Tegernsee Experts Group 12 December 2012

USER CONSULTATION QUESTIONNAIRE

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Part I: Introduction

At a meeting convened in Tegernsee, Germany in July 2011, leaders and representatives from the patent offices of Denmark, France, Germany, Japan, the United Kingdom, and the United States and from the European Patent Office (EPO) (the "Tegernsee Group") launched a new dialogue on the state of affairs concerning international patent law harmonization. Since the initial meeting, the Group has met twice to consider work done by patent experts from each office analyzing comparative aspects of each jurisdiction's patent law and practice, as well as detailed studies on four issues of particular interest for international harmonization: the grace period, publication of applications, treatment of conflicting applications, and prior user rights. Copies of the studies and further information may be found at [provide links to USPTO and EPO websites posting the studies/info].

At its most recent meeting in October 2012, leaders of the Tegernsee Group requested their patent law experts to collaborate in developing a joint questionnaire covering the four above-mentioned topics, for use in gathering stakeholder input on a range of related issues.
The following questionnaire is the result of that effort. Results from the questionnaire as well as any additional stakeholder input received will be considered by the Group in determining how to advance the discussions.

On behalf of the Tegernsee Group, we kindly invite you to respond to the questionnaire appearing below. Thank you in advance for your time and cooperation.

PART II: Information About the Respondent

1. Which of the following best describes your affiliation?

   [ ] Corporation

   [ ] University/Research Institution

   [ ] Individual Inventor

   [ ] Patent Professional

   [ ] Law Firm

   [ ] Other (business/legal association, etc.) _____

2. If you represent a business or are an individual inventor:

   a. Which of the following best describes the size of the entity you are affiliated with?

   [ ] Micro

   [ ] Small

   [ ] Medium

   [ ] Large

   [ ] Not applicable

   b. Please estimate the total number of employees.

   [ ] 0-10

   [ ] 11-100

   [ ] 101-500

   [ ] 501-1000

   [ ] Greater than 1000

c. What is your primary area of technology or industry?

[ ] Mechanics

[ ] Electrical /Electronics

[ ] Telecommunications

[ ] Computers

[ ] Chemistry

[ ] Biotechnology

[ ] Pharmaceuticals

[ ] Other _____

3. In which of the following jurisdictions is your residence or primary place of business?

[ ] Europe

[ ] Japan

[ ] United States

[ ] Other _____

4. In which of the following offices do you most frequently file applications (limit one)?

[ ] European Patent Office

[ ] Japan Patent Office

[ ] United States Patent and Trademark Office

[ ] Other _____

5. On average, how many applications do you file per year in the office identified in your response to Question 4? _____

6. Of the total number of applications you file per year in the office identified in your response to Question 4, how many of those applications do you estimate were:

   Filed only in that office:_____

   Second filings under the Paris Convention:_____

   Filings via the Patent Cooperation Treaty (PCT):_____

7. 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)?

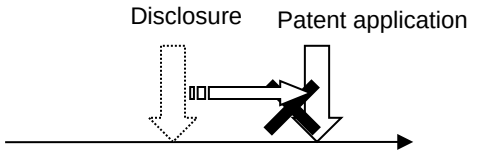
Part III: Grace Period

Background:

A grace period is a period of time before a patent application is filed for an invention, and during which time the invention could be disclosed through various means without its novelty being lost, due to the grace period being in effect. Disclosures of this nature are usually referred to as "non-prejudicial disclosures".

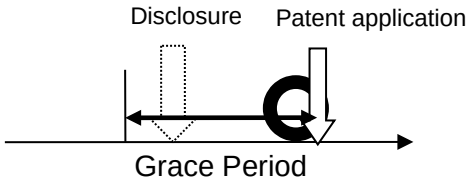
Many countries/regions have introduced some sort of grace period in their patent systems, though the grace periods may differ in various ways. The following diagram is an explanation by way of illustration of the basic concept behind the grace period.

《First-to-file Principle》



The disclosure of the invention prior to filing the patent application becomes novelty-defeating "prior art" against the application.

《Grace Period》



When an application is filed within a certain period of time after the invention is disclosed, the disclosure does not prejudice patentability of the invention.

Questions:

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?

