

CONVENTION
ON THE GRANT OF EUROPEAN PATENTS
(EUROPEAN PATENT CONVENTION)

of 5 October 1973

text as amended by the act revising Article 63 EPC of 17 December 1991 and by decisions of the Administrative Council of the European Patent Organisation of 21 December 1978, 13 December 1994, 20 October 1995, 5 December 1996 and 10 December 1998

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CONVENTION

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PREAMBLE

The Contracting States,

Desiring to strengthen co-operation between the States of Europe in respect of the protection of inventions,

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,

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,

Have agreed on the following provisions:

PART I

GENERAL AND INSTITUTIONAL PROVISIONS

CHAPTER I

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 hereby established.

Article 2

European patent

(1) Patents granted by virtue of this Convention shall be called European patents.

(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 otherwise provided in this Convention.

Article 3

Territorial effect

The grant of a European patent may be requested for one or more of the Contracting States.

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.

CHAPTER II

THE EUROPEAN PATENT ORGANISATION

Article 5

Legal status

(1) The Organisation shall have legal personality.

(2) In each of the Contracting States, the Organisation shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State; it may in particular acquire or dispose of movable and immovable property and may be a party to legal proceedings.

(3) The President of the European Patent Office shall represent the Organisation.

Article 6

Seat

(1) The Organisation shall have its seat at Munich.

(2) The European Patent Office shall be set up at Munich. It shall have a branch at The Hague.

Article 7

Sub-offices of the European Patent Office

By decision of the Administrative Council, suboffices

of the European Patent Office may be created if need be, for the purpose of information and liaison, in the Contracting States and with inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.

Article 8

Privileges and immunities

The Protocol on Privileges and Immunities annexed to this Convention shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the European Patent Office and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in the territory of each Contracting State, the privileges and immunities necessary for the performance of their duties.

Article 9

Liability

(1) The contractual liability of the Organisation shall be governed by the law applicable to the relevant contract.

(2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the European Patent Office in the performance of their duties shall be governed by the provisions of the law of the Federal Republic of Germany. Where the damage is caused by the branch at The Hague or a sub-office or employees attached thereto, the provisions of the law of the Contracting State in which such branch or sub-office is located shall apply.

(3) The personal liability of the employees of the European Patent Office towards the Organisation shall be laid down in their Service Regulations or conditions of employment.

(4) The courts with jurisdiction to settle disputes under paragraphs 1 and 2 shall be:

- (a) for disputes under paragraph 1, the courts of competent jurisdiction in the Federal Republic of Germany, unless the contract concluded between the parties designates the courts of another State;
- (b) for disputes under paragraph 2, either the courts of competent jurisdiction in the Federal Republic of Germany, or the courts of competent jurisdiction in the State in which the branch or sub-office is located.

CHAPTER III

THE EUROPEAN PATENT OFFICE

Article 10

Direction

(1) The European Patent Office shall be directed by

the President who shall be responsible for its activities to the Administrative Council.

(2) To this end, the President shall have in particular the following functions and powers:

- (a) he shall take all necessary steps, including the adoption of internal administrative instructions and the publication of guidance for the public, to ensure the functioning of the European Patent Office;
- (b) in so far as this Convention contains no provisions in this respect, he shall prescribe which transactions are to be carried out at the European Patent Office at Munich and its branch at The Hague respectively;
- (c) he may place before the Administrative Council any proposal for amending this Convention and any proposal for general regulations or decisions which come within the competence of the Administrative Council;
- (d) he shall prepare and implement the budget and any amending or supplementary budget;
- (e) he shall submit a management report to the Administrative Council each year;
- (f) he shall exercise supervisory authority over the personnel;
- (g) subject to the provisions of Article 11, he shall appoint and promote the employees;
- (h) he shall exercise disciplinary authority over the employees other than those referred to in Article 11, and may propose disciplinary action to the Administrative Council with regard to employees referred to in Article 11, paragraphs 2 and 3;
- (i) he may delegate his functions and powers.

(3) The President shall be assisted by a number of Vice-Presidents. If the President is absent or indisposed, one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Council.

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.

Article 12
Duties of office

The employees of the European Patent Office shall be bound, even after the termination of their employment, neither to disclose nor to make use of information which by its nature is a professional secret.

Article 13

Disputes between the Organisation and the employees of the European Patent Office

(1) Employees and former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organisation in the case of disputes with the European Patent Organisation in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.

(2) An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations, the Pension Scheme Regulations or the conditions of employment, as the case may be.

Article 14

Languages of the European Patent Office

(1) The official languages of the European Patent Office shall be English, French and German. European patent applications must be filed in one of these languages.

(2) However, natural or legal persons having their residence or principal place of business within the territory of 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 European patent applications in an official language of that State. Nevertheless, a translation in one of the official languages of the European Patent Office must be filed within the time limit prescribed in the Implementing Regulations; throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the original text of the application.

(3) The official language of the European Patent Office in which the European patent application is filed or, in the case referred to in paragraph 2, that of the translation, shall be used as the language of the proceedings in all proceedings before the European Patent Office concerning the application or the resulting patent, unless otherwise provided in the Implementing Regulations.

(4) The persons referred to in paragraph 2 may also file documents which have to be filed within a time limit in an official language of the Contracting State concerned. They must however file a translation in the

language of the proceedings within the time limit prescribed in the Implementing Regulations; in the cases provided for in the Implementing Regulations, they may file a translation in a different official language of the European Patent Office.

(5) If any document, other than those making up the European patent application, is not filed in the language prescribed by this Convention, or if any translation required by virtue of this Convention is not filed in due time, the document shall be deemed not to have been received.

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

(7) The specifications of European patents shall be published in the language of the proceedings; they shall include a translation of the claims in the two other official languages of the European Patent Office.

(8) There shall be published in the three official languages of the European Patent Office:

- (a) the European Patent Bulletin;
- (b) the Official Journal of the European Patent Office.

(9) Entries in the Register of European Patents shall be made in the three official languages of the European Patent Office. In cases of doubt, the entry in the language of the proceedings shall be authentic.

Article 15

The departments charged with the procedure

For implementing the procedures laid down in this Convention, there 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.

Article 16

Receiving Section

The Receiving Section shall be in the branch at The Hague. It shall be responsible for the examination on filing and the examination as to formal requirements of each European patent application up to the time when a request for examination has been made or the applicant has indicated under Article 96, paragraph 1, that he desires to proceed further with his application. It shall also be responsible for the publication of the European patent application and of the European search report.

Article 17

Search Divisions

The Search Divisions shall be in the branch at The Hague. They shall be responsible for drawing up European search reports.

Article 18
Examining Divisions

(1) An Examining Division shall be responsible for the examination of each European patent application from the time when the Receiving Section ceases to be responsible.

(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.

Article 19
Opposition Divisions

(1) An Opposition Division shall be responsible for the examination of oppositions against any European patent.

(2) An Opposition Division shall consist of three technical examiners, at least two of whom shall not have taken part in the proceedings for grant of the patent to which the opposition relates. An examiner who has taken part in the proceedings for the grant of the European patent shall not be the Chairman. Prior to the taking of a final decision on the opposition, the Opposition Division may entrust the examination of the opposition to one of its members. Oral proceedings shall be before the Opposition Division itself. If the Opposition Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner who shall not have taken part in the proceedings for grant of the patent. In the event of parity of votes, the vote of the Chairman of the Division shall be decisive.

Article 20
Legal Division

(1) The Legal Division shall be responsible for decisions in respect of entries in the Register of European Patents and in respect of registration on, and deletion from, the list of professional representatives.

(2) Decisions of the Legal Division shall be taken by one legally qualified member.

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 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.

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.

(2) For giving decisions or opinions, the Enlarged Board of Appeal shall consist of five legally qualified members and two technically qualified members. One of the legally qualified members shall be the Chairman.

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.

(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.

Article 24

Exclusion and objection

(1) Members of the Boards of Appeal or of the Enlarged Board of Appeal may not take part in any appeal if they have any personal interest therein, if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal.

(2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the Board accordingly.

(3) Members of a Board of Appeal or of the Enlarged Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. No objection may be based upon the nationality of members.

(4) The Boards of Appeal and the Enlarged Board of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision the member objected to shall be replaced by his alternate.

Article 25

Technical opinion

At the request of the competent national court trying an infringement or revocation action, the European Patent Office shall be obliged, against 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 the issue of such opinions.

CHAPTER IV

THE ADMINISTRATIVE COUNCIL

Article 26

Membership

(1) The Administrative Council shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council.

(2) The members of the Administrative Council may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

Article 27

Chairmanship

(1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman in the event of his being prevented from attending to his duties.

(2) The duration of the terms of office of the Chairman and the Deputy Chairman shall be three years. The terms of office shall be renewable.

Article 28

Board

(1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members.

(2) The Chairman and the Deputy Chairman of the Administrative Council shall be members of the Board ex officio; the other three members shall be elected by the Administrative Council.

(3) The term of office of the members elected by the Administrative Council shall be three years. This term of office shall not be renewable.

(4) The Board shall perform the duties given to it by the Administrative Council in accordance with the Rules of Procedure.

Article 29

Meetings

(1) Meetings of the Administrative Council shall be convened by its Chairman.

(2) The President of the European Patent Office shall take part in the deliberations of the Administrative Council.

(3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.

(4) The deliberations of the Administrative Council shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.

(5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.

Article 30

Attendance of observers

(1) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with the provisions of an agreement to be concluded between the European Patent Organisation and the World Intellectual Property Organization.

(2) Any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Organisation has concluded an agreement shall be represented at the meetings of the Administrative Council, in accordance with any provisions contained in such agreement.

(3) Any other inter-governmental and international non-governmental organisations exercising an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.

Article 31

Languages of the Administrative Council

(1) The languages in use in the deliberations of the Administrative Council shall be English, French and German.

(2) Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up in the three languages mentioned in paragraph 1.

Article 32

Staff, premises and equipment

The European Patent Office shall place at the disposal of the Administrative Council and any body established by it such staff, premises and equipment as may be necessary for the performance of their duties.

Article 33

Competence of the Administrative Council in certain cases

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

- (a) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 94 only in the conditions laid down in Article 95;
- (b) 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.

Article 34

Voting rights

(1) The right to vote in the Administrative Council shall be restricted to the Contracting States.

(2) Each Contracting State shall have one vote, subject to the application of the provisions of Article 36.

Article 35

Voting rules

(1) The Administrative Council shall take its decisions other than those referred to in paragraph 2 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, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 87, Article 95, Article 134, Article 151, paragraph 3, Article 154, paragraph 2, Article 155, paragraph 2, Article 156, Article 157, paragraphs 2 to 4, Article 160, paragraph 1, second sentence, Article 162, Article 163, Article 166, Article 167 and Article 172.

(3) Abstentions shall not be considered as votes.

Article 36

Weighting of votes

(1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot.

(2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows:

- (a) the percentage obtained for each Contracting State in respect of the scale for the special financial

- contributions, pursuant to Article 40, paragraphs 3 and 4, shall be multiplied by the number of Contracting States and divided by five;
- (b) the number of votes thus given shall be rounded upwards to the next higher whole number;
 - (c) five additional votes shall be added to this number;
 - (d) nevertheless no Contracting State shall have more than 30 votes.

CHAPTER V FINANCIAL PROVISIONS

Article 37

Cover for expenditure

The expenditure of the Organisation shall be covered:

- (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.

Article 38

The Organisation's own resources

The Organisation's own resources shall be the yield from the fees laid down in this Convention, and also all receipts, whatever their nature.

Article 39

Payments by the Contracting States in respect of renewal fees for European patents

(1) Each Contracting State shall pay to the Organisation in respect of each renewal fee received for a European patent in that State an amount equal to a proportion of that fee, to be fixed by the Administrative Council; the proportion shall not exceed 75 per cent and shall be the same for all Contracting States. However, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the Organisation.

(2) Each Contracting State shall communicate to the Organisation such information as the Administrative Council considers to be necessary to determine the amount of its payments.

(3) The due dates for these payments shall be determined by the Administrative Council.

(4) If a payment is not remitted fully by the due date, the Contracting State shall pay interest from the due date on the amount remaining unpaid.

Article 40

Level of fees and payments – Special financial contributions

(1) The amounts of the fees referred to under Article 38 and the proportion referred to under 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.

(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:

- (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 determined in proportion to the total number of patent applications filed in these States.

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

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

(6) The special financial contributions shall be repaid together 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 mentioned in paragraphs 3 and 4 above.

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

Article 41

Advances

(1) At the request of the President of the European Patent Office, the Contracting States shall make advances to the Organisation, on account of their

payments and contributions, within the limit of the amount fixed by the Administrative Council. Such advances shall be apportioned in proportion to the amounts due by the Contracting States for the accounting period in question.

(2) Article 39, paragraphs 3 and 4, shall apply *mutatis mutandis* to the advances.

Article 42

Budget

(1) Income and expenditure of the Organisation shall form the subject of estimates in respect of each accounting period and shall be shown in the budget. If necessary, there may be amending or supplementary budgets.

(2) The budget shall be balanced as between income and expenditure.

(3) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.

Article 43

Authorisation for expenditure

(1) The expenditure entered in the budget shall be authorised for the duration of one accounting period, unless any provisions to the contrary are contained in the Financial Regulations.

(2) Subject to the conditions to be laid down in the Financial Regulations, any appropriations, other than those relating to staff costs, which are unexpended at the end of the accounting period may be carried forward, but not beyond the end of the following accounting period.

(3) Appropriations shall be set out under different headings according to type and purpose of the expenditure and subdivided, as far as necessary, in accordance with the Financial Regulations.

Article 44

Appropriations for unforeseeable expenditure

(1) The budget of the Organisation may contain appropriations for unforeseeable expenditure.

(2) The employment of these appropriations by the Organisation shall be subject to the prior approval of the Administrative Council.

Article 45

Accounting period

The accounting period shall commence on 1 January and end on 31 December.

Article 46

Preparation and adoption of the budget

(1) The President of the European Patent Office shall lay the draft budget before the Administrative Council

not later than the date prescribed in the Financial Regulations.

(2) The budget and any amending or supplementary budget shall be adopted by the Administrative Council.

Article 47

Provisional budget

(1) If, at the beginning of the accounting period, the budget has not been adopted by the Administrative Council, expenditures may be effected on a monthly basis per heading or other division of the budget, according to the provisions of the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, provided that the appropriations thus made available to the President of the European Patent Office shall not exceed one-twelfth of those provided for in the draft budget.

(2) The Administrative Council may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the appropriations.

(3) The payments referred to in Article 37, sub-paragraph (b), shall continue to be made, on a provisional basis, under the conditions determined under Article 39 for the year preceding that to which the draft budget relates.

(4) The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 40, paragraphs 3 and 4, any special financial contributions necessary to ensure implementation of paragraphs 1 and 2 above. Article 39, paragraph 4, shall apply *mutatis mutandis* to these contributions.

Article 48

Budget implementation

(1) The President of the European Patent Office shall implement the budget and any amending or supplementary budget on his own responsibility and within the limits of the allocated appropriations.

(2) Within the budget, the President of the European Patent Office may, subject to the limits and conditions laid down in the Financial Regulations, transfer funds as between the various headings or sub-headings.

Article 49

Auditing of accounts

(1) The income and expenditure account and a balance sheet of the Organisation shall be examined by auditors whose independence is beyond doubt, appointed by the Administrative Council for a period of five years, which shall be renewable or extensible.

(2) The audit, which shall be based on vouchers and shall take place, if necessary, *in situ*, shall ascertain that all income has been received and all expenditure

effected in a lawful and proper manner and that the financial management is sound. The auditors shall draw up a report after the end of each accounting period.

(3) The President of the European Patent Office shall annually submit to the Administrative Council the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the Organisation together with the report of the auditors.

(4) The Administrative Council shall approve the annual accounts together with the report of the auditors and shall give the President of the European Patent Office a discharge in respect of the implementation of the budget.

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 the 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 accounting and paying 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.

Article 51

Rules relating to Fees

The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid.

PART II

SUBSTANTIVE PATENT LAW

CHAPTER I PATENTABILITY

Article 52

Patentable inventions

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(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, and programs for computers;
- (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.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

Article 53

Exceptions to patentability

European patents shall not be granted in respect of:

- (a) inventions the publication or exploitation of which would be contrary to "ordre public" or morality, provided that the 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.

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) Paragraph 3 shall be applied only in so far as a Contracting State designated in respect of the later application, was also designated in respect of the earlier application as published.

(5) The provisions of paragraphs 1 to 4 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 52, paragraph 4, provided that its use for any method referred to in that paragraph is not comprised in the state of the art.

Article 55

Non-prejudicial disclosures

(1) For the application of Article 54 a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:

- (a) an evident abuse in relation to the applicant or his legal predecessor, or
- (b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972.

(2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the period and under the conditions laid down in the Implementing Regulations.

Article 56

Inventive step

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents are not to be considered in deciding whether there has been an inventive step.

Article 57

Industrial application

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

CHAPTER II

PERSONS ENTITLED TO APPLY FOR AND OBTAIN EUROPEAN PATENTS – MENTION OF THE INVENTOR

Article 58

Entitlement to file a European patent application

A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it.

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.

Article 60

Right to a European patent

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee the right to the European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has his place of business to which the employee is attached.

(2) If two or more persons have made an invention independently of each other, the right to the European patent shall belong to the person whose European patent application has the earliest date of filing; however, this provision shall apply only if this first application has been published under Article 93 and shall only have effect in respect of the Contracting States designated in that application as published.

(3) For the purposes of proceedings before the European Patent Office, the applicant shall be deemed to be entitled to exercise the right to the European patent.

Article 61

European patent applications by persons not having the right to a European patent

(1) If by a final decision it is adjudged that a person referred to in Article 60, paragraph 1, other than the applicant, is entitled to the grant of a European patent, that person may, within a period of three months after the decision has become final, provided that the European patent has not yet been granted, in respect of those Contracting States designated in the European patent application in which the decision has been taken or recognised, or has to be recognised on the basis of the Protocol on Recognition annexed to this Convention:

- (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.

(3) The procedure to be followed in carrying out the provisions of paragraph 1, the special conditions applying to a new application filed under paragraph 1 and the time limit for paying the filing, search and designation fees on it are laid down in the Implementing Regulations.

Article 62

Right of the inventor to be mentioned

The inventor shall have the right, *vis-à-vis* the applicant for or proprietor of a European patent, to be mentioned as such before the European Patent Office.

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 as from the date of filing of the application.

(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:

- (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 of 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.

(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.

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 of publication of the mention of its grant, 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.

(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.

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

Article 65

Translation of the specification of the European patent

(1) Any Contracting State may prescribe that if the text, in which the European Patent Office intends to grant a European patent or maintain a European patent as amended for that State, is not drawn up in one of its official languages, the applicant for or proprietor of the patent shall supply to its central industrial property office a translation of this text 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 of the European patent or of the maintenance of the European patent as amended 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 applicant for or 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.

