Hello everybody,

my name is Gabriel Luis, i´m translator, climber and pirate party member since yesterday and potential patentee, since I have filed my patent (confirmation .pdf from the european patent office can be uploaded upon request) by myself for less then 3 000 euros. Well, some of you will think, this may be a crappy patent, but one thing is for sure: after doing this I have avoided that somebody tries to patent the same invention (oder der gleiche Erfindungsgegenstand). Whether I do really get the patent granted is a larger procedure (since there is quite a big difference between a patent application and a granted patent specification) and is something that only in the development of the interaction with the EPO, which can be made over internet, shall be cleared.

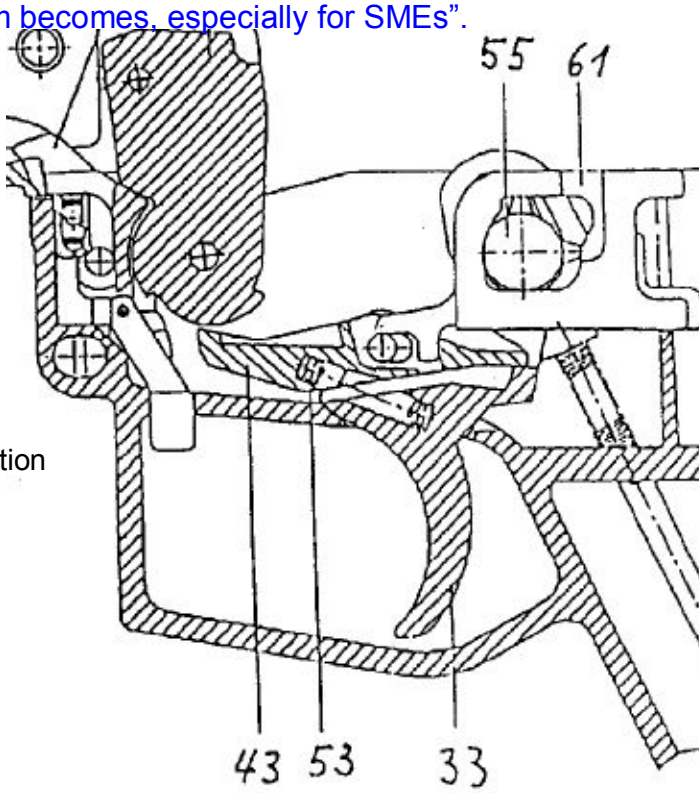
I have thrown a view to the paper of Mr. Pothelsberghe and seen nothing new compared with the content of his paper "The economics of the European Patent System". So I have decided to help to put up some light in this issue from my point of view, since, as European and specialized translator, I feel few concepts are missed in his argumentation, guiding the debate in the wrong direction.

Let´s start from his assertion

"Conversely, the greater the cost of acquiring a patent – especially where the bill is bloated by duplicate administrative fees and translation charges which add no value to the patent – the less attractive the system becomes, especially for SMEs".

Key concepts in this argumentation seem to be:

1. -cost
2. -acquiring
3. -patent-bill
4. -administrative fees
5. -translation charges/no added value by translation
6. -less atractiveness for SMEs.



1 Costs of patenting.

This costs can be divided into administrative, representation and validation costs. To understand this, you have to take into account that an european patent is preliminary document, providing 9 months of preliminary protection after been granted as European Specification to the patentee. To get full protection according to the national laws, the patent has to be translated into the official languages of those countries which have not signed the London Agreement. Check the list of the contracting countries and the status of the agreement under:
http://www.epo.org/topics/issues/london-agreement/implementing.html
http://www.epo.org/patents/law/legal-texts/london-agreement/status.html

1.1 Administrative fees

Let´s talk now about administrative costs at the EPO. Check please this link first in order to get an overview of the filing fees at the European Patent Office:

http://www.epoline.org

You´ll think: wow that's unaffordable! Be careful. Take into account that the EPO is one of the few international Patent Institutions that has implemented a full-online-procedure in order to file patents and, as long you are empowered by your company to do so, and to allow you to represent your company in the patenting process. This amount of technical infrastructure (smart card reader, smart card, online account...) is for FREE, needs people behind to run it, and to provide advice and so on.

