

MR/24/00

Orig.: German

Munich, 15.07.2003

**CONFERENCE OF THE CONTRACTING STATES
TO REVISE THE 1973 EUROPEAN PATENT CONVENTION**

Munich, 20 to 29 November 2000

Conference Proceedings

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Conference of the Contracting States
to revise the 1973 European Patent Convention

Munich, 20 to 29 November 2000

Conference Proceedings

I. INTRODUCTION

1. The Conference of the Contracting States to revise the 1973 European Patent Convention (EPC) was convened by the Administrative Council of the European Patent Organisation in a decision dated 24 February 2000 and took place in Munich from 20 to 29 November 2000.

The Conference was attended by the 20 contracting states of the European Patent Organisation, the European Community, states with observer status, intergovernmental organisations and international non-governmental organisations. The list of participants can be found in Annex I. The Conference met in Plenary. It had a Credentials Committee and a Drafting Committee. The functions of the Conference Secretariat were assumed by the President of the European Patent Office.

2. The subject of the Conference was the final discussion and adoption of an Act revising the 1973 European Patent Convention (Revision Act), a Final Act, and supplementary declarations and resolutions. The basis of the discussion was formed by:
 - the Preparatory Documents submitted by the Administrative Council of the European Patent Organisation, and
 - the opinions and proposals relating to the Preparatory Documents as submitted by the states attending the Conference, the international organisations and the Conference Secretariat.

The conference documents to which these Proceedings refer can be found in Annex II.

3. The draft Conference Proceedings were established by the Secretariat by means of note taking and tape recordings. They were forwarded, on 29 November 2002, as MR/23/00 to the delegations for an opinion and produced in this printed form in the light of those opinions. The Proceedings group related issues together rather than strictly following the chronological order of the Conference.

4. The Acts were unanimously adopted by the Conference on 29 November 2000 (see Special Edition No. 1 of the Official Journal 2001, p. 2 ff). By the time the period for signature had expired on 1 September 2001 the Revision Act had been signed by a total of 17 contracting states¹.

II. OPENING OF THE CONFERENCE BY THE CHAIRMAN OF THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION, MR ROLAND GROSSENBACHER

5. Excellencies, Ladies and Gentlemen,

As the current Chairman of the Administrative Council, I have the great honour of opening the 2000 Diplomatic Conference to revise the European Patent Convention. It gives me great pleasure to welcome you today to the Conference's constituent assembly.

I should like to extend a particular welcome to the delegations of the contracting states, the observer states, and the intergovernmental and non-governmental international organisations.

I also warmly welcome Mr Paul Braendli, the former President of the European Patent Office, as our Guest of Honour.

A special welcome and thanks go to Mr Ingo Kober, the President of the European Patent Office, who has not only made his Office's facilities available to us for the duration of the Conference but also generously provided the staff and logistical support needed to prepare it. Here I also welcome and thank the members of the Task Force he set up, without whose tireless efforts we would have been unable to conduct our discussions. The same applies to the Administrative Council's Committee on Patent Law and its Chairman, Mr Paul Laurent, to whom I also extend my sincere thanks.

Finally, I should like to welcome the interpreters whose work will play an important part in ensuring the smooth running of the Conference.

¹ BE (Belgium), DK (Denmark), DE (Germany), FR (France), GR (Ellas), IT (Italy), LI (Liechtenstein), LU (Luxembourg), MC (Monaco), NL (The Netherlands), AT (Austria), PT (Portugal), SE (Sweden), CH (Switzerland), ES (Spain), TR (Turkey), GB (United Kingdom).

Ladies and gentlemen, we have come to this Conference to discuss and adopt an extensive revision of the European Patent Convention. This will be done on the basis of the Basic Proposal approved by the Administrative Council last September, following intensive preparatory work which had to be carried out in a very short space of time. In fact, at the first intergovernmental conference of the Organisation's member states in June 1999, hardly anyone believed that we could meet the Paris mandate's highly ambitious target of completing the revision of the European Patent Convention in 2000. That target has nevertheless been reached and I regard this as a considerable achievement and good omen.

Not all the planned revision items are of major significance. Indeed, the items of most political relevance are perhaps those which the Administrative Council has deliberately not included in the Basic Proposal.

I am thinking here in particular of biotechnological inventions. The patenting of such inventions regularly gives rise to public debate on the social and political desirability of certain avenues of technical progress. This is unjustified because patent law is not a suitable instrument for fine tuning technological policy and the debate is therefore misdirected. It is, however, justified to the extent that it is often the publicity surrounding patenting that makes such debate possible.

On this particular topic, the European Community has issued its Directive on the legal protection of biotechnological inventions and thus taken on the leading role. The primary political forum for this debate has therefore been established and there is no sense in the European Patent Organisation conducting a parallel discussion; this applies all the more since the European Patent Convention is in complete accord with the Directive. This was merely confirmed by the Administrative Council last year when it undertook its adaptation of the Implementing Regulations. The criticisms levied against it were therefore unjustified.

Another important issue left to one side for the time being is the relationship between the future Community patent and the European Patent Convention. Rightly so, but in a way for the opposite reason. Here it is the European Patent Organisation that plays the leading role, if only for historical reasons, since the failure 30 years ago to create a unitary Community patent was overcome by devising the concept of the European bundle of patents.

But this also holds true today, since we are now in a similar situation. Take, for example, the way the European Patent Organisation has taken the lead - influenced to a large extent by the non-member states of the European Union - on two crucial issues which will determine the fate of the Community patent too: namely, the language arrangements and the question of jurisdiction. Here the important progress made between the 1999 intergovernmental conference of EPO states in Paris and the follow-up conference in London in October this year had a substantial influence on the European Commission's proposal for a Community patent.

Above all, this Diplomatic Conference shows that the European Patent Organisation has maintained its momentum and is even enjoying a rejuvenation. For the first time in its nearly 30-year history, the European Patent Convention is to undergo a thorough revision.

A successful revision did in fact take place in 1991, but that only affected one specific area, whereas we have now undertaken to draw the consequences from the remarkable success of the European patent system. This process was started back in 1997 when Mr Kober proposed that the European Patent Convention be amended to enshrine the so-called "BEST" procedure which is making a major contribution to coping with the growing workload.

In addition, however, we shall be subjecting the Convention's provisions to a systematic review in order to maintain its functionality in the face of unremitting growth, and to safeguard its continued acceptance among the interested parties in the future. The practice and case law of the European Patent Office up to now have made a very successful contribution to ensuring that the interests of the parties concerned are duly taken into account in the application and interpretation of the provisions of European patent law. It has also been possible to fill gaps in those provisions by means of differential case law. The Convention has thus provided a firm basis on which to take account of technical and legal innovations. The principles of the rule of law, however, set clear limits to the scope for developing the law through interpretation. The reform of the present provisions is intended to bring about legal certainty in those areas which could not have been envisaged by the original legislator or have only emerged in the course of time as issues requiring regulation.

The European Patent Organisation is also growing geographically. Only a few weeks ago, we were able to welcome Turkey as the 20th contracting state. The accession of further states from central and eastern Europe is imminent. In the light of this, the need for institutional reforms was also discussed during the preparations for the revision.

When it comes to institutional provisions, the Basic Proposal provides for greater political underpinning of the European Patent Organisation by incorporating the concept of intergovernmental conferences into the Convention. Apart from this important item, however, few institutional innovations have been included. In particular, it has not been possible to reach a consensus on changes to the weighting of votes and the qualified majority.

In this context, however, I would like to reiterate what I said at the London intergovernmental conference: firstly, by adopting a pragmatic approach, the Administrative Council has already achieved significant improvements in the way it forms its opinions, despite the increasing number and complexity of the decisions it has to take; and, secondly, the existing Convention permits further measures in this area which the Administrative Council can adopt independently and will also discuss.

The Conference will nevertheless be considering one very important change: the Administrative Council's power to adapt the Convention to other international treaties and, in particular, to the provisions of Community law. This measure is, however, to be accompanied by so many caveats that the powers of the national legislator in every contracting state are left fully intact.

Ladies and gentlemen, much of what we shall be discussing over the next few days is unspectacular, largely uncontroversial and relates to legal technicalities. Yet these items represent the largest element in the revision and their preparation has required Herculean efforts from the Task Force and the Committee on Patent Law. I should therefore like to draw your attention once more to the remarkable work they have put into this project, and also pay tribute to the commitment shown by all the delegations and the interested circles. They have all risen to the occasion despite the intense time pressure under which the work has had to be carried out.

The Basic Proposal before us reflects the concerns of the interested circles and the proposals and ideas of the contracting states and the European Patent Office. It represents the balanced outcome of a wide-ranging opinion-forming process which found general agreement among the delegations. In my view, considerable credit must go to the preparatory work for ensuring that the proposed amendments included in the Basic Proposal have commanded a broad consensus among the delegations. As a result, it will be possible for the Conference to dispense with the creation of Main Committees and this, I hope, will help to expedite many of our deliberations.

There are, however, several "tough nuts to crack", to coin a phrase. Some of these are major legal issues, whilst others have extended beyond the purely legal aspects

and thus taken on a strategic importance; one example is the proposal to delete the exclusion of computer programs, which is really only intended to codify existing practice.

We want to consider these few controversial issues carefully and give ourselves enough time to discuss them in detail. It should be our aim wherever possible to enable all delegations to vote in favour of each decision at the end of our deliberations. We should not forget, however, that - contrary to the prevailing opinion held earlier in the revision process - it has not been assumed that there must be *de facto* unanimous support for each proposal. Indeed, only the realisation that this is not the case has made it possible to put together the Basic Proposal.

Ladies and gentlemen, I believe that I am conveying the feeling of all present when I say that the start of this Conference brings with it a sense of satisfaction at the prospect of being able to harvest the fruits of our intensive and sometimes arduous preparatory work. With this revision we are showing that the contracting states of the European Patent Organisation are dynamic and capable of adapting the European patent system to changing requirements.

However, we also can and want to view the European patent system as a whole and show our ability to prepare for the future Community patent's incorporation into the European patent system. The time for steps to be taken in that direction by the European Patent Organisation has not yet come; that will depend on the progress made within the Community. Personally, I hope that we shall soon be able to consider what action is needed.

Today, however, we want to set to work on completing a revision process which is itself ambitious. We have reason to hope for a successful outcome to the Conference and expect that we shall ultimately achieve a result that takes due account of the interests of all those involved in the European patent system. Ladies and gentlemen, let us embark on our task in that spirit.

The choice of venue for this conference will, I hope, contribute to its success. It was no doubt a good decision to reconvene in Munich, a city that has built up a reputation in the field of European and international patent law.

It was a spirit of co-operation, coupled with the common will to overcome obstacles in order to achieve a good result, that led to the great success of the earlier

conferences in Munich. I am confident that the same spirit will bring our own deliberations to a successful conclusion.

Ladies and gentlemen, on that note I now declare the Diplomatic Conference to revise the European Patent Convention open.

III. CONSIDERATION AND ADOPTION OF THE RULES OF PROCEDURE (MR/1/00)

6. The Conference adopted the Rules of Procedure in the wording proposed in MR/1/00.

The Chairman thanked the delegations for electing him as President of the Conference and Mr J. Mota Maia as Vice-President of the Conference by their adoption of the Rules of Procedure.

IV. CONSIDERATION AND ADOPTION OF THE DRAFT AGENDA (MR/A/00 Rev. 1)

7. The Conference unanimously adopted the draft agenda in the wording of MR/A/00 Rev. 1.

V. ELECTION OF THE MEMBERS OF THE CREDENTIALS COMMITTEE AND THE DRAFTING COMMITTEE (MR/5/00)

8. On a proposal from the Conference President the two agenda items 4 and 5 were dealt with together. The Swedish delegation stated that it would be delegating only one representative to the Drafting Committee and was therefore withdrawing the nomination of Mr Per Holmstrand. The Conference, with due consideration for the Swedish delegation's statement, unanimously confirmed as members of the respective committees the persons proposed by the Conference President in MR/5/00.

Mr N. Ravn (Denmark) became Chairman of the Credentials Committee, Mr C. Sahl (Luxembourg) was elected Deputy Chairman and Mr J. Congregado Loscertales (Spain) was elected a further member.

Mrs C. Margellou (Ellas) was elected Chairman of the Drafting Committee and Mr W. van der Eijk (Netherlands) was elected Deputy Chairman. Further members of the Drafting Committee were Mrs M. Bonthron (Sweden) and Messrs D. Welp (Germany), J.-F. Lebesnerais (France), H. Edwards (United Kingdom) and S. Fitzpatrick (Ireland).

VI. OPENING STATEMENTS

9. The Head of the German delegation made the following statement:

As the representative of the country in which the European Patent Organisation has its headquarters, I should like to begin by welcoming you all on behalf of the Government of the Federal Republic of Germany. I hope that you will enjoy your stay here and take home with you happy memories of both Munich and Germany.

Some 27 years after it was signed, the European Patent Convention is due for its first major overhaul. The Convention saw the creation of one of the largest and most important patent offices in the world, one which continues to go from strength to strength. The fact that this continuing success has so far been possible without any large-scale revision speaks volumes for the quality of the Convention and the far-sightedness of its founding fathers. What they have passed down to us, however, must be preserved. As with any other valuable inheritance, this includes scrutinising and updating it where necessary. Yet with the exception of a minor amendment in 1991, the Convention has remained untouched, and people were beginning to say that the European patent system was becoming ossified. In our view this assessment is difficult to accept, given the manifest dynamism of the European Patent Office, in particular the surge in filing figures and the large increase in the number of staff, and not forgetting the recognition the EPO's work has earned throughout the world. The Office's evident dynamism has now extended to the legal framework of the European patent system. But the revision is more than simply a question of amending the European Patent Convention itself. Its scope ranges from the establishment of a central European patent court to the creation of the Community patent, a long-standing aim. We very much welcome these developments, because we are certain that the discussions will result in an improved system of protection for both inventors and patent proprietors.

What we have before us then, ladies and gentlemen, is a draft Revision Act containing amendments to around 100 articles of the EPC.

It is a very ambitious project.

I would like to take this opportunity to thank all those who have worked on it for their magnificent efforts. Particular thanks are due to the Chairman and members of the

Patent Law Committee and to the members of the EPO's Task Force, who have done sterling work under considerable pressure.

Our thanks must also go to you, Mr President, and to the Conference Secretariat, for your excellent preparation of the Conference.

Although the Basic Proposal is over 250 pages long, not all the issues which need to be resolved are included in it.

Missing items, for example, include the incorporation into the EPC of a grace period and of the fundamental aspects of the Biotechnology Directive. This will have to be left to a future revision conference. On the other hand, the draft Revision Act contains one proposal whose effects in our view have not yet been fully explored and which we believe should be postponed to a later date. I am referring to the proposal to delete computer programs as such from the list of non-patentable inventions in Article 52(2) EPC. Biotech patents and software patents have both been the subject of fierce debate recently, by both the general public and politicians. Patent law would thus appear to have taken on a new political dimension. Many of our colleagues in the patent world, who have been used to discussing patent law exclusively with fellow patent professionals, have been surprised, if not shocked, by this development. Some of them may be tempted to overlook these arguments because certain objections and concerns may be technically unfounded. We believe, however, that, where there is the need and the interest, we must discuss these complicated issues with the general public if we want the patent system to retain the high level of public acceptance it enjoys today. And we must do so regardless of the time and effort, and even the nerves, involved. It will be worth it in the end.

The draft Revision Act before us contains important improvements to the Convention. Most of the proposals are in no way contentious. Some will have to be discussed at length. We hope that the results of this Conference will be accepted by every delegation and that ratification of the Final Act by all the member states can take place in the very near future.

10. The minister responsible for external affairs made the following statement on behalf of the Italian delegation:

Italy welcomes the convening of a Diplomatic Conference to revise the EPC and the opportunity to participate in the revision of the patent system in this major region of the world.

We have long felt there is good reason to revise the text of the Convention. Whereas the Convention in 1973 had to deal essentially with technical issues, today it has to take highly sensitive ethical and political matters into consideration. And that is the justification for the amendments we have proposed, which we think are likely to enhance the supervisory powers of the contracting states.

After all, we must not forget that, in spite of Article 53 of the Convention, the Administrative Council's decision of 16 June 1999 clearing the way for the patenting of life aroused particular emotion in broad sectors of Italian public opinion. This episode has alerted the Italian government to the need to identify mechanisms for clarifying the interpretation and application of the provisions of the Convention. In any case we aim to return to this particular issue at the next revision conference.

As to the present conference, one of the most important aspects of this revision exercise is making the Convention more flexible and better equipped to handle technological developments and international regulations. This is clearly an important issue for users, and Italy is in principle in favour of an approach of this kind.

I must however stress that some amendment proposals - including the new powers granted to the Administrative Council under Article 33(1)(b) - are so innovative compared to the usual rules for revising international conventions that they may encounter problems in the course of ratification by the Italian parliament. That is why the Italian government has submitted a special amendment to Article 35(3). What we are requesting is in effect a reversal of the logic inherent in the mechanism whereby the contracting states consent to decisions taken by the Administrative Council under Article 33(1)(b). We consider it indispensable for states to give their consent explicitly in the stipulated twelve-month period instead of simply remaining silent. In other words, if not all the contracting states have expressed their

agreement within the twelve-month period, the Administrative Council's decision will have no effect.

As regards the amendment proposals relating to the principles of patentability, Italy is not against those warranted by technological developments or by the need to take account of obligations under international treaties or Community legislation.

However, on the latter point, the Italian government has seen fit to propose a second amendment. In practical terms the aim is to ensure that the new process whereby the Administrative Council incorporates Community law into the EPC does not produce paradoxical situations in which such law is incorporated before it has been implemented by EU member states. By way of this amendment, therefore, we want the Administrative Council not to be able to start incorporating new Community directives until after the time limit for their implementation by the member states has passed.

As regards the other changes in the organisation of the EPO, Italy considers that the Office should have a large degree of autonomy in choosing an internal organisation suitable for guaranteeing the quality of its work, and this also applies to the introduction of BEST.

Revision of the EPC will undeniably mean new responsibilities and duties, not only for the Administrative Council but also for the Office as a whole. Yet it is the very importance of the prospects opening up to the Office that is increasingly showing up the lack of provision for recourse to judicial review of the conformity of decisions taken by Office bodies with its act of constitution. Italy therefore hopes that preparatory work on this issue can be speeded up and that broad consensus on an effective judicial mechanism can already be achieved at the next intergovernmental conference.

In view of these truly significant developments, the Italian government hopes that the Conference will proceed efficiently but also with all due caution.

The Italian delegation will co-operate in this endeavour, taking into account the importance and the sensitive nature of the issues at stake and the responsibilities that the government will have to bear before parliament and public opinion as a whole.

11. Statement by the Head of the Spanish delegation:

It is a welcome task and an honour for us to participate in this conference which has been convened on the initiative of the Administrative Council in accordance with the mandate given by the June 1999 Paris Intergovernmental Conference. This represents the first overall review of the European Patent Convention since it entered into force on 7 October 1977. We welcome this initiative which will undoubtedly contribute to achieving an integrated European system which is more balanced, cheaper and more secure, permitting its possibilities to be exploited to the full and leaving the way open for the Organisation to respond flexibly to new challenges and developments.

It is to the credit of all those on the different committees and working groups who have carried out the preparatory work leading to the Basic Proposal that a very comprehensive draft and accompanying comments have been submitted to the Conference for decision. We would therefore take this opportunity of congratulating them on their excellent performance.

We regard the European patent system not only as a valuable tool for industry and economic growth in the EPO, but also as a cornerstone for a larger and more integrated Europe, a task where we all take our share of responsibility. The foundations of the system were laid almost 30 years ago, a long period for a fast moving world in which neither the technical and legal environment nor the economic and political conditions have stayed the same.

In this context, we regard the updating and improvement of the Convention as the first step in a direction which will, in the end, converge with the second route, the Community patent, along with the national routes, to form an integrated, and not merely centralised, European patent system, where industry must be able to make the choice most suited to its needs. That means that the availability of the options must be real, and that no option should be excluded, either linguistically or, in an indirect way, geographically. A flexible legal basis in the Convention for future optional agreements between member states concerning matters such as litigation, translation requirements and/or centralised filing, like that created by new Article 149a of the Basic Proposal, provides an open and balanced approach to addressing the most controversial issues and forming a coherent overall framework for the future European patent system.

The Basic Proposal builds on the existing system that has fared so well for so long. Everybody knows that the EPO has been overtaken by its own success and, hopefully, one of the aims of this revision is to make EPO procedures quicker, clearer and more efficient. The EPO will have to cope in the near future with an even greater flood of applications. The forthcoming changes, such as the expansion of the EPO to 28 member states or the introduction of the Community patent, will only add to this tendency. How the system will shoulder the burden of this success is yet to be seen.

It has been rightly said that a key factor in establishing the EPC was the overcoming of narrow national attitudes in favour of a supranational approach, with the European system working alongside existing national systems. We wonder whether the process of growing centralisation, leading to the EPO's increasingly monopolistic position, should now be counterbalanced by overcoming centralising attitudes in favour of more integrated solutions and using the capacity of national offices for alleviating the EPO's growing workload in the future. This could lead to more balanced solutions, enhancing the user friendliness of the whole system and avoiding the risk of exposing the EPO to serious problems in terms of increasing backlogs and longer processing times.

To work out strategies favouring integration and synergic co-operation instead of one-sided centralisation and using the possibilities afforded by electronic handling and processing of applications is, in our view, one of the main challenges in the on-going process of reform. The so highly praised competition in a worldwide market entails effective systems smoothly and synergically working alongside each other to the benefit of end users, offering them a real choice irrespective of their country of origin and linguistic environment.

The enlarged competence granted to the Administrative Council to amend certain EPC provisions along with the transfer of numerous procedural provisions to the Implementing Regulations will give the EPO the power to respond quickly and flexibly to future developments in a world where new technologies are booming on a vast scale worldwide and the need for fast and reliable protection in global markets is stronger than ever before. At the same time, electronic filing and processing of applications enhanced by new legal instruments like the forthcoming PLT will make it possible to develop strategies capable of ensuring maximum efficiency in unbureaucratic and less geographically based operational conditions.

Certainly, some of the questions to be addressed are likely to raise controversy, such as the transfer of unpatentable subject-matter to the Implementing Regulations along with the deletion of software from the list of non technical inventions. The intended suppleness might be offset by a loss of legal certainty as to the patentability of software related inventions where the requirement of "technical character" is loosely construed. Software as such is already protected by intellectual property laws, and its deletion from the list of unpatentable subject-matter might be an indirect approach to reshaping the concept of technical character, entailing grave consequences for new technologies in the information society and e-commerce in Europe.

We are sure, however, that work, commitment and imagination will help us to solve the controversial issues lying ahead in a balanced way and look forward to the success of this conference.

12. Statement by the Head of the Finnish delegation:

The importance to human prosperity of intellectual property in general and patents in particular is steadily increasing, in both economic and social terms.

It is therefore important for the European patent systems to be modernised. Finland is pleased to note that the many years of preparatory work carried out at expert level will bear fruit at this Diplomatic Conference.

Finland is willing to lend active support to this reform and harmonisation work in order to achieve an end result that will further improve the options available to users of the European patent system for protecting their inventions.

We should like to thank the European Patent Office for organising this Conference here in Munich, the "patent capital" of Europe.

13. Statement by the Head of the French delegation:

The French delegation welcomes this Diplomatic Conference to revise the European Patent Convention, in which it has a keen interest.

It is particularly gratified to see this conference getting under way because, as the Chairman of the Administrative Council has pointed out, holding it was part of the threefold mandate laid down by the Paris Intergovernmental Conference in June 1999. The timetable was indeed very tight, and the topics were complex and not always well understood by elements of public opinion clearly much more sensitised than a quarter of a century ago.

France, the current holder of the EU presidency, has demonstrated its interest by taking an active role in all the key issues and by proposing amendments, particularly to Articles 14 and 52.

We would like at this point to thank the Committee on Patent Law, chaired by Paul Laurent, the EPO Task Force under Ulrich Schatz, and the Conference Secretariat, for all their hard work.

The EPC is clearly due for an overhaul: now twenty-five years old, it was drafted in an economic, political and social climate very different from today's, for six or seven member states, and for about 30 000 filings per year.

But the EPO now has twenty member states - soon to be thirty - and expects some 140 000 applications this year.

So it is time to update the EPC to meet the needs of the modern European economy. The BEST procedure, for example, combined with other measures, should enable the EPO to keep pace with the continued filings growth which testifies so eloquently to the vitality and attractiveness of the system founded in 1977.

One more point to close this opening statement: in 1977, the world of patents was well ahead of the rest of the European enterprise, both in intellectual property

- there was no European system for trade marks, designs or utility models at that time

- and in European economic integration, then still in its infancy.

But today, it is the other way round: despite its success in terms of filings growth, the European patent system has remained immobile, whereas there is now a Community trade mark, Community designs and utility models are in the offing, the world has become a global village, and in a year's time Europe will have a single currency.

It is therefore essential that we make progress during this key period for the ongoing European project and with the Nice summit just a few weeks away. In this connection, let me quote Hubert Védrine, France's Foreign Minister, who once referred to an old German legend about a pied piper to make the point that Europe has sometimes, unfortunately, let itself be led astray by the seductive sound of sweet music. On that note, I wish us all every success in our work over the next nine days.

14. Statement by the Head of the Irish delegation:

I am very honoured to have this opportunity to speak before this conference of the Member States of the European Patent Organisation for revising the European Patent Convention. The entry into force of the European Patent Convention and the Patent Cooperation Treaty may be considered as the second revolution in the history of the patent system - the first being recognised as the achievement of the Paris Convention. The European patent system and its administrator, the European Patents Office, is internationally regarded as being the ideal patent system. The remarkable success of the European Patent Convention which implemented a centralised system for examination and grant of patents in Europe has greatly exceeded the expectations of the Convention's founding fathers. The number of applications filed in recent years has now reached twice the number expected in the earlier years of the Organisation. Considering that the patents granted by the European Patent Office could cover not only the member states but also those states which allow the extension of European patents to their territory, the total market covered could be of the order of 450 million people.

Intellectual property is probably the most active area in law that exists today. In today's "knowledge-is-wealth" society people are increasingly aware of the importance of intellectual property. During the Uruguay Round of the General

Agreement on Tariffs and Trade the relationship between intellectual property protection and international trade was recognised. As we all know this resulted in the TRIPs Agreement which, *inter alia*, set high standards of harmonised patent protection at a multinational level.

The Patent Law Treaty, which reached a successful conclusion in Geneva in June of this year, provides for harmonisation of the formal requirements under patent law. Ireland strongly supports the provisions in the Basic Proposal aimed at bringing the European Patent Convention into line with the provisions of the TRIPs Agreement and the Patent Law Treaty.

In principle we also support the proposals the objective of which is to streamline the European Patent Convention to render it more flexible by transferring details from the Articles of the Convention into the Implementing Regulations. When the European Patent Convention was adopted in 1973 both the Basic Proposal for the Convention and the Draft Implementing Regulations were available to the Diplomatic Conference. Ideally the draft of the revised Implementing Regulations should have been ready for this Conference, but we realise that due to time constraints and the practical difficulties involved in its preparation this was not possible. We would like to see the task of preparing the revised Implementing Regulations commencing at the earliest possible date after the completion of this Conference.

It is also desirable to swiftly bring the European Patent Convention into line with patent related international treaties and European Community law. We are therefore pleased to see the inclusion in the Basic Proposal of amendments to Article 33 and 35 of the Convention - a suggestion first made by Ireland at the Committee on Patent Law. The proposed amendments would extend the competence of the Administrative Council to amend certain Articles of the Convention subject to approval by all the contracting states. We consider that unanimity is an absolutely essential component of the proposal.

Ireland has become a significant world centre for computer software development. Indeed we are the largest software exporter in the world.

The issue of patent protection for software-related inventions is therefore of particular interest to us. As regards Article 52 of the EPC which prohibits patenting of computer programs "as such", we feel that this provision needs at least some clarification. In

view of the extensive consultation process that the European Commission is currently engaged in concerning this matter, we think it would be desirable not to delete at this stage the references to "programs for computers" in Article 52(2).

In general I can also say that Ireland is favourably disposed to various other proposals contained in the Basis Proposal. We do have some concerns about certain proposals and our views on any modifications or drafting changes which we wish to see implemented will be made known at the appropriate time during the course of our deliberations at this Conference.

Before I conclude, I would like to thank the Committee on Patent Law and the European Patent Office for their tremendous work in the preparation of the Basic Proposal. I would also like to express the gratitude of the Irish delegation to the European Patent Office for the great deal of work that has gone into the organisation of this Conference.

We are sure that at the end of the Conference the main objectives of modernising the European patent system will have been achieved. We also recognise the probable need for further revision of the European Patent Convention in the not too distant future to take account of the Community patent system proposed by the European Commission.

15. Statement by the Head of the Luxembourg delegation:

We wish to thank the EPO for organising the conference, and also the Administrative Council, the Committee on Patent Law and the Office's Task Force for the excellent Basic Proposal submitted to us. The unstinting efforts of the EPO President and his colleagues have made it possible to prepare an in-depth revision of the EPC in a very short period.

This revision takes into account over 20 years' experience and aims to take up the challenge of the new millennium. The proposed amendments are numerous and relate to political matters (institutionalising a conference of ministers, allowing the Administrative Council to bring the EPC into line with international and Community legislation under very strict conditions), to making the running of the Office more flexible (BEST procedure, transferring procedural provisions to the Implementing Regulations, provision for electronic communication with applicants) and to patent law (central limitation procedure, TRIPs compliance, link to the protocols issuing from the process launched by the intergovernmental conferences in Paris and London).

