1.1 Do you agree that these are the basic features required of the patent system?

No, we need an assertion of democratic control over the patent system.

1.2 Are there other features that you consider important?

A clear and solid separation of executive, legislative, and judicial powers, in the process of defining patent law, granting patents, and handling patent litigation. There should be an EU parliamentary enquiry committee on the independence of the EPO Technical Board of Appeal (TBA) and Enlarged Board of Appeal (EBA), and the results of this committee should be the basis for using the EPO TBA case law as the basis for the Community Patent, or not.

1.3 How can the Community better take into account the broader public interest in developing its policy on patents?

The restoration of the EPC article 52, and undoing of EPO TBA case law concerning said article, which has allowed the patenting of damaging software and business methods. This should be compliant for eg. with current case law in Poland which is contrary to EPO TBA concerning definition of patentable subject matter (invention and technical contribution).

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 most important point is to separate the executive, legislative and judicial powers which are all currently performed by the EPO to some extent, as mentioned above. This implies that the EPO's TBAs/EBA case law must not form the basis of community law, otherwise we discard the current patent laws and their interpretations by national judges in all member states. Even the UK, whose case law is closest to the EPO's case law, is still quite a bit more strict than the EPO. The European Community should not accede to the European Patent Convention in a way which hands over full authority on granting Community patents to a non-Community body (namely the EPO and it's TBAs and EBA). Special care has to be taken too, that accession to the EPC does not lead to Community law made by the EPO, bypassing the Community's constituting treaties, bypassing the European Commission and Parliament. For the Netherlands and other countries, the Community Patent will also introduce retroactive liability. The Community Patent thereby will make it profitable to apply for broad, vague and trivial patents, with goal of sending out infringement notices after some years. Since going to court will often be too expensive, SMEs will have to pay. The result: the Community Patent will make legal extortion profitable. Belgium already has retroactive liability, but for a shorter period. The currently proposed retroactive period is longer than the one in force in the US. It is ironic that abuse and extortion of this retroactive period has led to a call for reform in the US, while Europe is in danger of going even further on this point.

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?

If the EPLA were to enforce the high-quality patents defined by EPC article 52, this could have a positive impact. If the EPLA were to enforce the EPO TBA case law (and thus enforce software and business method patents), the results would be catastrophic. After all, the current "legal uncertainty" regarding software patents keeps various litigants at bay and is partially responsible for the absence of a US like litigation climate in Europe. This is clearly demonstrated by the fact that many software patent lawsuits are filed in the UK (Trading Technologies vs various makers of software for stock exchanges, NTP vs RiM), where case law is closest to the EPO case law.
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?

It should be possible to litigate a Community patent before a Community court, based on Community law made by Community legislators (and not by an unaccountable TBA or EBA of the EPO). This court should be independent of any Community or other Patent Office. Regarding national patents, the most logical decision is to keep the possibility to have them litigated in national courts. This is convenient in terms of geography, language, and culture. Given that European Patents are more or less collections of national patents, at least the possibility to go to a national court should be kept. The most important feature is that it must always be possible to appeal to a court which is not bound by case law of the executive (the various patent offices), since such judicial independence is a basic requirement of our justice system.

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?

Software and business method patents give rise to significant trade barriers and distortions of competition within the EU. In some member states, such as Poland, these patents are not granted and appeals to rejections based on subject matter are consistently turned down by courts. In other member states, such as the UK, granting practice and case law follows the EPO practice more closely. This puts British companies operating in Poland at a competitive disadvantage and acts as a trade barrier when Polish companies try to enter the UK market.

4.2 To what extent is your business affected by such differences?

Software and business method patents mean that producers and consumers of software are exposed to arbitrary litigation when they export their services to another EU country. Our business is affected in that we are unable to determine accurately whether our products and services are "legal" in other member states, so we are exposed to a significant and unmanageable risk if we decide to export. There is also no insurance available for software patent infringement, and experience of e.g. Miller Insurance Services Ltd has shown that the reason for this is the fact that it is impossible for a company to provide a profitable insurance service in the current patent granting climate. (See: http://en.eu.ffii.org/sections/bxl0411/program/)

4.3 What are your views on the value-added and feasibility of the different options (1) - (3) outlined above?

We notice that the "subject matter" criterium is missing from the list in point 1. Subject matter is a critical criterium, since it is on this basis that the EPO has granted tens of thousands of software and business process patents. The three options 1-3 are all unclear with respect to the rules on subject matter, and the question of whether EPO TBAs' case law overrides the EPC and interpretations of national courts, or not. Regarding option 3 in particular, mutual recognition by patent offices of patents granted by another EU Member State opens the possibility that applicants start to shop around to find the patent office that most readily grants their applications. The Community Patent is intended to reduce forum shopping, but this option would actually increase that problem.

A recodification of EPC 52 substantive patent law exclusions /and/ further clarifications are needed to

* prevent the enforcement of software patents and business method patents granted by the
EPO within the European Community.
* enable control of the European Union over the EPO patent pratice which will be forced to review its policy
* reinstall political governance of the patent system

4.4 Are there any alternative proposals that the Commission might consider?

Further the EU has to prevent that EPC 52 exclusions will get weakened by further international substantive patent law harmonisation, trilateral diplomatic negotiations or TRIPs reform. Therefore the European Union has to make sure that parliaments may exercise their full control over diplomatic negotiations by the EU or member states. As long as the problem with EPO software patents prevails the EU shall seek to strengthen Interoperability by legislative safeguards to indemnify affected software producers and E-Commerce.

5.1 How important is the patent system in Europe compared to other areas of legislation affecting your business?

It is a fundamental aspect of my business, but I want patent law in Europe to be clear and not inclined to special corporate interests.

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?

It is important as much as these aspects.

5.3 How important to you is the patent system in Europe compared to the patent system worldwide?

It is important, but we must not follow other nations (USA) blindly. We must take the time to think and do extensive indagations. False allegations or corporate interests are to be avoided.

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?

I want to run a business which will be probably covered by some patents. None of them are patents about software technologies.

What problems have you encountered using the existing patent system?

Lack of informations and research instruments.

5.5 Are there other issues than those in this paper you feel the Commission should address in relation to the patent system?

Yes, we should state clear the position of public workers in the patent areas. We must be sure they are not influenced by corporate interests and that they follow the interest of the entire society.

(I) 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?

• Citizen

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

Riccardo Covino

(c) Your email address:

(d) Your postal address:

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

(2) 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? Italy

(b) Are you involved in cross-border activity? No

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

Just myself

(d) What is your area of activity?

Multimedia productions

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

No, I don't own patents

(f) Do you license your patents?

No

(g) Are you a patent licensee? Not for the moment

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

No

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

Yes, some general informations.