1.1.1 Determining novelty

The EPO also acts internationally since the middle 80´s as ISA, i.e., International Search Authority. This Authoritys are in charge of determining whether a patent application is new, since novelty is one of the four criteria to be fullfilled by an invention in order to be patentable. The other three criteria are:

- Inventiveness
- Commercial application
- Technicality (this is mainly in Europe so (Technizität) since in the US and according to the wording of the Supreme Courts "every thing made by man under the sun is patentable".

So let´s talk now about **novelty**, costs and the USA. Novelty is, as already pointed out, a key feature of an application to be patentable. How can the EPA or other patent office determine what is **new**? The legal definition of **new**, according to the PCT (Patent Cooperation Treaty) and the UKs Patent Act asserts that:

2.-(1) An invention shall be taken to be **new** if it does not form part of the **state of the art**.

, whereas the state of the art is

(2) The **state of the art** in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the **priority date** of that invention been made **available to the public** (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.

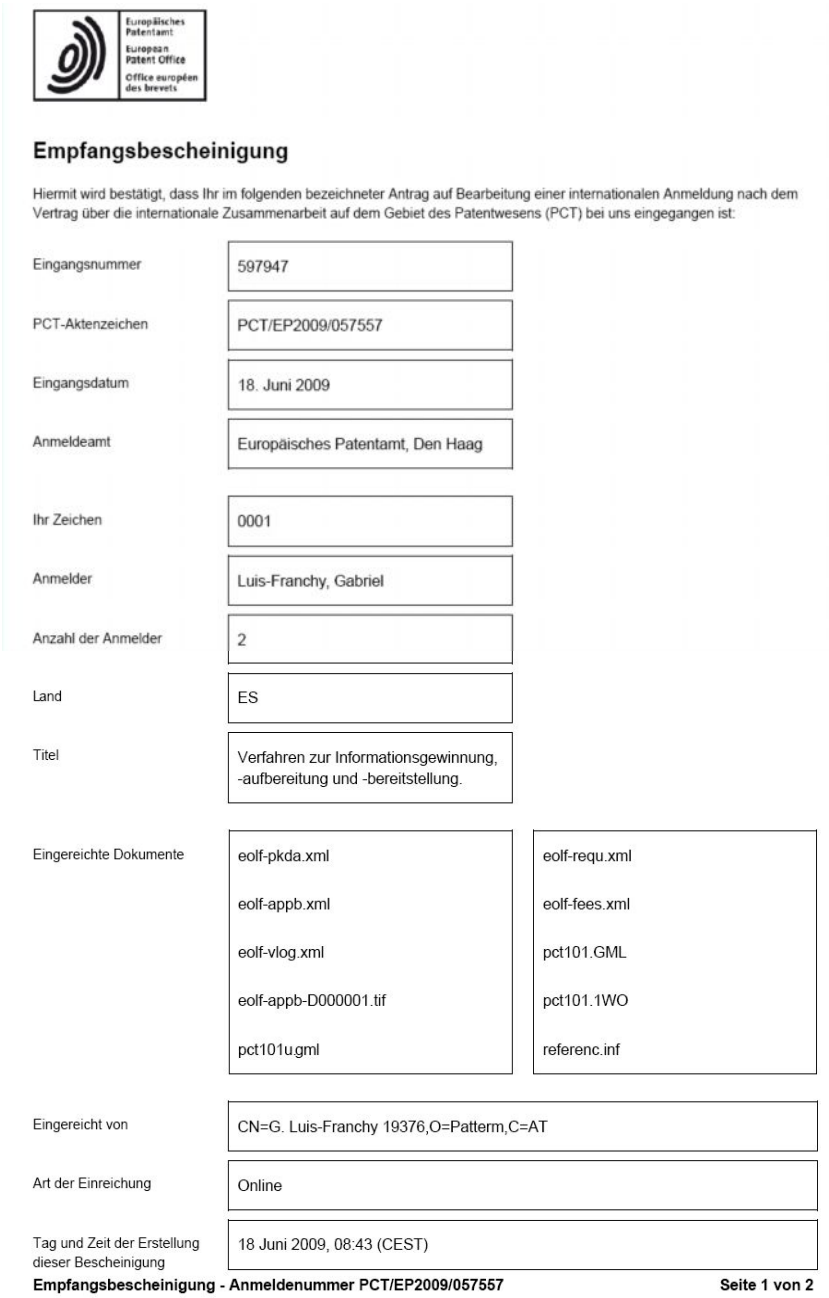
(Both articles taken from the UKs Patent Act, which is in my opinion a good model europewide and is worded like in the PCT…)