The Luxembourg delegation supports all these amendments. Our only reservation concerns the amendment to Article 52(2)(c) (deletion of computer programs from the list of exceptions to patentability). In the light of the consultation promised by the Commission, we should like this change to be deferred and placed in the second revision basket.

Our co-operation can be relied upon, and we are confident that the ambitious aims of this Conference will be met.

16. Statement by the Head of the Monegasque delegation:

First let me thank the European Patent Office and in particular its President, Ingo Kober, for organising this, the second Diplomatic Conference in the history of the EPO, which is intended to revitalise the Munich Convention by allowing it to adjust to the demands of today's technology and to the challenges facing European industry at the start of the third millennium.

I should also like to thank France, which set EPC revision on its way, and the United Kingdom, for its recent organisation of the intergovernmental conference in London.

I am well aware that an overhaul of this nature entailed lengthy preparation and the collation of many expert opinions at preparatory meetings.

On that note I should like to pay tribute to the Committee on Patent Law, and in particular to its chairman, Paul Laurent, whose legal rigour and personality were instrumental in the smooth running of its meetings. I also wish to congratulate the entire Secretariat team on the outstanding work it has done.

Thanks to the quality and clarity of the amendments proposed for a text which had become obsolete in several respects, given the pace at which a field such as high technology evolves, I am sure we will be able to respond extremely effectively to the problems that have arisen over the last two decades, in terms both of daily application of the Convention and of unforeseeable advances in knowledge.

Let us not forget that patents are a strategic and commercial tool for invention protection and market capture, allowing technological information to be disseminated and thereby contributing to competitiveness and job creation.

There can be nothing but praise for the European Patent Organisation, which at a time of economic and scientific acceleration has managed to seize the opportunity to modernise its structures and adapt to the changing world of today.

I sincerely hope that the work of this Conference will meet with success.

17. Statement by the Head of the Netherlands' delegation:

On behalf of the government of the Netherlands I wish to express my feelings of gratitude and satisfaction that we can now hold this Conference.

After years of fundamental discussions about different aspects of the European Patent Convention, it is most important that we have now reached the stage where a comprehensive revision can be made.

For all the preparatory work that has been done I would like to thank you very much. I also wish to thank the President of the European Patent Office, Dr Kober, and his staff and the Chairman of the Committee on Patent Law, Mr Laurent, and its members. It is due to the efforts of all the people involved in this matter that we can now hold this Diplomatic Conference on the revision of the European Patent Convention. It concerns matters of great importance.

The government of the Netherlands wishes to stress the importance of modernising the Convention. Since 1973 there have been enormous developments in the field of technology, there has been a lot of new jurisprudence and we have been confronted with new requests from the interested circles.

Moreover it is important that the Convention be adapted to international developments and also that more flexibility be introduced into the text as regards decision-making, which I believe will be very useful because the number of member states will increase in the near future.

For the Netherlands the proposals concerning the BEST project which affect the position of the branch in The Hague are of special interest. In the current text of the EPC the Receiving Section and the Search Divisions are located in The Hague. My delegation fully supports the BEST proposals, because they will bring about a more flexible and integrated way of working. The government of the Netherlands is most obliged that we could reach agreement on the way in which we could lay down the future position of the branch in The Hague, as set out in the new Protocol on Staff Complement.

It is not the moment now to consider in detail all the different proposals. However, I want to give the view of my delegation on two subjects, which I think are of great importance.

First, the patentability of software. The current text of Article 52(1)(c) is obsolete in the eyes of the Netherlands. Therefore we shall support the deletion of the prohibition on patentability of computer programs. However, I stress that we will have to maintain the traditional criteria for patentability, and we will not go along with patenting business methods as such.

The second issue concerns the patentability of the second medical indication in the newly proposed Article 53(c). We have a text proposal, provided by the Swiss delegation, and we have received a letter from the President of the Office with an alternative.

My delegation considers that it is time to make more space for the second applicant and will therefore support the proposal by the President.

I hope I have been clear. My delegation will do its utmost to contribute to the success of this Conference and is ready fully to participate in the work that has to be done during the Conference to modernise the European patent system.

18. Statement by the Head of the Austrian delegation:

As an expression of the joint political will of European states to establish a unitary, international patent system, the European Patent Organisation has more than fulfilled the expectations placed in it when it was set up by the signing of the Convention on the Grant of European Patents in 1973.

By 1979, it had become clear that the increasing globalisation of the world's economy and its storehouse of knowledge called for ways of protecting innovations that complemented the national system. In that year, the Republic of Austria accordingly ratified both the Patent Cooperation Treaty (PCT) and the European Patent Convention (EPC), thereby extending the opportunities available to both Austrian and European applicants by forging a link with the European and international patent systems.

In the years that followed, Austria and its representatives on the bodies set up under the European Patent Convention endeavoured to make a success of the Convention and to ensure its further development.

We are of the firm opinion that the planned major reform of the Convention, 27 years after it was first signed, will help to perfect it and so add to its attractiveness and to the level of acceptance it enjoys among patent circles in commerce and industry. The amendments and additions for discussion at this Conference will enable the Organisation to respond flexibly to the constantly and rapidly changing demands of the global information society.

The agenda of amendments to the EPC is not exhaustive. A number of both necessary and desirable amendments, such as the grace period issue, still require further discussion, and should be addressed at a future revision conference.

The fact that the EPO has a sub-office located in Vienna is just one of the reasons why the Austrian delegation attaches great importance to this Revision Conference. In the interests of the Austrian and European economies, this delegation is ready and willing to do all it can over the next few days to ensure that the Conference is a success.

19. Statement by the Head of the Portuguese delegation:

The document containing the Basic Proposal for the revision of the European Patent Convention represents the fruits of a systematic effort on the part of experts from the member states, meeting on the Committee on Patent Law and working under mandate from the Administrative Council.

I should therefore like to start by congratulating the members of that Committee on their outstanding work.

As a member of the Administrative Council I should also like to praise that body's initiatives, proposals, analyses and discussions, which have made it possible to arrive at the potential consensus reflected in the Basic Proposal before this Conference.

Last but by no means least I wish to congratulate and thank the President of the Office and his colleagues for the invaluable legal, technical and logistical support they have offered the Administrative Council, always with the greatest competence and efficiency.

Among useful contributions I feel it judicious to mention those of the European Commission and the system's users and above all the work done at the intergovernmental conference, which was certainly most encouraging, chiefly in relation to the second phase of the revision.

To sum up the aims of this first phase of revision, they are to enhance the legal certainty of the Convention, to modernise the running of the European Patent Organisation, notably with a view to improved integration in the international environment, to review the substantive requirements for patentability, and to simplify the Convention, so as to make it more readable and more flexible, involving nearly a hundred articles featuring in the Basic Proposal. These are aims which deserve the support of the Portuguese delegation to this Conference.

Among the new provisions, Articles 4(4) and 11(5) are worthy of special mention in the light of their importance and implications.

The first, Article 4(4), designed to create a legal basis in the Convention for institutionalising a conference of ministers of the contracting states responsible for patent matters, in my opinion allows the Organisation to become integrated in the effective political framework to which by definition it belongs.

The Portuguese delegation supports the interpretation of the functions of the conference of ministers given in the explanatory remarks for Article 4 and confirms its approval of the insertion of this new provision into the Convention.

The second article I wish to mention, Article 11(5), concerns creating a legal basis for appointing external legally qualified members of the Enlarged Board of Appeal, with consequent deletion of the corresponding transitional provision from Article 160(2).

The Portuguese delegation also supports this new provision.

In our opinion this is all part of modernising the Convention to reflect changes in the EPO's activities and of creating appropriate powers to that end.

Yet to my mind an equally relevant aspect is the opportunity given to legally qualified members from the contracting states to participate in proceedings before the Enlarged Board of Appeal.

Among other advantages mentioned in the explanatory remarks for Article 11, this provision will help to harmonise the jurisprudence of the EPO and the national offices.

Finally, the Portuguese delegation is well aware of the timeliness and importance of this first phase of revision of the EPC, yet is equally sure that revision proper will take place on completion of the work whose results will form the subject-matter of the second phase of revision.

I conclude by hoping for the best possible outcome to the work of the Diplomatic Conference beginning today, which I am honoured to attend.

20. Statement by the Head of the Swiss delegation:

The Swiss delegation would like to join earlier speakers in thanking the European Patent Office for organising this conference. We all know how much work this kind of event involves. Thanks to the efforts and expertise of the Office, the Council Secretariat and the special Task Force, I am sure this Diplomatic Conference will achieve excellent results - provided of course that we, the member state delegations, make our own contribution over the next few days.

The major role of patent law in modern economies, and the ongoing globalisation of the patent system, make this revision project vital, and Switzerland can only

welcome any new initiative to improve the system for protecting inventions at European level.

Obviously, not every amendment proposed will suit all the member states, but we hope delegations will be open and constructive enough for this Conference to succeed.

Let me briefly mention the revision proposals which Switzerland regards as a priority:

First, the EPC as a whole needs to be trimmed where possible, to make it more accessible whilst maintaining legal certainty. We therefore support the proposed transfer of provisions governing certain procedural points to the Implementing Regulations.

For a clear, transparent and up-to-date text, a smoother adjustment mechanism is vital, and the one now proposed offers all the necessary safeguards, including one (proposed by Switzerland) enabling member states to inform their parliaments of changes planned. The need for national political endorsement (particularly when the EPC is to be brought into line with other international texts) must not be overlooked, and national parliaments must be able to prevent the application (via the EPC) of international provisions to which they are opposed, without the country concerned having to leave the Convention.

As regards the patent law aspects of the Basic Proposal, the Swiss delegation reiterates its view that the EPC should contain two separate paragraphs protecting first and subsequent medical uses, in line with current practice.

Turning to equivalents and the issue of history estoppel, the Swiss delegation in principle supports the provisions in the Basic Proposal, which by providing much-

needed clarification should permit uniform application and interpretation at European level of the concepts involved.

Furthermore:

- For over a year, in the EPO's Committee on Patent Law and Administrative Council, Switzerland has been pointing out that Article 63 of the EU's draft Regulation on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, unlike Article 57 of the Brussels Convention, would prevent member states from acceding to existing and future conventions on jurisdiction and enforcement of judgments in specific legal fields.
- As mandated by the Paris Intergovernmental Conference, an EPO working party is now drafting an optional protocol on litigation over European patents, which would then be heard under an integrated judicial system with uniform rules of procedure and a common court.
- To ensure continued fruitful co-operation between the states interested in such a protocol, it is very important that EU member states pay special heed to this issue.
- They should therefore find a way to make sure that as and when the EU regulation takes over from the Brussels Convention it does not apply to the litigation protocol.

Last but not least, our delegation unreservedly supports the BEST project, which should improve EPO productivity substantially.

As the Conference proceeds, the Swiss delegation will be commenting in more detail on the points it considers essential.

The task confronting us over the next few days is considerable. But we are sure the past months of preparatory work will be rewarded, with all of us returning home in the knowledge of a job well done.

We wish the Conference President every success in his demanding role; with his in-depth knowledge of both patent law and the Organisation, we do not doubt for a moment that he will be equal to the challenge.

21. Statement by the Head of the Swedish delegation:

The European Patent Convention is now well established, though still in its prime. A quarter of a century has allowed the EPC to thrive and blossom beyond all expectations. The immense success of the European patent system proves the health and strength of the legal framework governing it.

The robust constitution of the EPC is particularly striking in the light of the remarkable developments which the world has faced since the 1970s. The political landscape has been dramatically reshaped. And information technology has pervaded all fields of activities in the western world.

Clearly the European patent system has not been unaffected by such events. In fact, it was the introduction of new technology tools that made it feasible effectively to "Bring Search and Examination Together" in EPO practice, and thus provided the starting point for the revision of the EPC.

Initially a routine item for the Committee on Patent Law, the BEST project gave rise to an avalanche of revision proposals. It became apparent that the EPC, however well-functioning, could be improved in various aspects.

The process accelerated. A strained timetable for the revision conference was set less than a year ago and a special Task Force, staffed by senior EPO legal experts, was formed.

We can now acknowledge the remarkable *tour de force* of that Task Force. Mr Schatz and his collaborators have piled up a set of revised Articles which is amazing, in terms of quality as well as quantity. On behalf of the Swedish delegation, I wish to express my sincere thanks for the exceptional work carried out by the Office.

These feelings of gratitude should, of course, be extended to the Committee on Patent Law, which has scrutinised virtually all of the proposals contained in the Basic Proposal.

This preparatory work provides a solid foundation for the Conference.

Nevertheless I have to express some concerns regarding the vast agenda.

Clearly most of the revision items have been thoroughly examined and could be promptly adopted. However, for some of the suggested amendments the situation is slightly different. In the preparatory discussions the Swedish delegation has called for a cautious approach with respect to the proposals regarding, *inter alia*, the procedure in Articles 33 and 35 for aligning the EPC with international conventions, and the proposals relating to the interpretation of Article 69 on the scope of protection, the limitation procedure (Articles 105a - 105c and Article 68) and the petition for review of decisions taken by the boards of appeal (Article 112a). Our feeling that such matters should be allowed further consideration have been confirmed by Swedish user groups. When consulted they have unanimously recommended the Swedish delegation to request a deferral of those topics till the "second basket" of the revision conference is dealt with. A document to that effect has now been formally tabled by this delegation.

Let me add in this context that Sweden will take a favourable position with regard to proposals for the postponement of decisions relating to the patentability of computer-related inventions as well as other matters pertaining to Article 52.

Furthermore, the Swedish delegation has submitted a document with drafting proposals for Articles 121 and 122. We hope that the Conference is willing to allot some time for discussions on how provisions for further processing and re-establishment of rights should best be drafted.

Having said this, let me assure you, Mr President, that this delegation is determined to invest all its efforts in helping to bring this Conference to a successful conclusion.

May I end by wishing you every success.

22. Statement by the Head of the Turkish delegation:

It is a great pleasure and a special honour for me to convey the best wishes of the Turkish Patent Institute (TPI) to all the honourable delegates present. As you know, Turkey became the twentieth member of the European Patent Organisation on 1 November. This Diplomatic Conference is the first activity which Turkey has taken part in since becoming a full member state.

I would like to give you a brief description of the historical relationship between the EPO and Turkey.

In 1973, Turkey took part in the Munich Diplomatic Conference which resulted in the signing of the EPC. Turkey did not sign the Convention at that time. The old Turkish legislation on granting patents was not compatible with the EPC. This was the main reason why it was not signed by Turkey at the end of the conference or soon after. When the new patent law entered into force in Turkey in 1995, this obstacle was removed. But there was still another problem to ratifying the EPC. That was the granting of patents for pharmaceutical inventions. These were not granted in Turkey until 1 January 1999.

The TPI started the necessary steps to becoming a full member of the EPO after that date. The EPC was ratified by Parliament on 27 January 2000 and the full text of the Convention was published on 12 July 2000 in the Turkish Official Journal. The deposition was made on 22 August 2000 by the Ministry of Foreign Affairs according to Articles 165 and 166 EPC.

As a result of these procedures Turkey became the 20th contracting state to the EPC on 1 November 2000.

Prior to this Diplomatic Conference to revise the EPC, Turkey had observer status in the Organisation. The TPI was invited to the 79th Administrative Council meeting in Dublin in February 2000. That was the first European Patent Organisation activity in which the TPI participated. The TPI also took part in the 14th meeting of the Committee on Patent Law from 3 to 7 July 2000 and the 81st meeting of the Administrative Council.

Once it was definitely known that Turkey would be the 20th member state, the TPI started comparing the Turkish law on patent protection with the EPC. The TPI set up a working group on the EPC which is responsible for all activities relating to the EPC and drafted EPC implementing regulations in Turkey to determine the options offered

by the EPC. It also organised a training programme with the EPO for the EPC Working Group which took place last month. Internal training activities have also been carried out. The TPI has offered to the EPO to organise a training seminar for patent attorneys and an International Conference on the EPC for the general IP public. We have agreed to hold the seminar on 12 and 13 January 2001 in Izmir, Turkey and the conference on 23 and 24 May 2001 in Istanbul. The conference will be a celebration of our joining the EPC. All EPO member states, extension states and observers are invited to the conference. It will be a great pleasure for us to see all the honourable representatives present in Turkey.

Mr President, honourable delegates, I am honoured to have been able to speak here on this occasion.

I wish you a successful conference.

23. Statement by the Head of the United Kingdom delegation:

Let me begin by thanking the EPO President and all his staff for the excellent and hard work they have put in to arrange this Conference and to ensure we have a well presented and worthwhile package to occupy us while we are here. The efforts of Mr Schatz and his team in preparing such a full and clear set of documents, and those of Mr Weiss and his team in making all the arrangements are key to our success, and we are very grateful. We are also grateful for the work of the Committee on Patent Law and its Chairman, Paul Laurent, for their hard work in bringing forward this package.

And success is what we must achieve. European industry needs a patent system which is relevant to business, is easy to use and does not carry unnecessary cost. The reform process to achieve this is underway and we think it is going well. It is true to say that the foresight of my French colleagues in involving ministers in a conference last year has been a crucial factor in bringing us together today. The recent conference in London was, if I may say so, a major success which has confirmed ministerial commitment to reform, and has moved us further along this path. The commitment, co-operation and flexibility of member states that we have enjoyed so far has made these achievements possible. My delegation looks forward

to this continuing this week and into the future. Industry is looking to us for results and we must not fail.

The days when intellectual property, patents and the activities of the EPO were only of interest to lawyers, professionals and technical people are now well and truly over.

As to the main body of the Basic Proposal, we believe it is sensible, necessary and will meet the objective of creating a business-relevant system. We have some concern that Article 69 goes beyond the current state of thinking and we have filed a proposal for changing the Basic Proposal. We will of course illuminate our thoughts in due course, and take a full part in constructive discussions throughout this week.

Public interest in what we do and in how we do it is high. As well as a host of technical and administrative reforms to be put in place this week there are a couple of questions we must take very seriously because of their wider economic impact and public and political profile.

Changing the regime for software patenting is a very important step. The effects of innovation and growth in this sector are not clear. The European Commission is consulting throughout the Community on needs, effects and possible solutions, and we look forward to a proposal for a European Directive in the near future when consultation is complete. We have a similar consultation underway in the UK. While we understand that the present Convention text is not clear enough and change is necessary to achieve legal certainty, we must act responsibly, transparently and accountably in full possession of the arguments and evidence necessary to make the right decision. But we recognise that industry and consumers cannot wait forever. Let me place a marker at this point that we are opposed to change at this Conference, but expect to return to the subject at a second session next year.

While I am speaking about a second session, public interest in genetic patenting and the patenting of biotechnological inventions remains high. The Administrative Council's decision to apply the European Directive through rule change was sensible

in that it ensured that practice at the EPO was quickly brought into line with that agreed by the ministers and parliaments of most of our member states. However, in order to ensure transparency and political accountability we believe that the Convention should be revisited as a matter of urgency, and not later than the second session of this Conference which, as I have said, should take place next year.

Work on a Community patent is going on in Brussels and we hope that sufficient progress will be made for amendments to the EPC to be made to ensure smooth interaction between the two systems and that these may be agreed at the next session.

24. Statement by the Head of the Belgian delegation:

The European Patent Convention (EPC) of 5 October 1973 entered into force on 7 October 1977, and has functioned without any major problems to date. So far, only its Article 63 has been amended (on 17 December 1991; entry into force: 4 July 1997). However, that relatively minor amendment clearly showed the unwieldy nature of the revision process pursuant to Article 172 EPC.

At its 69th meeting, in December 1997, the Administrative Council of the European Patent Organisation called for an overhaul of the entire EPC.

That revision project has to be seen in the context of the intergovernmental conference on the reform of the patent system in Europe, the European Commission's Green Paper on the Community patent and the patent system in Europe and the Administrative Council's decision to invite eight more countries to join the EPC (Bulgaria, Czech Republic, Estonia, Hungary, Poland, Romania, Slovakia and Slovenia).

In September 2000, the proposed revision was submitted to the Administrative Council, which decided to submit it to the present Diplomatic Conference. The original intention was to revise the EPC in a single operation, but on certain controversial topics - biotech and software patents, the grace period - no consensus yet exists, so these have been left for a "second basket". The impact of the

Community patent on the EPC must also be taken into account once sufficient progress has been made.

The Belgian government believes that the EPC, once revised, will be more readable and flexible, offer greater legal certainty, improve the EPO's functioning and integration into its international environment, provide better substantive conditions for patentability, and incorporate the outcome of the intergovernmental conferences.

Under the Basic Proposal, Articles 11(3) and 160(2) EPC would institutionalise service by national judges on the Enlarged Board of Appeal in order to harmonise European and national jurisprudence. Articles 22 and 112(a) would permit review by the Enlarged Board of board of appeal decisions taken following a criminal act or a serious procedural defect. Article 23(1) would fix an age limit of 65 years for board of appeal members. Articles 138 and 105a, 105b and 105c would provide for national and European procedures allowing patentees to limit the scope of their patents. And Article 69 and the protocol on its interpretation would establish the theory of equivalents in the EPC and thus avoid different approaches within Europe.

Harmonisation of equivalents is easily the most important point, for applicants and European unification alike, but standardised limitation proceedings and the proposed judicial review procedure are also major new elements. The age of board members is more an internal EPO issue, despite the possible consequences as regards the quality of decisions. For national judges to sit on the Enlarged Board would not be new; it merely institutionalises an existing possibility. Such involvement however will only make a difference in harmonisation terms if a real effort is made to ensure a balance of nationalities amongst the judges concerned. Belgium will be watching that attentively.

The Basic Proposal would also amend: Articles 16 and 17 and the Protocol on Centralisation, to put "BEST" (bringing examination and search together; they were hitherto regarded as distinct under the EPC) on a firm legal footing; Articles 33 and

35, to enable the Council (by unanimous decision subject to confirmation within one year) to bring the EPC's patentability provisions into line with international and Community law; Articles 37, 38, 42 and 50, to bring various financial provisions into line with international norms; Article 87(1) and (5), to facilitate mutual recognition of priority relating to applications filed with patent offices not subject to the TRIPs Agreement or the Paris Convention; and Articles 133 and 134, to include a "grandfather clause" for professional representatives from the member states and to reinforce the *epi*.

The most striking, if not revolutionary, aspect here is the power given to the Council to bring the EPC into line with international law. This is necessary because the existing revision mechanism is unwieldy, and because increasingly international legislation has an impact on patent law. It is underpinned by safeguards - such as unanimity - without which the Belgian government's agreement would never have been forthcoming. Belgium greatly regrets that the Basic Proposal does not amend Article 23 to enjoin the boards of appeal to look beyond the EPC to international law more generally, but we are gratified that the amendment to Article 87 should allow the more marginal issue of priority right recognition to be put on an easier footing in respect of applications filed with patent offices not subject to the Paris Convention or the TRIPs Agreement.

The Basic Proposal would: delete computer programs from the list of non-patentable subject-matter under Article 52; delete the reference to "publication" from Article 53(a), in line with the TRIPs Agreement, so as not to exclude from patentability those inventions whose mere publication would be contrary to *ordre public* or morality; delete Article 54(4), to make unpublished European applications part of the prior state irrespective of the states designated; and amend Article 54(5) to clarify the question of subsequent medical uses.

Belgium has always supported deletion of the words "programs for computers" from Article 52(2)(c), as requested by users at the hearing organised for the European Parliament by the Commission in Luxembourg in 1997 and by the Commission itself in 1999. However, we also note that the issue is now highly controversial, with the Commission requesting a moratorium at the London IGC in October 2000. In these circumstances we believe it best to maintain the *status quo* pending the Commission's further consultations. As regards subsequent medical uses, Belgium takes the view that the present system based on G 6/83 does not offer sufficient legal certainty in view of the doubts expressed, in both the literature and jurisprudence, as to whether the Enlarged Board's approach is in line with the actual text of Article 54(5) EPC. For us, it is also inconceivable for the scope of protection to extend beyond the content of the description - a position confirmed *mutatis mutandis* by Article 5.3 of Directive 98/44 on the legal protection of biotechnological inventions. The deletion of "publication" from Article 53(a), so as not to exclude from patentability those inventions whose mere publication would be contrary to *ordre public* or morality, derives from the TRIPs Agreement and has already been incorporated into Belgium's patent legislation by the law of 28 January 1997. Belgium therefore favours that amendment. Similarly, we welcome the widening of the prior art to include all patent applications as a liberalising and harmonising measure at European level.

The Basic Proposal would: amend Articles 121 and 122 ("further processing" and "re-establishment") to assist applicants who miss deadlines; amend Articles 51 and 126 to create a more systematic legal basis for fees; amend Article 79 so that all member states are designated at the outset, in line with current practice; delete Articles 159 to 163 and 167 containing transitional provisions.

To make the EPC more flexible, the Basic Proposal will trim various provisions down to their substance, and move the less important elements to the Implementing Regulations. This applies to Articles 61 (filing by unentitled person) 75 and 76 (place of filing), 77 (forwarding to EPO of applications filed with national offices), 78 (content

of application), 79 (designation), 80 (date of filing), 86 (European renewal fees), 88 (claiming priority), 90 and 91 (date of filing), 92 (drawing up the search report), 93 (publication of European patent application), 94, 95 and 96 (request for examination), 97 (refusal or grant), 98 (publication of specification), 99, 101 to 104 (opposition), 105 (intervention of the assumed infringer), 106 (appealable decisions), 107 and 108 (time limit and form of appeal), 110 (examination of appeals), 115 (observations by third parties), 117 (taking of evidence, forms of evidence), 119 (notification), 120 (time limits), 123 (amendments during proceedings), 124 (requests for information concerning national patent applications) 127 (Register of European Patents), 128 (file inspection), 129(a) (European Patent Bulletin), 130 (exchanges of information between offices), 135 to 137 and 140 (conversion of European applications into national ones) and 150 to 158 (international applications).

The Patent Law Treaty (PLT) signed at Geneva on 1 June 2000 dominates this entire section, as reflected in the efforts to facilitate resumption of the proceedings and, less overtly, in the transfer of a great deal of matter into the Implementing Regulations - an approach pioneered by the PLT. Normally, as a *quid pro quo*, Article 164 should be amended to specify clearly what is covered by those regulations and what is not, to ensure that substantive provisions remain in the EPC and to avoid any doubt about the lawfulness of Administrative Council decisions. Unfortunately, a proposal to that effect was removed by the Council in September 2000.

Some of the issues mentioned earlier (BEST, computer programs, speedy alignment with international texts) are on our agenda this week. In addition, new Article 149a would institutionalise in the EPC not only the optional protocols on language arrangements and litigation arising from the IGCs but also the actual IGCs themselves.

The bulk of the IGC programme is not about revising the EPC but rather relates to agreeing optional additional protocols. At most, the Paris IGC touched on a few

revision-related topics already under discussion. Institutionalising optional protocols and the IGCs in the EPC is at least partly symbolic. Such provisions are thus unsuitable in a legislative text.

However, by setting a revision timetable the Paris IGC forced things along. Given the challenges faced by the European Patent Organisation - new member states, adoption of the draft Regulation of 5 July 2000 on the Community patent, increasing competition from the USA and Japan, especially in high-tech areas - the "spirit of Paris" has put paid to complacency and triggered off major reforms. The London IGC in October 2000 continued this process.

To conclude, it would be unfair to criticise the November 2000 Diplomatic Conference for promising more than it can deliver. But it will not fundamentally change the system. And it is but the start of a process, not the end - witness the "second basket" already holding such topics as the grace period, the Community patent, and incorporation into the EPC of Directive 98/44 on biotech inventions. Nor must we underestimate the work involved in adjusting the Implementing Regulations in the light of the present Conference - a task which logically must precede the second basket.

25. Statement by the Head of the Danish delegation:

This is a major event in the development of the patent system in Europe. It is the first thorough revision of the EPC since it was established almost 30 years ago.

The importance of the European Patent Office can hardly be overestimated. It has meant a significant simplification and cost reduction for the patent granting procedure in Europe, and it has also meant patents of a very high standard. The EPC has made Europe one of the patent centres of the world.

Time has shown, however, that there is room for improvement. We therefore welcome this revision conference very warmly.

Some of the improvements which we find very desirable concern the possibility of making special agreements in order to find solutions to difficult issues such as how to reduce the cost of translating patents and how to improve patent litigation in Europe. We also welcome the formal introduction of the BEST system in the patent granting procedure as well as a number of other measures which will improve efficiency in the working of the Office and in the decision making procedure of the Organisation. Last, but certainly not least, we are pleased to note that this revision conference also has as one of its objectives how to pave the way for a number of Eastern European states to accede to the EPC.

We are, however, highly concerned about a few of the proposals in the Basic Proposal.

In particular the issue of patenting software is, in our opinion, not yet ripe for decision. We find it imperative not to take any decision until we know the outcome of the consultation process which has recently been launched by the European Commission. Our Government considers this issue to be of crucial importance for our assessment of the Basic Proposal as a whole.

Furthermore, we find that the proposal for central limitation of European patents, despite all its intrinsic qualities, needs to be studied in further detail before any decision can be taken. As this proposal is considered to imply transfer of sovereignty to the EPO, we also need some time to solve various constitutional problems.

Let me conclude, Mr President, by thanking everybody for the great efforts they have made in the preparation of the conference. Special thanks is due, of course, to President Kober and the Office which has produced resources on an almost super human level. But also the Chairman of the Council, the Secretariat and the delegations have worked hard in order to make sure that this conference will be a success.