Article 66

Equivalence of European filing with national filing

A European patent application which has been accorded a date of filing shall, in the designated Contracting States, be equivalent to a regular national filing, where appropriate with the priority claimed for the European patent application.

Article 67

Rights conferred by a European patent application after publication

(1) A European patent application shall, from the date of its publication under Article 93, provisionally confer upon the applicant such protection as is conferred by Article 64, in the Contracting States designated in the application as published.

(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, every 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 the said

State in circumstances where that person would be liable under national law for infringement of a national patent.

(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:

- (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.

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 above 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.

Article 68

Effect of revocation 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 in opposition proceedings.

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 terms of 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 latest filed claims contained in the publication under Article 93. However, the European patent as granted or as amended in opposition proceedings shall determine retroactively the protection conferred by the European patent application, in so far as such protection is not thereby extended.

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.

(2) However, in the case referred to in Article 14,

paragraph 2, the original text shall, in proceedings before the European Patent Office, constitute the basis for determining whether the subject-matter of the application or patent extends beyond the content of the application as filed.

(3) Any Contracting State may provide that a translation, as provided for in this Convention, in an official language of that State, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the application or patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.

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

- (a) must 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, and Article 67, paragraph 3, have been complied with *mutatis mutandis*;
- (b) may prescribe that any person who, in that State, in good faith is using 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.

CHAPTER IV

THE EUROPEAN PATENT APPLICATION AS AN OBJECT OF PROPERTY

Article 71

Transfer and constitution of rights

A European patent application may be transferred or give rise to rights for one or more of the designated Contracting States.

Article 72

Assignment

An assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.

Article 73

Contractual licensing

A European patent application may be licensed in whole or in part for the whole or part of the territories of the designated Contracting States.

Article 74

Law applicable

Unless otherwise specified in this Convention, the

European patent application as an object of property shall, in each designated Contracting State and with effect for such State, be subject to the law applicable in that State to national patent applications.

PART III

APPLICATION FOR EUROPEAN PATENTS

CHAPTER I

FILING AND REQUIREMENTS OF THE EUROPEAN PATENT APPLICATION

Article 75

Filing of the European patent application

- (1) A European patent application may be filed:
- (a) at the European Patent Office at Munich or its branch at The Hague, or
 - (b) if the law of a Contracting State so permits, at the central industrial property office or other competent authority of that State. An 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.
- (3) No Contracting State may provide for or allow the filing of European divisional applications with an authority referred to in paragraph 1(b).

Article 76

European divisional applications

- (1) A European divisional application must be filed directly with the European Patent Office at Munich or its branch at The Hague. 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 provision is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall have the benefit of any right to priority.
- (2) The European divisional application shall not designate Contracting States which were not designated in the earlier application.
- (3) The procedure to be followed in carrying out the provisions of paragraph 1, the special conditions to be complied with by a divisional application and the time limit for paying the filing, search and designation fees are laid down in the Implementing Regulations.

Article 77

Forwarding of European patent applications

- (1) The central industrial property office of a Contracting State shall be obliged to forward to the European Patent Office, in the shortest time compatible with the application of national law concerning the secrecy of inventions in the interests of the State, any European patent applications which have been filed with that office or with other competent authorities in that State.
- (2) The Contracting States shall take all appropriate steps to ensure that European patent applications, the subject of which is obviously not liable to secrecy by virtue of the law referred to in paragraph 1, shall be forwarded to the European Patent Office within six weeks after filing.
- (3) European patent applications which require further examination as to their liability to secrecy shall be forwarded in such manner as to reach the European Patent Office within four months after filing, or, where priority has been claimed, fourteen months after the date of priority.
- (4) A European patent application, the subject of which has been made secret, shall not be forwarded to the European Patent Office.
- (5) European patent applications which do not reach the European Patent Office before the end of the fourteenth month after filing or, if priority has been claimed, after the date of priority, shall be deemed to be withdrawn. The filing, search and designation fees shall be refunded.

Article 78

Requirements of the European patent application

- (1) A 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.
- (2) A European patent application shall be subject to the payment of the filing fee and the search fee within one month after the filing of the application.
- (3) A European patent application must satisfy the conditions laid down in the Implementing Regulations.

Article 79

Designation of Contracting States

- (1) The request for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.
- (2) The designation of a contracting state shall be subject to the payment of the designation fee. The designation fees shall be paid within six months of the

date on which the European Patent Bulletin mentions the publication of the European search report.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the European patent application. Designation fees shall not be refunded.

Article 80

Date of filing

The date of filing of a European patent application shall be the date on which documents filed by the applicant contain:

- (a) an indication that a European patent is sought;
- (b) the designation of at least one Contracting State;
- (c) information identifying the applicant;
- (d) a description and one or more claims in one of the languages referred to in Article 14, paragraphs 1 and 2, even though the description and the claims do not comply with the other requirements of this Convention.

Article 81

Designation of the inventor

The European patent application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the European patent.

Article 82

Unity of invention

The European patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Article 83

Disclosure of the invention

The European patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

Article 84

The claims

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

Article 85

The abstract

The abstract shall merely serve for use as technical information; it may not be taken into account for any other purpose, in particular not for the purpose of

interpreting the scope of the protection sought nor for the purpose of applying Article 54, paragraph 3.

Article 86

Renewal fees for European patent applications

(1) Renewal fees shall be paid to the European Patent Office in accordance with the Implementing Regulations in respect of European patent applications. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application.

(2) When a renewal fee has not been paid on or before the due date, the fee may be validly paid within six months of the said date, provided that the additional fee is paid at the same time.

(3) If the renewal fee and any additional fee have not been paid in due time the European patent application shall be deemed to be withdrawn. The European Patent Office alone shall be competent to decide this.

(4) 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.

CHAPTER II

PRIORITY

Article 87

Priority right

(1) A person who has duly filed in or for any State party to the Paris Convention for the Protection of Industrial Property, an application for a patent or for the registration of a utility model or for a utility certificate or for an inventor's certificate, or his successors 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 in a State which is not a party to the Paris Convention for the Protection of Industrial Property, paragraphs 1 to 4 shall apply only in so far as that State, according to a notification published by the Administrative Council, and by virtue of bilateral or multilateral agreements, grants on the basis of a first filing made at the European Patent Office as well as on the basis of a first filing made in or for any Contracting State and subject to conditions equivalent to those laid down in the Paris Convention, a right of priority having equivalent effect.

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, a copy of the previous application and, if the language of the latter is not one of the official languages of the European Patent Office, a translation of it in one of such official languages. The procedure to be followed in carrying out these provisions is laid down in 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.

Article 89

Effect of priority right

The right of priority shall have the effect that the date of priority shall count as the date of filing of the European patent application for the purposes of Article 54, paragraphs 2 and 3, and Article 60, paragraph 2.

PART IV PROCEDURE UP TO GRANT

Article 90

Examination on filing

(1) The Receiving Section shall examine whether:

- (a) the European patent application satisfies the requirements for the accordancy of a date of filing;
- (b) the filing fee and the search fee have been paid in due time;
- (c) in the case provided for in Article 14, paragraph 2, the translation of the European patent application in the language of the proceedings has been filed in due time.

(2) If a date of filing cannot be accorded, the Receiving Section shall give the applicant an opportunity to correct the deficiencies in accordance with the Implementing Regulations. If the deficiencies are not remedied in due time, the application shall not be dealt with as a European patent application.

(3) If the filing fee and the search fee have not been paid in due time or, in the case provided for in Article 14, paragraph 2, the translation of the application in the language of the proceedings has not been filed in due time, the application shall be deemed to be withdrawn.

Article 91

Examination as to formal requirements

(1) If a European patent application has been accorded a date of filing, and is not deemed to be withdrawn by virtue of Article 90, paragraph 3, the Receiving Section shall examine whether:

- (a) the requirements of Article 133, paragraph 2, have been satisfied;
- (b) the application meets the physical requirements laid down in the Implementing Regulations for the implementation of this provision;
- (c) the abstract has been filed;
- (d) the request for the grant of a European patent satisfies the mandatory provisions of the Implementing Regulations concerning its content and, where appropriate, whether the requirements of this Convention concerning the claim to priority have been satisfied;
- (e) the designation fees have been paid;
- (f) the designation of the inventor has been made in accordance with Article 81;
- (g) the drawings referred to in Article 78, paragraph 1(d), were filed on the date of filing of the application.

(2) Where the Receiving Section notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them in accordance with the Implementing Regulations.

(3) If any deficiencies noted in the examination under paragraph 1(a) to (d) are not corrected in

accordance with the Implementing Regulations, the application shall be refused; where the provisions referred to in paragraph 1(d) concern the right of priority, this right shall be lost for the application.

(4) Where, in the case referred to in paragraph 1(e), the designation fee has not been paid in due time in respect of any designated State, the designation of that State shall be deemed to be withdrawn.

(5) Where, in the case referred to in paragraph 1(f), the omission of the designation of the inventor is not, in accordance with the Implementing Regulations and subject to the exceptions laid down therein, corrected within 16 months after the date of filing of the European patent application or, if priority is claimed, after the date of priority, the application shall be deemed to be withdrawn.

(6) Where, in the case referred to in paragraph 1(g), the drawings were not filed on the date of filing of the application and no steps have been taken to correct the deficiency in accordance with the Implementing Regulations, either the application shall be re-dated to the date of filing of the drawings or any reference to the drawings in the application shall be deemed to be deleted, according to the choice exercised by the applicant in accordance with the Implementing Regulations.

Article 92

The drawing up of the European search report

(1) If a European patent application has been accorded a date of filing and is not deemed to be withdrawn by virtue of Article 90, paragraph 3, the Search Division shall draw up the European search report on the basis of the claims, with due regard to the description and any drawings, in the form prescribed in the Implementing Regulations.

(2) Immediately after it has been drawn up, the European search report shall be transmitted to the applicant together with copies of any cited documents.

Article 93

Publication of a European patent application

(1) A European patent application shall be published as soon as possible after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, as from the date of priority. Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. It shall be published simultaneously with the publication of the specification of the European patent when the grant of the patent has become effective before the expiry of the period referred to above.

(2) The publication shall contain the description, the claims and any drawings as filed and, in an annex, the European search report and the abstract, in so far as the latter are available before the termination of the technical preparations for publication. If the European search report and the abstract have not been

published at the same time as the application, they shall be published separately.

Article 94

Request for examination

(1) The European Patent Office shall examine, on written request, whether a European patent application and the invention to which it relates meet the requirements of this Convention.

(2) A request for examination may be filed by the applicant up to the end of six months after the date on which the European Patent Bulletin mentions the publication of the European search report. The request shall not be deemed to be filed until after the examination fee has been paid. The request may not be withdrawn.

(3) If no request for examination has been filed by the end of the period referred to in paragraph 2, the application shall be deemed to be withdrawn.

Article 95

Extension of the period within which requests for examination may be filed

(1) The Administrative Council may extend the period within which requests for examination may be filed if it is established that European patent applications cannot be examined in due time.

(2) If the Administrative Council extends the period, it may decide that third parties will be entitled to make requests for examination. In such cases, it shall determine the appropriate rules in the Implementing Regulations.

(3) Any decision of the Administrative Council to extend the period shall apply only in respect of applications filed after the publication of such decision in the Official Journal of the European Patent Office.

(4) If the Administrative Council extends the period, it must lay down measures with a view to restoring the original period as soon as possible.

Article 96

Examination of the European patent application

(1) If the applicant for a European patent has filed the request for examination before the European search report has been transmitted to him, the European Patent Office shall invite him after the transmission of the report to indicate, within a period to be determined, whether he desires to proceed further with the European patent application.

(2) If the examination of a European patent application 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, in accordance with the Implementing Regulations and as often as necessary, to file his observations within a period to be fixed by the Examining Division.

(3) If the applicant fails to reply in due time to any invitation under paragraph 1 or paragraph 2, the application shall be deemed to be withdrawn.

Article 97
Refusal or grant

(1) The Examining Division shall refuse a European patent application if it is of the opinion that such application or the invention to which it relates does not meet the requirements of this Convention, except where a different sanction is provided for by this Convention.

(2) If the Examining Division is of the opinion that the application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant the European patent for the designated Contracting States provided that:

- (a) it is established, in accordance with the provisions of the Implementing Regulations, that the applicant approves the text in which the Examining Division intends to grant the patent;
- (b) the fees for grant and printing are paid within the time limit prescribed in the Implementing Regulations;
- (c) the renewal fees and any additional fees already due have been paid.

(3) If the fees for grant and printing are not paid in due time, the application shall be deemed to be withdrawn.

(4) The decision to grant a European patent shall not take effect until the date on which the European Patent Bulletin mentions the grant. This mention shall be published at least 3 months after the start of the time limit referred to in paragraph 2(b).

(5) Provision may be made in the Implementing Regulations for the applicant to file a translation, in the two official languages of the European Patent Office other than the language of the proceedings, of the claims appearing in the text in which the Examining Division intends to grant the patent. In such case, the period laid down in paragraph 4 shall be at least five months. If the translation has not been filed in due time, the application shall be deemed to be withdrawn.

(6) At the request of the applicant, mention of grant of the European patent shall be published before expiry of the time limit under paragraph 4 or 5. Such request may only be made if the requirements pursuant to paragraphs 2 and 5 are met.

Article 98
Publication of a specification
of the European patent

At the same time as it publishes the mention of the grant of the European patent, the European Patent Office shall publish a specification of the European patent containing the description, the claims and any drawings.

PART V
OPPOSITION PROCEDURE

Article 99
Opposition

(1) Within nine months from the publication of the mention of the grant of the European patent, any person may give notice to the European Patent Office of opposition to the European patent granted. Notice of opposition shall be filed in a written reasoned statement. It shall not be deemed to have been filed until 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) An opposition may be filed even if the European patent has been surrendered or has lapsed for all the designated States.

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

(5) 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.

Article 100
Grounds for opposition

- Opposition may only be filed on the grounds that:
- (a) the subject-matter of the European patent is not patentable within the terms of Articles 52 to 57;
 - (b) 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) 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 in accordance with Article 61, beyond the content of the earlier application as filed.

Article 101
Examination of the opposition

(1) If the opposition is admissible, the Opposition Division shall examine whether the grounds for opposition laid down in Article 100 prejudice the maintenance of the European patent.

(2) In the examination of the opposition, which shall be conducted in accordance with the provisions of the Implementing Regulations, the Opposition Division shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the

Opposition Division, on communications from another party or issued by itself.

Article 102

Revocation or maintenance of the European patent

(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 prejudice the maintenance of the European patent, it shall revoke the patent.

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 do not prejudice the maintenance of the patent unamended, 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 meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that:

- (a) it is established, in accordance with the provisions of the Implementing Regulations, that the proprietor of the patent approves the text in which the Opposition Division intends to maintain the patent;
- (b) the fee for the printing of a new specification of the European patent is paid within the time limit prescribed in the Implementing Regulations.

(4) If the fee for the printing of a new specification is not paid in due time, the patent shall be revoked.

(5) Provision may be made in the Implementing Regulations for the proprietor of the patent to file a translation of any amended claims in the two official languages of the European Patent Office other than the language of the proceedings. If the translation has not been filed in due time the patent shall be revoked.

Article 103

Publication of a new specification of the European patent

If a European patent is amended under Article 102, paragraph 3, the European Patent Office shall, at the same time as it publishes the mention of the opposition decision, publish a new specification of the European patent containing the description, the claims and any drawings, in the amended form.

Article 104

Costs

(1) Each party to the proceedings shall meet the costs he has incurred unless a decision of an Opposition Division or Board of Appeal, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs incurred during taking of evidence or in oral proceedings.

(2) On request, the registry of the Opposition

Division shall fix the amount of the costs to be paid under a decision apportioning them. The fixing of the costs by the registry may be reviewed by a decision of the Opposition Division on a request filed within the period 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.

Article 105

Intervention of the assumed infringer

(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him may, after the opposition period has expired, intervene in the opposition proceedings, if he gives notice of intervention within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any third party who proves both that the proprietor of the patent has requested that he cease alleged infringement of the patent and that he has instituted proceedings for a court ruling that he is not infringing the patent.

(2) Notice of intervention shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid. Thereafter the intervention shall, subject to any exceptions laid down in the Implementing Regulations, be treated as an opposition.

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.

(2) An appeal may be filed against the decision of the Opposition Division even if the European patent has been surrendered or has lapsed for all the designated States.

(3) 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.

(4) The apportionment of costs of opposition proceedings cannot be the sole subject of an appeal.

(5) A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount is in excess of that laid down in the Rules relating to Fees.

Article 107

Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 108

Time limit and form of appeal

Notice of appeal must be filed in writing at the European Patent Office within two months after the date of notification of the decision appealed from. The notice shall not be deemed to have been filed until after the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

Article 109

Interlocutory revision

(1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

(2) If the appeal is not allowed within three months after receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

Article 110

Examination of appeals

(1) If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable.

(2) In the examination of the appeal, which shall be conducted in accordance with the provisions of the Implementing Regulations, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from another party or issued by itself.

(3) If the applicant fails to reply in due time to an invitation under paragraph 2, the European patent application shall be deemed to be withdrawn, unless the decision under appeal was taken by the Legal Division.

Article 111

Decision in respect of appeals

(1) Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

(2) If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same. If the decision which was appealed emanated from the Receiving Section, the Examining Division shall similarly be bound by the ratio decidendi of the Board of Appeal.

Article 112

Decision or opinion of the Enlarged Board of Appeal

(1) In order to ensure uniform application of the law, or if an important point of law arises:

(a) the Board of Appeal shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes. If the Board of Appeal rejects the request, it shall give the reasons in its final decision;

(b) the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.

(2) In the cases covered by paragraph 1(a) the parties to the appeal proceedings shall be parties to the proceedings before the Enlarged Board of Appeal.

(3) The decision of the Enlarged Board of Appeal referred to in paragraph 1(a) shall be binding on the Board of Appeal in respect of the appeal in question.

PART VII

COMMON PROVISIONS

CHAPTER I

COMMON PROVISIONS GOVERNING PROCEDURE

Article 113

Basis of decisions

(1) The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

(2) The European Patent Office shall consider and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant for or proprietor of the patent.

Article 114

Examination by the European Patent Office of its own motion

(1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts,

evidence and arguments provided by the parties and the relief sought.

(2) The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 115

Observations by third parties

(1) Following the publication of the European patent application, any person may present observations concerning the patentability of the invention in respect of which the application has been filed. Such observations must be filed in writing and must include a statement of the grounds on which they are based. That person shall not be a party to the proceedings before the European Patent Office.

(2) The observations referred to in paragraph 1 shall be communicated to the applicant for or proprietor of the patent who may comment on them.

Article 116

Oral proceedings

(1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request for further oral proceedings before the same department where the parties and the subject of the proceedings are the same.

(2) Nevertheless, oral proceedings shall take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it envisages refusing the European patent application.

(3) Oral proceedings before the Receiving Section, the Examining Divisions and the Legal Division shall not be public.

