

Pre-Emptive Patenting: Securing Market Exclusion and Freedom of Operation

We investigate statistically the characteristics, functioning and incidence of pre-emptive patenting, defined as patent filings whose main effect is to hamper the grant of other patents. Patent applications can be used to prevent the grant of exclusive rights on markets and technologies to others in order to ensure freedom of operation to their holder or keep patent-less competitors out of the market. Combining data from examination outcomes and prior art at the European Patent Office (EPO), we develop a methodology to identify pre-emptive patent applications. We find evidence of pre-emption associated to patent applications cited as compromising patentability while being deemed non inventive. Furthermore, amongst them, those which are withdrawn by the applicant have the strongest pre-emptive power. The coincidence of low inventiveness and high pre-emptive impact supports the idea that some of these patents may be strategically designed by their applicants to block patenting by others.

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Knowledge Type: [Thematic report](#) [1]

Other Tag: [patent data](#) [2]

[patent offices](#) [3]

[technology markets](#) [4]

[novelty](#) [5]

[biotechnology](#) [6]

[arts](#) [7]

[inventor](#) [8]

[market power](#) [9]

[patent examiner](#) [10]

[patent applications](#) [11]

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[1] <https://innovationpolicyplatform.org/knowledge-type/thematic-report-0>

[2] <https://innovationpolicyplatform.org/topic/patent-data>

[3] <https://innovationpolicyplatform.org/topic/patent-offices>

[4] <https://innovationpolicyplatform.org/topic/technology-markets>

[5] <https://innovationpolicyplatform.org/topic/novelty>

[6] <https://innovationpolicyplatform.org/topic/biotechnology-0>

[7] <https://innovationpolicyplatform.org/topic/arts>

[8] <https://innovationpolicyplatform.org/topic/inventor>

[9] <https://innovationpolicyplatform.org/topic/market-power>

[10] <https://innovationpolicyplatform.org/topic/patent-examiner>

[11] <https://innovationpolicyplatform.org/topic/patent-applications>