



# Identifying and mitigating linguistic inequalities in the management of patent information in Europe



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## ABSTRACT

The current language regime of the European Patent Office, based on three official languages (namely, English, French and German) entails different types of inequalities among European users of the European patent system. Such inequalities concern the distribution of translation costs borne by European applicants when they file a European patent application, and the costs to access patent information published by the Office. This article identifies and characterises inequalities occurring at the level of patent information management, and it discusses some possible measures to mitigate them. Three measures are proposed, that is, rationalising and harmonising the European patent information system, introducing tools to facilitate the retrieval of multilingual information, and enhancing the infrastructure for the dissemination of knowledge on the use of patent information. This article also presents some unpublished figures revealing that the European patent system is more multilingual than commonly believed. There is a mismatch between the current language regime of the Office and the actual needs of European innovators for multilingual patent information. These results confirm the relevance of new initiatives to manage patent information more effectively by reducing existing inequalities in this area.

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## 1. Introduction<sup>1</sup>

Policies related to the use of languages in Intellectual Property (IP) organisations (or “language regimes”) can have differing effects on users interacting with such organisations. First, the choice made by a patent organisation about its official languages can asymmetrically affect the costs of access to patenting procedures borne by applicants whose primary language is one of the organisations’ official languages, and the costs borne by users whose primary language is not official. The latter, for instance, must bear the translation costs at the moment of filing, during the patent application procedures, substantive examination of the patent application, various communications with the office and the negotiations dealing with possible amendments to the scope of the patent application. Second, a language regime determines the extent to which patent information must be published in (and possibly translated into) a given language. This, in turn, has an effect on the

relative information costs borne by users who need such information. As a result, inequalities in the distribution of costs develop within the patent system and more widely in the technology market.

The European Patent Office (EPO), for example, has three official (or procedural) languages, that is, English, French and German. European patent applications are accepted, examined and published only in these three languages. The trilingual language policy of the EPO entails different types of cost inequalities between applicants whose first language is English, French and German, and all other users of the European patent system. Such inequalities are not properly identified and discussed in the literature. The debate on the language-related costs of the European patent system, in fact, has often revolved around the excessiveness of translation validation costs in the Contracting States of the EPC at the post-grant stage (e.g. [1,2]), but little attention has been paid to the effects of a trilingual language regime on the costs of access to patenting procedures before a patent application is filed, during the patent application procedures and the substantive examination of the application. Moreover, inequalities at the level of patent information costs are usually ignored. The existing literature on information costs in patents and IP (e.g. [3,4,5]) mentions the role of language in patents as an aspect affecting information costs for

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<sup>1</sup> List of non-standard abbreviations: LA (London Agreement), CLIR (Cross-lingual information retrieval), EPC (European Patent Convention), MT (Machine Translation), PATLIB (Patent information centres), PCT (Patent Cooperation Treaty).

users of patent information such as individual inventors, industry, consultants, academics, but only from the point of view of those who may find patent jargon an obstacle. In other words, these contributions address the issue of the complexity of *language* used in patents, but not the issue of *languages* or linguistic diversity in IP policies.

The purpose of this article is to contribute to filling this gap by clarifying how the language regime of the EPO influences the distribution of costs of access to patenting procedures and in particular the distribution of information costs in the European patent system. It shows that the choice of policy-makers of looking at translations and interpreting as pure cost — or sometimes a deadweight loss that should be reduced as much as possible [6] — obfuscates the importance and the relevance of the implicit costs of language regimes, that is, the language-related costs borne by users of the European patent system that arise from their interaction with the patenting authority. As Pool and McFann correctly note: “It is wrong to claim that having many official languages is necessarily inefficient. As more native languages are made official, translation costs rise but adoption costs fall. The tendency to regard multiple official languages as inefficient may reflect a state-centred neglect of costs incurred by individuals in adapting to language policies” [7].

