

Evaluation of the Tegernsee questionnaires for Germany

Executive Summary

Within the framework of the so-called Tegernsee Group on substantive patent law harmonisation, the Federal Ministry of Justice conducted a survey of users of the German patent system with a questionnaire developed by the Tegernsee Experts Group from 9 January to 15 March 2013.

The Federal Ministry of Justice received a total of 39 questionnaires for the Tegernsee user survey. The main results of the evaluation of the returned questionnaires are as follows:

a) Structure of respondents

The bulk of responses come from corporations (64.1 %; the great majority are large scale industrial enterprises active in the areas: chemistry/pharmaceuticals and mechanics/electrical/electronics) followed by patent professionals and law firms (together 23.1 %) as well as important industrial associations, patent organisations and professional organisations relevant in the field of patents (together 12.8 %).

Double counts cannot be excluded. For example, it is possible that a corporation or a law firm responding to the Federal Ministry of Justice had previously filed a comment with an association or an organisation. Therefore the opinion of a respondent corporation or law firm may also have been taken into account in the response submitted by associations or organisations. However, due to the structure of the questionnaires, these possible (indirect) double counts are inherent to the system.

Responses of the following areas are clearly under-represented: medium-sized enterprises, universities/research institutions and individual inventors, the telecommunications and computer industries, as well as applicants with low filing activity.

Due to the fact that some individual groups of applicants make up a large proportion of the respondents and due to the comparatively low return rate, this evaluation of the user consultation cannot be regarded as representative.

However, it is a clear set of opinions of German enterprises of important sectors of industry, important patent organisations as well as professional organisations relevant in the field of patents.

b) Grace period

61.5 % of all respondents oppose a grace period in principle. Disapproval of a grace period is highest among large scale industrial enterprises (73.9 %), while associations and organisations (80 %), and companies in the mechanics sector (57.1 %) tend to support a grace period.

c) Publication after 18 months

By far the greatest proportion of respondents (94.9 %) supported publication of all patent applications, and 84.6 % of the respondents regard publication at 18 months from the filing date/priority date as reasonable.

d) Conflicting applications

Two thirds of the respondents (66.7 %) are in favour of maintaining the current German/European practice of considering conflicting applications for the examination of novelty only with not special treatment of conflicting applications filed by the same applicant (no anti-self collision).

In contrast, 80 % of the organisations and associations prefer approaches with anti-self collision.

e) Prior user rights

A broad majority of the responding users support the practice already established in Germany that requires actual use of the invention (69.2 %) or preparations for its use (71.8 %) having taken place prior to the filing or priority date (76.9 %) for giving rise to prior user rights. There is a broad opposition to exceptions for specific patents or their owners (82.1 %).

f) Other areas requiring harmonisation

While the need for harmonisation is deemed to be constantly high for the four aforementioned fields of law (76.9 % - 92.3 %), there are no other obvious topics deemed to be similarly important by the applicants.

Evaluation of the Tegernsee questionnaires for Germany

I. Carrying out the user consultation in Germany

The questionnaires jointly developed by the Tegernsee Group were sent to the stakeholders in Germany by the Federal Ministry of Justice. In response to the user consultation the Federal Ministry of Justice has received 36 completed questionnaires and three written comments by associations and organisations.

No hearing on the Tegernsee process was conducted by the Federal Ministry of Justice and the German Patent and Trade Mark Office in Germany.

II. Result of the user consultation in Germany

2.1 Comments by associations and organisations

The following paragraphs present the main issues mentioned in the five comments or completed questionnaires by important patent organisations in Germany and professional organisations relevant in the field of patents.

2.1.1 Grace period (part III of the questionnaire)

Four associations and organisations **are in favour** of the introduction of a **grace period**. **One** association was **against** the **introduction of a grace period** in Germany.

Three of the four associations/organisations in favour of the introduction of a grace period believe that a grace period of six months is appropriate. One association supports the introduction of a twelve-month grace period. Three of the associations in favour of the introduction of a grace period object to mandatory declarations for invoking the grace period. In contrast, two associations or organisations support mandatory declaration. Half of the associations/organisations (two) in favour of the introduction of a grace period think that the date relevant for the grace period should be the filing date only and the other two associations/organisations believe that it should be the priority date.

2.1.2 Publication of applications after 18 months (part IV of the questionnaire)

Four associations and organisations are in favour **of the publication of all patent applications** – except for secret patents - **after 18 months**. Only one

association/organisation supports a shorter period for the publication of all patent applications.

Three of the associations/organisation that commented on the issue of examination/search reports are in favour of an informative report with search and/or examination results being provided to the applicant sufficiently in advance of the publication so that the applicant can withdraw the application before publication, if necessary.

2.1.3 Conflicting applications (part V of the questionnaire)

60 % of the responding organisations/associations are in favour of maintaining the present German/ European practice of considering conflicting applications for the examination of novelty only.

80 % of respondent organisations/associations are in favour of approaches with an anti-self collision provision.

2.1.4 Prior user rights (part VI of the questionnaire)

All associations/organisation that commented on the issue of prior user rights are in favour of the current practice in Germany according to which prior user rights arise from actual use of the invention or preparations for use which took place prior to the filing date/priority date.

One association/organisation argues that the legal situation within the EU with regard to provisions on prior use is so confusing that rules should be harmonised at European level first.

2.2 Evaluation of the questionnaires received

2.2.1 General remarks

The Federal Ministry of Justice received 39 responses in total, 36 of which were completed questionnaires (including two completed questionnaires of associations/organisations) and three free-text written comments by associations/organisations. The key statements of the latter comments (e.g. grace period "yes"/"no") were also included in the statistical analysis and considered as answers to the corresponding questions of the questionnaire.

A table of results and explanations on the methodology of the evaluation are enclosed in the annex.

2.2.2 Results

2.2.2.1 Information about the respondent (part II of the questionnaire)

In summary it can be said that more than half of the responses (51.8 %) come from large enterprises with more than 1,000 employees active in the sectors: chemistry/ pharmaceuticals/ biotechnology or mechanics/electrical/electronics that have their primary place of business in Europe and mostly file distinctly more than 10 patent applications per year with the EPO and/or the DPMA.

The following areas are clearly under-represented among respondents: medium-sized enterprises, universities/research institutions and individual inventors, telecommunications and computer industries, as well as applicants with low filing activity.

Due to the great over-representation of some individual groups of applicants and the comparatively low return rate, this evaluation of the user consultation cannot be regarded as representative.

One respondent company in the computer industry gives the USA as their primary place of business and the USPTO as the office in which they most frequently file applications.

Consequently, the evaluation for Germany must be seen as a clear set of opinions of German enterprises of important sectors of industry, important patent organisations as well as the professional organisations relevant in the field of patents.

Double counts cannot be excluded. For example, it is possible that a corporation or a law firm responding to the Federal Ministry of Justice had previously also filed a comment with an association or an organisation. Therefore the opinion of a respondent corporation or law firm may also have been taken into account in the response submitted by associations or organisations. However, due to the structure of the questionnaires, these possible (indirect) double counts are inherent to the system.

In detail:

The bulk of respondents are corporations (64.1 %) followed by patent professionals and law firms (together 23.1 %). 12.8 % of the responses come from associations and organisations ("Other"). No responses were received from universities or research institutions as well as from individual inventors (cf. question II 1).

The responding corporations are almost exclusively large scale industrial enterprises (92 % of the respondent corporations have more 1,000 employees), only two responses come from medium-sized companies (8 %; 11 to 100 employees).

The size of patent professionals and law firms ranges between 0 and 100 employees (cf. question II 2 a).

The primary areas of technology or industry of most of the responding enterprises are chemistry/ pharmaceuticals/ biotechnology (64 % of companies) and mechanics/ electrical/ electronics (32 %). In contrast, the telecommunications and computer sectors are clearly under-represented (4 %; cf. question II 2 b).

96 % of the respondent corporations as well as 100 % of the patent professionals and law firms have their primary place of business in Europe, with some enterprises giving additional places of business in other countries (2 x USA, 1 x China). One enterprise gives the USA as principal place of business (cf. question II 3).

