



Balancing Diversity and Efficiency in the EU's Language Regime: *E Pluribus Tres* for the EU Patent?

Stephanie Locatelli

Abstract

Recently, the European Commission has breathed new life into the decade-long attempt to create a patent that would protect inventors throughout the European Union with a proposal making English, French, and German the sole languages of the EU patent. This would reduce the cost of patenting, thereby stimulating research and development within the EU. But the EU-wide patent has reached an impasse as member states struggle with the question of which languages should be used. Italy in particular has opposed the exclusion of Italian, raising more general questions about the language regime in the European Union. Are diversity and efficiency mutually exclusive, or is there a formula that can satisfy both criteria? It appears, in the end, that the Commission's proposal is the most effective way of cutting costs while at the same time preserving the multilingual character of the EU. For Italy, however, the question of trilingualism in the patent system has become a kind of litmus test of its rank within the EU.

Keywords: *European Union / EU official languages / Trilingualism / Italy / European Commission / EU patent*

**Balancing Diversity and Efficiency in the EU's Language Regime:
E Pluribus Tres for the EU Patent?**

by Stephanie Locatelli*

Introduction

On the surface, an EU wide patent seems like an inarguably good idea. Why not adopt a measure that would result in lower costs and fewer barriers for inventors, thus stimulating innovation and making the EU more competitive? But the EU has been struggling for years to bring this goal to fruition. Throughout the long push for a common EU patent, one deceptively simple issue has proven time and again to be a formidable obstacle: in what language(s) should the EU issue its patents? In 2000, the European Commission revived the issue, proposing a Regulation for a Community Patent, referred to as the "EU Patent" in the Lisbon Treaty. But only in December 2009 at a meeting of the European Union's Competitiveness Council, did ministers from the member states adopt a package of rules, which included "a draft regulation on the EU patent and a set of conclusion on the features of the envisaged unified patent litigation system, the arrangements for renewal fees and their distribution, and a system of enhanced partnership between the European Patent Office and the central industrial property offices."¹ Translation arrangements, however, were left to be dealt with separately, and the Commission considered various options.

For a moment, the most competitive proposal seemed to be the "English only" solution, whereby patent applications and patents would be issued only in English; this, however, was blocked by France and Germany. During the Spanish rotating presidency of the EU in the first half of 2010, consensus seemed to be building around a wider proposal, which would allow for patents in five languages - English, French, German, Italian, and Spanish. But one day after the end of the Spanish presidency, French EU Internal Market Commissioner Michel Barnier announced a different proposal on behalf of the Commission whereby EU patents would be examined and granted in one of three official languages: English, French, or German. The version published in this language would be the legally binding text of the patent, with a translation of the claims into the other two official languages.² No other translations into the other official languages of the EU would be required, except in the case of a legal dispute over the patent. The EU patent seemed well on its way to becoming a reality, until language once again emerged as a major stumbling block.

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* Stephanie Locatelli is an M.A. Candidate (2011) in International Economics and European Studies at the Johns Hopkins School of Advanced International Studies.

¹ See: <http://www.epo.org/patents/law/legislative-initiatives/community-patent.html>

² The claim is the part of the patent that defines the scope of protection granted. It is the crucial component when it comes to litigation.

Italian Veto

Despite the fact that this proposal builds on the language regime of many EU institutions, which in general use English, French, and German as their procedural languages, the Commission's proposal caused an immediate and sharp reaction in Italy, where the deluge of negative responses has been remarkable. Shortly after its announcement, Italian Foreign Minister Franco Frattini, joined by politicians from both the governing coalition and the opposition, rejected the proposal. Italian europarlamentarians organized a hearing in the European Parliament on the matter, acknowledging that the use of all twenty-three official EU languages for the patents was not feasible but still asserting that Italy, as one of the founders of the EU, could not be excluded. Confindustria, the leading Italian employers' association, also issued a statement condemning the Commission's proposal.³ Even the director of the Dante Alighieri Society, whose mission is to promote the Italian language and culture worldwide, got into the action by stating that "the Italian language is not to be touched."⁴

