

## Results of Consultations with Users <Major Discussion Points>

June 2013

Japan Patent Office

□ Questionnaire survey: Conducted between mid-January and mid-March in 2013. Received 412 responses (large companies 147, SMEs 120, universities/research institutions 71, and attorneys 64).

Roundtable discussions: Representatives in each sector (large companies 2, SMEs 1, universities 1, attorneys 1) were invited as panelists, and a panel discussion was conducted in Osaka (on February 28) and in Tokyo (on March 12), respectively. There were 70 people who attended in Osaka, and 140 people in Tokyo.

### Grace Period:

✓ 75% of the respondents (308/412) to the questionnaire survey supported a grace period (GP) (see Fig.1). According to Fig.2, most of the respondents favored the positive factors of GP rather than the negative ones.

Fig.1

Are You in favor of GP? (Q.III-9)

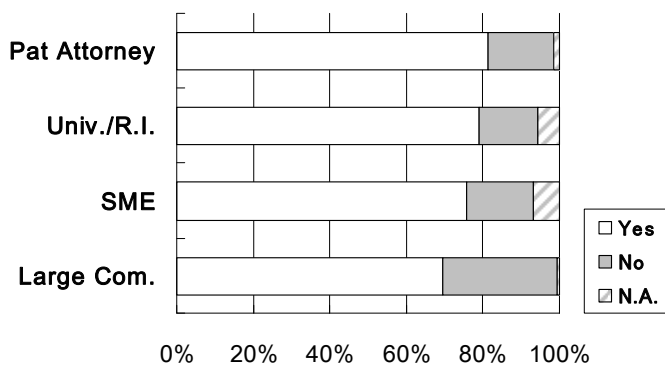
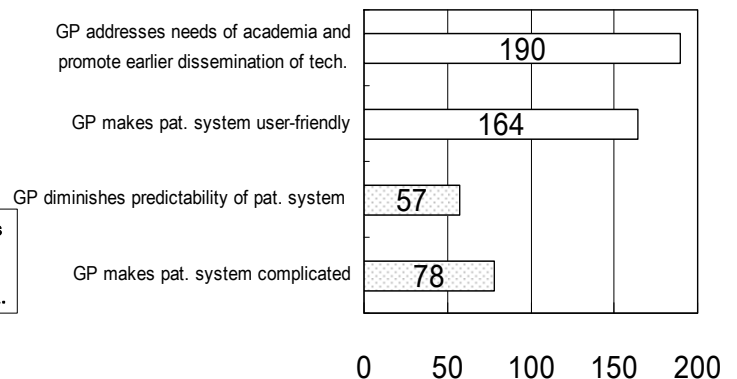


Fig.2

Perception about GP (Q.III-11)



✓ For large companies, SMEs, and universities, GP may be used as a safety net.

### Large companies: frequency of using GP is approx. 1 out of 1000 applications

Large companies pay considerable attention to managing their intellectual property (IP). GP systems are used for cases based on external factors (cases in which the circumstances of universities are taken into account in conducting joint research projects), or for cases based on errors (58 out of 116).

### SMEs: frequency of using GP is approx. 1 out of 100 applications

SMEs have limited and insufficient capacity to manage IP. In some cases, SMEs called consultation on filing patent applications, after they had exhibited and sold their

inventions, or disclosed them on their websites.

Universities/Research institutions: frequency of using GP is approx. 1 out of 10 applications  
Universities are working to enhance their capability in managing IP, in order to raise funds for research. Universities do not actively use GP systems. However, due to the concept of academic freedom, it may be difficult for universities, unlike large companies, to manage their IP.

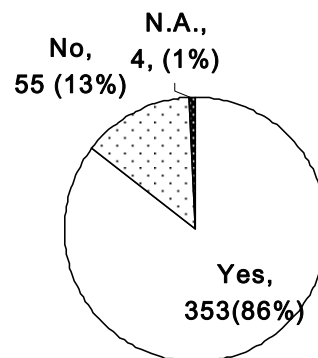
- ✓ 67% of the respondents (93/139) indicated that due to differences in GP systems, they gave up acquiring patent rights (51 from Europe, 17 from China). → GP systems are incomplete as a safety net in some regions.

