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SUBJECT: Draft Revision Act

DRAWN UP BY: Administrative Council

ADDRESSEES: Revision Conference (for adoption)

SUMMARY

This document contains the draft Act revising the European Patent Convention.

Draft

**ACT REVISING THE CONVENTION ON THE GRANT OF EUROPEAN PATENTS
(EUROPEAN PATENT CONVENTION)
OF 5 OCTOBER 1973, LAST REVISED AT 17 DECEMBER 1991**

Preamble

THE CONTRACTING STATES TO THE EUROPEAN PATENT CONVENTION,

CONSIDERING that the co-operation of the countries of Europe on the basis of the European Patent Convention and the single procedure for the grant of patents thereby established renders a significant contribution to the legal and economic integration of Europe,

WISHING to promote innovation and economic growth in Europe still more effectively by laying foundations for the further development of the European patent system,

DESIRING, in the light of the increasingly international character of the patent system, to adapt the European Patent Convention to the technological and legal developments which have occurred since it was concluded,

HAVE AGREED AS FOLLOWS:

**ARTICLE 1
AMENDMENT OF THE EUROPEAN PATENT CONVENTION**

The European Patent Convention shall be amended as follows:

1. Article 4 shall be amended to read as follows:

Article 4
European Patent Organisation

- (1) A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. It shall have administrative and financial autonomy.
- (2) The organs of the Organisation shall be:
 - (a) a European Patent Office;
 - (b) an Administrative Council.

(3) The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.

(4) A conference of ministers of the Contracting States responsible for patent matters shall meet at least every five years to discuss issues pertaining to the Organisation and to the European patent system.

2. Article 11 shall be amended to read as follows:

Article 11

Appointment of senior employees

(1) The President of the European Patent Office shall be appointed by decision of the Administrative Council.

(2) The Vice-Presidents shall be appointed by decision of the Administrative Council after the President has been consulted.

(3) The members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by decision of the Administrative Council, taken on a proposal from the President of the European Patent Office. They may be re-appointed by decision of the Administrative Council after the President of the European Patent Office has been consulted.

(4) The Administrative Council shall exercise disciplinary authority over the employees referred to in paragraphs 1 to 3.

(5) The Administrative Council, after consulting the President of the European Patent Office, may also appoint as members of the Enlarged Board of Appeal legally qualified members of the national courts or quasi-judicial authorities of the Contracting States, who may continue their judicial activities at the national level. They shall be appointed for a term of three years and may be reappointed.

3. Article 14 shall be amended to read as follows:

Article 14

Languages of the European Patent Office,
European patent applications and other documents

(1) The official languages of the European Patent Office shall be English, French and German.

(2) A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. Throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.

(3) The official language of the European Patent Office in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before the European Patent Office, unless otherwise provided in the Implementing Regulations.

(4) Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State. They shall however file a translation in an official language of the European Patent Office in accordance with the Implementing Regulations. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.

(5) European patent applications shall be published in the language of the proceedings.

(6) Specifications of European patents shall be published in the language of the proceedings and shall include a translation of the claims in the two other official languages of the European Patent Office.

4. Article 16 shall be amended to read as follows:

Article 16
Receiving Section

The Receiving Section shall be responsible for the examination on filing and as to formal requirements of any European patent application.

5. Article 17 shall be amended to read as follows:

Article 17
Search Divisions

The Search Divisions shall be responsible for drawing up European search reports.

6. Article 18 shall be amended to read as follows:

Article 18
Examining Divisions

- (1) The Examining Divisions shall be responsible for the examination of any European patent application.
- (2) An Examining Division shall consist of three technical examiners. Nevertheless, the examination prior to a final decision shall, as a general rule, be entrusted to one member of the Division. Oral proceedings shall be before the Examining Division itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Division shall be decisive.

7. Article 21 shall be amended to read as follows:

Article 21
Boards of Appeal

- (1) The Boards of Appeal shall be responsible for the examination of appeals from the decisions of the Receiving Section, Examining Divisions, Opposition Divisions and of the Legal Division.
- (2) For appeals from a decision of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.
- (3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:
 - (a) two technically qualified members and one legally qualified member, when the decision concerns the refusal of a European patent application or the grant, limitation or revocation of a European patent and was taken by an Examining Division consisting of less than four members;
 - (b) three technically qualified members and two legally qualified members, when the decision was taken by an Examining Division consisting of four members or when the Board of Appeal considers that the nature of the appeal so requires;
 - (c) three legally qualified members in all other cases.
- (4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:

- (a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;
- (b) three technically qualified members and two legally qualified members, when the decision was taken by an Opposition Division consisting of four members or when the Board of Appeal considers that the nature of the appeal so requires.

8. Article 22 shall be amended to read as follows:

Article 22
Enlarged Board of Appeal

- (1) The Enlarged Board of Appeal shall be responsible for:
 - (a) deciding points of law referred to it by Boards of Appeal;
 - (b) giving opinions on points of law referred to it by the President of the European Patent Office under the conditions laid down in Article 112;
 - (c) deciding on petitions for review of decisions of the Boards of Appeal under the conditions laid down in Article 112a.
- (2) In proceedings under paragraph 1(a) and (b), the Enlarged Board of Appeal shall consist of five legally qualified and two technically qualified members. In proceedings under paragraph 1(c), the Enlarged Board of Appeal shall consist of three or five members as laid down in the Implementing Regulations. In all proceedings a legally qualified member shall be the Chairman.

9. Article 23 shall be amended to read as follows:

Article 23
Independence of the members of the Boards

- (1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect. Notwithstanding sentence 1, the term of office of members of the Boards shall end if they resign or are retired in accordance with the Service Regulations for permanent employees of the European Patent Office.

(2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or of the Legal Division.

(3) In their decisions the members of the Boards shall not be bound by any instructions and shall comply only with the provisions of this Convention.

