擬制喪失新穎性之先申請案依國際優先權日認定之國際規範

CN	第 22 條第 2 款	**新穎性**，是指該發明或者實用新型不屬於現有技術；也**沒有任何單位或者個人就同樣的發明或者實用新型在申請日以前向國務院專利行政部門提出過申請，並記載在申請日以後公佈的專利申請文件或者公告的專利檔中**。
	審查指南第二部分第三章 2.2 抵觸申請	審查員在檢索時應當注意，確定是否存在抵觸申請，不僅要查閱在先專利或專利申請的權利要求書，而且要查閱其說明書（包括附圖），應當以其全文內容為准。 抵觸申請**還包括滿足以下條件的進入了中國國家階段的國際專利申請**，即申請日以前由任何單位或者個人提出、並在申請日之後（含申請日）由專利局作出公佈或公告的且為同樣的發明或者實用新型的國際專利申請。
	審查指南第二部分第三章 4.1.3 外國優先權的效力	**申請人在外國首次申請後，就相同主題的發明創造在優先權期限內向中國提出的專利申請，都看作是在該外國首次申請的申請日提出的**，不會因為在優先權期間內，即首次申請的申請日與在後申請的申請日之間任何單位和個人提出了相同主題的申請或者公佈、利用這種發明創造而失去效力。 此外，在優先權期間內，任何單位和個人可能會就相同主題的發明創造提出專利申請。由於優先權的效力，任何單位和個人提出的相同主題發明創造的專利申請不能被授予專利權。就是說，**由於有作為優先權基礎的外國首次申請的存在，使得從外國首次申請的申請日起至中國在後申請的申請日中間由任何單位和個人提出的相同主題的發明創造專利申請因失去新穎性而不能被授予專利權。**
EP	第 54 條(3)	(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.
	審查基準 part C, Chapter IV, 7.1.1	Whether a published European application can be a conflicting application under Art. 54(3) is determined firstly **by its filing date and the date of its publication; the former must be before the filing or valid priority date of the application under examination, the latter must be on or after that date. If the published European application claims priority, the priority date replaces the filing date (Art. 89) for that subject-matter in the application which corresponds to the priority application.** If a priority claim was

		abandoned or otherwise lost with effect from a date prior to publication, the filing date and not the priority date is relevant, irrespective of whether or not the priority claim might have conferred a valid priority right.
JP	第 29 條之 2	特許出願に係る発明が当該特許出願の日前の他の特許出願又は実用新案登録出願であつて当該特許出願後に第六十六条第三項の規定により同項各号に掲げる事項を掲載した特許公報（以下「特許掲載公報」という。）の発行若しくは出願公開又は実用新案法（昭和三十四年法律第百二十三号）第十四条第三項の規定により同項各号に掲げる事項を掲載した実用新案公報（以下「実用新案掲載公報」という。）の発行がされたものの願書に最初に添付した明細書、特許請求の範囲若しくは実用新案登録請求の範囲又は図面（第三十六条の二第二項の外国語書面出願にあつては、同条第一項の外国語書面）に記載された発明又は考案（その発明又は考案をした者が当該特許出願に係る発明の発明者と同一の者である場合におけるその発明又は考案を除く。）と同一であるときは、その発明については、前条第一項の規定にかかわらず、特許を受けることができない。ただし、当該特許出願の時にその出願人と当該他の特許出願又は実用新案登録出願の出願人とが同一の者であるときは、この限りでない。 **Where an invention claimed in a patent application is identical with an invention or device** (excluding an invention or device made by the inventor of the invention claimed in the said patent application) **disclosed in the description, scope of claims or drawings** (in the case of the foreign language written application under Article 36-2(2), foreign language documents as provided in Article 36-2(1)) **originally attached to the written application of another application for a patent or for a registration of a utility model which has been filed prior to the date of filing of the said patent application and published after the filing of the said patent application in the patent gazette** under Article 66(3) of the Patent Act (hereinafter referred to as "gazette containing the patent") or **in the utility model bulletin** under Article 14(3) of the utility Model Act (Act No. 123 of 1959) (hereinafter referred to as "utility model bulletin") **describing matters** provided for in each of the paragraphs of the respective Article or for which the publication of the patent application has been effected, **a patent shall not be granted for such an invention notwithstanding Article 29(1)**; provided, however,

		that **this shall not apply where, at the time of the filing of the said patent application, the applicant of the said patent application and the applicant of the other application for a patent or for registration of a utility model are the same person.**
	審査基準第 3 章 2.2 (3)	**他の出願がパリ条約による優先権の主張を伴う出願である場合、その出願が優先期間内の出願であって優先権証明書を提出したものであれば、第一国出願の明細書等と我が国への出願時の願書に最初に添付した**明細書、特許請求の範囲又は図面（以下、「当初明細書等」という。）**とに共通して記載されている発明に関しては、第一国出願日に我が国へ出願があったものとして扱う**。 In the case where **another application is one with a priority claim under the Paris Convention, and filed within the priority period and accompanied by a priority document**, it is **deemed as filed in Japan on the filing date of filing in the country of origin, for an invention commonly disclosed in the specification**, etc. of the original application and in a specification and drawings **originally attached to the request in Japan** (referred to as an"initial specification, etc." hereinafter).
SPLT	第 8 條(2)	[Prior Art Effect of Certain Applications] (a) The following **subject matter** in another application ("the other application") shall also form **part of the prior art for the purpose of determining the novelty of a claimed invention**, provided that t**he other application** or **the patent granted thereon** is **made available to the public subsequently by the Office**[, as prescribed in the Regulations]: (i) if the filing date of the other application is prior to the priority date of the claimed invention, the whole contents of the other application; (ii) **if the other application** has a filing date that is the same as, or later than, the priority date of the claimed invention, but **claims, in accordance with the applicable law, the priority of a previous application having a filing date that is earlier than the priority date of the claimed invention, subject matter that is contained in both the other application and that previous application**.
	細則第 9 條(3)	[(3) [Anti-Self-Collision] **Article 8(2)** and paragraphs (1) and (2) **shall not apply** when **the applicant in respect of, or the inventor identified in, the other application and the applicant in respect of, or the inventor**

		identified in, the application under examination, are, at the filing date of the application under examination, one and the same person, provided that only one patent may be validly granted with effect for a Contracting Party for the same claimed invention.]
US	AIA §102(a)(2) & § 102(d) (適用於 2011. 9. 16 後之申請案，於 2013.3.16 生效)	35 U.S.C. § 102(a)(2) (a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless— (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**. 35 U.S.C. § 102(d) (d) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention **under subsection (a)(2)**, such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application— (1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or (2) if the patent or application for patent is **entitled to claim a right of priority under section 119, 365(a), or 365(b), or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior filed applications for patent**, as of **the filing date of the earliest such application that describes the subject matter.**