



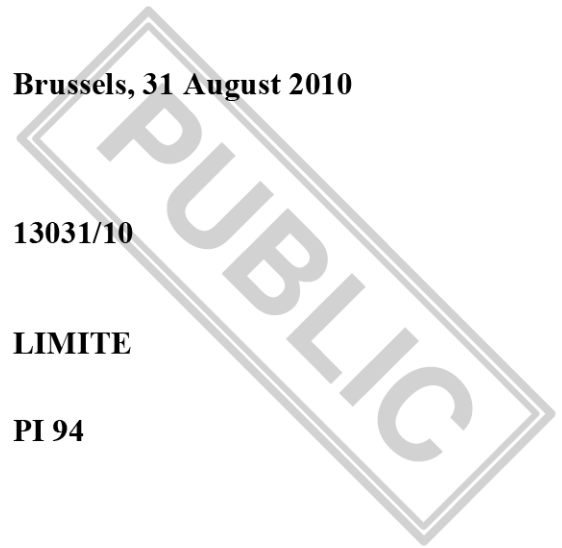
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Subject: EU patent project:
- Reflections from the Spanish delegation on a possible model for the Regulation
on translations

Delegations will find in Annex an alternative proposal for the language arrangements of the future EU patent, drawn up by the Spanish delegation.

**EU patent project. Reflections from the spanish delegation on a possible model for
the regulation on translations**

Background

Spain is fully convinced that setting up a Patent for the European Union will contribute to reinforce the Internal Market, will foster innovation in Europe and therefore supports without reserves the pre-eminent role of this issue in “*Europe 2020, new strategy for jobs and smart, sustainable and inclusive, growth*”.

The basic foundations on which the EU patent linguistic regime should be set up are:

1. Reduce translation costs to a minimum level

This costs reduction should be performed in a transparent and democratic way. This means that the burden of the consequences of the reduction in the number of translation should be balanced. It is necessary to take into account which will be the companies mostly benefited by the cost reduction and the group of companies mostly damaged by translation reduction. Any possible solution that does not follow this approach will create discrimination.

2. Provide a maximum of legal certainty

Legal certainty must be understood in a broad sense. This means that it does not only affect patent owners or patent applicants. Third parties’ rights have to be carefully taken into account. In a patent granting process, there are two moments in which the legal certainty is of particular importance.

Firstly, when the patent application is published, the provisional protection starts. This is a critical moment where the third parties should analyse which is the state of the art of a certain

technology not only in terms of technological information but also to avoid unintended infractions. The scope of a certain invention is many times very narrow and the wording used – sometimes even a single word matters- is decisive to determine if an invention is protected or not. Any solution that does not take into account that when published, a patent should be drafted in a language at least vastly known by technicians will create a great deal of legal uncertainty among third parties.

Secondly, when the patent application is granted, there is a full protection. At this moment, third parties should be capable to determine with a minimum uncertainty which is the scope of the protected invention. Again, this is not possible without a high quality translation that is only possible if the translation affects the scope of the protection, i.e., if the quality of the translation really matters to the patent owner.

With this spirit and taking into account previous considerations, Spain has always looked for feasible and constructive solutions based on a fair balance of four elements: the solution should be beneficial for the European citizens, should take into account the interests of the European industry, specially those of the SMEs, should facilitate the dissemination and knowledge of the technical specifications contained in the patent applications and finally, must respect and promote the European linguistic wealth.

Firstly, all European potential applicants should have the possibility to file a patent application in their own language and that this application, once published, has certain legal effects, rather than being a document without any legal value.

Secondly, in order for the EU patent to be affordable and widely accessible, industry associations, such as BusinessEurope¹ and UEAPME² have advocated a simplified language regime, expressing preference for an English-only solution.

¹ <http://businesseurope.eu/DocShareNoFrame/docs/2/AEDOLIPAEDHNJHMINFOKFLFAPDB39DWNAK9LTE4Q/UNICE/docs/DLS/2007-01634-E.pdf>

² http://www.ueapme.com/docs/press_releases/pr_2007/070404_patents.pdf

Thirdly, to provide an effective dissemination of technical knowledge in patent applications it is needed that they are written in a language massively known or accepted at least in the most interested circles. The use of a “lingua franca” warrants a reasonable dissemination among the technical sectors in combination with documents of high technical quality and extraordinary technical and legal accuracy. On this respect, the solution must necessarily take into account that, according to the Eurobarometer¹, “half of the citizens of the Member States assert that they can speak at least one other language than their mother tongue at the level of being able to have a conversation”. On top of that the study mentions that out of this 50% “in the EU, English (34%) is the most widely known language besides the mother tongue followed by German (12%) and French (11%)”

Finally, we cannot ignore that one of the most important wealth of the European Union is its cultural and linguistic diversity that deserves attention and protection. Additionally, the translation and publication of patented inventions in different EU languages would improve access to information on state-of-the-art technology and enrich technical vocabulary in these languages. In fact, the European Machine Translation Programme developed by the EPO and National Patent Offices has been possible just due to the existence of a large collection of pairs of patent documents which has allowed to build up multilingual technical dictionaries.