(4) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the Enlarged Board of Appeal, after publication of the European patent application, and also before the Opposition Divisions, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 117

Taking of evidence

(1) In any proceedings before an Examining Division, an Opposition Division, the Legal Division or a Board of Appeal the means of giving or obtaining evidence shall include the following:

- (a) hearing the parties;
- (b) requests for information;
- (c) the production of documents;

(d) hearing the witnesses;

(e) opinions by experts;

(f) inspection;

(g) sworn statements in writing.

(2) The Examining Division, Opposition Division or Board of Appeal may commission one of its members to examine the evidence adduced.

(3) If the European Patent Office considers it necessary for a party, witness or expert to give evidence orally, it shall either:

- (a) issue a summons to the person concerned to appear before it, or
- (b) request, in accordance with the provisions of Article 131, paragraph 2, the competent court in the country of residence of the person concerned to take such evidence.

(4) A party, witness or expert who is summoned before the European Patent Office may request the latter to allow his evidence to be heard by a competent court in his country of residence. On receipt of such a request, or if there has been no reply to the summons by the expiry of a period fixed by the European Patent Office in the summons, the European Patent Office may, in accordance with the provisions of Article 131, paragraph 2, request the competent court to hear the person concerned.

(5) If a party, witness or expert gives evidence before the European Patent Office, the latter may, if it considers it advisable for the evidence to be given on oath or in an equally binding form, request the competent court in the country of residence of the person concerned to re-examine his evidence under such conditions.

(6) When the European Patent Office requests a competent court to take evidence, it may request the court to take the evidence on oath or in an equally binding form and to permit a member of the department concerned to attend the hearing and question the party, witness or expert either through the intermediary of the court or directly.

Article 118

Unity of the European patent application or European patent

Where the applicants for or proprietors of a European patent are not the same in respect of different designated Contracting States, they shall be regarded as joint applicants or proprietors for the purposes of proceedings before the European Patent Office. The unity of the application or patent in these proceedings shall not be affected; in particular the text of the application or patent shall be uniform for all designated Contracting States unless otherwise provided for in this Convention.

Article 119

Notification

The European Patent Office shall, as a matter of course, notify those concerned of decisions and

summonses, and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Convention, or of which notification has been ordered by the President of the European Patent Office. Notifications may, where exceptional circumstances so require, be given through the intermediary of the central industrial property offices of the Contracting States.

Article 120

Time limits

The Implementing Regulations shall specify:

- (a) the manner of computation of time limits and the conditions under which such time limits may be extended, either because the European Patent Office or the authorities referred to in Article 75, paragraph 1(b), are not open to receive documents or because mail is not delivered in the localities in which the European Patent Office or such authorities are situated or because postal services are generally interrupted or subsequently dislocated;
- (b) the minima and maxima for time limits to be determined by the European Patent Office.

Article 121

Further processing of the European patent application

(1) If the European patent application is to be refused or is refused or deemed to be withdrawn following failure to reply within a time limit set by the European Patent Office, the legal consequence provided for shall not ensue or, if it has already ensued, shall be retracted if the applicant requests further processing of the application.

(2) The request shall be filed in writing within two months of the date on which either the decision to refuse the application or the communication that the application is deemed to be withdrawn was notified. The omitted act must be completed within this time limit. The request shall not be deemed to have been filed until the fee for further processing has been paid.

(3) The department competent to decide on the omitted act shall decide on the request.

Article 122

Restitutio in integrum

(1) The 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 application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of this Convention, 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 application must be filed in writing within two months from the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the unobserved time limit. In the case of non-payment of a renewal fee, the period specified in Article 86, paragraph 2, shall be deducted from the period of one year.

(3) The application must state the grounds on which it is based, and must set out the facts on which it relies. It shall not be deemed to be filed until after the fee for re-establishment of rights has been paid.

(4) The department competent to decide on the omitted act shall decide upon the application.

(5) The provisions of this Article shall not be applicable to the time limits referred to in paragraph 2 of this Article, Article 61, paragraph 3, Article 76, paragraph 3, Article 78, paragraph 2, Article 79, paragraph 2, Article 87, paragraph 1, and Article 94, paragraph 2.

(6) Any person who, in a designated Contracting State, in good faith has 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 course of 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.

(7) Nothing in this Article shall limit the right of a Contracting State to grant *restitutio in integrum* in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

Article 123

Amendments

(1) The conditions under which a European patent application or a European patent may be amended in proceedings before the European Patent Office are laid down in the Implementing Regulations. In any case, an applicant shall be allowed at least one opportunity of amending the description, claims and drawings of his own volition.

(2) A European patent application or a 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 claims of the European patent may not be amended during opposition proceedings in such a way as to extend the protection conferred.

Article 124

Information concerning national patent applications

(1) The Examining Division or the Board of Appeal may invite the applicant to indicate, within a period to be determined by it, the States in which he has made applications for national patents for the whole or part of the invention to which the European patent application relates, and to give the reference numbers of the said applications.

(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.

Article 125

Reference to general principles

In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.

Article 126

Termination of financial obligations

(1) Rights of the Organisation to the payment of a fee to the European Patent Office shall be extinguished after four years from the end of the calendar year in which the fee fell due.

(2) Rights against the Organisation for the refunding by the European Patent Office of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.

(3) The period laid down in paragraphs 1 and 2 shall be interrupted in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgment enters into force.

CHAPTER II

INFORMATION TO THE PUBLIC OR OFFICIAL AUTHORITIES

Article 127

Register of European Patents

The European Patent Office shall keep a register, to be known as the Register of European Patents, which shall contain those particulars the registration of which is provided for by this Convention. No entry shall be made in the Register prior to the publication of the European patent application. The Register shall be open to public inspection.

Article 128

Inspection of files

(1) The 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 relevant applicant.

(4) Subsequent to the publication of the European patent application, the files relating to such 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 the following bibliographic data to third parties or publish them:

- (a) the number of the European patent application;
- (b) the date of filing of the European patent application and, where the priority of a previous application is claimed, the date, State and file number of the previous application;
- (c) the name of the applicant;
- (d) the title of the invention;
- (e) the Contracting States designated.

Article 129

Periodical publications

The European Patent Office shall periodically publish:

- (a) a European Patent Bulletin containing entries made in the Register of European Patents, as well as other particulars the publication of which is prescribed by this Convention;
- (b) an Official Journal of the European Patent Office, 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.

Article 130

Exchanges of information

(1) The European Patent Office and, subject to the application of the legislative or regulatory provisions referred to in Article 75, paragraph 2, the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding the filing of European or national patent applications and regarding any

proceedings concerning such applications and the resulting patents.

(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 office of any State which is not a party to this Convention;
- (b) any inter-governmental 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 shall treat the information communicated as confidential until the European patent application has been published.

Article 131

Administrative and legal co-operation

(1) Unless otherwise provided in this Convention or in national laws, 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 lays files open to 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.

(2) Upon receipt of letters rogatory from the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of that Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.

Article 132

Exchange of publications

(1) The European Patent Office and the central industrial property offices of the Contracting States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.

(2) The European Patent Office may conclude agreements relating to the exchange or supply of publications.

CHAPTER III REPRESENTATION

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 either a residence or their principal place of business within the territory of one of the Contracting States must be represented by a professional representative and act through him in all proceedings established by this Convention, other than in filing the European patent application; the Implementing Regulations may permit other exceptions.

(3) Natural or legal persons having their residence or principal place of business within the territory of one of the Contracting States may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who must 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 within the territory of one of the Contracting States 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.

Article 134

Professional representatives

(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 fulfils the following conditions may be entered on the list of professional representatives:

- (a) he must be a national of one of the Contracting States;
- (b) he must have his place of business or employment within the territory of one of the Contracting States;
- (c) he must have passed the European qualifying examination.

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

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

(5) 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.

(6) The President of the European Patent Office may, in special circumstances, grant exemption from the requirement of paragraph 2(a).

(7) 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 one of the Contracting States and having his place of business within such State, to the extent that he is entitled, within the said State, to act as a professional representative in patent matters. Paragraph 5 shall apply *mutatis mutandis*.

(8) The Administrative Council may adopt provisions governing:

- (a) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;
- (b) the establishment or recognition of an institute constituted by the persons entitled to act as professional representatives by virtue of either the European qualifying examination or the provisions of Article 163, paragraph 7;
- (c) any disciplinary power to be exercised by that institute or the European Patent Office on such persons.

PART VIII

IMPACT ON NATIONAL LAW

CHAPTER I

CONVERSION INTO A NATIONAL PATENT APPLICATION

Article 135

Request for the application of national procedure

(1) The central industrial property office of a designated Contracting State shall apply the procedure for the grant of a national patent only at the request of the applicant for or proprietor of a European patent, and in the following circumstances:

- (a) when the European patent application is deemed to be withdrawn pursuant to Article 77, paragraph 5, or Article 162, paragraph 4;
- (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) The request for conversion shall be filed within three months after the European patent application has been withdrawn or after notification has been made that the application is deemed to be withdrawn, or after a decision has been notified refusing the application or revoking the European patent. The

effect referred to in Article 66 shall lapse if the request is not filed in due time.

Article 136

Submission and transmission of the request

(1) A request for conversion shall be filed with the European Patent Office and shall specify the Contracting States in which application of the procedure for the grant of a national patent is desired. The request shall not be deemed to be filed until 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, accompanied by a copy of the files relating to the European patent application or the European patent.

(2) However, if the applicant is notified that the European patent application has been deemed to be withdrawn pursuant to Article 77, paragraph 5, the request shall be filed with the central industrial property office with which the application has been filed. That office shall, subject to the provisions of national security, transmit the request, together with a copy of the European patent application, directly to the central industrial property offices of the Contracting States specified by the applicant in the request. The effect referred to in Article 66 shall lapse if such transmission is not made within twenty months after the date of filing or, if a priority has been claimed, after the date of priority.

Article 137

Formal requirements for conversion

(1) A European patent application transmitted in accordance with Article 136 shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.

(2) Any central industrial property office to which the application is transmitted may require that the applicant shall, within not less than two months:

- (a) pay the national application fee;
- (b) file a translation in one of the official languages of the State in question of the original text of the European patent application and, where appropriate, of the text, as amended during proceedings before the European Patent Office, which the applicant wishes to submit to the national procedure.

CHAPTER II

REVOCATION AND PRIOR RIGHTS

Article 138

Grounds for revocation

(1) Subject to the provisions of Article 139, a European patent may only be revoked under the law

of a Contracting State, with effect for its territory, on the following grounds:

- (a) if the subject-matter of the European patent is not patentable within the terms of 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 in accordance with 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 only affect the European patent in part, revocation shall be pronounced in the form of a corresponding limitation of the said patent. If the national law so allows, the limitation may be effected in the form of an amendment to the claims, the description or the drawings.

Article 139

Rights of earlier date or 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.

(2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent in which that Contracting State is designated the same prior right effect as they have with regard to 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.

CHAPTER III

MISCELLANEOUS EFFECTS

Article 140

National utility models and utility certificates

Article 66, Article 124, Articles 135 to 137 and Article 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.

Article 141

Renewal fees for European patents

(1) Renewal fees in respect of a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 4.

(2) Any renewal fees falling due within two months after the publication of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.

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.

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

Article 143

Special departments of the European Patent Office

(1) The group of Contracting States may give additional tasks to the European Patent Office.

(2) Special departments common to the Contracting States in the group may be set up within the European Patent Office in order to carry out the additional tasks. The President of the European Patent Office shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply *mutatis mutandis*.

Article 144

Representation before special departments

The group of Contracting States may lay down special provisions to govern representation of parties before the departments referred to in Article 143, paragraph 2.

Article 145

Select committee of the Administrative Council

(1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the European Patent Office shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the European Patent Office shall be

responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.

Article 146

Cover for expenditure for carrying out special tasks

Where additional tasks have been given to the European Patent Office under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the European Patent Office to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply mutatis mutandis.

Article 147

Payments in respect of renewal fees
for unitary patents

If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis.

Article 148

The European patent application
as an object of property

(1) Article 74 shall apply unless the group of Contracting States has specified otherwise.

(2) The group of Contracting States may provide that a European patent application for which these Contracting States are designated may only be transferred, mortgaged or subjected to any legal means of execution in respect of all the Contracting States of the group and in accordance with the provisions of the special agreement.

Article 149

Joint designation

(1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the

designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.

PART X

INTERNATIONAL APPLICATION PURSUANT TO THE PATENT COOPERATION TREATY

Article 150

Application of the Patent Cooperation Treaty

(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the Cooperation Treaty, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the Cooperation Treaty may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the Cooperation Treaty shall prevail. In particular, for an international application the time limit within which a request for examination must be filed under Article 94, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Cooperation Treaty as the case maybe.

(3) An international application, for which the European Patent Office acts as designated Office or elected Office, shall be deemed to be a European patent application.

(4) Where reference is made in this Convention to the Cooperation Treaty, such reference shall include the Regulations under that Treaty.

Article 151

The European Patent Office as a receiving Office

(1) The European Patent Office may act as a receiving Office within the meaning of Article 2(xv) of the Cooperation Treaty if the applicant is a resident or national of a Contracting State to this Convention in respect of which the Cooperation Treaty has entered into force.

(2) The European Patent Office may also act as a receiving Office if the applicant is a resident or national of a State which is not a Contracting State to this Convention, but which is a Contracting State to the Cooperation Treaty and which has concluded an agreement with the Organisation whereby the European Patent Office acts as a receiving Office, in accordance with the provisions of the Cooperation Treaty, in place of the national office of that State.

(3) Subject to the prior approval of the Administrative Council, the European Patent Office may also act as a receiving Office for any other applicant, in accordance with an agreement concluded

between the Organisation and the International Bureau of the World Intellectual Property Organization.

Article 152

Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 75, paragraph 2, shall nevertheless apply mutatis mutandis.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Cooperation Treaty.

(3) Each international application shall be subject to the payment of the transmittal fee, which shall be payable within one month after receipt of the application.

Article 153

The European Patent Office as a designated Office

(1) The European Patent Office shall act as a designated Office within the meaning of Article 2(xiii) of the Cooperation Treaty for those Contracting States to this Convention in respect of which the Cooperation Treaty has entered into force and which are designated in the international application if the applicant informs the receiving Office in the international application that he wishes to obtain a European patent for these States. The same shall apply if, in the international application, the applicant designates a Contracting State of which the national law provides that designation of that State shall have the effect of the application being for a European patent.

(2) When the European Patent Office acts as a designated Office, the Examining Division shall be competent to take decisions which are required under Article 25, paragraph 2(a), of the Cooperation Treaty.

Article 154

The European Patent Office as an International Searching Authority

(1) The European Patent Office shall act as an International Searching Authority within the meaning of Chapter I of the Cooperation Treaty for applicants who are residents or nationals of a Contracting State in respect of which the Cooperation Treaty has entered into force, subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Searching Authority for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 17, paragraph 3(a), of the Cooperation Treaty.

Article 155

The European Patent Office as an International Preliminary Examining Authority

(1) The European Patent Office shall act as an International Preliminary Examining Authority within the meaning of Chapter II of the Cooperation Treaty for applicants who are residents or nationals of a Contracting State bound by that Chapter, subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Preliminary Examining Authority for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 34, paragraph 3(a), of the Cooperation Treaty.

Article 156

The European Patent Office as an elected Office

The European Patent Office shall act as an elected Office within the meaning of Article 2(xiv) of the Cooperation Treaty if the applicant has elected any of the designated States referred to in Article 153, paragraph 1, or Article 149, paragraph 2, for which Chapter II of that Treaty has become binding. Subject to the prior approval of the Administrative Council, the same shall apply where the applicant is a resident or national of a State which is not a party to that Treaty or which is not bound by Chapter II of that Treaty, provided that he is one of the persons whom the Assembly of the International Patent Cooperation Union has decided to allow, pursuant to Article 31, paragraph 2(b), of the Cooperation Treaty, to make a demand for international preliminary examination.

Article 157

International search report

(1) Without prejudice to the provisions of

paragraphs 2 to 4, the international search report under Article 18 of the Cooperation Treaty or any declaration under Article 17, paragraph 2(a), of that Treaty and their publication under Article 21 of that Treaty shall take the place of the European search report and the mention of its publication in the European Patent Bulletin.

(2) Subject to the decisions of the Administrative Council referred to in paragraph 3:

- (a) a supplementary European search report shall be drawn up in respect of all international applications;
- (b) the applicant shall pay the search fee, which shall be paid at the same time as the national fee provided for in Article 22, paragraph 1, or Article 39, paragraph 1, of the Cooperation Treaty. If the search fee is not paid in due time the application shall be deemed to be withdrawn.

(3) The Administrative Council may decide under what conditions and to what extent:

- (a) the supplementary European search report is to be dispensed with;
- (b) the search fee is to be reduced.

(4) The Administrative Council may at any time rescind the decisions taken pursuant to paragraph 3.

Article 158

Publication of the international application and its supply to the European Patent Office

(1) Publication under Article 21 of the Cooperation Treaty of an international application for which the European Patent Office is a designated Office shall, subject to paragraph 3, take the place of the publication of a European patent application and shall be mentioned in the European Patent Bulletin. Such an application shall not however be considered as comprised in the state of the art in accordance with Article 54, paragraph 3, if the conditions laid down in paragraph 2 are not fulfilled.

(2) The international application shall be supplied to the European Patent Office in one of its official languages. The applicant shall pay to the European Patent Office the national fee provided for in Article 22, paragraph 1, or Article 39, paragraph 1, of the Cooperation Treaty.

(3) If the international application is published in a language other than one of the official languages of the European Patent Office, that Office shall publish the international application, supplied as specified in paragraph 2. Subject to the provisions of Article 67, paragraph 3, the provisional protection in accordance with Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.

PART XI TRANSITIONAL PROVISIONS

Article 159

Administrative Council during a transitional period

(1) The States referred to in Article 169, paragraph 1, shall appoint their representatives to the Administrative Council; on the invitation of the Government of the Federal Republic of Germany, the Administrative Council shall meet no later than two months after the entry into force of this Convention, particularly for the purpose of appointing the President of the European Patent Office.

(2) The duration of the term of office of the first Chairman of the Administrative Council appointed after the entry into force of this Convention shall be four years.

(3) The term of office of two of the elected members of the first Board of the Administrative Council set up after the entry into force of this Convention shall be five and four years respectively.

Article 160

Appointment of employees during a transitional period

(1) Until such time as the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office have been adopted, the Administrative Council and the President of the European Patent Office, each within their respective powers, shall recruit the necessary employees and shall conclude short-term contracts to that effect. The Administrative Council may lay down general principles in respect of recruitment.

(2) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities. They may be appointed for a term of less than five years, though this shall not be less than one year, and may be reappointed.

Article 161

First accounting period

(1) The first accounting period of the Organisation shall extend from the date of entry into force of this Convention to 31 December of the same year. If that date falls within the second half of the year, the

accounting period shall extend until 31 December of the following year.

(2) The budget for the first accounting period shall be drawn up as soon as possible after the entry into force of this Convention. Until contributions provided for in Article 40 due in accordance with the first budget are received by the Organisation, the Contracting States shall, upon the request of and within the limit of the amount fixed by the Administrative Council, make advances which shall be deducted from their contributions in respect of that budget. The advances shall be determined in accordance with the scale referred to in Article 40. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.

