.

c) Prior Public Display etc. (S. 31)

If the application for the patent is made by the inventor or his assignee not later than twelve months after the opening of the exhibition (notified by the Central Government) where the invention is first displayed and published by the applicant or used with his consent, it will not be deemed as anticipated. The use of the invention (so displayed) by an unauthorized person during the period of exhibition also will be deemed as non-anticipation.

(d) The description of the invention in a paper read by the true and first inventor or its publication with his consent in the transactions before a learned society also does not constitute anticipation, if the application is made within the period of twelve months.

e) Prior Public Working (S. 32)

This deals with public working of an invention claimed in a complete specification for a reasonable trial because the nature of the invention is such that it was necessary to do so. This type of public working will not be deemed as anticipation if performed within one year before the priority date by the patentee, applicant (or assignor) or by any person with their consent.

f) Use and Publication after provisional specifications (S. 33)

An invention in an application should not be considered as anticipated by public use and/or publication of the invention in India or elsewhere after the corresponding filing date of the provisional specification or the prior application in a convention country for which a priority is claimed.

## US:

<sup>9</sup>The U.S. patent law system is among the most lenient in the world with regards to prior disclosure of your invention. It allows you to publish your invention or offer it for sale prior to filing a patent application, provided that you file your patent application within one year of the publication or offer for sale. If you wait longer than one year, your patent rights are forfeited. The one-year period is a "grace period."

In the U.S., the "public disclosure" must be a "publication"--that is, in writing. However, do note that slides at meetings and poster sessions are "publications"--as is private correspondence, advertisements, etc.

<sup>9</sup>An "offer for sale" counts as a bar to patenting (after the one year "grace period") in the U.S. Same is true for showcasing your product at a trade show.

Simply announcing that you have made an invention is not a "public disclosure" of the invention. In order to act as a patent bar, the disclosure must be "enabling"--that is, it must teach someone "of ordinary skill in the art" how to actually duplicate the invention.

An offer for sale, even if it does not teach someone how to make the invention, is a bar to patentability (after the grace period) in the U.S.

<sup>11</sup>Under United States law, a public disclosure occurs when an invention is:

- A. Described in a printed publication anywhere in the world;
- B. Placed in public use in the United States; or
- C. Offered for sale in the United States.

For U.S. patent purposes, a "printed publication" is any communication that:

- A. Appears in a fixed-media form (i.e., not necessarily "printed");
- B. Is considered to be available to the public (either because it was intended to be made public, as an article in a scientific journal, or because it was made without an obligation of confidentiality, as a casual letter to a friend); and
- C. Describes an invention in such detail that one familiar with the field ("skilled in the art") could duplicate it or put it into use.

Virtually anything is deemed to be a printed publication for patent purposes. The most obvious examples include books and treatises, articles in scientific or trade journals, and articles in newsletters and bulletins. However, printed matter that is less obviously available to the public is generally more likely to cause the inadvertent loss of patent rights.

<sup>11</sup>Under the right circumstances, virtually *anything* can constitute a printed publication for patent purposes.

For example, a printed publication may occur in each of the following circumstances: • the placing of a thesis or dissertation on the library shelves or on the Internet • the cataloguing of a thesis or dissertation for microfilm distribution • the submission of an abstract as a proposal for a book or journal • the e-mailing of an abstract to prospective attendees of a professional conference • the appearance of a newspaper or web article written by a reporter who attended an oral presentation • a poster presentation • participation in a television or radio interview • the submission of a proposal to a federal agency • making a report to a public or private research sponsor.

<sup>11</sup>To impact patentability, the disclosure must contain a description of the invention that is detailed enough to enable a person skilled in the art to duplicate or use it (see Rule 3.C. above). This requirement is sufficient to exclude some abstracts, articles, etc., from the realm of public disclosure. But as a practical matter, when deciding whether or not to discuss an invention in any way outside of your own research environment, you should assume that it will constitute a public disclosure for patent purposes.

For patent purposes, a "public use" may be:

- A. Any use of the completed invention by someone who is not under a duty to keep the invention a secret;
- B. Any authorized commercial use of the completed invention (even if the invention is kept secret).

It is clear that a “public” use need not be public at all -- in fact, it may be very private. However, there *are* exceptions and each case will be decided on its own facts. As a result, what may be a public use in one situation in one court may not be a public use in another situation in another court. When attempting to decide whether a proposed use will constitute a “public use” for patent purposes, the safest route is to assume that it is to be interpreted broadly. By doing so, patent rights won’t be inadvertently lost by engaging in an activity that you think is acceptable but later turns out to be a “public use” of the invention.

However, there is one significant caveat to the “public use” rule that is important for academic inventors:

A so-called exception to the “public use” rule as stated above is a *bona fide* experimental use, if its motive is truly the testing and/or perfection of the invention.

