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## **SUEPO position on the questionnaire of the European Commission on the patent system in Europe**

**(European Commission Ref. IP/06/38 of 16.01.2005. Deadline of 31.03.2006)**

The Staff Union of the European Patent Office (SUEPO) is the only union active at the EPO. It represents staff from all sites of employment of the EPO (Berlin, Munich, The Hague, Vienna), as well as from all occupations within the EPO (clerical staff, legal staff, patent examiners, members of the boards of appeal, etc). Its membership amounts to about 50% of EPO staff, widely distributed throughout the EPO hierarchy (including senior EPO officials).

In SUEPO's view, the role of the EPO is not only to grant patents, as Article 4(3) EPC might suggest.<sup>1</sup> On the contrary, Article 97(1) EPC expressly provides that the examining division shall refuse a patent application if it does not meet the requirements of the EPC, and only the next paragraph, Article 97(2) EPC, provides for the grant of a patent, if the patentability criteria are met.

In 1997, SUEPO made an extensive contribution<sup>2</sup> to the discussion on the European Commission's "Green Paper on the Community patent and the patent system in Europe". In this paper, it already insisted on the need for *patent quality* if competition and innovation are not to be impeded<sup>3</sup>. Subsequently, prompted by increasing public criticism of patent quality, as well as by developments inside the EPO (an enormous increase in the number and complexity of patent applications, the consequent pressure on staff to "master the workload" and even increase productivity to impossible levels, rumours about the introduction of "performance related pay", etc.), SUEPO published a more detailed working paper on the quality of the patent system, and the need to keep in mind not only the interests of direct users of the patent system, but also that of the public in general<sup>4</sup>.

These principles, which have consistently underpinned SUEPO's work, have also guided the following answers to the European Commission's questionnaire on the patent system in Europe. Regarding certain implementation details, SUEPO's position might have been adapted with respect to that expressed in previous publications, to take into account the more recent developments in the patent system.

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<sup>1</sup> Article 4(3) EPC reads: "The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council."

See: <http://www.european-patent-office.org/legal/epc/e/ar4.html>.

<sup>2</sup> See <http://www.suepo.org/public/docs/2001/greenp.pdf> (hereafter referred to as *SUEPO on Green Paper*)

<sup>3</sup> *SUEPO on Green Paper*, paragraphs 11-15.

<sup>4</sup> See *A Quality Strategy for the EPO* (Working Paper, December 2002)

available at: <http://www.suepo.org/public/docs/2002/quality.pdf> and

*The quality mission of the European Patent Office - A perspective for the future* (August 2004)

available at: <http://www.suepo.org/public/docs/2004/zb0504.pdf>

## **Section 1 - Basic Principles and features of the patent system**

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*The idea behind the patent system is that it should be used by businesses and research organisations to support innovation, growth and quality of life for the benefit of all in society. Essentially the temporary rights conferred by a patent allow a company a breathing-space in the market to recoup investment in the research and development which led to the patented invention. It also allows research organisations having no exploitation activities to derive benefits from the results of their R&D activities. But for the patent system to be attractive to its users and for the patent system to retain the support of all sections of society it needs to have the following features:*

- *clear substantive rules on what can and cannot be covered by patents, balancing the interests of the right holders with the overall objectives of the patent system*
- *transparent, cost effective and accessible processes for obtaining a patent*
- *predictable, rapid and inexpensive resolution of disputes between right holders and other parties*
- *due regard for other public policy interests such as competition (anti-trust), ethics, environment, healthcare, access to information, so as to be effective and credible within society.*

### Questions

#### **1.1 DO YOU AGREE THAT THESE ARE THE BASIC FEATURES REQUIRED OF THE PATENT SYSTEM?**

**Clarity and predictability of the law, accessible, predictable and speedy processes, and rapid, cost-effective and harmonised resolution of patent disputes are essential elements of a patent system.**

However, if the patent system is to promote innovation, economic growth and job creation, it is not sufficient to render the patenting process attractive for potential applicants. In addition, it must be ensured that patents are granted only for true innovations. There is consensus among economists that the patent system is beneficial to society as a whole only if the granted monopoly is commensurate to the inventor's contribution to the state of the art, which entails the following requirements:

- a sufficient level of inventive activity (as opposed to mere novelty in the narrow sense);
- a reasonably limited scope of protection (avoiding overbroad claims);
- a sufficient disclosure of the invention in exchange for the monopoly granted, according to the fundamental *quid pro quo* between the inventor and society.