26. Statement by the European Community representative:

I am pleased, as the representative of the European Commission, to be able to mark the status afforded to my delegation for the first time by congratulating Dr Grossenbacher on his election. Furthermore, I should like to thank the European

Patent Office for preparing and organising this Conference, and to give a particularly warm welcome to our Turkish colleagues.

I wish the President and all the other delegates to the Conference much success with the work that lies ahead.

We welcome the fact that the European patent system is to be modernised. We also support the endeavours to accelerate the procedure for granting European patents, as well as those to reduce costs.

The tasks facing the Conference include the creation of a new provision which will permit more rapid adaptation of the EPC to the body of EU law, the *acquis communautaire*.

Of particular interest to the Community are a number of other planned new provisions dealing with topical problems relating to Community policies.

The Community supports these efforts to bring about a comprehensive revision of the EPC. Our perspective, however, extends beyond the current discussions centring on the Basic Proposal.

As you know, in the spring of this year, on the occasion of two summit meetings, the heads of state and government of the European Union issued a mandate to set up the Community patent by the end of 2001.

Against this background, it is imperative that, once the present discussions are over, work on the next stage of the revision of the EPC should commence without delay, to ensure that the Convention can take full account of the forthcoming Community patent.

In this connection, I should like to remind delegates of the appeal issued by the London intergovernmental conference in October for the contracting states to take the necessary steps to enable the Community patent to be introduced on schedule.

In order to facilitate and accelerate work on this next stage, the Community is preparing concrete proposals. As progress is made in the negotiations, we intend to put forward our proposals on the future Community regulation.

Some people may think that it is too soon to start a round of negotiations dealing with the Community patent within the framework of the EPC.

Apart from the fact that the Community Regulation will enter into force on the 20th day after it is promulgated - with lasting consequences for many of the contracting parties to the Convention - I can in no way share this view. It is well known that the revision of conventions and treaties is a time-consuming process. We should therefore try to avoid facing national parliaments with a swift succession of legislative measures amending one and the same Convention. Taking account of the Community patent in the EPC at an early stage could reduce the procedural work involved for the individual national legislative bodies.

27. Statement by the Head of the Bulgarian delegation:

Allow me to express first of all our gratitude for the invitation to the Republic of Bulgaria to attend, as an observer, this high-level forum, the Diplomatic Conference on the Revision of the European Patent Convention.

We are convinced that the Conference will succeed and that the revised Convention will be able to function efficiently with an increasing number of contracting states.

Patents have always played an important role in the economic development of all countries. In this respect, the European Patent Office is successfully performing the tasks it was set up for, providing applicants worldwide with patents of the best quality which form a solid basis for investment and technical transfer.

The development and globalisation of the world markets require modernisation of the patent system with a view to rendering it more attractive to the users and to providing a strong patent with a broad geographical cover. We highly appreciate the efforts made by the European Patent Organisation to bring about such modernisation of the European patent system, which is one of the leading patent systems in the world. For the Republic of Bulgaria, a country in the process of building a modern market economy, the European patent system is a milestone along the road to economic development and prosperity. That is the very reason why Bulgaria is among the states that will accede to the EPC in 2002 and will modernise its national patent legislation on the basis of the revised Convention. That is also why we are happy to participate in this Conference, which will undoubtedly be very interesting and useful to us.

We thank you once again for the opportunity to attend, and hope that the Conference will be a great success.

28. Statement by the Head of the Czech delegation:

First of all, the Czech delegation wishes to thank you as Chairman of the Administrative Council of the European Patent Organisation for having invited the Czech Republic to participate in this Conference. It is an honour for us to take part in such an important Conference as an observer delegation. I am also pleased to take this opportunity of congratulating you on your presidency of the Conference. Furthermore, I would like to extend my sincere congratulations to the President of the European Patent Office, Dr Ingo Kober, and his excellent team for the clear and comprehensive preparatory documents.

The Czech Republic attaches great importance to the European patent system, which has been a considerable success and plays an important role throughout the world. We fully support the forthcoming improvement that will render this system still more efficient, cost-effective and tailored to the applicant's needs.

The Czech Republic is making every effort to accede to the European Patent Convention in accordance with the invitation of the EPO Administrative Council of 29 January 1999. We believe that membership of the Czech Republic in the European Patent Organisation will represent an important contribution to our integration into the European Union. It will also be a milestone in the history of the Czech Industrial Property Office.

At present we are taking appropriate measures to prepare for membership of the European Patent Organisation. We would like to thank the President of the European Patent Office for all the support and assistance given by the European Patent Office to our Office in the preparatory accession process. Co-operation between the EPO and the Czech Industrial Property Office has always taken place in a warm spirit and been carried out in good mutual understanding. We look forward to further future co-operation.

In conclusion, Mr President, let me express our belief that the deliberations of the Conference will be fruitful and the expectations of all participants will be met.

We wish the Conference every success.

29. Statement by the Head of the Estonian delegation:

Let me first congratulate you, Mr President, on behalf of the Estonian delegation on the occasion of your election to such a high post.

May I take this opportunity of telling you about the work done at the Estonian Patent Office since it was set up in March 1992. The Republic of Estonia joined WIPO in February 1994.

By 2000 a system of legal protection for industrial property was built up which meets the requirements of its users in Estonia as well as in other countries.

In addition, Estonia joined the World Trade Organisation (WTO) in November 1999.

On the basis of the TRIPs Agreement, the Patent Act was amended in 1998 and 1999. Following the recommendations of the European Commission, provisions were added establishing supplementary protection for medicinal and plant products and clarifying legal protection for biotechnological inventions.

On 6 April 2000, during the negotiations with the European Union, the chapter on company law (including legal protection for industrial property) was finalised.

The Group of Experts of the UN Economic Commission for Europe recently reviewed the legal protection of intellectual property in Estonia (as at 31 January 2000). It emphasised that the system in Estonia is in conformity with international agreements.

We hope to introduce electronic filing of patent applications in 2002 since the Act on Digital Signature has already been passed and will enter into force in 2001. Preparations for the transition to the use of ID cards have also been made.

The Republic of Estonia will join the Patent Law Treaty in 2002 and is ready to accede to the European Patent Convention on 1 July 2002.

The delegation of the Republic of Estonia hopes that the final documents of the Diplomatic Conference will clearly endorse the principle that filing and maintenance fees should be used in the member states exclusively for purposes related to

industrial property. This principle was expressed in the Report of the Industry Advisory Commission at the 35th General Assembly of WIPO.

The revised European Patent Convention must provide for the use of the national languages of all member states, thereby ensuring that they continue to flourish and consolidating, broadening and developing their areas of use.

We hope that the Diplomatic Conference will be fruitful and successful.

30. Statement by the Head of the delegation of the former Yugoslav Republic of Macedonia:

The period of time that has elapsed since the signing of the European Patent Convention and its entry into force can be considered long or short, depending on one's point of view. I will limit my remarks to the subject matter regulated by this Convention, that is the protection of inventions by patents. Patents are directly linked to technological development. We are witnessing extremely fast technological development, which is resulting in the appearance of new fields of technology. In these conditions a period of 20 or 30 years is very long. Many new technological solutions have emerged which need to be reflected in the European Patent Convention. The proposed changes to the Convention have thus been made necessary by the rapid pace of technological progress.

In 1997 the former Yugoslav Republic of Macedonia signed a Co-operation Agreement with the European Patent Organisation, which includes a clause governing the extension of European patents to its territory. The terms of the Convention thus apply to our country, too. That is the reason for our interest in actively participating in the process of revising the EPC.

We expect the discussion to be successful and the decisions taken to be acceptable to all and to cater for the new technological developments. In the revision process we should certainly take into consideration the legal framework and economic significance of patent protection.

I would like to take this opportunity of pointing out some key aspects of the successful co-operation between our Industrial Property Protection Office and the

EPO. Since our inclusion in the RIPP programme PHARE in 1996, co-operation between the two offices has constantly expanded. The Co-operation Agreement was certainly the most important aspect of this co-operation.

The EPO, as an institution with a long tradition and high reputation, has made a major contribution to the development of the Macedonian Office. It has helped by offering assistance with equipment, documentation, databases, training of staff, promotion of patent protection and organising of seminars for Office staff and others involved in industrial property protection, such as applicants, patent agents and judges.

A significant element in the activity of the Macedonian Office this year is the implementation of the project establishing a technology watch centre in Skopje. This project has been devised in co-operation with the Government of the Grand Duchy of Luxembourg and the EPO. The opening of the centre is expected to take place by the end of this year and we hope that the President of the EPO, Mr Ingo Kober, will be able to attend, too.

As a result of the constant readiness of the EPO to co-operate, we have started on a number of activities this year in connection with implementation of the Common Software, version Light 3, at the Macedonian Office. As a pilot project, it will show the possibilities of applying this software at the small offices. The project is expected to be completed by the end of year 2001 at the latest. We anticipate that the introduction of this software will increase the efficiency of our Office.

My country is participating in this Diplomatic Conference as an observer. However, we consider that this should only be for a transitional period. We see our future as a full member of an EPO which will include all European countries. The opening of the borders for goods and ideas clearly imposes the need for a unified system of patent protection. This is particularly important because a patent is an item of property with its own market value, like any other goods.

In conclusion, I would like to express our best wishes for the success of the Diplomatic Conference.

31. Statement by the Head of the Hungarian delegation:

It is a great honour for me, on behalf of the Hungarian Government, to address this Diplomatic Conference convened for the revision of the European Patent Convention.

It is our future which will be taking shape at this Conference. Hungary is one of those countries that have been invited by the Administrative Council to accede on condition that they accept the revised version of the EPC. It is for this reason that we have a clear and obvious interest in the outcome of the revision process. We regard our participation as observers in this Conference as an invaluable contribution to our preparations for membership of the European Patent Organisation.

Hungary has already brought its national patent law into line with the present version of the EPC to the fullest extent possible. In addition, our preparations for accession have resulted in a thoroughly modernised patent system, including the Hungarian Patent Office itself, capable of meeting, both in terms of personnel and technical infrastructure, the requirements of co-operation at European level. Nevertheless, the reform of the European patent system and, in particular, the revision of the EPC at this conference, will certainly require further adaptation of the Hungarian patent system.

We are ready and willing to cope with the ensuing challenge of double adaptation - first to the current version of the EPC and later on to the revised one - on the understanding that we can count on the assistance and co-operation of the European Patent Office and the existing contracting states.

We are particularly pleased to note that, by virtue of Article 7 of the Revision Act, Hungary can be one of those 15 states whose ratification of, or accession to, the revised text of the EPC will result in the entry into force of the revised Convention. It is certainly reassuring that, at least with regard to the revised EPC, prospective contracting states are placed on an equal footing with the present ones.

We also welcome the fact that it is not to the detriment of future contracting states that EPO decision-making is going to be made more efficient. We have always had

some concerns and reservations regarding the establishment of a close link between the prospect of our accession and the need to modernise EPO decision-making. We have a clear interest in maintaining fair treatment for all contracting states even after the enlargement of the Organisation. We believe that this fair treatment will be maintained by the adoption of the relevant provisions of the Basic Proposal.

We have noted with great interest that the Basic Proposal seeks to "streamline" the EPC by transferring a large number of provisions from the Convention to the Implementing Regulations. This will undoubtedly enhance flexibility and lead to wider responsibility for the Administrative Council. In addition, the increased importance of the Implementing Regulations, and, especially, the number of substantive provisions that will be included in those Regulations can also be expected to have an impact not only on the substantive aspects of our preparations for EPO membership but also on the timing of our accession. The sooner the new Implementing Regulations are adopted, the earlier Hungary can take the final steps necessary for its accession to the EPC.

We are aware that the revision of the EPC must be seen in a wider context. Our understanding of that wider context has, to a great extent, been facilitated by our participation in the IGCs held in Paris and London as well as in the Working Parties on Cost Reduction and Litigation. Nevertheless, at this stage, it would certainly be premature for Hungary to consider its accession to any future special agreement concluded by only some of the EPC contracting states.

Our accession to the EPC and our participation in its revision also form part of a wide-ranging process, namely, that of Hungary's European integration and eventual accession to the European Union. Membership of Hungary in the European Patent Organisation will represent an important contribution to furthering our country's integration into the European Union.

Let me conclude by expressing my firm conviction that, thanks to the tremendous efforts made by the Office and to the constructive spirit shown by the contracting states in the preparatory phase, this Conference has been very well prepared, is being held at an appropriate moment and will be a great success.

32. Statement by the Head of the Norwegian delegation:

First of all, the Norwegian delegation would like to thank the European Patent Office for inviting us to attend this Diplomatic Conference as observers. We would also like

to thank the Office for the excellent work carried out in preparing this Diplomatic Conference.

As you know, Mr President, Norway initially signed the European Patent Convention of 1973. The treaty has not yet entered into force by ratification in Norway, and consequently Norway has not yet joined the European Patent Organisation. According to the European Economic Agreement, Norway is obliged to harmonise its national law with European law and naturally it is of the utmost importance for Norway to harmonise its national law with European law in the field of patents too.

Thus, let me reiterate, Mr President, that we are very grateful for the invitation to attend and participate in this Diplomatic Conference as observers.

As we all are aware, the field of patents is constantly undergoing changes, and it is important for both legislators and the other parties involved to keep up with the changes in technology, business and the needs of the users of the patent system. The Norwegian delegation therefore appreciates this initiative to revise the European Patent Convention, and we look forward to seeing the results of this Conference.

The Norwegian delegation sincerely hopes that the outcome of the deliberations will be in the best interests of all the parties involved, and in the best interests of the patent system itself.

33. Statement by the Head of the Romanian delegation:

On behalf of the Romanian government I am greatly honoured to greet all the participants in the EPC revision conference.

The work of the Conference and its results will clearly represent a significant stage in the evolution of the European patent system and are likely to have a major impact on the Community patent. For Romania, this evolution is all the more significant because of the Organisation's invitation to my country to accede on or after 1 July 2002.

For about three years, as an observer, the Romanian delegation has been closely following progress in the drafting of amendments to the EPC, both in the Committee on Patent Law and on the Administrative Council.

Romania attended the two intergovernmental conferences in Paris in 1999 and London in 2000, drawing the necessary conclusions, political, legal and technical.

The Romanian delegation is pleased to announce that an act amending the existing law is currently before parliament. The aim of this act is wide-ranging revision comparable in scope with the current EPC revision process, taking account of major objectives of harmonisation with the EPC on the basis of the European biotechnology directive and the TRIPs provisions which were not yet included in Romanian patent law.

That means on the one hand that the new amended patent law will be fully compatible with the EPC and on the other hand that, as the law is currently before parliament, it will be possible to include significant aspects of the EPC as revised at the present conference. Thus it is hoped that the revised form of the law will contain all the main elements resulting from the revised EPC.

The Romanian office, as a governmental organisation, is resolved to do everything possible to complete all the legal preparations necessary for Romania to accede, bringing the amended law and an accession act into force before 1 July 2002, when the invitation to accede takes effect.

By 2002, the Romanian office will have finished the ongoing major extension and modernisation work on its headquarters, including its computer systems.

Thus 2002 will see the completion of all the conditions of a legal, technical and administrative nature for Romania's accession to the EPC, and the Romanian office with its considerable tradition and track record in the world of inventions will take its place among the European patent offices.

In concluding I wish to express the conviction of the Romanian delegation that the results achieved by this Conference will constitute a landmark in the development of the European patent system with a major impact on the international scene.

34. Statement by the *epi* representative:

The Institute of professional representatives before the European Patent Office - *epi* - welcomes the revision of the European Patent Convention. The Basic Proposal, to which the *epi* has contributed in its role as observer on the Administrative Council and on the Committee on Patent Law, meets most of the wishes of the profession. A modernised European patent law that can be implemented in a more flexible manner

will be of benefit to both applicants and their representatives. It will above all be able effectively to compete with patent laws in other parts of the world by enabling the patenting of new developments in science and industry. Significantly, the Convention now stipulates that patents can be obtained in all fields of technology. The *epi*, as the European body representing European patent attorneys both from industry and from the free profession pursuant to the Basic Proposal, is now firmly anchored in the European Patent Convention. It wishes the Conference every success.

35. Statement by the UNICE representative:

First of all, thank you for inviting UNICE to attend this Diplomatic Conference.

In the Basic Proposal, the Conference has before it a revision document which will not only bring about the necessary further organisational development of the European Patent Organisation, but also contains a number of provisions which respond directly to the wishes of users of the European patent system.

The preparation and adoption of the Basic Proposal by the Administrative Council, the Committee on Patent Law and the EPO Task Force is a remarkable achievement, particularly in view of the tight schedule within which they had to work.

Unfortunately, this tight schedule meant that some of the more important issues in the Basic Proposal were not discussed in detail with broader sections of the public and the user circles, or only at the last minute.

For example, considerable reservations were expressed about the proposed amendments to the Protocol on Interpretation of Article 69 EPC. UNICE shares these reservations.

Apart from this one exception, UNICE supports the Basic Proposal wholeheartedly and wishes the Conference every success.

36. Statement by the AIPPI representative:

AIPPI, the International Association for the Protection of Industrial Property, is over a hundred years old and has 8 000 members - businessmen, lawyers, academics and patent attorneys - in 64 countries.

The Association is interested in industrial property worldwide, but particularly in developments in the patent system in Europe. After all, the latter accounts for a sizeable amount of territory and more and more countries are now covered by European patents.

AIPPI took an active part in the 1973 Diplomatic Conference which adopted the European Patent Convention (EPC). Its long experience and highly representative membership gave it an authoritative voice on points of detail, and many of its suggestions were duly incorporated into the text of the EPC.

The European Patent Organisation has now decided to overhaul the EPC. This ambitious project not only revisits vital issues such as patentability and equivalents but also introduces completely new ideas such as centralised limitation or revocation proceedings, and powers for the Enlarged Board to review board of appeal decisions in certain circumstances.

Like many other non-governmental organisations, AIPPI notes that the revision text now before this Diplomatic Conference transfers many procedural provisions to the Implementing Regulations. In view of the importance of the topics concerned, if the Diplomatic Conference agrees to do that, then AIPPI would like to be able to make its views known when the text of the Implementing Regulations is being finalised.

In conclusion, I should like on behalf of AIPPI to thank the European Patent Organisation for inviting us to this Conference. You may rest assured, Mr President, that as in 1973 we shall be following the proceedings very closely and giving our views on the various points under discussion. We wish this Diplomatic Conference every success.

37. Statement by the EFPIA representative:

On behalf of EFPIA, I should like to thank the President for this opportunity to address this Conference.

EFPIA represents the European pharmaceutical industry, and we will be observing with considerable interest this ambitious programme of proposed revisions, many of which are, of course, of direct relevance to our industry.

I should like to mention just two of the revision proposals which are of particular interest to EFPIA.

Firstly, and not surprisingly, Articles 54(4) and (5). EFPIA strongly supports a firm legal basis for the second and subsequent medical uses of known substances. Furthermore, in view of the substantial contribution made to the art by the development of the first medical use of a known substance, EFPIA strongly supports the maintenance of a broad scope for claims directed to the first medical use. To this end, we support the wording of the so-called "Swiss" proposal which, we believe, meets these objectives.

The second point is the proposed revision to the Protocol on Article 69. In common with many other organisations, EFPIA believes that insufficient time has been made available for discussion of this far-reaching amendment, and that it is inappropriate to introduce this revision without an opportunity for consultation and consideration of the full implications of the proposal. EFPIA therefore strongly urges that this proposal be deferred until a later date.

38. Statement by the FEMIPi representative:

FEMIPi is the European Federation of Agents of Industry in Industrial Property. About 80% of the 1 500 people it represents are professional representatives before the EPO. It acts as the umbrella organisation for various national associations, the biggest of which (each with several hundred members) are in France, Germany and Switzerland.

FEMIPi took an active part in the 1973 Diplomatic Conference, and is delighted to be represented again now. Our particular concerns are:

- harmonisation of the EPC and national legislation
- ensuring sound and stable rules
- the problems of representation before the EPO.

FEMIPi welcomes the many amendments in the Basic Proposal which will promote harmonisation both organisationally - such as Article 4 (regular meetings of ministers), Article 11 (national judges on the boards of appeal), Article 33 (empowering the Administrative Council to bring the EPC into line with international agreements), and Article 149a (validity of individual agreements between the EPC contracting states) - and substantively - such as Article 52 (brought into line with the TRIPs Agreement), Article 69 and the protocol on its interpretation (scope of claims, equivalence, history estoppel), and Article 138 (amendment of claims in national proceedings).

FEMIPi notes with interest:

- amendments bringing the EPC into line with board of appeal case law (Article 52, computer programs now patentable; Article 54, second medical use patentable)
- initiatives such as Articles 105a-c (limitation or revocation procedure) and Article 112a (review by Enlarged Board of Appeal)
- the desire to make the EPC more flexible by moving numerous provisions to the Implementing Regulations, which can be amended by the Administrative Council without a revision conference. Here we see a danger of faster change, perhaps not always as well thought out as it might be.

We shall be drawing attention to the few instances where we believe that the provisions proposed - while for the most part entirely justified - should preferably stay in the body of the Convention.

FEMIPi also thinks it might be a good idea to hold special Council meetings to amend the Implementing Regulations, after consulting users.

Such meetings could be held in conjunction with the ministers' meetings introduced by the new Article 4(4).

An intermediate solution might be to identify certain provisions of the Implementing Regulations as amendable only at such special meetings.

FEMIPi notes that possible re-entry for representatives originally registered under the "grandfather clause" (Article 134(7)) has disappeared. We assume this provision was omitted by accident, see no valid reason for deleting it, and would like it restored.

We also note with great pleasure the new Article 134a(1)(d) placing European representatives on equal terms with certain foreign colleagues in some non-European proceedings.

Lastly, I wish to pay special tribute on behalf of FEMIPi to the late Dr Kurt Haertel, who did a remarkable job in preparing and directing the original and highly successful 1973 Diplomatic Conference.

I hope the Conference now opening will be equally successful. Certainly the preparatory work, in its detail and quality, augurs very well.

39. Statement by the FICPI representative:

Leaving aside the act revising Article 63 EPC and a few isolated decisions of the Administrative Council, we have had to wait almost 30 years from the date of signing of the Munich Convention for a proposal to make a range of far more substantial amendments. That is evidence that the provisions of the Munich Convention were both well designed and well formulated.

Nevertheless, like the Paris Convention, bolstered in the course of a century by the holding of eight diplomatic conferences, our Convention has now proved in need of more extensive revision, and FICPI would like to offer its full support for this initiative.

A number of amendments initially proved necessary in order to bring our Convention into line with various international treaties, in particular the Agreement on trade-related aspects of intellectual property rights (the TRIPs Agreement).

Others were also proposed to enhance the effectiveness of the European patent system, which in its lengthy existence to date has generally operated to the full satisfaction of its users.

Of course, these revisions could not be made without reference to other initiatives relating to the development of the patent system in Europe, such as the June 1999 intergovernmental conference or the draft Regulation on the Community Patent proposed by the European Commission on 1 August 2000.

Thus moves are afoot to provide industry and inventors with a whole armoury of protection options from which they can choose freely to suit their particular needs.

40. Statement by the UNION representative:

First of all, UNION congratulates the Administrative Council of the European Patent Organisation on its initiative to convene a conference of the contracting states for the first revision of the European Patent Convention.

UNION agrees with the position taken by the Administrative Council that it is necessary to undertake a comprehensive review of the 1973 European Patent Convention in the light of technical and legal developments over the many years of practical experience and also in the light of the TRIPs Agreement, the future Community patent and the provisions of the forthcoming Patent Law Treaty.

Many of the needs and suggestions put forward by users have been satisfied by the proposed amendments, which should result in the smooth, efficient and transparent conduct of all proceedings before the EPO. However, it is necessary not to put existing quality standards at risk.

UNION also agrees with the guiding principle behind the revision, ie to transfer many procedural details from the Convention to the Implementing Regulations in order to provide for quick and effective adaptation of European patent law to new requirements in the future.

However, UNION wishes to propose some amendments and additions to the Basic Proposal in order to enhance the practicality of the EPC and avoid the risk of conflict which may arise in view of new Article 149a EPC.

Article 52(2), enumerating inventions which may not be regarded as inventions within the meaning of Article 52(1), should be transferred to the Implementing Regulations so that this list of non-patentable inventions can be adapted to new requirements in the future without the need for a new intergovernmental conference. UNION supports the deletion of old Article 54(4), the adaptation of Article 54(3) and Article 69(2) to accord with this deletion, and the adaptation of Article 67(1) to accord with amended Article 69(2), as proposed in document MR/6/00.

The proposed addition of a new Article 54(5) is acceptable since it makes it possible to obtain product protection in the case of a first medical indication limited to a specific use. However, UNION is of the opinion that a further clarification of this Article is necessary in order to make it possible to obtain product protection for a second and further medical indication too, limited in each case to the specific uses disclosed in the application.

Alternatively, this Article should be supplemented so as to clarify how it is possible to obtain such protection.

UNION also supports the proposed transfer of a major part of Article 77 to the Implementing Regulations. However, it should be clearly indicated in the Implementing Regulations what is meant by "in due time" in new Article 77(3). The penalty - loss of rights - hits the applicant if the central industrial property office or any other competent authority in a contracting state does not forward the application, or forwards it too late, to the European Patent Office. Thus, the applicant should be entitled to *restitutio in integrum* should such a mistake be made by the office or authority concerned.

UNION is strongly against the proposed new Article 149a(2) and the idea of appointing members of the boards of appeal or the Enlarged Board of Appeal to

serve on a European patent court or a common entity and to take part in proceedings before that court or entity. Such a scheme would imply that such members could serve both at first instance (ie the boards of appeal) and at a higher instance (ie a European Patent Court or similar entity). Such a system is against the traditions in most of the contracting states. The parties to litigation concerning a granted patent must have the right to an independent judgment by judges who are unbiased by the traditions of the boards of appeal or the Enlarged Board of Appeal and who thus have not been and could not have been involved in the grant procedure.

41. GREENPEACE deputation:

Following the opening statements by the Conference participants and with the agreement of all the delegations, the Conference President gave the floor to two representatives of the environmental organisation Greenpeace, allowing them to make a written and verbal statement to the Conference. In the opinion, Greenpeace expressed its concern about European Patent Office practice in the field of patenting of biotechnology inventions. Greenpeace called on the Conference to discuss the patentability of biotechnology inventions and to amend the Conference agenda accordingly.

The Conference President thanked the Greenpeace deputation for its contribution and repeated that this subject was not on the agenda for the Conference in view of the political and legislative lead taken by the European Union in this area. Since none of the delegations wished to comment on the statement made by the Greenpeace deputation, the Conference President asked the Greenpeace representatives to leave the conference room and closed the agenda item "Opening statements".

VII. CONSIDERATION OF THE REPORT OF THE CREDENTIALS COMMITTEE

42. The Chairman of the Credentials Committee informed the Conference by means of MR/19/00 that, after detailed examination, the Committee had come to the conclusion that the credentials and full powers of all Ordinary Member Delegations had been presented in due and adequate form. The Committee therefore recommended that the Member Delegations' credentials be accepted.

43. The Conference President thanked the Committee for its work and the Chairman for his report.
44. The Conference recognised the credentials and full powers of all Ordinary Member Delegations as valid.

VIII. CONSIDERATION OF THE DOCUMENTS SUBMITTED TO THE CONFERENCE
(MR/2/00 + Info 5/MR 2000, MR/3/00, MR/4/00 and MR/6/00 to MR/12/00)

45. The Conference President set out the procedure he intended to follow for discussion. Every provision included in the Basic Proposal would be brought up for discussion. Articles for which there were no proposed amendments or where agreement could be quickly reached on any motions for amendment were to be adopted in a first round of discussions. A detailed consideration of outstanding matters was to be left for a second round.
46. The Conference President then called out the following provisions for discussion in the order in which they were mentioned in the Basic Proposal:

ARTICLES 4 AND 4a: CONFERENCE OF MINISTERS OF THE CONTRACTING STATES

47. The Belgian delegation reaffirmed that it was still against a fixed timeframe for the meeting of the conference of ministers.
48. The AIPPI representative objected that Article 4 was headed "European Patent Organisation", yet the conference of ministers was not an organ of the European Patent Organisation. Article 4(4) of the proposed version should therefore be incorporated in the revised Convention as a new Article 4a headed "Conference of ministers of the Contracting States".
49. The Secretariat and the Hellenic and Portuguese delegations seconded this proposal.
50. Articles 4 and 4a were unanimously adopted by the Conference in the wording of MR/PLD 2/00.

ARTICLE 11: APPOINTMENT OF SENIOR EMPLOYEES

51. The Belgian delegation referred to its opening statement and once again asked participants to bear in mind that the proposed judicial system could function only if a

balanced system of proportional national representation were adhered to when appointments were made to the office of judge. The Belgian delegation would keep a close eye on this in the Administrative Council.

52. The Portuguese delegation lent its active support to this view.
53. The Conference unanimously adopted Article 11 in the wording of the Basic Proposal.

ARTICLE 14: LANGUAGES OF THE EUROPEAN PATENT OFFICE, EUROPEAN PATENT APPLICATIONS AND OTHER DOCUMENTS

54. The French delegation explained the amendment proposed by it in MR/8/00, stating that the regulations governing the European Patent Office languages of publication were of such fundamental importance that they should remain in the Convention.
55. The German, Swedish and Monegasque delegations seconded this proposal.
56. The Secretariat said it understood the reasons behind the French delegation's proposal, since it was a matter of fundamental political importance and particular relevance. The Secretariat was therefore prepared to lend its support to the proposal.
57. The Swiss delegation did not oppose the proposal but asked the delegations not to jeopardise the Conference's aim to make the Convention more flexible by questioning the transfer of all purely procedural provisions to the Implementing Regulations.
58. The Spanish delegation was still in favour of the Basic Proposal.
59. The Conference President noted that over two thirds of the Ordinary Member Delegations were in favour of the wording proposed in MR/8/00, so Article 14 had been adopted by the Conference in the wording of that document.