The EPO (68 %) is indicated as the office in which companies most frequently file applications, followed by the DPMA (24 %). For responses from patent professionals and law firms the order is reversed (DPMA 55.6 %; EPO 22.2 %). Contrary to the instructions for answering the question, a number of respondents specified additional offices (USPTO, JPO, SIPO, KIPO). When combining responses, 85.3 % of corporations, patent professionals and law firms gave the EPO and/or DPMA as the office/s in which they most frequently file applications (cf. questions II 4).

350 patent applications were filed per year on average by the corporations, patent professionals and law firms who indicated in the questionnaire how many patent applications they file at their main filing office. Consequently, the majority of respondents are large applicants. A mere 7.7 % of the respondents file between one and ten applications per year (two medium-sized companies and a patent professional; cf. question II 5).

2.2.2.2 Grace period (part III of the questionnaire)

Grace period "yes" or "no"?

The key question of this part is whether or not the respondent is in principle in favour of a grace period (question III 9). 61.5 % of all respondents answer "no" to this question and 38.5 % answer "yes".

With 26.1 % in favour compared to 73.9 % opposed, the disapproval of a grace period is even more pronounced among large scale industrial enterprises (> 1,000 employees), while the two medium-sized enterprises participating in the survey support a grace period.

The disapproval among patent professionals and law firms is just above the total average at 66.7 %.

Interestingly, 80 % of the associations and organisations are in favour of the introduction of a grace period. Just one association/organisation is against it.

The analysis of the consultation results by sector of industry provides a differentiated picture.

The grace period has the highest rate of approval among companies in the mechanics sector at 57.1 %. In contrast, companies in the electrical/ electronics industry (100 %) and chemistry (84.6 %) strongly disapprove of a grace period. 55.6 % of the corporations in the pharmaceuticals sector oppose a grace period.

Protection of inventors against breach of confidence and theft of information (28.2 %; cf. question III 10) and the user-friendliness of a grace period provision, particularly for individual inventors and SMEs (33.3 %; cf. question III 11), are seen as the main purposes of the introduction of a grace period.

In contrast, most of the respondents think that a grace period diminishes legal certainty and complicates the patent system (61.5 % and 53.8 % respectively; cf. question III 11).

Conditions governing a possible grace period

The respondents regard the duration of the grace period (76.9 %) and the beginning of the term of the grace period (74.4 %) as particularly important for working out the conditions governing a (fictitious) grace period (cf. question III 16).

In this context, 71.8 % of all respondents are in favour of a comparatively short duration of six months (equivalent to the German utility model), 10.3 % support a duration of 12 months (cf. question III 13).

Furthermore, the respondents clearly prefer calculation of the term from the priority date (69.2 %) over calculation from the actual filing date (20.5 %) (cf. question III 14).

As regards mandatory declarations on the inventor's/applicant's own pre-filing disclosures in terms of a formal procedure for invoking the grace period, 64.1 % of all respondents - and specifically 80 % of the enterprises - are in favour of such mandatory declarations (cf. question III 12).

The enhancement of legal certainty for third parties is what most of the respondents cite as a reason (61.5 %; cf. question III 12 a).

A very large proportion of all respondents (89.7 %; cf. question III 15.) think that provisions on the grace period should be internationally harmonised. Although it cannot be directly inferred from the questionnaire, three associations/organisations, in particular, point out in their free-text written comments that international harmonisation of provisions are in fact considered as a prerequisite for the introduction of a grace period.

Experience gained with grace period provisions

Questions III 1 to III 7a deal in great detail with the respondents' own experience regarding different aspects of (non)-prejudicial disclosures and the previous use of corresponding national provisions.

51.3 % of the respondents stated that they had once felt the need to file a patent application after their own disclosures (cf. question III 2).

The reasons indicated for pre-filing disclosures are above all disclosures in an academic communication (article, conference 35.9 %), during business negotiations (25.6 %) and at trade shows (20.5 %) (cf. question III 2 a).

To obtain some degree of protection at all a total of 43.6 % of respondents sought IP protection in countries where they could rely on a grace period (e.g. the USA and Japan or a utility model application in Germany, cf. questions III 2 b).

Interestingly, just over half (55 %) of those intending to file a patent application after disclosure (many of whom subsequently relied on a grace period in other countries) are in favour of introducing a grace period (cf. question III 9).

A detailed table of results on these questions is included in the annex.

Additional notes on part III

Four of the questionnaires filed had evidently been downloaded from the EPO website, as these contain two additional EPO-specific questions (III 18 and III 19) in part III. The results are documented in the annex. However, no detailed analysis was made due to the small number of replies.

2.2.2.3 Publication of applications after 18 months (part IV of the questionnaire)

Mandatory publication and relevant period of time

By far the greatest proportion of respondents (94.9 %) supported publication of all patent applications (except for withdrawn applications and those subjected to secrecy orders; cf. question IV 3). 89.7 % are also in favour of requiring the competent search authority to make search results available to the applicant sufficiently in advance of the expiry of the 18-month period (cf. question IV 4).

With regard to the period of time until publication, 84.6 % of the respondents regard 18 months from the priority date as reasonable (from the perspective of the patent applicant; cf. question IV 1).

However, when answering the same question - from the perspective of third parties – only 59 % of the respondents consider 18 months to be reasonable, whereas a third (33.3 %) think that this period is too long (cf. question IV 2).

This reflects the ambivalent nature of the 18-month rule which aims to strike a balance between a reasonable period of time for the applicant during which the invention is kept secret and early information of the public about the possibility of new IP rights arising.

US "opt-out" provision and the need of harmonisation

A number of questions deal with the "opt-out" provision in the USA according to which, purely national applications (no subsequent international applications) are not published before grant if the applicant files a corresponding request.

In this context, 12.8 % of the respondents stated that they had once taken advantage of this provision giving protection against copying as the reason in all cases (cf. question IV 5 and IV 6).

In contrast, 38.5 % of respondents had once been negatively affected as a direct result of an application not being published due to the US opt-out provision.

The lack of an opt-out provision only caused 7.7 % of all respondents to consider trade secret protection for their inventions as an alternative to filing a patent application (cf. questions IV 8 and IV 9).

The question IV 10 as to whether the respondents believed that by means of the opt-out provision and the corresponding practice in the United States alignment with the 18-month publication has effectively been achieved was answered in the negative by 61.5 % of the users.

Generally, a very high proportion (92.3 %) of the respondents consider international harmonisation in this area to be "critical" or "important but not critical". However, the question whether parallel introduction of a grace period, in terms of a package solution, should be considered was regarded as irrelevant for international harmonisation by respondents (82.1 %; cf. questions IV 11 and IV 12).

Additional notes on part IV

The answers to the questions in part IV were largely evenly distributed across all groups of respondents (corporations, law firms, industries, sizes of enterprises etc) which is why there is no differentiation between groups of respondents.

Questions IV 7 to IV 9 comprise partial questions about the approximate number of instances which do not relate to a certain period of time (e.g. per year). Therefore, it is in most cases not possible to draw conclusions on the reference period for the answers received and consequently the answers cannot be interpreted. Just for the sake of completeness, the annex contains the means of the numerical values indicated in the questionnaires.

In respect of the answers to EPO-specific questions (IV 14 and IV 15) reference is made to the annex, too.

2.2.2.4 Treatment of conflicting applications (part V of the questionnaire)

Preferred model for conflicting applications

The international harmonisation of the legal basis for the examination of conflicting applications was considered to be critical (33.3 %) or important (43.6 %) by roughly three quarters of the respondents (cf. question V 7).

This rate is slightly lower than that relating to the harmonisation of the grace period (89.7 %) and the 18-month publication (92.3 %).

Two thirds of the responding users (66.7 %) are in favour of maintaining the current German/European practice of considering conflicting applications for the examination of novelty only with no special treatment of conflicting applications filed by the same applicant (no anti-self-collision; cf. question V 8).

