Introduction

READ OUT
Hello, I'm calling from BERENT on behalf of the European Patent Office.

IF NAMED RESPONDENT IN SAMPLE: **Could I please speak to** [NAME FROM SAMPLE]**?**

IF NO NAMED RESPONDENT IN SAMPLE OR NAMED RESPONDENT IN NEW SAMPLE NOT AVAILABLE:

The EPO is conducting a study to understand how the disclosure policies of our applicants are influenced by the strict novelty requirement in Europe, whereby inventions may not be disclosed prior to filing a European patent application. A key purpose of this study is to assess the consequences such disclosure policies may have on the applicants' business operations.

For an invention to be patentable under the European Patent Convention it must – among other things – be new. This means that it must not have been made available – or disclosed – to the public before the filing date of the patent application or its priority date. Otherwise, the disclosure of the invention will be considered as "prior art" to the patent application and used to determine whether the invention is new and inventive.

By contrast, some other patent systems allow for a grace period. That is a period of time before an application's filing date during which an invention can be disclosed to the public without losing its novelty so that the invention remains patentable. Such "graced" disclosures might be made in scientific publications, during field tests, at conferences or trade shows, or simply by accident.

Your business has filed one or more patent applications with the EPO and has therefore been selected to participate in this large-scale European study. The aim here is to help the EPO understand how the absence of a grace period impacts the filing and business practices of users of the European patent system.

Could I please speak to the most senior person at [INSERT COMPANY NAME FROM SAMPLE] responsible for managing the patent portfolio, and in particular for filing patent applications in Europe? [READ OUT IF NECESSARY:] This person could be the chief IP officer, the head of the patent department, a senior member of the patent department or, if your organisation does not have an IP department, the most senior executive in charge of IP matters. It's important that this person has an overview of your organisation's patenting activities, particularly those related to the EPO.

READ OUT TO ALL

To thank you for taking part in the survey, the EPO will email you a summary report of the findings.

The answers you provide in this survey will be added to the information already held about your company in the EPO's patent databases for analysis purposes. Your confidentiality will be maintained.

This telephone survey will take about 20 to 25 minutes of your time. Is now convenient for you?

REASSURANCES TO USE IF NECESSARY:

- **Everything you say will be treated in the strictest confidence. Your answers will only be reported in aggregate, together with those of the other organisations taking part.**
- **You don't need any specific knowledge of the grace period to take part.**
- **If you wish to check the legitimacy of the survey or get more information about its aims and objectives, you can visit the website epo.org/gp-survey or call +498923991317.**

Before we start, I just want to clarify that participation in the survey is voluntary and you can change your mind at any time. Are you happy to proceed with the interview?
IF NECESSARY**:**
If you'd like to read the privacy statement beforehand, you can access it online at http://documents.epo.org/projects/babylon/eponet.nsf/0/AC4179D70D826A22C1257ED0002B1AFB/$File/Service_Regulations_en.pdf#page=449

A- Profiling information: respondent

QA1. Which of the following best describes the organisation X (hereafter your organisation) that you represent? (AUTOMATE NAME)

1. Individual with no other employees working for you
2. Company with fewer than 250 employees
3. Company with more than 250 employees
4. University or related technology transfer organisation
5. Research organisation (PRO) or related technology transfer organisation
6. Other (PLEASE SPECIFY)

QA2. **(if "company" in QA1)** Is your organisation an independent company or part of a larger group?

1. Independent company
2. Part of a larger group
3. Other (PLEASE SPECIFY)

QA3. Do you supervise or are you responsible (JP/KR/US ONLY: possibly through a European representative) for the filing of patent applications at the EPO for your organisation X? (AUTOMATE NAME)

1. Yes
2. No
3. No statement

QA4. **(if "company" in QA1)** What position do you hold within your organisation?

