

The Single Patent for Portuguese or Spanish Language Countries



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INTRODUCTION

The present economic and financial situation in Southern European Countries creates an almost involuntary need for entrepreneurial ideas and innovation in the approach to social, legal and political solutions. Countries such as Portugal and Spain struggle to define strategies to improve their economies. A whole generation is being surrendered to difficult times characterized by a lack of investment, mainly due to the high financial interest rates dictated by powerful external financial institutions.

Transversal to several fields, including the Information Science and Technology, we may consider as possible path or valid option the Patent System. If we consider the Patent system as a possible route to be more competitive we need to state what the value is of a Portuguese or Spanish Patent, isolated from the European patent system: A Portuguese or a Spanish patent does not represent a usual choice for foreign investors. To address this issue, and if we consider that at the present moment countries such as Portugal and Spain need to present themselves as competitively and as innovative as possible, this article proposes a new approach to the Patent System, based on the creation of a patent that will cover, with only one standard submission and evaluation process, all of the Portuguese

language (the “CPLP Patent”/ the LUSOPATENT/ “Patente Lusofona”), or all of the Spanish language countries. Moving toward the establishment of a more innovative and competitive environment, the “Portuguese Language Patent” or the “Spanish Language Patent” would give a broader competitive advantage to the companies operating within these particular markets (Ascensao, 2012).

The strongest international advantage each of these two countries (Portugal and Spain) has in common is the widespread dissemination of their language across multiple continents. The present approach would be an answer and a complementary response to the implementation of the European Union (EU) Unitary Patent (to be governed by the European Patent Office). The consolidation of the “Portuguese and/or Spanish Language Patent” would rely on the same principles defined for the EU Unitary Patent: simplicity; lower cost; and the involvement of a large number of countries.

Given the successful implementation of regional-level common industrial property systems, this article aims to extend the concept of an economic region in this context beyond geographical boundaries and explore the merits and potential competitive advantages of a Common Language patent system, with particular reference to Portuguese and Spanish language countries. Previous experiences related with industrial property rights

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represent lessons learned and will also be mentioned in the present work, and special attention will be given to the recent negotiations between several Portuguese language countries Industrial Property Institutes in order to establish a “*Marca Lusofona*” (Common Trademark), as additional support for such systems.

BACKGROUND

This article defines a new concept related with the patent system. This approach is also able to fit within many different fields including the Information Science and Technology. A concept based specifically in stimulating innovation and promoting economic development in Portuguese and Spanish language countries. The single, unique or unitary patent for Portuguese or Spanish language countries relies in principles and approaches already defined and legally structured within similar and previous patent experiences.

Herein we present a new, initial and ambitious perspective and we also provide an initial comparison with similar patent systems, discussing the potential benefits and eventual obstacles related with the creation of a Portuguese or Spanish language patent.

The Geographical, Economic, and Dimensional Feature

At the root of the approach conveyed in this article is the importance of the Portuguese and Spanish languages in a global economic context.

As is generally known, the Portuguese language is derived from Latin and was introduced in the west of the Iberian Peninsula nearly two thousand years ago. Portuguese is an official language of several entities, including; the Community of Portuguese Language Countries (the CPLP consists of nine independent countries that have Portuguese as an official language: Angola, Brazil, Cape Verde, East Timor, Guinea Bissau, Mozambique, Portugal, Sao Tome and Principe and Equatorial Guinea), the European Union, the African Union and the Lusophone countries, Mercosur, the Organization of Ibero-American States, the Union of South American Nations, and the Organization of American States. Portuguese is also one of the official languages of the Chinese special administrative region of Macau.

As a consequence, the Portuguese language assumes a special economic importance since there are approximately 280 million speakers, making it the 5th most spoken language in the world, the 3rd most spoken language in the Western Hemisphere and the most widely spoken language in the southern hemisphere of the Earth.

It is also mandatory to address the existence and geographic expression of Spanish or Castilian. The Castilian (*castellano*) or Spanish (*español*) language also evolved from several dialects of spoken Latin in central- northern Iberia around the ninth century.¹

Currently, there are about 500 million people who speak Spanish: it is the second most spoken language in the world, after Mandarin. Spanish is one of the six official languages of the United Nations (UN), the European Union, Mercosur and the Union of South American Nations (UNASUL) and is the official language of the following countries: Bolivia, Argentina, Chile, Colombia, Costa Rica, Cuba, Ecuador, Spain, El Salvador, Guatemala, Equatorial Guinea, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Dominican Republic, Uruguay, and Venezuela.

Countries that share a common language and culture experience deep economic ties, and strong trade relationships (Eichengreen & Irwin, 1995). This is certainly true for Portuguese language countries and Spanish language countries. Industrial property rights can play a key role in developing and strengthening ties between trading partners. In particular, the internationalization of corporations has encouraged lawmakers in the development of international cooperation² agreements regarding industrial property rights.

The geographically dispersion of countries where Portuguese and Spanish are official spoken languages is in alignment with the objectives of internationalization and marketing and trade of goods and services, promoted by companies in the various continents where these languages have expression and representation in official, cultural and linguistic terms.

The sheer number of countries involved and their economic and social potential as a group cannot be ignored or overlooked and represent an undeniable reality in the current international, social, economic and global context, justifying the proposed creation of a Single, or unique Patent for Portuguese or Spanish Language Countries.

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