(4) The Rules of Procedure of the Boards of Appeal and the Enlarged Board of Appeal shall be adopted in accordance with the provisions of the Implementing Regulations. They shall be subject to the approval of the Administrative Council.

10. Article 33 shall be amended to read as follows:

Article 33

Competence of the Administrative Council in certain cases

(1) The Administrative Council shall be competent to amend the following provisions:

(a) the time limits laid down in this Convention;

(b) Parts II to VIII and Part X of this Convention, to bring them into line with an international treaty or European Community legislation relating to patents;

(c) the Implementing Regulations.

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions:

(a) the Financial Regulations;

(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature and rules for the grant of any supplementary benefits;

(c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;

(d) the Rules relating to Fees;

(e) its Rules of Procedure.

(3) Notwithstanding Article 18, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technical examiner. Such decision may be rescinded.

(4) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements on behalf of the European Patent Organisation with States, with intergovernmental organisations and with documentation centres set up by virtue of agreements with such organisations.

11. Article 35 shall be amended to read as follows:

Article 35
Voting rules

(1) The Administrative Council shall take its decisions other than those referred to in paragraphs 2 and 3 by a simple majority of the Contracting States represented and voting.

(2) A majority of three quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, paragraphs 1(a) and (c), and 2 to 4, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 134a, Article 149a, paragraph 2, Article 152, Article 153, paragraph 7, Article 166 and Article 172.

(3) Unanimity of the Contracting States voting shall be required for the decisions which the Administrative Council is empowered to take under Article 33, paragraph 1(b). The Administrative Council shall take such decisions only if all the Contracting States are represented. A decision taken on the basis of Article 33, paragraph 1(b), shall not take effect if a Contracting State declares, within 12 months of the date of the decision, that it does not wish to be bound by the decision.

(4) Abstentions shall not be considered as votes.

12. Article 37 shall be amended to read as follows:

Article 37
Budgetary funding

The budget of the Organisation shall be financed:

- (a) by the Organisation's own resources;
- (b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States;
- (c) where necessary, by special financial contributions made by the Contracting States;

- (d) where appropriate, by the revenue provided for in Article 146;
- (e) where appropriate, and for tangible assets only, by third-party borrowings secured on land or buildings;
- (f) where appropriate, by third-party funding for specific projects.

13. Article 38 shall be amended to read as follows:

Article 38
The Organisation's own resources

The Organisation's own resources shall comprise:

- (a) all income from fees and other sources and also the reserves of the Organisation;
- (b) the resources of the Pension Reserve Fund, which shall be treated as a special class of asset of the Organisation designed to lend support to the Organisation's pension scheme by providing the appropriate reserves.

14. Article 42 shall be amended to read as follows:

Article 42
Budget

- (1) The budget of the Organisation shall be balanced. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations. If necessary, there may be amending or supplementary budgets.
- (2) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.

15. Article 50 shall be amended to read as follows:

Article 50
Financial Regulations

The Financial Regulations shall in particular establish:

- (a) the procedure relating to the establishment and implementation of the budget and for rendering and auditing of accounts;

- (b) the method and procedure whereby the payments and contributions provided for in Article 37 and the advances provided for in Article 41 are to be made available to the Organisation by the Contracting States;
- (c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision;
- (d) the rates of interest provided for in Articles 39, 40 and 47;
- (e) the method of calculating the contributions payable by virtue of Article 146;
- (f) the composition of and duties to be assigned to a Budget and Finance Committee which should be set up by the Administrative Council;
- (g) the generally accepted accounting principles on which the budget and the annual financial statements shall be based.

16. Article 51 shall be amended to read as follows:

Article 51
Fees

- (1) The European Patent Office may levy fees for any official task or procedure carried out under this Convention.
- (2) Time limits for the payment of fees other than those fixed by this Convention shall be laid down in the Implementing Regulations.
- (3) Where the Implementing Regulations provide that a fee shall be paid, they shall also lay down the consequences of failure to pay such fee in due time.
- (4) The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid.

17. Article 52 shall be amended to read as follows:

Article 52
Patentable inventions

- (1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.
- (2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

- (a) discoveries, scientific theories and mathematical methods;
 - (b) aesthetic creations;
 - (c) schemes, rules and methods for performing mental acts, playing games or doing business;
 - (d) presentations of information.
- (3) The provisions of paragraph 2 shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

18. Article 53 shall be amended to read as follows:

Article 53
Exceptions to patentability

European patents shall not be granted in respect of:

- (a) inventions the commercial exploitation of which would be contrary to "ordre public" or morality, provided that such exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof;
- (c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

19. Article 54 shall be amended to read as follows:

Article 54
Novelty

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

- (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
- (3) Additionally, the content of European patent applications as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published under Article 93 on or after that date, shall be considered as comprised in the state of the art.
- (4) The provisions of paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any method referred to in that paragraph is not comprised in the state of the art.
- (5) Notwithstanding paragraphs 2 and 3, the provisions of this article shall 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), provided that such use is not comprised in the state of the art.

20. Article 61 shall be amended to read as follows:

Article 61

European patent applications filed by non-entitled persons

- (1) If by a final decision it is adjudged that a person other than the applicant is entitled to the grant of the European patent, that person may in accordance with the Implementing Regulations:
- (a) prosecute the application as his own application in place of the applicant,
 - (b) file a new European patent application in respect of the same invention, or
 - (c) request that the application be refused.
- (2) The provisions of Article 76, paragraph 1, shall apply mutatis mutandis to a new application filed under paragraph 1(b).

21. Article 65 shall be amended to read as follows:

Article 65

Translation of the European patent

(1) Any Contracting State may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant, maintenance in amended form, or limitation of the European patent is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.