In determining whether a use is truly experimental, the courts have developed a laundry list of factors to consider, but the focus of the inquiry is the inventor’s *motive*, as evidenced by his or her behaviour. If the inventor’s motive in allowing the public use was primarily commercial, patentability will be barred unless a U.S. patent application is filed within the one-year grace period.

<sup>11</sup> A single offer to sell an article, device, or composition embodying the invention is enough to bar patentability, even if that offer is not accepted.

This applies only to a physical *embodiment* of the invention. Thus: The licensing or assignment of rights in an invention or a patent does not constitute placing the invention “on sale.” Only the sale or offer for sale of a “thing” embodying the invention or capable of performing the invention will result in an “on sale” bar to patentability.

#### EUROPE:

The basic requirements for patentability under the European Patent Convention (EPC) are:

- 1) New Invention;
- 2) Invention susceptible of industrial application; &
- 3) The invention inclusive of an inventive step. (Article 52).

<sup>10</sup> Many people run into problems when applying for European patents because they disclose their invention before filing either a U.S. or European patent application. While this may be acceptable (with certain limitations) in the U.S., it can create insurmountable problems in many other countries like EP.

According to Article 54(1) of the EPC, an invention is considered to be new if it does not form part of the state of the art. Article 54(2) goes on to define “state of the art” as everything made available to the public, whether written, oral, in use, or any other way before the date of filing of the European patent application.

So, any public disclosure before the filing date of your invention, including writing about your invention on your blog, or using your invention as part of your newly launched website, can result in loss of international patent rights.


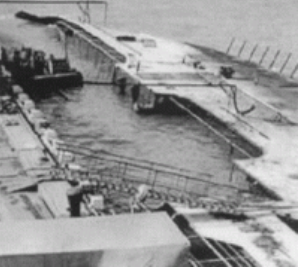
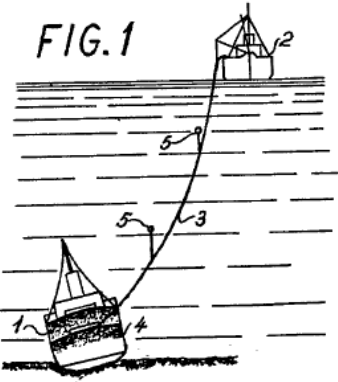
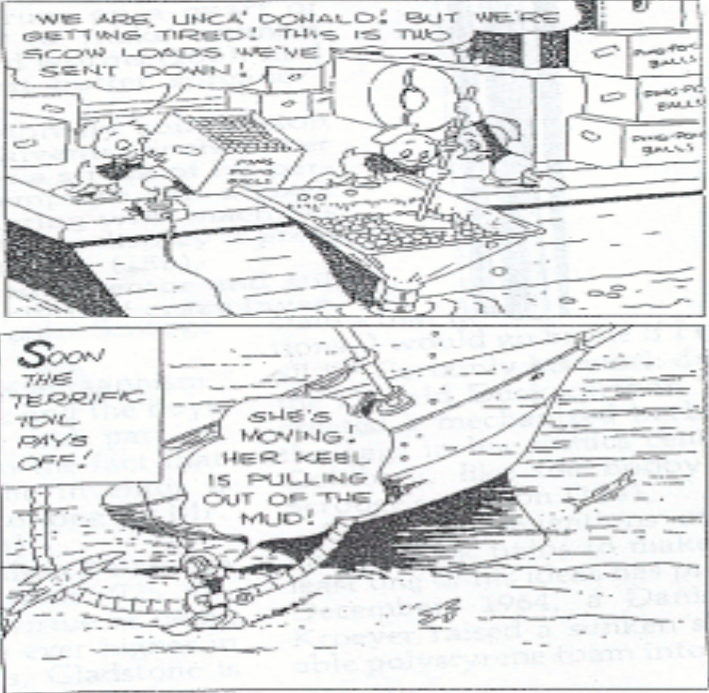
The only situations where public disclosure is not taken into consideration is if the public disclosure was made within six months of the filing of the European patent application, and was the result of some sort of abuse, such as a breach of confidence, or if it was made at a recognized international exhibition (Article 55).

Since the EPO only searches printed publications during examination, an oral disclosure is unlikely to affect the grant of a patent. However, the oral disclosure could be used by others after grant, for example, during an EPO opposition proceeding or national revocation proceeding.

Therefore, those considering filing international patent applications should be extremely careful about any public disclosure and, preferably, seek the advice of qualified patent counsel at IP Group.