**18-month publication:**

- ✓ 86% of the respondents consider that all patent applications should be published at 18 months from the initial application filing (see Fig.3).
- ✓ The percentage of the respondents who had actually been negatively impacted by the opt-out option in the U.S. was only 2% (8/412).
- ✓ Currently, the rate of using the opt-out option is 5%. Nevertheless, the percentage of the respondents who consider that the 18-month systems are not harmonized was 58% (238/412).
- ✓ Various issues were mentioned about the opt-out option, including concerns that it would create a breeding ground for patent trolls and unfairness.

Fig.3

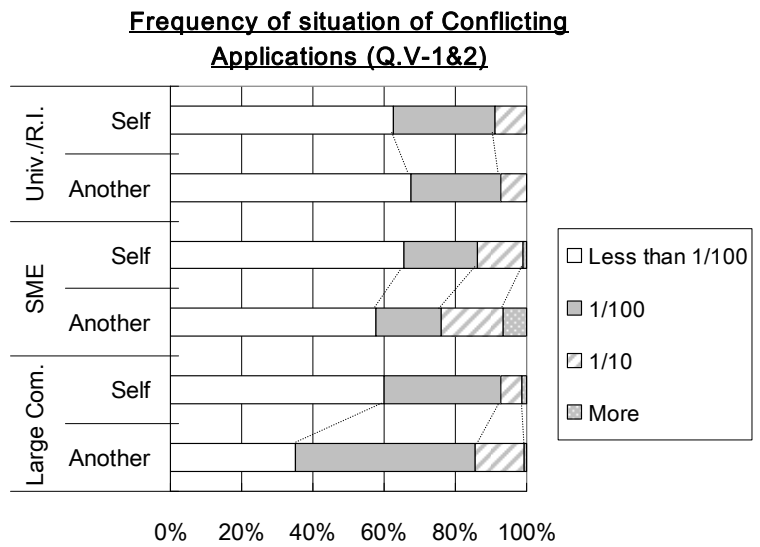
**Should all applications be published at 18-months? (Q.IV-3)**



**Conflicting Applications:**

- ✓ Large companies are said to file patent applications according to strict operating procedures in some countries. However, in fact, they were not able to avoid self-collision completely (see Fig.4).
- ✓ In regard to the treatment of conflicting applications (CA), 73% of the respondents (301/412) expressed support for the Japanese type, 11.4% (47/412) for the U.S. type, and 8.7% (36/412) for the European type.

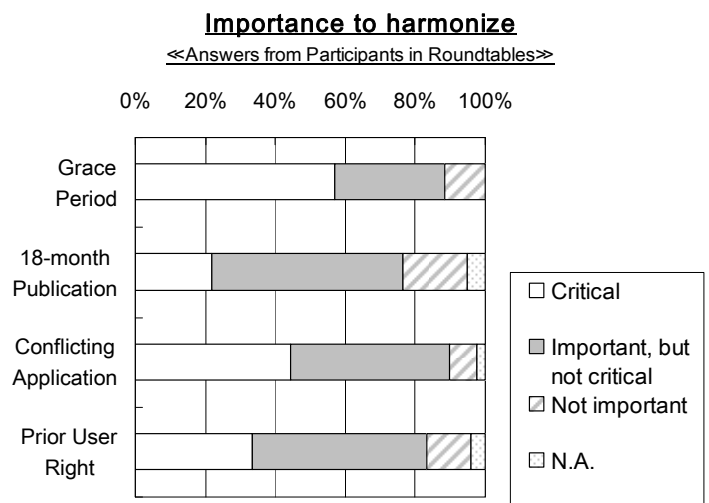
**Fig.4**



**Prior User Rights:**

- ✓ There are some cases in which applicants claimed prior user rights (PUR). In most cases, PUR were claimed in Japan. PUR claimed in overseas seem to be rare case.
- ✓ 67% of the respondents (277/412) denied PUR in case third parties in good faith derive knowledge from inventors.

**Fig.5**



**Conclusion:**

- ✓ Among the participants in the roundtable discussions, the results of a questionnaire survey on the importance of the above four issues, namely, GP, 18-month publication, CA, and PUR, show that GP gained the largest number of respondents who answered “Critical” (see Fig.5).