Article 162

Progressive expansion of the field of activity of the European Patent Office

(1) European patent applications may be filed with the European Patent Office from the date fixed by the Administrative Council on the recommendation of the President of the European Patent Office.

(2) The Administrative Council may, on the recommendation of the President of the European Patent Office, decide that, as from the date referred to in paragraph 1, the processing of European patent applications may be restricted. Such restriction may be in respect of certain areas of technology. However, examination shall in any event be made as to whether European patent applications can be accorded a date of filing.

(3) If a decision has been taken under paragraph 2, the Administrative Council may not subsequently further restrict the processing of European patent applications.

(4) Where, as a result of the procedure being restricted under paragraph 2, a European patent application cannot be further processed, the European Patent Office shall communicate this to the applicant and shall point out that he may make a request for conversion. The European patent application shall be deemed to be withdrawn on receipt of such communication.

Article 163

Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:

- (a) he must be a national of a Contracting State;
- (b) he must have his place of business or employment within the territory of one of the Contracting States;
- (c) he must be entitled to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State

in which he has his place of business or employment.

(2) Entry shall be effected upon request, accompanied by a certificate, furnished by the central industrial property office, which must indicate that the conditions laid down in paragraph 1 are fulfilled.

(3) When, in any Contracting State, the entitlement referred to in paragraph 1(c) is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in patent matters before the central industrial property office of the said State must have habitually so acted for at least five years. However, persons whose professional qualification to represent natural or legal persons in patent matters before the central industrial property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.

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

- (a) the requirement of paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way;
- (b) the requirement of paragraph 1(a) in special circumstances.

(5) The President of the European Patent Office shall grant exemption from the requirement of paragraph 1(a) if on 5 October 1973 the applicant fulfilled the requirements of paragraph 1(b) and (c).

(6) Persons having their places of business or employment in a State which acceded to this Convention less than one year before the expiry of the transitional period referred to in paragraph 1 or after the expiry of the transitional period may, under the conditions laid down in paragraphs 1 to 5, during a period of one year calculated from the date of entry into force of the accession of that State, be entered on the list of professional representatives.

(7) After the expiry of the transitional period, any person whose name was entered on the list of professional representatives during that period shall, without prejudice to any disciplinary measures taken under Article 134, paragraph 8(c), remain thereon or, on request, be restored thereto, provided that he then fulfils the requirement of paragraph 1(b).

PART XII FINAL PROVISIONS

Article 164

Implementing Regulations and Protocols

(1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation and the

Protocol on the Interpretation of Article 69 shall be integral parts of this Convention.

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

Article 165

Signature – Ratification

(1) This Convention shall be open for signature until 5 April 1974 by the States which took part in the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents or were informed of the holding of that conference and offered the option of taking part therein.

(2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the Federal Republic of Germany.

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.

(2) Any State which has been a party to the Convention and has ceased so to be 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.

Article 167

Reservations

(1) Each Contracting State may, at the time of signature or when depositing its instrument of ratification or accession, make only the reservations specified in paragraph 2.

(2) Each Contracting State may reserve the right to provide that:

- (a) European patents, in so far as they confer protection on chemical, pharmaceutical or food products, as such, shall, in accordance with the provisions applicable to national patents, be ineffective or revocable; this reservation shall not affect protection conferred by the patent in so far as it involves a process of manufacture or use of a chemical product or a process of manufacture of a pharmaceutical or food product;
- (b) European patents, in so far as they confer protection on agricultural or horticultural processes other than those to which Article 53, sub-paragraph (b), applies, shall, in accordance with the provisions applicable to national patents, be ineffective or revocable;
- (c) European patents shall have a term shorter than

twenty years, in accordance with the provisions applicable to national patents;

(d) it shall not be bound by the Protocol on Recognition.

(3) Any reservation made by a Contracting State shall have effect for a period of not more than ten years from the entry into force of this Convention. However, where a Contracting State has made any of the reservations referred to in paragraph 2(a) and (b), the Administrative Council may, in respect of such State, extend the period by not more than five years for all or part of any reservation made, if that State submits, at the latest one year before the end of the ten-year period, a reasoned request which satisfies the Administrative Council that the State is not in a position to dispense with that reservation by the expiry of the ten-year period.

(4) Any Contracting State that has made a reservation shall withdraw this reservation as soon as circumstances permit. Such withdrawal shall be made by notification addressed to the Government of the Federal Republic of Germany and shall take effect one month from the date of receipt of such notification.

(5) Any reservation made in accordance with paragraph 2(a), (b) or (c) shall apply to European patents granted on European patent applications filed during the period in which the reservation has effect. The effect of the reservation shall continue for the term of the patent.

(6) Without prejudice to paragraphs 4 and 5, any reservation shall cease to have effect on expiry of the period referred to in paragraph 3, first sentence, or, if the period is extended, on expiry of the extended period.

Article 168

Territorial field of application

(1) Any Contracting State may declare in its instrument of ratification or accession, or may inform the Government of the Federal Republic of Germany by written notification any time thereafter, that this Convention shall be applicable to one or more of the territories for the external relations of which it is responsible. European patents granted for that Contracting State shall also have effect in the territories for which such a declaration has taken effect.

(2) If the declaration referred to in paragraph 1 is contained in the instrument of ratification or accession, it shall take effect on the same date as the ratification or accession; if the declaration is made in a notification after the deposit of the instrument of ratification or accession, such notification shall take effect six months after the date of its receipt by the Government of the Federal Republic of Germany.

(3) Any Contracting State may at any time declare that the Convention shall cease to apply to some or to all of the territories in respect of which it has given a notification pursuant to paragraph 1. Such

declaration shall take effect one year after the date on which the Government of the Federal Republic of Germany received notification thereof.

Article 169

Entry into force

(1) This Convention shall enter into force three months after the deposit of the last instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180 000 for all the said States.

(2) Any ratification or accession after the entry into force of this Convention shall take effect on the first day of the third month after the deposit of the instrument of ratification or accession.

Article 170

Initial contribution

(1) Any State which ratifies or accedes to this Convention after its entry into force shall pay to the Organisation an initial contribution, which shall not be refunded.

(2) The initial contribution shall be 5 % of an amount calculated by applying the percentage obtained for the State in question, on the date on which ratification or accession takes effect, in accordance with the scale provided for in Article 40, paragraphs 3 and 4, to the sum of the special financial contributions due from the other Contracting States in respect of the accounting periods preceding the date referred to above.

(3) In the event that special financial contributions were not required in respect of the accounting period immediately preceding the date referred to in paragraph 2, the scale of contributions referred to in that paragraph shall be the scale that would have been applicable to the State concerned in respect of the last year for which financial contributions were required.

Article 171

Duration of the Convention

The present Convention shall be of unlimited duration.

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 deemed to be validly constituted unless at least three-quarters of the Contracting States are represented at it. In order to adopt the revised text there must be 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.

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.

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

Article 174

Denunciation

Any Contracting State may at any time denounce this Convention. Notification of denunciation shall be given to the Government of the Federal Republic of Germany. Denunciation shall take effect one year after the date of receipt of such notification.

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.

(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, in so far as that State is concerned, as if the Convention in force thereafter were applicable to that State.

(3) The provisions of 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.

(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.

Article 176
Financial rights and obligations
of a former Contracting State

(1) Any State which has ceased to be a party to this Convention in accordance with Article 172, paragraph 4, or Article 174, shall have the special financial contributions which it has paid pursuant to Article 40, paragraph 2, refunded to it by the Organisation only at the time and under the conditions whereby the Organisation refunds special financial contributions paid by other States during the same accounting period.

(2) The State referred to in paragraph 1 shall, even after ceasing to be a party to this Convention, continue to pay the proportion pursuant to Article 39 of renewal fees in respect of European patents remaining in force in that State, at the rate current on the date on which it ceased to be a party.

Article 177
Languages of the Convention

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

(2) The texts of this Convention drawn up in official languages of Contracting States other than those referred to in paragraph 1 shall, if they have been approved by the Administrative Council, be considered as official texts. In the event of conflict on the

interpretation of the various texts, the texts referred to in paragraph 1 shall be authentic.

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.

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

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any reservation or withdrawal of reservation pursuant to the provisions of Article 167;
- (d) any declaration or notification received pursuant to the provisions of Article 168;
- (e) the date of entry into force of this Convention;
- (f) any denunciation received pursuant to the provisions of 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.

In witness whereof, the Plenipotentiaries authorised thereto, having presented their Full Powers, found to be in good and due form, have signed this Convention.

Done at Munich this fifth day of October one thousand nine hundred and seventy-three.

IMPLEMENTING REGULATIONS TO THE EUROPEAN PATENT CONVENTION

of 5 October 1973

as amended by decision of the Administrative Council of the European Patent Organisation
of 6 March 2008

PART I IMPLEMENTING REGULATIONS TO PART I OF THE CONVENTION

CHAPTER I GENERAL PROVISIONS

Rule 1

Written proceedings

In written proceedings before the European Patent Office, the requirement to use the written form shall be satisfied if the content of the documents can be reproduced in a legible form on paper.

Rule 2

Filing of and formal requirements for documents

(1) In proceedings before the European Patent Office, documents may be filed by delivery by hand, by post or by technical means of communication. The President of the European Patent Office shall lay down the details and conditions and, where appropriate, any special formal or technical requirements for the filing of documents. In particular, he may specify that confirmation must be supplied. If such confirmation is not supplied in due time, the European patent application shall be refused; documents filed subsequently shall be deemed not to have been received.

(2) Where the Convention provides that a document must be signed, the authenticity of the document may be confirmed by handwritten signature or other appropriate means the use of which has been permitted by the President of the European Patent Office. A document authenticated by such other means shall be deemed to meet the legal requirements of signature in the same way as a document bearing a handwritten signature which has been filed in paper form.

Rule 3

Language in written proceedings

(1) In written proceedings before the European Patent Office, any party may use any official language

of the European Patent Office. The translation referred to in Article 14, paragraph 4, may be filed in any official language of the European Patent Office.

(2) Amendments to a European patent application or European patent shall be filed in the language of the proceedings.

(3) Documentary evidence and, in particular, publications may be filed in any language. The European Patent Office may, however, require that a translation in one of its official languages be filed, within a period to be specified. If a required translation is not filed in due time, the European Patent Office may disregard the document in question.

Rule 4

Language in oral proceedings

(1) Any party to oral proceedings before the European Patent Office may use an official language of the European Patent Office other than the language of the proceedings, if such party gives notice to the European Patent Office at least one month before the date of such oral proceedings or provides for interpretation into the language of the proceedings. Any party may use an official language of a Contracting State, if he provides for interpretation into the language of the proceedings. The European Patent Office may permit derogations from these provisions.

(2) In the course of oral proceedings, employees of the European Patent Office may use an official language of the European Patent Office other than the language of the proceedings.

(3) Where evidence is taken, any party, witness or expert to be heard who is unable to express himself adequately in an official language of the European Patent Office or of a Contracting State may use another language. Where evidence is taken upon request of a party, parties, witnesses or experts expressing themselves in a language other than an official language of the European Patent Office shall be heard only if that party provides for interpretation into the language of the proceedings. The European Patent Office may, however, permit interpretation into one of its other official languages.

(4) If the parties and the European Patent Office agree, any language may be used.

CHAPTER II
ORGANISATION
OF THE EUROPEAN PATENT OFFICE

Section 1
General matters

Rule 8

Patent classification

The European Patent Office shall use the classification referred to in Article 1 of the Strasbourg Agreement concerning the International Patent Classification of 24 March 1971, hereinafter referred to as the international classification.

Rule 9

Administrative structure
of the European Patent Office

(1) The European Patent Office shall be divided administratively into Directorates-General, to which the departments specified in Article 15, and the services set up to deal with legal matters and the internal administration of the Office, shall be assigned.

(2) Each Directorate-General shall be directed by a Vice-President. The assignment of a Vice-President to a Directorate-General shall be decided by the Administrative Council, after the President of the European Patent Office has been consulted.

Rule 10

Responsibility of the Receiving Section
and the Examining Division

(1) The Receiving Section shall be responsible for the examination on filing and the examination as to formal requirements of a European patent application up to the time when the Examining Division becomes responsible for the examination of the European patent application under Article 94, paragraph 1.

(2) Subject to paragraphs 3 and 4, the Examining Division shall be responsible for the examination of a European patent application under Article 94, paragraph 1, from the time when a request for examination is filed.

(3) If a request for examination is filed before the European search report has been transmitted to the applicant, the Examining Division shall, subject to paragraph 4, be responsible from the time when the European Patent Office receives the indication under Rule 70, paragraph 2.

(4) If a request for examination is filed before the European search report has been transmitted to the applicant, and if the applicant has waived the right under Rule 70, paragraph 2, the Examining Division shall be responsible from the time when the search report is transmitted to the applicant.

(5) The European Patent Office shall, if necessary, provide at its own expense interpretation into the language of the proceedings, or, where appropriate, into its other official languages, unless such interpretation is the responsibility of one of the parties.

(6) Statements by employees of the European Patent Office, parties, witnesses or experts, made in an official language of the European Patent Office, shall be entered in the minutes in that language. Statements made in any other language shall be entered in the official language into which they are translated. Amendments to a European patent application or European patent shall be entered in the minutes in the language of the proceedings.

Rule 5

Certification of translations

Where the translation of a document is required, the European Patent Office may require that a certificate that the translation corresponds to the original text be filed within a period to be specified. If the certificate is not filed in due time, such document shall be deemed not to have been filed, unless otherwise provided.

Rule 6

Filing of translations and reduction of fees

(1) A translation under Article 14, paragraph 2, shall be filed within two months of filing the European patent application.

(2) A translation under Article 14, paragraph 4, shall be filed within one month of filing the document. This shall also apply to requests under Article 105a. Where the document is a notice of opposition or appeal, or a statement of grounds of appeal, or a petition for review, the translation may be filed within the period for filing such a notice or statement or petition, if that period expires later.

(3) Where a person referred to in Article 14, paragraph 4, files a European patent application, a request for examination, an opposition, an appeal, a petition for review or a request for limitation or revocation in a language admitted in that provision, the filing fee, examination fee, opposition fee, appeal fee, fee for the petition for review or the limitation or revocation fee shall be reduced in accordance with the Rules relating to Fees.

Rule 7

Legal authenticity of the translation
of the European patent application

Unless evidence is provided to the contrary, the European Patent Office shall assume, for the purpose of determining whether the subject-matter of the European patent application or European patent extends beyond the content of the application as filed, that the translation filed under Article 14, paragraph 2, or Rule 40, paragraph 3, is in conformity with the original text of the application.

Rule 11

Allocation of duties to the departments of first instance

(1) Technically qualified examiners acting as members of Search, Examining or Opposition Divisions shall be assigned to Directorates. The President of the European Patent Office shall allocate duties to these Directorates by reference to the international classification.

(2) The President of the European Patent Office may allocate further duties to the Receiving Section, the Search, Examining and Opposition Divisions, and the Legal Division, in addition to the responsibilities vested in them under the Convention.

(3) The President of the European Patent Office may entrust to employees who are not technically or legally qualified examiners the execution of duties falling to the Search, Examining or Opposition Divisions and involving no technical or legal difficulties.

Section 2

Organisation of the Boards of Appeal and the Enlarged Board of Appeal

Rule 12

Presidium of the Boards of Appeal

(1) The autonomous authority within the organisational unit comprising the Boards of Appeal (the "Presidium of the Boards of Appeal") shall consist of the Vice-President in charge of the Boards of Appeal, who shall act as chairman, and twelve members of the Boards of Appeal, six being Chairmen and six being other members.

(2) All members of the Presidium shall be elected by the Chairmen and members of the Boards of Appeal for two working years. If the full composition of the Presidium cannot be reached, the vacancies shall be filled by designating the most senior Chairmen and members.

(3) The Presidium shall adopt the Rules of Procedure of the Boards of Appeal and the Rules of Procedure for the election and designation of its members. The Presidium shall further advise the Vice-President in charge of the Boards of Appeal with regard to matters concerning the functioning of the Boards of Appeal in general.

(4) Before the beginning of each working year, the Presidium, extended to include all Chairmen, shall allocate duties to the Boards of Appeal. In the same composition, it shall decide on conflicts regarding the allocation of duties between two or more Boards of Appeal. The extended Presidium shall designate the regular and alternate members of the various Boards of Appeal. Any member of a Board of Appeal may be designated as a member of more than one Board of Appeal. These measures may, where necessary, be amended during the course of the working year in question.

(5) The Presidium may only take a decision if at least five of its members are present; these must include the Vice-President in charge of the Boards of Appeal or his deputy, and the Chairmen of two Boards of Appeal. Where the tasks mentioned in paragraph 4 are concerned, nine members must be present, including the Vice-President in charge of the Boards of Appeal or his deputy, and the Chairmen of three Boards of Appeal. Decisions shall be taken by a majority vote; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.

(6) The Administrative Council may allocate duties under Article 134a, paragraph 1(c), to the Boards of Appeal.

Rule 13

Business distribution scheme for the Enlarged Board of Appeal and adoption of its Rules of Procedure

(1) Before the beginning of each working year, the members of the Enlarged Board of Appeal appointed under Article 11, paragraph 3, shall designate the regular and alternate members of the Enlarged Board of Appeal in proceedings under Article 22, paragraph 1(a) and (b), and the regular and alternate members in proceedings under Article 22, paragraph 1(c).

(2) The members of the Enlarged Board of Appeal appointed under Article 11, paragraph 3, shall adopt the Rules of Procedure of the Enlarged Board of Appeal.

(3) Decisions on matters mentioned in paragraphs 1 and 2 may only be taken if at least five members are present, including the Chairman of the Enlarged Board of Appeal or his deputy; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.

PART II

IMPLEMENTING REGULATIONS TO PART II OF THE CONVENTION

CHAPTER I

PROCEDURE WHERE THE APPLICANT IS NOT ENTITLED

Rule 14

Stay of proceedings

(1) If a third party provides evidence that he has instituted proceedings against the applicant seeking a decision within the meaning of Article 61, paragraph 1, the proceedings for grant shall be stayed unless the third party communicates to the European Patent Office in writing his consent to the continuation of such proceedings. Such consent shall be irrevocable. However, proceedings for grant shall not be stayed before the publication of the European patent application.

(2) Where evidence is provided that a final decision within the meaning of Article 61, paragraph 1, has been taken, the European Patent Office shall inform the applicant and any other party that the proceedings for grant shall be resumed as from the date stated in the communication, unless a new European patent application under Article 61, paragraph 1(b), has been filed for all the designated Contracting States. If the decision is in favour of the third party, the proceedings may not be resumed earlier than three months after the decision has become final, unless the third party requests the resumption.

(3) Upon staying the proceedings for grant, or thereafter, the European Patent Office may set a date on which it intends to resume the proceedings for grant, regardless of the stage reached in the national proceedings instituted under paragraph 1. It shall communicate this date to the third party, the applicant and any other party. If no evidence has been provided by that date that a final decision has been taken, the European Patent Office may resume proceedings.