A comparatively high proportion (25.6 %) prefers the approach "examination of novelty and inventive step with anti-self-collision", while the "extended examination of novelty with anti-self-collision" (2.6 %) and a fourth alternative ("examination of novelty only with anti-self-collision"; 5.1 %) receive only little support.

Interestingly, 80 % of organisations and associations prefer approaches with an anti-self-collision provision.

PCT applications as conflicting applications

For a PCT application to become prior art or conflicting application, it requires effective entry into the national phase in Germany (or regional phase at the EPO), for which translation requirements and fee payments, in particular, have to be observed.

Just under half of the respondents (46.2 %) are in favour of maintaining the current German practice, whereas for 35.9 % think that the publication of a PCT application (irrespective of its language or later fate) with designation of the country/region in question would be sufficient for it to qualify as prior art or conflicting application (cf. question V 9).

Frequency and effect of conflicting applications

51.3 % of the respondents indicate that they have been faced with the citation of conflicting applications as prior art in approximately one out of 100 of their own applications and 28.2 % specified that this occurred less frequently (cf. question V 1).

It can be inferred from the answers to question V 2 that, in about half of the cases, these are conflicting applications previously filed by the applicant himself ("self-collision").

25.6 % of the responding users state that they had once been faced with conflicting applications involving the same patent family as prior art in two or more different jurisdictions (that apply different rules on conflicting applications (cf. question V 3)). Remarkably, the outcome was different in all these cases and resulted in patents with different claims (cf. question V 4). Respondents stated that in 70 % of the cases such variation was caused by the rules on conflicting applications only. In 30 % of the cases the variation were also caused by other rules (cf. question V 5).

Patent Thickets

With regard to the questions on patent thickets, only 12.8 % of the respondents indicate that they have ever had experience with patent thickets when licensing a technology or with multiple infringement claims (cf. question V 6 a). Since a broad majority of users responding to this question have their (primary) place of business in Europe, it is little surprising that all these occurrences were in Europe (12.8 %); some users additionally specified the USA and other countries (5.1 % each; cf. question V 6 b i). With regard to the technology areas concerned, telecommunications (17.9 %) and computers (15.4 %) were predominantly mentioned (cf. question V 6 b ii).

Of those users having had experiences with patent thickets, a higher proportion (3 out of 5 - equivalent to 60 %) were in favour of the US practice of examining conflicting applications.

Additional notes on part V

The questions V 1 to V 5 are again relating to the estimated number of instances/frequencies without indication of a concrete reference period which is why the interpretation of the data is limited.

In respect of the answers to the EPO-specific questions (V 11 and V 13) reference is again made to the annex.

2.2.2.5 Prior user rights (part VI of the questionnaire)

Importance of and conditions governing prior user rights

As with conflicting applications, international harmonisation of prior user rights is deemed to be “critical” (35.9 %) or “important” (41 %) by approximately three quarters of the respondents (cf. question VI 3).

Two respondents (corresponding to 5.1 %) indicate that an EU-wide harmonisation should be aimed at before an international one (cf. question VI 4).

Regarding the conditions governing such harmonised prior user rights, a broad majority of the respondent users support the practice already established in Germany that requires actual use of the invention (69.2 %) or preparations for its use (71.8 %) having taken place prior to the filing or priority date (76.9 %) for giving rise to prior user rights (cf. questions VI 2.b and VI 2.c). There is a broad opposition to exceptions for certain patents or their owners (82.1 %; cf. question VI 2.d).

With regard to the question whether prior user rights should arise, even if the prior user derived knowledge of the invention in good faith from the patentee (for example, by intended or unintended publication by the patentee; subject to a grace period), the users are divided (41 % think that the prior user right should arise nonetheless; 43.6 % think that it should not arise; cf. question VI 2.a).

Experience gained with prior user rights

The fact that prior user rights are available is widely known among the respondents (79.5 %; cf. question VI 1).

However, only one third (33.3 %) has already asserted prior user rights in litigation. This corresponds approximately to the frequency of prior user rights having been asserted against them (35.9 %).

Prior user rights tend to be asserted somewhat more frequently to avoid infringement proceedings, to reach a settlement or for licensing negotiations (asserted themselves: 48.7 %; had asserted against them: 35.9 %).

The aforementioned activities primarily referred to German law (66.7 %) with 20.7 % of the respondents having experience alternatively or in addition with other European and non-European legal systems (cf. question VI 1.a).

As for the concerned areas of technology, mechanics was indicated most often (46.2 %), followed by chemistry (28.2 %) and electrical/electronics (23.1 %; cf. question VI 1.b).

All businesses (100 %) with mechanics as their area of industry (cf. question II 2.b) have already been confronted with prior user rights in the area of technology mechanics or asserted them themselves. Conspicuously, 31.3 % of the businesses from the areas chemistry/pharmaceuticals/biotechnology were also familiar with prior user rights in the area of mechanics. This implies that construction of production facilities and process engineering is of some importance in these areas.

While businesses from the areas chemistry/pharmaceuticals/biotechnology were also frequently concerned with prior user rights from their “own” area of technology (75 %), the prior user rights from these areas of technology are not relevant for other areas.

Additional notes on part VI

Question VI 1 is also about estimated numbers of times without an indication of a concrete reference period because of which an interpretation of the information given is only possible to a very limited extent.

For the sake of completeness, the table of results in the annex contains means for the numerical values included in the returned questionnaires.

2.2.2.6 Other areas requiring harmonisation (part VII of the questionnaire)

The answers to the general question about other areas where differences in the legal systems cause problems for the applicants included a range of different topics without an obvious focus and mostly also without any detailed explanation.

Most often given were (indirect) infringement (12.8 %) as well as technicality, patent term extension/supplementary protection certificates and utility/design patents (5.1 % each).

Therefore, it appears that there is no significant need among German users for international harmonisation with regard to further areas of patent law.

Evaluation of the Tegernsee questionnaires for Germany

Annex

1. Methodology of the evaluation and notes on the tables of results

1.1 The data of the received questionnaires and written comments were entered manually into an Excel spreadsheet und evaluated in it.

1.2. The totals of the respective answers as well as the (arithmetic) means of numerical data have been calculated.

1.2.1 A number of questions in part IV, V and VI concern approximate numbers of cases without the indication of a reference period. These questions were answered in very different ways, e.g. in the form of numerical values ("15"), ranges ("5-10"), percentages ("25 % of the applications"), numbers with a reference period ("5 in 20 years"), verbal answers ("very rarely"), etc.

In these cases, in order to determine notional means,

- numerical values have been taken as such (15 for "15"),
- ranges have been included with their means (7.5 for "5-10"),
- numbers with a reference period have been counted as numbers per year (0.25 for "5 in 20 years"),
- all other answers have not been included for the calculation of the mean.

1.2.2 Percentages in the tables („Percentage [%]”) always refer to the total number of respondents (i.e. 39).

For questions allowing only one answer, the total number of answers and missing answers is thus always 39 or 100 % (deviations of +/-0.1 % are due to rounding).

If multiple answers were allowed, the total number of answers is not equal to 39/100 % and is given in a field titled "Total All answers".

In case of multiple answers as well as for questions about numbers of cases without a reference period, it has been additionally evaluated whether the question had been answered or not ("Answer" and "No answer"). The total number of "Answer" and "No answer" is equal to 39 or 100 %.

1.2.3 In addition to the possible answers in the questionnaire, answers have been partially grouped or fields for answers have been created under „Other“, which are also included in

the table (e.g. part II, question II 2.b: grouping of areas of technology; question II 4: additional evaluation by offices in the field “Other”).

1.3 Four of the submitted questionnaires have obviously been downloaded from the EPO website, as they contain additional EPO-specific questions in part III, IV and V of the questionnaire. The results are documented in the respective tables.

