

## EUROPEAN SYMPOSIUM ON SPLH – 2023 QUESTIONNAIRE

At the Symposium on 23 March 2023, stakeholders were kindly requested to return to their associations and attempt to find a consensus in order to inform a wider discussion in Europe regarding a possible common European position on the main contentious SPLH topics. The participating stakeholder associations are kindly requested to return to the second part of the Symposium to report on their internal discussions and whether they have managed to achieve consensus on some issues.

As a guide to internal discussions, a questionnaire has been drawn up highlighting the issues which need to be addressed. The concepts are not explained here, users are referred to the Background Document distributed prior to the Symposium. Every **stakeholder association** is kindly requested to fill out the questionnaire, **on behalf of the association**, and return it to the EPO by **Wednesday 10<sup>th</sup> May 2023 at the latest**. Since it will not be possible time-wise for all user associations to make presentations, it is proposed that the EPO collate the results of this questionnaire, and present the outcomes, in addition to presentations by BusinessEurope, the epi, and perhaps a few other user associations to be determined. (Please click only one box per question, except for Q. 11. To click a box, hover over it, and left-click your mouse)

### **NAME OF THE ASSOCIATION:**

### **GRACE PERIOD**

#### **1. Are you in favour of a grace period?**

- Yes
- No
- Only as a compromise within a balanced harmonisation package
- No consensus
- Do not wish to answer

#### **2. 12 months are usually considered as an acceptable duration for a grace period. Do you agree?**

- Yes
- No
  - should be shorter
  - should be longer
- No consensus
- Do not wish to answer

#### **3. Should the grace period be calculated from:**

- The filing date only

- The filing date, or, if applicable, the priority date
- No consensus
- Do not wish to answer

**4. Should there be a statement requirement?**

- Yes, a mandatory one with a strict time limit
- Yes, a voluntary one associated with a presumption that items listed are graced
- No
- No consensus
- Do not wish to answer

**5. Do you agree with the following statement: intervening disclosures of independent inventions by third parties form prior art?**

- Yes
- No
- No consensus
- Do not wish to answer

**6. Do you agree with the following statement: the burden of proof to show that a pre-filing disclosure is graced should rest on the applicant.**

- Yes
- No
- No consensus
- Do not wish to answer

**7. Definition of a safety net grace period**

It would appear that a majority of respondent user associations are in favour of a “safety net” grace period. If Europe were to align on such a concept, should it be defined as:

- Providing a statement requirement
- Providing robust prior user rights for third parties
- Comprising both a statement requirement and robust prior user rights
- We could support any of the three options above
- We do not support a safety-net design for the grace period
- No consensus
- Do not wish to answer

**8. Should Europe have a blueprint ready for a grace period preserving the cardinal European principles of legal certainty and simplicity of rules, which could be relatively swiftly agreed to implement?**

- Yes
- No
- No consensus
- Do not wish to answer

**9. If there is a widespread agreement on a common European position, which path(s) would stakeholders prefer delegations to take with regard to SPLH? Please include input below.**

A safety net grace period with :

- a duration of 6 months,
- a mandatory statement requirement with a strict time limit
- a calculation of the date of publication of the patent application from the first PFD.

### **CONFLICTING APPLICATIONS**

**10. Do the rules on conflicting applications under the EPC represent best practice, i.e. conflicting applications are relevant for the examination of novelty only, without anti-self-collision?**

- Yes
- No
- No consensus
- Do not wish to answer

**11. Regarding the “distance” between applications, please indicate your preference (P) as well as the concept(s) which would be acceptable as a compromise (C), at the end of the option. (Example:  Enhanced novelty (P))**

- Novelty only (P)
- Enhanced novelty (C)
- Novelty and inventive step
- Other, namely \_\_\_\_\_
- No consensus
- Do not wish to answer

**12. Do you support the principle of anti-self-collision?**

- Yes
- No
- Only as a compromise within a balanced SPLH package
- No consensus
- Do not wish to answer

**13. If anti-self-collision were to be envisaged, should terminal disclaimers also be adopted?**

- Yes
- No
- No consensus
- Do not wish to answer

**14. Should PCT applications become conflicting applications upon their publication at 18 months, regardless of whether they enter the national/regional phase or not?**

- Yes
- No, current EPO practice is preferred

- No consensus
- Do not wish to answer

### **PRIOR USER RIGHTS**

**15. Should prior user rights be available where the knowledge of the invention has been legitimately derived from the applicant, including through a pre-filing disclosure made by the applicant or with their consent during the grace period ?**

- Yes
- No
- No consensus
- Do not wish to answer

**16. Should principles be agreed to ensure the uniform and predictable implementation of criteria relating to the accrual of prior user rights?**

- Yes
- No
- No consensus
- Do not wish to answer

**17. Would a threshold of minimal qualifying activity based on "serious and effective preparations to use" the invention existing in most jurisdictions be acceptable?**

- Yes
- No
- No consensus
- Do not wish to answer

**18. Should principles or criteria be agreed to ensure a uniform and predictable implementation of the scope of prior user rights across jurisdictions?**

- Yes
- No
- No consensus
- Do not wish to answer

**19. There are variations across jurisdictions in Europe regarding the accrual and the scope of prior user rights. Independently of SPLH, should a harmonisation exercise be considered within Europe on this matter?**

- Yes
- No
- No consensus
- Do not wish to answer

**20. Please include any comments you wish to add below.**