



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

PI 93

WORKING DOCUMENT

from: General Secretariat of the Council
to: Working Party on Intellectual Property (Patents)
No. prev. doc.: 7120/04 PI 29 + ADD 1
Subject: Proposals for amendments to the European Patent Convention

In order for the Community patent to become operational amendments will have to be made to the European Patent Convention (EPC). Delegations will find in Annex I a proposal for amendments drawn up by the Presidency. The proposal is based on the text contained in 7120/04 + ADD 1. Changes have been made to bring that text up to date with the current wording of the revised proposal for the Council Regulation on the Community patent.

With the aim of making it as easy as possible to see the context of the proposed changes the text is structured in two columns: the left column containing the current wording of the relevant Articles of the EPC and the right column the proposed new wording. Proposed changes are in bold type.

Delegations will find in Annex II a proposal for a protocol to the revision act of the European Patent Convention on enhanced partnership drawn up by the Presidency. The protocol is based on the text previously in recital 2a of the proposal for a Community Patent Regulation and the two working documents presented by the Czech and the Swedish Presidencies (6044/09 and 12342/09).

Delegations will find in Annex III a proposal for a protocol to the revision act of the European Patent Convention on the renewal fees of the Community patent drawn up by the Presidency. The protocol is a slightly amended version of the text previously in recitals 5a – 5e of the proposal for a Community Patent Regulation.

Delegations will find in Annex IV a proposal for an agreement on the translation arrangements applicable under the European Patent Convention to the Community patent. The agreement is based on previous recitals and Chapter IIa of the proposal for a Community Patent Regulation.

The Presidency invites delegations to have an exchange of views on these working documents at the meeting of the Working Party on 6-7 October 2009.

**Draft amendments of the European Patent Convention for aligning it with a
Regulation on Community Patents**

PREAMBLE

The Contracting States,	The Contracting Parties
DESIRING to strengthen co-operation between the States of Europe in respect of the protection of inventions,	unchanged
DESIRING that such protection may be obtained in those States by a single procedure for the grant of patents and by the establishment of certain standard rules governing patents so granted,	unchanged
DESIRING, for this purpose, to conclude a Convention which establishes a European Patent Organisation and which constitutes a special agreement within the meaning of Article 19 of the Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883 and last revised on 14 July 1967, and a regional patent treaty within the meaning of Article 45, paragraph 1, of the Patent Cooperation Treaty of 19 June 1970,	unchanged
HAVE AGREED on the following provisions:	unchanged

PART 1
GENERAL AND INSTITUTIONAL PROVISIONS

Chapter 1
General provisions

Article 1
European law for the grant of patents

A system of law, common to the Contracting States, for the grant of patents for invention is established by this Convention.

(1) A system of law, common to the Contracting **Parties**, for the grant of patents for invention is established by this Convention.

(2) **Contracting Party means a Contracting State or the European Community.**

Article 2
European patent

(1) Patents granted under this Convention shall be called European patents. (1) unchanged

(2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless this Convention provides otherwise. (2) unchanged

(3) Notwithstanding the provision of paragraph 2, a European patent granted for the European Community (hereafter “Community patent”) shall, within the territory of the European Community, have the effect and be subject to the conditions laid down in the provisions adopted in application of the Treaty establishing the European Community (hereafter “Community law”) and moreover in the provisions of this Convention, in conformity with Community law. A European patent application in which the European Community is designated shall be subject to this Convention, unless Community law provides otherwise.

Article 4a

Conference of ministers of the Contracting States

Conference of *representatives* of the Contracting *Parties*

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.

A conference of ministers of the Contracting States [...] **and of representatives of the European Community** shall meet at least every five years to discuss issues pertaining to the Organisation and to the European patent system.

Chapter III The European Patent Office

Article 15 Departments entrusted with the procedure

To carry out the procedures laid down in this Convention, the following shall be set up within the European Patent Office:

- (a) a Receiving Section;
- (b) Search Divisions;
- (c) Examining Divisions;
- (d) Opposition Divisions;
- (e) a Legal Division;
- (f) Boards of Appeal;
- (g) an Enlarged Board of Appeal.

To carry out the procedures laid down in this Convention, the following shall be set up within the European Patent Office:

- (a) a Receiving Section;
- (b) Search Divisions;
- (c) Examining Divisions;
- (c.1) a Community patent Division;**
- (d) Opposition Divisions;
- (e) a Legal Division;
- (f) Boards of Appeal;
- (g) an Enlarged Board of Appeal.

Article 21 Boards of Appeal

(1) The Boards of Appeal shall be responsible for the examination of appeals from decisions of the Receiving Section, the Examining Divisions and Opposition Divisions, and the Legal Division.

(1) The Boards of Appeal shall be responsible for the examination of appeals from decisions of the Receiving Section, the Examining Divisions, **the Community Patent Division**, Opposition Divisions, and the Legal Division.

(2) For appeals from decisions of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.

(2) For appeals from decisions of the Receiving Section, **the Community Patent Division** 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:

(3) unchanged

(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 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:

(4) unchanged

(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 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.