ARTICLE 16: RECEIVING SECTION

60. The Conference unanimously adopted Article 16 in the wording of the Basic Proposal.

ARTICLE 17: SEARCH DIVISIONS

61. The Conference unanimously adopted Article 17 in the wording of the Basic Proposal.

ARTICLE 18: EXAMINING DIVISIONS

62. The FEMIP representative inquired whether it would not make sense also to stipulate the examining division's competence for the examination of requests for limitation.
63. The Secretariat replied that this was not necessary since the question of competence was regulated in the Implementing Regulations.
64. The Conference President noted that the Conference had unanimously adopted Article 18 in the version of the Basic Proposal.

ARTICLE 21: BOARDS OF APPEAL

65. The Swedish delegation explained the proposal it had submitted in MR/10/00. It said it was expressing a general reservation about the introduction of a central limitation procedure since, if such a procedure were incorporated into the Convention, constitutional problems might arise over ratification by the Swedish parliament.
66. The Austrian delegation supported the Swedish delegation's position.
67. The Danish delegation also had misgivings of a constitutional nature and therefore shared the Swedish delegation's view.
68. Since the Conference had not agreed with the Swedish delegation's proposal concerning Article 105a-c (see point 255), on an inquiry from the Conference President the Swedish delegation said it did not wish to maintain its motion on Article 21, which was directly connected with the decision concerning Article 105a-c.
69. The Conference unanimously adopted Article 21 in the wording of the Basic Proposal.

ARTICLE 22: ENLARGED BOARD OF APPEAL

70. The Swedish delegation said its proposal (MR/10/00) on Article 22 had likewise been submitted for constitutional reasons. Since Article 22 refers to the new proceedings relating to petitions for the review of board of appeal decisions under Article 112a, a two-thirds' majority would be needed in the Swedish parliament for the adoption of the Revision Act if the Basic Proposal were to remain unchanged.

71. The Conference President noted that the Swedish delegation's proposal was not seconded by further Member Delegations.
72. The Conference adopted Article 22 in the wording of the Basic Proposal.

ARTICLE 23: INDEPENDENCE OF THE MEMBERS OF THE BOARDS

73. The Conference unanimously adopted Article 23 in the wording of the Basic Proposal.

ARTICLE 33: COMPETENCE OF THE ADMINISTRATIVE COUNCIL IN CERTAIN CASES

74. The Italian delegation (MR/7/00) and the Swedish delegation (MR/10/00) submitted proposed amendments to Article 33. Since the Swedish delegation was proposing that this provision should not be revised at all, the Conference President brought this proposal up for discussion first as the one that went further in substantive terms.
75. The Swedish delegation explained that it had doubts as to whether, at the moment, a majority of the Swedish parliament would be in favour of the Administrative Council's powers being extended. This proposed reform should be dealt with at a later conference. In the alternative the Swedish delegation moved that the Administrative Council's competence in respect of international treaties should be deleted from the Basic Proposal.
76. The Italian and Turkish delegations seconded the Swedish delegation's proposed amendment.
77. Since the Swedish delegation wished its proposed amendment to remain before the meeting despite the low level of support from the other delegations, on a suggestion from the Conference President each delegation in turn was asked to explain its position.
78. The Belgian delegation said it was in favour of Article 33(1)(b) also including international treaties that had repercussions for the EPC.
79. The Finnish delegation said it no longer had misgivings about the Article 33 revision mechanism and it supported the provision as worded in the Basic Proposal.

80. In view of the fact that there was not the required majority for an adjournment of this topic, the Swedish delegation said it would not be pursuing its main request. It drew attention instead to its alternative motion and called on the Conference to draft a version of Articles 33 and 35 that was acceptable to all the delegations.
81. The Italian delegation referred to its proposed amendment, which was along the lines of the Swedish delegation's alternative motion. It asked for the Basic Proposal to be revised to take account of the Swedish and Italian delegations' misgivings, suggesting that the Conference President act as mediator.
82. The French delegation said it understood the misgivings expressed but considered Article 33 to be a useful provision. An attempt could therefore be made to word the provision more clearly to eliminate fears that the Administrative Council could anticipate decisions by the national legislators. To prevent any misinterpretation of Article 33(1)(b), the French delegation proposed that a further paragraph with the following wording be incorporated into Article 33: "No decision of the Administrative Council can be taken: concerning an international treaty, before the entry into force of that treaty; concerning Community legislation, before the expiry of the time limit for implementation by the Member States of the European Union."
83. The Austrian delegation criticised the wording of Article 33(1)(b) inasmuch as the term "international treaty" was not defined precisely enough. It therefore seconded the Swedish delegation's proposal.
84. The German delegation stated that the safety mechanisms provided in Articles 33 and 35 were such that no contracting state had to fear being bound by Administrative Council decisions that conflicted with national interests. Germany wanted a procedure whereby any amendment to the EPC was approved by the Administrative Council only once the German legislator had transposed the international treaty or European Community Directive into national law. The Administrative Council's decision was a "subsequent implementation" of the national provisions at EPC level. These provisions offered a considerable time savings when adapting the law, since a timeframe of some five to seven years had to be allowed for national ratification of an EPC revision.

85. The Swiss delegation also emphasised that, in its present version, this draft of Articles 33 and 35 contained provisions that took account of any fundamental misgivings of a democratic nature. The Swiss delegation firmly opposed the view that this was a process "without due democratic control", since the proposed solution allowed *a posteriori* control by the legislative bodies and took due account of the legitimate interests of any contracting state. The term "international treaty" should not be specified in more detail in the Convention so as not to deprive the contracting states of all flexibility in this respect. Both an international treaty and European Community legislation would have to be encompassed by the provisions since both could be equally important for easier adaptation of the EPC. The delegation was sceptical about an EPC adaptation procedure where approval by the Administrative Council was followed by a statement in favour on the part of the national legislator, since confirmation by the parliaments was an unnecessary step. If the matter was put before the parliaments, there was the risk of additional administrative expense and time-consuming procedures which would wreck all attempts to achieve simplification.
86. The Netherlands delegation said it was in favour of the Basic Proposal for the same reasons as those submitted by the German and Swiss delegations. It referred again to the need for the Administrative Council decision to be unanimous and to the explanatory remarks on Article 35(3) which convincingly show that each contracting state had the right of veto.
87. The Irish, Danish, Spanish and Luxembourg delegations likewise said they were in favour of the Basic Proposal. The procedure outlined in Article 33 in conjunction with Article 35(3) provided adequate safety precautions enabling any contracting state to prevent adaptation of the EPC by its veto if this was the will of its national legislator.
88. The Belgian delegation warned against the possible consequences of interfering with the balanced solution of the Basic Proposal. The distinction between international law and Community law which formed the basis of the Swedish delegation's proposal was not convincing especially as, in the context of international treaties, a national ratification procedure always had to be positively completed for the treaty to become binding on the state in question. In the context of Community law, on the other hand, even the minority defeated in the voting procedure was obliged to transpose the legislation.
89. The Portuguese delegation considered the version proposed by the Swedish and Italian delegations to be unnecessary. The solution in the Basic Proposal was a

balanced compromise offering parliaments in the contracting states adequate guarantees and, at the same time, enabling the necessary simplification of proposed revisions to go ahead.

90. The EPO President stated that the reservations expressed by some delegations should be viewed with a certain amount of sympathy. He recommended the adoption of the Basic Proposal, however. He referred to recent accusations levelled against the European Patent Office by various interest groups that alleged in particular that Office practice did not accord with the legal provisions in force. The Office could find itself in a very difficult situation at any time if differences between the EPC and other legal systems, eg that of the European Union, could not be quickly reconciled. The codification of the proposed revision mechanism was therefore of extreme importance.
91. The Swiss delegation explained that implementation of the EU Biotechnology Directive by means of the Implementing Regulations was an example of how the additional safety measure proposed by the French delegation (see point 82) would not constitute an improvement. The time limit for transposition of the EU Biotechnology Directive had since expired, enabling the Administrative Council to implement it in the EPC. The legal fate of the Directive was not, however, finally clarified, which meant that the Administrative Council would still have to wait before making a decision. Waiting not only until the time limit for transposition had expired but until international or European regulations had been effectively transposed would, however, cancel out the time savings hoped for from the new provision.
92. The Belgian delegation said it understood the reasons for the French delegation's proposal but also pointed out that it might be desirable to transpose Community legislation even before the time limit for transposition had passed. A distinction had to be made between the transposition of Community legislation and the transfer of international treaties into national law. In the case of Community legislation the time between the publication an EU Directive and its entry into force was relatively short. The requirements for the entry into force of international agreements would, on the other hand, vary and generally not specify a fixed time. There were therefore no misgivings about specifying that international treaties must actually have entered into force. Where Community legislation was concerned, there was no apparent benefit in specifying this because the legislation entered into force quickly.

93. The French delegation replied that the future provision should take account of the misgivings of the national parliaments. The impression should not be given that the Administrative Council could bypass national sovereign rights and adopt EPC amendments to which the national legislator had not yet given its assent. The new wording of Article 33 should therefore also be construed as a political concession to parliaments' legitimate concerns to prevent the circumvention of parliamentary powers. The French delegation was keeping an open mind about how this matter could be embodied in the law.
94. The European Community representative pointed out the need to find a wording that encompassed both EU Directives and EU Regulations.
95. The Polish delegation endorsed the statements by the Belgian, Swiss and German delegations. Its view was based on the underlying independence of Administrative Council decision-making processes. Moreover, Article 35 specified unanimity, so contracting states' interests were adequately safeguarded.
96. The Hungarian delegation asked about the effects of the proposed Articles 33(1)(b) and 35(3) on the accession of new contracting states. It wondered in particular whether an acceding state could exercise the option set out in Article 35(3) if accession took place only after an Administrative Council decision to adapt the EPC to international or Community law.
97. The former EPO President and guest of honour at the Conference, Mr Braendli, drew attention to the extreme importance of these new provisions for the future of European patent law. Particular attention had to be paid to the wording of Article 33(1)(b) if its aim was to be achieved. He considered the German and French wording of the provision to be incorrect by comparison with the English version ("bring into line"). The first two versions gave the impression that the provision covered not only the Administrative Council's competence to adapt EPC provisions that were not in accord with provisions of international or Community law but also, as had happened in the case of the Biotechnology Directive, the possibility of spelling out provisions that were open to interpretation by adopting international or Community rules in the Implementing Regulations. This present possibility could be open to question in future if the proposed German and French versions remained.

98. The Secretariat replied that the system for the states acceding to the Convention would still be that of Article 33(1)(a). Moreover, every new contracting state assumed all the rights and duties of the Convention, so it could also take advantage of Article 35(3). From the background to the draft it was clear that other instruments for amending the EPC remained completely unaffected by the new provision. The new powers related to the amendment of provisions of the Convention itself. Their purpose was not to help interpret provisions by including appropriately specific rules in the Implementing Regulations.
99. The Conference President took the following procedural decision. The amendments proposed by the Swedish and Italian delegations had not found the required majority support. On the contrary, the overwhelming majority were in favour of the Basic Proposal. Owing to the particular importance this point appeared to have for the Italian and Swedish governments an attempt would be made to find a provision that would meet with all the delegations' approval. He therefore gave the delegations concerned the opportunity to submit proposed amendments to the Plenary for consideration.
100. The Belgian, Italian and French delegations then submitted a jointly proposed amendment as MR/PLD 4/00. The Italian delegation said it was withdrawing its previously proposed amendment (MR/7/00). The Swedish delegation stated that, in view of the low level of support for its motion for adjournment, it would not be pursuing this motion. It now supported the new proposal but reserved the right to place a declaration on record.
101. The French delegation introduced MR/PLD 4/00. The proposed amendment was a compromise solution that took account of some delegations' misgivings about the Basic Proposal. Two aspects had been highlighted. First, the phrase "relating to patents" had been incorporated in Article 33(1)(b) to specify the scope of application of the provision. Secondly, a paragraph had been added to regulate the conditions under which the Administrative Council could take a decision to adapt the EPC. Here a distinction was made between international treaties and European Community legislation. It was justifiable generally to specify that an international treaty should have entered into force without it having to have already become binding on all EPC contracting states, since a double system of safeguards should not be required. The states that had not ratified the international treaty would have the opportunity to oppose any Administrative Council decision under Article 35(3). The wording of the

provision relating to Community legislation was more complex, since a distinction had to be made between legislation that entered into force immediately and that for which there was a period allowed for implementation. The proposed provision ensured that the national legislators' decision concerning transposition into national law was not anticipated *de facto* by an Administrative Council decision. The proposal was balanced, since it took full account of the interests of national legislators and also gave the Administrative Council the competence to prepare a formal decision at an early stage.

102. The Belgian delegation added that the wording of Article 33(1)(b) did not deprive the Administrative Council of the competence to adapt the EPC to agreements that did not specifically relate to patents but had repercussions for the EPC.
103. The Swiss delegation supported the proposal and the Belgian delegation's statements. It asked the Conference to consider whether the repetition of the phrase "relating to patents" was not redundant and therefore to be avoided.
104. The Portuguese delegation approved the proposal but thought it would be more systematic to incorporate Article 35(3), last sentence, into Article 33. The delegation also proposed a clearer structure for Article 33(1).
105. The Hellenic and Luxembourg delegations supported the Portuguese delegation's position.
106. On an inquiry from the Hellenic delegation, the Belgian delegation stated that the purpose of Article 33(5), last half-sentence, was to cover cases where different time limits for implementation applied to the member states.
107. The German delegation said it was against amalgamating Article 35(3) and Article 33. The subject of Article 35(3) was a voting procedure, ie the reversal of a specific vote, whereas Article 33 regulated abstract issues surrounding the validity of a provision.
108. Mr Braendli commented on the French delegation's statement that an Administrative Council decision could be prepared before an international treaty or European legislation was legally binding. According to the draft the Administrative Council could not take an advance decision that became operative when the international agreement or European Community legislation entered into force. This meant that at times there would be a loophole in the European Patent Convention because there

would always be a delay in implementation. Wording such as "the Administrative Council cannot take a decision that becomes operative before the international treaty or the Community legislation enters into force" should be chosen for Article 33(5).

109. The French delegation replied that the terminology had been chosen because of the direct connection with Article 35(3), last sentence.
110. Several delegations stated that they supported the proposal as a compromise solution (DK, IE, AT, LU, ES, MC and NL). Doubts were, however, also expressed about the need for the provision in Article 33(5) (IE). Some delegations saw a problem in the fact that implementation of international or European legislation in the EPC would be considerably delayed by the numerous provisos in the proposed provisions (DK, NL and DE). Editorial amendments were also suggested (IE, AT, MC and LU).
111. The Swiss delegation recalled that the Basic Proposal had itself been a compromise, partly on the Irish and Swiss delegations' initiative, and took account of all the misgivings about a transfer of sovereign rights to the European Patent Organisation. The wording of the motion for amendment now introduced was so restrictive that the provision would be barely applicable in practice, if at all. The Swiss delegation could not therefore support a decision providing for self-restraint on the part of the Organisation to the extent proposed.
112. The European Community representative referred to the Community's great interest in the efficient implementation of its legislation relating to the European patent system. Although the amendment proposed made it more difficult for the EPC to be quickly adapted to Community law, he nevertheless welcomed the solution found as a workable compromise whose effect on the development of Community legislation gave no cause for concern.
113. The Conference adopted Article 33 in the wording of MR/PLD 4/00 with one vote against (CH).

ARTICLE 35: VOTING RULES

114. On an inquiry from the Conference President the Swedish and Italian delegations said they were withdrawing their proposed amendments.
115. The Conference unanimously adopted Article 35 in the wording of the Basic Proposal.

ARTICLE 37: BUDGETARY FUNDING

116. The German delegation introduced the amendment it had proposed in MR/14/00.
117. The Conference President noted that this proposed amendment was not seconded by any other delegation.
118. The German delegation then made the following statement for the record:

"The German delegation has said it is against the provision in Article 37(e) of the draft Revision Act which accords the European Patent Organisation the independent right to borrow. Incorporating the possibility of an international organisation borrowing independently and without obtaining authorisation in each case from its member states conflicts with the Federal Republic of Germany's position as held in other international organisations. Unfortunately the German motion to delete this possibility from the draft did not find the support of the necessary majority. The German delegation does not, however, wish to refuse to approve the Revision Act as a whole solely for this reason. Any approval by the German delegation of the Revision Act generally must not, however, be construed as meaning that it no longer has such misgivings. On the contrary, it specifically draws attention to the fact that it will in future uphold its view on the question of borrowing by international organisations."

119. The Conference President noted that the Conference had adopted Article 37 in the wording of the Basic Proposal.

ARTICLE 38: THE ORGANISATION'S OWN RESOURCES

120. The Conference unanimously adopted Article 38 in the wording of the Basic Proposal.

ARTICLE 42: BUDGET

121. The Conference unanimously adopted Article 42 in the wording of the Basic Proposal.

ARTICLE 50: FINANCIAL REGULATIONS

122. The Conference unanimously adopted Article 50 in the wording of the Basic Proposal.

ARTICLE 51: FEES

123. The Conference unanimously adopted Article 51 in the wording of the Basic Proposal.

ARTICLE 52: PATENTABLE INVENTIONS

124. The French, Danish and German delegations introduced the amendments they had proposed in MR/8/00, MR/15/00 and MR/16/00. The object of all these was to leave Article 52(2) as it stood, particularly so as not to anticipate the possible regulation of patent protection for computer programs by EU legislation. This issue should therefore be discussed at a follow-up conference.
125. This proposal was seconded by the Finnish, Monegasque, Swedish, Irish, Italian, Belgian, Spanish, Luxembourg, Cyprus, United Kingdom and Portuguese delegations.
126. The Netherlands delegation said it was essentially in favour of deleting programs for computers from Article 52(2)(c) as in the Basic Proposal, since the provision had become obsolete as a result of legal practice. In the light of future regulation by EU legislation, the delegation could, however, support an adjournment. It suggested that the Conference should explain the reasons for amending the Basic Proposal in a statement and place on record the fact that the decision not to delete programs for computers from the list of exceptions during this revision of the EPC did not indicate a departure from current practice. The Italian and Luxembourg delegations expressly endorsed this petition.
127. The Austrian delegation considered the deletion of programs for computers from Article 52(2)(c) to constitute not only an adaptation of the EPC to established European Patent Office practice but also a desirable clarification of the legal position for the benefit of users of the European patent system. In view of the current discussion about possibilities for patenting software-related inventions it could, however, make sense to leave the proposal until a follow-up conference. In the event of a vote the Austrian delegation would therefore abstain.
128. The Swiss delegation said it was still in favour of the Basic Proposal and referred to the Paris intergovernmental conference mandate that the existing legal uncertainty regarding the patentability of inventions involving software be eliminated. Deleting programs for computers from Article 52(2) did not mean a substantive change in the legal position, since the patenting of computer programs was a reality in any case. The Swiss delegation conceded that the ultimate consequences of a deletion could

not be fully predicted. It should be borne in mind, however, that keeping the existing provision might be misconstrued as a sign of a more restrictive practice on the part of the EPO and the courts. This would not only mean a sudden change in the prevailing concept of "technical invention" but would also have economic repercussions for the European software industry.

129. The Liechtenstein delegation shared the Swiss delegation's view and announced that in the event of a vote it would also abstain.
130. The Turkish delegation also said that in the event of a vote it would abstain.
131. The French delegation replied that opinion on this matter had changed since the Paris intergovernmental conference. This was not related to any *acquis communautaire*, however. No such text had been presented, so it was not correct to say that opinion had changed because of a new *acquis*.
132. The German delegation pointed out that, also in its view, leaving Article 52(2)(c) in its present wording must clearly not lead to a change in EPO patenting practice or in the decisions made by the national courts. Like the French delegation, the German delegation emphasised that the law was remaining the same not because previous practice was to be abandoned but to enable further consideration to be given to ways of better formulating patenting practice in a Community context.
133. The representatives of the non-governmental organisations expressed their communal disappointment over the Conference's intention to continue regarding programs for computers as unpatentable inventions in the EPC (*epi*, UNICE, FICPI, AIPPI, CNIPA, UNION, FEMIP and ICC). Owing to the clear requirement for a patentable invention to have a technical character the list of exceptions in Article 52(2) was not necessary for the purpose of examining patentability (FICPI, CNIPA). In the interests of European industry it was not desirable for the proposal to be left until a later conference (*epi*, UNION, AIPPI, ICC). Some called on the Conference to make a statement that the legality of patenting computer programs with a technical connection was not in doubt if Article 52(2)(c) were retained (UNICE, FEMIP, CNIPA). The Basic Proposal was in conformity with the TRIPs Agreement; patent

protection and copyright protection could co-exist (AIPPI). Patent protection was not being sought for business methods as such but only for technical methods for implementing them (UNICE, CNIPA).

134. Summing up, the Conference President noted that no formal vote could be held on the Basic Proposal for Article 52(2). Article 52 was adopted by the Conference in the version of the Basic Proposal with the German, Danish and French delegations' amended proposal on Article 52(2).

ARTICLE 53: EXCEPTIONS TO PATENTABILITY

135. The Conference unanimously adopted Article 53 in the wording of the Basic Proposal.

ARTICLE 54: NOVELTY

136. The Secretariat explained the purely editorial adjustments to Article 54(3) as proposed in MR/6/00.
137. The Conference President noted that, as there were no objections to this proposed amendment, it had been unanimously adopted by the Conference.
138. The Hellenic delegation introduced the amendment it had proposed as MR/9/00 Corr. 1. The proposal was seconded by the Belgian delegation.
139. The Swiss delegation said it was against any amendment to the wording of Article 54(4) and (5) as contained in the Basic Proposal. The present wording of Article 54(5) should remain unchanged in respect of what was known as the first medical use; as regards the second or further medical uses, the case law evolved by the EPO Enlarged Board of Appeal should be enshrined in the Convention. For the sake of transparency and legal certainty the aim of the Basic Proposal was to keep the legal status quo for medical uses. In this respect MR/18/00 contained only explanatory remarks on the Basic Proposal that had not been incorporated into it. The proposed reform satisfied the demand users had long been making for the existing loophole in respect of the patenting of the second and further medical uses to be closed. The Basic Proposal met this demand without extending protection beyond the legal status quo.
140. On a suggestion from the Swiss delegation the Conference President first gave the floor to the non-governmental organisations' representatives, who said they were in

favour of the solution in the Basic Proposal and largely endorsed the Swiss delegation's statements (*epi*, UNICE, EFPIA, AIPPI, FICPI, UNION, FEMIP, CNIPA and ICC). The proposal represented a balanced solution for the first and further medical uses and promoted legal certainty and harmonisation of the law for the benefit of users.

141. The Secretariat explained that both the Basic Proposal and the Hellenic delegation's proposed amendment served to create greater legal certainty in relation to the patentability of further medical uses. The only difference between the two proposals was that the Basic Proposal provided for a restricted protection in Article 54(5) whereas this was not the case for the first medical use in Article 54(4). As a result, by an *argumentum e contrario* the courts could assume that a "broad medical preparation claim" should be granted for the first medical use irrespective of the actual disclosure. The Hellenic delegation's proposed amendment made it clear that the provision related only to novelty and that the question of the breadth of protection should not be prejudiced by the wording of a law which at least admitted an *argumentum e contrario* of this kind. The definition of the admissible breadth of claims for medical uses had to remain a matter for the future development of the law on the basis of practice at the EPO and in the courts.
142. In the subsequent debate some delegations, essentially supporting the arguments put forward by the Hellenic delegation and the Secretariat and also with a view to systematising the law, said they were in favour of the proposed amendment in MR/9/00 Corr. 1 (AT, CY, DE, BE, NL, DK and ES). The German delegation pointed out that Article 54 was concerned with the legal concept of novelty, which was defined in the Article. Therefore, in the German view, the proposed special provision governing medical uses in Article 54 should also be confined to the aspect of novelty. A direct or indirect definition of the resultant scope of substance protection did not seem appropriate. The scope of substance protection had to be governed by the general principles of patent law. The majority of the delegations were still in favour of the provision in the Basic Proposal (FR, CH, IT, SE, GB, MC, LI, IE, FI, TR and LU). The aim of the reform was to codify current legal practice, which treated inventions of first and further uses differently in terms of the scope of grantable claims. According to the first and each further medical use the same status in terms of novelty did not

necessarily have an effect on the breadth of the claims for the first medical use. Only the Basic Proposal therefore provided a solution that fully achieved the aim of codifying current legal practice.

143. Summing up, the Conference President stated that, as the Hellenic delegation's proposal had not obtained the necessary majority, Article 54 had been adopted by the Conference in the wording of the Basic Proposal with the editorial amendment in MR/6/00.

ARTICLE 60: RIGHT TO A EUROPEAN PATENT

144. The Secretariat explained the editorial amendment proposed in MR/6/00. The proposed amendment was seconded by the German and Swiss delegations.

145. The Conference unanimously adopted Article 60 in the wording of MR/6/00.

ARTICLE 61: EUROPEAN PATENT APPLICATIONS FILED BY NON-ENTITLED PERSONS

146. The Conference unanimously adopted Article 61 in the wording of the Basic Proposal.

ARTICLE 65: TRANSLATION OF THE EUROPEAN PATENT

147. The Conference unanimously adopted Article 65 in the wording of the Basic Proposal.

ARTICLE 67: RIGHTS CONFERRED BY A EUROPEAN PATENT APPLICATION AFTER PUBLICATION

148. The Secretariat explained the editorial amendment proposed in MR/6/00, which was seconded by the Portuguese and Monegasque delegations.

149. The Conference unanimously adopted Article 67 in the wording of MR/6/00.

ARTICLE 68: EFFECT OF REVOCATION OR LIMITATION OF THE EUROPEAN PATENT

150. On an inquiry from the Conference President the Swedish delegation said it did not wish its proposed amendment presented in MR/10/00 to remain before the meeting.

151. The FEMIP representative asked whether the proposal had been drafted clearly enough in respect of the effect of revocation decisions by the national courts. The Secretariat replied that the *ab initio* effect applied to every decision, irrespective of whether it was declared in the form of a revocation in the European opposition proceedings, as a limitation in the central limitation proceedings or by a judgment in national revocation proceedings. This legislative intent was clearly expressed by the Basic Proposal.

152. The Conference unanimously adopted Article 68 in the wording of the Basic Proposal.

ARTICLE 69: EXTENT OF PROTECTION

153. The Swedish delegation withdrew the amendment it had proposed in MR/10/00.

154. The Conference unanimously adopted Article 69 in the wording of the Basic Proposal.

PROTOCOL ON THE INTERPRETATION OF ARTICLE 69

155. The Conference President said that the two amendments proposed by the Swedish and United Kingdom delegations (MR/10/00, and MR/13/00 - main motion) were to be discussed first, since they advocated the deletion of the new provision. In substantive terms they therefore went further than the two proposed amendments from the French and German delegations (MR/8/00 and MR/17/00) and the United Kingdom delegation's alternative proposal (MR/13/00 - alternative motion), all of which advocated amending the proposed text.

156. The Swedish delegation introduced its motion for amendment, emphasising that it supported the United Kingdom delegation's arguments and conclusions in its own proposed amendment.

157. The United Kingdom delegation explained its proposal referred to as "A", which it considered the better option.

158. The representatives of most of the non-governmental organisations said they were in favour of adjourning discussion on this point to a later conference (*epi*, UNICE, EFPIA, FICPI and ICC), since no conclusive opinion had yet been formed within their organisations. Although the Basic Proposal contained positive approaches to a solution, it had to be discussed in even more detail owing to the complexity of the

problems, eg different schools of thought on the matter of equivalence. A reform of the Protocol must likewise not be allowed to jeopardise the useful development of national case law, which had already led to more clarity and greater harmonisation in the interpretation of patent claims. The AIPPI representative felt it would be difficult at present to achieve a consensus, particularly on the date of consideration, ie the time at which equivalence should be judged, and on the definition of equivalent means. He was nevertheless able to support the Basic Proposal, provided that the reference to the date of consideration was deleted from Article 2(1) of the Protocol. The FEMIPPI representative considered the Basic Proposal to be a step in the right direction that would not impede further development of the law. He therefore supported the Basic Proposal. The FICPI representatives suggested that the doctrine of equivalents should be duly mentioned in the Conference Proceedings if agreement on a legal provision could not be reached at the present time.

159. The Secretariat, replying to the opinions given, stated that the proposed rule was essentially based on the preliminary work for the PLT of 1991. The sole purpose of the rule was to satisfy user needs. It had met with broad approval in the Administrative Council, the Committee on Patent Law and SACEPO. It had also been discussed in detail at the Symposium of European Patent Judges without any misgivings having been expressed. If users felt the Basic Proposal went too far, the Office - which was not pursuing any interests of its own here - would not persist with a revision of the Protocol.
160. The Belgian delegation said it was in favour of the Basic Proposal. The present legal position might well allow more flexibility in national case law but there was also the risk of similar circumstances being very differently assessed. The *Epilady* case was a prime example of this. There was no point in waiting for proponents of the different hypotheses to agree on a single definition of the term "equivalent". As a legislator the Conference was in a different position from those who represented the interests of the user organisations and who were calling for discussion to be continued within their associations.
161. The Swiss delegation also considered it advisable to agree on a legal provision at the present time. It pointed out that the problems were by no means new and that harmonised case law had not yet been adequately achievable despite all the discussion. Hearings of the relevant associations in Switzerland had shown that controversial views persisted to some extent on, for example, the time at which equivalence should be judged. It was therefore right to agree rules now so that further progress could be achieved in harmonising legal practice with respect to "equivalents" and the importance of "prior statements". The Basic Proposal was

worded generally so there was no fear of excessively restrictive rules being introduced. The Basic Proposal was therefore unreservedly supported. Should a compromise begin to emerge on the basis of the amendments proposed by the German delegation for Article 2 of the Protocol and by the United Kingdom delegation in the alternative for Article 3, the Swiss delegation could support such an outcome to prevent a stalemate.