   [ ] Often

   [ ] Occasionally

   [ ] Hardly

   [ ] Never

   [ ] Not applicable

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?

   [ ] Yes

   [ ] No

   a. If "Yes" in Question 2, why did such necessity arise?

      [ ] Error on the part of the inventor/person entitled to file or an employee

      [ ] Breach of confidence

      [ ] Disclosure at a trade show

      [ ] Disclosure during business negotiations

      [ ] Disclosure during trials/public experiments

      [ ] Disclosure in an academic communication (Article, Conference)

      [ ] Other – Please specify:_____

   b. If "Yes" in Question 2, how did you deal with it?

[ ] I filed anyway.

[ ] I filed in all jurisdictions where I could rely on a grace period.

[ ] I gave up on patenting and decided to protect the invention as a trade secret.

[ ] Other – Please specify:_____

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?

[ ] They have sufficient knowledge about the patent system, including the grace period.

[ ] They have a basic idea of the patent system but little to no understanding of the grace period.

[ ] They have little to no understanding of the patent system.

[ ] Not applicable

4. Have you or your client(s) ever relied on the grace period?

[ ] Yes

[ ] No

a. If "Yes" in Question 4, in which countries and under what circumstances did you or your client(s) rely on the grace period?

Please explain your answer. _____

b. If "Yes" in Question 4, how frequently have you or your client(s) relied on it? Please choose the closest one.

[ ] Less frequently than once per 1,000 patent applications
Please specify, if possible:_____

[ ] Once per 1,000 patent applications

[ ] Once per 100 patent applications

[ ] Once per 10 patent applications

[ ] More frequently
Please specify, if possible:_____

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?

[ ] Yes

[ ] No

Please provide additional details/explanation as appropriate._____

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?

[ ] Yes

[ ] No

Please explain your answer, including the countries involved. _____

5. Have there been instances where you or your client(s) were unable to obtain a patent because a grace period was not available?

[ ] Yes

[ ] No

Please explain your answer, including the approximate number of instances and the countries involved. _____

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?

[ ] Yes

[ ] No

Please explain your answer, including the countries involved and the approximate number of instances. _____

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?

   [ ] Yes

   [ ] No

   Please explain your answer. _____

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?

   [ ] Yes

   [ ] No

   Please explain your answer, including the approximate number of instances. _____

   a. If "Yes" in Question 7, at what stage did these negative consequences occur:

   [ ] Between publication of the application and grant of a patent to another party

   [ ] After the grant of a patent to another party but before any litigation regarding the validity or infringement of the patent

   [ ] During litigation of the validity or infringement of another party's patent

8. Do you think that a grace period is an important feature of patent law?

   [ ] Yes

   [ ] No

9. In principle, are you in favor of a grace period?

   [ ] Yes

   [ ] No

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:

[ ] take account of and balance the goals of the patent system and the needs of the scientific community

[ ] protect inventors against the consequences of breach of confidence and theft of information

[ ] 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

[ ] 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

[ ] 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

[ ] 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

[ ] Not applicable

Please add any comments you deem necessary:_____

11. Please check the box next to each of the following statements that you agree with:

[ ] 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.

[ ] A good reason not to implement a grace period is that it complicates the patent system.

[ ] A grace period diminishes the predictability and legal certainty of the patent system.

[ ] 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

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?

    [ ] Yes

    [ ] No

    a. If you answered "Yes" in Question 12, please indicate for which of the following reason(s) (check all that apply):

        [ ] It enhances legal certainty for third parties, including during the post-grant phase

        [ ] It simplifies the work of patent offices and may eliminate the need for an extra communication

        [ ] You have experience with declarations in existing systems and do not feel it imposes an undue burden on applicants

        [ ] Other – please specify:_____

    b. If you answered "No" in Question 12, please indicate for which of the following reason(s) (check all that apply):

        [ ] 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

        [ ] You are concerned that it will lead to applicants trying to manipulate the system

        [ ] It imposes an additional burden on applicants.

        [ ] It imposes an additional burden on patent offices.

        [ ] Other – please specify:_____

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?

