



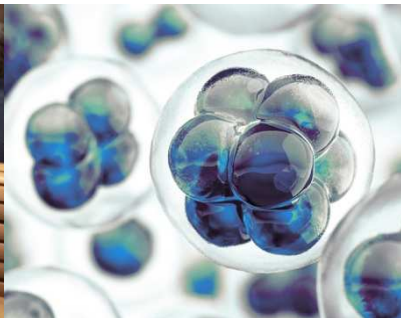
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The European patent system and the grace period

An impact analysis



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Purpose of the study

- Produce **fact-based evidence** on the actual impact on EPO applicants of the strict novelty requirement under the EP
 - Frequency and impact of early disclosures that may undermine subsequent patent applications
 - Frequency and impact of postponed disclosures
 - Comparison with alternative grace period scenarios
- Based on a large **survey of EPO applicants**, accounting for the diversity of their profiles and needs

Mains applicant categories	Interviews
European SMEs	252
Other European companies	313
European research institutions	182
US companies	118
Japanese and Korean companies	140

- Complemented by a **consultation** of EPO stakeholders and a review of available statistical evidence on the use of the **grace period in other patent systems**

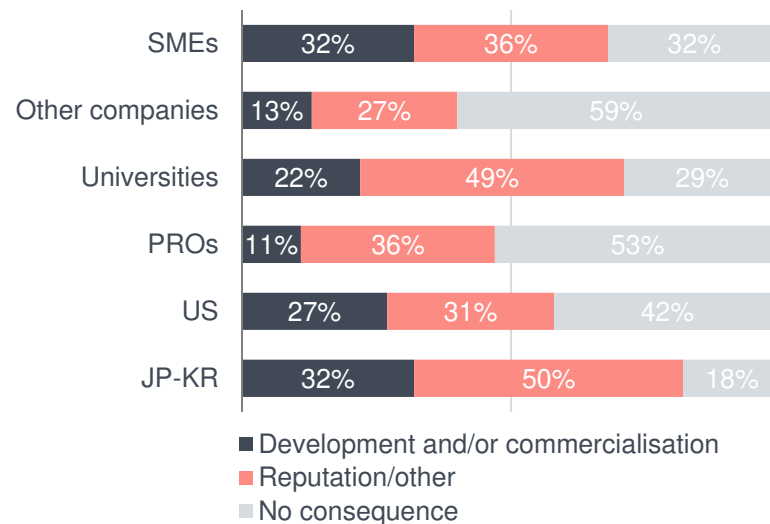
European EPO applicants generally manage to comply with the strict novelty requirement, although universities still experience more frequent issues than other entities due to pre-filing disclosures

Estimated impact of the strict novelty requirement by EPO applicant category

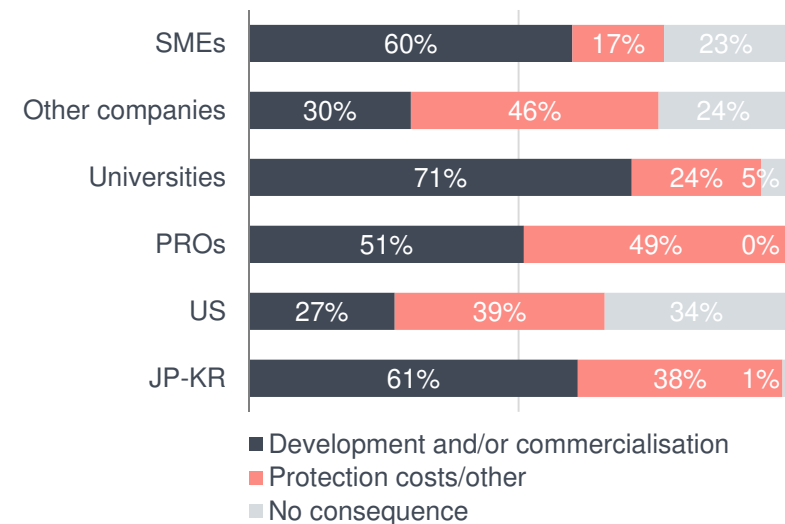
Applicant category	Share of EP applications that required the postponement of a disclosure	Share of EP applications prevented due to a pre-filing disclosure
European SMEs	10.4%	1.0%
Other European companies	2.3%	0.8%
European universities	12.1%	7.8%
European PROs	6.6%	3.7%
US companies	4.1%	7.2%
Japanese and Korean companies	0.4%	2.3%