(4) All periods other than those for the payment of renewal fees, running at the date of the stay of proceedings, shall be interrupted by such stay. The time which has not yet elapsed shall begin to run from the date on which proceedings are resumed. However, the time still to run after such resumption shall not be less than two months.

Rule 15

Limitation on withdrawals

From the date on which a third party provides evidence that he has instituted national proceedings under Rule 14, paragraph 1, and up to the date on which the proceedings for grant are resumed, neither the European patent application nor the designation of any Contracting State may be withdrawn.

Rule 16

Procedure under Article 61, paragraph 1

(1) A person entitled to the grant of a European patent may only avail himself of the remedies under Article 61, paragraph 1, if:

- (a) he does so no later than three months after the decision recognising his entitlement has become final, and
- (b) the European patent has not yet been granted.

(2) Such remedies shall only apply in respect of Contracting States designated in the European patent application in which the decision has been taken or recognised or must be recognised on the basis of the Protocol on Recognition.

Rule 17

Filing of a new European patent application by the entitled person

(1) Where the person adjudged by a final decision to be entitled to the grant of the European patent files

a new European patent application under Article 61, paragraph 1(b), the original application shall be deemed to be withdrawn on the date of filing the new application for the Contracting States designated therein in which the decision has been taken or recognised or must be recognised on the basis of the Protocol on Recognition.

(2) The filing fee and search fee shall be paid within one month of filing the new application. If the filing fee or search fee is not paid in due time, the application shall be deemed to be withdrawn.

(3) The designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the new application. Rule 39, paragraphs 2 and 3, shall apply.

Rule 18

Partial transfer of the right to the European patent

(1) If a final decision determines that a third party is entitled to the grant of a European patent in respect of only part of the subject-matter disclosed in the original European patent application, Article 61 and Rules 16 and 17 shall apply to such part.

(2) Where appropriate, the original European patent application shall contain, for the designated Contracting States in which the decision was taken or recognised or must be recognised on the basis of the Protocol on Recognition, claims, a description and drawings which are different from those for the other designated Contracting States.

CHAPTER II

MENTION OF THE INVENTOR

Rule 19

Designation of the inventor

(1) The request for grant of a European patent shall contain the designation of the inventor. However, if the applicant is not the inventor or is not the sole inventor, the designation shall be filed in a separate document. The designation shall state the family name, given names and full address of the inventor, contain the statement referred to in Article 81 and bear the signature of the applicant or his representative.

(2) The European Patent Office shall not verify the accuracy of the designation of the inventor.

(3) If the applicant is not the inventor or is not the sole inventor, the European Patent Office shall communicate to the designated inventor the information in the document designating him and the following data:

- (a) the number of the European patent application;
- (b) the date of filing of the European patent application and, if priority has been claimed, the date, State and file number of the previous application;
- (c) the name of the applicant;

- (d) the title of the invention;
- (e) the Contracting States designated.

(4) The applicant and the inventor may invoke neither the omission of the communication under paragraph 3 nor any errors contained therein.

Rule 20

Publication of the mention of the inventor

(1) The designated inventor shall be mentioned in the published European patent application and the European patent specification, unless he informs the European Patent Office in writing that he has waived his right to be thus mentioned.

(2) Paragraph 1 shall apply where a third party files with the European Patent Office a final decision determining that the applicant for or proprietor of a European patent is required to designate him as an inventor.

Rule 21

Rectification of the designation of an inventor

(1) An incorrect designation of an inventor shall be rectified upon request and only with the consent of the wrongly designated person and, where such a request is filed by a third party, the consent of the applicant for or proprietor of the patent. Rule 19 shall apply *mutatis mutandis*.

(2) Where an incorrect designation of the inventor has been recorded in the European Patent Register or published in the European Patent Bulletin, its rectification or cancellation shall also be recorded or published therein.

CHAPTER III REGISTRATION OF TRANSFERS, LICENCES AND OTHER RIGHTS

Rule 22

Registration of transfers

(1) The transfer of a European patent application shall be recorded in the European Patent Register at the request of an interested party, upon production of documents providing evidence of such transfer.

(2) The request shall not be deemed to have been filed until an administrative fee has been paid. It may be rejected only if paragraph 1 has not been complied with.

(3) A transfer shall have effect vis-à-vis the European Patent Office only at the date when and to the extent that the documents referred to in paragraph 1 have been produced.

Rule 23

Registration of licences and other rights

(1) Rule 22, paragraphs 1 and 2, shall apply *mutatis mutandis* to the registration of the grant or transfer of

a licence, the establishment or transfer of a right *in rem* in respect of a European patent application and any legal means of execution affecting such an application.

(2) A registration under paragraph 1 shall be cancelled upon request, supported by documents providing evidence that the right has lapsed, or by the written consent of the proprietor of the right to the cancellation of the registration. Rule 22, paragraph 2, shall apply *mutatis mutandis*.

Rule 24

Special entries for licence registrations

A licence in respect of a European patent application shall be recorded

- (a) as an exclusive licence if the applicant and the licensee so request;
- (b) as a sub-licence where it is granted by a licensee whose licence is recorded in the European Patent Register.

CHAPTER IV

CERTIFICATE OF EXHIBITION

Rule 25

Certificate of exhibition

Within four months of filing the European patent application, the applicant shall file the certificate referred to in Article 55, paragraph 2, which:

- (a) is issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition;
- (b) states that the invention was in fact displayed there;
- (c) states the opening date of the exhibition and, where the invention was disclosed later than on that date, the date on which the invention was first disclosed; and
- (d) is accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.

CHAPTER V

BIOTECHNOLOGICAL INVENTIONS

Rule 26

General and definitions

(1) For European patent applications and patents concerning biotechnological inventions, the relevant provisions of the Convention shall be applied and interpreted in accordance with the provisions of this Chapter. Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions shall be used as a supplementary means of interpretation.

(2) "Biotechnological inventions" are inventions which concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used.

(3) "Biological material" means any material containing genetic information and capable of

reproducing itself or being reproduced in a biological system.

(4) "Plant variety" means any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be:

- (a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes,
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

(5) A process for the production of plants or animals is essentially biological if it consists entirely of natural phenomena such as crossing or selection.

(6) "Microbiological process" means any process involving or performed upon or resulting in microbiological material.

Rule 27

Patentable biotechnological inventions

Biotechnological inventions shall also be patentable if they concern:

- (a) biological material which is isolated from its natural environment or produced by means of a technical process even if it previously occurred in nature;
- (b) plants or animals if the technical feasibility of the invention is not confined to a particular plant or animal variety;
- (c) a microbiological or other technical process, or a product obtained by means of such a process other than a plant or animal variety.

Rule 28

Exceptions to patentability

Under Article 53(a), European patents shall not be granted in respect of biotechnological inventions which, in particular, concern the following:

- (a) processes for cloning human beings;
- (b) processes for modifying the germ line genetic identity of human beings;
- (c) uses of human embryos for industrial or commercial purposes;
- (d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

Rule 29

The human body and its elements

(1) The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial

sequence of a gene, cannot constitute patentable inventions.

(2) An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.

(3) The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

Rule 30

Requirements of European patent applications relating to nucleotide and amino acid sequences

(1) If nucleotide or amino acid sequences are disclosed in the European patent application, the description shall contain a sequence listing conforming to the rules laid down by the President of the European Patent Office for the standardised representation of nucleotide and amino acid sequences.

(2) A sequence listing filed after the date of filing shall not form part of the description.

(3) Where the applicant has not filed a sequence listing complying with the requirements under paragraph 1 at the date of filing, the European Patent Office shall invite the applicant to furnish such a sequence listing and pay the late furnishing fee. If the applicant does not furnish the required sequence listing and pay the required late furnishing fee within a period of two months after such an invitation, the application shall be refused.

Rule 31

Deposit of biological material

(1) If an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in the European patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being disclosed as prescribed in Article 83 if:

- (a) a sample of the biological material has been deposited with a recognised depositary institution on the same terms as those laid down in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977 not later than the date of filing of the application;
- (b) the application as filed gives such relevant information as is available to the applicant on the characteristics of the biological material;
- (c) the depositary institution and the accession number of the deposited biological material are stated in the application, and
- (d) where the biological material has been deposited by a person other than the applicant, the name and address of the depositor are stated in the application

and a document is submitted to the European Patent Office providing evidence that the depositor has authorised the applicant to refer to the deposited biological material in the application and has given his unreserved and irrevocable consent to the deposited material being made available to the public in accordance with Rule 33.

- (2) The information referred to in paragraph 1(c) and (d) may be submitted
- (a) within sixteen months after the date of filing of the application or, if priority has been claimed, after the priority date, this period being deemed to have been observed if the information is communicated before completion of the technical preparations for publication of the European patent application;
 - (b) up to the date of submission of a request under Article 93, paragraph 1(b);
 - (c) within one month after the European Patent Office has communicated to the applicant that the right to inspect the files under Article 128, paragraph 2, exists.

The ruling period shall be the one which is the first to expire. The communication of this information shall be considered as constituting the unreserved and irrevocable consent of the applicant to the deposited biological material being made available to the public in accordance with Rule 33.

Rule 32

Expert solution

- (1) Until completion of the technical preparations for publication of the European patent application, the applicant may inform the European Patent Office that,
- (a) until the publication of the mention of the grant of the European patent or, where applicable,
 - (b) for twenty years from the date of filing, if the application is refused or withdrawn or deemed to be withdrawn,
- the availability referred to in Rule 33 shall be effected only by the issue of a sample to an expert nominated by the requester.
- (2) The following may be nominated as an expert:
- (a) any natural person, provided that the requester furnishes evidence, when filing the request, that the nomination has the approval of the applicant;
 - (b) any natural person recognised as an expert by the President of the European Patent Office.

The nomination shall be accompanied by a declaration from the expert vis-à-vis the applicant in which he enters into the undertaking given under Rule 33 until either the date on which the patent expires in all the designated States or, where the application is refused, withdrawn or deemed to be withdrawn, the date referred to in paragraph 1(b), the requester being regarded as a third party.

Rule 33

Availability of biological material

- (1) Biological material deposited in accordance with

Rule 31 shall be available upon request to any person from the date of publication of the European patent application and to any person having the right to inspect the files under Article 128, paragraph 2, prior to that date. Subject to Rule 32, such availability shall be effected by the issue of a sample of the biological material to the person making the request (hereinafter referred to as "the requester").

(2) Said issue shall be made only if the requester has undertaken vis-à-vis the applicant for or proprietor of the patent not to make the biological material or any biological material derived therefrom available to any third party and to use that material for experimental purposes only, until such time as the patent application is refused or withdrawn or deemed to be withdrawn, or before the European patent has expired in all the designated States, unless the applicant for or proprietor of the patent expressly waives such an undertaking.

The undertaking to use the biological material for experimental purposes only shall not apply in so far as the requester is using that material under a compulsory licence. The term "compulsory licence" shall be construed as including ex officio licences and the right to use patented inventions in the public interest.

(3) For the purposes of paragraph 2, derived biological material shall mean any material which still exhibits those characteristics of the deposited material which are essential to carrying out the invention. The undertaking under paragraph 2 shall not impede any deposit of derived biological material necessary for the purpose of patent procedure.

(4) The request referred to in paragraph 1 shall be submitted to the European Patent Office on a form recognised by that Office. The European Patent Office shall certify on the form that a European patent application referring to the deposit of the biological material has been filed, and that the requester or the expert nominated by him under Rule 32 is entitled to the issue of a sample of that material. After grant of the European patent, the request shall also be submitted to the European Patent Office.

(5) The European Patent Office shall transmit a copy of the request, with the certification provided for in paragraph 4, to the depositary institution and to the applicant for or the proprietor of the patent.

(6) The European Patent Office shall publish in its Official Journal the list of depositary institutions and experts recognised for the purpose of Rules 31 to 34.

Rule 34

New deposit of biological material

If biological material deposited in accordance with Rule 31 ceases to be available from the recognised depositary institution, an interruption in availability shall be deemed not to have occurred if a new deposit of that material is made with a recognised depositary institution on the same terms as those laid down in the

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977, and if a copy of the receipt of the new deposit issued by the depositary institution is forwarded to the European Patent Office within four months of the date of the new deposit, stating the number of the European patent application or of the European patent.

PART III
IMPLEMENTING REGULATIONS
TO PART III OF THE CONVENTION

CHAPTER I

FILING OF THE EUROPEAN PATENT APPLICATION

Rule 35

General provisions

(1) European patent applications may be filed in writing with the European Patent Office in Munich, The Hague or Berlin, or the authorities referred to in Article 75, paragraph 1(b).

(2) The authority with which the European patent application is filed shall mark the documents making up the application with the date of their receipt, and issue without delay a receipt to the applicant including at least the application number and the nature, number and date of receipt of the documents.

(3) If the European patent application is filed with an authority referred to in Article 75, paragraph 1(b), such authority shall without delay inform the European Patent Office of the receipt of the application, and, in particular, of the nature and date of receipt of the documents, the application number and any priority date claimed.

(4) Upon receipt of a European patent application forwarded by the central industrial property office of a Contracting State, the European Patent Office shall inform the applicant accordingly, indicating the date of its receipt.

Rule 36

European divisional applications

(1) The applicant may file a divisional application relating to any pending earlier European patent application.

(2) A divisional application shall be in the language of the proceedings for the earlier application and shall be filed with the European Patent Office in Munich, The Hague or Berlin.

(3) The filing fee and search fee shall be paid within one month of filing the divisional application. If the filing fee or search fee is not paid in due time, the application shall be deemed to be withdrawn.

(4) The designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European

search report drawn up in respect of the divisional application. Rule 39, paragraphs 2 and 3, shall apply.

Rule 37

Forwarding of European patent applications

(1) The central industrial property office of a Contracting State shall forward European patent applications to the European Patent Office in the shortest time compatible with its national law relating to the secrecy of inventions in the interests of the State, and shall take all appropriate steps to ensure such forwarding within:

- (a) six weeks of filing, where the subject of the application is evidently not liable to secrecy under the national law; or
- (b) four months of filing or, if priority has been claimed, fourteen months of the date of priority, where the application requires further examination as to its liability to secrecy.

(2) A European patent application not received by the European Patent Office within fourteen months of filing or, if priority has been claimed, of the date of priority, shall be deemed to be withdrawn. Any fees paid in respect of this application shall be refunded.

Rule 38

Filing fee and search fee

The filing fee and search fee shall be paid within one month of filing the European patent application.

Rule 39

Designation fees

(1) Designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report.

(2) Where the designation fee is not paid in due time in respect of any Contracting State, the designation of that State shall be deemed to be withdrawn.

(3) Where no designation fee is paid in due time or the designations of all the Contracting States are withdrawn, the European patent application shall be deemed to be withdrawn.

(4) Without prejudice to Rule 37, paragraph 2, second sentence, designation fees shall not be refunded.

Rule 40

Date of filing

(1) The date of filing of a European patent application shall be the date on which the documents filed by the applicant contain:

- (a) an indication that a European patent is sought;
- (b) information identifying the applicant or allowing the applicant to be contacted; and
- (c) a description or reference to a previously filed application.

(2) A reference to a previously filed application under paragraph 1(c) shall state the filing date and number of that application and the Office with which it was filed. Such reference shall indicate that it replaces the description and any drawings.

(3) Where the application contains a reference under paragraph 2, a certified copy of the previously filed application shall be filed within two months of filing the application. Where the previously filed application is not in an official language of the European Patent Office, a translation thereof in one of these languages shall be filed within the same period. Rule 53, paragraph 2, shall apply *mutatis mutandis*.

CHAPTER II

PROVISIONS GOVERNING THE APPLICATION

Rule 41

Request for grant

(1) The request for grant of a European patent shall be filed on a form drawn up by the European Patent Office.

(2) The request shall contain:

- (a) a petition for the grant of a European patent;
- (b) the title of the invention, which shall clearly and concisely state the technical designation of the invention and shall exclude all fancy names;
- (c) the name, address and nationality of the applicant and the State in which his residence or principal place of business is located. Names of natural persons shall be indicated by the person's family name, followed by his given names. Names of legal persons, as well as of bodies equivalent to legal persons under the law governing them, shall be indicated by their official designations. Addresses shall be indicated in accordance with applicable customary requirements for prompt postal delivery and shall comprise all the relevant administrative units, including the house number, if any. It is recommended that the fax and telephone numbers be indicated;
- (d) if the applicant has appointed a representative, his name and the address of his place of business as prescribed in sub-paragraph (c);
- (e) where appropriate, an indication that the application constitutes a divisional application and the number of the earlier European patent application;
- (f) in cases covered by Article 61, paragraph 1(b), the number of the original European patent application;
- (g) where applicable, a declaration claiming the priority of an earlier application and indicating the date on which and the country in or for which the earlier application was filed;
- (h) the signature of the applicant or his representative;
- (i) a list of the documents accompanying the request. This list shall also indicate the number of sheets of the description, claims, drawings and abstract filed with the request;
- (j) the designation of the inventor, where the applicant is the inventor.

(3) If there is more than one applicant, the request shall preferably contain the appointment of one applicant or representative as common representative.

Rule 42

Content of the description

(1) The description shall:

- (a) specify the technical field to which the invention relates;
- (b) indicate the background art which, as far as is known to the applicant, can be regarded as useful to understand the invention, draw up the European search report and examine the European patent application, and, preferably, cite the documents reflecting such art;
- (c) disclose the invention, as claimed, in such terms that the technical problem, even if not expressly stated as such, and its solution can be understood, and state any advantageous effects of the invention with reference to the background art;
- (d) briefly describe the figures in the drawings, if any;
- (e) describe in detail at least one way of carrying out the invention claimed, using examples where appropriate and referring to the drawings, if any;
- (f) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is industrially applicable.

(2) The description shall be presented in the manner and order specified in paragraph 1, unless, owing to the nature of the invention, a different presentation would afford a better understanding or be more concise.

Rule 43

Form and content of claims

(1) The claims shall define the matter for which protection is sought in terms of the technical features of the invention. Wherever appropriate, claims shall contain:

- (a) a statement indicating the designation of the subject-matter of the invention and those technical features which are necessary for the definition of the claimed subject-matter but which, in combination, form part of the prior art;
- (b) a characterising portion, beginning with the expression "characterised in that" or "characterised by" and specifying the technical features for which, in combination with the features stated under sub-paragraph (a), protection is sought.

(2) Without prejudice to Article 82, a European patent application may contain more than one independent claim in the same category (product, process, apparatus or use) only if the subject-matter of the application involves one of the following:

- (a) a plurality of interrelated products,
- (b) different uses of a product or apparatus,
- (c) alternative solutions to a particular problem, where it is inappropriate to cover these alternatives by a single claim.

(3) Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.

(4) Any claim which includes all the features of any other claim (dependent claim) shall contain, if possible at the beginning, a reference to the other claim and then state the additional features. A dependent claim directly referring to another dependent claim shall also be admissible. All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most appropriate way possible.

