

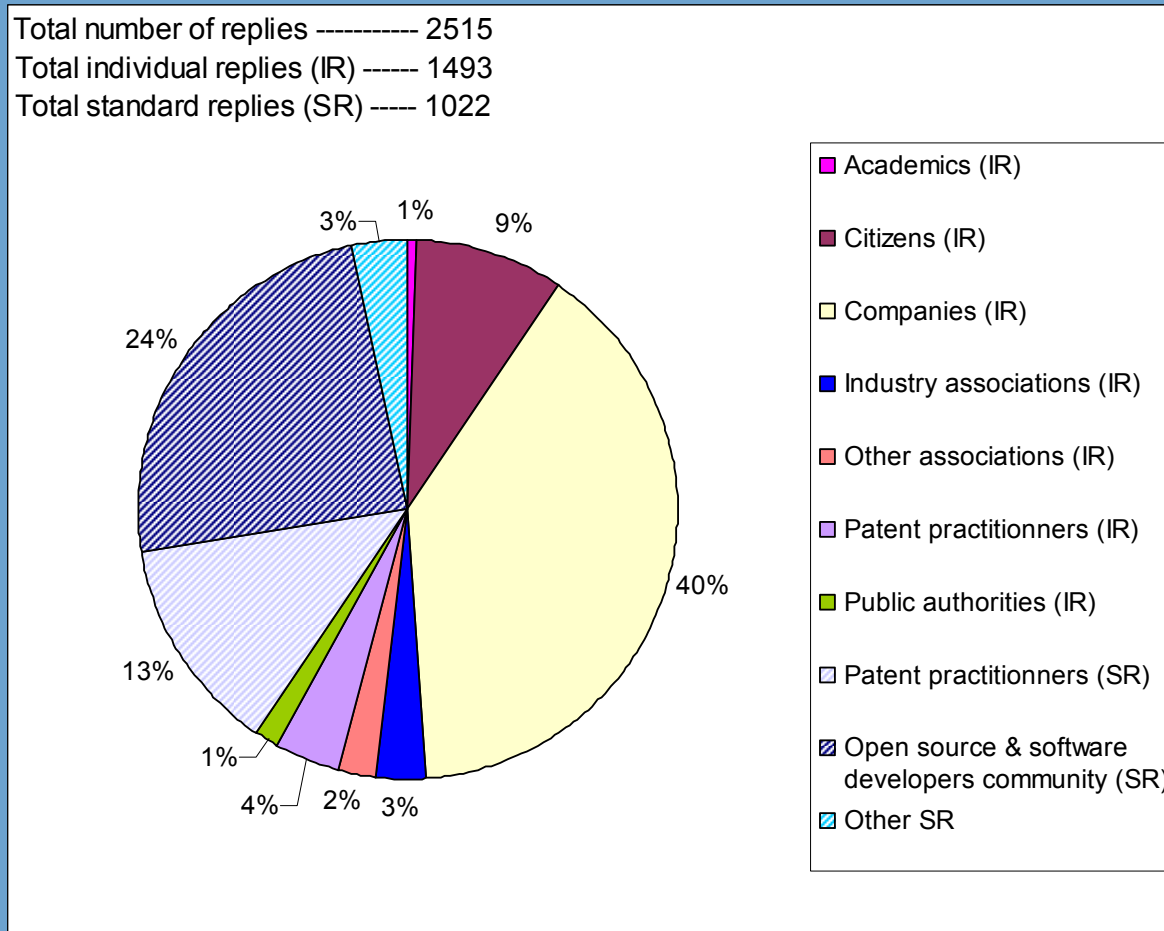
PRELIMINARY FINDINGS OF THE PATENT CONSULTATION

I. FACTS AND FIGURES

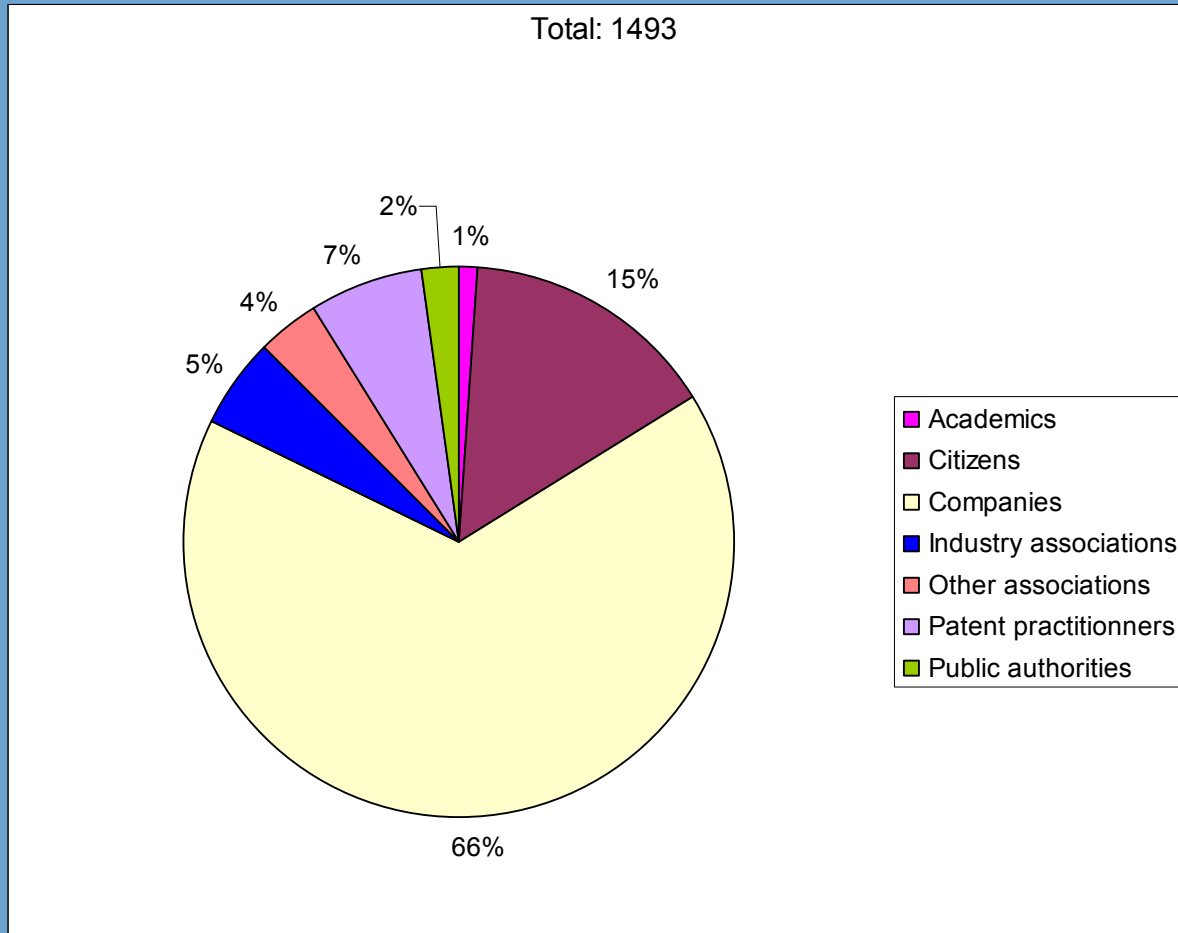
Consultation launched on 16 January 2006.
Extended deadline 12 April 2006.