2. Tables of result

2.1 Table of results regarding information about the respondents (part II of the questionnaire)

Question	Answer	Percentage [%]	Total/mean
II 1. Which of the following best describes your affiliation?	II 1. Corporation	64,1	25
	II 1. University/Research Institution	0	0
	II 1. Individual Inventor	0	0
	II 1. Patent Professional	7,7	3
	II 1. Law Firm	15,4	6
	II 1. Other	12,8	5
	II 1. No answer	0	0
	II 1. Total	100	39
II 2. If you represent a business or are an individual inventor: II 2. a. Please estimate the total number of employees.	II 2.a 0-10	10,3	4
	II 2.a 11-100	10,3	4
	II 2.a 101-500	0	0
	II 2.a 501-1000	0	0
	II 2.a > 1000	59	23
	II 2.a No answer	20,5	8
	II 2.a Total	100,1	39

Question	Answer	Percentage [%]	Total/ mean
II 2.b What is your primary area of technology or industry?	II 2.b Mechanics	35,9	14
	II 2.b Electrical/Electronics	12,8	5
	II 2.b Telecommunications	2,6	1
	II 2.b Computers	2,6	1
	II 2.b Chemistry	38,5	15
	II 2.b Biotechnology	7,7	3
	II 2.b Pharmaceuticals	28,2	11
	II 2.b Other	0	0
	II 2.b Total All answers	128,3	50
	II 2.b Mechanics and/or Electrical	38,5	15
	II 2.b Telecommunications and/or Computers	5,1	2
	II 2.b Chemistry and/or Biotech and/or Pharma	48,7	19
	II 2.b Total All answers	92,3	36
	II 2.b Answer	77	30
	II 2.b No answer	23	9
	II 2.b Total	100	39

Question	Answer	Percentage [%]	Total/ mean
II 3. In which of the following jurisdictions is your residence or primary place of business?	II 3. Europe	84,6	33
	II 3. Japan	0	0
	II 3. United States	7,7	3
	II 3. Other (China)	2,6	1
	II 3. Total All answers	94,9	37
	II 3. Answer	87,2	34
	II 3. No answer	12,8	5
	II 3. Total	100	39
II 4. In which of the following offices do you most frequently file applications (limit one)?	II 4. European Patent Office	48,7	19
	II 4. Japan Patent Office	7,7	3
	II 4. United States Patent and Trademark Office	10,3	4
	II 4. Other	41	16
	II 4. Total All answers	107,7	42
	II 4. Other-DPMA	28,2	11
	II 4. Other-Korea/China	7,7	3
	II 4. Other-No filing	2,6	1
	II 4. Other-Not spec	2,6	1
	II 4. Total Other	41,1	16
	II 4. EPO and/or DPMA	74,4	29
	II 4. Answer	82,1	32
	II 4. No answer	17,9	7
	II 4. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
II 5. On average, how many applications do you file per year in the office identified in your response to Question 4?			
	II 5. Mean		349,96
	II 5. 1-10	7,7	3
	II 5. 11-100	28,2	11
	II 5. 101-500	17,9	7
	II 5. >500	17,9	7
	II 5. Answer	71,8	28
	II 5. No answer	28,2	11
	II 5. Total	100,0	39

2.2 Table of results regarding the grace period (part III of the questionnaire)

Question	Answer	Percentage [%]	Total/ mean
III 1. If you are affiliated with a business, does that business conduct joint research with universities/research institutes? If you are affiliated with a university or research institution, do you conduct joint research with private companies?	III 1. Often	46,2	18
	III 1. Occasionally	17,9	7
	III 1. Hardly	10,3	4
	III 1. Never	0	0
	III 1. Not applicable	10,3	4
	III 1. No answer	15,4	6
	III 1. Total	100,1	39
III 2. Have you ever felt the need to file a patent application after you or your client(s) disclosed a research (and/or product development) result?	III 2. Yes	51,3	20
	III 2. No	33,3	13
	III 2. Not applicable	5,1	2
	III 2. No answer	10,3	4
	III 2. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 2.a If "Yes" in Question 2, why did such necessity arise?	III 2.a. Error on the part of the inventor/person entitled to file or an employee	15,4	6
	III 2.a. Breach of confidence	15,4	6
	III 2.a. Disclosure at a trade show	20,5	8
	III 2.a. Disclosure during business negotiations	25,6	10
	III 2.a. Disclosure during trials/public experiments	5,1	2
	III 2.a. Disclosure in an academic communication (Article/Conference)	35,9	14
	III 2.a. Other - Please specify: +/- Answers given above	2,6	1
	III 2.a. Total All answers	120,5	47
	III 2.a. Answer	51,3	20
	III 2.a. No answer	48,7	19
	III 2.a. Total	100	39
III 2.b b. If "Yes" in Question 2, how did you deal with it?	III 2.b I filed anyway.	15,4	6
	III 2.b I filed in all jurisdictions where I could rely on a grace period.	30,8	12
	III 2.b I gave up on patenting and decided to protect the invention as a trade secret.	5,1	2
	III 2.b Other - Please specify:	17,9	7
	III 2.b Other – text 1 Defensive Publication 3 Restricted Scope 3 Filing in States with GP 3 Utility Model (with GP)		
	III 2.b Total All answers	69,2	27
	III 2.b Answer	53,8	21
	III 2.b No answer	46,2	18
	III 2.b Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 3. If you are affiliated with a business or a university/research institution or are an individual inventor, to what extent do your researchers/employees (including yourself, as appropriate) understand the patent system, including the grace period?	III 3. They have sufficient knowledge about the patent system, including the grace period.	35,9	14
	III 3. They have a basic idea of the patent system but little to no understanding of the grace period.	28,2	11
	III 3. They have little to no understanding of the patent system.	7,7	3
	III 3. Not applicable	12,8	5
	III 3. No answer	15,4	6
	III 3. Total	100	39
III 4. Have you or your client(s) ever relied on the grace period?	III 4. Yes	48,7	19
	III 4. No	38,5	15
	III 4. No answer	12,8	5
	III 4. Total	100	39
III 4.a If "Yes" in Question 4, in which countries and under what circumstances did you or your client(s) rely on the grace period?	III 4.a Please explain your answer.		16
	III 4.a Text <u>Countries:</u> 11 DE Utility model 9 US Patent 3 JP Patent 2 DE Trade Fair 2 Other		
	III 4.a Text <u>Circumstances:</u> 5 academic prepub 2 breach of confidence 1 other		