The harshest criticisms, however, came from Minister of EU Affairs Andrea Ronchi, who declared that Italy was "ready for battle" and defined the proposal as "unacceptable because it means actually legitimizing the notion that there exist languages of first class and languages of second class, all this in contradiction with the provisions of the Treaties of the Union on the principle of equal dignity of languages."⁵ Frattini announced that Italy "will oppose [the measure] with all legal means and if we don't succeed, we will use the veto."⁶ Ronchi echoed Frattini's threat, saying "If the situation doesn't change, Italy can't help but exercise its right to veto."⁷

What, then, do the Italians propose as a solution? It is clear that the government prefers the "Alicante model," which would include Italian and Spanish among the languages of the new EU patent. That being impossible, however, the government is prepared to support a solution that would make English the sole language of the EU patent system. Ronchi supports the English only option, which he deemed "politically acceptable."⁸ Confindustria, along with the vast majority of Italian industry, also supports this option as it would lead to the biggest reduction of costs associated with patenting. In short, rather than see its language excluded and discriminated against- to the benefit of French and especially German- Italy is willing to accept the primacy of English in the EU patent regime.

In the face of opposition by Italy and Spain, EU officials have been fighting back. President of the European Commission José Manuel Barroso has said that the Commission's proposal is the logical choice to reduce costs, arguing that "this is not a linguistic beauty contest. It is not about saying that any one language is more important

³ See <http://www.confindustria.it/comstampa2.nsf/tuttiDoc/E3396781E536F835C1257769005D9DBE>.

⁴ See <http://www.storiainrete.com/in-primo-piano/barroso-eliminare-italiano-lingue-ufficiali-europa/>.

⁵ See <http://www.politichecomunitarie.it/ministro/17366/brevetto-ue-in-sole-tre-lingue-pronti-a-dare-battaglia>.

⁶ See <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2010/07/07/sui-brevetti-roma-minaccia-il-veto.html>.

⁷ See http://www.asca.it/news-ue__ronchi__su_brevetto_europeo_pronti_a_porre_veto-928780--.html.

⁸ See <http://www.eubusiness.com/news-eu/italy-industry.5f7>.

than any other. The priority is to find a cost-effective workable solution in the interest of European business.”⁹ Barnier, in turn, stressed the fact that the three languages proposed by the Commission for use in the patents - English, French, and German - are the “working languages” of both the EU and the European Patent Organization (EPO), stating, “I didn’t invent the working languages of the European Community or of the EPO, which has been working with three languages for thirty years.”¹⁰ As a response to protests from Italy and Spain, the Commission has amended its proposal to allow for the possibility of inventors filing applications in their native language and being reimbursed for the necessary translations into an EPO language. Barnier believes that this proposal “strikes the right balance” between pragmatism and linguistic pluralism. But Italian and Spanish opposition might succeed in again blocking the EU patent, which now moves to the EU Council for adoption. The Council, after consulting with the European Parliament, must vote unanimously to pass the proposal.¹¹

Italy’s fierce opposition is not without certain inconsistencies. First, as emerged above, there is some ambiguity in an Italian position that fights for the inclusion of its language while at the same time announcing its support for the English only option. For his part, Italian Commissioner Antonio Tajani, who voted in favor of the Commission’s trilingual proposal, adds to the confusion by explaining his vote as having been meant to “avert the risk of English as the only language, which could in the future lead to the dominance of British law in the decisions of the European Court of Justice.”¹² As has been mentioned above, the Italian government seems inclined to accept the English only solution as a compromise. Then, there is also the matter of how realistic it is to expect the Italian language to play the same role in EU institutions as English, French, and German. Despite Ronchi’s emphasis on the “seventy million native speakers compared to another one hundred and twenty million people who speak Italian fluently,” Italian is not a global language in the way English, French, or even Spanish is.¹³ As an EU language, it cannot even be considered on par with German, which is the official language in Germany and Austria, and also widely spoken in places like Holland, Denmark, and Central Europe. Between native speakers and those who speak German as a second language, thirty percent of EU citizens speak German, compared with fifteen percent who speak Italian.¹⁴ Furthermore, German is already highly utilized in the current patent regime. According to a Commission press release, in 2009 a large part of patent applications directed at the EPO came from Germany,

⁹ See <http://www.ft.com/cms/s/0/69b60a64-8533-11df-9c2f-00144feabdc0.html>.