22. Article 68 shall be amended to read as follows:

Article 68

Effect of revocation or limitation of the European patent

The European patent application and the resulting patent shall be deemed not to have had, as from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked or limited in opposition, limitation or revocation proceedings.

23. Article 69 shall be amended to read as follows:

Article 69

Extent of protection

(1) The extent of the protection conferred by a European patent or a European patent application shall be determined by the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

(2) For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the claims contained in the application as published. However, the European patent as granted or as amended in opposition, limitation or revocation proceedings shall determine retroactively the protection conferred by the European patent application, in so far as such protection is not thereby extended.

24. Article 75 shall be amended to read as follows:

Article 75

Filing of the European patent application

(1) The European patent application may be filed:

(a) at the European Patent Office, or

(b) if the law of a Contracting State so permits, and subject to Article 76, paragraph 1, at the central industrial property office or other competent authority of that State. Any application filed in this way shall have the same effect as if it had been filed on the same date at the European Patent Office.

(2) The provisions of paragraph 1 shall not preclude the application of legislative or regulatory provisions which, in any Contracting State:

(a) govern inventions which, owing to the nature of their subject-matter, may not be communicated abroad without the prior authorisation of the competent authorities of that State, or

(b) prescribe that each application is to be filed initially with a national authority or make direct filing with another authority subject to prior authorisation.

25. Article 76 shall be amended to read as follows:

Article 76

European divisional applications

(1) Any European divisional application shall be filed directly with the European Patent Office in accordance with the Implementing Regulations. It may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed; in so far as this requirement is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall enjoy any right of priority.

(2) All the Contracting States designated in the earlier application at the time of filing of a European divisional application shall be deemed to be designated in the divisional application.

26. Article 77 shall be amended to read as follows:

Article 77

Forwarding of European patent applications

(1) The central industrial property office of a Contracting State shall forward to the European Patent Office any European patent application filed with it or any other competent authority in that State, in accordance with the Implementing Regulations.

(2) Any European patent application the subject of which has been made secret shall not be forwarded to the European Patent Office.

(3) Any European patent application not forwarded to the European Patent Office in due time shall be deemed to be withdrawn.

27. Article 78 shall be amended to read as follows:

Article 78

Requirements of the European
patent application

(1) The European patent application shall contain:

- (a) a request for the grant of a European patent;
- (b) a description of the invention;
- (c) one or more claims;
- (d) any drawings referred to in the description or the claims;
- (e) an abstract,

and satisfy the conditions laid down in the Implementing Regulations.

(2) The European patent application shall be subject to the payment of the filing fee and the search fee. If the filing fee or the search fee is not paid in due time, the application shall be deemed to be withdrawn.

28. Article 79 shall be amended to read as follows:

Article 79
Designation of Contracting States

- (1) All the Contracting States party to this Convention at the time of filing of the European patent application shall be deemed to be designated in the request for grant of a European patent.
- (2) The designation of a Contracting State may be subject to the payment of a designation fee.
- (3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent.

29. Article 80 shall be amended to read as follows:

Article 80
Date of filing

The date of filing of a European patent application shall be the date on which the requirements laid down in the Implementing Regulations are fulfilled.

30. Article 86 shall be amended to read as follows:

Article 86
Renewal fees for European
patent applications

- (1) Renewal fees for European patent applications shall be paid to the European Patent Office in accordance with the Implementing Regulations. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application. If a renewal fee is not paid in due time, the application shall be deemed to be withdrawn.
- (2) The obligation to pay renewal fees shall terminate with the payment of the renewal fee due in respect of the year in which the mention of the grant of the European patent is published.

31. Article 87 shall be amended to read as follows:

Article 87
Priority right

- (1) Any person who has duly filed, in or for any State party to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, an application for a patent, a utility model or a utility certificate, or his successor in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.
- (2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements, including this Convention, shall be recognised as giving rise to a right of priority.
- (3) By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.
- (4) A subsequent application for the same subject-matter as a previous first application and filed in or in respect of the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.
- (5) If the first filing has been made with an industrial property authority which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply if that authority, according to a communication issued by the President of the European Patent Office, recognises that a first filing made at the European Patent Office gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention.

32. Article 88 shall be amended to read as follows:

Article 88
Claiming priority

- (1) An applicant for a European patent desiring to take advantage of the priority of a previous application shall file a declaration of priority and any other document required, in accordance with the Implementing Regulations.
- (2) Multiple priorities may be claimed in respect of a European patent application, notwithstanding the fact that they originated in different countries. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits which run from the date of priority shall run from the earliest date of priority.
- (3) If one or more priorities are claimed in respect of a European patent application, the right of priority shall cover only those elements of the European patent application which are included in the application or applications whose priority is claimed.
- (4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.

33. Article 90 shall be amended to read as follows:

Article 90
Examination on filing and as to formal
requirements

- (1) The European Patent Office shall examine, in accordance with the Implementing Regulations, whether the application satisfies the requirements for the accordance of a date of filing.
- (2) If a date of filing cannot be accorded following the examination under paragraph 1, the application shall not be dealt with as a European patent application.
- (3) If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with the Implementing Regulations, whether the requirements in Articles 14, 78 and 81, and, where applicable, Article 88, paragraph 1, and Article 133, paragraph 2, as well as any other requirement laid down in the Implementing Regulations, have been satisfied.
- (4) Where the European Patent Office in carrying out the examination under paragraphs 1 or 3 notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them.

(5) If any deficiency noted in the examination under paragraph 3 is not corrected, the application shall be refused. Where the deficiency concerns the right of priority, this right shall be lost for the application.

34. Article 91 shall be deleted.

35. Article 92 shall be amended to read as follows:

Article 92

Drawing up the European search report

The European Patent Office shall, in accordance with the Implementing Regulations, draw up and publish a European search report in respect of the European patent application on the basis of the claims, with due regard to the description and any drawings.

