

Translation Inflates Cost of EU Patents

Technology Streamlines the Process

By Eric Elting

In March 2007, the European Commission once again sat down to debate the virtues of an EU-wide patent system that, if implemented, would consign patent-filing to a single language, effectively reducing both the headaches and

the costs that are currently associated with foreign patent filing. A report published out of Brussels states that “a single community patent would be the most affordable and legally secure answer” to current obstacles.

According to the online news service the EU Observer, Europe lags far behind the United States and Japan in patent activity due to an outdated and expensive system that requires national patents be translated into contracting states’ official languages in order to be legally valid in their territory. The translation process is by far the most expensive part of patent-filing in Europe, and it means that the average cost of a patent is much greater in Europe than in either the United States or Japan. In fact, Global 100 companies report that as much as 70

percent of the total foreign filing costs are associated with translation of the application.

Many European lawmakers are bent on making patent reform a priority, and the issue is likely to get a lot of attention. Until reform is implemented, patent-filing managers of international corporations are shifting away from the traditional approach of utilizing foreign counsel for non-legal work, and exploring new methods for protecting their assets.

In the traditional model, foreign filing managers pass their original application to foreign counsel based in the target country. Local counsel make recommendations to the foreign counsel and coordinate the work. Costs associated with foreign filing include official fees associated with filing in the various countries, and the additional costs of trans-

lating the application from the source language into the language of the country.

In many situations, a third-party, professional translation services company can produce less expensive translations by using translation memory (TM) technology.

In 2005 and 2006, our firm studied 300 patents for leading pharmaceutical and technology companies and identified how often each company had repeat text within individual patents and across multiple patents. Repeat text costs much less to translate than new text, meaning companies that have a large percentage of repeat text can save by utilizing professional providers that will leverage previously translated content.

Of the two industries, the life sciences had by far the most repeated

text. An analysis of one pharmaceutical company's patents showed 3.1 million total words, with 2.1 million words repeated throughout seven applications. Five additional applications showed even greater amounts of repeat text when compared to the original translation work. This comes in stark contrast to one technology firm that had only 14 percent repeat text over 51 applications.

I recently discussed this discrepancy with a patent attorney, who explained that attorneys are specifically instructed to write new copy for each application, since each patent is supposed to have unique language representing a unique invention. However, for companies that file multiple patents within a specialized area, the products, and hence the language describing them, will have many similarities.

In the case of drug makers, it appears to be much more likely that their patents will contain repetitive information about biochemistry, physiology, and the attributes of various chemical compounds than a manufacturer's patent would when it describes a household appliance, for example. But this doesn't mean that technology firms can't benefit from the use of TM. The beauty of trans-

lation memory technology is that the more patents a given company files, the more repeat text will be assembled over the months and years, meaning that over time translation costs will actually be reduced.

For many companies, utilizing a third-party translation vendor can have significant cost advantages. When working in unison,

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foreign counsel and a language service provider can create a faster filing process that reduces costs.

But aren't agents and attorneys better trained in technical aspects of their fields and therefore better translators? True, many have advanced degrees and can understand the technology as well as the inventors. However, in many countries, non-lawyers perform similar services.

In Japan, Germany, England, France, and Korea non-lawyers are often licensed to prosecute patents. Indeed, in Japan, patent advisors, or "benrishi," are permitted to

offer advice on patent validity and infringement in addition to prosecuting patents. Because the number of lawyers in Japan is small, it may be hard to avoid using a benrishi in connection with patent issues.

Regardless of the filing philosophy a company employs, the slow development of a single-entry filing system necessitates the implemen-

tation of more timely strategies to mitigate the costs of multiple-language filing requirements, strategies that may include partnering with a language service provider with patent translation and filing experience.



Eric Elting is the Director of Global Legal Business Development for TransPerfect Translations. He regularly speaks on patent-filing issues at legal conferences worldwide.

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