



P I M E C : Small and Medium Enterprises of Catalonia
PUBLIC HEARING ON FUTURE PATENT POLICY IN EUROPE
DEBATE N°3: COMMUNITY PATENT

Dear President, Ladies and Gentlemen,

The name of our Organization is PIMEC, an acronym of the Spanish phrase "Pequeña y Mediana Empresa de Cataluña", which English translation is *Small and Medium Enterprises of Catalonia*. Our Organization is the most important Spanish Organization of SMEs: comprises about 70.000 associated SMEs, which in its whole provides about 340.000 jobs. The problems and opinions of PIMEC are shared by the whole of Catalonia SMEs, which, in 2003, amounted 474.086 enterprises, with 1.853.231 jobs, and generated an added value of 71.386 million Euros.

SMEs are the driving force of European growth and job creation. In Spain and in Europe in general, nine out of ten enterprises are SMEs and they provide almost two out of three jobs.

As known, in the scenario established by the Patent Laws there is, for each patent, the active user and the general public as passive users. The active user is the patent owner, to whom the law confers the right to enforce the patent. The passive users are the ones who are obliged to respect the owner's patent. Spanish enterprises play much more often the role of passive users than the role of active user. Obviously both roles are equally respectable.

The establishment of a Community Patent as a need within the future patent policy in Europe, cannot be supported by PIMEC for the following considerations and reasons:

- 1) Having in mind the traditional principle "monopoly in exchange of disclosure", PIMEC considers that one of the most important principles of the patent system is **to balance the interests of the patent owners with the interests of the general public**.
- 2) The principle of **legal certainty** in the involved countries. The legal certainty would not exist if only the claims were translated into the official language of each country, as provided in the article 69(1) EPC "*the extent of the protection (...) shall be determined by (...) the claims. Nevertheless, the description (...) shall be used for interpret the claims*".
- 3) The principle of **constitutionality**, which PIMEC considers very important. On the one hand, because a patent system could be considered unconstitutional when discriminates against Spanish language in favour of other languages such as English, German or French. On the other hand, because the Spanish Constitution orders that publicity be given to all regulatory acts, that is, those which create obligations for the citizens in general or limit their rights. The absence of such



publicity gives rise to the violation of the principle of legality and infringes the right of citizens to effective judicial protection.

- 4) The **basic principle on equal rights among all the European citizens** must be maintained and consequently there must not exist privileges among citizens of the different Member States.
- 5) The **principle of subsidiarity** must also be taken into account. Under this principle all the Administrations which are closer to the users must be preferred to the ones away from them.
- 6) Last but not least, PIMEC must remember the principle of respecting the **technological cultural heritage** of the Member States, that is, the patents and the involved technologies therewith must be available to the citizens of said countries in their own language.

The information contained in the patents is widely used by Society in general. Therefore, the Spanish enterprises are very interested to know the complete documents in Spanish of the European patents extending their legal effects in Spain. In fact, during the year 2005, the number of documents in Spanish language that have been consulted in the web of the Spanish Patent and Trade Mark Office is the following:

Month	Number of documents
January	93.417
February	97.396
March	104.300
April	123.507
May	111.580
June	114.175
July	82.736
August	71.693
September	109.575
October	129.451
November	184.490
December	93.590
T o t a l	1.315.910

Taking into account the **economic aspect**, PIMEC must remember that the aim of the proposed changes is to achieve a cheaper and competitive Community Patent, thanks to the fact that the cost thereof would be practically equivalent to the protection cost in five Member States, within the framework of the current European patent system. These economy and competitiveness are aimed to be obtained by means of an alleged saving consisting in not translating the complete text of the patent to all the European Union languages and/or to limit the translation only to the claims. But then one of the



necessary requirements for obtaining a patent would be infringed: “*disclose the invention in a manner sufficiently clear and complete for it be carried out by a person skilled in the art (article 83 EPC)*”.

Really, the alleged translation cost saving is a fallacious jugglery, due to the fact that, in the best case, there is only a transfer of the translation costs from the patent owner to the person or persons who must respect it. Very often there will be no saving, but rather an increase of translation costs. In fact, having in mind that, when a first user has translated the complete text of the patent, the subsequent users ignore that a translation already exists, then further translations of the same text must be done, what would have a multiplying effect on the costs. Consequently, a flagrant injustice arises: the general public shall be obliged to incur several times in the cost spared by the patent owners.

A better approach of the European Community would be to directly encourage R+D and innovation in European SMEs, and to this purpose tax measures, subventions, aids for a better education of the potential researchers are advisable. If SMEs are the driving force of European growth and job creation, R+D and innovation is the driving force for generating inventions by SMEs.

Dear President, Ladies and Gentlemen, thank you for your kind attention.

Barcelona, July 2006