36. Article 93 shall be amended to read as follows:

Article 93

Publication of the European patent application

(1) The European Patent Office shall publish the European patent application as soon as possible

(a) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date of priority, or

(b) at the request of the applicant, before the expiry of that period.

(2) The European patent application shall be published at the same time as the specification of the European patent when the decision to grant the patent becomes effective before the expiry of the period referred to in paragraph 1(a).

37. Article 94 shall be amended to read as follows:

Article 94

Examination of the European patent application

(1) The European Patent Office shall, in accordance with the Implementing Regulations, examine on request whether the European patent application and the invention to which it relates meet the requirements of this Convention. The request shall not be deemed to be filed until after the examination fee has been paid.

(2) If no request for examination has been made in due time, the application shall be deemed to be withdrawn.

(3) If the examination reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, as often as necessary, to file his observations and, subject to Article 123, paragraph 1, to amend the application.

(4) If the applicant fails to reply in due time to any communication from the Examining Division, the application shall be deemed to be withdrawn.

38. Articles 95 and 96 shall be deleted.

39. Article 97 shall be amended to read as follows:

Article 97
Grant or refusal

(1) If the Examining Division is of the opinion that the European patent application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant a European patent, provided that the conditions laid down in the Implementing Regulations are fulfilled.

(2) If the Examining Division is of the opinion that the European patent application or the invention to which it relates does not meet the requirements of this Convention, it shall refuse the application unless a different sanction is provided for by this Convention.

(3) The decision to grant a European patent shall take effect on the date on which the mention of the grant is published in the European Patent Bulletin.

40. Article 98 shall be amended to read as follows:

Article 98
Publication of the specification of the European patent

The European Patent Office shall publish the specification of the European patent as soon as possible after the mention of the grant of the European patent has been published in the European Patent Bulletin.

41. The title of Part V shall be amended to read as follows:

PART V
OPPOSITION AND LIMITATION PROCEDURE

42. Article 99 shall be amended to read as follows:

Article 99
Opposition

- (1) Within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the European Patent Office of opposition to that patent, in accordance with the Implementing Regulations. Notice of opposition shall not be deemed to have been filed until after the opposition fee has been paid.
- (2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.
- (3) Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent.
- (4) Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. By derogation from Article 118, the previous proprietor and the person making the request shall not be deemed to be joint proprietors unless both so request.

43. Article 101 shall be amended to read as follows:

Article 101
Examination of the opposition
Revocation or maintenance of the European patent

- (1) If the opposition is admissible, the Opposition Division shall examine, in accordance with the Implementing Regulations, whether at least one ground for opposition under Article 100 prejudices the maintenance of the European patent. During this examination, the Opposition Division shall invite the parties, as often as necessary, to file observations on communications from another party or issued by itself.
- (2) If the Opposition Division is of the opinion that at least one ground for opposition prejudices the maintenance of the European patent, it shall revoke the patent. Otherwise, it shall reject the opposition.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates

(a) meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that the conditions laid down in the Implementing Regulations are fulfilled;

(b) do not meet the requirements of this Convention, it shall revoke the patent.

44. Article 102 shall be deleted.

45. Article 103 shall be amended to read as follows:

Article 103

Publication of a new specification of the European patent

If a European patent is maintained as amended under Article 101, paragraph 3(a), the European Patent Office shall publish a new specification of the European patent as soon as possible after the mention of the opposition decision has been published in the European Patent Bulletin.

46. Article 104 shall be amended to read as follows:

Article 104

Costs

(1) Each party to the opposition proceedings shall bear the costs it has incurred, unless the decision of the Opposition Division, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs.

(2) The procedure for fixing costs shall be laid down in the Implementing Regulations.

(3) Any final decision of the European Patent Office fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given by a civil court of the State in the territory of which enforcement is to be carried out. Verification of such decision shall be limited to its authenticity.

47. Article 105 shall be amended to read as follows:

Article 105

Intervention of the assumed infringer

(1) Any third party may, in accordance with the Implementing Regulations, intervene in opposition proceedings after the opposition period has expired, if the third party proves that

(a) proceedings for infringement of the same patent have been instituted against him, or

(b) following a request of the proprietor of the patent to cease alleged infringement, the third party has instituted proceedings for a ruling that he is not infringing the patent.

(2) An admissible intervention shall be treated as an opposition.

48. The following new Articles 105a, 105b and 105c shall be inserted after Article 105:

Article 105a

Request for limitation or revocation

(1) At the request of the proprietor, the European patent may be revoked or be limited by an amendment of the claims. The request shall be filed with the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to have been filed until after the limitation or revocation fee has been paid.

(2) The request may not be filed while opposition proceedings in respect of the European patent are pending.

Article 105b

Limitation or revocation of the European patent

(1) The European Patent Office shall examine whether the requirements laid down in the Implementing Regulations for limiting or revoking the European patent have been met.

(2) If the European Patent Office considers that the request for limitation or revocation of the European patent meets these requirements, it shall decide to limit or revoke the European patent in accordance with the Implementing Regulations. Otherwise, it shall reject the request.

(3) The decision to limit or revoke the European patent shall apply to the European patent in all the Contracting States in respect of which it has been granted. It shall take effect on the date on which the European Patent Bulletin mentions the decision.

Article 105c

Publication of the amended specification of the European patent

If the European patent is limited under Article 105b, paragraph 2, the European Patent Office shall publish the amended specification of the European patent as soon as possible after the mention of the limitation has been published in the European Patent Bulletin.

49. Article 106 shall be amended to read as follows:

Article 106

Decisions subject to appeal

(1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.

(2) A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal.

(3) The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.