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. (1) unchanged
- (2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or Legal Division. (2) unchanged
- (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. (3) In their decisions the members of the Boards shall not be bound by any instructions and shall, **subject to Article 24a**, 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 Implementing Regulations. They shall be subject to the approval of the Administrative Council. (4) unchanged

Article 24a (new)
Consistent interpretation

When applying this Convention the European Patent Office shall take due account of relevant principles deriving from the jurisprudence of the European Court of Justice or of the unified court structure established in accordance with Article 149a (1) (a).

Article 25
Technical opinion

At the request of the competent national court hearing an infringement or revocation action, the European Patent Office shall be obliged, on payment of an appropriate fee, to give a technical opinion concerning the European patent which is the subject of the action. The Examining Division shall be responsible for issuing such opinions.

At the request of the competent [...] court hearing an infringement or revocation action, **or other action**, the European Patent Office shall be obliged, on payment of an appropriate fee, to give a technical opinion concerning the European patent which is the subject of the action. The Examining Division shall be responsible for issuing such opinions.

Chapter IV The Administrative Council

Article 33 Competence of the Administrative Council in certain cases

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| <p>(1) The Administrative Council shall be competent to amend:</p> <p>(a) the time limits laid down in this Convention;</p> <p>(b) Parts II to VIII and Part X of this Convention, to bring them into line with an international treaty relating to patents or European Community legislation relating to patents;</p> <p>(c) the Implementing Regulations.</p> <p>(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend:</p> <p>(a) the Financial Regulations;</p> <p>(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 of any supplementary benefits and the rules for granting them;</p> <p>(c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;</p> <p>(d) the Rules relating to Fees;</p> | <p>(1) The Administrative Council shall be competent to amend:</p> <p>(a) the time limits laid down in this Convention;</p> <p>(b) Parts II to VIII, Part IXa and Part X of this Convention, to bring them into line with</p> <p>(i) an international treaty relating to patents [...]</p> <p>(ii) European Community legislation relating to patents;</p> <p>(c) the Implementing Regulations.</p> <p>(2) unchanged.</p> |
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(e) its Rules of Procedure

(3) Notwithstanding Article 18, paragraph 2, (3) unchanged
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 technically qualified examiner only. Such decision may be rescinded.

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

(5) The Administrative Council may not take (5) unchanged
a decision under paragraph 1(b):

- concerning an international treaty, before its entry into force;

- concerning European Community legislation, before its entry into force or, where that legislation lays down a period for its implementation, before the expiry of that period.

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. (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 **Parties** 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, 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 twelve months of the date of the decision, that it does not wish to be bound by that decision.

(4) Abstentions shall not be considered as votes.

(2) A majority of three-quarters of the votes of the Contracting **Parties** represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, Article 33, paragraphs 1 (a), **(b)(ii)** and (c), and 2 to 4, Article 39, paragraph 1, **Article 39a**, 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 **Parties** voting shall be required for the decisions which the Administrative Council is empowered to take under Article 33, paragraph 1(b)(i). 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)(i) shall not take effect if a Contracting State declares, within twelve months of the date of the decision, that it does not wish to be bound by that decision.

(4) unchanged

Chapter V

Financial provisions

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.

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;

(b.1) by the amounts retained, under Article 39a, from renewal fees paid for Community patents;

(c) where necessary, by special financial contributions made by the Contracting Parties;

(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.

Article 39a (new)

*Amounts retained from renewal fees paid
for Community patents*

By way of derogation from Articles 39, 146 and 147, the Organisation shall retain from each renewal fee, that has been paid for a Community patent in accordance with Article 149h, an amount equal to 50 per cent. This proportion may be revised by the Administrative Council. The decision of the Administrative Council shall take due account of the tasks performed by the Community Patent Division.

Article 40

Level of fees and payments - Special financial contributions

(1) The amounts of the fees referred to in Article 38 and the proportion referred to in Article 39 shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the budget of the Organisation to be balanced.

(2) However, if the Organisation is unable to balance its budget under the conditions laid down in paragraph 1, the Contracting States shall remit to the Organisation special financial contributions, the amount of which shall be determined by the Administrative Council for the accounting period in question.

(1) The amounts of the fees referred to in Article 38 and the proportion referred to in Article 39 **and in Article 39a** shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the budget of the Organisation to be balanced.

(2) However, if the Organisation is unable to balance its budget under the conditions laid down in paragraph 1, the Contracting **Parties** shall remit to the Organisation special financial contributions, the amount of which shall be determined by the Administrative Council for the accounting period in question.

(3) These special financial contributions shall be determined in respect of any Contracting State on the basis of the number of patent applications filed in the last year but one prior to that of entry into force of this Convention, and calculated in the following manner:

(3) unchanged

(a) one half in proportion to the number of patent applications filed in that Contracting State;

(b) one half in proportion to the second highest number of patent applications filed in the other Contracting States by natural or legal persons having their residence or principal place of business in that Contracting State.

