Response to
Questionnaire on the patent system in Europe
of January 9 2006

Section 1 - Basic principles and features of the patent system

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

The features mentioned in Section 1 of the Questionnaire are relevant, but the most important issue is to balance the interests of the right holders with the interests of the general public as passive users and simultaneously providing equal possibilities of making use of existing patent systems both for giant multinational companies and small national firms as well as individual businessmen in all countries worldwide.

1.2 Are there other features that you consider important?

EU legislation on IPRs should fully comply with the WTO TRIPs Agreement. In our opinion the WTO TRIPs Agreement is already based on the appropriate balance of interests of the right holders with the overall objectives of the patent system. The following important features should be taken into consideration:

- respecting the technological cultural heritage of the Member States which would require providing full access of citizens of these states to patent literature in their own language;
- legal security in the field of industrial property protection in the Member States, for which information available in mother tongue is essential;
- necessity of compatibility with national regulations - the patent system must be in accordance with National Law and it cannot discriminate national languages in many countries in favour of such languages as English, French and German.

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

- It is clear that patent quality should be one of the priorities on the agenda. The Member States and the European Commission should work with the European Patent Office so as to ensure that the validity of granted national and European patents is incontestable as practically possible. Only then the patent system will be credible with society. However, it is believed that no new EU legislation or other EU legal instruments are required for this purpose.

- The possibilities for SMEs to benefit from the patent system should be improved. They should be assisted as regards finding prior art to determine whether it makes sense to file a patent application for their own inventions, as regards entering the patent system e.g. by means of subsidies for their patent applications, and as regards finding what has already been patented by their competitors. National
Several currently available instruments already provide matters needed to pay due attention 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. For example,
- Articles 81 and 82 EC Treaty provide the tools to deal with anti-trust issues.
- Article 53 European Patent Convention (EPC) outlaws patents in respect of inventions the publication or exploitation of which would be contrary to “public order” or morality.
- Article 31 WTO TRIPs Agreement provides for compulsory licenses to ensure that patents essential for environment and healthcare can be used even if the patentee does not agree.
- Article 93 EPC provides that all European patent applications are published 18 months from the priority date. These publications can be retrieved and searched by means of free and user-friendly web-access.
- Article 128 EPC provides that the file of a European patent application is accessible to the public via free and very user-friendly web-access as from this publication date.
- Article 115 EPC provides that any person may file observations with the European Patent Office (EPO) concerning patentability as from the publication date.
- Article 99 EPC provides that all granted European patents may be revoked by the EPO as a result of an opposition filed by any person if the patent does not meet essential patentability criteria.
- Article 138 EPC provides that all granted European patents may be revoked by national courts if the patent does not meet essential patentability criteria.

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

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?

Following the basic principle of the European Union on equal rights among all European citizens, no privileges may exist among citizens or among diverse sectors of the different Member States.

A fair Community Patent System must offer the same possibilities to obtain protection rights, the same possibilities to respect them and the same possibilities to enforce them against third parties, that is the same benefits for all the European citizens and for all the economical sectors of the different Member States.
Furthermore, the principle of subsidiarity must be taken into account that is, all the Administrations (i.e. national Patent Offices) which are closer to the users must be preferred to that (e.g. one common patent centre) which are far away from them.

The common political approach adopted by the Council on March 2003 may be advisable for some countries of the European Union and for some non European countries in which there are important industrial firms, most of them of multinational nature with large patent portfolios. However, it may be prejudicial for a lot of European countries which import patents, and Poland is among them, wherein SMEs and small autonomous businessmen are clearly predominant.

**Section 3 – The European Patent System**

and in particular the European Patent Litigation Agreement

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 proposal of the EPLA would be very unfavourable in countries such as Poland where the defendants are almost always the national ones and the plaintiffs are foreigners, as all the defendants (natural or legal person) would probably defend themselves before a Court located out of their country, with Judges who possibly could not know their language, and also having to defend themselves (as has been previously said) against a patent text that they probably do not understand and in a language of legal proceedings that they do not understand either.

Currently European patents are not rights “per se”. They become national rights when validation of European patents is carried out individually for each country. As the rights conferred by patents obtained through the national direct way or through the European Patent System are the same, we consider it appropriate that the national Jurisdictions deal with the litigation related to the rights of all national patents.

We are of the opinion that priority should be given a consent on Community Patent System and common criteria of patentability; only then it would be reasonable and effective to discuss a relevant European Patent Litigation System.

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 ideal patent litigation scheme in Europe should coexist with national and European system. National patents should remain subject to the jurisdiction of national courts. In the future, if a community patent is created, the jurisdiction system for dealing with the litigation should be similar to that created in respect of the community trademark and design. That is, a specific Community Jurisdiction, which would be organized in each country, competent Courts of First Instance and Courts of Appeal.
Section 4 – Approximation and mutual recognition of national patents

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?

At present, the national patent laws of all EU Member States have been harmonized with the EPC. There are no important differences neither in their patent laws, nor in their practical application, and for this reason there is no risk of barriers for the free movement of goods and services, or distortions of competition.

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

Firms of our country are not affected by differences between the national regulations and standard practice in terms of protection of industrial property rights, as such differences practically do not exist.

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

We do not see necessity of such measures

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

An alternative solution to the current proposal of the Council could be to discuss an option of a practical community patent based on the Convention on the European Patent but subject to current national jurisdictional structures.

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):

For those businesses represented by European Patent Attorneys, the following answers are in general indicative of the various importance:

5.1 How important is the patent system in Europe compared to other areas of legislation affecting your business?
   • 9

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?
   • 9
5.3 How important to you is the patent system in Europe compared to the patent system worldwide?

- 9

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

- No

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

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

I am replying in the name of organization

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

Polish Chamber of Patent Attorneys

(c) Your email address:

e-mail info@pirp.pl

(d) Your postal address:

Madalinskiego 20/2, 02-513 Warsaw, Poland

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

www.pirp.org.pl

(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?

Our activities are located in Poland

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

Yes, we are

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

We are not company, we are organization, which is obligatory for Polish patent attorneys

(d) What is your area of activity?
By law, the task of the Chamber is representation of patent attorneys as well as the protection of the interest of the profession. Also the Chamber gives opinions to drafts of legal acts and proposals on legal regulations in industrial property matters.

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

No, we do not

(f) Do you license your patents?

No, we do not

(g) Are you a patent licensee?

No, We are not

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

Our members are involved in a patent dispute.

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

Many members of the Chamber of Patent Attorneys are European Patent Attorneys and are involved in European patent and PCT proceedings.