50. Article 108 shall be amended to read as follows:

Article 108

Time limit and form of appeal

Notice of appeal shall be filed, in accordance with the Implementing Regulations, at the European Patent Office within two months of notification of the decision. Notice of appeal shall not be deemed to have been filed until after the fee for appeal has been paid. Within four months of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations.

51. Article 110 shall be amended to read as follows:

Article 110
Examination of appeals

If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable. The examination of the appeal shall be conducted in accordance with the Implementing Regulations.

52. The following new Article 112a shall be inserted after Article 112:

Article 112a
Petition for review by the Enlarged Board of Appeal

- (1) Any party to appeal proceedings adversely affected by a decision of the Board of Appeal may file a petition for review by the Enlarged Board of Appeal
 - (a) if a fundamental procedural defect as defined in the Implementing Regulations occurred in the appeal proceedings, or
 - (b) if a criminal act as established in accordance with the Implementing Regulations may have had an impact on the decision.
- (2) The petition for review shall not have suspensive effect.
- (3) The petition for review shall be filed in a reasoned statement, in accordance with the Implementing Regulations. If based on paragraph 1(a), the petition shall be filed within two months of notification of the decision of the Board of Appeal. If based on paragraph 1(b), the petition shall be filed within two months of the date on which the criminal act has been established and in any event not later than five years from notification of the decision of the Board of Appeal. The petition shall not be deemed to have been filed until after the prescribed fee has been paid.
- (4) The Enlarged Board of Appeal shall examine the petition for review in accordance with the Implementing Regulations. If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision under review and shall re-open proceedings before the Boards of Appeal in accordance with the Implementing Regulations.

(5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the decision of the Board of Appeal under review and publication of the mention of the decision of the Enlarged Board of Appeal on the petition, may without payment continue such use in the course of his business or for the needs thereof.

53. Article 115 shall be amended to read as follows:

Article 115
Observations by third parties

In proceedings before the European Patent Office, following the publication of the European patent application, any third party may, in accordance with the Implementing Regulations, present observations concerning the patentability of the invention to which the application or patent relates. That person shall not be a party to the proceedings.

54. Article 117 shall be amended to read as follows:

Article 117
Means and taking of evidence

(1) In proceedings before the European Patent Office the means of giving or obtaining evidence shall include the following:

- (a) hearing the parties;
- (b) requests for information;
- (c) production of documents;
- (d) hearing witnesses;
- (e) opinions by experts;
- (f) inspection;
- (g) sworn statements in writing.

(2) The procedure for taking such evidence shall be laid down in the Implementing Regulations.

55. Article 119 shall be amended to read as follows:

Article 119
Notification

Decisions, summonses, notices and communications shall be notified by the European Patent Office of its own motion in accordance with the Implementing Regulations. Notifications may, where exceptional circumstances so require, be effected through the intermediary of the central industrial property offices of the Contracting States.

56. Article 120 shall be amended to read as follows:

Article 120
Time limits

The Implementing Regulations shall specify:

- (a) the time limits which are to be observed in proceedings before the European Patent Office and are not fixed by this Convention;
- (b) the manner of computation of time limits and the conditions under which time limits may be extended;
- (c) the minima and maxima for time limits to be determined by the European Patent Office.

57. Article 121 shall be amended to read as follows:

Article 121
Further processing of the European
patent application

- (1) If an applicant fails to observe a time limit vis-à-vis the European Patent Office, he may request further processing of the European patent application.
- (2) The European Patent Office shall grant the request, provided that the requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.
- (3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Further processing shall be ruled out in respect of the time limits in Article 87, paragraph 1, Article 108 and Article 112a, paragraph 3, as well as the time limits for requesting further processing or re-establishment of rights. The Implementing Regulations may rule out further processing for other time limits.

58. Article 122 shall be amended to read as follows:

Article 122
Restitutio in integrum

(1) An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall, upon request, have his rights re-established if the non-observance of this time limit has the direct consequence of causing the refusal of the European patent application, or of a request, or the deeming of the European patent application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) The European Patent Office shall grant the request, provided that the conditions of paragraph 1 and any other requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.

(3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights. The Implementing Regulations may rule out re-establishment for other time limits.

(5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the loss of rights referred to in paragraph 1 and publication of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(6) Nothing in this Article shall limit the right of a Contracting State to grant re-establishment of rights in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

59. Article 123 shall be amended to read as follows:

Article 123
Amendments

(1) A European patent application or European patent may be amended in proceedings before the European Patent Office, in accordance with the Implementing Regulations. In any case, the applicant shall be given at least one opportunity of amending the application of his own volition.

(2) The European patent application or European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

(3) The European patent may not be amended in such a way as to extend the protection it confers.

60. Article 124 shall be amended to read as follows:

Article 124
Information on prior art

(1) The European Patent Office may, in accordance with the Implementing Regulations, invite the applicant to provide information on prior art taken into consideration in national or regional patent proceedings and concerning an invention to which the European patent application relates.

(2) If the applicant fails to reply in due time to an invitation under paragraph 1, the European patent application shall be deemed to be withdrawn.

61. Article 126 shall be deleted.

62. Article 127 shall be amended to read as follows:

Article 127
European Patent Register

The European Patent Office shall keep a European Patent Register, in which the particulars specified in the Implementing Regulations shall be recorded. No entry shall be made in the European Patent Register prior to the publication of the European patent application. The European Patent Register shall be open to public inspection.

63. Article 128 shall be amended to read as follows:

Article 128
Inspection of files

- (1) Files relating to European patent applications which have not yet been published shall not be made available for inspection without the consent of the applicant.
- (2) Any person who can prove that the applicant for a European patent has invoked the rights under the application against him may obtain inspection of the files prior to the publication of that application and without the consent of the applicant.
- (3) Where a European divisional application or a new European patent application filed under Article 61, paragraph 1, is published, any person may obtain inspection of the files of the earlier application prior to the publication of that application and without the consent of the applicant.
- (4) Subsequent to the publication of the European patent application, the files relating to the application and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations.
- (5) Even prior to the publication of the European patent application, the European Patent Office may communicate to third parties or publish the particulars specified in the Implementing Regulations.