However, the amounts to be contributed by States in which the number of patent applications filed exceeds 25 000 shall then be taken as a whole and a new scale drawn up in proportion to the total number of patent applications filed in these States.

(4) Where the scale position of any Contracting State cannot be established in accordance with paragraph 3, the Administrative Council shall, with the consent of that State, decide its scale position.

(4) Where the scale position of any Contracting **Party** cannot be established in accordance with paragraph 3, the Administrative Council shall, with the consent of that **Party**, decide its scale position.

(5) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the special financial contributions.

(5) unchanged

(6) The special financial contributions shall be repaid with interest at a rate which shall be the same for all Contracting States. Repayments shall be made in so far as it is possible to provide for this purpose in the budget; the amount thus provided shall be distributed among the Contracting States in accordance with the scale referred to in paragraphs 3 and 4.

(6) The special financial contributions shall be repaid with interest at a rate which shall be the same for all Contracting **Parties**. Repayments shall be made in so far as it is possible to provide for this purpose in the budget; the amount thus provided shall be distributed among the Contracting **Parties** in accordance with the scale referred to in paragraphs 3 and 4.

(7) The special financial contributions remitted in any accounting period shall be repaid in full before any such contributions or parts thereof remitted in any subsequent accounting period are repaid.

(7) unchanged

Article 50 Financial Regulations

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| The Financial Regulations shall lay down in particular: | The Financial Regulations shall lay down in particular: |
| (a) the arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts; | (a) unchanged; |
| (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; | (b) the method and procedure whereby the payments, amounts retained and contributions provided for in Article 37 and Article 39a, as well as 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; | (c) unchanged |
| (d) the rates of interest provided for in Articles 39, 40 and 47; | (d) unchanged; |
| (e) the method of calculating the contributions payable by virtue of Article 146; | (e) unchanged; |
| (f) the composition of and duties to be assigned to a Budget and Finance Committee which should be set up by the Administrative Council; | (f) unchanged; |
| (g) the generally accepted accounting principles on which the budget and the annual financial statements shall be based. | (g) unchanged. |

Article 59
Multiple applicants

A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting States.

A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting **Parties. In respect of the territory of the European Community, two or more applicants shall be deemed to be joint applicants.**

PART II
SUBSTANTIVE PATENT LAW

Chapter III
Effects of the European patent and the European patent application

Article 63
Term of the European patent

(1) The term of the European patent shall be 20 years from the date of filing of the application. (1) unchanged

(2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent, or to grant corresponding protection which follows immediately on expiry of the term of the patent, under the same conditions as those applying to national patents: (2) unchanged

(a) in order to take account of a state of war or similar emergency conditions affecting that State;

(b) if the subject-matter of the European patent is a product or a process for manufacturing a product or a use of a product which has to undergo an administrative authorisation procedure required by law before it can be put on the market in that State.

(3) Paragraph 2 shall apply mutatis mutandis to European patents granted jointly for a group of Contracting States in accordance with Article 142.

(3) Paragraph 2 shall apply mutatis mutandis to:

(a) Community Patents

(b) European patents granted jointly for a group of Contracting States in accordance with Article 142.

(4) A Contracting State which makes provision for extension of the term or corresponding protection under paragraph 2(b) may, in accordance with an agreement concluded with the Organisation, entrust to the European Patent Office tasks associated with implementation of the relevant provisions. (4) unchanged.

Article 64 **Rights conferred by a European patent**

(1) A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date on which the mention of its grant is published in the European Patent Bulletin, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State.

(1) A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date on which the mention of its grant is published in the European Patent Bulletin, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State. **A Community patent shall confer the rights laid down by Community law.**

(2) If the subject-matter of the European patent is a process, the protection conferred by the patent shall extend to the products directly obtained by such process.

(2) unchanged

(3) Any infringement of a European patent shall be dealt with by national law.

(3) Any infringement of a European patent shall be dealt with by national law **or, in the case of a Community Patent, by Community law, as well as the instrument establishing the European and Community Patents Court in accordance with Article 149a (1) (a).**

Article 67

Rights conferred by a European patent application after publication

(1) A European patent application shall, from the date of its publication, provisionally confer upon the applicant the protection provided for by Article 64, in the Contracting States designated in the application. (1) unchanged

(2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 64. However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, each State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has used the invention in that State in circumstances where that person would be liable under national law for infringement of a national patent. (2) unchanged

(3) Any Contracting State which does not have as an official language the language of the proceedings may prescribe that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as a translation of the claims in one of its official languages at the option of the applicant or, where that State has prescribed the use of one specific official language, in that language: (3) unchanged

(a) has been made available to the public in the manner prescribed by national law, or

(b) has been communicated to the person using the invention in the said State.

(3a) The rights conferred by a European patent application designating the European Community shall, in respect of the European Community, be governed by Community law.

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 when it has been withdrawn, deemed to be withdrawn or finally refused. The same shall apply in respect of the effects of the European patent application in a Contracting State the designation of which is withdrawn or deemed to be withdrawn.