In the few cases where it occurs, failure to comply with the strict novelty requirement under the EPC may have economic consequences

Main consequences of postponed disclosures¹



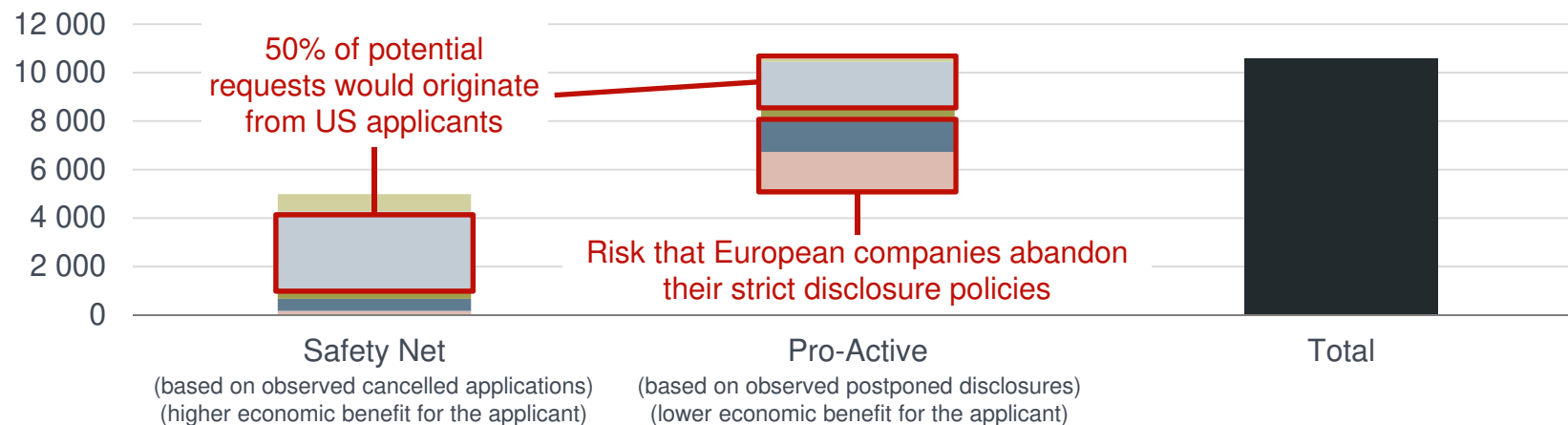
Main consequences of cancelled applications due to PFD¹



¹ Responses weighted by each participant's volume of EP applications

Data shows that the strict novelty requirement creates problems for applicants in approximately 10 000 cases a year. Consequently, if the EPC made provision for a grace period, the baseline potential volume of EP-application-related requests invoking the grace period can be estimated at 10 000 annually, corresponding to 6% of European patent applications filed in 2021

Estimated potential impact of a grace period¹ (in annual number of grace requests)



■ European SMEs ■ Other European companies ■ European universities and PROs ■ US companies ■ Japanese and Korean companies

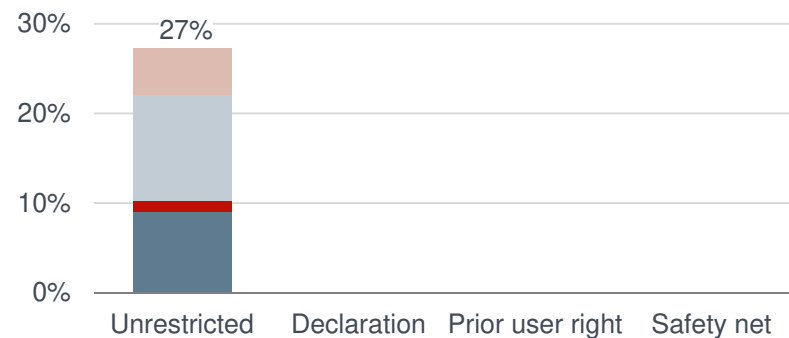
¹ It is noted that changes of applicant behaviour following the introduction of a grace period may go beyond those measured by our methodology and are thus not captured in the estimated potential volume. For instance, the availability of a grace period might lead applicants to make pre-filing disclosures in cases where they would not even be considered under the present system.