64. Article 129 shall be amended to read as follows:

Article 129
Periodical publications

The European Patent Office shall periodically publish:

- (a) a European Patent Bulletin containing the particulars the publication of which is prescribed by this Convention, the Implementing Regulations or the President of the European Patent Office;
- (b) an Official Journal containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.

65. Article 130 shall be amended to read as follows:

Article 130
Exchange of information

- (1) Unless otherwise provided in this Convention or in national laws, the European Patent Office and the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding European or national patent applications and patents and any proceedings concerning them.
- (2) The provisions of paragraph 1 shall apply to the communication of information by virtue of working agreements between the European Patent Office and
 - (a) the central industrial property offices of other States;
 - (b) any intergovernmental organisation entrusted with the task of granting patents;
 - (c) any other organisation.
- (3) The communications under paragraphs 1 and 2(a) and (b) shall not be subject to the restrictions laid down in Article 128. The Administrative Council may decide that communications under paragraph 2(c) shall not be subject to such restrictions, provided that the organisation concerned treats the information communicated as confidential until the European patent application has been published.

66. Article 133 shall be amended to read as follows:

Article 133
General principles of representation

- (1) Subject to the provisions of paragraph 2, no person shall be compelled to be represented by a professional representative in proceedings established by this Convention.
- (2) Natural or legal persons not having their residence or principal place of business in a Contracting State shall be represented by a professional representative and act through him in all proceedings established by this Convention, other than in filing a European patent application; the Implementing Regulations may permit other exceptions.

(3) Natural or legal persons having their residence or principal place of business in a Contracting State may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who shall be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of such a legal person may also represent other legal persons which have their principal place of business in a Contracting State and which have economic connections with the first legal person.

(4) The Implementing Regulations may prescribe special provisions concerning the common representation of parties acting in common.

67. Article 134 shall be amended to read as follows:

Article 134
Professional representation

(1) Professional representation of natural or legal persons in proceedings established by this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the European Patent Office.

(2) Any natural person who

(a) is a national of a Contracting State,

(b) has his place of business or employment in a Contracting State and

(c) has passed the European qualifying examination

may be entered on the list of professional representatives.

(3) During a period of one year from the date on which the accession of a State to this Convention takes effect, entry on that list may also be requested by any natural person who

(a) is a national of a Contracting State,

(b) has his place of business or employment in the State having acceded to the Convention and

(c) is entitled to represent natural or legal persons in patent matters before the central industrial property office of that State. Where such entitlement is not conditional upon the requirement of special professional qualifications, the person shall have regularly so acted in that State for at least five years.

(4) Entry shall be effected upon request, accompanied by certificates which shall indicate that the conditions laid down in paragraph 2 or 3 are fulfilled.

(5) Persons whose names appear on the list of professional representatives shall be entitled to act in all proceedings established by this Convention.

(6) For the purpose of acting as a professional representative, any person whose name appears on the list referred to in paragraph 1 shall be entitled to establish a place of business in any Contracting State in which proceedings established by this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the European Patent Office shall be consulted.

(7) The President of the European Patent Office may grant exemption from:

(a) the requirement of paragraphs 2(a) or 3(a) in special circumstances;

(b) the requirement of paragraph 3(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(8) Professional representation in proceedings established by this Convention may also be undertaken, in the same way as by a professional representative, by any legal practitioner qualified in a Contracting State and having his place of business in that State, to the extent that he is entitled in that State to act as a professional representative in patent matters. Paragraph 6 shall apply *mutatis mutandis*.

68. The following new Article 134a shall be inserted after Article 134:

Article 134a

Institute of Professional Representatives before the European Patent Office

(1) The Administrative Council shall be competent to adopt and amend provisions governing:

(a) the Institute of Professional Representatives before the European Patent Office, hereinafter referred to as the Institute;

- (b) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;
 - (c) any disciplinary power exercised by the Institute or the European Patent Office in respect of professional representatives;
 - (d) the obligation of confidentiality of the professional representative and the privilege from disclosure in proceedings before the European Patent Office in respect of communications between a professional representative and his client or any other person.
- (2) Any person entered on the list of professional representatives referred to in Article 134, paragraph 1, shall be a member of the Institute.

69. Article 135 shall be amended to read as follows:

Article 135

Request for the application of national procedure

- (1) The central industrial property office of a designated Contracting State shall, at the request of the applicant for or proprietor of a European patent, apply the procedure for the grant of a national patent in the following circumstances:
- (a) when the European patent application is deemed to be withdrawn pursuant to Article 77, paragraph 3;
 - (b) in such other cases as are provided for by the national law in which the European patent application is refused or withdrawn or deemed to be withdrawn, or the European patent is revoked under this Convention.
- (2) In the case referred to in paragraph 1(a), the request for conversion shall be filed with the central industrial property office with which the European patent application has been filed. That office shall, subject to the provisions of national security, transmit the request directly to the central industrial property offices of the Contracting States specified therein.
- (3) In the cases referred to in paragraph 1(b), the request for conversion shall be submitted to the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to be filed until after the conversion fee has been paid. The European Patent Office shall transmit the request to the central industrial property offices of the Contracting States specified therein.

(4) The effect of the European patent application referred to in Article 66 shall lapse if the request for conversion is not submitted in due time.

70. Article 136 shall be deleted.

71. Article 138 shall be amended to read as follows:

Article 138
Revocation of European patents

(1) Subject to Article 139, a European patent may be revoked with effect for a Contracting State only on the following grounds:

(a) if the subject-matter of the European patent is not patentable under Articles 52 to 57;

(b) if the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(c) if the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;

(d) if the protection conferred by the European patent has been extended;

(e) if the proprietor of the European patent is not entitled under Article 60, paragraph 1.