    [ ] 6 months

    [ ] 12 months

    [ ] Other – please specify and explain:_____

14. Regardless of the duration of the grace period, from which date should the term of the grace period be computed:

    [ ] The filing date only

    [ ] The filing date, or, if applicable, the priority date

    [ ] Other – please specify:_____

15. Do you think the grace period should be internationally harmonized?

    [ ] Yes

    [ ] No

    [ ] No opinion/Don't know

Please explain your answer. _____

16. In terms of achieving a sufficient level of international harmonization, which of the following matters, if any, do you believe are not required to be harmonized? Check all that apply:

    [ ] Mode of disclosure (e.g., in writing, orally, at an academic conference, etc.)

[ ] 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.)

[ ] The duration (e.g. 6 months, 12 months, etc.)

[ ] The date from which the term of the grace period is computed (e.g. actual filing date, priority date)

[ ] Declaration or other formal requirements for invoking the grace period

[ ] The availability and scope of prior user rights during the grace period

Please feel free to add any other comments concerning the grace period that you wish to make:_____

PART IV: PUBLICATION OF APPLICATIONS ("18-MONTH PUBLICATION")

Background:

The practice of publishing patent applications at 18 months from the earliest effective filing date (including any claimed priority) is a common fixture in many of the world's patent systems, and represents a balance of interests between inventors and third parties, including the public. On the one hand, 18 months is thought to represent a reasonable period of time after filing of the application for the inventor to make an assessment whether to continue prosecution of the application or to withdraw or abandon it. On the other hand, 18 months is believed to be a reasonable period of time for third parties to wait to obtain information about a new technology.

There are many policy considerations that underlie this balance. One such policy is to ensure that third party competitors have timely notice of new developments, so they can make informed decisions about, e.g., whether to continue pursuing a similar technology, or designing around the subject matter disclosed in the application. This, in turn, promotes a more effective allocation of research investments and a corresponding reduction in costly and time consuming litigation. Another underlying policy is to allow the inventor to make a suitably informed decision whether to continue seeking patent protection or to keep the information as a possible trade secret. 18-month publication also increases the efficiency of allocating patent rights by enabling an early assessment of prior art with respect to conflicting applications.

However, 18-month publication is not without its consequences. The availability of potentially lucrative information during the period of time between 18-month publication and grant of the patent provides competitors worldwide the opportunity to copy or design around technologies that are stuck in examination backlogs, although it should be noted that third parties may be subject to liability for infringement accruing from the time the application is published, if provisional rights are afforded once the patent is granted. A system that requires 18-month publication may also deprive the applicant of an opportunity to withdraw an application in favor of keeping the information in it a trade secret if search or examination results are not provided before publication sufficient to enable the inventor to make a reasonable assessment of the likelihood of obtaining patent protection.

Questions:

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:

[ ] Too long

[ ] Too short

[ ] Reasonable

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:

[ ] Too long

[ ] Too short

[ ] Reasonable

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?

[ ] Yes

[ ] No

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?

[ ] Yes

[ ] No

Please provide additional details/explanation as appropriate. _____

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?

[ ] Yes Approximate number of times per year _____

[ ] No

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?

[ ] Yes

[ ] No

Please provide additional details/explanation as appropriate. _____

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?

[ ] Yes Approximate number of instances _____

[ ] No

Please provide additional details/explanation as appropriate. _____

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?

[ ] Yes Approximate number of instances _____

[ ] No

Please provide additional details/information as appropriate. _____

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?

[ ] Yes Approximate number of instances _____

[ ] No

Please provide additional details/information as appropriate. _____

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?

[ ] Yes

[ ] No

11. How important do you consider international harmonization of publication of applications to be?

[ ] Critical

[ ] Important, but not critical

[ ] Not important

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?

[ ] Yes

[ ] No

Please provide additional details/explanation as appropriate. _____

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? Please explain. _____

Part V: Treatment of Conflicting Applications

Background:

An issue in all patent systems is how to deal with the situation where an application is filed before the filing or priority date of the application being examined and is later published, and the applications disclose common subject matter. Such applications are said to "conflict" because the contents of the earlier-filed application only become publicly available as prior art after the filing or priority date of the application being examined. Absent some rule giving prior art effect to the earlier-filed application as of its filing or priority date (a rule creating what is known as "secret" prior art), it would thus be possible for two or more patents to be granted covering the same or similar subject matter. On the other hand, if the applications in question were filed by the same applicant, such a rule could lead to "self-collision"—one of the applicant's own applications being used to refuse another—unless a measure for avoiding self-collision ("anti-self collision") was also provided. It is a particularly difficult issue to address, requiring a balance to be struck between the interests of the first applicant, subsequent applicants and the general public.

