



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.1.2002
SEC(2002) 50

COMMISSION STAFF WORKING PAPER

Examples of the Questionnaires QRES and QPAT

ANNEX TO THE

**REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND COUNCIL**

An assessment of the implications for basic genetic engineering research of failure to publish, or late publication of, papers on subjects which could be patentable as required under Article 16(b) of Directive 98/44/EC on the legal protection of biotechnological inventions

{COM(2002)2 final}

1. Questionnaire QRES



EUROPEAN COMMISSION
RESEARCH DIRECTORATE-GENERAL

Directorate E - Life Sciences : biotechnology, agricultural and food research
Directorate F - Life Sciences : health research

The Directors

Dear colleague :

Patentability of results of basic genetic engineering research and implications for publications of these results

The implementation of Directive 98/44 on the "Legal protection of biotechnological inventions" will allow patenting of subjects of basic genetic engineering research thereby encouraging researchers to seek patent protection in cases where they previously wouldn't have done so. This may possibly lead to a delay in publication of the research results, in part also to the lack of a "grace period".

When adopting the directive in 1998, the European Parliament has requested the Commission to assess the implications of this directive on the failure to publish, or the late publication of, papers on subjects in basic genetic engineering that could be patentable. As the directive came into effect just 6 months ago, it may be difficult to fully assess the impact of the directive in this area.

That is why our directorate, together with DG MARKT, which is responsible for implementation of the directive, has initiated this survey among European researchers in basic genetic engineering. The aim of the attached questionnaire is that you, as a potential user of the patent system, will provide us with some information on the actual experience you may have already encountered with the patent system and/or how you will potentially make use of this system. We have kept the questionnaire very short and hope that you will be ready to devote time to help the Commission in this important issue. Completed questionnaires will be kept strictly confidential and only used in aggregate form.

Thanking you in advance for your co-operation.

Yours sincerely

BRUNO HANSEN
Directors Life Sciences Programme, DG RESEARCH, European Commission

PETER KIND

If you have any questions, please feel free to contact:
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BEFORE FEBRUARY 14, 2001

1. Research organisation and type of research**A. What organisation do you currently work with?** (Tick appropriate box)

- large industry small or medium sized company¹ start-up company
 public research organisation university hospital/health institute
 other, please specify:

B. What is your focus of research? (Tick one box for area and one for activity, respectively)

AREA:	ACTIVITY
<input type="checkbox"/> plant biology	<input type="checkbox"/> genetic engineering
<input type="checkbox"/> animal biology	<input type="checkbox"/> genome mapping/sequencing
<input type="checkbox"/> human biology	<input type="checkbox"/> functional genomics (including proteomics)
<input type="checkbox"/> microbial biology	<input type="checkbox"/> other, please specify:
<input type="checkbox"/> industrial biotechnology (cell factory, food, etc)	
<input type="checkbox"/> other, please specify	

C. Research collaboration

Did you perform this research

- mainly in-house in collaboration with other partners from academia
 industry
 both academia and industry

2. Number of publications and patent applications

(Please indicate whether the numbers given apply to a personal level a institute/company level)

A. How many publications in refereed journals have you (your institution) authored or co-authored in recent years in the areas ticked under 1.B above?

YEAR	1996	1997	1998	1999	2000
No. of publ.					

If you do not know the approximate numbers, please indicate whether the numbers of publications have

- stayed constant over the years decreased continuously grown
 steeply increased went up and down

B. How many patent applications with you (your institution) as an inventor/assignee have been filed?

YEAR	1996	1997	1998	1999	2000
No. of filings					
Of which national filings					
Filings at EPO					
Filings in US					

If you do not know the approximate numbers, please indicate whether the numbers of patent applications have

- stayed constant over the years decreased continuously grown
 steeply increased went up and down

and whether they were filed predominantly in US JP EPO National Patent Office.

If these patents have been filed in collaboration with other organisations, which were the main partners?

- academic institutions industry both academic institutions/industry

C. Do you intend to file patent applications in the near future?

- No Yes If yes, will you file in US JP EPO National Patent Office

¹ An SME is defined as having less than 250 employees, a turnover of less than 40 mio. € or a balance sheet income of less than 27 mio € and is considered to be independent (not owned more than 25% by a large company).