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1, 2 **and 3a** when it has been withdrawn, deemed to be withdrawn or finally refused. The same shall apply in respect of the effects of the European patent application **for** a Contracting **Party** the designation of which is withdrawn or deemed to be withdrawn.

Article 70

Authentic text of a European patent application or European patent

(1) The text of a European patent application or a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State.

(1) The text of a European patent application or a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in **the jurisdiction of any Contracting Party**.

(2) If, however, the European patent application has been filed in a language which is not an official language of the European Patent Office, that text shall be the application as filed within the meaning of this Convention.

(2) unchanged

(3) Any Contracting State may provide that a translation into one of its official languages, as prescribed by it according to this Convention, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the European patent application or European patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings. (3) unchanged

(4) Any Contracting State which adopts a provision under paragraph 3: (4) unchanged

(a) shall allow the applicant for or proprietor of the patent to file a corrected translation of the European patent application or European patent. Such corrected translation shall not have any legal effect until any conditions established by the Contracting State under Article 65, paragraph 2, or Article 67, paragraph 3, have been complied with;

(b) may prescribe that any person who, in that State, in good faith has used or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation, may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

PART III
THE EUROPEAN PATENT APPLICATION

Chapter I
Filing and requirements of the European patent application

Article 79

Designation of Contracting States

Designation of Contracting *Parties*

(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.

(1) All the Contracting **Parties** 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.

(2) The designation of a Contracting **Party** 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.

(3) The designation of a Contracting **Party** may be withdrawn at any time up to the grant of the European patent.

(4) If, at the time a decision is taken on the grant of a European patent, both the European Community and one or more of its Member States, the latter as contracting states to this Convention, are designated, the designations of the Contracting State or Contracting States concerned shall be suspended.

(5) By way of derogation from paragraph 4, the designation of any Member State of the European Community, which has a territorial coverage extending beyond that of the respective Community patent designation, shall only be deemed to be withdrawn to the geographical territory covered by the Community patent designation.

PART V

OPPOSITION AND LIMITATION PROCEDURE

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 the opposition fee has been paid. (1) unchanged

(2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect. (2) The opposition shall apply to the European patent **with regard to all the Contracting Parties** for which that patent has effect.

(3) Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent. (3) unchanged

(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. Notwithstanding Article 118, the previous proprietor and the person making the request shall not be regarded as joint proprietors unless both so request.

(4) Where a person provides evidence that **he/she**, following a final decision, [...] has been entered in the patent register of a **Contracting State or the Register of Community Patents** instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such **Party**. Notwithstanding Article 118, the previous proprietor and the person making the request shall not be regarded as joint proprietors unless both so request.

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.

(1) unchanged

(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.

(2) unchanged

(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 mention of the decision is published in the European Patent Bulletin.

(3) The decision to limit or revoke the European patent shall apply **to the European patent with regard to** all the Contracting **Parties** in respect of which **the patent** has been granted. It shall take effect on the date on which the mention of the decision is published in the European Patent Bulletin.

**PART VI
APPEALS PROCEDURE**

**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.

(1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions, the Legal Division **and the Community Patent 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 a separate appeal.

(2) unchanged

(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.

(3) unchanged

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

(1) Any party to appeal proceedings adversely affected by the decision of the Board of Appeal may file a petition for review of the decision by the Enlarged Board of Appeal.

(1) unchanged

(2) The petition may only be filed on the grounds that: (2) unchanged

(a) a member of the Board of Appeal took part in the decision in breach of Article 24, paragraph 1, or despite being excluded pursuant to a decision under Article 24, paragraph 4;

(b) the Board of Appeal included a person not appointed as a member of the Boards of Appeal;

(c) a fundamental violation of Article 113 occurred;

(d) any other fundamental procedural defect defined in the Implementing Regulations occurred in the appeal proceedings; or

(e) a criminal act established under the conditions laid down in the Implementing Regulations may have had an impact on the decision.

(3) The petition for review shall not have suspensive effect. (3) unchanged

(4) The petition for review shall be filed in a reasoned statement, in accordance with the Implementing Regulations. If based on paragraph 2(a) to (d), the petition shall be filed within two months of notification of the decision of the Board of Appeal. If based on paragraph 2(e), the petition shall be filed within two months of the date on which the criminal act has been established and in any event no 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) unchanged

(5) 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 and shall re-open proceedings before the Boards of Appeal in accordance with the Implementing Regulations.

(6) 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 and publication in the European Patent Bulletin 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.

(5) unchanged

(6) Any person who, in a designated Contracting State **in respect of which the patent was granted**, 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 and publication in the European Patent Bulletin 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.

PART VII
COMMON PROVISIONS

Chapter I
Common provisions governing procedures

Article 122
Re-establishment of rights

(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 have his rights re-established upon request 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 application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress. (1) unchanged

(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. (2) unchanged

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

(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. (4) unchanged

(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 in the European Patent Bulletin 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.