The role of examining patent offices, and in particular of the EPO, is to act as gatekeepers to ensure that these patentability standards are met. Leaving the determination of patent validity to post-grant litigation is not a viable option. If companies build up large portfolios of low quality patents, challenging the validity of all these patents in court would be extremely costly, not to say impossible, for their competitors (and especially for SME's!). Moreover, by ensuring a consistently high patentability standard, a patent office also avoids the need for said competitors to file defensive portfolios of trivial patents, thereby freeing resources for truly innovative activities.

The features of the patent system listed by the European Commission therefore call for the following comments:

- The substantive rules of the patent system are clear (see the Strasbourg Convention, the EPC, TRIPS). The substantive patent law has been harmonized in all EU States through accession to the EPC. The EPC is clear on what can and cannot be covered by patents

(Art. 52-57 EPC) and contains provisions specifically designed to balance the interests of the patentees with the objective of promoting innovation for the benefit of the European public (Art. 56, 83 EPC).

- The application of the EPC by a single body, the EPO, and the unitary prosecution by the EPO of a patent application throughout Europe, and in particular for the 25 member states of the EU<sup>5</sup>, ensures a harmonious interpretation and application of the law. This interpretation is public (e.g. Case Law of the Boards of Appeal, Guidelines for Examination), and thus improves the predictability of results.
- Although cost effectiveness is *per se* desirable, both for obtaining patents and for resolving disputes, “perverse incentives” should be avoided. The present costs of patenting have not prevented filing numbers from rising. For SME’s and start-ups, special fee reductions could be foreseen. To save litigation costs, the best way is to reduce the likelihood of litigations by avoiding the grant of trivial patents in the first place. Cost pressure should not lead to decreasing quality of patent examination.
- A virtuous circle should be initiated in order to tame patent inflation. Higher standards should be applied when interpreting the EPC, in particular with regard to inventive step and scope of the claims. Examiners should be encouraged in these endeavours by properly rewarding the higher workload involved in refusing patent applications as compared to granting them. This will in turn obviate the need for applicants to file trivial patent applications for purely defensive purposes and encourage them to file applications only for true innovations.

**Public interests must be protected by law. Preservation of competition, and concern for ethics, health and the environment cannot be the main aims of a patent system, and therefore cannot be considered an essential element thereof.**

As citizens and residents of the EU, members of SUEPO are naturally concerned about ethics, health and the environment, as well as preservation of competition. However, it is the opinion of SUEPO that a patent system cannot substitute the role of citizens, governments or law-makers in defending most public policy interests. Those public policy interests directly related to patent protection will be best taken care of by respecting the principles set out above, i.e. by striking a fair balance between the interests of inventors and those of society as a whole. Accordingly, competition can best be preserved within the framework of a patent system by ensuring that patents are rewarded only for true innovations.

An efficient and extensive patent information system provides worldwide access to patent information.

**Other basic features which are not, or are only partly, available in Europe today:**

- The patent granting process and the resolution of opposition cases at the EPO often takes too long.
- The system is too expensive, in particular as a consequence of the requirements to translate the complete text of the patent in most of the Contracting States and due to the necessity to pay renewal fees in all countries for which a patent is desired. It would be preferable to avoid translations as much as possible, and in particular translations of the complete patent specifications, and to require payment of only one annual renewal fee to the EPO.
- There is no unitary, harmonised route for the resolution of patent conflicts in Europe.

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<sup>5</sup> The Republic of Malta is not yet a Contracting State of the European Patent Organisation. However, it is expected that Malta will soon access the EPC. Malta is treated in this paper as if it already were a Contracting State of the EPO.