When talking about law, definitions are very important. On the other hand, legal definitions have first to be known and, as a Spanish aforism says:

"Quien hace la ley, hace la trampa" (those making the law, make also the tricks)

The trick-makers will deserve more attention in a different chapter of this paper. So as the definitions above present, novelty is a key issue of the patent system but is also a quite difficult issue to determine on a worldwide basis. Therefore you need an office where the expression of your inventiveness on paper (or PDF/XML) is filed and documented. This expression of inventiveness is called the priority document, i.e. the document that fixes WHO

WHEN and WHERE a patent application has been filed in order to claim its priority, as following picture shows:



Europäisches Patentamt
European Patent Office
Office européen des brevets

Empfangsbescheinigung

Hiermit wird bestätigt, dass Ihr im folgenden bezeichneter Antrag auf Bearbeitung einer internationalen Anmeldung nach dem Vertrag über die internationale Zusammenarbeit auf dem Gebiet des Patentwesens (PCT) bei uns eingegangen ist:

Eingangsnummer	597947
PCT-Aktenzeichen	PCT/EP2009/057557
Eingangsdatum	18. Juni 2009
Anmeldeamt	Europäisches Patentamt, Den Haag
Ihr Zeichen	0001
Anmelder	Luis-Franchy, Gabriel
Anzahl der Anmelder	2
Land	ES
Titel	Verfahren zur Informationsgewinnung, -aufbereitung und -bereitstellung.
Eingereichte Dokumente	eolf-pkda.xml eolf-appb.xml eolf-vlog.xml eolf-appb-D000001.tif pct101u.gml eolf-requ.xml eolf-fees.xml pct101.GML pct101.1WO referenc.inf
Eingereicht von	CN=G. Luis-Franchy 19376,O=Patterm,C=AT
Art der Einreichung	Online
Tag und Zeit der Erstellung dieser Bescheinigung	18 Juni 2009, 08:43 (CEST)

Empfangsbescheinigung - Anmeldenummer PCT/EP2009/057557 **Seite 1 von 2**

(method for retrieving, structuring and delivering information)

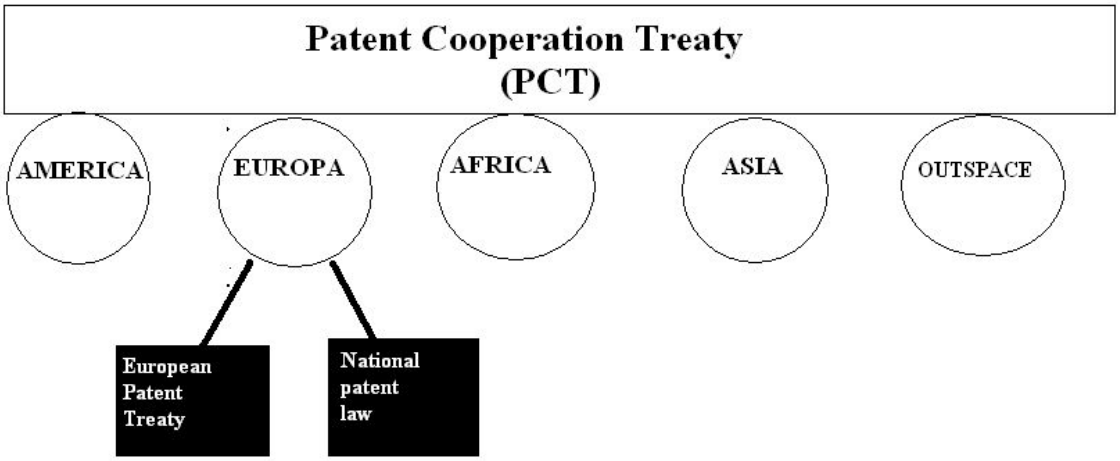
Those needing a translation of this confirmation of receipt into Spanish should contact me. Those needing a translation into English should do the same.