(5) Any person who, in a designated Contracting State **in respect of which the patent was granted**, 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 in the Community Patent Bulletin or the European Patent Bulletin 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 **Party** to grant re-establishment of rights in respect of time limits provided for in this Convention and to be observed vis-à-vis the **competent authorities**.

Chapter II

Information to the public or to official authorities

Article 131

Administrative and legal co-operation

1) Unless this Convention or national laws provide otherwise, the European Patent Office and the courts or authorities of Contracting States shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office makes files available for inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 128.

1) Unless this Convention, **the instrument establishing a unified court structure in accordance with Article 149a (1) (a)**, national law or **Community law** provide otherwise, the European Patent Office and the **competent** courts or authorities of Contracting **Parties** shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office makes files available for inspection by courts, Public Prosecutors' Offices, central industrial property offices or **the competent bodies of the European Community**, the inspection shall not be subject to the restrictions laid down in Article 128.

(2) At the request of the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of the Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.

(2) At the request of the European Patent Office, the courts or other competent authorities of Contracting **Parties** shall undertake, on behalf of the Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.

PART VIII
**IMPACT ON NATIONAL LAW IMPACT ON NATIONAL AND
COMMUNITY LAW**

Chapter II
Revocation and prior rights

Article 139
Prior rights and rights arising on the same date

(1) In any designated Contracting State a European patent application and a European patent shall have with regard to a national patent application and a national patent the same prior right effect as a national patent application and a national patent.

(1) unchanged

(2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent designating that Contracting State the same prior right effect as if the European patent were a national patent.

(2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent designating that Contracting State the same prior right effect as if the European patent were a national patent. **A national patent application and a national patent in a Member State of the European Community shall have with regard to a Community patent the same prior right effect as if the Community patent were a national patent.**

(3) Any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.

(3) Any Contracting **Party** may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.

PART IX SPECIAL AGREEMENTS

Article 142 Unitary patents

(1) Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.

(1) unchanged.

(2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.

(2) unchanged.

**(3) Part IXA shall apply with regard to
Community patents.**

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.

Other agreements between the Contracting Parties

(1) Nothing in this Convention shall be construed as limiting the right of some or all of the Contracting **Parties** 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 **or Community law**, such as, in particular

(a) an agreement establishing a **unified patent court structure** common to its Contracting **Parties**;

(b) an agreement establishing an entity common to the Contracting **Parties bound by the agreement** 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 **Parties bound by it** dispense fully or in part with translations of European patents under Article 65;

(d) an agreement under which the Contracting **Parties bound by 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 (2) unchanged 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 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.

PART IXA (new)
SPECIFIC PROVISIONS
CONCERNING COMMUNITY
PATENTS

Chapter I
General provisions

Article 149b (new)
Provisions applicable to the
Community patent

The provisions of this Part shall apply to
Community patents.

Article 149c (new)
Respect for Community law

The Community Patent Division referred
to in Article 149d and the Select
Committee referred to in Article 149j shall
in carrying out their tasks respect
Community law.

Chapter II
The Community Patent Division

Article 149d (new)
General responsibility of the
Community Patent Division

(1) The Community Patent Division shall be responsible for all acts of the European Patent Office relating to Community patents, insofar as those acts are not the responsibility of other departments of the Office.

(1a) Decisions of the Community Patent Division shall be taken by one legally qualified member.

(2) It shall report on its activities to the President of the Office.

Article 149e (new)
Community Patent Register

(1) The European Patent Office shall keep a Community Patent Register in accordance with Community law and as specified in the Implementing Regulations. The Community Patent Register shall be open to public inspection.

(2) The Community Patent Division shall be responsible for all decisions in respect of entries to be made in the Community Patent Register.

Article 149f (new)
Community Patent Bulletin

The Community Patent Division shall publish a Community Patent Bulletin in accordance with Community law and as specified in the Implementing Regulations.

Article 149g (new)

Renewal Fees for Community Patents

(1) Renewal fees for Community patents shall be administered by the Community Patent Division, in accordance with the Implementing Regulations.

(2) Income from such fees shall, after deduction of the amounts retained by the European Patent Organisation pursuant to Article 39a, be distributed among the Member States of the European Community in accordance with a distribution key.

Article 149h (new)

Lapse

The Community Patent Division shall be responsible for declaring that a Community patent has lapsed, in accordance with the Implementing Regulations.

Article 149i (new)

Failure to comply with time-limits.

In proceedings before the Community Patent Division, Article 122 shall apply.

Chapter III
Select Committee of the
Administrative Council

Article 149j (new)
General rules

(1) A Select Committee of the Administrative Council shall be set up. It shall be composed of representatives of the European Community and representatives of all of its Member States.

(2) The European Patent Office shall place at the disposal of this Committee such staff, premises and equipment as may be necessary for the performance of its duties.

(3) The President of the Office shall take part in the deliberations of the Select Committee. He/she shall be responsible for the activities of the Community Patent Division to the Select Committee.

Article 149k (new)
Chairmanship and Votes in the Select
Committee

(1) The Select Committee is chaired by the representative of the Community. Each Member State shall have one vote. Article 36 shall not apply.