162. The German delegation welcomed the broadening of the Protocol as a desirable approach to harmonisation. The Basic Proposal, particularly in Article 2 of the Protocol, contained only indications as to what was meant by equivalents. However, the aim was not to achieve a definitive description or definition of this concept but to leave the national infringement courts enough latitude and to give them useful pointers for dealing with a complex issue of evaluation. This was also the direction taken by its own proposed amendment (MR/17/00). There was no support for an adjournment of this matter to a later conference.
163. The French delegation essentially approved the wording of the Basic Proposal but also drew attention to its suggested amendment in MR/8/00. It asked for at least general provisions to be incorporated in the Protocol at this point in time. The wording could then be hammered out at a follow-up conference.
164. The Danish delegation said the groups it had consulted had clearly signalled their desire for a more detailed examination and consideration of the issue. The United Kingdom delegation's arguments in support of its main motion were also convincing. Adjournment of the matter to a later conference was therefore appropriate.
165. The Austrian delegation said reaction from interested parties in Austria to the amendment of the Protocol had been very cautious. The main criticism was that the Basic Proposal had not been thought through. The time at which equivalence should be judged, the definition of equivalent means, which should not only be based on the result but also had to take account of the function, and "prior statements" all required more detailed discussion. More time was required for this, so adjournment of the decision to amend the Protocol was therefore advisable. At present the Austrian delegation could approve a provision as proposed in Article 2(1) of the Protocol, provided that reference to the time of the infringement was deleted.

166. Further delegations recognised the need for harmonisation of this point of law in Europe, but more extensive discussion was needed because of the importance of the issue for patent law. Articles 2 and 3 of the Protocol in the wording of the Basic Proposal should therefore be deleted, as proposed by the Swedish and United Kingdom delegations, and should be considered again at a later date (ES, NL, IE, FI and IT).
167. In the subsequent vote the amendments proposed by the Swedish delegation and by the United Kingdom delegation (main motion) to delete Articles 2 and 3 of the Protocol in the wording of the Basic Proposal did not achieve the necessary majority (in favour: DK, ES, FI, IE, IT, NL, AT, GB and SE (9); against: BE, CY, GR, DE, FR, LU, LI, MC, TR, PT and CH (11)).
168. The Conference then debated the wording of the individual provisions of the Protocol on the Interpretation of Article 69. The Conference President first noted that the French and German delegations had withdrawn their motions for amendment (MR/8/00 and MR/17/00) in their entirety, and that the United Kingdom delegation had withdrawn its motion for amendment concerning Article 2 of the Protocol, in favour of the joint motion by these three delegations (MR/PLD 6/00).
169. The German delegation introduced the proposed amendment for Article 2(1) of the Protocol. The main difference from the Basic Proposal was the absence of a conclusive definition of the term "equivalents". The time at which equivalence should be judged was likewise not stipulated, since the courts were to be given sufficient latitude to make an appropriate assessment of this on a case by case basis.
170. The Belgian delegation expressed its surprise that the Conference was again calling into question the Basic Proposal, which was the outcome of intensive discussion. The aim of revising the Protocol had to be to approximate the different legal positions on the question of equivalence in the contracting states. This was all the more important since the concept of "invention" was not clearly defined in European patent law and the majority of infringement offences involved equivalent means. The draft in MR/PLD 6/00 did not contain provisions to regulate either the definition of the concept of equivalence, or the question of the date of consideration, or the issue of "prior statements". The Belgian delegation was in favour of extensive provisions and therefore continued to support the wording of the Basic Proposal.
171. Several delegations said they approved the wording of Article 2(1) of the Protocol as in MR/PLD 6/00 (DK, SE, CH, PT, UNICE, AIPPI, CNIPA, FICPI and *epi*). Some delegations suggested replacing the term "element" by "means" (PT and CNIPA).

The United Kingdom delegation replied that the term "element" conformed to PLT terminology, that it was more appropriate in the context of chemical inventions, and that the word "means" was imprecise in that it could be construed as a plurality of elements.

172. The Conference adopted Article 2(1) of the Protocol on the Interpretation of Article 69 in the wording of MR/PLD 6/00 with 19 votes in favour and 1 against (BE). The amendment proposed by the Belgian delegation following the vote, namely that the mention "*tel que défini dans le règlement d'exécution*" ("as defined in the Implementing Regulations") be added to the end of Article 2(1), did not find the support needed to reopen the debate on this provision.
173. The United Kingdom delegation explained why the jointly proposed amendment provided for the deletion of Article 2(2) of the Protocol. The crucial factor was that it was not advisable to incorporate a statutory definition at present in view of the continuing discussion as to what was meant by an equivalent means amongst the parties concerned.
174. The Portuguese delegation opposed this view. Mention of equivalence in the new version of the Protocol introduced a new legal concept for determining the extent of protection conferred by European patents. It made no sense to incorporate a new concept into the Convention if it was not also defined. Article 2(2) of the Protocol should therefore be retained in the wording of the Basic Proposal but edited to conform to the revised wording of Article 2(1).
175. The UNICE and AIPPI representatives said they were in favour of the proposed amendment. The underlying principle of the relevance of equivalents in determining the extent of protection of a patent was adequately well documented by the new wording. A definition of the term "equivalent" should be given only once the opinion-forming process on this matter had led to a consensus. US patent law also managed without a detailed definition of "equivalents".
176. The Conference decided to delete Article 2(2) in accordance with the proposed amendment in MR/PLD 6/00 by 16 votes to 3 (BE, PT and CH) with one abstention (GR).
177. The Conference then considered Article 3 of the Protocol. The Danish delegation moved that it be deleted in its entirety. The United Kingdom delegation said it would withdraw its motion for the amendment of Article 3 (MR/13/00) if the Conference approved the deletion.
178. The Danish delegation's proposal was seconded by several delegations (AT, SE, FI, PT, NL, IT, ES, DE and UNICE). The Belgian and French delegations did not

endorse the motion. The French delegation gave as the reason for its position the fact that both "equivalents" and "prior statements" were an integral part of the Protocol. Both aspects should therefore be part of the new wording of the Protocol.

179. The Conference adopted the deletion of Article 3 of the Protocol from the Basic Proposal by 14 votes to 4 (BE, FR, GR and CH) with two abstentions (LU and MC).

ARTICLE 70: AUTHENTIC TEXT OF A EUROPEAN PATENT APPLICATION OR EUROPEAN PATENT

180. The Secretariat introduced the proposed amendment which was of an editorial nature.

181. The Conference unanimously adopted Article 70 in the wording proposed in MR/6/00.

ARTICLE 75: FILING OF A EUROPEAN PATENT APPLICATION

182. The Conference unanimously adopted Article 75 in the wording of the Basic Proposal.

ARTICLE 76: EUROPEAN DIVISIONAL APPLICATIONS

183. The Conference unanimously adopted Article 76 in the wording of the Basic Proposal.

ARTICLE 77: FORWARDING OF EUROPEAN PATENT APPLICATIONS

184. The Conference unanimously adopted Article 77 in the wording of the Basic Proposal.

ARTICLE 78: REQUIREMENTS OF A EUROPEAN PATENT APPLICATION

185. The Conference unanimously adopted Article 78 in the wording of the Basic Proposal.

ARTICLE 79: DESIGNATION OF CONTRACTING STATES

186. The FICPI representative objected that there were misgivings about the wording of Article 79(1) because of possible connections with Community patent law. The Secretariat replied that this provision regulated only the legal position of the classic European patent.

187. The Conference unanimously adopted Article 79 in the wording of the Basic Proposal.

ARTICLE 80: DATE OF FILING

188. The Conference unanimously adopted Article 80 in the wording of the Basic Proposal.

ARTICLE 86: RENEWAL FEES FOR A EUROPEAN PATENT APPLICATION

189. The Conference unanimously adopted Article 86 in the wording of the Basic Proposal.

ARTICLE 87: PRIORITY RIGHT

190. The Irish delegation introduced the amendment to Article 87(1) it had proposed in MR/12/00. The proposal was seconded by the Secretariat and the Austrian delegation.

191. The Irish delegation then introduced the amendment to Article 87(5) it had proposed in MR/12/00. This proposal was not seconded by any other delegation.

192. The Conference unanimously adopted Article 87 in the wording of the Basic Proposal with the amendment to the first paragraph as proposed by the Irish delegation.

ARTICLE 88: CLAIMING PRIORITY

193. The Conference unanimously adopted Article 88 in the wording of the Basic Proposal.

ARTICLE 90: EXAMINATION ON FILING AND EXAMINATION AS TO FORMAL REQUIREMENTS

194. The Conference unanimously adopted Article 90 in the wording of the Basic Proposal.

ARTICLE 91: EXAMINATION AS TO FORMAL REQUIREMENTS

195. The Conference unanimously adopted the deletion of Article 91 in accordance with the Basic Proposal.

ARTICLE 92: DRAWING UP THE EUROPEAN SEARCH REPORT

196. The Conference unanimously adopted Article 92 in the wording of the Basic Proposal.

ARTICLE 93: PUBLICATION OF THE EUROPEAN PATENT APPLICATION

197. The Conference unanimously adopted Article 93 in the wording of the Basic Proposal.

ARTICLE 94: EXAMINATION OF THE EUROPEAN PATENT APPLICATION

198. The Conference unanimously adopted Article 94 in the wording of the Basic Proposal.

ARTICLE 95: EXTENSION OF THE PERIOD WITHIN WHICH REQUESTS FOR EXAMINATION MAY BE FILED

199. The AIPPI representative expressed his organisation's misgivings about the fact that the deletion of Article 95 and the amendment of Article 94 gave the Administrative Council far-reaching powers to determine time limits in the examination procedure. This could have repercussions for the entire system and could even mean proceedings equivalent to a deferred examination being introduced. There was therefore particular criticism of the deletion of Article 95(4).

200. The Secretariat explained that the proposed amendment to the law was not intended to indicate new Office policy concerning the time limit applicable to the filing of a request for examination. As the explanatory remarks on the Basic Proposal clearly indicated, the amendment was designed to provide the Office with the flexibility to focus better on the needs of users.

201. The Conference unanimously adopted the deletion of Article 95 in accordance with the Basic Proposal.

ARTICLE 96: EXAMINATION OF THE EUROPEAN PATENT APPLICATION

202. The Conference unanimously adopted the deletion of Article 96 in accordance with the Basic Proposal.

ARTICLE 97: GRANT OR REFUSAL

203. The FEMIPPI representative said he was against the content of the present Article 97(2)(a) being moved to the Implementing Regulations.

204. The Secretariat replied that the consent requirement was designed to flesh out the principle that the parties concerned must have had an opportunity to present their comments. This was adequately reflected in Article 113.

205. The Conference unanimously adopted Article 97 in the wording of the Basic Proposal.

ARTICLE 98: PUBLICATION OF THE SPECIFICATION OF THE EUROPEAN PATENT

206. The Conference unanimously adopted Article 98 in the wording of the Basic Proposal.

ARTICLE 99: OPPOSITION

207. The French delegation introduced the amendment proposed by it in MR/8/00.

208. The proposal was seconded by the United Kingdom and Monegasque delegations. The Portuguese delegation likewise supported the proposed shortening of the period for opposition, since modern means of communication meant information could now be exchanged much more quickly than it could in 1973, the time the provision was drawn up.

209. The Secretariat said the Office was endeavouring to reduce the duration of proceedings as far as possible. At present, however, it saw no reason to shorten the period for opposition. A study had come to the conclusion that too short a period of opposition meant oppositions might be filed "by way of precaution". Participants were also referred to the proceedings provided for in Article 33(1)(a).

210. The Belgian delegation pointed out that a large majority of the Committee on Patent Law were in favour of retaining the present period for opposition. The Belgian delegation suggested that this matter be discussed in detail with industry and the patent profession and then be referred to the Administrative Council. The *epi* representative endorsed this view.

211. The Turkish and Finnish delegations, like several representatives of the observer organisations (UNICE, FICPI and CNIPA), said they were against shortening the period for opposition. In future it was actually likely to take longer to draw up a notice of opposition since the opponent would have to translate priority documents, for example. This would also lead to further discrimination against opponents in countries whose official language was not one of the EPO languages.

212. Summing up, the Conference President noted that there was no majority in favour of the French delegation's proposed amendment, whereupon the French delegation

withdrew its proposal. The Conference unanimously adopted Article 99 in the wording of the Basic Proposal.

ARTICLE 101: EXAMINATION OF THE OPPOSITION – REVOCATION OR MAINTENANCE OF THE EUROPEAN PATENT

213. The Conference unanimously adopted Article 101 in the wording of the Basic Proposal.

ARTICLE 102: REVOCATION OR MAINTENANCE OF THE EUROPEAN PATENT

214. The Conference unanimously adopted the deletion of Article 102 in accordance with the Basic Proposal.

ARTICLE 103: PUBLICATION OF A NEW SPECIFICATION OF THE EUROPEAN PATENT

215. The Conference unanimously adopted Article 103 in the wording of the Basic Proposal.

ARTICLE 104: COSTS

216. The Conference unanimously adopted Article 104 in the wording of the Basic Proposal.

ARTICLE 105: INTERVENTION OF THE ASSUMED INFRINGER

217. The Conference unanimously adopted Article 105 in the wording of the Basic Proposal.

ARTICLE 105a-c: REQUEST FOR LIMITATION OR REVOCATION - LIMITATION OR REVOCATION OF THE EUROPEAN PATENT - PUBLICATION OF THE AMENDED SPECIFICATION OF THE EUROPEAN PATENT

218. The Danish delegation introduced the amendment it had proposed in MR/15/00. The introduction of a central limitation procedure in the Basic Proposal meant the transfer of sovereign rights. Since this could lead to considerable constitutional problems with ratification of the Revision Act by the Danish legislator, the option of a reservation should be incorporated.

219. The Swedish delegation said the reason for the amendment it had proposed in MR/10/00 was also the possibility of constitutional problems with ratification by the

Swedish parliament. The subject also needed to be considered further in Sweden; these provisions should therefore be adjourned to a follow-up conference.

220. On a proposal from the Conference President the Conference first discussed the fundamental question of whether Article 105a-c should be deleted from the Basic Proposal or whether, if appropriate, the option of a reservation should be provided.
221. The Irish delegation endorsed the call for the question of a central limitation procedure to be adjourned to a "second basket", since constitutional aspects would also have to be discussed in more detail in Ireland.
222. The representatives of several non-governmental organisations said their associations were very interested in the possibility of a central limitation procedure for European patents (*epi*, UNICE, UNION, FEMIP, AIPPI and FICPI). Such a system had enormous practical importance, especially as there was no longer the possibility of an opposition on the part of the patent proprietor as a result of an Enlarged Board of Appeal decision. It was also hoped that the institution would have a harmonising effect on national legislation. The FEMIP representative suggested that legal aspects of fundamental importance for a limitation procedure should not be incorporated in the Implementing Regulations but in the Convention. The FICPI representative asked whether third parties should not be given the opportunity of becoming a party to the limitation procedure in the event of parallel infringement litigation. Lastly the UNION representative stated that a further point in favour of creating a voluntary limitation instrument was the fact that patent proprietors who did not have sufficient funds to defend their property rights in numerous national proceedings were often forced to grant competitors a licence free of charge to minimise the costs that might be incurred. For these reasons the central limitation procedure should now be introduced.
223. The German delegation welcomed the introduction of a central limitation procedure because lengthy proceedings before the European Patent Office or the national courts to correct the substance of patents which could have no validity could then be shortened or avoided completely. Germany's many years' experience with the limitation procedure had not led to any problems in proceedings before either the patent office or the courts.
224. The Austrian delegation said that its misgivings about the relationship between the European limitation procedure and national proceedings had been dispelled by the

wording of the Basic Proposal. The question arose, however, as to whether too high a political price was perhaps being paid for the introduction of the central limitation procedure in the EPC if two contracting states might then be forced to cease to be a party to the Convention because of constitutional problems.

225. The Swiss delegation drew attention to the detailed discussion of the limitation procedure in the expert bodies, the outcome of which was enshrined in the Basic Proposal. There could also be an advantage in a procedure whereby the patent proprietor and patent office were able to react immediately in the case of controversial patents in technologies that attracted a good deal of public interest. Since the constitutional problems alleged by the Swedish delegation were not definite but only "might" arise, as the explanatory remarks on its proposed amendment stated, the Swiss delegation was in favour of keeping the Basic Proposal.
226. The Belgian delegation endorsed the Swiss delegation's position.
227. The Swedish delegation replied that constitutional problems had been confirmed by the Swedish Ministry of Justice, so the adoption of this provision by the Conference might well mean that Sweden could no longer be a party to the EPC. A central limitation procedure was not rejected in principle, but an adjournment of the issue to the follow-up conference was requested.
228. The Secretariat remarked that the problems cited by some delegations were more of a political than a constitutional nature, since they concerned the question of the majority required for parliamentary assent. In view of recent debates about controversial European patents in the field of biotechnology and genetic engineering, patent proprietors also had to have a legal instrument whereby their patents could be limited by self-amendment.
229. The Netherlands delegation supported the introduction of a European limitation procedure. It did not entirely understand the problems of transferring sovereign rights in this context. In the first place, the central limitation procedure in no way affected possible national proceedings. In the second place, the European limitation procedure was carried out solely on the patent proprietor's initiative and not *ex officio*. The Office only examined whether the requirements for limitation were met.
230. The Danish delegation supported the Swedish position and disagreed with the view that this was a political and not a constitutional problem. The qualified majority was required by the Constitution. There was no doubt about the advantages of a central limitation procedure. Denmark would endeavour to refrain from making use of a reservation, but a fall-back position of this kind should be incorporated into the Basic Proposal as a precaution.

231. The United Kingdom delegation reminded the Conference that it had always supported the introduction of a central limitation procedure because it improved the European patent system and therefore served the interests of both industry and the patent profession. It did not seem helpful to postpone the matter to the "second basket" since it was unclear why assent could be given more easily in the member states concerned at a later date. The United Kingdom delegation would prefer to try now to find a compromise wording that could be supported by all the contracting states.
232. The Swedish delegation again drew attention to the fundamental nature of these problems. It shared the Danish delegation's view. In Sweden it was difficult at present to find public support for the transfer of further powers from national authorities to supranational organisations. If Article 105a-c were to be adopted in the wording of the Basic Proposal, a three-quarters' majority would be needed for adoption of the whole Revision Act by parliament. Since the revision of Articles 33 and 35 was the subject of vigorous debate in Sweden, certain political groups would be likely to use the qualified majority required on the basis of Articles 105a-c to stop the extension of powers under Article 33. An adjournment of the decision on the central limitation procedure was therefore desirable, otherwise Sweden would be at risk of having to leave the Organisation.
233. The German delegation re-emphasised the advantages of a limitation procedure to the parties. Some delegations had mentioned the constitutional problems that would arise when this provision was implemented by the national legislators. The German delegation objected, however, that it could not see how an adjournment of this issue would solve the problem. After all, an amendment to the constitutional requirements was not anticipated. These misgivings had to be taken very seriously, however. A situation must not be allowed to arise where a contracting state could escape only by leaving the Organisation. The incorporation of a reservation would be breaking a taboo for the EPC and should be considered only as a last resort.
234. The EPO President made it clear that he understood the Danish and Swedish delegations' political problems. The debate had nevertheless shown that the introduction of the central limitation procedure should be adopted. To take account of the particular problems that this appeared to pose for some contracting states they could be allowed the option of a reservation if the provisions would then be acceptable to all the contracting states.

235. Summing up, the Conference President said a new situation had arisen, in that several delegations had indicated their willingness exceptionally to approve the incorporation of a reservation. He proposed allowing the option of a reservation in respect of Article 105a-c in the Revision Act and read out his proposal for a new Article 6a with the following wording: "Each contracting state may at the time of signature or when depositing its instrument of ratification or accession of this act, reserve the right to provide that decisions of the European Patent Office taken in limitation proceedings under Articles 105a-c shall have no effect in respect of European patents granted for that state".
236. The Danish delegation seconded this proposal.
237. The French delegation said it was in favour of the solution in the Basic Proposal and against allowing reservations. Article 167 had been worded restrictively for good reason. To allow exceptions to this would destroy the whole EPC system, since the contracting states would then exert increasing political pressure to provide for options of a reservation if a particular provision could not be approved or unreservedly approved. The European patent system had diverse and complex repercussions for the national legal situation in any contracting state. The uniform effect of the Convention's provisions should not be impaired. For this reason the EPC stipulated the obvious consequence of a contracting state being unable to support a provision.
238. The Hellenic delegation endorsed the French delegation's view. To admit reservations would mark the end of the European patent system. It was willing to contemplate other concessions, but there should be absolutely no question of allowing reservations in the EPC. If it were really only a matter of time before the political and constitutional problems in the relevant states could be overcome, an extended ratification process could be considered, for example. At the moment it was not, however, clear where the constitutional problems lay. Since the proposed rules merely allowed patent proprietors to renounce part of their patent protection, they did not constitute a transfer of sovereign rights by the contracting states.
239. The Swiss delegation shared the Hellenic delegation's view.
240. The Irish delegation pointed out that possible constitutional problems in terms of an amendment to the Constitution in Ireland could not be overcome by a parliamentary decision but only by a national referendum. The "reservations solution" proposed by

the Conference President made sense. If the necessary majority was not found for this proposal, it would be better to refrain from inserting Article 105a-c at the moment. Otherwise contracting states might be forced to leave the European Patent Organisation.

241. The Portuguese delegation said it basically understood the constitutional problems submitted by Sweden and Denmark. The patent grant procedure was regulated by a supranational convention, the EPC, and this was supplemented by the contracting states' national legislation for the post-grant phase. The limitation of a granted European patent in proceedings before a supranational authority could therefore in principle be construed as a transfer of sovereign rights. The Portuguese delegation was, however, convinced of the appropriateness of a centralised limitation procedure. The option of a reservation that was limited in time, along the lines of Article 167, could be supported as a compromise solution. It would then have to be ensured, however, that this did not set a precedent for further centralisation plans.
242. Mr Braendli, speaking on the issue of creating the option of a reservation, admitted that the 1973 Conference had permitted reservations in Article 167. Strict limitations had, however, been set for this option, namely incompatibility with national provisions, a time limit, and the political instruction to the contracting states in Article 167(4).
243. The Swedish delegation welcomed the Conference President's "reservation" initiative as a very constructive effort that would make it easier for the delegations concerned to approve the Revision Act in these very exceptional circumstances. A time limit on the reservation along the lines of Article 167(3) was acceptable. The Swedish delegation explained once again that provisions that had an effect on the patent after the opposition phase presupposed the transfer of sovereign rights, and a three-quarters' majority was required for this in parliament.
244. The Belgian delegation said it was in favour of the limitation procedure, referring to the considerable interest in such an institution expressed by users and to the advantages of this procedure in the field of biotechnology inventions, for example. It could not see that the constitutional conflict in the contracting states concerned could be solved by postponing the decision. The option of a reservation was not a suitable instrument since it conflicted with the concept of centralisation on which the EPC was based. The Belgian delegation was likewise not completely in agreement with all the reforms in the Basic Proposal; it had, however, put its own interests aside and accepted the amendments. It would be difficult to tell the Belgian legislator that an exception was being made for some contracting states.

245. The Netherlands delegation said that without consulting its government it could not adopt a final position on the proposed option of a reservation. Its provisional position corresponded to that of the French delegation, that was to say, an option of a reservation would be like opening Pandora's box. It might mean the end of international co-operation in the territory covered by the EPC. Referring to serious misgivings about the patenting of biotechnology inventions in certain circles in the Netherlands, it asked the Conference to bear in mind that increasing pressure could be exerted on national governments to make use of reservations if this was made an option here.
246. The Danish delegation supported the Swedish delegation, adding that any possible option of a reservation should be construed merely as a precaution. Denmark supported a centralised limitation procedure in principle and would make every effort to refrain from using the option. A time limit on any reservation was acceptable.
247. The Finnish delegation said it was unreservedly in favour of the Basic Proposal. It shared the French delegation's misgivings about reservations.
248. The Italian delegation said it supported the Basic Proposal because of the overwhelming vote in favour by user groups.
249. The Conference President announced that a consultative vote would be held on the option of a reservation. Some delegations said this was a radically different situation that was not covered by the instructions from their governments (FR, BE and IT). The Conference President then stated that further discussion of the topics covered by Article 105a-c (and by Articles 68 and 69) would be adjourned to give delegations the opportunity to ask for instructions on the issue of reservations. The Irish delegation suggested that the Conference President should initially propose a written amendment, which could then be put to the vote.
250. On the issue of transferring sovereign rights Mr Braendli recalled the discussion at the 1973 Conference on an opposition procedure following the grant of a patent. Although this involved an intervention in the national jurisdiction of the contracting states beyond the original intention (to establish a central grant procedure), none of the delegations said there would be constitutional problems. Earlier Enlarged Board of Appeal case law, which allowed self-opposition by the patent proprietor, was ultimately nothing other than limitation in centralised proceedings. This case law was

abandoned on the premise that this possibility should be appropriately regulated in the form of a central limitation procedure. It was not therefore clear what aspect of the proposed provisions was new compared with the 1973 decision.

251. The Danish delegation replied that the decision to accede to the EPC had required a five-sixths' majority in Denmark, so any amendment to the EPC not encompassed by the transfer of sovereign rights at that time again required this qualified majority.
252. With MR/PLD 3/00 the Conference President presented a compromise proposal providing for the insertion of an additional Article 6a into the Revision Act. Under this article the contracting states would be able to make a reservation concerning the central limitation procedure for a period of ten years.
253. The Swedish delegation welcomed the Conference President's proposal and said it would second it only if its motion for adjournment did not find majority support. The incorporation of the option of a reservation would enable the Swedish parliament to vote on Article 105a-c in a separate procedure. This would make the required majorities easier to achieve since the separate legislative procedure in respect of Article 105a-c did not have a politically explosive content. As a concession to the delegations that had misgivings about the option of a reservation the Swedish delegation proposed that the period of validity for a reservation be limited to three years.
254. The Danish delegation confirmed that it would be able to approve the Conference President's proposal, modified by the Swedish delegation's proposed amendment, if its motion for adjournment of the decision were not successful.
255. The Conference then voted on the proposed amendments on the table.

The Conference President noted that the Conference had rejected the deletion of Article 105a-c in its entirety from the Basic Proposal by 18 votes to 2 (DK and SE). The Swedish delegation then withdrew its motion for amendment in MR/10/00.

On a point of order made by the Belgian delegation, which was unable to vote since it rejected both possibilities, the Conference President withdrew the motion for amendment submitted by him as MR/PLD 3/00. The Swedish delegation then resubmitted it for voting in a modified form (in Article 6a(2) "ten years" was replaced

by "three years"), seconded by the Danish delegation. Eleven delegations voted in favour of this proposed amendment (DK, DE, FI, IE, IT, NL, PT, AT, GB, TR and SE) and nine delegations voted against (BE, CY, GR, FR, LI, LU, MC, CH and ES).

The Conference President noted that the proposed amendment had not found the necessary majority and was therefore rejected; the Conference had therefore adopted Article 105a-c in the wording of the Basic Proposal.

ARTICLE 106: DECISIONS SUBJECT TO APPEAL

256. The Conference unanimously adopted Article 106 in the wording of the Basic Proposal.

ARTICLE 108: TIME LIMIT AND FORM OF APPEAL

257. The Conference unanimously adopted Article 108 in the wording of the Basic Proposal.

ARTICLE 110: EXAMINATION OF APPEALS

258. The Conference unanimously adopted Article 110 in the wording of the Basic Proposal.

ARTICLE 112a: PETITION FOR REVIEW BY THE ENLARGED BOARD OF APPEAL

259. The Swedish delegation introduced its amendment as proposed in MR/10/00. The proposal was not seconded by any other delegations.

260. The French delegation introduced its amendment as proposed in MR/8/00.

261. The Secretariat explained that, for reasons of flexibility, general principles were regulated in the Convention itself and the individual circumstances that could lead to a board of appeal decision being reviewed and set aside were set out in detail in the Implementing Regulations. Since this was an entirely new legal provision, some latitude was to be left for further legislation to permit a response to any experience gained from the practical application of the provision.

262. The Netherlands delegation said it supported the proposed amendment. Instead of incorporating the individual grounds for revocation directly into the Convention, the delegation could also conceive of a wording that left it to the case law to determine the cases in which a fundamental procedural defect had occurred.