2515 replies!

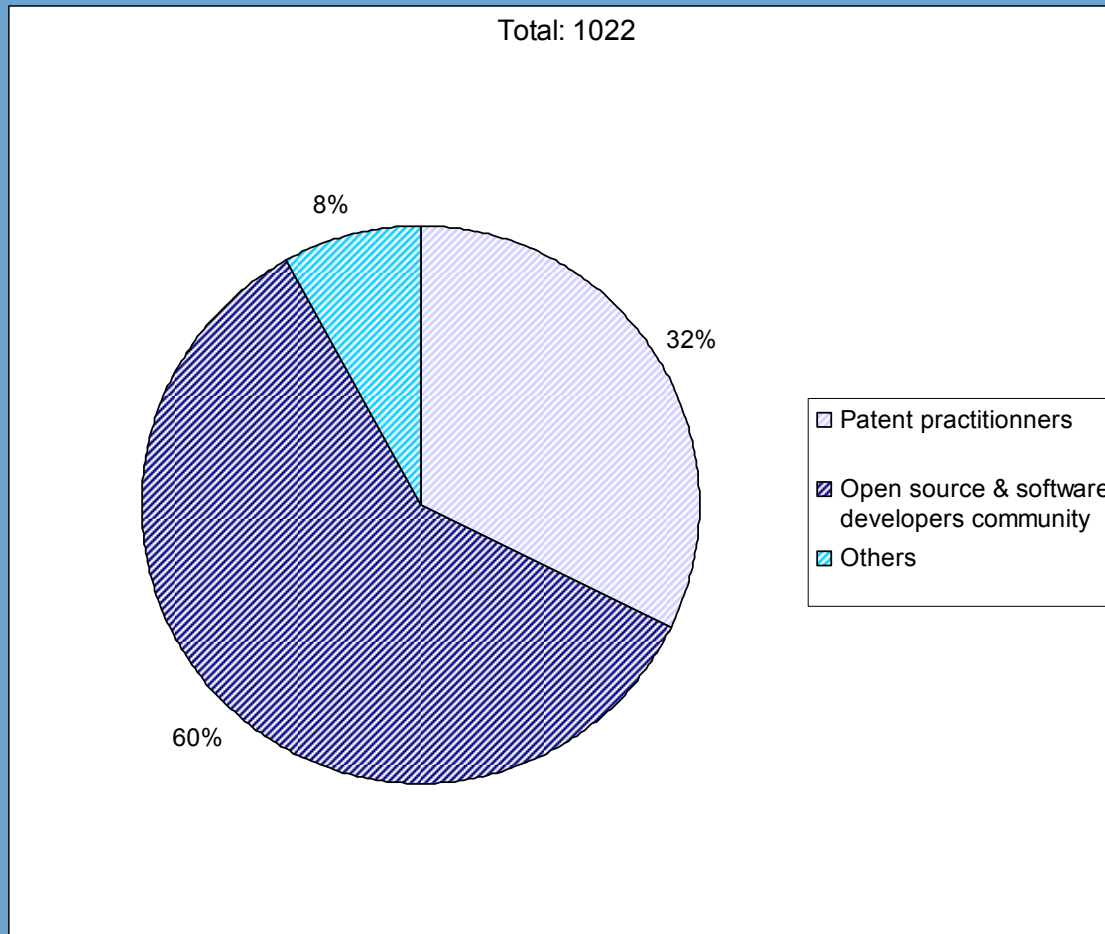
Categories of Stakeholders – All Replies