(2) Subject to paragraph 3, the Select Committee shall arrive at its decisions by a simple majority of the votes of the Committee Members represented and voting.

(3) Favourable opinions pursuant to Article 149m shall require a majority of three-quarters of the votes of the Committee Members represented and voting.

Article 149l (new)

Favourable opinion

A favourable opinion by the Select Committee shall be required as a precondition for allowing the Administrative Council to reach decisions on the following:

- (a) the proportion of renewal fees referred to in Article 39a;
- (b) measures applying to budgetary matters relating to the Community patent;
- (c) the Implementing Regulations relating to this Part.

Article 149m (new)

Sole competence

The select Committee shall be solely competent to adopt and amend:

- (a) its Rules of Procedure;**

- (b) the particulars to be entered in the Community Patent Register and Bulletin under Articles 149e and 149f;**

- (c) Rules relating to fees for the purpose of establishing and amending the renewal fees referred to in Article 149g, paragraph 1;**

- (d) Implementing Regulations for the purpose of establishing and amending the distribution key referred to in Article 149g, paragraph 2.**

**PART X: INTERNATIONAL APPLICATIONS UNDER THE PATENT
COOPERATIONS TREATY – EURO-PCT APPLICATIONS**

**Article 166
Accession**

(1) This Convention shall be open to accession by:

(a) the States referred to in Article 165, paragraph 1;

(b) any other European State at the invitation of the Administrative Council.

(c) the European Community.

(2) Any State which has been a party to the Convention and has ceased to be so as a result of the application of Article 172, paragraph 4, may again become a party to the Convention by acceding to it.

(2) Any **Contracting Party** which has been bound by the Convention and has ceased to be so as a result of the application of Article 172, paragraph 4, may again become a party to the Convention by acceding to it.

(3) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.

(unchanged)

Article 172
Revision

(1) This Convention may be revised by a Conference of the Contracting States.

(2) The Conference shall be prepared and convened by the Administrative Council. The Conference shall not be validly constituted unless at least three-quarters of the Contracting States are represented at it. Adoption of the revised text shall require a majority of three-quarters of the Contracting States represented and voting at the Conference. Abstentions shall not be considered as votes.

(3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting States specified by the Conference, and at the time specified by that Conference.

(4) Such States as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.

(1) This Convention may be revised by a Conference of the Contracting **Parties**.

(2) The Conference shall be prepared and convened by the Administrative Council. The Conference shall not be validly constituted unless at least three-quarters of the Contracting Parties are represented at it. Adoption of the revised text shall require a majority of three-quarters of the Contracting States represented and voting at the Conference. Abstentions shall not be considered as votes.

(3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting **Parties** specified by the Conference, and at the time specified by that Conference.

(4) Such **Parties** as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.

Article 173

Disputes between Contracting States

(1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.

Disputes between Contracting Parties

(1) Any dispute between Contracting **Parties** concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the Parties concerned, to the Administrative Council, which shall endeavour to bring about agreement between the **Parties** concerned.

(2) If such agreement is not reached within six months from the date when the dispute was referred to the Administrative Council, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision.

(2) If such agreement is not reached within six months from the date when the dispute was referred to the Administrative Council, any one of the **Parties** concerned may submit the dispute to the International Court of Justice for a binding decision.

(3) Rights and obligations of the Contracting Parties under paragraph (2) being a Member State of the European Community shall be without prejudice to their rights and obligations under Article 239 and 292 of the Treaty establishing the European Community.

Article 175

Preservation of acquired rights

(1) In the event of a State ceasing to be party to this Convention in accordance with Article 172, paragraph 4, or Article 174 rights already acquired pursuant to this Convention shall not be impaired.

(1) In the event of a **Party** ceasing to be **bound by** this Convention in accordance with Article 172, paragraph 4, or Article 174 rights already acquired pursuant to this Convention shall not be impaired.

(2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed by the European Patent Office, as far as that State is concerned, as if the Convention in force thereafter were applicable to that State.

(2) A European patent application which is pending when a designated **Party** ceases to be **bound by this** Convention shall be processed by the European Patent Office, as far as that **Party** is concerned, as if the Convention in force thereafter were applicable to that **Party**.

(3) Paragraph 2 shall apply to European patents in respect of which, on the date mentioned in that paragraph, an opposition is pending or the opposition period has not expired.

(unchanged)

(4) Nothing in this Article shall affect the right of any State that has ceased to be a party to this Convention to treat any European patent in accordance with the text to which it was a party.

(4) Nothing in this Article shall affect the right of any **Party** that has ceased to be **bound by** this Convention to treat any European patent in accordance with the text to which it was a party.

Article 178
Transmission and notifications

(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Convention and shall transmit them to the Governments of all signatory or acceding States.

(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Convention and shall transmit them to the Governments of all signatory or acceding States. **In the case of the European Community it shall transmit them to the Council of the European Union.**

(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:

(2) The Government of the Federal Republic of Germany shall notify to the **authorities** referred to in paragraph 1:

(a) the deposit of any instrument of ratification or accession;

(a) the deposit of any instrument of ratification or accession;

(b) any declaration or notification received pursuant to Article 168;

(b) any declaration or notification received pursuant to Article 168;

(c) any denunciation received pursuant to Article 174 and the date on which such denunciation comes into force.