## ***1.2 ARE THERE OTHER FEATURES THAT YOU CONSIDER IMPORTANT?***

**The European patent system should be closer to the European user, in particular to the European SME.**

- Costs should be substantially reduced by providing an effective solution to the language problem in Europe: a unified, centralised litigation instance with specialised judges and one annual renewal fee only, valid for the complete territory of the EU.
- The National Patent Offices should play a role in getting the patent system closer to the European inventor, and in particular to the SME, through spreading of information and awareness campaigns and providing for an effective entry into the system through an inexpensive, fast and result-oriented National patent route.

## ***1.3 HOW CAN THE COMMUNITY BETTER TAKE INTO ACCOUNT THE BROADER PUBLIC INTEREST IN DEVELOPING ITS POLICY ON PATENTS?***

**The EU should assume a leading role and actively work towards the introduction of a single patent for the complete territory of the Union, in any one of the EPO's official languages (at the applicant's choice), without the need for any translation, under the political responsibility of the Union. Conflicts arising from the Community Patent should be seen by a centralised European patent court.**

The Community patent is the preferred route for the European users. The Union should continue to actively seek the necessary consensus for its introduction. The Community patent should seek to achieve at least the same degree of acceptance of the European patent and guarantee a centralised granting process of high quality.

## **Section 2 – The Community patent as a priority for the EU**

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The Commission's proposals for a Community patent have been on the table since 2000 and reached an important milestone with the adoption of the Council's common political approach in March 2003 [<http://register.consilium.eu.int/pdf/en/03/st07/st07159en03.pdf>]; see also [http://europa.eu.int/comm/internal\\_market/en/indprop/patent/docs/2003-03-patent-costs\\_en.pdf](http://europa.eu.int/comm/internal_market/en/indprop/patent/docs/2003-03-patent-costs_en.pdf)]. The disagreement over the precise legal effect of translations is one reason why final agreement on the Community patent regulation has not yet been achieved. The Community patent delivers value-added for European industry as part of the Lisbon agenda. It offers a unitary, affordable and competitive patent and greater legal certainty through a unified Community jurisdiction. It also contributes to a stronger EU position in external fora and would provide for Community accession to the European Patent Convention (EPC). Calculations based on the common political approach suggest a Community patent would be available for the whole of the EU at about the same cost as patent protection under the existing European Patent system for only five states.

### Questions

#### **2.1 BY COMPARISON WITH THE COMMON POLITICAL APPROACH, ARE THERE ANY ALTERNATIVE OR ADDITIONAL FEATURES THAT YOU BELIEVE AN EFFECTIVE COMMUNITY PATENT SYSTEM SHOULD OFFER?**

**The common political approach of 2003 is completely unacceptable for the European industry in several respects. It should be withdrawn and agreement should be sought on a different basis**

SUEPO is of the opinion that a genuine “communitarisation” of the patent system would be beneficial to the European economy<sup>6</sup> and will ultimately be the only means to prevent the dominance of non-European patent systems.<sup>7</sup> However, the Council's common political approach of March 2003 falls far short of this objective, and even brings a number of dangers, since it cares too much for the interest of national administrations, and not enough for those of national citizens, let alone for those of Europe as a whole.

The National patent offices should not be involved in tasks which have a direct influence on the scope of protection being granted, such as novelty searches. Harmonisation, predictability of the system, and a high level of quality cannot be ensured if 25 different National Patent Offices and the EPO are involved in substantive search and examination. There are too many elements pointing towards a decentralisation of patent examination in the common political approach, contrary to the original aim of the EPC. However, the EPO is widely considered to be the leading patent examining authority world wide. For the benefit of the European economy, this role should be strengthened (to overcome existing shortcomings) and not weakened.

A language regime according to which the claims should be translated into all the official languages of the Union is impractical and too expensive. The present three-language-regime of the EPO has proved to be a good compromise. It avoids the Babel-like problems which would arise if each and every language had to be treated on an equal footing. Hence, the linguistic regime proposed in the common political approach is impracticable, and would actually hurt most the SME's and local companies it is supposed to protect. It is hoped that the

<sup>6</sup> See SUEPO on Green Paper, cited above.