(5) The number of claims shall be reasonable with regard to the nature of the invention claimed. The claims shall be numbered consecutively in Arabic numerals.

(6) Except where absolutely necessary, claims shall not rely on references to the description or drawings in specifying the technical features of the invention. In particular, they shall not contain such expressions as "as described in part ... of the description", or "as illustrated in figure ... of the drawings".

(7) Where the European patent application contains drawings including reference signs, the technical features specified in the claims shall preferably be followed by such reference signs relating to these features, placed in parentheses, if the intelligibility of the claim can thereby be increased. These reference signs shall not be construed as limiting the claim.

Rule 44

Unity of invention

(1) Where a group of inventions is claimed in a European patent application, the requirement of unity of invention under Article 82 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those features which define a contribution which each of the claimed inventions considered as a whole makes over the prior art.

(2) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

Rule 45

Claims incurring fees

(1) Any European patent application comprising more than fifteen claims shall, in respect of the sixteenth and each subsequent claim, incur payment of claims fees as laid down in the Rules relating to Fees.

(2) The claims fees shall be paid within one month of filing the first set of claims. If the claims fees have not been paid in due time, they may still be paid within one

month of a communication concerning the failure to observe the time limit.

(3) If a claims fee is not paid in due time, the claim concerned shall be deemed to be abandoned.

Rule 46

Form of the drawings

(1) On sheets containing drawings, the usable surface area shall not exceed 26.2 cm x 17 cm. The usable or used surface shall not be surrounded by frames. The minimum margins shall be as follows:

| | |
|------------|--------|
| top | 2.5 cm |
| left side | 2.5 cm |
| right side | 1.5 cm |
| bottom | 1 cm |

(2) Drawings shall be executed as follows:

- (a) Drawings shall be executed without colourings in durable, black, sufficiently dense and dark, uniformly thick and well-defined lines and strokes.
- (b) Cross-sections shall be indicated by hatching which should not impede the clear reading of the reference signs and leading lines.
- (c) The scale of the drawings and their graphical execution shall be such that electronic or photographic reproduction with a linear reduction in size to two-thirds will allow all details to be distinguished without difficulty. If, exceptionally, the scale is given on a drawing, it shall be represented graphically.
- (d) All numbers, letters, and reference signs appearing on the drawings shall be simple and clear. Brackets, circles or inverted commas shall not be used in association with numbers and letters.
- (e) Generally, all lines in the drawings shall be drawn with the aid of drafting instruments.
- (f) Elements of the same figure shall be proportional to one another, unless a difference in proportion is indispensable for the clarity of the figure.
- (g) The height of the numbers and letters shall not be less than 0.32 cm. For the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used.
- (h) The same sheet of drawings may contain several figures. Where figures drawn on two or more sheets are intended to form a single figure, the figures on the several sheets shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures. The different figures shall be arranged without wasting space, preferably in an upright position, clearly separated from one another. Where the figures are not arranged in an upright position, they shall be presented sideways with the top of the figures at the left side of the sheet. The different figures shall be numbered consecutively in Arabic numerals, independently of the numbering of the sheets.
- (i) Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. Reference signs to features shall be consistent throughout the application.

(j) The drawings shall not contain text matter. Where indispensable to understand the drawings, a few short keywords, such as “water”, “steam”, “open”, “closed” or “section on AB”, may be included. Any such keywords shall be placed in such a way that, if required, they can be replaced by their translations without interfering with any lines of the drawings.

(3) Flow sheets and diagrams shall be deemed to be drawings.

Rule 47

Form and content of the abstract

(1) The abstract shall indicate the title of the invention.

(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings. The summary shall indicate the technical field to which the invention pertains, and shall be drafted in a manner allowing the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on speculative applications thereof.

(3) The abstract shall preferably not contain more than one hundred and fifty words.

(4) If the European patent application contains drawings, the applicant shall indicate the figure or, exceptionally, the figures of the drawings which should be published with the abstract. The European Patent Office may decide to publish one or more other figures if it considers that they better characterise the invention. Each essential feature mentioned in the abstract and illustrated by a drawing shall be followed by a reference sign placed in parentheses.

(5) The abstract shall be drafted in such a manner as to constitute an efficient instrument for the purpose of searching in the particular technical field. In particular, it shall make it possible to assess whether consultation of the European patent application itself is necessary.

Rule 48

Prohibited matter

(1) The European patent application shall not contain:

- (a) statements or other matter contrary to “ordre public” or morality;
- (b) statements disparaging the products or processes of any third party or the merits or validity of the applications or patents of any such party. Mere comparisons with the prior art shall not be considered disparaging *per se*;
- (c) any statement or other matter obviously irrelevant or unnecessary under the circumstances.

(2) If the application contains matter prohibited under paragraph 1(a), the European Patent Office may omit such matter from the application as published, indicating the place and number of words or drawings omitted.

(3) If the application contains statements referred to in paragraph 1(b), the European Patent Office may omit them from the application as published, indicating the place and number of words omitted. Upon request, the European Patent Office shall furnish a copy of the passages omitted.

Rule 49

General provisions governing the presentation of the application documents

(1) Any translation filed under Article 14, paragraph 2, or Rule 40, paragraph 3, shall be deemed to be a document making up the European patent application.

(2) The documents making up the application shall be presented so as to allow electronic and direct reproduction, in particular by scanning, photography, electrostatic processes, photo offset and microfilming, in an unlimited number of copies. All sheets shall be free from cracks, creases and folds. Only one side of the sheet shall be used.

(3) The documents making up the application shall be on A4 paper (29.7 cm x 21 cm) which shall be pliable, strong, white, smooth, matt and durable. Subject to paragraph 10 and Rule 46, paragraph 2(h), each sheet shall be used with its short sides at the top and bottom (upright position).

(4) Each of the documents making up the application (request, description, claims, drawings and abstract) shall commence on a new sheet. The sheets shall be connected in such a way that they can easily be turned over, separated and joined together again.

(5) Subject to Rule 46, paragraph 1, the minimum margins shall be as follows:

| | |
|-------------|--------|
| top: | 2 cm |
| left side: | 2.5 cm |
| right side: | 2 cm |
| bottom: | 2 cm |

The recommended maximum for the margins quoted above is as follows:

| | |
|-------------|------|
| top: | 4 cm |
| left side: | 4 cm |
| right side: | 3 cm |
| bottom: | 3 cm |

(6) All the sheets contained in the application shall be numbered in consecutive Arabic numerals. These shall be centred at the top of the sheet, but not placed in the top margin.

(7) The lines of each sheet of the description and of the claims shall preferably be numbered in sets of five, the numbers appearing on the left side, to the right of the margin.

Rule 51

Payment of renewal fees

(8) The request for grant of a European patent, the description, the claims and the abstract shall be typed or printed. Only graphic symbols and characters and chemical or mathematical formulae may, if necessary, be drawn or written by hand. The typing shall be 1" spaced. All text matter shall be in characters, the capital letters of which are not less than 0.21 cm high, and shall be in a dark, indelible colour.

(9) The request for grant of a European patent, the description, the claims and the abstract shall not contain drawings. The description, claims and abstract may contain chemical or mathematical formulae. The description and abstract may contain tables. The claims may contain tables only if their subject-matter makes the use of tables desirable. Tables and chemical or mathematical formulae may be placed sideways on the sheet if they cannot be presented satisfactorily in an upright position. Tables or chemical or mathematical formulae presented sideways shall be placed so that the tops of the tables or formulae are at the left-hand side of the sheet.

(10) Values shall be expressed in units conforming to international standards, wherever appropriate in terms of the metric system using SI units. Any data not meeting this requirement shall also be expressed in units conforming to international standards. Only the technical terms, conventions, formulae, signs and symbols generally accepted in the field in question shall be used.

(11) The terminology and the signs shall be consistent throughout the European patent application.

(12) Each sheet shall be reasonably free from erasures and shall be free from alterations. Non-compliance with this rule may be authorised if the authenticity of the content is not impugned and the requirements for good reproduction are not thereby jeopardised.

Rule 50

Documents filed subsequently

(1) Rules 42, 43 and 46 to 49 shall apply to documents replacing documents making up the European patent application. Rule 49, paragraphs 2 to 12, shall also apply to the translation of the claims referred to in Rule 71.

(2) All documents other than those making up the application shall generally be typewritten or printed. There shall be a margin of about 2.5 cm on the left-hand side of each page.

(3) Documents filed after filing the application shall be signed, with the exception of annexed documents. If a document has not been signed, the European Patent Office shall invite the party concerned to do so within a time limit to be specified. If signed in due time, the document shall retain its original date of receipt; otherwise it shall be deemed not to have been filed.

(1) A renewal fee for the European patent application in respect of the coming year shall be due on the last day of the month containing the anniversary of the date of filing of the European patent application. Renewal fees may not be validly paid more than one year before they fall due.

(2) If a renewal fee is not paid in due time, the fee may still be paid within six months of the due date, provided that an additional fee is also paid within that period.

(3) Renewal fees already due in respect of an earlier application at the date on which a divisional application is filed shall also be paid for the divisional application and shall be due on its filing. These fees and any renewal fee due within four months of filing the divisional application may be paid within that period without an additional fee. Paragraph 2 shall apply.

(4) If a European patent application has been refused or deemed to be withdrawn as a result of non-observance of a time limit, and if the applicant's rights are re-established under Article 122, a renewal fee

(a) which would have fallen due under paragraph 1 in the period starting on the date on which the loss of rights occurred, up to and including the date of the notification of the decision re-establishing the rights shall be due on that latter date.

This fee and any renewal fee due within four months from that latter date may still be paid within four months of that latter date without an additional fee. Paragraph 2 shall apply.

(b) which, on the date on which the loss of rights has occurred, was already due but the period provided for in paragraph 2 has not yet expired, may still be paid within six months from the date of the notification of the decision re-establishing the rights, provided that the additional fee pursuant to paragraph 2 is also paid within that period.

(5) If the Enlarged Board of Appeal re-opens proceedings before the Board of Appeal under Article 112a, paragraph 5, second sentence, a renewal fee

(a) which would have fallen due under paragraph 1 in the period starting on the date when the decision of the Board of Appeal subject to the petition for review was taken, up to and including the date of the notification of the decision of the Enlarged Board of Appeal re-opening proceedings before the Board of Appeal, shall be due on that latter date.

This fee and any renewal fee due within four months from that latter date may still be paid within four months of that latter date without an additional fee. Paragraph 2 shall apply.

(b) which, on the day on which the decision of the Board

of Appeal was taken, was already due but the period provided for in paragraph 2 has not yet expired, may still be paid within six months from the date of the notification of the decision of the Enlarged Board of Appeal re-opening proceedings before the Board of Appeal, provided that the additional fee pursuant to paragraph 2 is also paid within that period.

(6) A renewal fee shall not be payable for a new European patent application filed under Article 61, paragraph 1(b), in respect of the year in which it was filed and any preceding year.

CHAPTER IV PRIORITY

Rule 52 Declaration of priority

(1) The declaration of priority referred to in Article 88, paragraph 1, shall indicate the date of the previous filing, the State party to the Paris Convention or Member of the World Trade Organization in or for which it was made and the file number. In the case referred to in Article 87, paragraph 5, the first sentence shall apply *mutatis mutandis*.

(2) The declaration of priority shall preferably be made on filing the European patent application. It may still be made within sixteen months from the earliest priority date claimed.

(3) The applicant may correct the declaration of priority within sixteen months from the earliest priority date claimed, or, where the correction would cause a change in the earliest priority date claimed, within sixteen months from the corrected earliest priority date, whichever sixteen-month period expires first, provided that such a correction may be submitted until the expiry of four months from the date of filing accorded to the European patent application.

(4) However, a declaration of priority may not be made or corrected after a request under Article 93, paragraph 1(b), has been filed.

(5) The particulars of the declaration of priority shall appear in the published European patent application and the European patent specification.

Rule 53 Priority documents

(1) An applicant claiming priority shall file a copy of the previous application within sixteen months of the earliest priority date claimed. This copy and the date of filing of the previous application shall be certified as correct by the authority with which that application was filed.

(2) The copy of the previous application shall be deemed to be duly filed if a copy of that application available to the European Patent Office is to be included in the file of the European patent application under the conditions determined by the President of the European Patent Office.

(3) Where the previous application is not in an official language of the European Patent Office and the validity of the priority claim is relevant to the determination of the patentability of the invention concerned, the European Patent Office shall invite the applicant for or proprietor of the European patent to file a translation of that application into one of the official languages within a period to be specified. Alternatively, a declaration may be submitted that the European patent application is a complete translation of the previous application. Paragraph 2 shall apply *mutatis mutandis*.

Rule 54 Issuing priority documents

On request, the European Patent Office shall issue to the applicant a certified copy of the European patent application (priority document), under the conditions determined by the President of the European Patent Office, including the form of the priority document and the circumstances under which an administrative fee shall be paid.

PART IV IMPLEMENTING REGULATIONS TO PART IV OF THE CONVENTION

CHAPTER I EXAMINATION BY THE RECEIVING SECTION

Rule 55 Examination on filing

If the examination under Article 90, paragraph 1, reveals that the application fails to meet the requirements laid down in Rule 40, paragraph 1(a) or (c), paragraph 2 or paragraph 3, first sentence, the European Patent Office shall inform the applicant of any deficiencies and advise him that the application will not be dealt with as a European patent application unless such deficiencies are remedied within two months. If the applicant does this, he shall be informed of the date of filing accorded by the Office.

Rule 56 Missing parts of the description or missing drawings

(1) If the examination under Article 90, paragraph 1, reveals that parts of the description, or drawings referred to in the description or in the claims, appear to be missing, the European Patent Office shall invite the applicant to file the missing parts within two months. The applicant may not invoke the omission of such a communication.

(2) If missing parts of the description or missing drawings are filed later than the date of filing, but within two months of the date of filing or, if a communication is issued under paragraph 1, within two months of that communication, the application

shall be re-dated to the date on which the missing parts of the description or missing drawings were filed. The European Patent Office shall inform the applicant accordingly.

(3) If the missing parts of the description or missing drawings are filed within the period under paragraph 2, and the application claims priority of an earlier application, the date of filing shall, provided that the missing parts of the description or the missing drawings are completely contained in the earlier application, remain the date on which the requirements laid down in Rule 40, paragraph 1, were fulfilled, where the applicant so requests and files, within the period under paragraph 2:

- (a) a copy of the earlier application, unless such copy is available to the European Patent Office under Rule 53, paragraph 2;
- (b) where the earlier application is not in an official language of the European Patent Office, a translation thereof in one of these languages, unless such copy is available to the European Patent Office under Rule 53, paragraph 3; and
- (c) an indication as to where the missing parts of the description or the missing drawings are completely contained in the earlier application and, where applicable, in the translation thereof.

(4) If the applicant:

- (a) fails to file the missing parts of the description or the missing drawings within the period under paragraph 1 or 2, or
- (b) withdraws under paragraph 6 any missing part of the description or missing drawing filed under paragraph 2, any references referred to in paragraph 1 shall be deemed to be deleted, and any filing of the missing parts of the description or missing drawings shall be deemed not to have been made. The European Patent Office shall inform the applicant accordingly.

(5) If the applicant fails to comply with the requirements referred to in paragraph 3(a) to (c) within the period under paragraph 2, the application shall be re-dated to the date on which the missing parts of the description or missing drawings were filed. The European Patent Office shall inform the applicant accordingly.

(6) Within one month of the notification referred to in paragraph 2 or 5, last sentence, the applicant may withdraw the missing parts of the description or the missing drawings filed, in which case the re-dating shall be deemed not to have been made. The European Patent Office shall inform the applicant accordingly.

Rule 57

Examination as to formal requirements

If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with Article 90, paragraph 3, whether:

- (a) a translation of the application required under Article 14, paragraph 2, or under Rule 40,

paragraph 3, second sentence, has been filed in due time;

- (b) the request for grant of a European patent satisfies the requirements of Rule 41;
- (c) the application contains one or more claims in accordance with Article 78, paragraph 1(c), or a reference to a previously filed application in accordance with Rule 40, paragraphs 1(c), 2 and 3, indicating that it replaces also the claims;
- (d) the application contains an abstract in accordance with Article 78, paragraph 1(e);
- (e) the filing fee and the search fee have been paid in accordance with Rule 17, paragraph 2, Rule 36, paragraph 3, or Rule 38;
- (f) the designation of the inventor has been made in accordance with Rule 19, paragraph 1;
- (g) where appropriate, the requirements laid down in Rules 52 and 53 concerning the claim to priority have been satisfied;
- (h) where appropriate, the requirements of Article 133, paragraph 2, have been satisfied;
- (i) the application meets the requirements laid down in Rule 46 and Rule 49, paragraphs 1 to 9 and 12;
- (j) the application meets the requirements laid down in Rule 30 or Rule 163, paragraph 3.

Rule 58

Correction of deficiencies in the application documents

If the European patent application does not comply with the requirements of Rule 57(a) to (d), (h) and (i), the European Patent Office shall inform the applicant accordingly and invite him to correct the deficiencies noted within two months. The description, claims and drawings may be amended only to an extent sufficient to remedy such deficiencies.

Rule 59

Deficiencies in claiming priority

If the file number of the previous application under Rule 52, paragraph 1, or the copy of that application under Rule 53, paragraph 1, have not been filed in due time, the European Patent Office shall inform the applicant accordingly and invite him to file them within a period to be specified.

Rule 60

Subsequent designation of the inventor

(1) If the designation of the inventor has not been made in accordance with Rule 19, the European Patent Office shall inform the applicant that the European patent application will be refused unless the designation is made within sixteen months of the date of filing of the application or, if priority is claimed, of the date of priority, this period being deemed to have been observed if the information is communicated before completion of the technical preparations for the publication of the European patent application.

- (2) Where, in a divisional application or a new

application under Article 61, paragraph 1(b), the designation of the inventor has not been made in accordance with Rule 19, the European Patent Office shall invite the applicant to make the designation within a period to be specified.

CHAPTER II EUROPEAN SEARCH REPORT

Rule 61

Content of the European search report

(1) The European search report shall mention those documents, available to the European Patent Office at the time of drawing up the report, which may be taken into consideration in deciding whether the invention to which the European patent application relates is new and involves an inventive step.

(2) Each citation shall be referred to the claims to which it relates. Where appropriate, relevant parts of the documents cited shall be identified.

(3) The European search report shall distinguish between cited documents published before the date of priority claimed, between such date of priority and the date of filing, and on or after the date of filing.

(4) Any document which refers to an oral disclosure, a use or any other means of disclosure which took place before the date of filing of the European patent application shall be mentioned in the European search report, together with an indication of the date of publication, if any, of the document and the date of the non-written disclosure.

(5) The European search report shall be drawn up in the language of the proceedings.

(6) The European search report shall contain the classification of the subject-matter of the European patent application in accordance with the international classification.

Rule 62

Extended European search report

(1) The European search report shall be accompanied by an opinion on whether the application and the invention to which it relates seem to meet the requirements of this Convention, unless a communication under Rule 71, paragraph 1 or 3, can be issued.