(c) any denunciation received pursuant to Article 174 and the date on which such denunciation comes into force.

(3) The Government of the Federal Republic of Germany shall register this Convention with the Secretariat of the United Nations.

(unchanged)

New Article XX

Technical adaptations

In the following provisions of the Convention the terms "Contracting State" or "Contracting States" are replaced by "Contracting Party" or "Contracting Parties" respectively:

Articles 3, 26(1), 27(1), 28(1), 29(5), 34(1), 63(4), 71, 73, 75(1) - (2), 76 (2), 118, 125, 138(1), 153(1), 174, 176(1) (incl. title)

**PROTOCOL TO THE REVISION ACT OF THE EUROPEAN PATENT CONVENTION
ON ENHANCED PARTNERSHIP**

1. Enhanced Partnerships shall make it possible for the European Patent Office to make regular use, where appropriate, of the result of any search carried out by central industrial property offices of Member States of the European Patent Organisation on a national patent application, the priority of which is claimed in a subsequent filing of a European patent application.
2. Enhanced partnerships will be established through individual agreements between the European Patent Office and the central industrial property offices of Member States.
3. Enhanced partnership agreements shall fully respect the central role of the European Patent Office in the granting and administering of European patents.
4. The enhanced partnership agreements shall be based on a *European Standard for Searches*, ESS, containing common criteria for ensuring quality.
5. The ESS shall be implemented within the European Patent Network (EPN)¹, in particular the Utilization Project² and the European Quality System,³ within the policy of the European Patent Organization.
6. The ESS shall include:

¹ EPO documents CA/120/06 and CA/PL 8/09.

² EPO document CA/147/08 Rev. 1.

³ EPO document CA/122/06 and CA/PL 8/09.

- 6.1 Criteria commonly established having an impact on the search results, inter alia minimum documentation searched, searched classes according to defined classification systems, and common search strategies. The ESS shall also cover criteria for the documentation of the search through a standardised "log sheet" in which appropriate information concerning consulted databases, search parameters (strategy, keywords etc), classification, relevant documents etc shall be given.
- 6.2 A standardised training programme aimed at assuring that all examiners who are entitled to perform a search according to the ESS have been given comprehensive training. This training shall be subject to a certification process. The European Patent Office shall contribute to the arrangement and the administration of the standardised training programme. The training programme shall include exchanges of examiners between the Office and the participating central industrial property offices in order to enable the exchange of best practice and experience.
- 6.3 Standards ensuring that all examiners performing a search according to the ESS have access to a set of search tools defined in the standard. The standard shall therefore comprise a list of search tools and search-related tools, such as databases, preparations, and others.
- 6.4 Standards to be met with regard to feedback in order to obtain improved quality and efficiency. An appropriate model for this could be based on Deming's PDCA-model (Plan-Do-Check-Act).
- 6.5 Standards for the assessment of the fulfilment of the criteria established under the ESS aiming at providing objective, transparent and reliable information on the quality of work and performance of the central industrial property offices of the Member States participating in the ESS. These standards shall include criteria ensuring the adequate involvement of users and wider stakeholders. The added value rendered by search reports carried out by central industrial property offices should be considered in the design of the fee structure.

7. The European Patent Office shall be invited to conclude the enhanced partnership agreements referred to in paragraphs 1 to 3 above and may terminate such agreements if the objective quality standards in the ESS or other conditions of the agreement are not met.
8. The enhanced partnership agreements will be subject to an individual periodic review, carried out by the European Patent Office ensuring the active participation of the central industrial property offices and the users.
9. The participation of central industrial property offices in an *enhanced partnership* shall be voluntary but open to all. In the spirit of facilitating the utilisation and pooling of all available resources, regional cooperation shall be encouraged together with the possibility of limiting the participation of a central industrial property offices in an enhanced partnership to a specific technical field shall be further analysed, tested and evaluated.
10. The steps now taken shall be without prejudice to any future development of the enhanced partnership. Against this background the European Patent Office shall give comprehensive evaluation of the functioning and the further development of the enhanced partnerships, in close cooperation with the Member States, based on experience gained through the implementation and the performance achieved by central industrial property offices in meeting the standard of this protocol.