<sup>7</sup> In that respect, it is noted that an important part of European patent applications originates from non-European countries, like the US, Japan, and emerging Asian economies. In the framework of globalisation, and via international instruments negotiated in the framework of WTO and WIPO (e.g. TRIPS, SPLT) these countries attempt, to a more or less pronounced degree, to impose their own view of the patent system, to the benefit of their own companies.

London agreement regarding the linguistic regime will soon be ratified. The London agreement constitutes a practical and cheap solution to the language problem.

In contrast, as far as the judicial system is concerned, the fact-finding instances need to be present locally if they are to be truly operational. Naturally, a common central appeal instance should harmonise the application of the law. The language regime of the planned CPC is impractical and could well result in the collapse of the Court.

The patent judges need to have sufficient technical expertise, since in patent matters, legal and factual aspects are intermingled and cannot be separated. The same holds for patent attorneys. Under the regime foreseen for the CPC, language skills could prevail over technical and legal expertise.

## **Section 3 – The European Patent System and in particular the European Patent Litigation Agreement**

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Since 1999, States party to the European Patent Convention (EPC), including States which are members of the EU, have been working on an agreement on the litigation of European patents (EPLA). The EPLA would be an optional litigation system common to those EPC States that choose to adhere to it.

The EPLA would set up a European Patent Court which would have jurisdiction over the validity and infringements of European patents (including actions for a declaration of non-infringement, actions or counterclaims for revocation, and actions for damages or compensation derived from the provisional protection conferred by a published European patent application). National courts would retain jurisdiction to order provisional and protective measures, and in respect of the provisional seizure of goods as security. For more information see [\[http://www.european-patent-office.org/epo/epla/pdf/agreement\\_draft.pdf\]](http://www.european-patent-office.org/epo/epla/pdf/agreement_draft.pdf)

Some of the states party to the EPC have also been tackling the patent cost issues through the London Protocol which would simplify the existing language requirements for participating states. It is an important project that would render the European patent more attractive.

The European Community is not a party to the European Patent Convention. However there is Community law which covers some of the same areas as the draft Litigation Agreement, particularly the "Brussels" Regulation on Recognition and Enforcement of Judgments (Council Regulation no 44/2001) and the Directive on enforcement of intellectual property rights through civil procedures (Directive 2004/48/EC).

[\[http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l\\_195/l\\_19520040602en00160025.pdf\]](http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_195/l_19520040602en00160025.pdf)

It appears that there are three issues to be addressed before EU Member States may become party to the draft Litigation Agreement:

- (1) *the text of the Agreement has to be brought into line with the Community legislation in this field*
- (2) *the relationship with the EC Court of Justice must be clarified*
- (3) *the question of the grant of a negotiating mandate to the Commission by the Council of the EU in order to take part in negotiations on the Agreement, with a view to its possible conclusion by the Community and its Member States, needs to be addressed.*

#### Questions

### **3.1 WHAT ADVANTAGES AND DISADVANTAGES DO YOU THINK THAT PAN-EUROPEAN LITIGATION ARRANGEMENTS AS SET OUT IN THE DRAFT EPLA WOULD HAVE FOR THOSE WHO USE AND ARE AFFECTED BY PATENTS?**

**The main advantage of the EPLA today is that it could easily be accepted by European industry. It could provide for an efficient harmonisation of the case law in matters related to the invalidity and infringement of European patents.**

**Its main disadvantage is, however, that it is a purely optional scheme for the EPC Contracting States, which do not need to adhere to the EPLA.**

In view of the shortcomings of the existing community proposals regarding a common patent jurisdiction, the EPLA appears to be a practicable step in the right direction. Though its optional character might go against the *esprit communautaire*, it allows those willing to support the system to proceed. It is hoped that this will create a model which the remaining EU countries will ultimately want to follow. The main advantages of the present EPLA proposal are:

- decentralized fact-finding instances, with a central appeal instance to harmonise the law;
- the possibility to appoint technically qualified judges;
- a unanimous decision of all EU member states is not required.