3. Effect of patenting on publication behaviour

- A. If you have applied for patents, did patent filing actually delay scientific publication?**
 Yes, considerably Yes, marginally No
- B. If you have not applied for patents yet, but intent to do so in the future, do you think that patent filing would actually delay scientific publication?**
 Yes, considerably Yes, marginally No
- C. If there was a (potential) delay in publication, what would be possible measures to avoid this? Rank importance of the possible measures (start with 1 = highest, 2,)**

Measure	Importance
Revise corporate/university intellectual property strategy/policy	
Introduce a grace period, allowing authors of scientific papers to file for a patent within a defined period (6-12 months) after initial publication	
Provide support and assistance in patent filing (e.g. university licensing offices, etc.)	
Allow "provisional patent application" ²	
Initiate awareness measures	
Others:	

4. Patent law

- A. Are you aware of the recent adaptations in patent law, which allow (or clarify) patenting of certain subjects that were not (or not clearly) patentable before?**
 Yes No
- If YES**, which of the following legislative changes concerning patenting of biotechnological inventions are you aware of:
 Directive 98/44, adopted on July 6, 1998 and currently being implemented by the Member States, on the "Legal protection of biotechnological inventions"
 New implementation rules of the European Patent Convention of June 16, 1999, inserting a new chapter on "Biotechnological inventions", closely following the 98/44 directive
 Other recent changes in national laws, please specify: _____
- B. Has the change in the legal framework allowed you to publicise scientific results (through scientific publications and/or patent applications), that would have been kept secret without patent protection?**
 Yes No

5. General comments to this issue, if any

² In principle, it would allow to provisionally file for a patent application under reduced formal requirements, e.g. by depositing a scientific paper.

2. Questionnaire QPAT



EUROPEAN COMMISSION

Internal Market DG

SERVICES, ELECTRONIC COMMERCE, INTELLECTUAL AND INDUSTRIAL PROPERTY AND THE MEDIA

Industrial property

Brussels,
MARKT/E/2 D(2001)

Dear colleague :

Subject : Patentability of results of basic genetic engineering research and implications for publications of these results

The implementation of Directive 98/44 on the “Legal protection of biotechnological inventions” will allow patenting of subjects of basic genetic engineering research thereby encouraging researchers to seek patent protection in cases where they previously wouldn’t have done so. This may possibly lead to a delay in publication of the research results, in part also to the lack of a “grace period”.

When adopting the directive in 1998, the European Parliament has requested the Commission to assess the implications of this directive on the failure to publish, or the late publication of, papers on subjects in basic genetic engineering that could be patentable. As the directive came into effect just 6 months ago, it may be difficult to fully assess the impact of the directive in this area.

Our directorate, which is responsible for implementation of the directive, together with DG RESEARCH has initiated this survey among researchers, companies, government agencies and organisations who are working in the field of basic genetic engineering in Europe. The aim of the attached questionnaire is that you, as a potential or actual user of the patent system, will provide us with some information on the experience you, or those you represent, may have already encountered with the patent system and/or how you will potentially make use of this system. We have kept the questionnaire very short and hope that you will be ready to devote time to help the Commission in this important issue. Completed questionnaires will be kept strictly confidential and only used in aggregate form.

Thanking you in advance for your co-operation.

Yours sincerely,

Erik Nooteboom

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BEFORE March 19, 2001

I. If there was a (potential) delay in publication, what would be possible measures to avoid this? Rank importance of the possible measures (start with 1 = highest, 2,)

Measure	Importance
Revise corporate/university intellectual property strategy/policy	
Introduce a grace period, allowing authors of scientific papers to file for a patent within a defined period (6-12 months) after initial publication	
Provide support and assistance in patent filing (e.g. university licensing offices, etc.)	
Allow "provisional patent application" ⁵	
Initiate awareness measures	
Others:	

3. Patent law

C. Are you aware of the recent adaptations in patent law, which allow (or clarify) patenting of certain subjects that were not (or not clearly) patentable before?

Yes No

If YES, which of the following legislative changes concerning patenting of biotechnological inventions are you aware of:

- Directive 98/44, adopted on July 6, 1998 and currently being implemented by the Member States, on the "Legal protection of biotechnological inventions"
- New implementation rules of the European Patent Convention of June 16, 1999, inserting a new chapter on "Biotechnological inventions", closely following the 98/44 directive
- Other recent changes in national laws, please specify: _____

D. Has the change in the legal framework allowed you to publicise scientific results (through scientific publications and/or patent applications), that would have been kept secret without patent protection?

Yes No

4. General comments on the effects of patent applications on scientific publications, if any

⁵ In principle, it would allow one to file provisionally for a patent application under reduced formal requirements, e.g. by depositing a scientific paper.