(2) The opinion under paragraph 1 shall not be published together with the search report.

Rule 63

Incomplete search

If the European Patent Office considers that the European patent application does not comply with this Convention to such an extent that it is impossible to carry out a meaningful search into the state of the art on the basis of all or some of the subject-matter claimed, it shall either issue a reasoned declaration to

that effect or, as far as is practicable, draw up a partial search report. The declaration or the partial report shall be considered, for the purposes of subsequent proceedings, as the European search report.

Rule 64

European search report where the invention lacks unity

(1) If the European Patent Office considers that the European patent application does not comply with the requirement of unity of invention, it shall draw up a partial search report on those parts of the application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims. It shall inform the applicant that for the European search report to cover the other inventions, a further search fee must be paid, in respect of each invention involved, within a period to be specified, which shall neither be shorter than two weeks nor exceed six weeks. The European search report shall be drawn up for the parts of the application relating to inventions in respect of which search fees have been paid.

(2) Any fee paid under paragraph 1 shall be refunded if, during the examination of the European patent application, the applicant requests a refund and the Examining Division finds that the communication under paragraph 1 was not justified.

Rule 65

Transmittal of the European search report

Immediately after it has been drawn up, the European search report shall be transmitted to the applicant together with copies of any cited documents.

Rule 66

Definitive content of the abstract

Upon drawing up the European search report, the European Patent Office shall determine the definitive content of the abstract and transmit it to the applicant together with the search report.

CHAPTER III

PUBLICATION OF THE EUROPEAN PATENT APPLICATION

Rule 67

Technical preparations for publication

(1) The President of the European Patent Office shall determine when the technical preparations for publication of the European patent application are deemed to have been completed.

(2) The application shall not be published if it has been finally refused or withdrawn or is deemed to be withdrawn before the termination of the technical preparations for publication.

Rule 68

Form of the publication of European patent applications and European search reports

(1) The publication of the European patent application shall contain the description, the claims and any drawings as filed, and the abstract, or, if these documents making up the application were not filed in an official language of the European Patent Office, a translation in the language of the proceedings, and, in an annex, the European search report, where it is available before the termination of the technical preparations for publication. If the search report or the abstract is not published at the same time as the application, it shall be published separately.

(2) The President of the European Patent Office shall determine the form of the publication of the application and the data to be included. The same shall apply where the European search report and the abstract are published separately.

(3) The designated Contracting States shall be indicated in the published application.

(4) If the patent claims were not filed on the date of filing of the application, this shall be indicated when the application is published. If, before the termination of the technical preparations for publication of the application, the claims have been amended under Rule 137, paragraph 2, the new or amended claims shall be included in the publication in addition to the claims as filed.

Rule 69

Information about publication

(1) The European Patent Office shall inform the applicant of the date on which the European Patent Bulletin mentions the publication of the European search report and shall draw his attention to Rule 70, paragraph 1, and Article 94, paragraph 2.

(2) The applicant may not invoke the omission of the communication under paragraph 1. If a later date of publication is specified in the communication, that later date shall be the decisive date as regards the period for filing the request for examination, unless the error is obvious.

Rule 70

Request for examination

(1) The applicant may request examination of the European patent application up to six months after the date on which the European Patent Bulletin mentions the publication of the European search report. The request may not be withdrawn.

(2) If the request for examination has been filed before the European search report has been transmitted to the applicant, the European Patent Office shall invite the applicant to indicate, within a period to be specified, whether he wishes to proceed further with the application, and shall give him the

opportunity to comment on the search report and to amend, where appropriate, the description, claims and drawings.

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

CHAPTER IV

EXAMINATION BY THE EXAMINING DIVISION

Rule 71

Examination procedure

(1) In any communication under Article 94, paragraph 3, the Examining Division shall, where appropriate, invite the applicant to correct any deficiencies noted and to amend the description, claims and drawings within a period to be specified.

(2) Any communication under Article 94, paragraph 3, shall contain a reasoned statement covering, where appropriate, all the grounds against the grant of the European patent.

(3) Before the Examining Division decides to grant the European patent, it shall inform the applicant of the text in which it intends to grant it, and shall invite him to pay the fees for grant and printing and to file a translation of the claims in the two official languages of the European Patent Office other than the language of the proceedings within a period of four months. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the text intended for grant.

(4) If the applicant, within the period laid down in paragraph 3, requests amendments under Rule 137, paragraph 3, or the correction of errors under Rule 139, he shall, where the claims are amended or corrected, file a translation of the claims as amended or corrected. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the grant of the patent as amended or corrected.

(5) If the Examining Division does not consent to an amendment or correction requested under paragraph 4, it shall, before taking a decision, give the applicant an opportunity to submit, within a period to be specified, his observations and any amendments considered necessary by the Examining Division, and, where the claims are amended, a translation of the claims as amended. If the applicant submits such amendments, he shall be deemed to have approved the grant of the patent as amended. If the European patent application is refused, withdrawn or deemed to be withdrawn, the fees for grant and printing, and any claims fees paid under paragraph 6, shall be refunded.

(6) If the European patent application in the text intended for grant comprises more than fifteen claims, the Examining Division shall invite the applicant to pay claims fees in respect of each additional claim within the period under paragraph 3, and, where

applicable, paragraph 5, unless the said fees have already been paid under Rule 45 or Rule 162.

(7) If the fees for grant and printing or the claims fees are not paid in due time, or if the translation is not filed in due time, the European patent application shall be deemed to be withdrawn.

(8) If the designation fees become due after the communication under paragraph 3, the mention of the grant of the European patent shall not be published until the designation fees have been paid. The applicant shall be informed accordingly.

(9) If a renewal fee becomes due after the communication under paragraph 3 and before the next possible date for publication of the mention of the grant of the European patent, the mention shall not be published until the renewal fee has been paid. The applicant shall be informed accordingly.

(10) The communication under paragraph 3 shall indicate the designated Contracting States which require a translation under Article 65, paragraph 1.

(11) The decision to grant the European patent shall state which text of the European patent application forms the basis for the decision.

Rule 72

Grant of the European patent to different applicants

Where different persons are recorded in the European Patent Register as applicants in respect of different Contracting States, the European Patent Office shall grant the European patent for each Contracting State accordingly.

CHAPTER V

THE EUROPEAN PATENT SPECIFICATION

Rule 73

Content and form of the specification

(1) The specification of the European patent shall include the description, the claims and any drawings. It shall also indicate the period for opposing the European patent.

(2) The President of the European Patent Office shall determine the form of the publication of the specification and the data to be included.

(3) The designated Contracting States shall be indicated in the specification.

Rule 74

Certificate for a European patent

As soon as the specification of the European patent has been published, the European Patent Office shall issue to the proprietor of the patent a certificate for a European patent. The President of the European Patent Office shall prescribe the content, form and means of communication of the certificate and

determine the circumstances in which an administrative fee is payable.

PART V

IMPLEMENTING REGULATIONS TO PART V OF THE CONVENTION

CHAPTER I

OPPOSITION PROCEDURE

Rule 75

Surrender or lapse of the patent

An opposition may be filed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.

Rule 76

Form and content of the opposition

(1) Notice of opposition shall be filed in a written reasoned statement.

(2) The notice of opposition shall contain:

- (a) particulars of the opponent as provided in Rule 41, paragraph 2(c);
- (b) the number of the European patent against which opposition is filed, the name of the proprietor of the patent and the title of the invention;
- (c) a statement of the extent to which the European patent is opposed and of the grounds on which the opposition is based, as well as an indication of the facts and evidence presented in support of these grounds;
- (d) if the opponent has appointed a representative, particulars as provided in Rule 41, paragraph 2(d).

(3) Part III of the Implementing Regulations shall apply *mutatis mutandis* to the notice of opposition.

Rule 77

Rejection of the opposition as inadmissible

(1) If the Opposition Division notes that the notice of opposition does not comply with the provisions of Article 99, paragraph 1, or Rule 76, paragraph 2(c), or does not sufficiently identify the patent against which opposition has been filed, it shall reject the opposition as inadmissible, unless these deficiencies have been remedied before expiry of the opposition period.

(2) If the Opposition Division notes that the notice of opposition does not comply with provisions other than those referred to in paragraph 1, it shall communicate this to the opponent and shall invite him to remedy the deficiencies noted within a period to be specified. If the deficiencies are not remedied in due time, the Opposition Division shall reject the opposition as inadmissible.

(3) The decision to reject an opposition as inadmissible shall be communicated to the proprietor of the patent, together with a copy of the notice of opposition.

Rule 78

Procedure where the proprietor of the patent is not entitled

(1) If a third party provides evidence, during opposition proceedings or during the opposition period, that he has instituted proceedings against the proprietor of the European patent, seeking a decision within the meaning of Article 61, paragraph 1, opposition proceedings shall be stayed unless the third party communicates to the European Patent Office in writing his consent to the continuation of such proceedings. Such consent shall be irrevocable. However, proceedings shall not be stayed until the Opposition Division has deemed the opposition admissible. Rule 14, paragraphs 2 to 4, shall apply *mutatis mutandis*.

(2) Where a third party has, in accordance with Article 99, paragraph 4, replaced the previous proprietor for one or some of the designated Contracting States, the patent as maintained in opposition proceedings may, for these States, contain claims, a description and drawings different from those for the other designated States.

Rule 79

Preparation of the examination of the opposition

(1) The Opposition Division shall communicate the notice of opposition to the proprietor of the patent and shall give him the opportunity to file his observations and to amend, where appropriate, the description, claims and drawings within a period to be specified.

(2) If several notices of opposition have been filed, the Opposition Division shall communicate them to the other opponents at the same time as the communication under paragraph 1.

(3) The Opposition Division shall communicate any observations and amendments filed by the proprietor of the patent to the other parties, and shall invite them, if it considers this expedient, to reply within a period to be specified.

(4) In the case of an intervention under Article 105, the Opposition Division may dispense with the application of paragraphs 1 to 3.

Rule 80

Amendment of the European patent

Without prejudice to Rule 138, the description, claims and drawings may be amended, provided that the amendments are occasioned by a ground for opposition under Article 100, even if that ground has not been invoked by the opponent.

Rule 81

Examination of opposition

(1) The Opposition Division shall examine those

grounds for opposition which are invoked in the opponent's statement under Rule 76, paragraph 2(c). Grounds for opposition not invoked by the opponent may be examined by the Opposition Division of its own motion if they would prejudice the maintenance of the European patent.

(2) Communications under Article 101, paragraph 1, second sentence, and all replies thereto shall be sent to all parties. If the opposition division considers this expedient, it shall invite the parties to reply within a period to be specified.

(3) In any communication under Article 101, paragraph 1, second sentence, the proprietor of the European patent shall, where necessary, be given the opportunity to amend, where appropriate, the description, claims and drawings. Where necessary, the communication shall contain a reasoned statement covering the grounds against the maintenance of the European patent.

Rule 82

Maintenance of the European patent in amended form

(1) Before the Opposition Division decides to maintain the European patent as amended, it shall inform the parties of the text in which it intends to maintain the patent, and shall invite them to file their observations within two months if they disapprove of that text.

(2) If a party disapproves of the text communicated by the Opposition Division, examination of the opposition may be continued. Otherwise, the Opposition Division shall, on expiry of the period under paragraph 1, invite the proprietor of the patent to pay the prescribed fee and to file a translation of any amended claims in the official languages of the European Patent Office other than the language of the proceedings, within a period of three months. This invitation shall indicate the designated Contracting States which require a translation under Article 65, paragraph 1.

(3) If the acts required under paragraph 2 are not performed in due time, they may still be performed within two months of a communication concerning the failure to observe the time limit, provided that a surcharge is paid within this period. Otherwise, the patent shall be revoked.

(4) The decision to maintain the European patent as amended shall state which text of the patent forms the basis for the decision.

Rule 83

Request for documents

Documents referred to by a party to opposition proceedings shall be filed together with the notice of opposition or the written submissions. If such documents are neither enclosed nor filed in due time

upon invitation by the European Patent Office, it may decide not to take into account any arguments based on them.

Rule 84

Continuation of the opposition proceedings by the European Patent Office of its own motion

(1) If the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States, the opposition proceedings may be continued at the request of the opponent filed within two months of a communication from the European Patent Office informing him of the surrender or lapse.

(2) In the event of the death or legal incapacity of an opponent, the opposition proceedings may be continued by the European Patent Office of its own motion, even without the participation of the heirs or legal representatives. The same shall apply where the opposition is withdrawn.

Rule 85

Transfer of the European patent

Rule 22 shall apply to any transfer of the European patent made during the opposition period or during opposition proceedings.

Rule 86

Documents in opposition proceedings

Part III of the Implementing Regulations shall apply *mutatis mutandis* to documents filed in opposition proceedings.

Rule 87

Content and form of the new specification of the European patent

The new specification of the European patent shall include the description, claims and drawings as amended. Rule 73, paragraphs 2 and 3, and Rule 74 shall apply.

Rule 88

Costs

(1) The apportionment of costs shall be dealt with in the decision on the opposition. Such apportionment shall only take into consideration the expenses necessary to assure proper protection of the rights involved. The costs shall include the remuneration of the representatives of the parties.

(2) The Opposition Division shall, on request, fix the amount of costs to be paid under a final decision apportioning them. A bill of costs, with supporting evidence, shall be attached to the request. Costs may be fixed once their credibility is established.

(3) A request for a decision by the Opposition Division may be filed within one month of the communication on the fixing of costs under paragraph 2. The request shall be filed in writing and state the grounds on which it is based. It shall not be deemed to be filed until the prescribed fee has been paid.

(4) The Opposition Division shall decide on the request under paragraph 3 without oral proceedings.

Rule 89

Intervention of the assumed infringer

(1) Notice of intervention shall be filed within three months of the date on which proceedings referred to in Article 105 are instituted.

(2) Notice of intervention shall be filed in a written reasoned statement; Rules 76 and 77 shall apply *mutatis mutandis*. The notice of intervention shall not be deemed to have been filed until the opposition fee has been paid.

CHAPTER II

PROCEDURE FOR LIMITATION OR REVOCATION

Rule 90

Subject of proceedings

The subject of limitation or revocation proceedings under Article 105a shall be the European patent as granted or as amended in opposition or limitation proceedings before the European Patent Office.

Rule 91

Responsibility for proceedings

Decisions on requests for limitation or revocation of the European patent under Article 105a shall be taken by the Examining Division. Article 18, paragraph 2, shall apply *mutatis mutandis*.

Rule 92

Requirements of the request

(1) The request for limitation or revocation of a European patent shall be filed in writing. Part III of the Implementing Regulations shall apply *mutatis mutandis* to documents filed in limitation or revocation proceedings.

(2) The request shall contain:

- (a) particulars of the proprietor of the European patent making the request (the requester) as provided in Rule 41, paragraph 2(c), and an indication of the Contracting States for which the requester is the proprietor of the patent;
- (b) the number of the patent whose limitation or

- revocation is requested, and a list of the Contracting States in which the patent has taken effect;
- (c) where appropriate, the names and addresses of the proprietors of the patent for those Contracting States in which the requester is not the proprietor of the patent, and evidence that the requester is entitled to act on their behalf in the proceedings;
 - (d) where limitation of the patent is requested, the complete version of the amended claims and, as the case may be, of the amended description and drawings;
 - (e) where the requester has appointed a representative, particulars as provided in Rule 41, paragraph 2(d).

Rule 93

Precedence of opposition proceedings

(1) The request for limitation or revocation shall be deemed not to have been filed if opposition proceedings in respect of the patent are pending at the time of filing the request.

(2) If, at the time of filing an opposition to a European patent, limitation proceedings in respect of that patent are pending, the Examining Division shall terminate the limitation proceedings and order the reimbursement of the limitation fee. The reimbursement shall also be ordered in respect of the fee referred to in Rule 95, paragraph 3, first sentence, if the requester has already paid this fee.

Rule 94

Rejection of the request as inadmissible

If the Examining Division finds that the request for limitation or revocation fails to comply with the requirements of Rule 92, it shall invite the requester to correct the deficiencies noted, within a period to be specified. If the deficiencies are not corrected in due time, the Examining Division shall reject the request as inadmissible.

Rule 95

Decision on the request

(1) If a request for revocation is admissible, the Examining Division shall revoke the patent and communicate this to the requester.

(2) If a request for limitation is admissible, the Examining Division shall examine whether the amended claims constitute a limitation vis-à-vis the claims as granted or amended in opposition or limitation proceedings and comply with Article 84 and Article 123, paragraphs 2 and 3. If the request does not comply with these requirements, the Examining Division shall give the requester one opportunity to correct any deficiencies noted, and to amend the claims and, where appropriate, the description and drawings, within a period to be specified.

(3) If a request for limitation is allowable under

paragraph 2, the Examining Division shall communicate this to the requester and invite him to pay the prescribed fee and to file a translation of the amended claims in the official languages of the European Patent Office other than the language of the proceedings, within a period of three months; Rule 82, paragraph 3, first sentence, shall apply *mutatis mutandis*. If the requester performs these acts in due time, the Examining Division shall limit the patent.

(4) If the requester does not respond in due time to the communication issued under paragraph 2, or if the request for limitation is not allowable, or if the requester fails to perform the acts required under paragraph 3 in due time, the Examining Division shall reject the request

Rule 96

Content and form of the amended European patent specification

The amended European patent specification shall include the description, claims and drawings as amended. Rule 73, paragraphs 2 and 3, and Rule 74 shall apply.

PART VI

IMPLEMENTING REGULATIONS TO PART VI OF THE CONVENTION

CHAPTER I

APPEALS PROCEDURE

Rule 97

Appeal against apportionment and fixing of costs

(1) The apportionment of costs of opposition proceedings cannot be the sole subject of an appeal.

(2) A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount exceeds that of the fee for appeal.

Rule 98

Surrender or lapse of the patent

The decision of an Opposition Division may be appealed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.

Rule 99

Content of the notice of appeal and the statement of grounds

- (1) The notice of appeal shall contain:
- (a) the name and the address of the appellant as provided in Rule 41, paragraph 2(c);
 - (b) an indication of the decision impugned; and
 - (c) a request defining the subject of the appeal.

(2) In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based.

(3) Part III of the Implementing Regulations shall apply *mutatis mutandis* to the notice of appeal, the statement of grounds and the documents filed in appeal proceedings.

Rule 100

Examination of appeals

(1) Unless otherwise provided, the provisions relating to proceedings before the department which has taken the decision impugned shall apply to appeal proceedings.

(2) In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be specified, on communications issued by itself or observations submitted by another party.

(3) If the applicant fails to reply in due time to an invitation under paragraph 2, the European patent application shall be deemed to be withdrawn, unless the decision impugned was taken by the Legal Division.

Rule 101

Rejection of the appeal as inadmissible

(1) If the appeal does not comply with Articles 106 to 108, Rule 97 or Rule 99, paragraph 1(b) or (c) or paragraph 2, the Board of Appeal shall reject it as inadmissible, unless any deficiency has been remedied before the relevant period under Article 108 has expired.