The article is structured as follows. Section 2 characterises the distributive effects related to the EPO’s language regime, focussing on inequalities emerging at the level of patent information costs. Section 3 proposes some measures at the level of information management that could be undertaken in order to mitigate existing linguistic inequalities, even without the need for a major reform of the current EPO language regime. Section 4 reveals that the European patent system is more multilingual than commonly believed, and that there is a mismatch between the current language regime of the EPO and the actual needs of European innovators for multilingual patent information. These results confirm the relevance of new initiatives to manage patent information more effectively and to reduce existing inequalities in this area. Section 5 summarises and concludes the article.

This article focuses on the European patent and on the 38 Contracting States of the European Patent Convention (EPC). It does not examine the agreement on a European patent with unitary effect (“unitary patent”) approved by 25 Member states of the European Union through an enhanced cooperation in 2012. At the time of writing of this article, in fact, the agreement on a Unified Patent Court—the third and last component of the “patent package” setting up a single and specialised patent jurisdiction—is still not in force, and therefore the unitary patent is not a reality yet. However, some implications of the translation arrangements of the unitary patent adopted in 2012 are briefly discussed in Section 2.2.

## 2. The distributive effects of the EPO’s language regime

### 2.1. Background: the language regime of the EPO

The official languages of the EPO are English, French and German. Applicants who choose to file in a non official language are subsequently required to produce a translation of their application into one of the EPO’s official languages within two months of filing (Rule 6 of the EPC). The elected official language is used for all the proceedings before the Office, and for the publication of the European application filed and the European patent granted. During the patenting process, all written and oral communication between the applicant and the Office takes place in the designated EPO official language. Applicants can use any non-official language in oral proceedings (opposition and appeal), but they must provide and

thus pay for interpretation services.<sup>2</sup> When the patent application meets the patenting criteria, the Office issues an intention to grant. At this stage the applicant has to file a translation of the claims in the two official languages of the EPO other than the language of the proceedings (Rule 71 EPC). Since all applicants must provide such translations, no distributive consequence occurs at this stage. After the patent grant, European patents need to be validated at the national level. Such validation requires the payment of validation fees, and then of renewal fees every year until protection is sought up to a period of 20 years. In the majority of the EPC Contracting States it is required to provide the translation of the patent document (or parts of it, usually the claims) into one of the official languages of the countries in which patent protection is sought (see Section 2.3 for more details).

### 2.2. Implicit costs of language regimes

There are four categories of language-related implicit costs associated with the EPO language regime [8], that is:

1. *Admission costs*: costs of translating a European patent application and other relevant documents which had been originally filed in an admissible non-EPO language. Recall that “admissible non-EPO languages” are the Contracting States’ official languages which are not English, French or German. The average admission cost for a standard patent application is at least € 1700 ([6], adapting [9]).
2. *Interaction costs*: translation costs related to communication exchange (oral and written) between the user and the Office on formalities as well as substantial issues (e.g. amendments to the claims, opposition and appeal proceedings). No figures on these costs are available. However, they are likely to be far from negligible, as the process of negotiation with the EPO (especially the examination of patent applications) can last several months or even some years.
3. *Granting costs*: costs of translating the claims into the two official languages of the EPO other than the language used in proceedings. The average cost of translating the claims into two official languages is € 680 ([6]).
4. *Information costs*: costs of access, retrieval and comprehension of patent information published by the Office in a language that users do not understand or do not master fluently. Information costs arise from searching for an existing technical solution in prior art for the purposes of patent landscaping and freedom to operate analysis, drafting a new application, and opposition purposes. As for interaction costs in opposition and appeal proceedings, information costs are incurred not only by applicants involved in patenting procedures but also by third parties carrying out information monitoring and analysis. Information costs in patents are not, of course, exclusively language-related, and their distribution is influenced by several factors such as, for instance, the extent of digitalisation of literature, the level of technical know-how of users willing to access the literature and the development of information management skills. This article, nevertheless, focuses on the role of language policies in explaining the inequalities in the distribution of information costs.

Note that the concept of implicit cost is relevant also for international or multinational companies. Even if the staff is multilingual and therefore capable of effectively working in a foreign

<sup>2</sup> Rule 4 provides that the party has to provide for interpretation. This means that the party has to pay for interpretation services and find the interpreters.

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