Question	Answer	Percentage [%]	Total/ mean
III 4.b If "Yes" in Question 4, how frequently have you or your client(s) relied on it? Please choose the closest one.	III 4.b Less frequently than once per 1,000 patent applications	2,6	1
	Please specify, if possible:	0	0
	III 4.b Once per 1,000 patent applications	20,5	8
	III 4.b Once per 100 patent applications	23,1	9
	III 4.b Once per 10 patent applications	0	0
	III 4.b More frequently	0	0
	Please specify, if possible:	0	0
	III 4.b No answer	53,8	21
	III 4.b Total	100	39
III 4.c If "Yes" in Question 4, have there been any specific instances where your or your client's reliance on the grace period has directly led to or been a particular contributing factor in the success of your or your client's business and/or research activities?	III 4.c Yes	10,3	4
	III 4.c No	35,9	14
	III 4.c Please provide additional details/explanation as appropriate.	12,8	5
	III 4.c Details – text 2 otherwise no market privilege 2 not marketed 1 other		
	III 4.c No answer	53,8	21
	III 4.c Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 4.d d. If "Yes" in Question 4, have you or your client(s) ever experienced any problems in terms of the procedures involved when invoking the grace period?	III 4.d Yes	2,6	1
	III 4.d No	33,3	13
	III 4.d Please explain your answer, including the countries involved.	5,1	2
	III 4.d Explain – text 1 no problems 1 other		
	III 4.d No answer	64,1	25
	III 4.d Total	100	39
III 5. Have there been instances where you or your client(s) were unable to obtain a patent because a grace period was not available?	III 5. Yes	30,8	12
	III 5. No	53,8	21
	III 5. Please explain your answer, including the approximate number of instances and the countries involved.	23,1	9
	III 5. Explain – text +/- like answers to questions 2 and 4		
	III 5. No answer	15,4	6
	III 5. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 5.a a. If "Yes" in Question 5, have there been instances where you or your client(s) were able to obtain a patent in one country but not in another country because the grace periods were either not harmonized or a grace period was not available in the other country?	III 5.a Yes	23,1	9
	III 5.a No	10,3	4
	III 5.a Please explain your answer, including the countries involved and the approximate number of instances.	25,6	10
	III 5.a Explain – text +/- like answers to questions 2 and 4 no number of instances given		
	III 5.a No answer	66,7	26
	III 5.a Total	100,1	39
III 6. Has the unavailability of a grace period been a factor for you or your client(s) in making business and/or research decisions beyond those associated with a particular invention?	III 6. Yes	12,8	5
	III 6. No	74,4	29
	III 6. Please explain your answer	10,3	4
	III 6. Explain – text +/- like answers to questions 2 and 4		
	III 6. No answer	12,8	5
	III 6. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 7. Have there been instances where reliance by another on the grace period has negatively affected your or your client's business and/or research activities?	III 7. Yes	17,9	7
	III 7. No	66,7	26
	III 7. Please explain your answer, including the approximate number of instances	12,8	5
	III 7. Explain – text +/- like answers to questions 2 and 4 no number of instances given 2 negative effect by strong protection in US, weak protection rest of world		
	III 7. No answer	15,4	6
	III 7. Total	100	39
III 7.a If "Yes" in Question 7, at what stage did these negative consequences occur:	III 7.a Between publication of the application and grant of a patent to another party	5,1	2
	III 7.a After the grant of a patent to another party but before any litigation regarding the validity or infringement of the patent	17,9	7
	III 7.a During litigation of the validity or infringement of another party's patent	2,6	1
	III 7.a Total All answers	25,6	10
	III 7.a Answer	20,5	8
	III 7.a No answer	79,5	31
	III 7.a Total	100	39
III 8. Do you think that a grace period is an important feature of patent law?	III 8. Yes	46,2	18
	III 8. No	53,8	21
	III 8. No answer	0	0
	III 8. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 9. In principle, are you in favor of a grace period?	III 9. Yes	38,5	15
	III 9. No	61,5	24
	III 9. No answer	0	0
	III 9. Total	100	39
III 10. If "Yes" in Questions 8 and 9, please check the box next to each of the following statements that you agree with:			
A grace period should:	III 10. take account of and balance the goals of the patent system and the needs of the scientific community	23,1	9
	III 10. protect inventors against the consequences of breach of confidence and theft of information	28,2	11
	III 10. allow inventors to test the marketability of their inventions and/or attract venture capital financing before undertaking the expense of pursuing patent protection for the innovation	17,9	7
	III 10. protect the inventor who first disclosed his invention from re-disclosure of his invention in the interval between first disclosure and filing, by third parties having derived knowledge of his invention from him	23,1	9
	III 10. protect the inventor who first disclosed an invention against any interference from third parties in the interval between first disclosure and filing, including disclosures from independent inventors of their own inventions	10,3	4
	III 10. have a safety net function only, meaning that if inventors choose to disclose their invention prior to filing, they should bear the risk of such disclosures and the investments of third parties in good faith who adopt technology which appears to be freely available prior to the filing or priority date should be protected	12,8	5

Question	Answer	Percentage [%]	Total/ mean
	III 10. I agree with none of the above statement	5,1	2
	III 10. Please add any comments you deem necessary:	2,6	1
	III 10. Total All answers	120,5	47
	III 10. Answer	38,5	15
	III 10. No answer	61,5	24
	III 10. Total	100	39
III 11. Please check the box next to each of the following statements that you agree with:	III 11. A good reason to implement a grace period is that it is user-friendly for those that may not be knowledgeable about the patent system, including small and medium enterprises (SMEs) and individual inventors.	33,3	13
	III 11. A good reason not to implement a grace period is that it complicates the patent system.	53,8	21
	III 11. A grace period diminishes the predictability and legal certainty of the patent system.	61,5	24
	III 11. A grace period allows early publication of research results, which not only addresses the needs of academics but advances the interests of the public by promoting earlier dissemination of new technical information	17,9	7
	III 11. Other - please specify: 1 GP required for product testing 1 legal uncertainty 2 no use if no harmonization	10,3	4
	III 11. Total All answers	176,8	69
	III 11. Answer	87,2	34
	III 11. No answer	12,8	5
	III 11. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 12. Some patent systems require applicants to declare entitlement to the grace period by providing certain information about any pre-filing disclosures they are aware of within a prescribed period of time after filing the application. In other systems, the grace period arises by operation of law, i.e., no formal procedures for obtaining its benefits are required. Do you believe declarations or similar prescribed procedures should be mandatory for invoking the grace period?	III 12. Yes	64,1	25
	III 12. No	35,9	14
	III 12. No answer	0	0
	III 12. Total	100	39
III 12.a If you answered "Yes" in Question 12, please indicate for which of the following reason(s) (check all that apply):	III 12.a It enhances legal certainty for third parties, including during the post-grant phase	61,5	24
	III 12.a It simplifies the work of patent offices and may eliminate the need for an extra communication	38,5	15
	III 12.a You have experience with declarations in existing systems and do not feel it imposes an undue burden on applicants	15,4	6
	III 12.a Other – please specify: 2 helps for immediate documentation 1 allow applicant to amend declaration	7,7	3
	III 12.a Total All answers	123,1	48
	III 12.a Answer	61,5	24
	III 12.a No answer	38,5	15
	III 12.a Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 12.b If you answered "No" in Question 12, please indicate for which of the following reason(s) (check all that apply):	III 12.b You are concerned that failure to identify or misidentification of a disclosure in the declaration, even due to an honest mistake or oversight, might result in the disclosure not being graced	15,4	6
	III 12.b You are concerned that it will lead to applicants trying to manipulate the system	7,7	3
	III 12.b It imposes an additional burden on applicants.	15,4	6
	III 12.b It imposes an additional burden on patent offices.	12,8	5
	III 12.b Other – please specify: +/- answers given above	5,1	2
	III 12.b Total All answers	56,4	22
	III 12.b Answer	30,8	12
	III 12.b No answer	69,2	27
	III 12.b Total	100	39
III 13. The duration of the grace period reflects a balance between affording a reasonable amount of time to the inventor/applicant to disclose the invention prior to filing the application on the one hand, and the interests of third parties in knowing within a reasonable period of time whether an application has been filed for an invention that has been revealed to the public on the other. Some patent systems provide a grace period of 6 months before filing, and others provide 12 months. What length of time (in months) do you believe is appropriate for the grace period?	III 13. 6 months	71,8	28
	III 13. 12 months	10,3	4
	III 13. Other - please specify and explain: 7 no GP 3 1-18 months 1 other	28,2	11
	III 13. Total All answers	110,3	43
	III 13. Answer	100	39
	III 13. No answer	0	0
	III 13. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 14. Regardless of the duration of the grace period, from which date should the term of the grace period be computed:	III 14. The filing date only	20,5	8
	III 14. The filing date, or, if applicable, the priority date	69,2	27
	III 14. Other – please specify: 6 no GP 1 other	17,9	7
	III 14. Total All answers	107,6	42
	III 14. Answer	100	39
	III 14. No answer	0	0
	III 14. Total	100	39
III 15. Do you think the grace period should be internationally harmonized?	III 15. Yes	89,7	35
	III 15. No	7,7	3
	III 15. No opinion/ Don't know	0	0
	III 15. Please explain your answer.	43,6	17
	III 15. Explain – text 11 intl legal certainty and validity 2 easier intl collaboration 2 no GP 2 other		
	III 15. No answer	2,6	1
	III 15. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
III 16. In terms of achieving a sufficient level of international harmonization, which of the following matters, if any, do you believe are required to be harmonized? Check all that apply:	III 16. Mode of disclosure (e.g., in writing, orally, at an academic conference, etc.)	69,2	27
	III 16. Scope of the grace period (e.g., disclosures emanating from the inventor/applicant only, disclosures resulting from breach of confidence, theft or misappropriation of information, third party disclosures based on independent invention etc.)	69,2	27
	III 16. The duration (e.g. 6 months, 12 months, etc.)	76,9	30
	III 16. The date from which the term of the grace period is computed (e.g. actual filing date, priority date)	74,4	29
	III 16. Declaration or other formal requirements for invoking the grace period	51,3	20
	III 16. The availability and scope of prior user rights during the grace period	46,2	18
	III 16. None of the above	5,1	2
	III 16. Other – please specify: +/- like answers above	7,7	3
	III 16. Total All answers	400	156
	III 16. Answer	92,3	36
	III 16. No answer	7,7	3
	III 16. Total	100	39
III 17. Please feel free to add any other comments concerning the grace period that you wish to make:	III 17. Comments – text 2 questions biased pro GP 2 no GP 1 only safety net	12,8	5