The following provisions would further improve the existing proposal:

- allowing third party interventions, at least as far as the validity of the patent is concerned; although patent litigation initially arises from a dispute between private parties, it indirectly also has “public good” effects;
- allowing the court to revoke a patent of its own motion once proceedings have been initiated, and to base its decision on any evidence, even if not put forward by the parties themselves (e.g. put forward by third parties).

Moreover, care should be taken to render the EPLA consistent with Community law, lest this initiative be stopped by a judgment of the ECJ. It is unclear if all Member States still have the legislative competence to create or amend any judicial body within the meaning of regulation 44/2001/EC. A unanimous decision of all EU member states in favour of EPLA is not required only insofar as the member States have kept the necessary legislative competence. A lack of competence of EU Member States would require the EPLA to be approved by the EU legislative bodies, involving all EU Member States, including those not adhering to the EPLA.

### ***3.2 GIVEN THE POSSIBLE COEXISTENCE OF THREE PATENT SYSTEMS IN EUROPE (THE NATIONAL, THE COMMUNITY AND THE EUROPEAN PATENT), WHAT IN YOUR VIEW WOULD BE THE IDEAL PATENT LITIGATION SCHEME IN EUROPE?***

**The introduction of a successful Community patent is highly desirable. However, introduction on the basis of the common political approach of 2003 is unrealistic and even undesirable. In the short term a Community patent system is thus unlikely to be set up.**

The ideal patent litigation scheme should provide a first, accessible, simple and inexpensive instance at national level. A second instance should be introduced along the model of the court of second instance foreseen by the EPLA. However, this Court should be able to pronounce judgements binding on all the 25 Member States. This central second instance should be accessible only when the same patent claims have given rise to different, contradictory judgements in different courts of first instance in two or more Member States.

## **Section 4 – Approximation and mutual recognition of national patents**

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*The proposed regulation on the Community patent is based on Article 308 of the EC Treaty, which requires consultation of the European Parliament and unanimity in the Council. It has been suggested that the substantive patent system might be improved through an approximation (harmonisation) instrument based on Article 95, which involves the Council and the European Parliament in the co-decision procedure with the Council acting by qualified majority. One or more of the following approaches, some of them suggested by members of the European Parliament, might be considered:*

- (1) Bringing the main patentability criteria of the European Patent Convention into Community law so that national courts can refer questions of interpretation to the European Court of Justice. This could include the general criteria of novelty, inventive step and industrial applicability, together with exceptions for particular subject matter and specific sectoral rules where these add value.*
- (2) More limited harmonisation picking up issues which are not specifically covered by the European Patent Convention.*
- (3) Mutual recognition by patent offices of patents granted by another EU Member State, possibly linked to an agreed quality standards framework, or "validation" by the European Patent Office, and provided the patent document is available in the original language and another language commonly used in business.*

*To make the case for approximation and use of Article 95, there needs to be evidence of an economic impact arising from differences in national laws or practice, which lead to barriers in the free movement of goods or services between states or distortions of competition.*

### Questions

#### **4.1 WHAT ASPECTS OF PATENT LAW DO YOU FEEL GIVE RISE TO BARRIERS TO FREE MOVEMENT OR DISTORTION OF COMPETITION BECAUSE OF DIFFERENCES IN LAW OR ITS APPLICATION IN PRACTICE BETWEEN MEMBER STATES?**

**There are no differences in patent law between the 25 Member States. All the Member States of the EU are Contracting States to the EPC<sup>8</sup> and have harmonized their National patent law to the EPC. In particular, substantive patent law is already identical in all the Member States.**

However some national differences in post-grant law (such as licensing, penalties for infringement, etc) might result in unequal treatment of a patent owner, depending on where the legal action takes place.

As to free trade, the existence of separate national patent rights can in principle constitute an obstacle, but for all practical purposes, the case law of the ECJ has ensured that patent rights in Europe do not hinder the free flow of goods between EU countries.