The treatment of conflicting applications is different under the legal regimes in Europe, the United States and Japan. In Europe, under the European Patent Convention (EPC), as well as under the national law of the EPC Contracting States, earlier-filed, later published applications ("secret" prior art) are relevant to the examination of novelty only, and anti-self-collision is not provided. In the United States, "secret" prior art is relevant to the examination of both novelty and inventive step, and anti-self collision is provided for. In Japan, "secret" prior art is relevant to the examination of novelty, including minor differences, provided the inventions are "substantially the same", but is not relevant for examination of inventive step, with anti-self collision applying.

There are likewise differences among the jurisdictions as to the conditions under which PCT international applications become "secret" prior art. In Japan and under the EPC, such applications become "secret" prior art as of the international filing date or the priority date, if claimed, only if they enter into the respective national/regional phase, which also entails that they have been translated into the prescribed language(s). In the United States, under the America Invents Act, PCT applications will form "secret" prior art as of their international filing date or priority date, if claimed, merely upon designation of the United States in the international application.

Questions:

1. In your experience, in approximately how many applications have you been faced with the citation of a conflicting application filed by another applicant in the region in which you conduct your main patenting activity (Europe, Japan, or US)?

   [ ] Less frequently than once per 100 patent applications: Please specify if possible:_____

   [ ] Once per 100 patent applications

   [ ] Once per 10 patent applications

   [ ] More frequently. Please specify if possible:_____

2. In your experience, in approximately how many applications have you been faced with the citation of a conflicting application previously filed by you (i.e., faced a "self-collision" situation) in the region in which you conduct your main patenting activity (Europe, Japan, or US)?

   [ ] Less frequently than once per 100 patent applications: Please specify if possible:_____

   [ ] Once per 100 patent applications

   [ ] Once per 10 patent applications

   [ ] More frequently. Please specify if possible:_____

3. Have you 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 that apply different rules on conflicting applications? If the answer is yes, please indicate the number of cases:

   [ ] No

   [ ] Yes, in two different jurisdictions; Number of cases: _____

   [ ] Yes, in three or more different jurisdictions; Number of cases: _____

4. Was the outcome different in each jurisdiction? For each response, please indicate the number of cases:

[ ] No; Number of cases: _____

[ ] Yes, the scope of protection granted was different; Number of cases:_____

[ ] Yes, the patent was granted in at least one office and the application rejected in at least one other; Number of cases: _____

5. 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:

[ ] The rules on the effect of conflicting applications only; Number of cases: _____

[ ] Both the rules on conflicting applications and other factors (for example: rules on novelty, grace period, other differences in examination practice). Number of cases:_____
If so, please explain which other factors influenced the outcome:_____

[ ] Other factor(s) alone. Please indicate factors: _____;
Number of cases: _____

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:

a. Have you 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?"

[ ] Yes

[ ] No

b. If your answer to Question 6(a) was "Yes":

i. In which of the following markets did such a "patent thicket" occur ?

[ ] United States

[ ] Europe

[ ] Japan

ii. Which of the following, if any, do you believe or know to be the cause of the "patent thicket(s)" in question?

[ ] Two or more patents owned by a single entity
[ ] Two or more patents owned by different entities

[ ] A combination of the above

[ ] None of the above

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)?

[ ] Mechanics

[ ] Electrical /Electronics

[ ] Telecommunications

[ ] Computers

[ ] Chemistry

[ ] Biotechnology

[ ] Pharmaceuticals

[ ] Other _____

7. How important do you consider international harmonization of the treatment of conflicting applications to be?

[ ] Critical

[ ] Important, but not critical

[ ] Not important

Please provide a reason for your answer:_____

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)?

[ ] Conflicting applications should be relevant for the examination of novelty only with no consideration of who filed the application (no anti-self-collision).

[ ] 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).

[ ] 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).