This step of filing an application costs € 200 . To my best knowledge this is possible only in Europe on a 100% safe and transparent basis (the system in Japan is pretty

unknown for non Japanese speaking people or minor cashed), as long you know the was the system works.

But what happens in the rest of the world? What about world patent champions USA and Japan?

In order to clear this and to provide more legal security for inventors worldwide, there is an international frame for patent applications filed outside Europe, the so called Patent Cooperation Treaty (PCT). This is specially necessary in the case of foreign applicants who want to protect their invention in the USA, since only a foreign application filed under the PCT can be applied in the US, if the priority document has been filed outside the USA. This practice goes back to the XIX century and has had different consequences over history (check “In Re Kawai”), so I will discuss them later. For this reason a pure European application makes no sense on a worldwide basis as long as you don’t choose the Euro-PCT route, i.e., filing a worldwide patent over the EPO as ISA (International Search Authority) and designating the USA as contracting country where your priority application shall be enforced. For Japan, China, India and the other 138 contracting countries of the PCT applies the same rule. The picture below tries to describe the world patent frame on a very simplified basis:



So in the case of the EPO, we have an institution, where you can file online a legal document, which is valid, public and enforceable worldwide. Pretty cool institution right? Public is also a key concept in the whole system - the Latin word "patent" meaning “revealed” or “opened”.

So in order to determine what has been maybe public, open information access play a key role and therefore the translation question is central in order to determine the way something has been made accessible to other, since, if your mother tongue is no English, German or French, should it be mandatory to write and file your application in one of those languages?

From Van Pottelbergue´s strictly economic point of view it may be, but from my point of view as born-in-germany-grew-up-in-spain-and-fucked-up-with-the-crisis-in-Austria person, it seems that strictly economic reasons are not enough to cope or solve the problem, furthermore they seem to be the root of much of the problems we are confronted with…I have pasted below one picture of a facsimile of a nazi-patent, claiming a patent for the burning ovens...
I was born in Germany and I love this country, but some forces there are at the very root of the problems of the European Patent System and reducing access to information will not help to fight them back...

AUSGEGEBEN AM
31. DEZEMBER 1938

REICHSPATENTAMT

PATENTSCHRIFT

№ 669 645

KLASSE 24d GRUPPE 1

R 96607 V/24d

Tag der Bekanntmachung über die Erteilung des Patents: 8. Dezember 1938

Firma Wilhelm Ruppmann in Stuttgart

Leichenverbrennungsofen

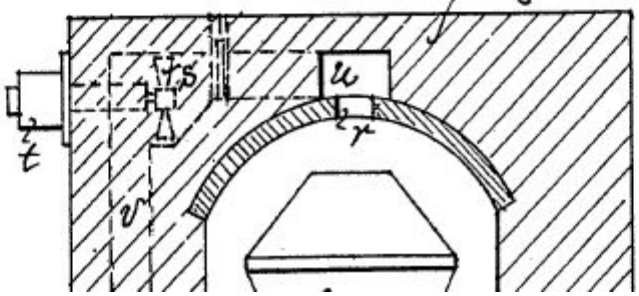
Patentiert im Deutschen Reiche vom 23. Juni 1936 ab

Die Erfindung bezieht sich auf solche Einäscherungsöfen, bei denen das Verbrennungsgut auf einem Rost ruht, welcher den obenliegenden Sarg- oder Hauptverbrennungsraum von dem darunter befindlichen Nachverbrennungsraum trennt.