¹⁰ The European Patent Organization has been filling in for the missing EU wide patent since 1977. It works in three official languages - English, French, and German - but allows patent applications to be filed in any language, with a translation into one of the official languages required within two months. The patent also has to be translated into the national language of every country in which the patentee wants to be protected. See: <http://www.euractiv.com/en/innovation/eu-seeks-break-patent-translation-deadlock-news-495842>.

¹¹ See <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/291>.

¹² See

http://archiviostorico.corriere.it/2010/luglio/07/Brevetti_solo_tre_lingue_Roma_co_9_100707018.shtml.

¹³ See <http://www.politichecomunitarie.it/ministro/17366/brevetto-ue-in-sole-tre-lingue-pronti-a-dare-battaglia>.

¹⁴ Ulrich Ammon, “Language Conflicts in the European Union: On Finding a Politically Acceptable and Practicable Solution for EU Institutions That Satisfies Diverging Interests,” *International Journal of Applied Linguistics*, Vol. 16, No. 3 (2006), 331.

which filed 25, 107 applications to Italy's 3, 881. Italy also trailed France, the Netherlands, and the United Kingdom.¹⁵ Is it reasonable for the Italian government to demand that Italian be put on par with German, which is both more widely spoken by EU citizens and more widely used in the day to day operations of EU institutions?

Alongside the practical considerations of accessibility and competitive advantage for national companies lay more emotive issues. The controversy over the role various languages should play in EU institutions is one aspect of the greater struggle over the political importance and prestige of the various member states. It is by placing the situation in this context that one can most accurately understand the reaction of Italy, a country which feels that although, it was among the original founders of the EU and played host to some of its most important meetings, is not treated with the consideration and respect that it feels it deserves. It appears as though the Italian inferiority complex has reared its ugly head.

The EU's Language Regime

In order to put both the Commission's proposal and Italy's reaction in context, it is important to understand the EU's language regime. Even at the very beginning, when there were only four different official languages among the founding member states - Dutch, French, German, and Italian - language was a serious issue. In fact, it was such an apple of discord that the very first piece of legislation the newly founded European Economic Community passed in 1958, Regulation One, dealt with that very question. In eight articles, Regulation One laid out the official and working languages of the institution (later updated with each enlargement), established the principle that "documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender" and the reply will come in the same language, and stipulated that the various institutions of the EEC would decide in their own rules of procedure which languages to use in which cases.¹⁶

Throughout the first years, the institutions of the EEC used this liberty to select French and German as the primary languages to be used in their day-to-day functioning. Although French was much more of a global language at the time, this arrangement was meant to reflect the essential parity of French and German power that was the necessary building block for European integration. As the EU began to expand, the number of official languages expanded as well, but French and German retained their institutional roles. When the 1973 enlargement brought in Denmark, Ireland, and the United Kingdom, English and Danish became official languages of the European Community; English, however, also became a working language of the EC institutions. As the EC expanded, new complexities were added to the EU's linguistic arrangements. Finally, with the "Big Bang Enlargement of 2004," when ten Central and Eastern European countries acceded to the European Union, the tally of official languages reached twenty-three. At this number, the language regime became unwieldy, leading to many calls for a streamlining of the translation arrangements, seen

¹⁵ See <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/291>.

¹⁶ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31958R0001:EN:NOT>.

as too expensive and too time consuming. Another side effect, much to the alarm of the French, was the increased importance of English as an EU language.

The main problem with the EU's language regime stems from commitment to two goals that can often work against each other. On the one hand, the EU is committed to promoting and protecting the cultural diversity of its Member States. To that effect, the Treaties of European Union uphold the principal of equal dignity and importance of each official language. The EU must also ensure that it is a transparent and accessible organization. To achieve this, it has undertaken a variety of measures, such as its policy that any EU citizen may write to an EU institution in his or her language and is entitled to receive a response in that same language. On the other hand, these goals must be balanced against more practical concerns if the EU is to function successfully. Running an organization that works in twenty-three languages is cumbersome, and the EU must ensure that the money and time consumed by translating and interpreting do not impact negatively on the efficiency of its operations.