263. Pointing out that all fundamentally important "core provisions" should be found in the Convention itself, several delegations endorsed the French delegation's proposal (BE, DE, PT, MC, IT, AT, GB, LU, FI and NL). The German delegation confirmed that all "core provisions" had to be found in the Convention itself. However, the Convention also had to provide a sufficient basis of authorisation for the provisions of the Implementing Regulations. The content, purpose and scope of the latter therefore had to be regulated by the Convention itself. The German delegation suggested that the words "in particular" ("*insbesondere*", "*notamment*") should precede the list of procedural defects to make it clear that the list was not exhaustive. This suggestion was seconded by several delegations (PT, MC, FR, ES, AT, GB, LU, FI and NL).
264. The Swiss delegation did not support the arguments on which the French delegation's proposed amendment was based. To list relevant procedural defects in the Convention restricted the Enlarged Board of Appeal's jurisdiction in terms of any future development of the law. It could, for example, become more difficult for the Enlarged Board to take account of the principles continuously evolved by the European Court of Human Rights. The rules set out in the Basic Proposal were therefore preferable, although the variation submitted by the Netherlands delegation could also be approved as a compromise solution.
265. The Swedish delegation emphasised that the Implementing Regulations should neither regulate the relevant procedural defects nor include rules for the establishment of a criminal act. It should, on the contrary, be left to the Enlarged Board of Appeal to evolve case law on these matters. The Irish and Danish delegations also adopted this position.
266. The Hellenic delegation said it was in favour of the Basic Proposal.
267. Of the observer delegations UNICE unreservedly supported the Basic Proposal; *epi* signalled its approval of both options; the FICPI and AIPPI representatives indicated their preference for the modified French proposal for an inexhaustive list; the FEMIPPI representative favoured regulation in the Convention itself and asked the Conference to bear in mind that, if there were an inexhaustive list, a board of appeal decision that was not in line with Enlarged Board case law could be set aside.
268. The Secretariat replied that it was not desirable to have either a list that was construed only as a guide or provisions that left interpretation of the term "fundamental procedural defect" entirely to the case law. In practice a large number of petitions might well then be submitted on account of the unclear legal position. Any

delay in proceedings as a result would conflict with efforts to ensure that the review procedure was carried out as speedily as possible. The consequence of an opening clause incorporating the words "in particular" in the list of examples would extend the narrow limits of an exceptional provision in a way that was contrary to the system. If inclusion in the Implementing Regulations of the reasons for resumption were rejected, exhaustive provisions would logically have to be included in the Convention.

269. The Secretariat, together with the German and French delegations, introduced a revised version of Article 112a as MR/21/00. This document largely took account of the arguments submitted, and incorporated the approaches to a solution outlined in the other proposed amendments. In particular, following the model of the French proposed amendment, a general reference to the Implementing Regulations had been replaced by the inclusion in the Convention of a complete list of the grounds on which a petition for review could be based. Account was also taken of the concern not to make this an exhaustive list by the possibility of providing for further grounds in the Implementing Regulations.
270. On an inquiry from the Conference President, the French delegation withdrew its proposed amendment in favour of the jointly proposed amendment. The Swedish delegation likewise withdrew its proposed amendment.
271. The German delegation considered the jointly proposed amendment to be an improvement on the Basic Proposal. The principle that all fundamental provisions should be included in the Convention itself had been upheld and the list of grounds had been opened up to ensure adequate flexibility in the application of this exceptional means of redress.
272. Several delegations said they were in favour of the jointly proposed amendment (GB, IT, BE and MC). Some delegations, however, suggested editorial amendments (GB, AIPPI) or clarifications (IT). The AIPPI representative took the view that failure to take into account a request should be included in the list of grounds for review.
273. Without holding a formal vote the Conference President noted that the Conference had unanimously adopted Article 112a in the wording of MR/21/00.

ARTICLE 115: OBSERVATIONS BY THIRD PARTIES

274. The Conference unanimously adopted Article 115 in the wording of the Basic Proposal.

ARTICLE 117: MEANS AND TAKING OF EVIDENCE

275. The Conference unanimously adopted Article 117 in the wording of the Basic Proposal.

ARTICLE 119: NOTIFICATION

276. The Conference unanimously adopted Article 119 in the wording of the Basic Proposal.

ARTICLE 120: TIME LIMITS

277. The Conference unanimously adopted Article 120 in the wording of the Basic Proposal.

ARTICLE 121: FURTHER PROCESSING OF THE EUROPEAN PATENT APPLICATION

278. The Swedish delegation explained its reasons for the proposed amendment submitted as MR/11/00. It said it was, however, prepared to withdraw this proposal in its entirety, that was to say also for the purposes of Article 122.

279. On an inquiry from the AIPPI representative concerning Article 121(4), second sentence, the Secretariat confirmed that the purpose of this provision was not to enable the scope of application of further processing to be generally restricted. Only if an adequate legal remedy was already provided by the law would it be possible to rule out application of Article 121.

280. The Conference unanimously adopted Article 121 in the wording of the Basic Proposal.

ARTICLE 122: RE-ESTABLISHMENT OF RIGHTS

281. The FICPI representative inquired whether the inclusion in Article 122(3) of a cross-reference to Article 122(5) could preclude this provision from having any prejudicial effect on possible third-party rights. The Secretariat stated that this was not necessary since, under the legal system, third-party rights were safeguarded in the event of a legal consequence deemed not to have occurred on the basis of a procedural fiction.

282. The Conference unanimously adopted Article 122 in the wording of the Basic Proposal.

ARTICLE 123: AMENDMENTS

283. The Conference unanimously adopted Article 123 in the wording of the Basic Proposal.

ARTICLE 124: INFORMATION ON PRIOR ART

284. The Conference unanimously adopted Article 124 in the wording of the Basic Proposal.

ARTICLE 126: TERMINATION OF FINANCIAL OBLIGATIONS

285. The Conference unanimously adopted the deletion of Article 126 in accordance with the Basic Proposal.

ARTICLE 127: EUROPEAN PATENT REGISTER

286. The Conference unanimously adopted Article 127 in the wording of the Basic Proposal.

ARTICLE 128: INSPECTION OF FILES

287. The Conference unanimously adopted Article 128 in the wording of the Basic Proposal.

ARTICLE 129: PERIODICAL PUBLICATIONS

288. The Conference unanimously adopted Article 129 in the wording of the Basic Proposal.

ARTICLE 130: EXCHANGES OF INFORMATION

289. The Conference unanimously adopted Article 130 in the wording of the Basic Proposal.

ARTICLE 133: GENERAL PRINCIPLES OF REPRESENTATION

290. The Conference unanimously adopted Article 133 in the wording of the Basic Proposal.

ARTICLE 134: REPRESENTATION BEFORE THE EUROPEAN PATENT OFFICE

291. The Conference unanimously adopted Article 134 in the wording of the Basic Proposal.

**ARTICLE 134a: INSTITUTE OF PROFESSIONAL REPRESENTATIVES
BEFORE THE EUROPEAN PATENT OFFICE**

292. The ICC representative pointed out that his organisation would welcome the early adoption by the Administrative Council of rules on the representatives' evidentiary exception.

293. The Conference unanimously adopted Article 134a in the wording of the Basic Proposal.

ARTICLE 135: REQUEST FOR THE APPLICATION OF NATIONAL PROCEDURE

294. The Conference unanimously adopted Article 135 in the wording of the Basic Proposal.

ARTICLE 136: SUBMISSION AND TRANSMISSION OF THE REQUEST

295. The Conference unanimously adopted the deletion of Article 136 in accordance with the Basic Proposal.

ARTICLE 137: FORMAL REQUIREMENTS FOR CONVERSION

296. The Secretariat explained the amendment it had proposed in MR/6/00 which was merely a formal adaptation of the legal text to amendments already adopted.

297. The Conference unanimously adopted Article 137 in the wording of MR/6/00.

ARTICLE 138: REVOCATION OF EUROPEAN PATENTS

298. The French delegation withdrew its proposed amendment as submitted in MR/8/00.

299. The Conference unanimously adopted Article 138 in the wording of the Basic Proposal.

ARTICLE 140: NATIONAL UTILITY MODELS AND UTILITY CERTIFICATES

300. The Secretariat explained the purely editorial amendment it had proposed in MR/6/00.

301. The Conference unanimously adopted Article 140 in the wording of MR/6/00.

ARTICLE 141: RENEWAL FEES FOR A EUROPEAN PATENT

302. The Secretariat pointed out that the amendment proposed in MR/6/00 was purely editorial.

303. The Conference unanimously adopted Article 141 in the wording of MR/6/00.

ARTICLE 149a: OTHER AGREEMENTS BETWEEN THE CONTRACTING STATES

304. The Finnish delegation suggested deleting the list of agreements cited by way of example in Article 149a(1)(a) to (d). Only the Italian delegation seconded this proposal.

305. The Conference unanimously adopted Article 149a in the wording of the Basic Proposal.

HEADING OF PART X OF THE CONVENTION: International applications under the Patent Cooperation Treaty - Euro-PCT applications

306. The Conference unanimously adopted the amendment as set out in the Basic Proposal.

ARTICLE 150: APPLICATION OF THE PATENT COOPERATION TREATY

307. The Conference unanimously adopted Article 150 in the wording of the Basic Proposal.

ARTICLE 151: THE EUROPEAN PATENT OFFICE AS A RECEIVING OFFICE

308. The Conference unanimously adopted Article 151 in the wording of the Basic Proposal.

ARTICLE 152: THE EUROPEAN PATENT OFFICE AS AN INTERNATIONAL SEARCHING AUTHORITY OR INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

309. The Conference unanimously adopted Article 152 in the wording of the Basic Proposal.

ARTICLE 153: THE EUROPEAN PATENT OFFICE AS DESIGNATED OFFICE OR ELECTED OFFICE

310. The FICPI representative pointed out that the revised wording of Article 153(5) emphasised the imbalance between US patent applications, particularly under Section 102(e) of the US Patent Act, and PCT applications. This fact was to be taken into account in future negotiations.

311. The Conference unanimously adopted Article 153 in the wording of the Basic Proposal.

ARTICLE 156: THE EUROPEAN PATENT OFFICE AS AN ELECTED OFFICE

312. The Conference unanimously adopted the deletion of Article 156 in accordance with the Basic Proposal.

ARTICLE 157: INTERNATIONAL SEARCH REPORT

313. The Conference unanimously adopted the deletion of Article 157 in accordance with the Basic Proposal.

ARTICLE 158: PUBLICATION OF THE INTERNATIONAL APPLICATION AND ITS SUPPLY TO THE EUROPEAN PATENT OFFICE

314. The Conference unanimously adopted the deletion of Article 158 in accordance with the Basic Proposal.

ARTICLE 159: ADMINISTRATIVE COUNCIL DURING A TRANSITIONAL PERIOD

315. The Conference unanimously adopted the deletion of Article 159 in accordance with the Basic Proposal.

ARTICLE 160: APPOINTMENT OF EMPLOYEES DURING A TRANSITIONAL PERIOD

316. The Conference unanimously adopted the deletion of Article 160 in accordance with the Basic Proposal.

ARTICLE 161: FIRST ACCOUNTING PERIOD

317. The Conference unanimously adopted the deletion of Article 161 in accordance with the Basic Proposal.

ARTICLE 162: PROGRESSIVE EXPANSION OF THE FIELD OF ACTIVITY OF THE EUROPEAN PATENT OFFICE

318. The Conference unanimously adopted the deletion of Article 162 in accordance with the Basic Proposal.

ARTICLE 163: PROFESSIONAL REPRESENTATIVES DURING A TRANSITIONAL PERIOD

319. On an inquiry from the FEMIP representative the Secretariat confirmed that the provision for the restoration of persons onto the list of professional representatives, now dropped by deleting Article 163(7), would be incorporated into the Implementing Regulations.

320. The Conference unanimously adopted the deletion of Article 163 in accordance with the Basic Proposal.

PROTOCOL ON THE STAFF COMPLEMENT OF THE EUROPEAN PATENT OFFICE AT THE HAGUE (PROTOCOL ON STAFF COMPLEMENT)

321. The Netherlands delegation said it was sure that the appropriate agencies within the Netherlands ministry of external affairs did not want the matter to be delayed and that the shortcomings of the present Headquarters Agreement could be remedied in the foreseeable future. It would not approve the adjournment of a decision on the Protocol on Staff Complement since the revision of Articles 16 and 17 were closely related to its adoption. The Netherlands delegation hoped that the outcome of negotiations for an improved Headquarters Agreement would take appropriate account of the European Patent Organisation's interests.

322. The EPO President addressed the aspects of the Headquarters Agreement between the European Patent Organisation and the Netherlands and the general issue of stipulating duty stations and staff numbers at each one. The criticism was not directed at the Netherlands delegation, which had always championed the Office's cause, but at the Netherlands government and local authorities, which had frequently failed to respect the European Patent Organisation's rights. To fix the staff complement for The Hague would deprive the European Patent Organisation of the only means of bringing pressure to bear in the context of a revision of the Headquarters Agreement and of ensuring that its legitimate demands were met. The staff complement should not therefore be fixed as it was in the Basic Proposal, at least not at present. In future the staff complement fixed for the European Patent Office duty stations should be governed by human resources and organisational aspects such as future staffing plans or possible changes of procedure. The

development of technology would also continue to affect staff structure and numbers. Finally, political developments also had to be considered. Staff complements should not therefore be fixed in a way that did not permit modification in the foreseeable future.

The EPO President explained a modified version of the Protocol on Staff Complement (see also point 336 below; formal proposal in MR/PLD 5/00) which guaranteed stability as well as administrative and political flexibility. The latter involved the Office's right to make a proposal, the need for consultation with the host country, and the Administrative Council's power of decision.

323. The Netherlands delegation replied that the text of the Basic Proposal had been preceded by intensive trilateral consultation between the EPO and the governments of Germany and the Netherlands. Finding a fair wording for the Protocol on Staff Complement had been a highly political act, since the significance of the provisions went back to the Organisation's early days. The Netherlands delegation had approved the revision of Articles 16 and 17 in the firm conviction that the negotiated Protocol on Staff Complement would no longer be called into question. The version now submitted by the EPO was very different from the original text. The amendments proposed did not have a discernibly positive effect on the Headquarters Agreement negotiations. The Netherlands delegation therefore urged the other delegations to support the provisions of the Basic Proposal, which had been approved by all the bodies concerned.
324. The Portuguese delegation stated that it could not comment on the political aspect of this situation because it did not have detailed information. The criticism of the working and living conditions of staff at The Hague did, however, appear to be justified and a solution to the problem therefore needed to be urgently sought.
325. The French delegation supported the Portuguese delegation and seconded the version submitted by the European Patent Office.
326. The Swiss delegation said it supported the Office proposal because it took better account of the present situation of staff at The Hague and of what the European Patent Organisation was trying to achieve in its Headquarters Agreement negotiations, since it gave the Organisation more latitude. At the same time, the proposal contained enough hurdles to prevent any arbitrary change in the staff complement at The Hague. Should the Conference not be able to approve the Office proposal, a decision on the Protocol should be adjourned to a follow-up conference.

327. The Hellenic delegation also said it was convinced of the legitimacy of the complaints made by staff at The Hague about their unsatisfactory position. The proposal submitted by the Office seemed to make sense. The Hellenic delegation had no fixed views on whether a decision should be made on this point now or whether the outcome of the Headquarters Agreement negotiations should first be awaited. It could support any majority decision but rejected the Basic Proposal in its present version.
328. The Italian delegation asked the Conference to bear in mind that the reports from staff at The Hague had shed new light on the matter and a decision now had to be made on a different basis. The Basic Proposal was therefore no longer satisfactory. It seemed sensible to adjourn the decision on the Protocol to give the European Patent Organisation more freedom in its negotiations with the Netherlands government on a Headquarters Agreement.
329. The United Kingdom delegation emphasised that the organisation of a modern authority nowadays required not only stability but also a large measure of flexibility, although flexibility must not preclude fairness. The proposal submitted by the Office took account of these requirements and was therefore preferred to the Basic Proposal.
330. The Danish delegation drew attention to the connection between the Protocol on Staff Complement and the Headquarters Agreement. The decision on the Protocol should therefore be adjourned so that both sets of provisions could be negotiated as one package. For this reason the Basic Proposal was not convincing, nor was it certain that the version submitted by the Office served the purpose in the context of the negotiations.
331. The Spanish delegation also considered that regulation was needed quickly. The Office proposal offered the necessary flexibility and therefore met with the Spanish delegation's approval. If no consensus solution were found at present, the Spanish delegation would also be in agreement with an adjournment of the whole issue.
332. The Austrian delegation said it took very seriously the misgivings expressed by the European Patent Office management and by staff at The Hague. It was willing to support the amended Basic Proposal if appropriate, once it had consulted its policymakers.
333. The Monegasque and Liechtenstein delegations said they were in favour of the Protocol on Staff Complement version submitted by the European Patent Office. The Irish delegation also tended to favour this version since it was less dogmatic than the Basic Proposal. The Finnish delegation recommended that a solution be sought on the basis of the Office proposal.

334. The CNIPA representative spoke in favour of the Office proposal, although it did not stipulate a specific timing for determining the 10% margin. The text therefore needed to be made more precise on this point. The Turkish delegation was of the same opinion.
335. The Cyprus delegation supported the delegations that had advocated an adjournment of discussions on this point. This view was shared by the Luxembourg delegation, which considered neither the Basic Proposal nor the alternative proposal submitted by the Office to be a satisfactory solution. It considered that the Basic Proposal did not take adequate account of the difficult position of staff at The Hague. The alternative proposal provided the European Patent Organisation with a means of bringing pressure to bear on the Netherlands government without being restricted as to time. The Luxembourg delegation asked the European Patent Office to provide detailed information on the progress of negotiations with the Netherlands government.
336. In the light of the discussion, the Secretariat, together with the Netherlands and German delegations, introduced a jointly proposed amendment to the Protocol on Staff Complement (MR/PLD 5/00). In his introduction the EPO President pointed out that the amendments took account of all the matters of concern: they were, on the one hand, to achieve greater flexibility and, on the other, to secure planning certainty for the host countries, the Office and its staff.
337. The Netherlands delegation stated that it had not been easy for it to accept the proposed amendment as a compromise proposal. The delegation nevertheless supported it as a fair outcome. Faced with the alternatives of adjourning the adoption of the Protocol on Staff Complement, which was difficult in view of the decision to reform Articles 16 and 17, or approving the proposed amendment now on the table, it had decided in favour of the latter. The draft took account of the vociferous complaints made by staff at The Hague about their current situation. The European Patent Office was being given much more latitude for its negotiations over a Headquarters Agreement with the Netherlands government. In the circumstances the Netherlands delegation had to be satisfied with a complement guarantee at a lower level.
338. The German delegation welcomed the greater flexibility accorded the Office by the proposed amendment. It also pointed out that there had never been such an extensive guarantee for Germany as that envisaged for the Netherlands in the Basic Proposal.
339. The Portuguese delegation inquired as to the purpose of the additional requirement to consult the host countries, which had now been incorporated into the proposed amendment, and whether Austria might be included as third host country. The EPO

President replied that the consultation procedure was necessary to ensure equal treatment of the host countries. Austria had adequate guarantees through the INPADOC agreement.

340. The Conference unanimously adopted the wording of the Protocol on Staff Complement as set out in MR/PLD 5/00.
341. The staff representatives said they were pleased by the solution found, although they would have preferred an adjournment. They thanked the Office and all the delegations that had been involved in the revised version and so had contributed to a solution that guaranteed both long-term stability and the necessary political flexibility. They said they hoped the Netherlands delegation would in future continue to show understanding and support for the interests of EPO employees in The Hague, not least during the Headquarters Agreement negotiations.

ARTICLE 164: IMPLEMENTING REGULATIONS AND PROTOCOLS

342. The Conference unanimously adopted Article 164 in the wording of the Basic Proposal.

ARTICLE 167: RESERVATIONS

343. The Conference unanimously adopted the deletion of Article 167 in accordance with the Basic Proposal.

PROTOCOL ON CENTRALISATION

344. The Conference unanimously adopted the amendments to the Protocol on Centralisation as set out in the Basic Proposal.

IXa. CONSIDERATION OF THE DRAFTING COMMITTEE'S REPORT (MR/DCD 1/00)

345. The Chairman of the Drafting Committee reported to the Conference that the Committee had dealt with the texts referred to it in accordance with Article 11(3) of the Rules of Procedure. The Committee had made amendments to the EPC wording in the three official languages where it had considered this necessary, and it unanimously recommended that the revised text be adopted by the Conference. The version submitted by the Drafting Committee as MR/DCD 1/00 contained the proposed amendments to the Basic Proposal (MR/2/00) as approved by the Conference, taking into account the adopted amendments in MR/6/00, MR/8/00, MR/12/00, MR/21/00, MR/PLD 4/00, MR/PLD 5/00 and MR/PLD 6/00. Different positions had been taken over the wording of Article 54(4) and (5) and were unable to be reconciled in committee. The Secretariat's proposal that the word "patentability" be replaced by "novelty" had therefore been indicated in a footnote to Article 54.

346. The French delegation asked whether the different terminology used in the French version of Article 33(1)(b) and (5), second alternative, for "European Community legislation" was deliberate. The Secretariat replied that the term in Article 33(1) was generic, whereas in Article 33(5) it meant not legislation as such but a specific legislative act. The different regulatory content of the two provisions therefore necessitated a different choice of words in the French version.
347. The delegations (FR, IT, FI, SE, LI, BE, TR, AIPPI and *epi*) agreed with the view held by the Swiss delegation and the UNICE representative that the footnote should not be included. Its inclusion could give rise to doubts as to whether the previous case law on Article 54(5) in the EPC version now in force was still applicable to the new version of Article 54(4) and (5) and the substance of the term used was sufficiently clear.
348. The Conference President stated that proposals concerning a substantive amendment of the Basic Proposal could no longer be submitted. The Secretariat then made the following statement: "The Secretariat considers the replacement of the word 'patentability' by 'novelty' not to be a substantive amendment but a completely logical rectification. Article 54(1) to (3) indisputably relates solely to the question of novelty. Article 54(1) states that anything that does not form part of the state of the art is new. Paragraphs 2 and 3 define the content of the state of the art. It is likewise indisputable that paragraphs 4 and 5 concern exceptions to paragraphs 2 and 3. The Drafting Committee clearly expressed this by the wording 'Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in any method referred to in Article 53(c)'. These provisions therefore clearly provide for exceptions to paragraphs 2 and 3. An exceptional provision can inevitably relate only to the provision for which it is established. Logically, and applying legal principles of interpretation to the text adopted by the Conference, this provision should be construed in such a way that the term '*Patentfähigkeit*, patentability, *brevetabilité*' is equivalent to the term '*Neuheit*, novelty, *nouveauté*'."
349. The Swiss delegation was against interpreting Article 54(4) and (5) on the basis of the statement made by the European Patent Office. It was the written statements and views expressed during the consultations that were decisive. The amendment proposed by the Swiss delegation was merely intended to provide existing case law with a legal framework.
350. The Conference unanimously adopted Article 54 in the wording of MR/DCD 1/00 subject to deletion of the footnote.

351. The Secretariat took up the Hellenic delegation's proposal, seconded by the French delegation, to adapt the heading of Article 90 in the French version to the other two official languages. The words "*certaines irrégularités*" should therefore be replaced by "*exigences de forme*" and Article 16 adapted accordingly.
352. The Conference unanimously adopted Article 90 in the wording of MR/DCD 1/00, with the amendment to the French version and the appropriate adaptation of Article 16.
353. The Conference President noted that the Conference had unanimously adopted MR/DCD 1/00 with the amendments made thereto.

IXb. ADOPTION OF THE ACT REVISING THE EUROPEAN PATENT CONVENTION
(MR/3/00)

354. The heading, Preamble and Articles 4, 5, 6 and 8 of the Revision Act were unanimously adopted by the Conference without further consideration.
355. The Conference President stated that Articles 1 and 2 of the Revision Act were being adapted to take account of the results of the discussions on the Basic Proposal.
356. Several delegations (IE, PT, FR and NL) shared the Secretariat's view of Article 3 of the Revision Act, namely that paragraphs 2 and 3 should be deleted to simplify the procedure for drawing up a new text of the Convention without reducing qualitative consideration of the provisions. The German delegation said it questioned whether the two paragraphs should be deleted. A new text of the Convention would have to be published in the national publication organs so as to make the renumbered provisions formally available to the public. The staff representatives said they were against any renumbering of the Convention.
357. The Secretariat then submitted a revised proposal in MR/PLD 7/00 which now optionally provided for a renumbering of the Convention and authorised the Administrative Council to adopt the new text of the Convention by a three-quarters' majority. The European Patent Office was also authorised to make editorial and terminological corrections and adjustments to the text to eliminate any inconsistencies between the new texts in the three official languages.
358. The Conference unanimously adopted Article 3 of the Revision Act in the wording of MR/PLD 7/00.

359. The United Kingdom delegation asked the Conference to consider whether Article 7 of the Revision Act should not include transitional provisions. The reason was that, on entering into force, some of the amendments adopted, eg the wording of claims for a second or further medical use or the interpretation of claims under Article 2 of the Protocol on the Interpretation of Article 69, might not be readily applicable to granted European patents. On a question from the Danish delegation as to the effect of the accession of new contracting states on the majority required for entry into force, the Secretariat explained that all states that acceded to the Convention were able to validly ratify the Revision Act and should therefore be included in the required majority.
360. The Secretariat, taking account of the United Kingdom delegation's concerns, submitted a proposal (MR/PLD 7/00) adding a further paragraph to Article 7. This paragraph regulated the circumstances and procedures to which the revised version would essentially apply on entry into force. For special circumstances to which the general rule could not or could not suitably be applied the Administrative Council was to be authorised to issue specific transitional provisions. This took due account of the need for adequate flexibility on the one hand and the requirements of the rule of law on the other. Owing to the special nature of the subject to be regulated, the relevant transitional provisions should not follow the rules of the Vienna Convention on the Law of Treaties but be laid down separately in the Revision Act.
361. Some delegations felt that the authorisation of the Administrative Council in Article 7(2) was too wide-ranging since its substance, purpose and scope was not sufficiently well defined (DE, IT and FR). A qualified majority should at least be stipulated for the Administrative Council's decision. The Netherlands and Swedish delegations also suggested that the transitional provisions be incorporated in a separate Article 7a.
362. The Secretariat replied that considerable legal uncertainty was to be expected for a long time to come if the transitional rules were left solely to the Vienna Convention on the Law of Treaties and the national courts. The present case did not involve political issues but the spelling out of general legal principles for the safeguarding of duly acquired rights and the application of amended provisions to procedures already in progress. The proposed authorisation of the Administrative Council was therefore a sensible solution.

363. The Portuguese delegation saw no need to incorporate Article 7(2) in the Revision Act.
364. The United Kingdom, German and Netherlands delegations, on the other hand, said they were in favour of incorporating transitional provisions into the Revision Act. In the view of the AIPPI representative, transitional provisions were indispensable, since the revised text of the Convention could not have retroactive effect.
365. The CNIPA representative took up one of the Conference President's ideas, according to which powers could be delegated to the Administrative Council on the principle that the revised version of the EPC had a retrospective effect only in the exceptional cases determined by the Administrative Council. Provisos should be stipulated for the Administrative Council's decision, eg a qualified (three-quarters') majority, and a time limit for the decision. This was to ensure that before initiating national ratification procedures the contracting states had legal certainty as to the circumstances affected by transitional provisions. The proposal was seconded by UNICE and FICPI.
366. Mr Braendli pointed out that any provision authorising the Administrative Council had to be adopted by the Conference as "to be applied provisionally" in order to create a legally technically correct basis for the proposed Administrative Council decision before entry into force of the revised version.
367. A new text of Articles 6 and 7a of the Revision Act was then presented to the Conference by the Netherlands, German and United Kingdom delegations (MR/PLD 11/00). The transitional provisions were set out in a new Article 7a, the second paragraph of which specified the timeframe for the Administrative Council's decision and the majorities required for this purpose. Article 6 stated that the transitional rule would be applied provisionally.
368. The Conference unanimously adopted the proposed text with minor editorial amendments. The French delegation abstained since it did not consider that Article 7a should be entirely provisionally applicable as stated in Article 6.
369. The Conference unanimously adopted the Revision Act in the wording of MR/3/00 Rev. 1.

X. FINAL ACT OF THE CONFERENCE OF THE CONTRACTING STATES TO REVISE THE EUROPEAN PATENT CONVENTION (MR/4/00)

370. The European Community representative stated that on the basis of the Rules of Procedure he had reserved the right to sign the Final Act like the Member Delegations. He suggested that a reference to this effect be incorporated into the introductory part of the Final Act (MR/PLD 8/00). The French and German delegations seconded this request.

371. The Swiss delegation asked whether this was covered by the Rules of Procedure. The consequences of signature by the European Community were not clear. There were also doubts about the legality of signature, because the Commission had not claimed to have a mandate at to draw up and establish the Revision Act. The Finnish delegation shared these misgivings.
372. The European Community representative replied that he would have an appropriate mandate at the time of signing the Final Act and would then be properly authorised to do so. The credentials submitted likewise included these powers. He also referred to general principles of international law whereby participants in an international conference had the right to record the outcome of the conference. The European Community was therefore able to derive its entitlement to sign the Final Act directly from its status as a member of the Conference as accorded by the Rules of Procedure.
373. The draft Final Act then submitted as MR/PLD 4/00 Rev. 1 by the French and United Kingdom delegations, seconded by the SE, PT, ES and TR delegations, took account of the European Community's request. The draft was adopted unanimously by the Conference with one abstention (FR), the period during which the Revision Act was to be open for signature being extended to 1 September 2001 at the suggestion of the German delegation, which was seconded by the Austrian delegation.