Basic features of the solution proposed by the Spanish Delegation.

The solution proposed by the Spanish delegation takes account of the previously explained objective facts and proposes a solution based on the following drivers:

1. The solution must take into account which is the most feasible European language in terms of “general knowledge” in the technical field.
2. The solution must take into account the interests of the industry in Europe clearly and repeatedly explained by industry associations and representatives: one language, better than several ones.

¹ Eurobarometer European Commission; European and languages
ec.europa.eu/public_opinion/archives/ebs/ebs_237.en.pdf

3. The solution must take into account the respect of the EU languages without discrimination.
4. The solution must be feasible in practical terms.

During our Presidency we had the opportunity to study in-depth the different alternatives and how each of them fits with the facts and objectives for a sustainable EU patent and we reached to the following conclusions:

1. Currently, the languages used to file an application before the EPO are unequally elected by the applicants:
 - English is chosen in a 77% of the case,
 - German in 18% and
 - French fall to 5% of cases.

The EU patent should be recognised the fact that today the language massively used by applicants is English. Therefore, it should be filed, processed and granted "*in the language customary in the sphere of international technological research and publications*" which is *de facto* currently mean in English.

This formulation is inspired by the text used in Article 20 of the Prospectus Directive (Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers of securities) where financial institutions do not have to provide translations of the prospectus into the language of the host Member State if the prospectus is drawn up in the "language customary in the sphere of international financial institutions".

2. A translation of the EU patent into another EU language should be provided by the patent applicant. This translation would be into one of the languages of the European Union. Applicants based in Member States having English as an official language or in third countries, should choose any other EU language for the translation.

3. The language of the granted patent (English) would be regarded as the authentic text. However the translation to the second language should have limited legal and geographical effect in analogy with Article 70 (3) (4) CPE.
4. The applicant would be able to file an application in a local official language which would be translated for processing up to grant with the costs borne by the system (mutualisation of costs). Applicants benefiting from this possibility would be able to use the original filing language for the translation into the second EU language at grant, which will only need to be revised at marginal costs to accommodate amendments made during pre-grant proceedings. This approach should improve access to the EU patent from Member States where patenting activity is currently low including many small and new Member States.
5. In patent infringement cases the defendant would be able to request from the patentee a full translation into his native language.
6. For the purpose of dissemination of the technical information provided by patents, automated translation of patent specifications into all official EU languages will be made available from the grant of the patent.

Economic and Legal Advantages.

1. In all cases, the granted EU patent must include the full description and claims in a second language of the EU of their election. Normally, the applicant will use the local language where the company or inventor is domiciled. Therefore, the **EU patent will have a multilingual character** without any discrimination for the rest of the EU official languages, since all of them could be present in the system. This way the EU patent system would contribute to maintain the huge linguistic wealth of Europe. This system remains affordable for businesses and other innovators.

Moreover, **automated translations for information purposes into all EU languages, available free of charge** after the patent is granted, will provide for improved dissemination of knowledge and give European innovators access to texts in their own language.

These automatic translation machines will be updated by the pairs of documents generated by the system.

2. This solution will result in **all publications of EU patents and EU patent applications (description and claims)** being officially **published and available in in the language customary in the sphere of international technological research and publications (English)**. At the same time, this solution will provide the technological information users with an early and easy source of information once the EU patent application is published –and provisionally protected- just 18 months after filing date. The fact that a single language is used is essential for the effectiveness of the knowledge transfer and dissemination.

In summary, this will make the patent system more consistent with the language mostly known in Europe by the public in general and the language of publication of the leading journals in science and technology.

In practical terms, this means that Civil Society, scientists and engineers throughout Europe will therefore be able to access and read all EU patents and EU patent applications in the language of most technical literature in their research domain, enhancing the importance and awareness of patents and other intellectual property rights. This should therefore improve innovation performance in Europe as a whole. Europe currently lags behind other leading economies in taking novel research ideas from the laboratory to achieve state-of-the-art products in the market despite producing world-class research papers.

3. This solution is **non-discriminatory in terms of translation costs**. All applicants will be required to translate the original text into one language only. Costs to perform this translation will be kept to a minimum since in quite a number of cases EU applicants use their local language to file the first filing at their domestic office (and even at the EPO) and later

translate the application in one of the official languages of the EPO. Therefore, they could use the original filing language for the translation into the second EU language at grant, with only small costs to accommodate amendments made during the proceedings. This should add savings for EU applicants. Estimated **savings** for 60.000 validations amounts to **470 M€ yearly**, with respect to the current situation.