While an unrestricted grace period in Europe would introduce significant legal uncertainty in the European patent system, a declaration requirement and prior user rights could help preserve the balance in the system

Estimated impact of four policy scenarios should a grace period be introduced in Europe

Frequency of use of the grace period¹

Share of all EP applications



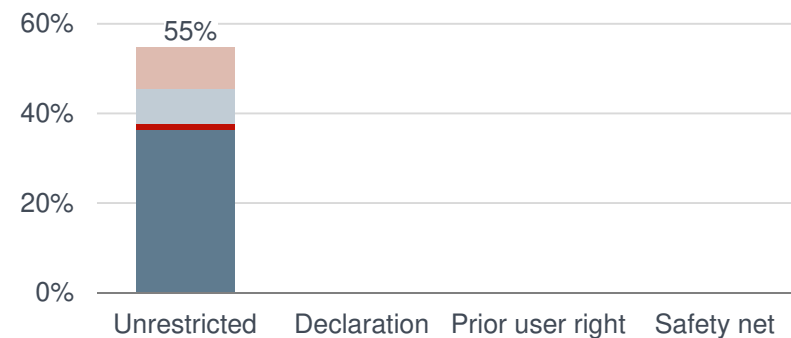
EP applications filed by applications who would use the GP occasionally or frequently

■ European companies ■ European research institutions ■ US companies ■ Japanese and Korean companies

¹ Responses weighted by each participant's volume of EP applications

Perception of legal uncertainty¹

Share of all EP applications



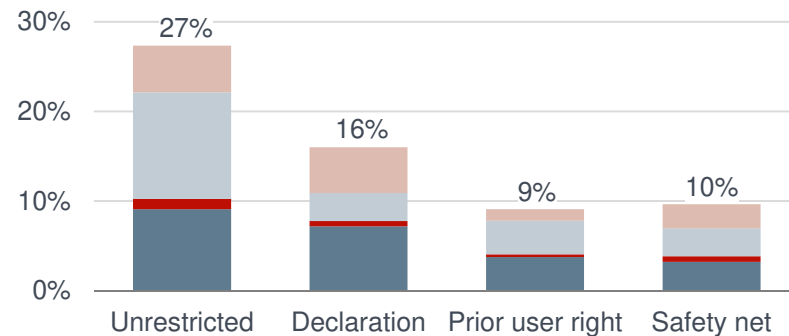
EP applications filed by applications who would expect significant legal uncertainty

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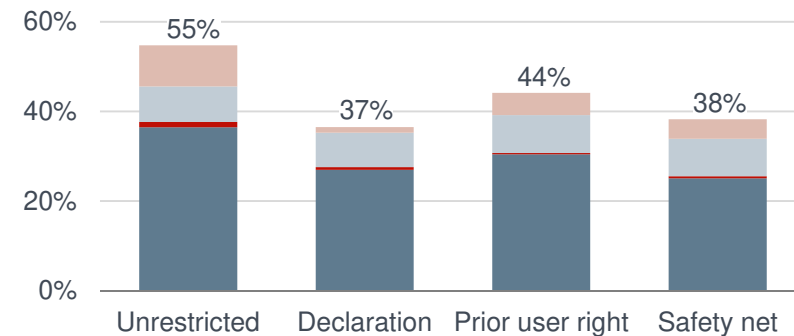
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EP applications filed by applications who would expect significant legal uncertainty

Summary

- Most **European EPO applicants** manage to **comply with the strict novelty requirement** under the EPC
 - The economic cost of postponing or cancelling disclosures is small compared to that of pre-filing disclosures (PFD)
 - While European companies have few issues with PFDs, **European research institutions report a larger share (7.8%) of failed applications** at the EPO due to such disclosures, often with economic consequences
 - **US applicants** also show a significant proportion (7%) of failed applications at the EPO due to PFDs, but with minor economic consequences

- Should a grace period be introduced at the EPO, the baseline potential number of grace period requests would represent approximately **6% of annual EP applications**

- The impact on the **balance of the European patent system** depends on the **design of the grace period**
 - The use of the grace period by some applicants would generate **legal uncertainty for all users of the patent system**
 - An **unrestricted grace period** is perceived as increasing legal uncertainty mostly by European companies
 - A **declaration requirement** and **prior user rights** could help maintain the balance of the system and reduce legal uncertainty by deterring applicants from filing grace period requests absent a compelling reason

Thank you for your attention!

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