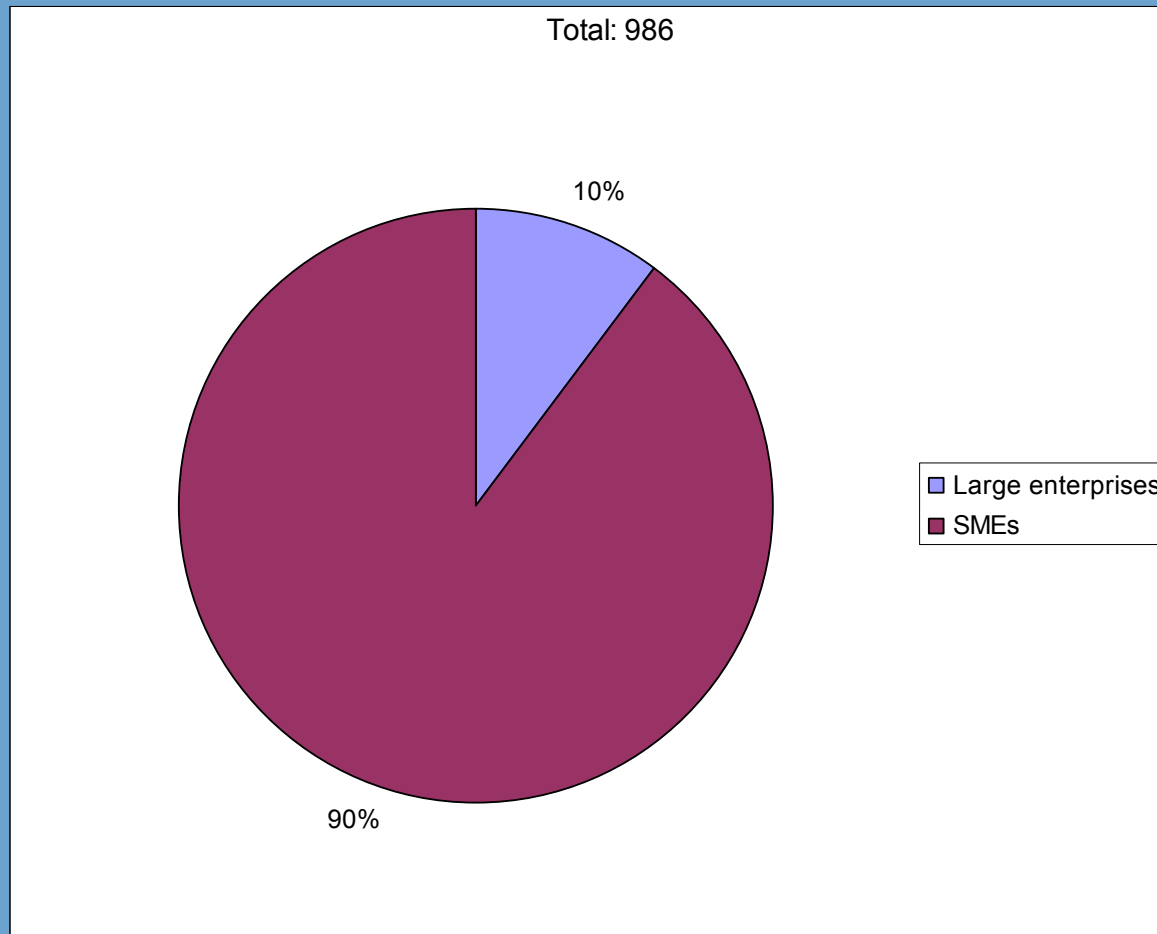
Categories of Stakeholders - Individual Replies



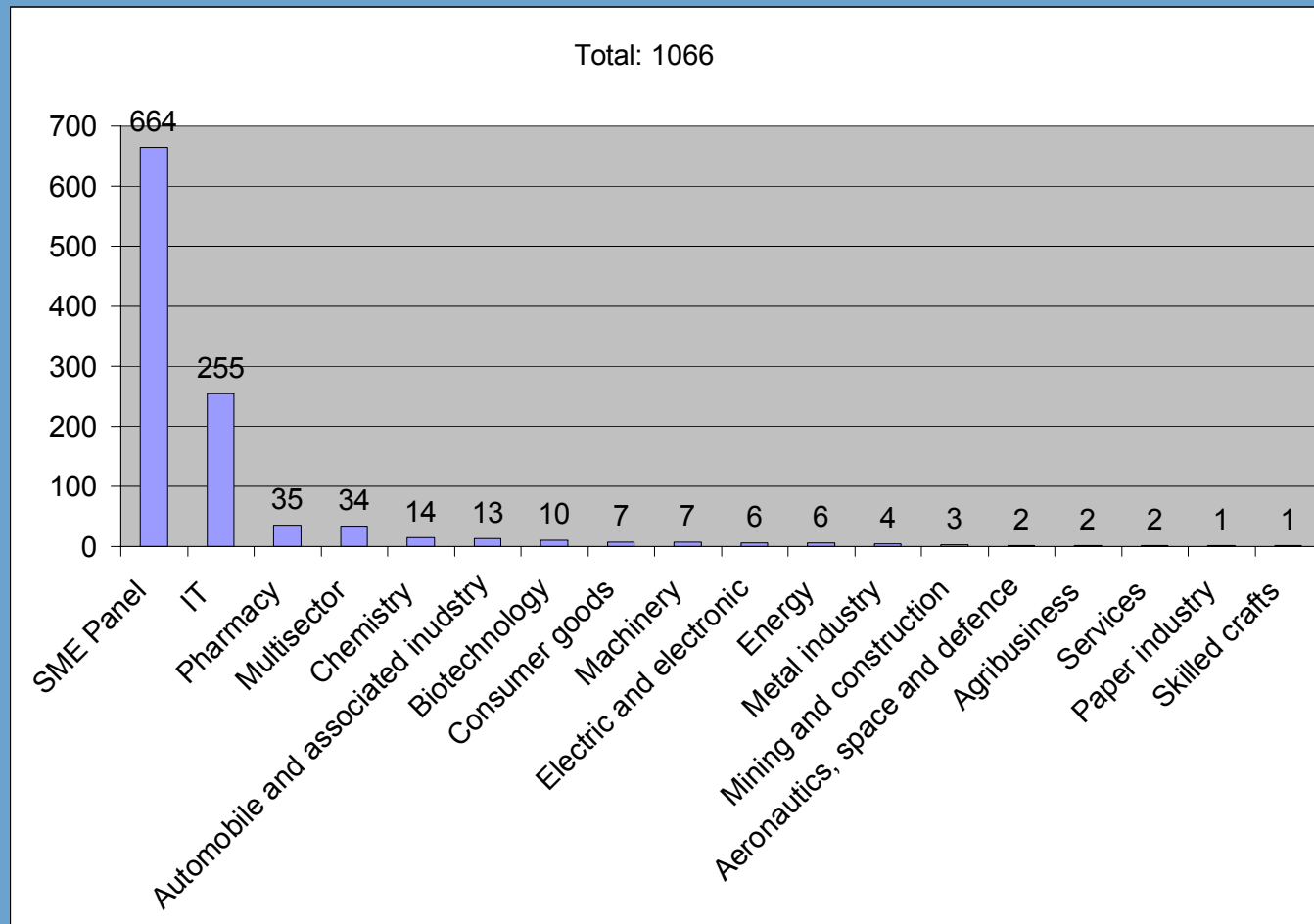
Categories of Stakeholders - Standard Replies