PROTOCOL TO THE REVISION ACT OF THE EUROPEAN PATENT CONVENTION ON THE
RENEWAL FEES OF THE COMMUNITY PATENT

- (1) Renewal fees for Community patents will be payable to the European Patent Office in accordance with Article 39a, and 149g of the European Patent Convention.
- (2) The Select Committee established according to Article 149j shall, once the Community patent Regulation enters into force, fix both the level of the renewal fees and the distribution key for their allocation, in accordance with Article 149m part c and d. The Select Committee shall periodically review its decisions.
- (3) When fixing or reviewing the level of the renewal fees the Select Committee shall take into account that the renewal fees shall be progressive throughout the life of the Community patent and together with the fees due to be paid during the application phase, cover the costs associated with the granting and administration of the Community patent, thus contributing to the financial stability of the European Patent Office.
- (4) When fixing, or reviewing, the level of the renewal fees the Select Committee shall, in addition to the fundamental principles expressed in (3), take into account that the renewal fees shall:
 - correlate to the level of the renewal fees for an average European Patent;
 - facilitate innovation and its protection in Europe;
 - foster the competitiveness of European business, especially small and medium sizes enterprises in the global economy and
 - reflect the size of the market covered by the Community patent, duly taking into account comparable patent systems.

(5) When fixing, or reviewing, the distribution key referred to in Article 149g(2) and 149m(d) the Select Committee shall take into account a basket of fair, equitable and relevant criteria.

Amongst these criteria the following should be given particular importance :

- proportionality with regard to the level of patent activity;
- proportionality with regard to the size of the market;
- compensation for Member States having one official language not in common with the Office,
and
- in cases of disproportionately low levels of patent activity, compensation should be provided with a view to promoting patent activity and facilitating innovation.

**AGREEMENT ON THE TRANSLATION ARRANGEMENTS APPLICABLE UNDER
THE EUROPEAN PATENT CONVENTION TO THE COMMUNITY PATENT**

The European Community and its Member States, as Contracting Parties to this Agreement, and
in their capacity as Contracting Parties to the Convention on the Grant of European Patents
(European Patent Convention) of 5 October 1973⁴,

Reaffirming their commitment to a cost effective, legally secure Community patent, which should
improve access to the patent system in Europe and further facilitate its use by companies, in
particular small and medium sized enterprises,

Seeking to reduce administrative complexity and costs for patents with the aim to stimulate
innovation,

Stressing the importance of the availability of patent information, the dissemination of
technological knowledge and multilingualism, which could be achieved by a patent machine
translation programme operational once the Community patent comes into effect enabling instant
access to translated publications of patent applications in all official languages of the European
Union.

Recognising that in order to facilitate access to the patent system, it is important for an applicant
from a Member State having an official language of the European Union that is not one of the
official languages of the European Patent Office to be able to file a patent application in this
language and that translations into one of the designated official languages of the European Patent
Office for the language of proceedings for the patent application should be borne by the system
("mutualisation of costs"),

⁴ As revised by the Act revising Article 63 EPC of 17 December 1991, the Act revising the
EPC of 29 November 2000 and the Act revising the EPC of ...

Have decided to establish a specific and simplified scheme for the translation arrangements related to the Community patent, which will dispense with the requirements provided for in Article 65 of the European Patent Convention.

Article 1

Dispensation with translation requirements

The Member States of the European Community shall dispense with the translation requirements provided for in Article 65 of the European Patent Convention with respect to Community patents.

Article 2

Mutualisation of costs

Without prejudice to Article 14(4) of the European Patent Convention, the costs incurred in respect of the translation of an application for a Community patent filed in an official language of the European Union that is not one of the official languages of the European Patent Office into one of the official languages of the European Patent Office shall be borne by the system.

Article 3

Translations for the provision of patent information

1. Translations of the patent specifications and claims into all official languages of the European Union shall be made available upon publication of the application for the Community patent.
2. These translations shall be carried out on demand by the Community Patent Division as referred to in Article 15(c.1) of the European Patent Convention based upon a machine translation programme involving electronic dictionaries with technical vocabulary linked to the international patent classification system.
3. The translations referred to in this Article shall be for the provision of information and shall have no legal effect.

Article 4
Translations in case of a dispute

In the case of a dispute relating to a Community patent, the patent proprietor, at his/her own expense, shall provide:

- (a) at the request of an alleged infringer, a full translation of the patent into an official language of the State in which the alleged infringement took place or in which the alleged infringer is domiciled;
- (b) at the request of a Court in the course of legal proceedings, a full translation of the patent into the language of proceedings.

Article 5
Ratification

This Agreement shall be subject to ratification by the Contracting Parties together with the ratification procedure of the Revision Act on [title of the Revision Act]⁵.

Article 6
Entry into force

This Agreement shall enter into force on the day of the entry into force of the revised European Patent Convention as amended by the Revision Act on [title of the Revision Act].

Article 7
Duration of the Agreement

This Agreement shall be concluded for an unlimited duration.

⁵ The Act revising the European Patent Convention of [date].

Article 8
Languages of the Agreement

This Agreement, drawn up in a single original in the English, French and German languages shall be deposited with the Government of the Federal Republic of Germany, the three texts being equally authentic.

Article 9
Transmissions and notifications

(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Agreement and shall transmit them to the Governments of all European Community Member States and to the Council of the European Union.

(2) The Government of the Federal Republic of Germany shall notify the Contracting Parties to this Agreement:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) the date of entry into force of this Agreement;

(3) The Government of the Federal Republic of Germany shall register this Agreement with the Secretariat of the United Nations.

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

Done in [place] on [date].