Model	Translation Costs		
	Cost per patent (in euros)	Total Cost	Percentage of reduction
Current situación (London protocol)	8.800		0%
Cost 60.000 validations		528 M€	
EC proposal ¹	680		8%
Cost 60.000 validations		40,8 M€	
English as a base	Priority is english: 1.556 euros. Priority is from another UE language: 0 euros		
Cost 60.000 validations from which 50% come from non UE members and 25% of the rest are filed directly.		58,35 M€	

The solution **improves the legal certainty for the industry** that, has not only better access to all relevant documents at any moment of the EU patent granting procedure, but also the full certainty of its content.

¹ 4 pag * 85 euros * 2 lenguas : 680 euros

4. Another important aspect of a possible solution is its feasibility as far as compatibility with EPC is concern. It is desirable that any solution could provoke minimum changes in the EPC. In fact, a new scheme based on “English as a base” could fall entirely under Part IX of the EPC related to unitary patent and particularly under Article 149a which gives a high degree of freedom to the States participating in a unitary patent to rule the way to proceed. The language regime of the EPO itself is not changed at all since English is an official language and therefore the impact on EPC regulation should be neglectable.

Additionally, as the EU will be a new “Contracting State”, it has the right to make use of an article based or similar to art.65 EPC that, interpreted in broad sense or with minimum changes could be the basis to demand a translation in another official language of the EU.

In any case, the possible impact on the EPC is minimum compared with the general changes that the adoption of the EU patent will imply.

Other important factor of feasibility is the behaviour of non-UE “UE patent users”. The most important countries outside Europe, the US and Japan has already shown its great support to an English as a base solution.

Finally, it seems that the proposal of the EC aims at leaving the choice for an EU patent after granting. This means in practice and to avoid a complete legal uncertainty about the geographical protection of a certain patent that the application is submitted to the current regulations of the EPC and after granted the applicant decides upon converting the European patent into a EU Patent.

Let the decision to a post-grant moment is not incompatible with an “English as a base” solution. If the decision is taken immediately after granting, the applicant should comply with the translation requirement, i.e., if the patent is in English, a translation should be filed in other language of the UE. Exceptionally, if the patent is in French or German, these languages could be considered as authentic with limited geographical effect, being the translation to English the authentic text in the majority of the EU.

Finally, the period to supply translations after grant, whichever the case is, could be solved in analogy to Art. 65 EPC, i.e., within three months after the date on which the mention of the grant is published in the European Patent bulletin.

To conclude, the use of one single language widely known in the European Union as a base, opens a full set of possibilities for the future and promote the setting up of stronger foundations for the European Union. At the same time, the addition of a second language at the applicants' choice which will be most probably the applicants' mother language will preserve at neglectable cost, the linguistic wealth in Europe which is a value that we have the must to protect.

Text of the proposal

Added as Annex 1

Article 1. Subject matter

This Regulation establishes the provisions on the translation arrangements applicable to a European Union patent.

Article 2. Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "European Union patent", hereinafter referred to as the "EU patent", means a patent as defined in Regulation xx/xx on the European Union patent.
- (b) "EU patent specification" shall include the description , the claims and any drawings.

Article 3 . Languages of the EU patent.

1. Without prejudice to paragraph 2, the EU patent shall **be filed , processed,** and granted in English.
2. The applicant may file his application in the official language **of the Member State** where he is domiciled or has his place of business. Any such application **shall** be translated into **English by the applicant with the costs borne by the system.**
3. **A translation of the EU patent specification into another official language of a Member State (second language)** shall be submitted by the applicant at grant . Applicants benefiting from the possibility provided for in paragraph 2 may use the original filing language for the translation into the second EU language.
4. Any changes of the patent specification after grant shall be translated into the second language.

5. The English text of the EU patent shall be the authentic text. However, the translation into the second language referred to in paragraph 2 shall have legal effect in analogy with article 70 (3) and (4) of the EPC.

Article 4. Translation in case of a dispute

1. In the case of a dispute relating to an EU patent, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled.
2. In the case of a dispute relating to an EU patent, the patent proprietor shall provide at the request of the competent court in the European Union in the course of legal proceedings, a full translation of the patent into the language of the proceedings of the court.
3. The cost of the translation referred to in paragraphs 1 and 2 shall be borne by the patent proprietor.

Article 5. Conversion of a European Patent into a EU Patent

1. Any European Patent may be converted into a EU Patent, by a request filed with the EPO.
2. EU Patent Regulation shall apply after the date the mention of the granted conversion is published in the European Patent Bulletin.
3. In case the language of the European Patent is English, provisions contained in article 3 shall apply.
4. In case the language of the European Patent is French or German, these texts shall be deemed authentic. **A translation of the European Patent into English shall be submitted by the applicant. In these cases any Member State may provide that the translation in English shall in that State be regarded as authentic, except for revocation proceedings, in the event of the EU patent in English conferring protection which is narrower than that conferred by it in French or German.**

Article 6. Report on the implementation of this Regulation

Not later than five years from the date on which this Regulation enters into force, the Commission shall present to the Council a report on the operation of the translation arrangements for the EU patent and where necessary make proposals for amending this Regulation.

Article 7. Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*date of the entry into force of Regulation xx/xx on the European Union patent*]. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the Council
The President