XI. ADOPTION OF ANY RECOMMENDATION, RESOLUTION, JOINT DECLARATION OR LEGAL ACT

374. The United Kingdom proposed that a joint declaration be issued to signal to interested members of the public that this Diplomatic Conference did not mark the end of the reform process. On the contrary, further major reforms of the law were waiting to be dealt with at a subsequent conference (eg protection of computer programs, Protocol on the Interpretation of Article 69 EPC, biotechnology, grace period, Community patent). This proposal was generally supported by several delegations (FR, SE, CH, DE, BE and DK). The Swiss delegation emphasised that a timeframe was needed for continuation of the reforms to prevent the outstanding issues from being adjourned because the opinion-forming process had not yet been able to be completed in some member states. This view was explicitly endorsed by the German and Danish delegations. The Secretariat suggested that a resolution be drawn up specifying a timetable for implementation of the outcome of the Conference. The Swedish delegation said it reserved the right to make a unilateral declaration in respect of the adoption of the Final Act and Revision Act. The European Community representative recalled the conclusions of the London intergovernmental conference.

375. The United Kingdom delegation then introduced the Draft Conference Resolution (MR/PLD 9/00) which it had prepared together with the German, Danish, French and Swedish delegations on the basis of general discussion. The Secretariat then presented its Draft Conference Resolution (MR/PLD 10/00), which was an amended version thereof, and made the major differences between the two drafts clear. In particular, the omission of the second paragraph was intended to prevent the public from being given a false impression of the Conference's success. The deletion of a specific timeframe for a further Diplomatic Conference took account of the fact that progress on a large number of the outstanding proposed reforms was beyond the Conference's control.
376. In view of the fact that some of the Conference participants were in favour of the draft MR/PLD 9/00 (DE, DK, FR, SE, GB, IT, LU and EU) while others preferred the draft MR/PLD 10/00 (GR, PT, NL, CH, AT, IE, CY, UNICE and AIPPI), the Conference President formulated a compromise proposal that distilled and combined parts of the two proposals. In this proposal the first and second paragraphs of MR/PLD 9/00 were to be included, although the reference to the "real concerns of industry" about a reform of the provisions concerning the patentability of software-related inventions was deleted on UNICE's intervention; a reference to the future regulation of patent protection for biotechnology inventions was also added to the end of the second paragraph. The first part of the third paragraph was taken from the proposal MR/PLD 10/00, also taking up the Netherlands delegation's suggestion to include an implicit reference to the European Union's timetable without explicitly mentioning 2001, however (" ... bearing in mind the need for a timely entry into force of an effective and efficient Community patent system.").

The French delegation objected that this choice of words was too vague and it therefore preferred a direct reference to the declaration of the heads of state and government of the European Union, which was of a more binding nature. The Irish delegation pointed out that, although the official European Union document expressed the wish for the Community patent to be quickly implemented, no specific time was mentioned. The Conference could take due account of this declaration of intent by inserting the words "without delay".

377. The revised version of the Draft Resolution was presented to the Conference for voting as MR/22/00. The Conference unanimously adopted this Resolution.

XII. CLOSING STATEMENTS

378. The Italian delegation made the following statement:

The Italian delegation agreed to co-operate in the process of revising the EPC which is ending today, in the full awareness of the importance and the sensitive nature of

this exercise, and in particular of the account which the Italian government will have to render to the Italian parliament and public opinion when the Revision Act is ratified.

The results of the Conference and the provisions of the revised text allow the contracting states to exercise more control over the decisions of the Administrative Council, at a time when some interested circles were demanding greater flexibility. We are pleased at this result.

In particular, the text of Article 33 as approved by the Conference stems from a proposal tabled by the Italian delegation with the support of Belgium and France. The amendment was adopted by a consensus of those contracting states which are EU members. When it was put to the vote, only one delegation opposed it.

The integration of Community law into the EPC via the combined provisions of the amended Articles 33 and 35 demonstrates the prudence of the member states in dealing with this issue. The Italian delegation is pleased by this approach.

Nevertheless, I wish to emphasise the following point. During the discussions, some delegations, including my own, referred to the Administrative Council's decision of 16 June 1999 on the patentability of biotechnological inventions. That decision was taken on the basis of an interpretation of the EPC provisions concerning patentability and the powers of the Administrative Council which the Italian government did not accept. The positions adopted by some contracting states at the revision conference have underlined the continuing threat posed by the contested interpretation, and in this respect Italy hopes that the ECJ appeal which it supported against Directive 44/98 will be decided as soon as possible. For this reason, the Italian government, while authorising the head of the Italian delegation to approve the whole of the revised text and to sign the Final Act, has asked me to express its serious misgivings about the European Patent Organisation's upholding of the decision of 16 June 1999, and to reaffirm its determination to seek a consensus in all the competent bodies with a view to amending that decision.

From this point of view, the Italian government will pay particular attention to the next revision of the Convention, which will concern the issues of biotechnology, judicial control and the relationship between the EPC and the provisions of a future Community patent law.

379. The French delegation made the following statement:

The French delegation has particular reasons to be pleased at the success of this Diplomatic Conference:

- its initiative of June 1999 in convening an intergovernmental conference in Paris made a major contribution to bringing the present Conference about;

- the Conference's success coincides with the French presidency of the EU.

On behalf of the French delegation, but also for my own part, I would like to thank and congratulate the Conference President, Roland Grossenbacher, for his professionalism and constructive authority, and the President of the Office and the Secretariat for the quality and quantity of their work.

Their contribution has been crucial to the success of the Conference.

I also take pleasure in mentioning the quality of the entertainment and receptions, which were of a professional standard - this no doubt is due to the Bavarian influence.

However, the French delegation realises that the hardest part is yet to come, in providing European industry with the revitalised patent system which it urgently needs.

In deference to our President's nationality, allow me to use an Alpine metaphor: we have arrived at the mountain hut, but we still have some difficult peaks to scale - you know which ones I mean.

I wish you good luck and fair weather.

380. The Swedish delegation made the following statement:

During the Revision Conference, the Swedish delegation has expressed its concerns regarding the proposed and now adopted Articles 33(1)(b) and 35(3). As is well known, a decision under these provisions can be taken by representatives of the Governments of the contracting states and become binding if no contracting state declares within a year that it does not wish to be bound by the decision. Most parts of the Convention can be amended in this way (ie without a normal ratification procedure), including the parts relating to substantive patent law. Normally, such amendments to the European Patent Convention can, of course, only become binding upon a contracting state if that state ratifies a revised version of the Convention. In states where national legislation demands that the national parliament is involved in ratification procedures regarding international treaties, the ratification procedure is a guarantee that international treaties cannot become binding upon that state without the involvement of Parliament. Since it is the case in Sweden that Parliament has in principle the power to decide on the ratification of treaties, the Swedish Government fears that the new Articles 33(1)(b) and 35(3) might lead to problems during the forthcoming ratification procedure.

In view of this, the Swedish delegation wishes to state its firm understanding that the provisions of Articles 33(1)(b) and 35(3) in no way preclude the obligation that may rest with the Swedish Government under Swedish law to refer to the Swedish Parliament the question of whether Sweden can accept amendments to the European Patent Convention. In situations where such an obligation exists, it is the Swedish Parliament that has the exclusive power to take the final decision on the matter.

381. The Danish delegation made the following statement:

First of all, I would like to thank the President of the Office, Mr Kober, and all his colleagues at the Office for having put so much effort into this Conference. I am not thinking only of the hard work on all the articles, but also on making our stay here in Munich a pleasant one. I would also like to thank the Chairman of the Administrative Council, Mr Grossenbacher, for his constructive, positive and professional way of conducting this Conference.

We consider that some good results have been achieved, although many of the top issues still remain to be discussed. I am sorry that there was not sufficient support for the Swedish and Danish proposal on the resolution in connection with the limitation procedure. Nevertheless, the Danish government will do everything it can to ratify in good time.

As far as I know, there are at this Diplomatic Conference three people who also participated in the Diplomatic Conference 27 years ago in 1973. I think they are Mr Braendli, the former President of the EPO, Mr Mota Maia, the head of the Portuguese delegation, and Mr Dunbeaten from UNICE.

For me this is my first Diplomatic Conference and although I do not expect to have 27 years ahead of me before I retire, I hope that I will have the opportunity to participate in one or even perhaps two more diplomatic conferences. I think it is necessary to have these conferences in the future to achieve modernisation in the European patent system. I am not only thinking here of the EPO, but also the Community patent and the role of the national patent offices in the future. We should strive in Europe to have the most effective and efficient framework for innovation possible so that we can give our companies the ability to compete effectively in the future.

382. The Spanish delegation made the following statement:

It has been an honour and a welcome task for us to participate in this Conference to revise the European Patent Convention.

We are aware of the enormous importance and far-reaching implications of this event for the development and evolution of the patent system in Europe and throughout the world.

We came here with the hope of achieving the aims for which we have been striving, our main aim being to adapt the European system to the needs of users, patent offices and the public. We have taken an important step towards establishing an integrated European system which will be more balanced, economic and secure. In addition, its greater flexibility will enable it to cope with the forthcoming changes at international level. The many hours of work put in by the various committees and working parties, as well as the Administrative Council, were necessary to arrive at the Basic Proposal on which our discussions were based. There is no doubt that this was a necessary step, since the EPC has now been in force for almost thirty years, with only one minor revision in 1991. The EPO will now be in a better position to meet its responsibilities as the best patent office in the world.

The Conference has been characterised by a spirit of co-operation and consensus extending beyond national interests. It is only in that spirit that progress can be made and the right decisions taken. The work done by all the delegations has been exceptional, reflecting how active and efficient our Organisation is.

The fact that the Conference has achieved the results expected of it is due in no small measure to the excellent work of the Conference President. We have adopted provisions that will introduce important improvements into the system. Article 4, for example, establishes a legal basis in the Convention for convening a Conference of Ministers every five years, thereby ensuring that the system is revised and modernised on an ongoing basis. The revision of Articles 33 and 35 concerning the competence of the Administrative Council in certain cases and the rules on voting are a reflection of this development. Even though all the safeguards concerning national decision-making powers still have to be taken into consideration, the revision nevertheless represents a considerable modernisation of the system that will shorten the period before changes to the EPC can enter into force and be applied in practice. The objective of keeping the EPC in line with international treaties relating to patents and European Community patent legislation is essential.

The introduction of BEST will reduce granting times, thereby overcoming some of the drawbacks in the current system, and contribute to greater flexibility in the procedure.

The limitation procedure will help patent owners by enabling them to amend their patent specifications even after grant. This will provide the EPO with a legal basis for handling patent amendments made necessary by changing circumstances - an important new provision that has long been called for.

The transfer of numerous procedural provisions to the Implementing Regulations and the adoption of new provisions such as Articles 4a, 112a and 149c will make it possible to exploit the European patent system to the full and enable the Organisation to respond flexibly to new challenges and future developments.

The decision to transfer to the second basket the question of whether to delete software from the list of non-patentable inventions in Article 52 is entirely appropriate, since the consultation process has not yet been completed and further reflection is needed on this issue.

The solution adopted for Article 69 and the Protocol on its interpretation leaves a door open for further study and development.

We recognise that major work still needs to be done and therefore expect another Diplomatic Conference in the near future at which the items in the second basket will be discussed. These include fundamental issues such as the grace period, software, biotechnology and the Community patent.

Having taken this important step forward, we will now be able to adapt to new circumstances more effectively and efficiently. Spain is in favour of any initiative designed to improve the system and make it more competitive. Once again, however, we must stress that the supranational European system has to coexist with existing national systems. In this context it is important to find appropriate ways of using the capacity available at the national Offices. On this particular point, we should remember Europe's special identity. We have to safeguard its overall integrity and respect the importance of language as a cultural value vital to all European systems.

Finally, let me thank all those people involved in preparing and organising this Conference, including, of course, the magnificent social events.

383. The Austrian delegation made the following statement:

The task of this Conference was to carry out the first large-scale reform of the European Patent Convention in over 25 years. More than 90 articles of this important Convention have been discussed, amended, newly introduced or deleted. The insertion of the Protocol on Staff Complement and the amendment of the Protocol on Centralisation and the Protocol on the Interpretation of Article 69 of the Convention are further aspects of this task. I think we can say that we have jointly accomplished a successful major reform of the EPC. Although we have yet to devise solutions in

some areas - especially for computer programs and biotechnology and for the grace period issue - the overall result is one which can be viewed with satisfaction. The Austrian delegation would therefore like to thank all those who have contributed to this major reform or have otherwise supported the work. The Austrian delegation hopes, as it stated during the Conference, that the non-amendment of Article 52(2)(c) will not be taken as a signal to begin falling behind the existing standard in patent protection for software. In the area of first and further therapeutic uses, which was discussed in depth for the first time at this Conference, we hope that the very precise wording of Article 54 will not lead to a situation where the extent of protection is no longer determined exclusively by the scope of the invention but is influenced by, or becomes dependent on, other criteria. We are confident that the questions which are still open will soon be successfully addressed by a follow-up conference, which we expect to take place reasonably soon. Thank you very much.

384. The Finnish delegation made the following statement:

On behalf of Finland and the Finnish delegation, I would like to thank all the participants for their contribution to the spirit of mutual understanding which has prevailed during this Diplomatic Conference. As a result of this, we are now ready to sign the completed documents, after several years of hard work. Particular thanks are due to the Conference President, Roland Grossenbacher, who, with his expert knowledge and abilities, has led us to the finishing line. Thank you, Roland, for your tremendous achievement. Our sincere thanks also go to all those who contributed to the arrangements and preparations; in particular, we would like to thank the European Patent Office, and of course its President, Mr Kober. We must remember that the point we have now reached is only a temporary stopping-place: the work has to continue. Finland believes that the decisions taken here will benefit all the member states of the European Patent Organisation and all patent applicants. This is important because, as we said in our opening statement, innovation and know-how are key concepts for Europe and for humanity as a whole. Patent offices have come to play an increasingly important part in this development. Once again, our thanks to all of you.

385. The Swiss delegation made the following statement:

First of all, let me join the other delegations in praising the excellent work of the Secretariat and the Office. I would also like to thank the Drafting Committee and the EPO President, Mr Kober, who enabled our deliberations to take place in a very pleasant atmosphere.

At the start of this Conference, the Swiss delegation set out the main points which it wished to emphasise. An important concern of the Swiss delegation was to make the Convention flexible enough to preserve the efficiency of the filing and grant procedure, with a future total of 28 contracting states, while safeguarding the present high quality of European patents. The measures decided here - streamlining the Convention by removing purely technical provisions, making it easier to adapt the EPC to international treaties and Community law, and introducing the BEST procedure - are important steps in this direction.

The Conference also expressed its support for codifying the case law relating to second and further medical uses in the European Patent Convention and thereby providing the necessary degree of legal certainty in this major area of patent law.

A need for further action emerged from the conclusions of the working parties, set up in Paris, on cost reduction and litigation. In view of the agreement which already exists on the application of Article 65 EPC, and of the progress of the work on the Protocol on Litigation, the creation of a clear legal basis in the EPC for such special agreements was seen as essential. This has been done in a new Article 149a, which clarifies the status of such agreements as part of the EPC and defines the role of the EPO.

The Conference also established a basis in the Convention for convening conferences of ministers. This makes it possible to convey important political messages to the European Patent Organisation regularly at ministerial level. The Paris and London intergovernmental conferences have shown that such initiatives can be very fruitful.

However, the process of renewing and reforming the European patent system must not be allowed to end with this Diplomatic Conference. The initiatives developed here must be taken forward straight away, and the points for which no solution was immediately available must be discussed and settled. The proposals from this second stage should be submitted as soon as possible to a further Diplomatic Conference.

A particular challenge in the coming months and years will be the clarification of the relationship between the European Patent Organisation and the emergent Community patent. Switzerland has always been in favour of promoting both routes as mutually supportive, since they are both directed towards the improved integration of the European patent system.

A further crucial step now is to implement the agreed changes as soon as possible, by ratifying the Revision Act immediately at the national level and adapting national legislation.

The Swiss delegation is convinced that the subsequent negotiations in all the committees of the European Patent Organisation will continue to be of the highest quality and will lead to solutions which will ensure the necessary spurs to economic growth and thereby help to safeguard the competitiveness of European industry.

386. The German delegation made the following statement:

In about half an hour, the Diplomatic Conference to revise the European Patent Convention will come to an end, after eight days of very hard work. The German delegation wishes to take this opportunity of saying that it is very pleased with the conference proceedings and results. We are gratified by the substantive outcome of this Diplomatic Conference, not only because we have amended some 100 articles of the European Patent Convention, but also because we feel that we have genuinely improved a number of key provisions. As we have already said elsewhere, it has not been possible to resolve all the pending issues in the past few days. But in our view, the Conference has done what it set out to do, and in a way which enables all the member states to accept the Revision Act. This was by no means a foregone conclusion; that it was achieved with such apparent ease is due not only to the fact that the delegations were well-prepared and approached the task in a constructive spirit of compromise, but also, in particular, to the work of the Conference Secretariat, the Office and its President, in preparing for and supporting the Conference. Our particular thanks go to all those of you who contributed to those efforts. We were also very pleased with the proceedings themselves, with the conduct of the Conference under the aegis of its highly professional chairman, enabling us to work through a very long agenda in what was, after all, a very short time - during which, however, we never had the feeling that an important or contentious point had been insufficiently discussed. Thank you very much, Mr Grossenbacher, for your excellent work as chairman. But we would also like to thank the other delegations, which enhanced the Conference with their expert knowledge and on occasions enlivened it with their sense of humour. That we all got along so well together is partly due to the work of the interpreters: our thanks go to them for performing a task which was not always easy. And all of you, ladies and gentlemen, helped to create a conference atmosphere which we found particularly pleasant and constructive, with the result that we are already looking forward eagerly to the next Diplomatic Conference.

387. The United Kingdom delegation made the following statement:

Let me say first of all that my delegation is very satisfied with the outcome of this Conference.

We have dealt with over 100 Articles and my delegation believes that this work will create a European patent system which is more relevant to business, simpler to use and offers a higher standard of legal security, upon which the system depends.

We are pleased that this Conference has also looked forward so positively to the important and outstanding issues we still face - computer programs, biotechnology, the emergence in due course of a Community patent. We now have a culture of reform and development built into this Organisation. We are determined to create the best patent system in the world for the benefit of European innovation and economic prosperity. This culture will lead us to deal with these outstanding issues, and more besides, in a brisk and focussed way, in full possession of all relevant information.

My delegation is also pleased with the constructive, co-operative and committed stance of all delegations that have taken part. This is a key factor in the outcome we have achieved. But co-operation and commitment need management. Let me congratulate you, Mr President, on your excellent management of this Conference and the professional and consistent way in which you have guided us through.

Let me also congratulate and thank the Office for its efforts this week. The timely delivery of documents to our desks has in itself been a major contribution to the smooth flow of decision-making.

We look forward to carrying over the results achieved here to a further conference in the near future.

388. The Portuguese delegation made the following statement:

The Portuguese delegation is very happy to have taken part in the work of this Conference and is pleased with its results, thanks to the spirit of co-operation and compromise shown by all the delegations during the very interesting discussions on the provisions tabled for revision. I think that all the delegations - not only those of the member states, but also those of the states which will shortly be joining the

Organisation, as well as those of the intergovernmental and nongovernmental organisations - have good reason to be pleased with the results of the Conference, bearing in mind that the patent system today is more complex than in 1973. Economic growth and globalisation have highlighted the importance of industrial property and in particular of patent systems. This was the context in which the Paris and London intergovernmental conferences decided to hold this Diplomatic Conference in 2000 and established the details of its mandate. We are all fully aware that a number of major issues are still pending for consideration at the second Conference, but we should also acknowledge that the results of this Conference are encouraging for the future. The Portuguese delegation reaffirms its willingness to make an active contribution, as in the past, to the preparations for the next Conference and to its deliberations, in order to modernise the Munich Convention in a way that will enhance its capacity to respond to the new challenges of the contemporary world. In conclusion, I would like to thank you, Mr President, for your conduct of the proceedings. I would also like to thank the European Patent Office for its excellent work. Finally, it is my pleasure to congratulate all the delegations, which in a spirit of co-operation have contributed greatly to the success of this Conference.

389. The Netherlands delegation made the following statement:

The Netherlands considers the fact that it was possible to accomplish such a large-scale revision of our Convention in quite a short space of time to be a sign that, with the co-operation of the member states, our Organisation is able to decide on a number of important issues. This might be seen as a good exercise for the work we have referred to the so-called "second basket". This basket is in the meantime now overloaded with a number of even more important issues, as we all know.

Our compliments go to all those involved in the preparatory work, but more especially to the President of the European Patent Office and his staff, and of course to the Secretariat for its great help and the perfect way it has arranged our Conference and looked after its participants.

My thanks go as well to the Conference President, Mr Grossenbacher, for the excellent way in which he has fulfilled his difficult task and kept us to the agreed rules of procedure that have again proved to be of considerable assistance.

To conclude, the Netherlands is satisfied with the results of this conference.

390. The Hellenic delegation made the following statement:

My delegation shares in the general sense of satisfaction at the completion of a major undertaking. I would also emphasise the scale of the task still facing us - a fact of which we are all aware and which should serve as a warning against trying to move too fast. Nevertheless, my delegation wishes to join in congratulating and thanking all those who contributed to the preparation of this Conference - in particular, the Office, its President and its staff. I do not wish to place too much emphasis on the quality and variety of the social events since this might be interpreted as a reason to repeat the exercise as soon as possible. Finally, Mr President, I would like to thank and congratulate you personally on the exemplary way in which you have guided the work of this Conference which has not always been easy.

391. The European Community representative made the following statement:

This is the first time we have attended a Diplomatic Conference of this kind, and I would be reluctant to forgo this opportunity to express my recognition of the Conference's efforts and to congratulate you, Mr President, on achieving such a result in a week of very hard work, which has also paved the way for continuing this very important task. Having seen at first hand the excellent preparation done by the Office and your work in conducting the proceedings, we now feel very optimistic, and we hope that it will soon be possible to resume these highly productive efforts.

392. The FICPI representative made the following statement:

On behalf of the FICPI, I would like to join everyone who has expressed congratulations on the conduct and outcome of this Diplomatic Conference. This applies to everyone who has contributed to this result in the preparations for the Conference, including the European Patent Organisation, represented by the Office and the Administrative Council, as well as all the delegations of the member states who have co-operated to achieve this result.

The interested circles, of course, now hope that everyone involved in the ratification procedure in the member states will live up to the intentions of the adopted Conference Resolution. We welcome the fact that this resolution very clearly sets out the matters which were not resolved on this occasion, but for which a second session of the Diplomatic Conference will have to be convened.

I think this is also the right time for a professional body like the FICPI, which represents not only the authorised representatives before the Office but patent practitioners worldwide, to extend our thanks to the European Patent Office and the Organisation for the very positive and constructive spirit in which it co-operates with the NGOs and practitioners.

Quite clearly there are elements in this revision, and I am thinking in this context in particular of the extended deregulation, which calls for even more co-operation with interested circles in the future, and we are certainly looking forward to that.

So, all in all, the interested circles, including the FICPI, would like to join members of the delegations in expressing congratulations on the work that has been achieved. We all know that we will have an interesting year ahead of us in which preparations for the second round of the conference will be made in parallel with difficult discussions on the issues which are still open.

393. The *epi* representative made the following statement:

The *epi* would like to congratulate the Organisation, its Chairman and the EPO President on the success and the extremely elegant conduct of this Conference. From the point of view of the European profession, we are satisfied with most of the amendments in the revision document. The *epi* looks forward to seeing the eggs in the second basket put on the agenda of a second revision conference.

In the case of those items on the agenda which still need to be addressed, Mr Kober has said that a revision conference starting from scratch takes about six years. The *epi* hopes that in this respect Mr Kober is wrong.

The patent system is based on evolution, on an ongoing evolution process, and this process should be accompanied by constant adaptation of the European Patent Convention to the interests of its users.

394. The UNICE representative made the following statement:

On behalf of UNICE and European industry, I want to thank and congratulate the member states on arriving unanimously at an improved and more flexible European Patent Convention.

We regard this as essential to clear the way for an affordable, efficient and effective Community patent, which is one of our main aims. We regard this as an essential

element for Europe's economic prosperity and the technical strength, competence, innovative capacity and competitiveness of our companies. We want to emphasise that this is very important not just for big companies but also for our smaller companies. We always have this very much in mind.

I want to thank everyone in connection with the Conference for all their dedicated hard work, the spirit of co-operation that everyone has shown and the many preparations that have taken place over the last two years or so, both prior to this Conference and during the Conference itself.

We particularly appreciate the splendid leadership we have received from the Conference President, Mr Grossenbacher. This has truly been a very big factor in the success of the Conference.

We thank the President of the European Office for facilitating this success in his usual charming way and providing the facilities that have smoothed the way for all the work that has been done, and particularly the members of his staff, his hardworking Secretariat, who have made the preparations and, as has already been remarked, produced things almost before you could expect them to have been written down. This has been truly remarkable and we are indeed thankful.

Now we look forward, of course, as everyone else has said, to the further work on the "second basket" and the mountains it contains. We shall approach this with relish and I am sure we shall have another successful result at the end of next year.

395. The FEMIP representative made the following statement:

FEMIP, the European Federation of Agents of Industry in Industrial Property, welcomes the successful conclusion of the Diplomatic Conference to revise the European Patent Convention as a significant further step towards the harmonisation of European patent law. FEMIP particularly welcomes the progressive impetus from the introduction of the new Articles 149a, governing "special agreements", and 105a to 105c, concerning limitation proceedings. The right under Article 138(3) to limit European patents in proceedings before national courts by amending the claims is also a positive step. FEMIP welcomes the clarification in Article 54(4) and (5) regarding the patentability of substances for use in methods referred to in Article 53(c). Finally, FEMIP welcomes the provisions of Article 134a(1)(d), which anchor the obligation of confidentiality, together with the privilege from disclosure of certain kinds of communication, in the EPC. This is a step forward at the European level which should be followed by national legislators. Despite these specific

examples of the progress already made, FEMIP is well aware that the major task of putting the revision into practice by amending the Implementing Regulations has yet to be tackled, and that a number of important further issues are waiting to be addressed by a second Diplomatic Conference. Here, too, the participation of the interested circles will be essential, and despite the pressure of time, the previous scope for discussion should be retained or even extended. In conclusion, we hope that the interest of the contracting states in European patent law will be reflected in the speedy ratification of the Revision Act.

396. The AIPPI representative made the following statement:

On behalf of the AIPPI, I would like first of all to congratulate you, Mr President, on your work in preparing the Conference and conducting the discussions.

The revision of the European Patent Convention would not have been possible without the determination of the participants to achieve a successful outcome and without their willingness to make concessions on the most sensitive issues.

The joint declaration states that not everything has been resolved, and identifies the main areas - software and biotechnology - which require further study. Our Association has done a lot of work on these issues, and obviously will be watching further developments very closely.

In the immediate future, the most urgent task is updating the Implementing Regulations, which with the revision of the Convention have now become an even more important element in the European patent system. In my initial statement, I expressed the hope that AIPPI would have an opportunity to state its point of view when the text of the Regulations is finalised. I have no doubt that our request will be heard, judging from your open and receptive attitude towards our comments during the Conference, for which I would like to thank you particularly.

At the editorial stage, some points of detail are bound to emerge which were not seen during the revision preparations. These, it must be said, were carried out under severe pressure of time. The consequences of some amendments will only become apparent later. An example which springs to mind is the deletion, for reasons of simplification which are entirely laudable, of paragraph 4 from Article 54, which could have the effect of putting a European applicant - where prior rights exist in certain contracting states only - in a less favourable position than if he opted for the national route in several countries.

We hope that the purely "cosmetic" amendments will be kept to a minimum. We all know that even the slightest change of wording, in one language or another, can give rise to differing interpretations and eventually create further legal uncertainty.

In conclusion, I would like to congratulate you again on the success of the Conference and to thank you for listening to the views of the AIPPI.

397. The Norwegian delegation made the following statement:

First of all, the Norwegian delegation would again express their gratitude to the European Patent Organisation for inviting us to observe this Diplomatic Conference. Secondly, I would like to congratulate you, Mr President, for the excellent way you have conducted the conference.

The Norwegian delegation would also like to thank the President, Mr Kober, for all the social events arranged during the Conference; especially the concert last Wednesday made an unforgettable impression.

Finally, the Norwegian delegation would like to thank all the interpreters for their contribution to this conference. Despite the fact that Norway has yet to ratify the European Patent Convention and is consequently not yet a member of the European Patent Organisation, amendments to the Convention will have an impact on Norwegian patent law. The conference has shown us, Mr Chairman, that the field of patents is rich in diversity, that we do not share the same views on every topic and that many questions in this area have still to be answered. However, it is the belief of the Norwegian delegation that in the field of patents both European and local co-operation is the key to answering the multitude of questions that lie ahead of us, both in the near future and beyond.

398. The WIPO representative made the following statement:

On behalf of the Director General of the World Intellectual Property Organization I would like to take this opportunity of congratulating all the participants in this Revision Conference for the very important work that you have done in furthering the development of the patent system.

As you know, WIPO has had recent experience of the resources and willpower needed to hold a successful Diplomatic Conference and we congratulate you on the excellent way in which you have done so. I note with pleasure that this Revision Conference has taken into account the results of the Diplomatic Conference at WIPO which adopted the Patent Law Treaty earlier this year. That result would not have been possible without the very able and very useful assistance of the EPO at the meetings of WIPO.

As many of you know, earlier this month at WIPO the Standing Committee on the Law of Patents took a decision to go forward with all due speed to achieve international harmonisation in the area of substantive patent law. The Standing Committee has decided that a first draft of that treaty will be presented to the meeting in May and has presented a suggested time line of three to five years for concluding the project.

We look forward to our continuing collaboration with the EPO on its project and we will of course maintain our usual communication in following developments with the so-called "second basket". We look forward to co-operating with you on these two processes that are not only mutually compatible but, I would say, mutually essential. Again, heartiest congratulations.