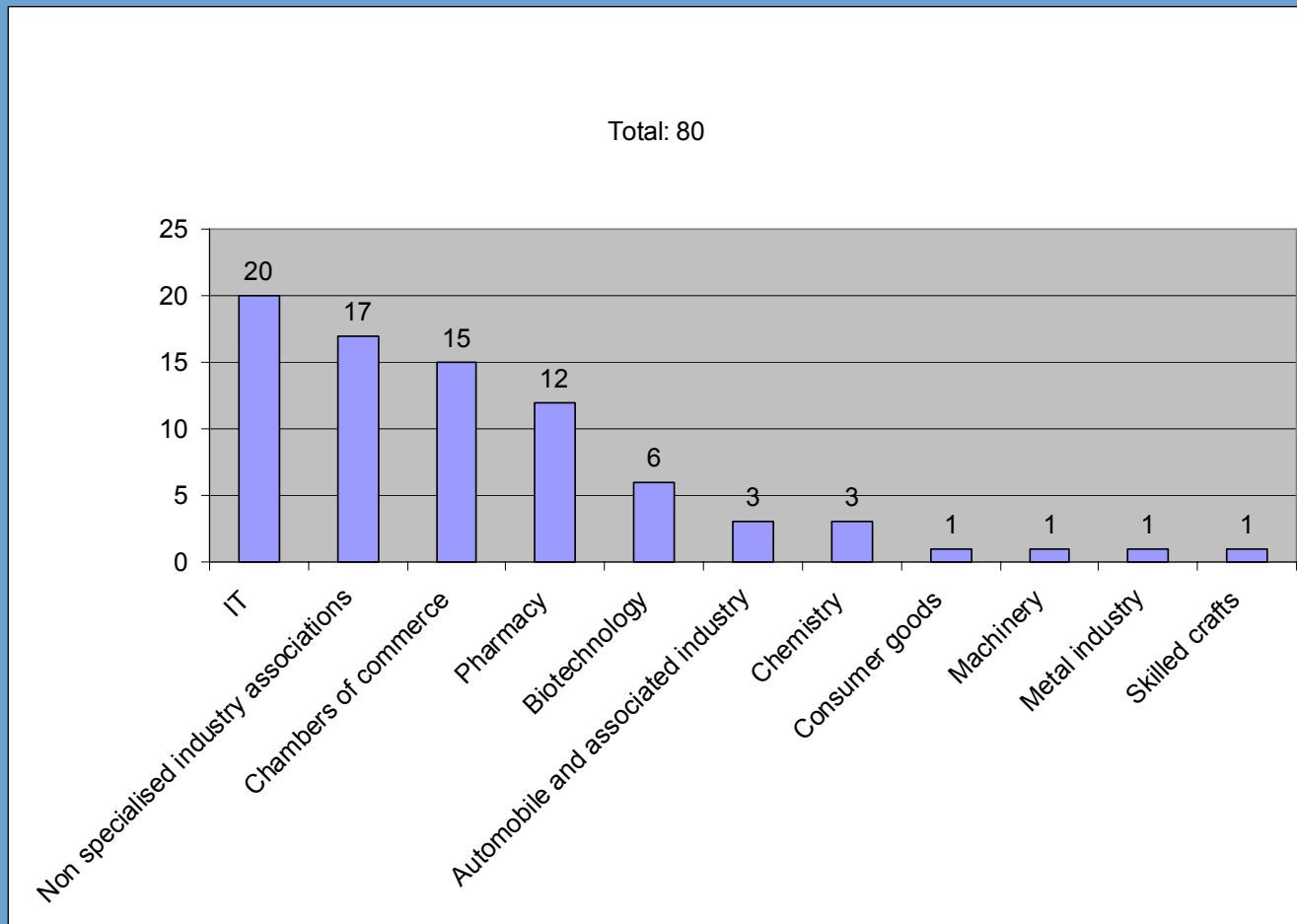
Categories of companies



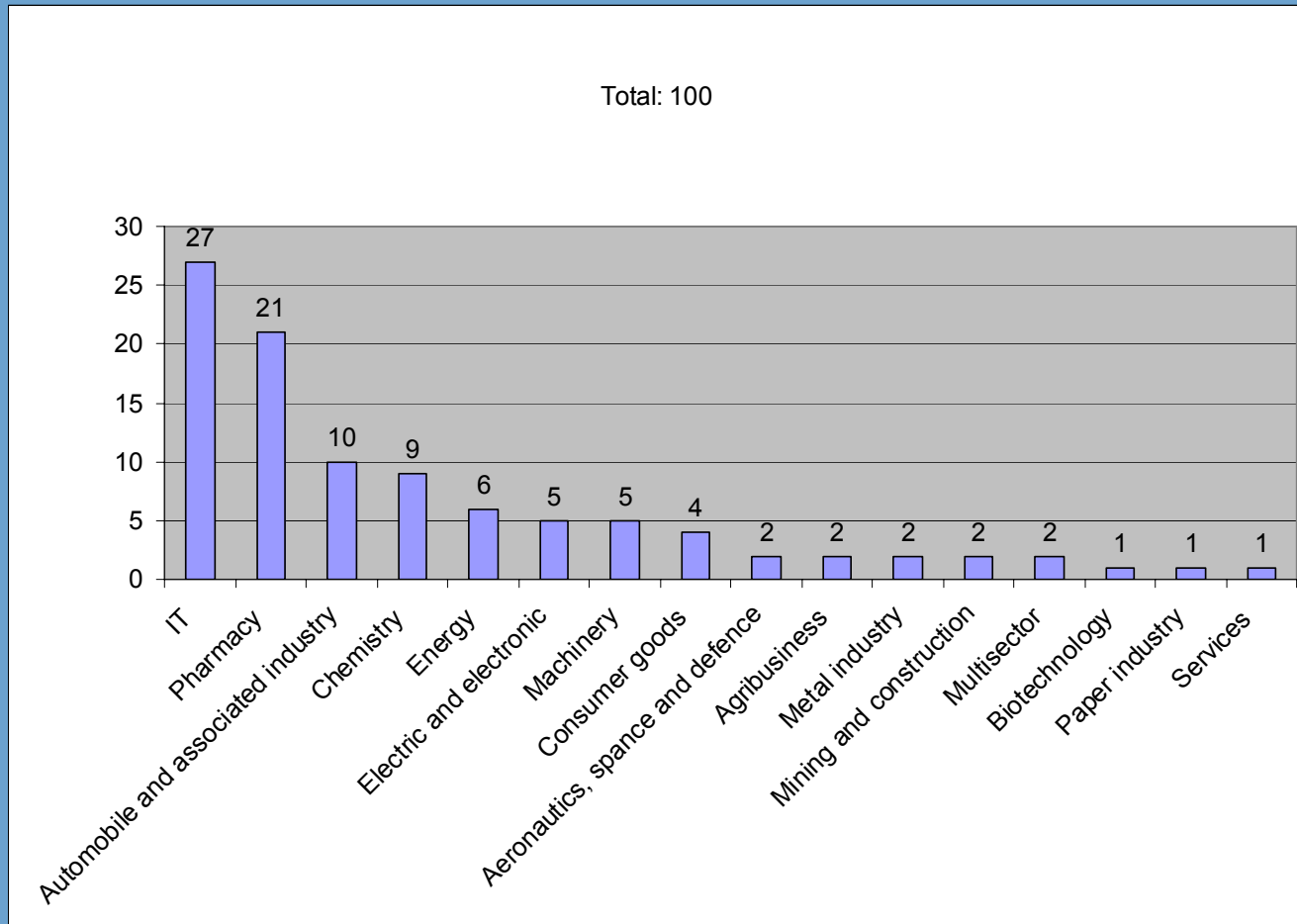
Sectors of Industry – Companies