(2) If the grounds for revocation affect the European patent only in part, the patent shall be limited by a corresponding amendment of the claims and revoked in part.

(3) In proceedings before the competent court or authority relating to the validity of the European patent, the proprietor of the patent shall have the right to limit the patent by amending the claims. The patent as thus limited shall form the basis for the proceedings.

72. The following new Article 149a shall be inserted after Article 149:

Article 149a

Other agreements between the Contracting States

(1) Nothing in this Convention shall be construed as limiting the right of some or all of the Contracting States to conclude special agreements on any matters concerning European patent applications or European patents which under this Convention are subject to and governed by national law, such as, in particular

(a) an agreement establishing a European patent court common to the Contracting States party to it;

(b) an agreement establishing an entity common to the Contracting States party to it to deliver, at the request of national courts or quasi-judicial authorities, opinions on issues of European or harmonised national patent law;

(c) an agreement under which the Contracting States party to it dispense fully or in part with translations of European patents under Article 65;

(d) an agreement under which the Contracting States party to it provide that translations of European patents as required under Article 65 may be filed with, and published by, the European Patent Office.

(2) The Administrative Council shall be competent to decide that:

(a) the members of the Boards of Appeal or the Enlarged Board of Appeal may serve on a European patent court or a common entity and take part in proceedings before that court or entity in accordance with the terms of any such agreement;

(b) the European Patent Office shall provide a common entity with such support staff, premises and equipment as may be necessary for the performance of its duties, and the expenses incurred by that entity shall be borne fully or in part by the Organisation.

73. Part X of the Convention shall be amended to read as follows:

PART X
INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION
TREATY - EURO-PCT APPLICATIONS

Article 150
Application of the Patent Cooperation Treaty

- (1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the PCT, shall be applied in accordance with the provisions of this Part.
- (2) International applications filed under the PCT may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of the PCT and its Regulations shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the PCT or its Regulations shall prevail.

Article 151
The European Patent Office as a receiving Office

The European Patent Office shall act as a receiving Office within the meaning of the PCT, in accordance with the Implementing Regulations. Article 75, paragraph 2, shall apply *mutatis mutandis*.

Article 152
The European Patent Office as an International Searching Authority
or International Preliminary Examining Authority

The European Patent Office shall act as an International Searching Authority and International Preliminary Examining Authority within the meaning of the PCT, in accordance with an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization, for applicants who are residents or nationals of a Contracting State to this Convention. This agreement may provide that the European Patent Office shall also act for other applicants.

Article 153

The European Patent Office as designated Office or elected Office

- (1) The European Patent Office shall be
 - (a) a designated Office for any Contracting State to this Convention in respect of which the PCT is in force, which is designated in the international application and for which the applicant wishes to obtain a European patent, and
 - (b) an elected Office, if the applicant has elected a State designated pursuant to (a).
- (2) An international application for which the European Patent Office is a designated or elected Office, and which has been accorded an international date of filing, shall be equivalent to a regular European application (Euro-PCT application).
- (3) The international publication of a Euro-PCT application in one of the official languages of the European Patent Office shall take the place of the publication of the European patent application and shall be mentioned in the European Patent Bulletin.
- (4) If the Euro-PCT application is published in another language, a translation into one of the official languages shall be filed with the European Patent Office, which shall publish it. Subject to Article 67, paragraph 3, the provisional protection under Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.
- (5) The Euro-PCT application shall be treated as a European patent application and shall be considered as comprised in the state of the art under Article 54, paragraph 3, if the conditions laid down in paragraphs 3 or 4 and in the Implementing Regulations are fulfilled.
- (6) The international search report drawn up in respect of a Euro-PCT application or the declaration replacing it, and their international publication, shall take the place of the European search report and the mention of its publication in the European Patent Bulletin.
- (7) A supplementary European search report shall be drawn up in respect of any Euro-PCT application under paragraph 5. The Administrative Council may decide that the supplementary search report is to be dispensed with or that the search fee is to be reduced.

- 74. Articles 154, 155, 156, 157, 158, 159, 160, 161, 162 and 163 shall be deleted.**
- 75. Article 164 shall be amended to read as follows:**

Article 164
Implementing Regulations and Protocols

(1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation, the Protocol on the Interpretation of Article 69 and the Protocol on Staff Complement shall be integral parts of this Convention.

(2) In case of conflict between the provisions of this Convention and those of the Implementing Regulations, the provisions of this Convention shall prevail.

- 76. Article 167 shall be deleted.**

ARTICLE 2
PROTOCOLS

- 1. The Protocol on the Interpretation of Article 69 EPC shall be amended to read as follows:**

PROTOCOL ON THE INTERPRETATION OF ARTICLE 69

Article 1
General principles

Article 69 should not be interpreted in the sense that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Neither should it be interpreted in the sense that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patentee has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patentee with a reasonable degree of certainty for third parties.

Article 2
Equivalents

(1) For the purpose of determining the extent of protection conferred by a European patent, due account shall be taken of means which at the time of the alleged infringement are equivalent to the means specified in the claims.

(2) A means shall generally be considered as being equivalent if it is obvious to a person skilled in the art that using such means achieves substantially the same result as that achieved through the means specified in the claim.

Article 3
Prior statements

For the purpose of determining the extent of protection, due account shall be taken of any statement unambiguously limiting the extent of protection, made by the applicant or the proprietor of the patent in the European patent application or patent, or during proceedings concerning the grant or the validity of the European patent, in particular where the limitation was made in response to a citation of prior art.