399. The CNIPA representative made the following statement:

I will be very brief. We wish to endorse the congratulations which have been expressed to all who prepared and concluded this Diplomatic Conference. We look forward to co-operating further with everybody, especially on the revision of the Implementing Regulations and any future Diplomatic Conferences, which we hope will be held sooner rather than later.

400. The Polish delegation made the following statement:

On behalf of the Polish delegation, I would like to thank you very sincerely for your invitation to this Conference. We have been able to observe all the work on the historic amendments to the EPC, which from our point of view was very interesting and useful. We would also like to thank you for looking after us so well and for the programme of social events. Thank you.

401. The President of the European Patent Office made the following statement:

I am grateful for the opportunity to say a few words on behalf of the Secretariat of this Diplomatic Conference. A great deal has been said here which I am happy to endorse wholeheartedly. It is certainly true that revising the Convention and holding a Diplomatic Conference are achievements which depend on a common effort, so I would like first to thank all the contracting states and the interested circles which, in the very open discussion of the substantive issues at this Conference and during the preparations for it, have helped to smooth the path for many practicable solutions. I would also, however, like to express my special thanks to the staff of the European Patent Office and, in particular, to the Conference Task Force and all the members of the Secretariat.

Ladies and gentlemen, a revision is the result of a collective effort, but we should not overlook the outstanding contributions of particular individuals. I am specifically

thinking of you, Mr President. This is the second Diplomatic Conference to revise the Convention. The first was in 1991 and concerned only one article, whereas the present Conference involved a whole array of far-reaching and difficult issues. You, Mr Grossenbacher, have presided over this Conference with an admirable combination of flexibility and severity, remaining impartial and independent, and occasionally adding a generous portion of humour. And at the same time you have set us an example of Swiss punctuality and precision, ensuring that we adhered rigorously to the timetable. For that we should be particularly grateful, not least because it had a beneficial effect on the shape of our evenings too. We all know of conferences, especially Diplomatic Conferences, which - for whatever reasons - run on long into the night. Here, that problem did not arise. The way in which you have conducted the proceedings of this Diplomatic Conference has set a standard by which we shall have to abide in future.

402. The Conference President made the following statement:

In a few moments we shall proceed to the signing of the Revision Act and Final Act. This comes at the end of a Diplomatic Conference which took place in a very pleasant atmosphere with excellent working conditions. It is gratifying, moreover, that it was possible to allow some scope on the sidelines for the expression of critical views, but without seriously impeding the Conference's deliberations.

The smooth conduct of the proceedings and their positive outcome are due, on the one hand, to the thoroughly constructive and professional contributions of the delegations, and on the other, to the perfect organisation of the event by the EPO Task Force, and, last but not least, the general framework provided for us by the President of the EPO, with aspects ranging from the attractive souvenir gifts to the programme of cultural and social events.

My sincere thanks once more to all concerned.

As was anticipated at the beginning of the Conference, its individual results are unspectacular. Viewed as a whole, however - and this needs to be emphasised - they are very impressive. While preserving the key achievements of the European patent system, the Conference has comprehensively modernised the system's legal instruments and provided for a considerable strengthening of legal certainty which will benefit all concerned.

And that is not all. The Conference has also given a new impetus to the further integration of the patent system in Europe. The anchoring of optional special agreements in the EPC reinforces the legitimacy of the efforts made by the European Patent Organisation with regard to the language question and the creation of a unified court system for patent litigation. This, together with the willingness to integrate the Community patent into the European patent system, indicates the way forward for the unitary Community patent which is in the process of emerging. In this connection, a further aspect of particular importance is the firmer political anchoring of the European Patent Organisation by institutionalising the intergovernmental conference at ministerial level. This clearly affirms the Organisation's independence and emphasises its role as a driving force in the continuing integration of the European patent system.

On the other hand, some important issues of substantive patent law, such as the patenting of biotechnological inventions and computer programs, were omitted from the present revision. Biotechnology was never on the agenda; the topic of software patenting was removed in the course of the Conference's deliberations.

This endorses a now firmly established division of labour - between the European Community, as the principal forum for the harmonisation of substantive patent law, and the European Patent Organisation, with the European Patent Office, as the main instrument for unifying patent procedures and practice. The same division of responsibilities is reflected in the new arrangement authorising the Administrative Council to adapt the EPC to new Community law, although the limitations imposed on this make it likely that such adaptation will take some time.

Finally, the revision has also strengthened the position of the EPO as an institution committed to efficiency and professionalism. As well as making numerous improvements in the details of procedures, the Conference has confirmed the legality of BEST, which can now be implemented in full.

The Revision Conference 2000 of the Contracting States of the European Patent Organisation is nearing its close. But the unification of the patent system in Europe is continuing, with the European Patent Organisation playing a leading role. We have reaffirmed this in a joint resolution which amounts to a programme for the continuation of the Conference's work - an ambitious programme which builds on what has been achieved and also addresses difficult issues. But it also remains realistic and thereby enhances its own prospects of success, since it adheres to the existing framework and establishes a link, in substantive terms, with the efforts of the European Community. In its speedy preparation of the Conference, which is ending exactly on schedule, the European Patent Organisation has demonstrated that it is an innovative, dynamic and effective body. That will remain the case in the future.

On that note, I declare the Conference closed.

DIPLOMATISCHE KONFERENZ ZUR REVISION DES EUROPÄISCHEN PATENTÜBEREINKOMMENS
DIPLOMATIC CONFERENCE TO REVISE THE EUROPEAN PATENT CONVENTION
CONFERENCE DIPLOMATIQUE POUR LA REVISION DE LA CONVENTION SUR LE BREVET
EUROPEEN

(München/Munich, 20 - 29.11.2000)

BETRIFFT: Verzeichnis der Teilnehmer
SUBJECT: List of participants
OBJET: Liste des participants

VERFASSER: Sekretariat
DRAWN UP BY: Secretariat
ORIGINE: Le secrétariat

EMPFÄNGER: Revisionskonferenz (zur Unterrichtung)
ADDRESSEES: Revision Conference (for information)
DESTINATAIRES: La Conférence de révision (pour information)

PRÄSIDENT - PRESIDENT

Herr Roland GROSSENBACHER
Direktor
Eidgenössisches Institut für Geistiges Eigentum
(Schweiz)

VIZEPRÄSIDENT - VICE-PRESIDENT

M. José MOTA MAIA
Président
Institut National de la Propriété Industrielle
(Portugal)

MITGLIEDSDELEGATIONEN - MEMBER DELEGATIONS - DELEGATIONS MEMBRES

I. ORDENTLICHE MITGLIEDSDELEGATIONEN - ORDINARY MEMBER DELEGATIONS - DELEGATIONS MEMBRES ORDINAIRES

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	M. Hugo VAN DIJCK	Consul général de Belgique à Munich
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	M. Geoffrey BAILLEUX	Conseiller adjoint Ministère des Affaires économiques
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	Mr Niels RAVN	Deputy Director General Danish Patent Office
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	Ms Catharine L.D. WINTERBERG	Legal Adviser Danish Patent Office
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	Herr Dietrich WELP	Referatsleiter Patentrecht Bundesministerium der Justiz

	Herr Johannes KARCHER	Richter Bundesministerium der Justiz
	Herr Hans-Georg LANDFERMANN	Präsident Deutsches Patent- und Markenamts
	Herr Hans-Christian METTERNICH	Leiter der Rechtsabteilung Deutsches Patent- und Markenamts
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GR	Ellas	
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Chef du Bureau du Droit communautaire
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Mr Roberto ROSSI
Mr Francesco LOMBRASSA
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Minister Plenipotentiary
Ministry of Foreign Affairs
Minister for European Community
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Chef de cabinet
Ministry for European Community
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Vice-Minister for Industry & Trade
Director
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Ms Maria Annunziata SANTAMATO	Ministry for European Community Policies

LI Liechtenstein

Herr Daniel OSPELT	Stellvertretender Leiter des Amtes für Auswärtige Angelegenheiten
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Mme Marie-Pierre GRAMAGLIA	Chef de division de la Propriété Intellectuelle

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Herr Herbert KNITTEL	Vizepräsident des Österreichischen Patentamtes
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Frau Susanne LANG	Stellvertretender Vorstand der Rechtsabteilung A des Österreichischen Patentamtes

PT Portugal

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M. Jaime Serrão ANDREZ	Administrateur Institut National de la Propriété Industrielle

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Herr Stefan LUGINBUEHL	Rechtsanwalt Eidgenössisches Institut für Geistiges Eigentum

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Mr Lars BJÖRKLUND	Deputy Director General Swedish Patent and Registration Office
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Mr Carl JOSEFSSON	Associate Judge of Appeal/Legal Adviser Ministry of Justice
Mr Per HOLMSTRAND	Chief Legal Counsel Swedish Patent and Registration Office
Ms Karin HÖKBORG	Judge of appeal Ministry of Justice

TR Türkei - Turkey - Turquie

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Mr A. Bülent DALOĞLU	Patent Examiner Turkish Patent Office

GB Vereinigtes Königreich - United Kingdom - Royaume-Uni

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Mr Mark TOOKE	Legal Adviser Legal Services A5 Department of Trade and Industry
Ms Sue SCOTT	Head of Patents BTG plc

**II. AUßERORDENTLICHE MITGLIEDSDELEGATION - SPECIAL MEMBER DELEGATION -
DELEGATION MEMBRE SPECIALE**

EC Europäische Gemeinschaft/European Community/Communauté européenne

**- Europäische Kommission/European Commission/Commission
européenne**

Mr Heinz ZOUREK	Deputy Director General Internal Market Directorate-General
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Mr Thierry STOLL	Director Internal Market Directorate-General
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Mr Erik NOOTEBOOM	Head of Unit Internal Market Directorate-General Industrial Property Unit
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Mr Jens GASTER	Principal Administrator Internal Market Directorate-General Industrial Property Unit
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**- Rat der Europäischen Union/Council of the European Union/Conseil
de l'Union européenne**

Mr Anders OLANDER	Director, DG C-II
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Mr Leonidas KARAMOUNTZOS	Principal Administrator, DG C-II
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BEOBACHTER - OBSERVERS - OBSERVATEURS

I. STAATEN - COUNTRIES - ETATS

BG Bulgarien - Bulgaria - Bulgarie

Mr Mircho MIRCHEV	President Patent Office of the Republic of Bulgaria
Ms Margarita NEDJALKOVA- MECHEVA	Vice-President Patent Office of the Republic of Bulgaria
Ms Vasja GERMANOVA	Director of Directorate Examination of LP Objects Patent Office of the Republic of Bulgaria
Ms Evgenia TABOVA	Head of Appeal Department Patent Office of the Republic of Bulgaria
Ms Ilia KRASTELNIKOV	Head of International Organisations Department, Human Rights Directorate Ministry of Foreign Affairs

CZ Tschechische Republik - Czech Republic - République tchèque

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EE Estland - Estonia - Estonie

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Mr Raul KARTUS	Councillor The Estonian Patent Office
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FYROM **ehemalige jugoslawische Republik Mazedonien - Former Yugoslav Republic of Macedonia - l'ex-République yougoslave de Macédoine**

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Ms Liljana VARGA	Assistant Director Industrial Property Protection Office
Ms Irena JAKIMOVSKA	Adviser Industrial Property Protection Office
Ms Marija KOSTOVSKA	Adviser Industrial Property Protection Office

HU **Magyarország**

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Ms Márta POSTEINER-TOLDI	Vice-President Hungarian Patent Office
Mr Mihály FICSOR	Head of department Hungarian Patent Office
Ms Klára MÁTTYUS	Head of department Ministry of Economy
Mr Kinga PÉTERVÁRI	Senior expert Ministry of Justice

LT **Litauen - Lithuania - Lituanie**

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Mr Žilvinas DANYS	Chief Specialist of the Legal Division State Patent Bureau

LV **Lettland - Latvia - Lettonie**

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Mr Georgij POLIAKOV	Deputy Director Latvian Patent Office

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	Mr Eirik RØDSAND	Senior Executive Officer Norwegian Patent Office
PL	Polen - Poland - Pologne	
	Mr Wieslaw KOTARBA	President The Patent Office
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	Mr Alexandru Cristian ŞTRENC	Deputy Director General State Office for Inventions and Trademarks
	Mr Liviu BULGĂR	Director Legal and International Affairs State Office for Inventions and Trademarks
SI	Slowenien - Slovenia - Slovénie	
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	Mr Andrej PIANO	Counsellor to the Government Slovenian Intellectual Property Office
	Ms Mojca PEČAR	Counsellor to the Director Slovenian Intellectual Property Office

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Mr Vladimír BANSKÝ	Director International Affairs European Integration and PCT Department Industrial Property Office of the Slovak Republic
Ms Katarína BRUOTHOVÁ	Law and Legislation Department Industrial Property Office of the Slovak Republic
Mr Metod ŠPAČEK	Head of Department Ministry of Foreign Affairs of the Slovak Republic

II. ZWISCHENSTAATLICHE ORGANISATIONEN - INTERGOVERNMENTAL ORGANISATIONS - ORGANISATIONS INTERGOUVERNEMENTALES

**WIPO/
OMPI World Intellectual Property Organization - Organisation Mondiale de la Propriété Intellectuelle**

Mr Albert TRAMPOSCH	Director Industrial Property Law Division
Mr Philippe BAECHTOLD	Head Patent Law Section Industrial Property Law Division
Mr Brad HUTHER	Special Attaché

III. NICHTSTAATLICHE ORGANISATIONEN - NON-GOVERNMENTAL ORGANISATIONS - ORGANISATIONS NON-GOUVERNEMENTALES

AIPPI Internationale Vereinigung für Gewerblichen Rechtsschutz - International Association for the Protection of Industrial Property - Association internationale pour la protection de la propriété industrielle

Mr Bruno PHELIP

Reporter General

Mr Ralph NACK

Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law

CCI/ICC Internationale Handelskammer - International Chamber of Commerce - Chambre de commerce internationale

Mr Richard F. FAWCETT

Rapporteur on patents
ICC Commission on Intellectual and Industrial Property

Mr Ivan HJERTMAN

Senior Patent Attorney
Global Intellectual Property, Patents

CNIPA Committee of National Institutes of Patent Agents - Comité des instituts nationaux d'agents de brevets

M. Jean-Jacques MARTIN

Président de la Compagnie Nationale des Conseils en Propriété Industrielle

Herr Uwe DREISS

President of the German Patentanwaltskammer

Herr Eugen POPP

General Secretary of CNIPA and Vice President of the German Patentanwaltskammer

M. Patrice VIDON

Vice-Président de la Compagnie Nationale des Conseils en Propriété Industrielle

Mr Frans. A. DIETZ

President of the Orde van Octrooigemachtigden

Mr Helmut SONN

Member of the Board of the Austrian Patentanwaltskammer

Frau Ursula WITTENZELLNER

Attorney at Law and Executive Secretary of the German Patentanwaltskammer

- Mr Edward LYNDON-STANFORD Member of referenting the Chartered
Institute of Patent Agents
- Mr John David BROWN Delegate
- EFPIA Europäische Föderation der Verbände der pharmazeutischen Industrie -
European Federation of Pharmaceutical Industry Associations - Fédération
européenne des associations de l'industrie pharmaceutique**
- Mr Peter DOLTON Glaxo Wellcome
Manager Patents
Global Intellectual Property
- Mme Elisabeth THOURET-LEMAITRE Sanofi-Synthelabo
Département Brevets
- EIRMA Europäische Vereinigung für das Management der Industrieforschung -
European Industrial Research Management Association - Association
européenne pour l'administration de la recherche industrielle**
- Mr Albert ZEESTRATEN General Patents & Licensing Attorney
Chairman of the EIRMA Special Interest
Group on IPP
- epi* Institut der beim Europäischen Patentamt zugelassenen Vertreter - Institute
of Professional Representatives before the European Patent Office - Institut
des mandataires agréés près de l'Office européen des brevets**
- Herr Walter HOLZER Präsident
- M. Francesco MACCHETTA Vice-président
- M. Sylvain LE VAGUERESE Vice-président
- FEMIP Europäischer Verband der Industrie-Patentingenieure - European
Federation of Agents of Industry in Industrial Property - Fédération
européenne des mandataires de l'industrie en propriété industrielle**
- Herr Paul Georg MAUE Präsident
- M. Robert DEPELSENAIRE Honorary Director
- FICPI Internationale Föderation von Patentanwälten - International Federation of
Industrial Property Attorneys - Fédération internationale des conseils en
propriété industrielle**
- M. Francis AHNER Vice-président
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Professor Dr. h.c. Paul BRAENDLI	Präsident a.D. des Europäischen Patentamts
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VERZEICHNIS DER KONFERENZDOKUMENTE
LIST OF CONFERENCE DOCUMENTS
LISTE DES DOCUMENTS DE LA CONFERENCE

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
<p>Entwurf der Tagesordnung für die Diplomatische Konferenz zur Revision des Europäischen Patentübereinkommens</p> <p>Draft agenda for the Diplomatic Conference to revise the European Patent Convention</p> <p>Projet d'ordre du jour de la Conférence diplomatique pour la révision de la Convention sur le brevet européen</p>	<p>MR/A/00 + Rev.1</p>
<p>Entwurf der Verfahrensordnung</p> <p>Draft Rules of Procedure</p> <p>Projet de règlement intérieur</p>	<p>MR/1/00</p>
<p>Basisvorschlag für die Revision des Europäischen Patentübereinkommens</p> <p>Basic proposal for the revision of the European Patent Convention</p> <p>Proposition de base pour la révision de la Convention sur le brevet européen</p>	<p>MR/2/00</p>
<p>Entwurf der Revisionsakte</p> <p>Draft Revision Act</p> <p>Projet d'Acte de révision</p>	<p>MR/3/00 + Rev.1</p>
<p>Entwurf der Schlußakte</p> <p>Draft Revision Act</p> <p>Projet d'Acte de révision</p>	<p>MR/4/00 + Rev.1</p>

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
<p>Vorschlag für die Besetzung der Ämter der Konferenz</p> <p>Proposal for allocation of the posts of the Conference</p> <p>Proposition concernant la répartition des postes de la Conférence</p>	<p>MR/5/00</p>
<p>Basisvorschlag für die Revision des Europäischen Patentübereinkommens</p> <p>- Folgeänderungen des Sekretariats</p> <p>Basic proposal for the revision of the European Patent Convention</p> <p>- Additional amendments from the Secretariat</p> <p>Proposition de base pour la révision de la Convention sur le brevet européen</p> <p>- Modifications supplémentaires de la part du secrétariat</p>	<p>MR/6/00</p>
<p>Änderungsvorschläge zu den Artikeln 33 und 35</p> <p>- IT Delegation</p> <p>Proposed amendments to Articles 33 and 35</p> <p>- IT delegation</p> <p>Modifications proposées des articles 33 et 35</p> <p>- IT délégation</p>	<p>MR/7/00</p>
<p>Änderungsvorschläge zu den Artikeln 14 und 52 und zum Protokoll über die Auslegung des Artikels 69 (Artikel 1, 2, 3, 99, 112a und 138)</p> <p>- FR Delegation</p> <p>Proposed amendments to Articles 14 and 52 and to the Protocol on the Interpretation of Article 69 (Articles 1, 2, 3, 99, 112a and 138)</p> <p>- FR delegation</p> <p>Modificaitons proposées des articles 14 et 52 et du Protocole interprétatif de l'article 69 (articles 1, 2, 3, 99, 112a et 138)</p> <p>- FR délégation</p>	<p>MR/8/00</p>
<p>Änderungsvorschläge zu Artikel 54</p> <p>- GR Delegation</p> <p>Proposed amendment to Article 54</p> <p>- GR delegation</p> <p>Modifications proposées à l'article 54</p> <p>- GR délégation</p>	<p>MR/9/00 + Corr.1</p>

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
Basisvorschlag für die Revision des Europäischen Patentübereinkommens - SE Delegation Basic proposal for the revision of the European Patent Convention - SE delegation Proposition de base pour la révision de la Convention sur le brevet européen - SE délégation	MR/10/00
Änderungsvorschlag zu den Artikeln 121 und 122 - SE Delegation Proposed amendments to Articles 121 and 122 - SE delegation Modifications proposées des articles 121 et 122 - SE délégation	MR/11/00
Änderungsvorschläge zu Artikel 87 - IE Delegation Proposed amendments to Article 87 - IE delegation Modifications proposées à l'article 87 - IE délégation	MR/12/00
Änderungsvorschläge zum Protokoll über die Auslegung des Artikels 69 - GB Delegation Proposed amendments to the Protocol on the interpretation of Article 69 - GB delegation Modifications proposées au Protocole interprétatif de l'article 69 - GB délégation	MR/13/00
Änderungsvorschläge zu Artikel 37 - DE Delegation Proposed amendments to Article 37 - DE delegation - Modifications proposées à l'article 37 - DE delegation	MR/14/00

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
<p>Änderungsvorschläge zu den Artikeln 52 und 105a bis c - DK Delegation</p> <p>Proposed amendments to Articles 52 and 105(a) to (c) - DK delegation</p> <p>Modifications proposées des articles 52 et 105a) à c) - DK délégation</p>	<p>MR/15/00</p>
<p>Änderungsvorschläge zu Artikel 52 - DE Delegation</p> <p>Proposed amendmends to Article 52 - DE delegation</p> <p>Modifications proposées à l'article 52 - DE délégation</p>	<p>MR/16/00</p>
<p>Änderungsvorschläge zum Protokoll über die Auslegung des Artikels 69 - DE Delegation</p> <p>Proposed amendments to the Protocol on the Interpretation of Article 69 - DE delegation</p> <p>Modifications proposées au Protocole interprétatif de l'article 69 - DE délégation</p>	<p>MR/17/00</p>
<p>Änderungsvorschläge zu Artikel 54, Absätze 4 und 5 - CH Delegation</p> <p>Proposed amendments to Article 54, paragraphs 4 and 5 - CH delegation</p> <p>Modifications proposées à l'article 54, paragraphes 4 et 5 - CH délégation</p>	<p>MR/18/00</p>
<p>Bericht des Vollmachtenprüfungsausschusses</p> <p>Report of the Credentials Committee</p> <p>Rapport de la Commission de vérification des pouvoirs</p>	<p>MR/19/00</p>

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
<p>Änderungsvorschläge zu Artikel 112a - DE, FR Delegationen</p> <p>Proposed amendments to Article 112a - DE, FR delegations</p> <p>Modifications proposées à l'article 112a - DE, FR délégations</p>	<p>MR/20/00</p>
<p>Änderungsvorschläge zu Artikel 112a - DE, FR Delegationen + EPA</p> <p>Proposed amendments to Article 112a - DE, FR delegations + EPO</p> <p>Modifications proposées à l'article 112a - DE, FR délégations + OEB</p>	<p>MR/21/00</p>
<p>Entwurf einer Entschließung der Konferenz</p> <p>Draft Conference Resolution</p> <p>Projet de résolution de la Conférence</p>	<p>MR/22/00</p>
<p>Entwurf des Berichts über die Diplomatische Konferenz zur Revision des Europäischen Patentübereinkommens (München, 20. bis 29. November 2000)</p> <p>Draft report on the Diplomatic Conference to revise the European Patent Convention (Munich, 20 to 29 November 2000)</p> <p>Projet de rapport sur la Conférence diplomatique pour la révision de la Convention sur le brevet européen (Munich, du 20 au 29 novembre 2000)</p>	<p>MR/23/00</p>
<p>Bericht über die Diplomatische Konferenz zur Revision des Europäischen Patentübereinkommens (München, 20. bis 29. November 2000)</p> <p>Report on the Diplomatic Conference to revise the European Patent Convention (Munich, 20 to 29 November 2000)</p> <p>Rapport sur la Conférence diplomatique pour la révision de la Convention sur le brevet européen (Munich, du 20 au 29 novembre 2000)</p>	<p>MR/24/00</p>
<p><i>Annulliert!</i></p> <p><i>Cancelled!</i></p> <p><i>Annulé</i></p>	<p>MR/PLD 1/00</p>

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
<p>Änderungsvorschläge zu den Artikeln 4 und 4a - Sekretariat</p> <p>Proposed amendments to Articles 4 and 4a - Secretariat</p> <p>Modifications proposées des articles 4 et 4a - Le secrétariat</p>	MR/PLD 2/00
<p>Vorgeschlagene Änderung der Revisionsakte [neuer Artikel 6a] - Präsident</p> <p>Proposed amendment to the Revision Act [new Article 6a] - Chairman</p> <p>Modification proposée de l'Acte de révision [nouvel article 6a] - Le Président</p>	MR/PLD 3/00
<p>Änderungsvorschläge zu Artikel 33 - BE, FR, IT Delegationen</p> <p>Proposed amendment to Article 33 - BE, FR, IT delegations</p> <p>Modifications proposées à l'article 33 - BE, FR, IT délégations</p>	MR/PLD 4/00
<p>Änderungsvorschläge zum Protokoll über den Personalbestand des Europäischen Patentamts in Den Haag (Personalstandsprotokoll) - DE, NL Delegationen + EPA</p> <p>Proposed amendments to the Protocol on the Staff Complement of the European Patent Office at The Hague (Protocol on Staff Complement) - DE, NL delegations + EPO</p> <p>Modifications proposées au Protocole sur les effectifs de l'Office européen des brevets à La Haye (Protocole sur les effectifs) - DE, NL délégations + OEB</p>	MR/PLD 5/00

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
<p>Änderungsvorschläge zum Protokoll über die Auslegung des Artikels 69 - DE, FR, GB Delegationen</p> <p>Proposed amendments to the Protocol on the Interpretation of Article 69 - DE, FR, GB delegations</p> <p>Modifications proposées au Protocole interprétatif de l'article 69 - DE, FR, GB délégations</p>	<p>MR/PLD 6/00</p>
<p>Änderungsvorschläge zu den Artikeln 3 und 7 der Revisionsakte - Sekretariat</p> <p>Proposed amendments to Articles 3 and 7 of the Revision Act - Secretariat</p> <p>Modifications proposées des articles 3 et 7 de l'Acte de révision - Le secrétariat</p>	<p>MR/PLD 7/00</p>
<p>Änderungsvorschläge zur Schlußakte - EG + FR, GB Delegationen</p> <p>Proposed amendments to the Final Act - EC + FR, GB delegations</p> <p>Modifications proposées de l'Acte final - CE + FR, GB délégations</p>	<p>MR/PLD 8/00 + Rev. 1</p>
<p>Entwurf einer Entschließung der Konferenz - DE, DK, FR, GB, SE Delegationen</p> <p>Draft Conference Resolution - DE, DK, FR, GB, SE delegations</p> <p>Projet de résolution de la Conférence - DE, DK, FR, GB, SE délégations</p>	<p>MR/PLD 9/00</p>

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
Entwurf einer EntschlieÙung der Konferenz - Sekretariat Draft Conference Resolution - Secretariat Projet de r�solution de la Conf�rence - Le secr�tariat	MR/PLD 10/00
�nderungsvorschl�ge zu den Artikeln 6 und 7a der Revisionsakte - DE, GB, NL Delegationen Proposed amendments to Articles 6 and 7a of the Revision Act - DE, GB, NL delegations Modifications propos�es des articles 6 et 7a de l'Acte de r�vision - DE, GB, NL d�l�gations	MR/PLD 11/00
Entwurf einer EntschlieÙung der Konferenz - Pr�sident Draft Conference Resolution - Chairman Projet de r�solution de la Conf�rence - Le Pr�sident	MR/PLD 12/00
Revision des Europ�ischen Patent�bereinkommens - RedaktionsausschuÙ Revision of the European Patent Convention - Drafting Committee R�vision de la Convention sur le brevet europ�en - Comit� de r�daction	MR/DCD 1/00
Vorl�ufiges Verzeichnis der Teilnehmer Provisional list of participants Liste provisoire des participants	Info 1/MR 2000
Allgemeine Informationen zur Diplomatischen Konferenz General information relating to the Diplomatic Conference Informations g�n�rales concernant la Conf�rence diplomatique	Info 2/MR 2000

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
Vorschlag für die Besetzung der Ämter der Konferenz Proposal for allocation of the posts of the Conference Proposition concernant la répartition des postes de la Conférence	Info 3/MR 2000
Konferenzprogramm Conference programme Programme de la Conférence	Info 4/MR 2000
Revision des Europäischen Patentübereinkommens - dreisprachige Synopse Revision of the European Patent Convention - trilingual synopsis Révision de la Convention sur le brevet européen - synopsis trilingue	Info 5/MR 2000
Text des Europäischen Patentübereinkommens Text of the European Patent Convention Texte de la Convention sur le brevet européen	Info 6/MR 2000
E-mail-Einrichtungen während der Diplomatischen Konferenz E-mail facilities during the Diplomatic Conference Fonctions de courrier électronique (e-mail) pendant la Conférence diplomatique	Info 7/MR 2000
Raumverteilung für die Diplomatische Konferenz Distribution of rooms during the Diplomatic Conference Affectation des salles pendant la Conférence diplomatique	Info 8/MR 2000
<i>Nur in Englisch!</i> Articles 52, 54, 69 and 101; Final comments by <i>epi</i> <i>Seulement en anglais!</i>	Info 9/MR 2000

Gegenstand Title Objet	Dokument Nr. Document reference Cote du document
<i>Nur in Englisch!</i> UNION's position paper on the Revision of the European Patent Convention <i>Seulement en anglais!</i>	Info 10/MR 2000
<i>Nur in Englisch!</i> Preliminary observation of FICPI on the Basic Proposal MR/2/00 <i>Seulement en anglais!</i>	Info 11/MR 2000