and Industry Associations' Replies



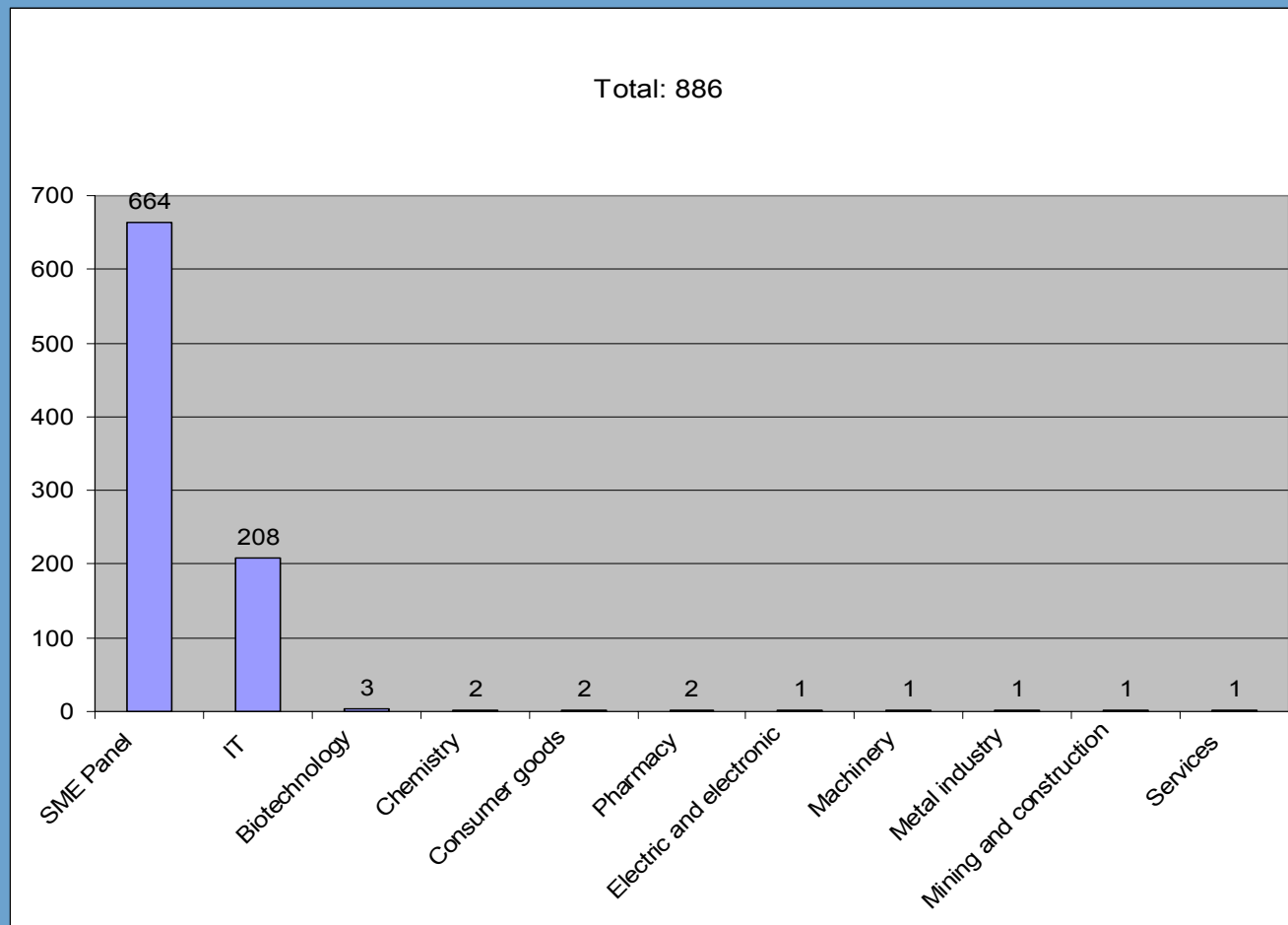
Sectors of Industry – Industry Associations' Replies