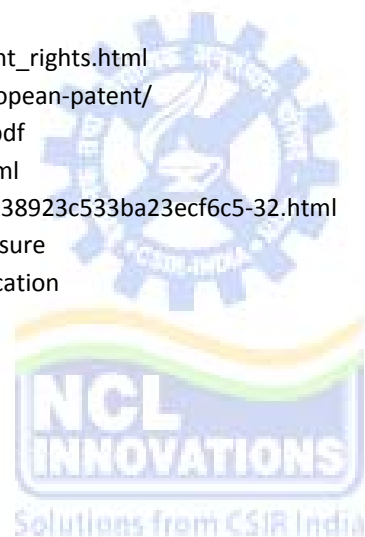
## D. EXAMPLES & CASES: The Donald Duck story as prior art case

The Case:	The invention:	The patents:	The Donald Duck story:
<p>There is a famous case about a Donald Duck story being used as prior art against a patent on a method of raising a sunken ship. A 1949 Donald Duck story used the same technique.</p> 	<p>The invention has been used in practice on several occasions. The most famous one, shown in the photograph below, was in 1964 in Kuwait. On September 14, 1964, the freighter Al Kuwait capsized at the docks in Kuwait's harbour. The ship was carrying 5,000 sheep that started decomposing in the harbour's water. Since this threatened to contaminate the city of Kuwait's drinking water supply, the ship had to be raised as quickly as possible. Bringing in cranes would have taken too long, and with such methods there is a significant risk that the ship will break. The Danish inventor Karl Krøyer came up with a method of raising this sunken ship by filling it with buoyant bodies fed through a tube. On December 31, 1964, he filled the ship with 27 million plastic balls made of expandable polystyrene foam and weighing 65 tons. The balls had been airlifted from Berlin to Kuwait.</p> 	<p>Inventor Karl Krøyer received patents for this method in the United Kingdom (GB 1070600) and Germany (DE1247893). According to the patent claim, buoyant bodies 1 are inserted into a sunken vessel 4 through a tube 3 from a salvage ship 2.</p> <p>The story is usually told as relating to the Dutch patent (NL 6514306) Krøyer applied for. This application was not approved. According to the story, the Dutch Patent Office found an old issue of the Donald Duck magazine which showed the same invention. Since an invention has to be new to be patentable, the application was refused. This story was recently repeated by the Dutch patent office (in Dutch), although surprisingly this confirmation did not give any detail on which patent office or how the Duck story came to its attention.</p>  <p>Figure 1 of Krøyer's patent</p>	<p>In 1949 the Donald Duck story The Sunken Yacht (by Carl Barks) shows Donald and the nephews raising a ship by filling it with ping pong balls shoved through a tube, as can be seen below in the images cited from that story.</p> <p>Since ping pong balls are buoyant bodies, and they were fed to the yacht through a tube, the Donald Duck episode discloses the same technique as that which is claimed in the patents. Consequently, the Duck story has to be considered novelty-destroying prior art: given the story, any Patent Office would have rejected Krøyer's patent application.</p> <p>It remains an open question whether the Dutch patent office in fact used this document as prior art to refuse the patent application. Regrettably the files of the cases have been destroyed by now, and the Dutch patent attorney who represented the inventor has passed away several years ago.</p> 

[Source: <http://www.iusmentis.com/patents/priorart/donaldduck/>]

## E. REFERENCES:

1. The Patents Act, 1970.
2. United States Code Title 35 – Patents
3. Leahy-Smith America Invents Act, 2011
4. European Patent Convention
5. Manual of Patent Practice & Procedure, Indian Patent Office.
6. [www.ipindia.nic.in](http://www.ipindia.nic.in)
7. [www.ipindia.nic.in/ipr/patent/patents\\_filing.pdf](http://www.ipindia.nic.in/ipr/patent/patents_filing.pdf)
8. [www.indianpatents.org.in/faqpat.htm](http://www.indianpatents.org.in/faqpat.htm)
9. [http://web.mit.edu/tlo/www/community/preserving\\_patent\\_rights.html](http://web.mit.edu/tlo/www/community/preserving_patent_rights.html)
10. <http://patentauthority.com/2007/03/public-disclosure-european-patent/>
11. [http://utr.f.tennessee.edu/PDF/Impact\\_of\\_PD%202-16-09.pdf](http://utr.f.tennessee.edu/PDF/Impact_of_PD%202-16-09.pdf)
12. <http://www.grad.wisc.edu/research/ip/publicdisclosure.html>
13. [http://www.mateoaboy.com/f6/blog\\_files/874912ee2802a38923c533ba23ecf6c5-32.html](http://www.mateoaboy.com/f6/blog_files/874912ee2802a38923c533ba23ecf6c5-32.html)
14. <http://olv.duke.edu/Inventors/LearningCenter/PublicDisclosure>
15. <http://www.iusmentis.com/patents/priorart/#earlier-application>
16. <http://www.iusmentis.com/patents/priorart/donaldduck/>



---

Note: This IGN was finalized in the current form on 10<sup>th</sup> Jan 2012. This is intended as a working document. Readers are requested to provide comments/suggestions & point to any errors (if any) so as to help improve this document. Comments may be sent to [sv.kanitkar@ncl.res.in](mailto:sv.kanitkar@ncl.res.in)