1. Patent attorney

2. Head or member of patent department
3. Head or member of R&D department
4. Head or member of legal department
5. Inventor
6. General manager, senior executive, engineer
7. Other (Int: please specify): _____
8. Answer refused
9. Don't know

QA4bis. **(if "university" or "research organisation" in QA1)** What position do you hold within your organisation?

1. External patent attorney
2. Head or member of the technology transfer office
3. General manager, senior executive, engineer
4. Head or member of another department
5. Other (please specify): _____

QA5. Are you a certified patent attorney?

1. Yes
2. No
3. Answer refused
4. Don't know

QA6. How many filings of European patent applications have you supervised on behalf of your current organisation **in the past three years**?

5. None
6. Fewer than five
7. 6 to 10
8. 11 to 20
9. 21 to 40
10. 41 to 60
11. 61 to 80
12. 81 to 100
13. 101 to 500
14. 501 to 1000
15. More than 1000 (please provide an order of magnitude)
16. Prefer not to answer
17. Other (please specify)

QA7. In which of the following technical/industrial fields have you supervised European patent application(s) in the last three years?

1. Electric (audio-visual, telecommunications, computers, semiconductors, etc.)
2. Instruments (optics, measurement, medical technology, etc.)
3. Chemistry (biotechnology, pharmaceuticals, etc.)
4. Mechanics (including transport)
5. Other (please describe in detail)

QA7bis. **(if CHEMISTRY in QA6)**. You indicated that you have supervised European patent application(s) in the field of Chemistry in the last three years? Were these European patent application(s) more specifically related to biotechnology?

1. Yes
2. No
3. Don't know

QA8. For what percentage of those European patent applications have you also filed corresponding patent applications in the following countries?

1. USA:	0%	1-20%	21-40%	41-60%	61-80%	81-100%
2. Japan:	0%	1-20%	21-40%	41-60%	61-80%	81-100%
3. Korea:	0%	1-20%	21-40%	41-60%	61-80%	81-100%
4. China:	0%	1-20%	21-40%	41-60%	61-80%	81-100%

Definition of grace period or "GP": For an invention to be patentable under the European Patent Convention, it must – among other things – be new. This means that it must not have been made available – or disclosed – to the public before the filing date of the patent application or its priority date.

Some patent systems allow for a grace period. That is a period of time before an application's filing date during which an invention can be disclosed to the public, for example in a scientific publication, during field tests, at a conference or a trade show, or simply by accident, without losing its novelty so that the invention remains patentable. The disclosure is thus considered "graced".

QA9. **(If YES to QA8)** You indicated that for some of the patent applications you have filed at the EPO, corresponding patent applications have also been filed outside Europe. Was the grace period used for any of these applications in the following countries?

1. USA: No/yes/don't know
2. Japan: No/yes/don't know
3. Korea: No/yes/don't know
4. Australia: No/yes/don't know

QA10. On a scale of one to five, how would you assess your knowledge of grace periods in the USA (one being excellent knowledge and five being no knowledge)?

1	2	3	4	5

QA11. On a scale of one to five, how would you assess your knowledge of grace periods in Japan (one being excellent knowledge and five being no knowledge)?

1	2	3	4	5

QA12. On a scale of one to five, how would you assess your knowledge of grace periods in Korea (one being excellent knowledge and five being no knowledge)?

1	2	3	4	5

QA13. On a scale of one to five, how would you assess your knowledge of grace periods in Australia (one being excellent knowledge and five being no knowledge)?

1	2	3	4	5

B- Cost of lack of a grace period in Europe

QB1. How would you qualify your organisation's policy to ensure compliance of the disclosure of scientific results with the novelty requirement in Europe?

5. No policy
6. Guidelines
7. Rules or strict policy
8. Don't know

QB2. **(If YES to QB1)** You said that you have a disclosure policy in place to ensure compliance with the novelty requirement in Europe. During the past three years, has this policy ever led you to have to refrain from, postpone or even cancel a publication or disclosure due to the absence of a GP in Europe?