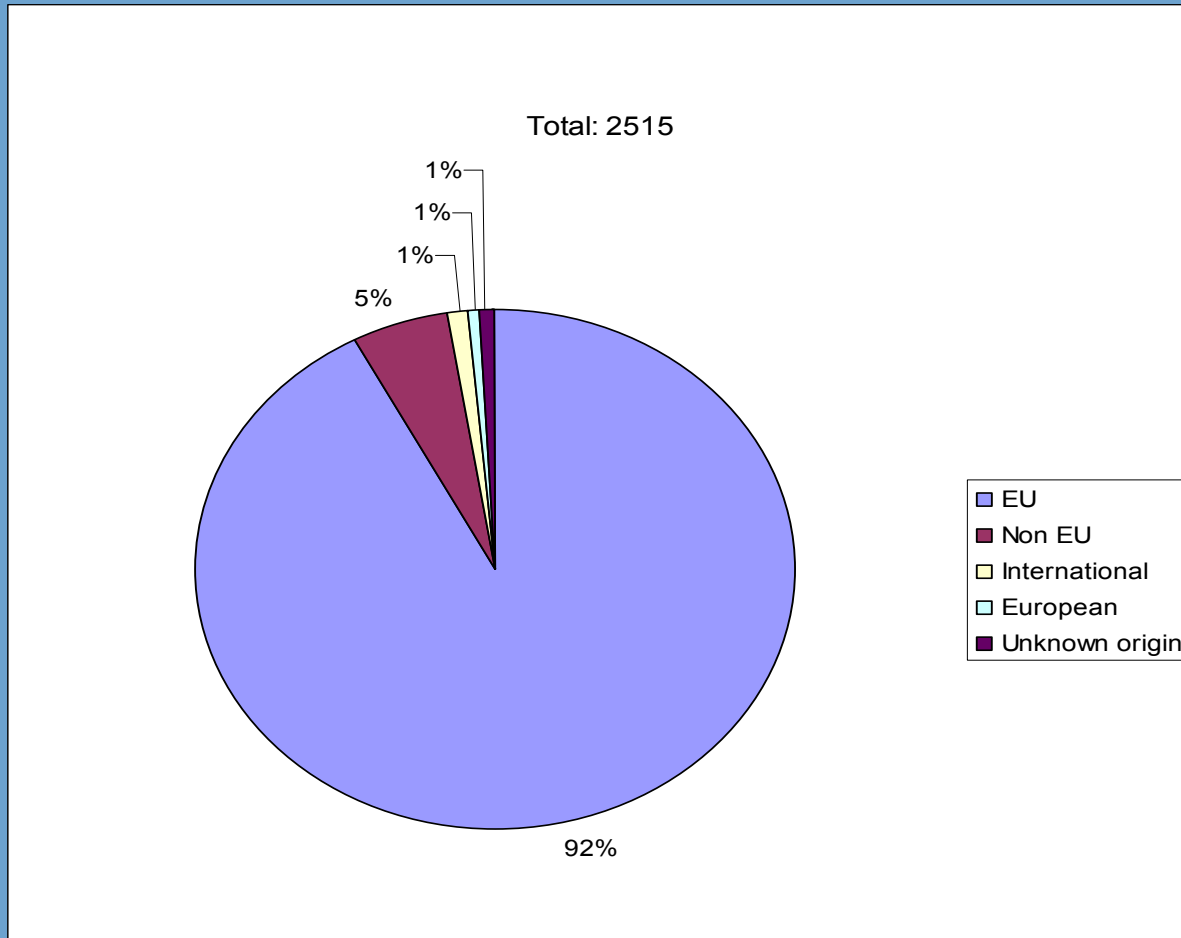
Sectors of Industry - Large Enterprises' Replies