The cost of translating EU official documents and correspondence and of interpreting to and from the various EU languages during meetings is a significant part of the EU's budget. A 2008 study estimated the size of the EU language industry, which "covers translation, interpreting, localizing and globalizing, subtitling and dubbing, language technology tools, multilingual conference organization and language teaching" in Europe, at approximately 8.4 billion euro, 5.7 billion of which was due to translation and interpretation work alone. The study also projected growth of ten percent per year in the industry for the rest of the decade.¹⁷ There is no doubt that the EU fuels this business, principally through money spent on DG Translation and DG Interpretation, the Commission's in-house translation and interpretation services. As far as patents are concerned, translation is particularly expensive. On average, it costs between seventy-five and eighty-five euro to translate a single page. Patents are typically twenty pages long, resulting in a cost of one thousand five hundred euro for a single translation. National validation costs can add approximately forty percent to the overall costs of patenting in Europe, since the patent must then be translated into the national language of each country in which the patentee is seeking protection.¹⁸

This question of cost impacting negatively on performance is one of the primary motivations behind the Commission's attempt to streamline the process of applying for and being granted a patent. As Barnier said in a statement, "For Europe to be competitive globally, we need to encourage innovation. That's not the case today - it is far too expensive and complicated to obtain a patent." Under today's European Patent Organization regime, patents must be validated in every country where the patentee wishes to be protected. Because of the high costs associated with validation, mostly due to translation costs, most inventors in the EU seek protection in only a limited number of countries. Even so, a patent valid in only thirteen European countries costs approximately twenty thousand euro, with fourteen thousand stemming from translation

¹⁷ See http://ec.europa.eu/dgs/translation/publications/studies/size_of_language_industry_en.pdf.

¹⁸ See <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/291>.

costs alone.¹⁹ This makes a European patent ten times more expensive than an American one.

The Commission analyzed the potential costs associated with three different patent policies. First, the “English only” option was deemed to be the most cost-effective; at the same time, it was thought to negatively impact on the “global competitiveness of European industry” by making the current patent system, which sees 48% of patent seekers file their applications in French and German, less flexible.²⁰ A second option adding Italian and Spanish to the three current working languages of the EPO would certainly make the patent application system more accessible to EU citizens and would reinforce the multilingual character of EU institutions. It would also, however, double the translation costs for those seeking patents, bringing the total to 1,360 euro per patent. Finally, an option requiring the translation of the claims into all EU official languages would clearly be the desired option in terms of reinforcing multilingualism, but it would cause the cost per patent for translations alone to skyrocket to approximately seven thousand euro per patent.²¹ The Commission’s proposal centering on the use of just three languages is expected to bring the total cost of filing a patent valid in all EU countries down to circa six thousand euro, bringing it in closer proximity to the American version. Of this six thousand euro, only ten percent would be due to translations.²² This would represent a remarkable cutting of costs and increase in efficiency, benefits which many EU officials and Member States believe are worth the elevation of three working languages in the patent process.

Besides the question of costs, there is also the question of how efficient the language regime is. It is, of course, impossible to translate everything into every official language. Each institution has come up with its own rules for governing the Tower of Babel within, ranging from the simple to the complex. For instance, the Commission’s arrangements are fairly simple. The “only documents produced in all twenty-three official languages are pieces of legislation and policy documents of major public importance- accounting for about one third” of its work.²³ Other documents are translated into languages on a case by case basis, while internal documents are written in and translated into English, French or German.²⁴ The European Parliament, in contrast, employs a much more complex system in which all official languages are given equal importance. All parliamentary documents are published in all twenty-three languages, and Parliament’s Rules of Procedure recognize “the right of each Member to read parliamentary documents, to follow debates, and so speak in his/her own language.” The European Parliament also has the added responsibility of ensuring the “linguistic quality” of all its laws in all official languages. Otherwise, translation error or imprecision could lead to legal discrepancies. These commitments, along with the 2004 enlargement, have created a problem in Parliament. The twenty-three official languages make a total of five hundred and six possible combinations for translation and interpretation. Finding

¹⁹ See: <http://www.zdnet.co.uk/news/intellectual-property/2010/07/02/european-commission-moves-to-free-up-patent-logjam-40089421/>.

²⁰ See: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/291>.

²¹ *Idem*.

²² *Idem*.

²³ *Idem*.