1. Yes
2. No
3. Don't know

QB2bis. **(If NO to QB1)** You said that you do not have a disclosure policy in place to ensure compliance with the novelty requirement in Europe. During the past three years, have you ever been in a position where you chose to refrain from, postpone or even cancel a publication or disclosure due to the absence of a GP in Europe?

1. Yes
2. No
3. Don't know

QB3. **(If YES to QB2 or to QB2bis)** For what percentage of the European filings you've supervised over the past three years did this occur?

4. <1%
5. 1-5%
6. 5-10%
7. 10-20%
8. 20-40%
9. 40-60%
10. 60-80%
11. 80-100%

QB4. **(If YES to QB2 or to QB2bis)** You said that due to the absence of a GP in Europe you have had to refrain from, postpone or cancel a publication or disclosure. Please indicate what kinds of publications or disclosures were affected (several answers possible)

1. Publications of academic papers/journals/PhD theses
2. Presentations at conferences
3. Reports to co-researchers
4. Presentations at exhibitions or trade shows
5. Disclosures to business partners to enter a joint venture or another form of co-operation and/or to obtain financing
6. Product launch

7. Press releases/website updates
8. Other – please describe in detail

QB5. **(If YES to QB2 or YES to QB2bis)** You said that due to the absence of a GP in Europe you have had to refrain from, postpone or cancel a publication or disclosure. What was the main consequence of this? (select only one answer)

1. Lost opportunity to raise scientific profile and enhance reputation
2. Lost opportunity to finance the development of the invention
3. Lost opportunity to commercialise the invention
4. Lost opportunity to engage in a joint venture
5. Lost opportunity to contribute to a standard development process
6. No significant consequence
7. Other – please describe in detail
8. Don't know

QB5bis. **(If YES to QB2 or YES to QB2bis) (skip if DON'T KNOW in QB5) (eliminate answer from QB5)**
What additional consequences, if any, did the need to refrain from, postpone or cancel a publication or disclosure have? (several answers possible)

1. Lost opportunity to raise scientific profile and enhance reputation
2. Lost opportunity to finance the development of the invention
3. Lost opportunity to commercialise the invention
4. Lost opportunity to engage in a joint venture
5. Lost opportunity to contribute to a standard development process
6. No significant consequence
7. Other – please describe in detail
8. Don't know

QB6. During the past three years, have you ever been prevented from filing an EP application due to a pre-filing disclosure of the invention and the absence of a GP in Europe?

1. Yes
2. No
3. Don't know

QB7. **(if YES to QB6)** You said that you have been prevented from filing an EP application due to a pre-filing disclosure and the absence of a GP in Europe. What percentage of the EP filings you've supervised over the past three years did this apply to?

4. <1%
5. 1-5%
6. 5-10%
7. 10-20%
8. 20-40%
9. 40-60%
10. 60-80%
11. 80-100%

QB8. **(if YES to QB6)** You said that you have been prevented from filing an EP application due to a pre-filing disclosure and the absence of a GP in Europe. Please indicate what kinds of pre-filing disclosures were concerned (several answers possible)

1. Accidental disclosures
2. Publications of academic papers/journals/ PhD theses
3. Presentations at conferences
4. Reports to co-researchers
5. Presentations at exhibitions or trade shows
6. Product launch
7. Disclosures to business partners to enter a joint venture or another form of co-operation and/or to obtain financing
8. Disclosures during a standard development process
9. Press releases/website updates
10. Other – please describe in detail

QB9. **(if YES to QB6)** You said that you have been prevented from filing an EP application due to a pre-filing disclosure and the absence of a GP in Europe. What was the main consequence of failing to obtain European patent protection?