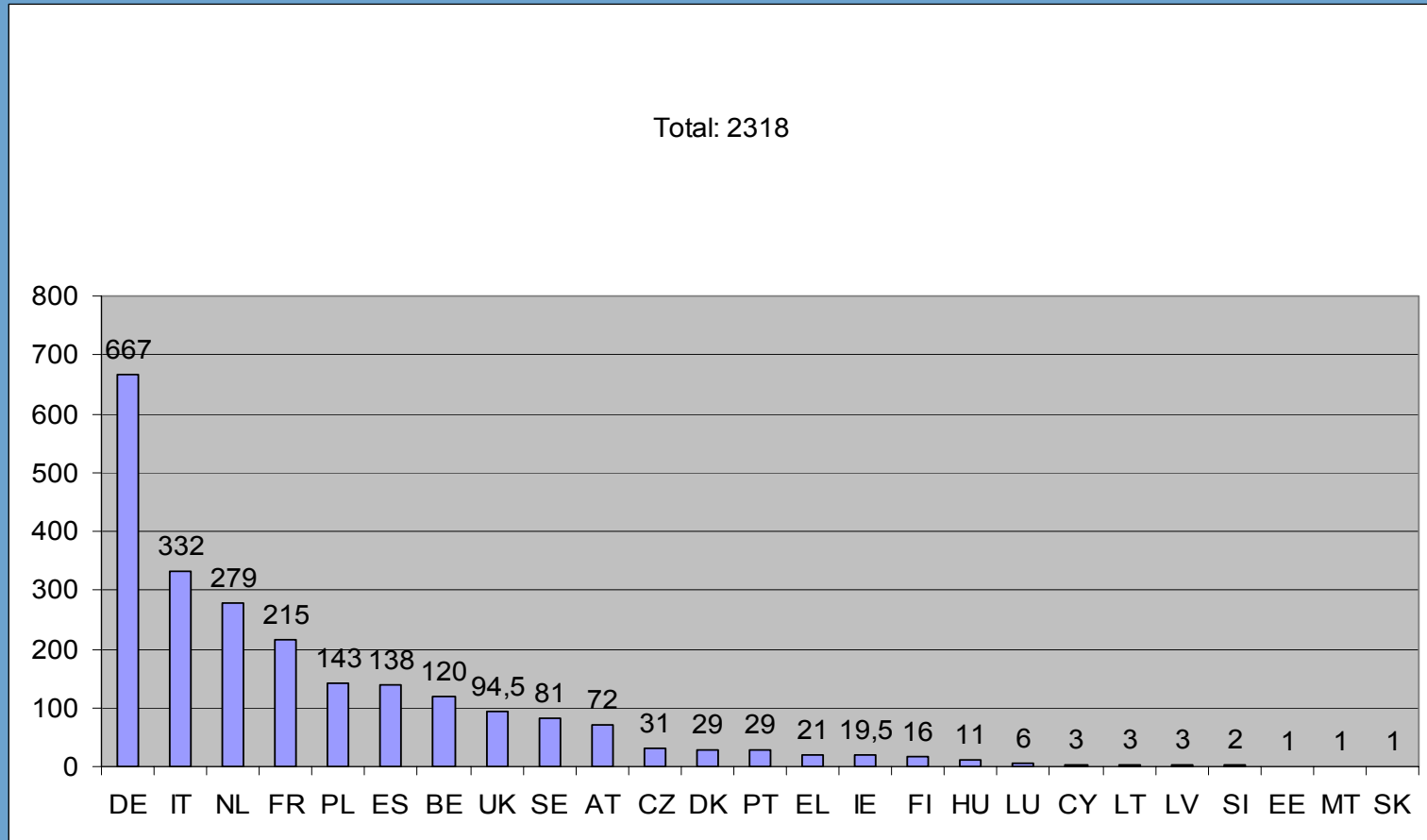
Sectors of Industry - SMEs' Replies



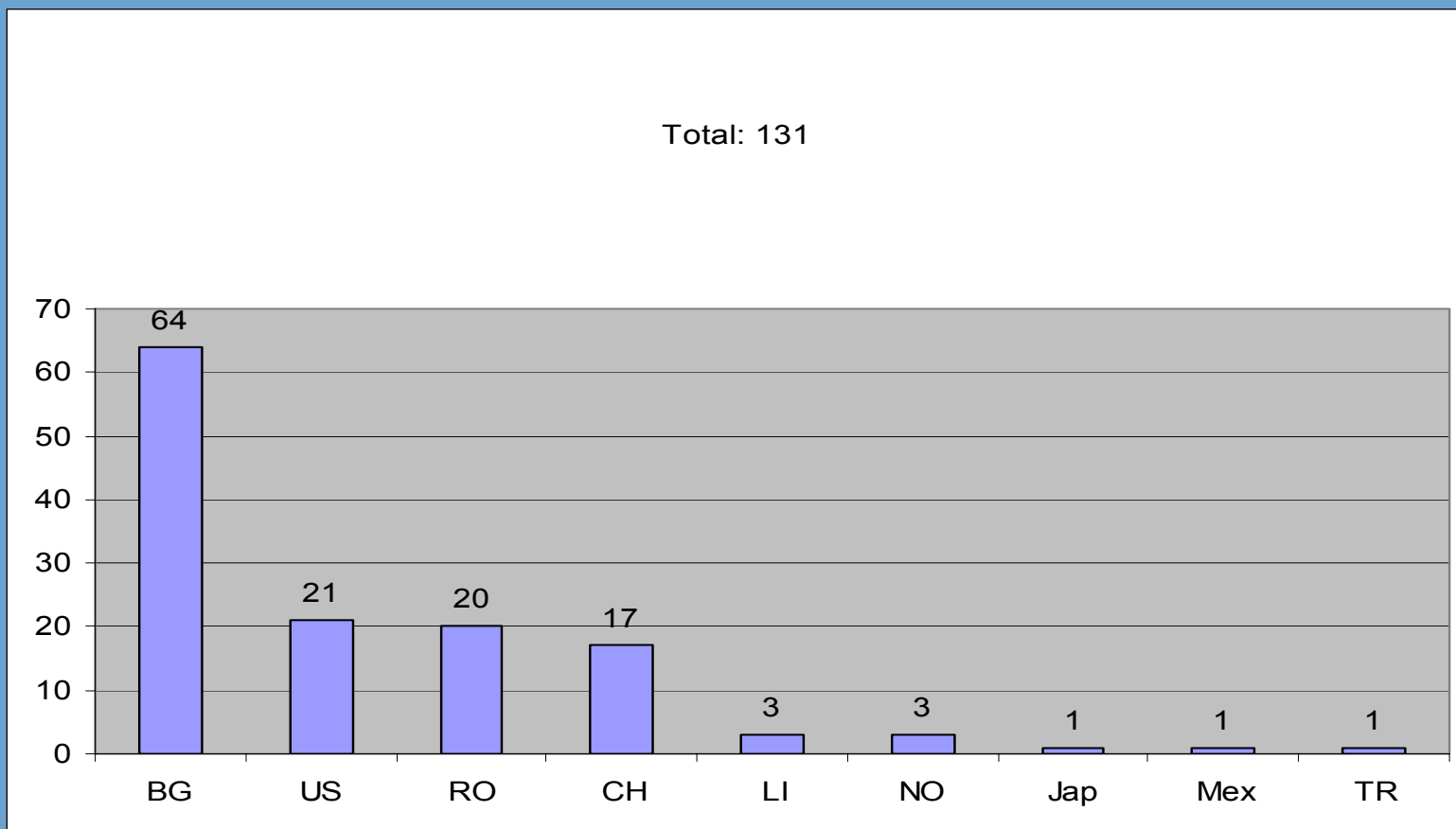
National Distribution - All Replies



National Distribution - EU Replies



National Distribution – Non EU Replies



II. FINDINGS

Section 1: Basic Principles of Patent Law

- Respondents generally agree with the characteristics identified by the Commission.
 - Some stakeholders considered some essential qualities were lacking, others pointed to additional features.
- Emergence of other basic principles.