²⁴ See http://ec.europa.eu/dgs/translation/translating/i/index_en.htm.

translators and interpreters for some of the least spoken languages in the EU is extremely challenging, leading the EP to put into place a system of “relay languages” whereby “a text is first translated into one of the most widely used languages (English, French or German) and from there into the minor languages.”²⁵

It is clear, then, that language in the European Union is a complex policy issue, so much so that in 2007 the Barroso Commission created a new portfolio- Commissioner for Multilingualism- whose job is to promote multilingualism among EU citizens and institutions. The latest proposal for patent reform is an obvious effort to strike the right balance between diversity and efficiency, a tightrope that has been particularly challenging to walk since the 2004 enlargement.

Conclusion

There can be no doubt that reform of the European patent system is necessary. The current system is cumbersome, costly, and discourages the research and development that the EU needs to give its economy a boost during this period of economic crisis. The Commission's trilingual option aims at cutting costs while still maintaining the EU's linguistic diversity. Each body of the EU has the right to determine the languages of its proceedings and the use of English, French, and German as “working languages” has long been the norm. The Commission's proposal of three working languages, which allows inventors to submit the initial patent application in their own language, is a sensible attempt to balance cultural diversity with cost efficiency.

Although Italy is appealing to the EU's commitment to multilingualism, this is not the only issue for the country. At stake is also a question of national pride and prestige, and of political weight and power within the EU. Italy boasts a long tradition of federalist thought when it comes to Europe, and was one of the founding members of the post-World War II European institutions. According to Eurobarometer, Italians are one of the most ardent supporters of European integration and the European Union itself, seeing it as a harbinger of modernization, increased socio-economic well-being, and other positive effects. In terms of demographics and size of its economy and economic contributions to the EU, Italy is one of the leading countries in the EU.

At the same time, perceptions of Italy in Brussels are not always positive. A recent article in *The Economist* refers to Italy's “long history of benign neglect” of Europe. This can partly be explained by structural factors, such as a weak diplomacy which often results in an inability to advance national interests. For example, Italy is much less active than France in promoting its language and culture within the EU, and tends to be mostly reactive in matters such as the current patent controversy. This situation is exacerbated by the often volatile diplomacy of Prime Minister Silvio Berlusconi. Some of Italy's traditional weaknesses such as its difficulty in engaging in effective “teamwork” limits its potentialities on the EU level.²⁶ Despite the fact that the situation has improved slightly in the past few years, Italy remains among the countries with the

²⁵ See <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=155&pageRank=3>.

²⁶ See <http://www.affarinternazionali.it/articolo.asp?ID=1419>.

most infractions of EU legislation²⁷. Furthermore, Italy is a highly indebted country, with public debt at one hundred and eighteen percent of GDP and an economy which has performed below the EU average over the past two decades.²⁸

As noted in a yearbook analyzing Italian foreign policy, Italy's "structural inability to be a reliable partner leads inevitably to political marginalization, even in a context which should, in theory, protect us from the discriminatory attitudes of other member states."²⁹ It is this fear of marginalization in the face of an ever more established leadership group - the "EU 3" made up of France, Germany, and the United Kingdom which, for example, is at the forefront of diplomatic efforts with Iran - that lays behind what Christopher Hill has described as Italy's "collective neurosis": an obsession with the idea of rank, which often comes at the expense of a serious examination of the country's role in the various international contexts.³⁰ In this sense, the question of trilingualism in the EU patent system has also become a kind of litmus test for Italy, which is responding to the feeling of being discriminated against with a tenacious effort to assert itself and make sure it is included.

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²⁷ Gianni Bonvicini and Alessandro Colombo (eds.), *La politica estera dell'Italia*. Edizione 2010, Bologna: Mulino, 2010, 25.

²⁸ See <http://www.msnbc.msn.com/id/35916067>.

²⁹ Gianni Bonvicini and Alessandro Colombo (eds.), *La politica estera dell'Italia*. Edizione 2010, *cit.*, 26.

³⁰ See <http://www.affarinternazionali.it/articolo.asp?ID=1283>.



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Istituto Affari Internazionali

Via Angelo Brunetti, 9 00186 Roma
Tel.: +39/06/3224360 Fax: + 39/06/3224363
E-mail: iai@iai.it - website: <http://www.iai.it>
Send orders to: iai_library@iai.it