However, distortion of competition can be caused by the existence of too many trivial patents, mostly to the detriment of consumers and end users.

#### **4.2 TO WHAT EXTENT IS YOUR BUSINESS AFFECTED BY SUCH DIFFERENCES?**

**SUEPO does not perform any business activities. However, there are no such differences in Europe.**

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<sup>8</sup> As mentioned earlier, the Republic of Malta is not yet a Contracting State of the European Patent Organisation. However, it is expected that Malta will soon access the EPC. Malta is treated in this paper as if it already were a Contracting State of the EPO.

### 4.3 **WHAT ARE YOUR VIEWS ON THE VALUE-ADDED AND FEASIBILITY OF THE DIFFERENT OPTIONS (1)–(3) OUTLINED ABOVE?**

- (1) does not appear necessary.** Substantive patent law is already harmonized throughout Europe.
- (2) topics not specifically covered by the EPC are normally harmonized by the Case Law of the Boards of Appeal of the EPO, which exercises a significant influence on National patent courts. Further harmonisation might be obtained by a common patent court of last instance, as foreseen e.g. by the EPLA.**

Regarding options (1) and (2), existing legislative provisions are as harmonised as they can be (Strasbourg Convention, EPC, TRIPS). A further layer of Community legislation is unlikely to bring more clarity, since most concepts of patent law, in particular inventive step, are “legal standards”, which do not lend themselves to a precise legislative definition, but which have to be progressively refined by case law. The appropriate means to achieve harmonisation between member states is a common patent court of last instance.

A centralized patent court of second instance would be more effective than any EU regulation. However, wherever necessary the EU has legislated in matters relative to patent protection, in particular to regulate new or emerging technologies. These mechanisms of control of the patent system by the European authorities should continue to be used in the future. Mechanisms should be found to make new Community law or regulations binding on the European Patent Organisation through changes to the EPC, if necessary.

Likewise, regular meetings between patent judges, with or without patent attorneys, patent officials or the like, might help to harmonise practices and points of view.

However, even a common jurisdiction does not in itself ensure that the economically optimal level of patentability is applied, in particular regarding inventive step. Patent courts have a natural tendency to become “applicant friendly”, for the simple reason that most of the time they hear only the point of view of the applicants.

This problem is only partially alleviated by the possibility to file oppositions, which allow at least in principle to express the point of view of those adversely affected by a patent. In practice however, most opponents are themselves applicants who sometimes hold large patent portfolios. As a consequence, despite the adversarial character of opposition proceedings, the arguments put forward most often reflect the interests of the community of patent applicants, rather than those of the public in general. Opposition proceedings should better take account of public interests, e.g. by widening the scope of *ex officio* examination, or by encouraging oppositions by third parties who are not themselves involved in patenting, and therefore less likely to act out of purely private interest. Presently, opposition is underused, although it is open to “any person” (see Article 99 EPC). Opposition should in fact be promoted, since from an economic point of view, it is a “public good” whose outcome improves patent law as a whole and benefits society at large.

If case law is to better take account of the economic consequences of patent decisions, the judges, who are highly qualified professionals with high ethical standards, should be more systematically exposed to facts and scientific thinking outside the narrow field of patent law, and in particular from the field of economics.

**(3) is undesirable.**

A mechanism which makes it possible to obtain patent protection throughout Europe can be administered and controlled only by a supranational instance that guarantees harmonisation

and quality. A National patent office should not have any jurisdiction to grant patents beyond its own National borders, nor be involved in processes which may directly influence the results of patent granting procedures in different countries.

Mutual recognition of national patents has to be strongly rejected for at least the following reasons:

- Only the EPO has the required critical density of competencies (number of examining staff) in all technical fields, and is thus in a position to ensure a rigorous and harmonised application of the patentability criteria. The search and examination of the EPO is considered as a reference also by the major industrial countries outside Europe. A mutual recognition of national patents *after* a validation by the EPO would be a wasteful duplication of work; *without* such a validation, it would amount to the dissolution of the present European patent system, which would open the floodgates for unchecked monopolies, many of them held by non-European companies.
- A neutral and objective assessment of patent applications, regardless of their country of origin, can be ensured only by a supranational organisation, with internationally-minded civil servants independent from particular national interests.
- If Europe succumbs to mutual recognition of national patents, the same type of recognition will soon be claimed at world level by the major industrialised countries (e.g. the US and Japan), which will ultimately impose their own patentability criteria upon Europe.