Question	Answer	Percentage [%]	Total/ mean
EPO-specific questions:			
III 18. Assuming that a grace period exists, as a matter of policy, in your view, who should <u>bear the risks</u> associated with pre-filing disclosures?	III 18. The inventor	7,7	3
	III 18. Third parties	0	0
	III 18. No answer	92,3	36
	III 18. Total	100	39
III 19. In past substantive patent law harmonization discussions, some European delegations were able to agree to a common position on a "safety net" grace period. Prior user rights available to third parties having used or made preparations to use the invention in good faith during the grace period were an integral part of the definition of the "safety net" grace period, as a deterrent to pre-filing disclosure. How do you consider prior user rights in relation to the definition of a grace period? Please check the statements you agree with below:	III 19 Prior user rights are an essential component of a safety-net grace period, and contribute to enhancing legal certainty by discouraging pre-filing disclosure where such disclosure may be avoided.	10,3	4
	III 19. Prior user rights should be precluded from arising during the grace period, even for third parties in good faith, because otherwise, the grace period would be a trap for the unwary.	0	0
	III 19. Prior user rights should be precluded from arising where the knowledge of the invention was derived from the subsequent patentee, even where the obtaining of the knowledge of the invention by the third party occurred in good faith - for instance, where it was made freely available prior to filing and its origin could not be traced.	0	0
	III 19. Prior user rights are irrelevant to the definition of a grace period.	0	0
	III 18. No answer	89,7	35
	III 18. Total	100	39

**2.3 Table of results regarding the publication of applications after 18 months
(part IV of the questionnaire)**

Question	Answer	Percentage [%]	Total/ mean
IV 1. 1. Considering the issue from the perspective of patent applicants, is 18 months from the earlier of the filing date or the priority date of the application:	IV 1. Too long	2,6	1
	IV 1. Too short	5,1	2
	IV 1. Reasonable	84,6	33
	IV 1. No answer	7,7	3
	IV 1. Total	100	39
IV 2. Considering the issue from the perspective of third parties, including the public, is 18 months from the earlier of the filing date or the priority date of the application:	IV 2. Too long	33,3	13
	IV 2. Too short	0	0
	IV 2. Reasonable	59	23
	IV 2. No answer	7,7	3
	IV 2. Total	100	39
IV 3. Should all applications not otherwise withdrawn, abandoned or subjected to secrecy orders or similar proceedings be published at 18 months from the earlier of the filing date or the priority date, assuming 18 months is a reasonable period of time considering the interests of applicants and third parties?	IV 3. Yes	94,9	37
	IV 3. No	5,1	2
	IV 3. No answer	0	0
	IV 3. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
IV 4. If a jurisdiction requires publication of all applications at 18 months, should that jurisdiction also require the competent authority to make search and/or examination results available to the applicant sufficiently in advance of the 18 month date under certain conditions so that the applicant can make an informed decision whether to withdraw or abandon their application before publication?	IV 4. Yes		
		89,7	35
	IV 4. No	5,1	2
	IV 4. Please provide additional details/explanation as appropriate.	20,5	8
	IV 4. Details – text 3 helpful 2 if possible for office 1 only on request by applicant 2 other		
	IV 4. No answer	5,1	2
	IV 4. Total	99,9	39
IV 5. Have you or your client(s) ever taken advantage of the provision in the United States to opt-out of publication at 18 months?	IV 5. Yes		
		12,8	5
	Approximate number of times per year		1,5
	IV 5. No	71,8	28
	IV 5. No answer	15,4	6
	IV 5. Total	100	39
IV 6. If your answer to Question 5 was yes, did you or your client(s) opt-out of publication to prevent competitors from copying or designing around the invention?	IV 6. Yes		
		12,8	5
	IV 6. No	0	0
	IV 6. Please provide additional details/explanation as appropriate.	0	0
	IV 6. No answer	87,2	34
	IV 6. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
IV 7. Have you ever had a competitor copy or design around your or your client's invention after the application was published at 18 months?	IV 7. Yes	59	23
	IV 7. Approximate number of instances (mean)		9,1
	IV 7. No	15,4	6
	IV 7. Please provide additional details/explanation as appropriate.	7,7	3
	IV 7. Details – text 2 copies usually after 18 months 1 copies by supplier		
	IV 7. No answer	25,6	10
	IV 7. Total	100	39
IV 8. Have you or your client(s) ever been negatively affected as a direct result of a U.S. application not being published within 18 months due to the applicant opting out of publication?	IV 8. Yes	38,5	15
	IV 8. Approximate number of instances (mean)		7,1
	IV 8. No	46,2	18
	IV 8. Please provide additional details/information as appropriate.	7,7	3
	IV 8. Details – text 2 can cause severe problems 1 no problem (competitors file internationally)		
	IV 8. No answer	15,4	6
	IV 8.Total	100,1	39

Question	Answer	Percentage [%]	Total/ mean
IV 9. Has the lack of an opt-out provision in a particular jurisdiction caused you or your client(s) to either consider or actively pursue trade secret protection as an alternative to obtaining a patent on an innovation?	IV 9. Yes	7,7	3
	IV 9. Approximate number of instances (mean)		1,3
	IV 9. No	77	30
	IV 9. Please provide additional details/information as appropriate.	0	0
	IV 9. No answer	15,4	6
	IV 9. Total	100,1	39
IV 10. Considering that the publication opt-out rate in the United States has been declining for the last several years and is currently at approximately 6% of applications filed per year (equating to about 22,000 non-publication requests in 2011), and further taking account of USPTO strategic plans that call for reaching 10 months pendency to first office action by 2014, do you consider the United States' 18-month publication regime to be effectively aligned with regimes in other jurisdictions that require all applications to be published at 18 months?	IV 10. Yes	30,8	12
	IV 10. No	61,5	24
	IV 10. No answer	7,7	3
	IV 10. Total	100	39
IV 11. How important do you consider international harmonization of publication of applications to be?	IV 11. Critical	56,4	22
	IV 11. Important, but not critical	35,9	14
	IV 11. Not important	0	0
	IV 11. No answer	7,7	3
	IV 11. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
IV 12. Does your answer to question 11 change if a grace period is included along with publication of applications among the issues to be considered for international harmonization?	IV 12. Yes	7,7	3
	IV 12. No	82,1	32
	IV 12. Please provide additional details/explanation as appropriate.	2,6	1
	IV 12. Details – text 1 "critical"		
	IV 12. No answer	10,3	4
	IV 12. Total	100,1	39
IV 13. Are there any other issues in relation to 18-month publication of patent applications that you believe should be addressed from the standpoint of international harmonization?	IV 13. Please explain: 3 opt-out very negative 1 provisional protection required 1 other	12,8	5
	IV 13. No answer	87,2	34
	IV 13. Total	100	39
EPO-specific questions:			
IV 14. Even without having ever experienced any direct impact from a "opted out application", does the mere possibility of such an unpublished application influence your business strategies in the US, in particular in respect of technology which you have not created, but which appears to be in the public domain?	IV 14. Yes	2,6	1
	IV 14. No	5,1	2
	IV 14. No answer	92,3	36
	IV 14. Total	100	39
IV 15. Would you be in favour of the conclusion of a substantive patent law harmonization treaty which provided for a mandatory grace period but did not contain a mandatory 18-month-publication provision?	IV 15. Yes	0	0
	IV 15. No	7,7	3
	IV 15. No answer	92,3	36
	IV 15. Total	100	39