2. The following Protocol shall be annexed to the European Patent Convention as an integral part thereof:

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

The European Patent Organisation shall ensure that the proportion of European Patent Office posts assigned to the duty station at The Hague under the 2000 establishment plan and table of posts remains substantially unchanged. Any temporary increase or decrease in the number of posts corresponding to that proportion which proves necessary for the proper functioning of the European Patent Office may not exceed ten per cent.

3. Section I of the Protocol on Centralisation shall be amended to read as follows:

Section I

(1)(a) Upon entry into force of the Convention, States parties thereto which are also members of the International Patent Institute set up by the Hague Agreement of 6 June 1947 shall take all necessary steps to ensure the transfer to the European Patent Office no later than the date referred to in Article 162, paragraph 1, of the

Convention of all assets and liabilities and all staff members of the International Patent Institute. Such transfer shall be effected by an agreement between the International Patent Institute and the European Patent Organisation. The above States and the other States parties to the Convention shall take all necessary steps to ensure that that agreement shall be implemented no later than the date referred to in Article 162, paragraph 1, of the Convention. Upon implementation of the agreement, those Member States of the International Patent Institute which are also parties to the Convention further undertake to terminate their participation in the Hague Agreement.

(b) The States parties to the Convention shall take all necessary steps to ensure that all the assets and liabilities and all the staff members of the International Patent Institute are taken into the European Patent Office in accordance with the agreement referred to in sub-paragraph (a). After the implementation of that agreement the tasks incumbent upon the International Patent Institute at the date on which the Convention is opened for signature, and in particular those carried out vis-à-vis its Member States, whether or not they become parties to the Convention, and such tasks as it has undertaken at the time of the entry into force of the Convention to carry out vis-à-vis States which, at that date, are both members of the International Patent Institute and parties to the Convention, shall be assumed by the European Patent Office. In addition, the Administrative Council of the European Patent Organisation may allocate further duties in the field of searching to the European Patent Office.

(c) The above obligations shall also apply mutatis mutandis to the sub-office set up under the Hague Agreement under the conditions set out in the agreement between the International Patent Institute and the Government of the Contracting State concerned. This Government hereby undertakes to make a new agreement with the European Patent Organisation in place of the one already made with the International Patent Institute to harmonise the clauses concerning the organisation, operation and financing of the sub-office with the provisions of this Protocol.

(2) Subject to the provisions of Section III, the States parties to the Convention shall, on behalf of their central industrial property offices, renounce in favour of the European Patent Office any activities as International Searching Authorities under the Patent Cooperation Treaty as from the date referred to in Article 162, paragraph 1, of the Convention.

(3)(a) A sub-office of the European Patent Office shall be set up in Berlin as from the date referred to in Article 162, paragraph 1, of the Convention. It shall operate under the direction of the branch at The Hague.

(b) The Administrative Council shall determine the duties to be allocated to the sub-office in Berlin in the light of general considerations and of the requirements of the European Patent Office.

(c) At least at the beginning of the period following the progressive expansion of the field of activity of the European Patent Office, the amount of work assigned to that sub-office shall be sufficient to enable the examining staff of the Berlin Annex of the German Patent Office, as it stands at the date on which the Convention is opened for signature, to be fully employed.

(d) The Federal Republic of Germany shall bear any additional costs incurred by the European Patent Organisation in setting up and maintaining the sub-office in Berlin.

ARTICLE 3 NEW TEXT OF THE CONVENTION

- (1) The Administrative Council of the European Patent Organisation is hereby authorised to draw up, at the proposal of the President of the European Patent Office, a new text of the European Patent Convention. In the new text, the provisions of the Convention shall be renumbered consecutively and the references to other provisions of the Convention amended accordingly; the wording of the provisions in the three official languages shall be modified where necessary.
- (2) The Chairman of the Administrative Council shall transmit the draft of the new text to the governments of the Contracting States for their approval.
- (3) Subject to the approval of three quarters of the governments of the Contracting States, the new text of the Convention shall become an integral part of this Revision Act.

ARTICLE 4 SIGNATURE AND RATIFICATION

- (1) This Revision Act shall be open for signature by the Contracting States at the European Patent Office in Munich until 1 July 2001.
- (2) This Revision Act shall be subject to ratification; instruments of ratification shall be deposited with the Government of the Federal Republic of Germany.

ARTICLE 5 ACCESSION

- (1) This Revision Act shall be open, until its entry into force, to accession by the Contracting States to the Convention and the States which ratify the Convention or accede thereto.
- (2) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.

ARTICLE 6 PROVISIONAL APPLICATION

Article 1, items 4-6 and 12-15, Article 2, items 2 and 3, and Article 3 of this Revision Act shall be applied provisionally.

ARTICLE 7 ENTRY INTO FORCE

- (1) The revised text of the European Patent Convention shall enter into force two years after the fifteenth Contracting State has deposited its instrument of ratification or accession, or on the first day of the third month following the deposit of the instrument of ratification or accession by the Contracting State taking this step as the last of all the Contracting States, if this takes place earlier.
- (2) Upon entry into force of the revised text of the Convention, the text valid until that time shall cease to apply.

ARTICLE 8 TRANSMISSION AND NOTIFICATIONS

- (1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Revision Act and shall transmit them to the governments of the Contracting States and of the States able to accede to the European Patent Convention under Article 166, paragraph 1.
- (2) The Government of the Federal Republic of Germany shall notify the governments referred to in paragraph 1 concerning:
 - (a) the deposit of any instrument of ratification or accession;
 - (b) the date of entry into force of this Revision Act.

IN WITNESS WHEREOF, the Plenipotentiaries authorised thereto, having presented their Full Powers, found to be in good and due form, have signed this Revision Act.

DONE at Munich this day of November two thousand in a single original in the English, French and German languages, the three texts being equally authentic. This original text shall be deposited in the archives of the Federal Republic of Germany.