[ ] Other (please briefly describe the approach or name a country operating on that basis) _____

Please provide a reason for your answer: _____

9. For conflicting applications filed under the Patent Cooperation Treaty (PCT), which of the following do you believe constitutes an international best practice?

[ ] 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.

[ ] 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.

[ ] Other - please explain _____

PART VI: PRIOR USER RIGHTS

Background:

A prior user right is the right of a party to continue the use of an invention where that use began before a patent application was filed for the same invention.

The main purpose of prior user rights is to strike a balance between the effects of the first-to-file principle on the one hand and prior user considerations on the other.

Prior user rights are provided for by the different national patent legislations and such provisions in national legislation only have national effect. However, whilst the national provisions on prior user rights have common ground, there are also differences in the conditions under which they may be acquired.

The main differences which have been identified in the national provisions relate to the critical date by which prior use must have occurred, whether actual use must have taken place or whether preparations for use may suffice, the effect of patentee-derived subject matter, and whether there should be any exceptions to the applicability of the prior user rights defense to infringement.

This section of the survey aims to obtain the views of users on the effects of these differences in prior user rights provisions.

Questions:

1. If you represent a business or are an individual inventor:

   a. How many times (approximately) have you asserted prior user rights, and on the basis of the national law of which country, either in litigation or to avoid litigation/infringement, including settlement or licensing negotiations? Which technologies were involved?

      Number of times in litigation _____

      Number of times to avoid Litigation/Infringement _____

      National Law involved _____

      Technologies Involved:

      [ ] Mechanics

      [ ] Electrical /Electronics

      [ ] Telecommunications

      [ ] Computers

      [ ] Chemistry

      [ ] Biotechnology

      [ ] Pharmaceuticals

      [ ] Other _____

   b. How many times (approximately) have prior user rights been asserted against a patent you own, and on the basis of the national law of which country, either in litigation or to avoid litigation/infringement, including settlement or licensing negotiations?

      Number of times in litigation _____

      Number of times to avoid Litigation/Infringement _____

      National Law involved _____

      Technologies Involved:

[ ] Mechanics

[ ] Electrical /Electronics

[ ] Telecommunications

[ ] Computers

[ ] Chemistry

[ ] Biotechnology

[ ] Pharmaceuticals

[ ] Other _____

2. If you are an outside legal representative (attorney, agent, other):

   a. How many times (approximately) have you counseled clients on the availability of, or asserted claims on their behalf for, prior user rights, and according to the national law of which country? Which technologies were involved?

      Number of times on availability _____

      Number of claims asserted _____

      National Law involved _____

      Technologies Involved:

      [ ] Mechanics

      [ ] Electrical /Electronics

      [ ] Telecommunications

      [ ] Computers

      [ ] Chemistry

      [ ] Biotechnology

      [ ] Pharmaceuticals

      [ ] Other _____

b. How many times (approximately) have you counseled clients in defense against assertions of prior user rights, and according to the national law of which country? Which technologies were involved?

Number of times Counseled Against _____

National Law involved _____

Technologies Involved:

[ ] Mechanics

[ ] Electrical /Electronics

[ ] Telecommunications

[ ] Computers

[ ] Chemistry

[ ] Biotechnology

[ ] Pharmaceuticals

[ ] Other _____

3. In terms of best practices:

a. Given that it is generally a requirement for acquiring prior user rights that the prior user have 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?

[ ] Yes

[ ] No

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.

[ ] Preparations to use the invention

[ ] Actual use of the invention

[ ] Prior knowledge of the invention

[ ] Other: _____

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.

[ ] Any time prior to the actual filing date or the priority date

[ ] If a grace period is provided, prior to the beginning of the grace period

[ ] If a grace period is provided, and a qualifying grace period disclosure is made, at a date prior to the grace period disclosure

[ ] Other: _____

d. Should exceptions to prior user rights be provided with respect to certain patents?

[ ] Yes

[ ] No

Please explain your answer. _____

4. How important do you consider international harmonization of prior user rights regimes to be?

[ ] Critical

[ ] Important, but not critical

[ ] Not important

5. Are there any other issues with respect to prior user rights that you believe should be addressed from the standpoint of international harmonization? Please explain.
_____