Der Verbrennungsrost, auf dem der Sarg oder die Leiche zu liegen kommt, kann aus

Um dieses zu erreichen, muß die Ofen- und Rostausbildung sowie die Art und Regelung der Luftzuführung so durchgebildet sein, daß auch bei der im Laufe der Verbrennung immer kleiner werdenden Masse und der Teile derselben die Luft trotzdem nur mit diesen Verbrennungsresten in Berührung kommt. Zu diesem Zweck erhalten zunächst die Rost-

Fig. 1.



This other document shows a nazi-patent for the gas chambers, both companies continued filing and obtaining patents after the holocaust, with other names and other faces:

DEUTSCHES REICH

AUSGEGEBEN AM
24. MAI 1943

REICHSPATENTAMT

PATENTSCHRIFT

№ 735749

KLASSE 30i GRUPPE 2

G 104444 IV a/30 i

✻ **Paul Breiting in Berlin** ✻

ist als Erfinder genannt worden.

Gustav Gaffran in Berlin

Zerlegbare Gaskammer zur Desinfektion, Entwesung und Entseuchung von Gegenständen beliebiger Art

Patentiert im Deutschen Reich vom 27. November 1941 an
Patenterteilung bekanntgemacht am 22. April 1943

Die Erfindung bezieht sich auf zerlegbare Gaskammern zur Desinfektion, Entwesung und Entseuchung von Gegenständen beliebiger Art mittels eines in der Kammer entwickelten keimtötenden Gases. Es ist bereits bekannt, solche Gaskammern zerlegbar auszuführen, indem die Wand-, Boden- und Deckenplatten mittels zweckmäßig außenliegender Spannschlösser irgendwelcher Art lösbar miteinander verbunden sind. Die Platten sind an den Stoßkanten bzw. Stoßrändern mit einem Dichtungsbelag versehen, welcher beim Aufbau der Kammer bzw. beim Schließen der Spannschlösser fest eingepreßt wird und den gasdichten Abschluß der Kammer herbeiführt.

Es ist in Verbindung mit Kammern dieser Art ferner bereits bekannt, zwecks Erleichterung des Transports jeweils ein Paar gleich große Platten in einem Rahmen zu verpacken, so daß bei der üblichen kubischen Ausführung der Kammer insgesamt drei Verpackungsrahmen erforderlich sind.

Die vorliegende Erfindung hat zum Ziel, die Verpackung der Wandplatten wesentlich zu vereinfachen. Erreicht wird dies dadurch, daß die Spannschlösser bzw. deren Teile an den Platten in solcher Verteilung angebracht und so bemessen sind, daß sie als Verbindungs- und Verspannungsmittel der zum Transport aufeinandergelegten Platten verwendet werden können. Es wird dadurch die Verwendung besonderer Verpackungsrahmen überflüssig. Als besonders zweckmäßig hat es sich erwiesen, die Bodenplatte und ebenso die Deckenplatte der Kammer mit je einer Seiten- und Stirnplatte in einem Bündel zusammenzufassen. Damit die Stirnkanten der Platten und insbesondere die an der Dichtung beteiligten Stirnkanten beim Transport nicht verletzt werden, empfiehlt es sich, in weiterer Ausbildung der Erfindung diese Kanten durch Leisten zu schützen, die bei aufgestellter Kammer zum Aufhängen der zu behandelnden Gegenstände dienen; diese Leisten sind erfindungsgemäß mit Spannschloßteilen versehen, so daß sie ohne Zuhilfenahme zusätzlicher Befestigungsmittel an das Plattenpaket angeschlossen werden können.

Der Gegenstand der Erfindung ist in der Zeichnung in einer Ausführungsform dargestellt; es zeigt

LET ME TAKE YOU TO NEW CORNERS OF THE PATENT SYSTEM.

LET´S IMPROVE THE EUROPEAN PATENT SYSTEM.

LET´S IMPROVE THE SYSTEM TOGETHER.