**2.4 Table of results regarding the treatment of conflicting applications
(part V of the questionnaire)**

Question	Answer	Percentage [%]	Total/ mean
V 1. In your experience, in approximately how many applications have you or your client(s) been faced with the citation of a conflicting application filed by another applicant in the region in which you conduct your main patenting activity?	V 1. Less frequently than once per 100 patent applications: Please specify if possible:	28,2	11
	V 1. Once per 100 patent applications	51,3	20
	V 1. Once per 10 patent applications	10,3	4
	V 1. More frequently. Please specify if possible:	0	0
	V 1. Specify – text 3 10-100 1 very rarely	10,3	4
	V 1. No answer	10,3	4
	V 1. Total	100,1	39
V 2. In your experience, in approximately how many applications have you or your client(s) been faced with the citation of a conflicting application previously filed by you or your client(s) (i.e., faced a "self-collision" situation) in the region in which you conduct your main patenting activity?	V 2. Less frequently than once per 100 patent applications: Please specify if possible	51,3	20
	V 2. Once per 100 patent applications	33,3	13
	V 2. Once per 10 patent applications	5,1	2
	V 2. More frequently Please specify if possible:	0	0
	V 2. Specify – text 3 very rarely 1 one per 1000	12,8	5
	V 2. No answer	10,3	4
	V 2. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
V 3. Have you or your client(s) ever had a case of conflicting applications involving the same two patent families (one patent family being examined, the other being “secret” prior art) in different jurisdictions <u>that apply different rules on conflicting applications?</u> If the answer is yes, please indicate the number of cases:	V 3. No	59	23
	V 3. Yes, in two different jurisdictions;	12,8	5
	V 3. Number of cases: (mean)		5
	V 3. Yes, in three or more different jurisdictions;	12,8	5
	V 3. Number of cases: (mean)		3,5
	V 3. No answer	15,4	6
	V 3. Total	100	39
V 4. If you responded “Yes” in question 3, was the outcome different in each jurisdiction? For each response, please indicate the number of cases:	V 4. No	0	0
	V 4. Yes, the scope of protection granted was different;	25,6	10
	V 4. Number of cases: (mean)		3,5
	V 4. Yes, the patent was granted in at least one office and the application rejected in at least one other;	0	0
	V 4. Number of cases: (mean)		0
	V 4. No answer	74,4	29
	V 4. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
V 5. If you responded “Yes” in question 3, if the decision to grant or the scope of protection varied across jurisdictions, please indicate the cause(s) of such variation, and the number of cases to which such cause applied:	V 5. The rules on the effect of conflicting applications <u>only</u>	17,9	7
	V 5. Number of cases: (mean)		2,6
	V 5. <u>Both</u> the rules on conflicting applications and other factors (for example: rules on novelty, grace period, or other differences in examination practice)	7,7	3
	V 5. Number of cases: (mean)		5
	If so, please explain which other factors influenced the outcome:	5,1	2
	V 5. Explain – text 2 EU easy to overcome vs. US Terminal disclaimer		
	V 5. Other factor(s) <u>alone</u>	0	0
	V 5. Number of cases: (mean)		0
	V 5. Please indicate factors:	0	0
	V 5. No answer	74,4	29
	V 5. Total	100	39
V 6. Assuming that a “patent thicket” refers to a cluster of patents that may or may not be related or subject to common ownership, and which have claims of overlapping scope:			
V 6.a Have you or your client(s) ever experienced difficulties licensing a technology or been subjected to multiple infringement claims for the same or similar subject matter that you believe to be directly attributable to the presence of a “patent thicket?”	V 6.a Yes	12,8	5
	V 6.a No	74,4	29
	V 6.a No answer	12,8	5
	V 6.a Total	100	39

Question	Answer	Percentage [%]	Total/ mean
V 6.b If your answer to Question 6(a) was "Yes":			
V 6.b.i. In which of the following markets did such a "patent thicket" occur ?	V 6.b.i. United States	5,1	2
	V 6.b.i. Europe	12,8	5
	V 6.b.i. Japan	0	0
	V 6.b.i. Other – please specify: 2 CA, BR, CN, IN	5,1	2
	V 6.b.i. Total All answers	23	9
	V 6.b.i. Answer	12,8	5
	V 6.b.i. No answer	87,2	34
	V 6.b.i. Total	100	39
V 6.b.ii. Which of the following, if any, do you believe or know to be the cause of the "patent thicket(s)" in question?	V 6.b.ii. Two or more patents owned by a single entity	15,4	6
	V 6.b.ii. Two or more patents owned by different entities	5,1	2
	V 6.b.ii. A combination of the above	15,4	6
	V 6.b.ii. Other – please specify:	0	0
	V 6.b.ii. No answer	64,1	25
	V 6.b.ii. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
V 6.b.iii. iii. Based on <u>your experience</u> , in which of the following technology areas is the presence of such “patent thickets” most prevalent (more than one box may be checked)?	V 6.b.iii. Mechanics	2,6	1
	V 6.b.iii. Electrical /Electronics	12,8	5
	V 6.b.iii. Telecommunications	17,9	7
	V 6.b.iii. Computers	15,4	6
	V 6.b.iii. Chemistry	7,7	3
	V 6.b.iii. Biotechnology	10,3	4
	V 6.b.iii. Pharmaceuticals	7,7	3
	V 6.b.iii. Other	0	0
	V 6.b.iii. Total All answers	74,4	29
	V 6.b.iii. Answer	28,2	11
	V 6.b.iii. No answer	71,8	28
	V 6.b.iii. Total	100	39
V 7. How important do you consider international harmonization of the treatment of conflicting applications to be?	V 7. Critical	33,3	13
	V 7. Important, but not critical	43,6	17
	V 7. Not important	15,4	6
	V 7. Please provide a reason for your answer:	15,4	6
	V 7. Reason – text: 3 also other matters important (inventive step, sufficiency, same prior art) 2 other countries but US +/- harmonized 1 other		
	V 7. No answer	7,7	3
	V 7. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
V 8. Which of the following approaches do you believe strikes the best balance among the competing interests involved in the treatment of conflicting applications (please choose one)?	V 8. Conflicting applications should be relevant for the examination of novelty only with no consideration of who filed the application (no anti-self-collision).	66,7	26
	V 8. Conflicting applications should be relevant for the examination of novelty only, a concept encompassing minor differences, provided the inventions are "substantially the same" but not where applications were filed by the same applicant (anti-self-collision applies).	2,6	1
	V 8. Conflicting applications should be relevant for the examination of novelty and inventive step/obviousness, but not where applications were filed by the same applicant (anti-self-collision applies).	25,6	10
	V 8. Other (please briefly describe the approach or name a country operating on that basis): 2 Novelty only with anti-self-collision	5,1	2
	V 8. Please provide a reason for your answer: 5 anti-self-collision too complex and not justified 2 novelty only is clear and simple	17,9	7
	V 8. No answer	0	0
	V 8. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
V 9. For conflicting applications filed under the Patent Cooperation Treaty (PCT), which of the following do you believe constitutes an international best practice?	V 9. The prior art effective date of the conflicting PCT application should be the international filing date or the priority date, if claimed, only if the application enters the national/regional phase in the country/region in question. One consequence would be that PCT applications would only become "secret" prior art once they have been translated into the prescribed language(s), making examination easier; another would be to limit the prior art effect of such applications only to that necessary to prevent two or more patents from issuing on the same subject matter, i.e., to prevent double-patenting, since the PCT application cannot mature into a patent if it does not enter the national/regional phase.	46,2	18
	V 9. The prior art effective date of the conflicting PCT application should be the international filing date or the priority date, if claimed, upon designation of the country or region in question and provided the application was published under the PCT. One consequence would be to enable a much earlier determination of the patentability of an invention contained in a subsequent application, another would be to allow the creation of an international pool of "secret" prior art applicable to all applications (PCT and national) worldwide.	35,9	14
	V 9. Other - please explain	0	0
	V 9. Explain – text: 1 often also national applications that compete with later PCT applications	2,6	1
	V 9. No answer	17,9	7
	V 9. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
V 10. Are there any other issues in relation to treatment of conflicting applications that you believe should be addressed from the standpoint of international harmonization?	V 10. Please explain.		
		0	0
	V 10. No answer	100	39
	V 10. Total	100	39
EPO-specific questions:			
V 11. Please check the statements you agree with below:	V 11. Legal certainty is important		
		7,7	3
	V 11. All applicants must be treated the same	7,7	3
	V 11. It is important to advantage the first past the post	2,6	1
	V 11. Proliferation of rights must be stopped: tighter rules for all would be beneficial	0	0
	V 11. Rules against double patenting should be reduced to what is strictly necessary	5,1	2
	V 11. Total All answers	23,1	9
	V 11. Answer	7,7	3
	V 11. No answer	92,3	36
	V 11. Total	100	39
V 12. Regarding a possible harmonization process focusing on rules governing conflicting applications, please check the statements you agree with:	V 12. If the rules applicable to my jurisdiction were to change, I would prefer no harmonization		
		5,1	2
	V 12. I am prepared to consider the modification of the rules in my jurisdiction as part of a process of harmonization	2,6	1
	V 12. In the area of conflicting applications, all existing systems are flawed and there would be a benefit in striving to find an alternative, compromise solution	0	0
	V 12. Answer	7,7	3
	V 12. No answer	92,3	36
	V 12. Total	100	39