#### ***4.4 ARE THERE ANY ALTERNATIVE PROPOSALS THAT THE COMMISSION MIGHT CONSIDER?***

**The Community patent constitutes the only alternative to the European patent that may be cheaper, easier to use and to maintain, and more attractive to European industry. In particular the language problem should be addressed by the Commission.**

## **Section 5 – General**

### *Section 5 – General*

*We would appreciate your views on the general importance of the patent system to you.  
On a scale of one to ten (10 is crucial, 1 is negligible):*

**5.1 HOW IMPORTANT IS THE PATENT SYSTEM IN EUROPE COMPARED TO OTHER AREAS OF LEGISLATION AFFECTING YOUR BUSINESS?**

**10**

**5.2 COMPARED TO THE OTHER AREAS OF INTELLECTUAL PROPERTY SUCH AS TRADE MARKS, DESIGNS, PLANT VARIETY RIGHTS, COPYRIGHT AND RELATED RIGHTS, HOW IMPORTANT IS THE PATENT SYSTEM IN EUROPE?**

**10 - As employees of the EPO, we are only affected by the patent system.**

**5. HOW IMPORTANT TO YOU IS THE PATENT SYSTEM IN EUROPE COMPARED TO THE PATENT SYSTEM WORLDWIDE?**

**10**

*Furthermore:*

**5.4 IF YOU ARE RESPONDING AS AN SME, HOW DO YOU MAKE USE OF PATENTS NOW AND HOW DO YOU EXPECT TO USE THEM IN FUTURE? WHAT PROBLEMS HAVE YOU ENCOUNTERED USING THE EXISTING PATENT SYSTEM?**

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**5.5 ARE THERE OTHER ISSUES THAN THOSE IN THIS PAPER YOU FEEL THE COMMISSION SHOULD ADDRESS IN RELATION TO THE PATENT SYSTEM?**

**The Commission should consider whether it is desirable that the only supranational patent authority in Europe is not part of the EU institutional setup. The EPO is not bound to Community law under the EPC.**

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*If you would like the Commission to be able to contact you to clarify your comments, please enter your contact details.*

(a) *Are you replying as a citizen / individual or on behalf of an organisation?*

**As SUEPO. SUEPO, the Staff Union of the European Patent Office, is the only Staff Union in the EPO and represents over 3000 associated employees of the EPO (ca. 50% of all staff)**

(b) *The name of your organisation/contact person:*

**SUEPO, the Staff Union of the European Patent Office.**

**Contact person: Mr François Basty, Central Chairman**

(c) *Your email address:*

**[chair@suepo.org](mailto:chair@suepo.org)**

(d) *Your postal address:*

**Mr. François Basty  
SUEPO Central Chairman  
c/o European Patent Office  
Vienna Sub-Office  
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1031 Vienna  
Austria**

(e) *Your organisation's website (if available):*

**[www.suepo.org](http://www.suepo.org)**

*Please help us understand the range of stakeholders by providing the following information:*

(a) *In which Member State do you reside / are your activities principally located?*

**In Germany, The Netherlands and Austria.**

(b) *Are you involved in cross-border activity*

**Yes.**

(c) *If you are a company: how many employees do you have?*

(d) *What is your area of activity?*

**Representation of the interests of the employees of the EPO.**

(e) *Do you own any patents? If yes, how many? Are they national / European patents?*

**No.**

(f) *Do you license your patents?*

(g) *Are you a patent licensee?*

**No.**

(h) *Have you been involved in a patent dispute?*

**Yes. As employees of the EPO, in particular in Opposition proceedings.**

(i) *Do you have any other experience with the patent system in Europe?*

**Yes. As employees of the EPO.**

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