1. Lost opportunity to further develop the invention
2. Lost opportunity to finance the development of the invention
3. Lost opportunity to commercialise the invention
4. Lost opportunity to recoup R&D costs
5. Additional costs to overcome the non-patentability of the invention
6. No significant consequence
7. Other (please describe)
8. No consequence

QB9bis. **(if YES to QB6) (skip if DON'T KNOW in QB9) (eliminate answer from Q9)**
Did failing to obtain European patent protection have other consequences, and if so, what were they? (several answers possible)

1. Lost opportunity to further develop the invention
2. Lost opportunity to finance the development of the invention
3. Lost opportunity to commercialise the invention
4. Lost opportunity to recoup R&D costs
5. Additional costs to overcome the non-patentability of the invention
6. Lost opportunity to contribute to a standard development process
7. No significant consequence
8. Other (please describe)
9. No consequence

C- Assessment of grace period scenarios

QC1. If Europe were to adopt a grace period, would your company use it?

1. No
2. Only in exceptional cases (e.g., emergency or accidental disclosure)
3. Occasionally
4. Often
5. Don't know

Introduce the four scenarios:

I would like to show you four different ways grace periods are implemented.
Please go to our website at www.berent.com/gp1.

Let me know when you can see the page.

WHEN RESPONDENT CAN SEE THE PAGE Please let me briefly go through the options …

- **GP with a declaration system only (~Japanese system).** In some of the countries that have grace periods, patent applicants must file a declaration stating when and how information about their invention was made available to the public. By consulting the patent office file, any third party can quickly check whether a pre-filing disclosure is graced, in which case it does not affect the validity of the patent. This information remains relevant after the patent has been granted.
- **GP with prior user rights only (~Australian system).** In some of the countries that have grace periods, third parties acting in good faith can obtain prior user rights based on knowledge of an invention gained as a result of that invention being made public prior to filing. These third parties can then continue to use the invention after the patent has been granted. This creates risk for applicants using the GP, who then use it only when there is a compelling reason to do so, which in turn lessens the impact of the GP on the system.
- **GP with both a declaration system and prior user rights (~safety net).** This model combines both types of safeguards for third parties.
- **GP without restriction (~US system).** No declaration requirement, no risk due to prior user rights accruing to third parties because of pre-filing disclosures, as well as protection from some intervening disclosures by third parties. This privileges the first person to disclose but provides no safeguards for third parties.

QC2. **(skip if NO to QC1)** As mentioned above, not all grace periods are equivalent. How would you use a grace period if Europe adopted a grace period according to the following scenarios:

Effective in:	Never	Only in exceptional cases	Occasionally	Frequently	Don't know
GP without restriction (~US system)					
GP with prior user rights only (~Australian system)					
GP with a declaration system only (~JP system)					

GP with a declaration system and prior user rights (~safety net)					

QC3.
Please go to www.berent.com/gp3.
WHEN RESPONDENT CAN SEE THE PAGE, ASK:

The grace period may create legal uncertainty for third parties as it makes it more difficult to assess freedom to operate. Indeed, some patent applications may be granted despite being filed after the disclosure of the invention, so it may not be immediately clear whether the patents are valid or not. As a third party potentially exposed to such patents, how do you assess the impact of the legal uncertainty that would ensue if a grace period were introduced in Europe?

	Don't know	No legal uncertainty	Small and acceptable level of legal uncertainty	Significant but acceptable level of legal uncertainty	Unacceptable level of legal uncertainty
GP without restriction (~US system)					
GP with prior user rights only (~Australian system)					
GP with a declaration system only (~JP system)					
GP with a declaration system and prior user rights (~safety-net)					

QC4.
Please go to www.berent.com/gp4.
WHEN RESPONDENT CAN SEE THE PAGE, ASK:
How would you expect the introduction of a grace period in Europe to impact your organisation's patent management processes in terms of establishing a policy on disclosure of inventions and applying for patents?

	Don't know	No consequence	Less complicated	More complicated but acceptable	More complicated and unacceptable
GP without restriction (~US system)					
GP with prior user rights only (~Australian system)					
GP with a declaration system only (~JP system)					

GP with a declaration system and prior user rights (~safety net)					

QC5. If we have any more questions about grace periods in the future, would you be happy for us to contact you again?

QC6. And the final question – would you like to receive a summary report of the findings?