Question	Answer	Percentage [%]	Total/ mean
V 13. Do you consider the level of substantive difficulty which exists in harmonizing these rules to be out of proportion with the expected benefits of harmonization?	V 13. Yes	2,6	1
	V 13. No	5,1	2
	V 13. Answer	7,7	3
	V 13. No answer	92,3	36
	V 13. Total	100	39

2.5 Table of results regarding prior user rights (part VI of the questionnaire)

Question	Answer	Percentage [%]	Total/mean
VI 1. How many times (approximately) have you or your clients:	VI 1. Counseled/been counseled regarding the availability of prior user rights: (mean)		19,9
	VI 1. Answer	79,5	31
	VI 1. No answer	20,5	8
	VI 1. Total	100	39
	VI 1. Asserted prior user rights in litigation: (mean)		5,8
	VI 1. Answer	33,3	13
	VI 1. No answer	66,7	26
	VI 1. Total	100	39
	VI 1. Asserted prior user rights to avoid litigation/infringement proceedings, including settlement or licensing negotiations: (mean)		7,0
	VI 1. Answer	48,7	19
	VI 1. No answer	51,3	20
	VI 1. Total	100	39
	VI 1. Had prior user rights asserted against you in litigation: (mean)		3,7
	VI 1. Answer	35,9	14
	VI 1. No answer	64,1	25
	VI 1. Total	100	39
	VI 1. Had prior user rights asserted against you to avoid infringement/litigation, including settlement or licensing negotiations: (mean)		7,1
	VI 1. Answer	38,5	15
	VI 1. No answer	61,5	24
	VI 1. Total	100	39
	VI 1. Answer (at all)	89,7	35
	VI 1. No answer (at all)	10,3	4
	VI 1. Total	100	39

Question	Answer	Percentage [%]	Total/mean
VI 1.a Which national law(s) was/were involved during the above occurrences?	VI 1.a German	66,7	26
	VI 1.a Other (FR, GB, US, SWE, AT, multiple)	20,5	8
	VI 1.a Total All answers	87,2	34
	VI 1.a Answer	74,4	29
	VI 1.a No answer	25,6	10
	VI 1.a Total	100	39
VI 1.b What technologies were involved (more than one box may be checked)?	VI 1.b Mechanics	46,2	18
	VI 1.b Electrical/Electronics	23,1	9
	VI 1.b Telecommunications	5,1	2
	VI 1.b Computers	2,6	1
	VI 1.b Chemistry	28,2	11
	VI 1.b Biotechnology	15,4	6
	VI 1.b Pharmaceuticals	15,4	6
	VI 1.b Other	5,1	2
	VI 1.b Other – text: 1 Medical Technology 1 Automotive		
	VI 1.b Total All answers	141,1	55
	VI 1.b Answer	76,9	30
	VI 1.b No answer	23,1	9
	VI 1.b Total	100	39

Question	Answer	Percentage [%]	Total/mean
VI 2. In terms of best practices:			
VI 2.a. a. Given that it is generally a requirement for acquiring prior user rights that the prior user has acted in good faith, should prior user rights nevertheless be unavailable if the prior user derived knowledge of the invention from the patentee, even though the knowledge could be considered to have been derived in good faith?	VI 2.a Yes		
		43,6	17
	VI 2.a No	41	16
	VI 2.a No answer	15,4	6
	VI 2.a Total	100	39
VI 2.b Which, if any, of the following activities by a third party acting in good faith do you believe should minimally suffice to give rise to prior user rights? More than one box may be checked.	VI 2.b Preparations to use the invention		
		71,8	28
	VI 2.b Actual use of the invention	69,2	27
	VI 2.b Prior knowledge of the invention	12,8	5
	VI 2.b Other	0	0
	VI 2.b Total All answers	153,8	60
	VI 2.b Answer	97,4	38
	VI 2.b No answer	2,6	1
	VI 2.b Total	100	39

Question	Answer	Percentage [%]	Total/mean
VI 2.c At what point in time relative to the actual filing date or the priority date of the patent at issue should the activity giving rise to prior user rights be required to take place? More than one box may be checked.	VI 2.c Any time prior to the actual filing date or the priority date	76,9	30
	VI 2.c If a grace period is provided, prior to the beginning of the grace period	5,1	2
	VI 2.c if a grace period is provided, and a qualifying grace period disclosure is made, at a date prior to the grace period disclosure	15,4	6
	VI 2.c Other	2,6	1
	VI 2.c Other – text: 1 not more than 3 months prior to priority date		
	VI 2.c Total All answers	100	39
	VI 2.c Answer	92,3	36
	VI 2.c No answer	7,7	3
	VI 2.c Total	100	39
VI 2.d Should exceptions to prior user rights be provided with respect to certain patents?	VI 2.d Yes	2,6	1
	VI 2.d No	82,1	32
	VI 2.d Please explain your answer	2,6	1
	VI 2.d Explain – text: 1 Like Sec 12, para 1, sentence 4 German Patent Act and dishonest conduct of prior user		
	VI 2.d No answer	15,4	6
	VI 2.d Total	100,1	39

Question	Answer	Percentage [%]	Total/ mean
VI 3. How important do you consider international harmonization of prior user rights regimes to be?	VI 3. Critical	35,9	14
	VI 3. Important, but not critical	41	16
	VI 3. Not important	10,3	4
	VI 3. Comments: 1 Critical because of global markets	2,6	1
	VI 3. No answer	12,8	5
	VI 3. Total	100	39
VI 4. Are there any other issues with respect to prior user rights that you believe should be addressed from the standpoint of international harmonization?	VI 4. Please explain.	10,3	4
	VI 4. Explain – text: 2 First EU harmonization then global 2 multinational businesses should be dealt with		
	VI 4. No answer	89,7	35
	VI 4. Total	100	39

**2.6 Table of results regarding other areas requiring harmonisation
(part VII of the questionnaire)**

Question	Answer	Percentage [%]	Total/ mean
VII 1. Are there any areas of patent law, other than grace period, publication of applications, treatment of conflicting applications, or prior user rights, where differences in national law cause problems for you or your client(s)?	VII 1. Other areas – text: 5 (indirect) infringement 2 technicality 2 term extension/SPCs 2 utility/design patents 5 others		
	VII 1. Answer	30,8	12
	VII 1. No answer	69,2	27
	VII 1. Total	100	39