The patent system must:

- provide an incentive for innovation
- thus, substantive patentability criteria must be rigorously respected
- ensure the diffusion of scientific knowledge and technologies by an efficient, transparent and complete publication of patent documentation;
- facilitate the transfer of technology;

The patent system must also:

- be available to all players on the market (enhance information and awareness activities, facilitate access for stakeholders - SMEs in particular);
- offer legal certainty to the patentee and the users (patent quality is a primary issue of concern, should be improved through the grant and the enforcement processes).

Sections 2 & 3: Preliminary Statement

It stems from stakeholders' submissions that:

- any cost reduction should be accompanied patent quality enhancing solutions, otherwise it is likely to have an adverse effect on the quality of patent (increased workload of patent offices);
- the rules of procedure of any future jurisdictional arrangement must contain safeguards against Community-wide or even larger enforcement of low quality patents.

Section 2: Community Patent

- Stakeholders generally support the Community Patent (COMPAT) as a way of addressing problems of the patent system.
- However not at any price, must offer advantages over the existing system.
 - Overall rejection of the 2003 CPA, mainly because of an unsatisfactory language regime and inadequate jurisdictional arrangements.

Language regime:

- 2 extremes: single language patent / full translations into all official EU languages immediately upon grant.
- Opinion divides mostly according to the size of the responding company (except. Eurochambers for English-only) or according to a national basis.

Jurisdictional arrangements:

- local first instance specialised and a centralised Community appeal court;
- judges must have solid legal and technical experience;
- clear procedural rules are absolutely vital;
- full competence (not only infringement) favoured by some stakeholders;
- for some the Community Trademark system is a model.

Proposed alternatives:

- transformation of a European Patent covering some or all of the EU Member States into a COMPAT (FICPI);
- have the initial Commission proposal back on the table for negotiations.

Objections raised:

- some stakeholders are concerned that COMPAT would raise cost and make risk assessment more difficult;
- a limited number of stakeholders reject the COMPAT in whatever form, giving preference to the EPLA as a response to patent problems in Europe (German Patent Attorneys).

Section 3: European Patent Litigation Agreement and London Protocol

London Protocol:

- Clear priority for industry (would have an immediate effect on the attractiveness of European patents).

European Patent Litigation Agreement (**EPLA**):

- Industry and patent attorneys favour the Community's involvement EPLA.
 - The existing European patent system works well, the EPLA tends to solve its main problem i.e. the lack of unitary jurisdiction.
- Support for EPLA not incompatible with support for COMPAT, except for the German patent attorneys' community.
- No unqualified support yet (concerns expressed about the cost and the length of the proceedings as well as the quality of the decisions).

European Patent Litigation Agreement (EPLA):

- No consensus on the exact details of the system:
 - degree of centralisation (most of the stakeholders favour local first instance specialised courts and a centralised appeal court);
 - competence (several stakeholders favour a full competence but this is not foreseen by the draft EPLA);
 - character of the EPLA (some stakeholders stressed on its optional character, the Lugano Convention and Regulation 44/2001 should govern the relationship between members and non-members).

Other litigation issues:

- The SME community urges the Commission to think of an effective dispute resolution system based on mediation.

Section 4: Harmonisation and Mutual Recognition

Harmonisation:

- Very little support as the patentability criteria is de facto harmonised by a number of instruments (incl. EPC).
- Any outstanding pre-grant issues are not perceived as barriers to the smooth functioning of the Internal Market.
- Some sectors have particular concerns not applicable in others (e.g. the issue of interoperability and standardisation for the telecom industry).

Mutual recognition:

- Almost unanimous rejection at this stage.
 - Individual National Patent Offices are seen to deliver patents having very unequal value.
- However stakeholders consider that there should be more cooperation among NPOs.

Responses from the SME Panel

- Many SMEs are unable to comment on the details of the proposals, but tend to have an opinion on the issue of languages and litigation.
- Generally, ask for simplicity of the system and clarity of rules (opposed to the idea of combining several patent systems).
- Ask also for more flexibility outside the EU, for common international patent rules and for preferential treatment in their favour in the preferred single EU patent.
- Beyond that, no unanimity among the SME, nationality and size difference result in disparities.

- Size:

- *micro IT enterprises*: anxious attitude towards the patent system, lack of knowledge of this system, fear of introduction of software patents;
- *small, non-ICT enterprises*: no opposition the patent system as such but perceive it as complicated and expensive, concerned that it won't serve them as well as the big companies;
- *medium-sized enterprises*: more comfortable with the patent system, sufficient knowledge, but concerned by the cost and the prospect of litigation against big companies.

- Nationality:

- *AT & SE*: "Cassis de Dijon" system of mutual recognition of patents;
- *BE*: one European court with EPLA valid in all EPC contracting states;
- *DE, ES, IE & PL*: COMPAT provided that it is rapidly adopted, English only regime;
- *IT & PT*: COMPAT with multilingual regime, patent litigation in 1st instance to be handled by the Chambers of Commerce;
- *PL*: Community Trademark system good model for the patent system in Europe.