(2) If the Board of Appeal notes that the appeal does not comply with Rule 99, paragraph 1(a), it shall communicate this to the appellant and shall invite him to remedy the deficiencies noted within a period to be specified. If the deficiencies are not remedied in due time, the Board of Appeal shall reject the appeal as inadmissible.

Rule 102

Form of decision of the Board of Appeal

The decision shall be authenticated by the Chairman of the Board of Appeal and by the competent employee of the registry of the Board of Appeal, either by their signature or by any other appropriate means. The decision shall contain:

- (a) a statement that it was delivered by the Board of Appeal;
- (b) the date when the decision was taken;
- (c) the names of the Chairman and of the other members of the Board of Appeal taking part;
- (d) the names of the parties and their representatives;
- (e) the requests of the parties;
- (f) a summary of the facts;
- (g) the reasons;

(h) the order of the Board of Appeal, including, where appropriate, a decision on costs.

Rule 103

Reimbursement of appeal fees

- (1) The appeal fee shall be reimbursed
 - (a) in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation, or
 - (b) if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired.

(2) The department whose decision is impugned shall order the reimbursement if it revises its decision and considers reimbursement equitable by reason of a substantial procedural violation. In all other cases, matters of reimbursement shall be decided by the Board of Appeal.

CHAPTER II

PETITIONS FOR REVIEW BY THE ENLARGED BOARD OF APPEAL

Rule 104

Further fundamental procedural defects

A fundamental procedural defect under Article 112a, paragraph 2(d), may have occurred where the Board of Appeal,

- (a) contrary to Article 116, failed to arrange for the holding of oral proceedings requested by the petitioner, or
- (b) decided on the appeal without deciding on a request relevant to that decision.

Rule 105

Criminal acts

A petition for review may be based on Article 112a, paragraph 2(e), if a competent court or authority has finally established that the criminal act occurred; a conviction is not necessary.

Rule 106

Obligation to raise objections

A petition under Article 112a, paragraph 2(a) to (d), is only admissible where an objection in respect of the procedural defect was raised during the appeal proceedings and dismissed by the Board of Appeal, except where such objection could not be raised during the appeal proceedings.

Rule 107

Contents of the petition for review

- (1) The petition shall contain:
 - (a) the name and the address of the petitioner as provided in Rule 41, paragraph 2(c);

(b) an indication of the decision to be reviewed.

(2) The petition shall indicate the reasons for setting aside the decision of the Board of Appeal, and the facts and evidence on which the petition is based.

(3) Part III of the Implementing Regulations shall apply *mutatis mutandis* to the petition for review and the documents filed in the proceedings.

Rule 108

Examination of the petition

(1) If the petition does not comply with Article 112a, paragraphs 1, 2 or 4, Rule 106 or Rule 107, paragraph 1(b) or 2, the Enlarged Board of Appeal shall reject it as inadmissible, unless any defect has been remedied before the relevant period under Article 112a, paragraph 4, expires.

(2) If the Enlarged Board of Appeal notes that the petition does not comply with Rule 107, paragraph 1(a), it shall communicate this to the petitioner and shall invite him to remedy the deficiencies noted within a period to be specified. If the deficiencies are not remedied in due time, the Enlarged Board of Appeal shall reject the petition as inadmissible.

(3) If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision of the Board of Appeal and order the re-opening of the proceedings before the Board of Appeal responsible under Rule 12, paragraph 4. The Enlarged Board of Appeal may order that members of the Board of Appeal who participated in taking the decision set aside shall be replaced.

Rule 109

Procedure in dealing with petitions for review

(1) In proceedings under Article 112a, the provisions relating to proceedings before the Boards of Appeal shall apply, unless otherwise provided. Rule 115, paragraph 1, second sentence, Rule 118, paragraph 2, first sentence, and Rule 132, paragraph 2, shall not apply. The Enlarged Board of Appeal may specify a period deviating from Rule 4, paragraph 1, first sentence.

(2) The Enlarged Board of Appeal

- (a) consisting of two legally qualified members and one technically qualified member shall examine all petitions for review and shall reject those which are clearly inadmissible or unallowable; such decision shall require unanimity;
- (b) consisting of four legally qualified members and one technically qualified member shall decide on any petition not rejected under sub-paragraph (a).

(3) The Enlarged Board of Appeal composed according to paragraph 2(a) shall decide without the involvement of other parties and on the basis of the petition.

Rule 110

Reimbursement of the fee for petitions for review

The Enlarged Board of Appeal shall order the reimbursement of the fee for a petition for review if the proceedings before the Boards of Appeal are reopened.

PART VII

IMPLEMENTING REGULATIONS TO PART VII OF THE CONVENTION

CHAPTER I

DECISIONS AND COMMUNICATIONS OF THE EUROPEAN PATENT OFFICE

Rule 111

Form of decisions

(1) Where oral proceedings are held before the European Patent Office, the decision may be given orally. The decision shall subsequently be put in writing and notified to the parties.

(2) Decisions of the European Patent Office which are open to appeal shall be reasoned and shall be accompanied by a communication pointing out the possibility of appeal and drawing the attention of the parties to Articles 106 to 108, the text of which shall be attached. The parties may not invoke the omission of the communication.

Rule 112

Noting of loss of rights

(1) If the European Patent Office notes that a loss of rights has occurred, without any decision concerning the refusal of the European patent application or the grant, revocation or maintenance of the European patent, or the taking of evidence, it shall communicate this to the party concerned.

(2) If the party concerned considers that the finding of the European Patent Office is inaccurate, it may, within two months of the communication under paragraph 1, apply for a decision on the matter. The European Patent Office shall take such decision only if it does not share the opinion of the party requesting it; otherwise, it shall inform that party.

Rule 113

Signature, name, seal

(1) Any decisions, summonses, notices and communications from the European Patent Office shall be signed by, and state the name of, the employee responsible.

(2) Where a document referred to in paragraph 1 is produced by the employee responsible using a computer, a seal may replace the signature. Where the document is produced automatically by a computer, the employee's name may also be

dispensed with. The same shall apply to pre-printed notices and communications.

CHAPTER II OBSERVATIONS BY THIRD PARTIES

Rule 114

Observations by third parties

(1) Any observations by a third party shall be filed in writing in an official language of the European Patent Office and state the grounds on which they are based. Rule 3, paragraph 3, shall apply.

(2) Any such observations shall be communicated to the applicant for or proprietor of the patent, who may comment on them.

CHAPTER III

ORAL PROCEEDINGS AND TAKING OF EVIDENCE

Rule 115

Summons to oral proceedings

(1) The parties shall be summoned to oral proceedings under Article 116, drawing their attention to paragraph 2 of this Rule. At least two months' notice of the summons shall be given, unless the parties agree to a shorter period.

(2) If a party duly summoned to oral proceedings before the European Patent Office does not appear as summoned, the proceedings may continue without that party.

Rule 116

Preparation of oral proceedings

(1) When issuing the summons, the European Patent Office shall draw attention to the points which in its opinion need to be discussed for the purposes of the decision to be taken. At the same time a final date for making written submissions in preparation for the oral proceedings shall be fixed. Rule 132 shall not apply. New facts and evidence presented after that date need not be considered, unless admitted on the grounds that the subject of the proceedings has changed.

(2) If the applicant or patent proprietor has been notified of the grounds prejudicing the grant or maintenance of the patent, he may be invited to submit, by the date specified in paragraph 1, second sentence, documents which meet the requirements of the Convention. Paragraph 1, third and fourth sentences, shall apply *mutatis mutandis*.

Rule 117

Decision on taking of evidence

Where the European Patent Office considers it necessary to hear a party, witness or expert, or to carry out an inspection, it shall take a decision to this end,

setting out the investigation which it intends to carry out, relevant facts to be proved and the date, time and place of the investigation. If the hearing of a witness or expert is requested by a party, the decision shall specify the period within which the requester must make known the name and address of any witness or expert concerned.

Rule 118

Summons to give evidence before the European Patent Office

(1) A summons to give evidence before the European Patent Office shall be issued to the parties, witnesses or experts concerned.

(2) At least two months' notice of a summons issued to a party, witness or expert to testify shall be given, unless they agree to a shorter period. The summons shall contain:

- (a) an extract from the decision under Rule 117, indicating the date, time and place of the investigation ordered and stating the facts in respect of which parties, witnesses or experts are to be heard;
- (b) the names of the parties and particulars of the rights which the witnesses or experts may invoke under Rule 122, paragraphs 2 to 4;
- (c) an indication that the party, witness or expert may request to be heard by a competent court of his country of residence under Rule 120, and an invitation to inform the European Patent Office, within a period to be specified, whether he is prepared to appear before it.

Rule 119

Examination of evidence before the European Patent Office

(1) The Examining Division, Opposition Division or Board of Appeal may commission one of its members to examine the evidence adduced.

(2) Before a party, witness or expert may be heard, he shall be informed that the European Patent Office may request the competent court in the country of residence of the person concerned to re-examine his testimony under oath or in an equally binding form.

(3) The parties may attend an investigation and may put relevant questions to the testifying party, witness or expert.

Rule 120

Hearing by a competent national court

(1) A party, witness or expert who is summoned before the European Patent Office may request the latter to allow him to be heard by a competent court in his country of residence. If this is requested, or if no reply is received within the period specified in the summons, the European Patent Office may, in accordance with Article 131, paragraph 2, request the competent court to hear the person concerned.

(2) If a party, witness or expert has been heard by the European Patent Office, the latter may, if it considers it advisable for the testimony to be given under oath or in an equally binding form, issue a request under Article 131, paragraph 2, to the competent court in the country of residence of the person concerned to re-examine his testimony under such conditions.

(3) When the European Patent Office requests a competent court to take evidence, it may request the court to take the evidence under oath or in an equally binding form and to permit a member of the department concerned to attend the hearing and question the party, witness or expert, either through the intermediary of the court or directly.

Rule 121

Commissioning of experts

(1) The European Patent Office shall decide in what form the opinion of an expert whom it appoints shall be submitted.

(2) The terms of reference of the expert shall include:

- (a) a precise description of his task;
- (b) the period specified for the submission of his opinion;
- (c) the names of the parties to the proceedings;
- (d) particulars of the rights which he may invoke under Rule 122, paragraphs 2 to 4.

(3) A copy of any written opinion shall be submitted to the parties.

(4) The parties may object to an expert. The department of the European Patent Office concerned shall decide on the objection.

Rule 122

Costs of taking of evidence

(1) The taking of evidence by the European Patent Office may be made conditional upon deposit with it, by the party requesting the evidence to be taken, of an amount to be fixed by reference to an estimate of the costs.

(2) Witnesses or experts who are summoned by and appear before the European Patent Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance for these expenses may be granted to them. This shall also apply to persons who appear before the European Patent Office without being summoned by it and are heard as witnesses or experts.

(3) Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. These payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks.

(4) The Administrative Council shall lay down the details implementing paragraphs 2 and 3. Any amounts due under these provisions shall be paid by the European Patent Office.

(1) On request, the European Patent Office may, without delay, take measures to conserve evidence of facts liable to affect a decision which it may be called upon to take with regard to a European patent application or a European patent, where there is reason to fear that it might subsequently become more difficult or even impossible to take evidence. The date on which the measures are to be taken shall be communicated to the applicant for or proprietor of the patent in sufficient time to allow him to attend. He may ask relevant questions.

(2) The request shall contain:

- (a) particulars of the requester as provided in Rule 41, paragraph 2(c);
- (b) sufficient identification of the European patent application or European patent in question;
- (c) an indication of the facts in respect of which evidence is to be taken;
- (d) particulars of the means of giving or obtaining evidence;
- (e) a statement establishing a prima facie case for fearing that it might subsequently become more difficult or impossible to take evidence.

(3) The request shall not be deemed to have been filed until the prescribed fee has been paid.

(4) The decision on the request and any resulting taking of evidence shall be incumbent upon the department of the European Patent Office which would have to take the decision liable to be affected by the facts to be established. The provisions with regard to the taking of evidence in proceedings before the European Patent Office shall apply.

Rule 124

Minutes of oral proceedings and of taking of evidence

(1) Minutes of oral proceedings and of the taking of evidence shall be drawn up, containing the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties, the testimony of the parties, witnesses or experts and the result of any inspection.

(2) The minutes of the testimony of a witness, expert or party shall be read out, submitted to him, so that he may examine them or, where they are recorded by technical means, played back to him, unless he waives this right. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. If his approval is not given, his objections shall be noted. It is not necessary to play back the minutes or to obtain approval of them if the testimony has been recorded verbatim and directly using technical means.

(3) The minutes shall be signed by the employee responsible for drawing them up and by the employee who conducted the oral proceedings or taking of evidence.

(4) The parties shall be provided with a copy of the minutes.

CHAPTER IV NOTIFICATIONS

Rule 125 General provisions

(1) In proceedings before the European Patent Office, any notification to be made shall take the form of the original document, a copy thereof certified by or bearing the seal of the European Patent Office, or a computer print-out bearing such seal. Copies of documents emanating from the parties themselves shall not require such certification.

(2) Notification shall be made:

- (a) by post in accordance with Rule 126;
- (b) by technical means of communication in accordance with Rule 127;
- (c) by delivery on the premises of the European Patent Office in accordance with Rule 128; or
- (d) by public notice in accordance with Rule 129.

(3) Notification through the central industrial property office of a Contracting State shall be made in accordance with the law applicable to that office in national proceedings.

(4) Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt.

Rule 126 Notification by post

(1) Decisions incurring a period for appeal or a petition for review, summonses and other such documents as determined by the President of the European Patent Office shall be notified by registered letter with advice of delivery. All other notifications by post shall be by registered letter.

(2) Where notification is effected by registered letter, whether or not with advice of delivery, such letter shall be deemed to be delivered to the addressee on the tenth day following its posting, unless it has failed to reach the addressee or has reached him at a later date; in the event of any dispute, it shall be incumbent on the European Patent Office to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.

(3) Notification by registered letter, whether or not with advice of delivery, shall be deemed to have been effected even if acceptance of the letter has been refused.

(4) To the extent that notification by post is not

covered by paragraphs 1 to 3, the law of the State in which the notification is made shall apply.

Rule 127

Notification by technical means of communication

Notification may be effected by such technical means of communication as are determined by the President of the European Patent Office and under the conditions laid down by him.

Rule 128

Notification by delivery by hand

Notification may be effected on the premises of the European Patent Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have been effected even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Rule 129

Public notification

(1) If the address of the addressee cannot be established, or if notification in accordance with Rule 126, paragraph 1, has proved to be impossible even after a second attempt, notification shall be effected by public notice.

(2) The President of the European Patent Office shall determine how the public notice is to be given and the beginning of the period of one month on expiry of which the document shall be deemed to have been notified.

Rule 130

Notification to representatives

(1) If a representative has been appointed, notifications shall be addressed to him.

(2) If several representatives have been appointed for a single party, notification to any one of them shall be sufficient.

(3) If several parties have a common representative, notification to the common representative shall be sufficient.

CHAPTER V TIME LIMITS

Rule 131

Calculation of periods

(1) Periods shall be laid down in terms of full years, months, weeks or days.

(2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the

relevant event shall be the receipt of the document notified, unless otherwise provided.

(3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred; if the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.

(4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred; if the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.

(5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Rule 132

Periods specified by the European Patent Office

(1) Where the Convention or these Implementing Regulations refer to "a period to be specified", this period shall be specified by the European Patent Office.

(2) Unless otherwise provided, a period specified by the European Patent Office shall be neither less than two months nor more than four months; in certain circumstances it may be up to six months. In special cases, the period may be extended upon request, presented before the expiry of such period.

Rule 133

Late receipt of documents

(1) A document received late at the European Patent Office shall be deemed to have been received in due time if it was posted, or delivered to a recognised delivery service, in due time before expiry of the period in accordance with the conditions laid down by the President of the European Patent Office, unless the document was received later than three months after expiry of the period.

(2) Paragraph 1 shall apply *mutatis mutandis* to any period where transactions are carried out with the competent authority in accordance with Article 75, paragraphs 1(b) or 2(b).

Rule 134

Extension of periods

(1) If a period expires on a day on which one of the filing offices of the European Patent Office under Rule 35, paragraph 1, is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, mail is not delivered there, the period shall extend to the first day thereafter on

which all the filing offices are open for receipt of documents and on which mail is delivered. The first sentence shall apply *mutatis mutandis* if documents filed by one of the technical means of communication permitted by the President of the European Patent Office under Rule 2, paragraph 1, cannot be received.

(2) If a period expires on a day on which there is a general dislocation in the delivery or transmission of mail in a Contracting State, the period shall extend to the first day following the end of the interval of dislocation for parties which are resident in the State concerned or have appointed representatives with a place of business in that State. Where the State concerned is the State in which the European Patent Office is located, this provision shall apply to all parties and their representatives. This paragraph shall apply *mutatis mutandis* to the period referred to in Rule 37, paragraph 2.

(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* where acts are performed with the competent authority in accordance with Article 75, paragraphs 1(b) or 2(b).

(4) The date of commencement and the end of any dislocation under paragraph 2 shall be published by the European Patent Office.

(5) Without prejudice to paragraphs 1 to 4, a party concerned may produce evidence that on any of the ten days preceding the day of expiry of a period the delivery or transmission of mail was dislocated due to an exceptional occurrence such as a natural disaster, war, civil disorder, a general breakdown in any of the technical means of communication permitted by the President of the European Patent Office under Rule 2, paragraph 1, or other like reasons affecting the locality where the party or his representative resides or has his place of business. If the evidence produced satisfies the European Patent Office, a document received late shall be deemed to have been received in due time, provided that the mailing or the transmission was effected at the latest on the fifth day after the end of the dislocation.

Rule 135

Further processing

(1) Further processing under Article 121, paragraph 1, shall be requested by payment of the prescribed fee within two months of the communication concerning either the failure to observe a time limit or a loss of rights. The omitted act shall be completed within the period for making the request.

(2) Further processing shall be ruled out in respect of the periods referred to in Article 121, paragraph 4, and of the periods under Rule 6, paragraph 1, Rule 16, paragraph 1(a), Rule 31, paragraph 2, Rule 40, paragraph 3, Rule 51, paragraphs 2 to 5, Rule 52, paragraphs 2 and 3, Rules 55, 56, 58, 59, 64 and Rule 112, paragraph 2.

(3) The department competent to decide on the omitted act shall decide on the request for further processing.

Rule 136

Re-establishment of rights

(1) Any request for re-establishment of rights under Article 122, paragraph 1, shall be filed in writing within two months of the removal of the cause of non-compliance with the period, but at the latest within one year of expiry of the unobserved time limit. However, a request for re-establishment of rights in respect of any of the periods specified in Article 87, paragraph 1, and in Article 112a, paragraph 4, shall be filed within two months of expiry of that period. The request for re-establishment of rights shall not be deemed to have been filed until the prescribed fee has been paid.

(2) The request shall state the grounds on which it is based and shall set out the facts on which it relies. The omitted act shall be completed within the relevant period for filing the request according to paragraph 1.

(3) Re-establishment of rights shall be ruled out in respect of any period for which further processing under Article 121 is available and in respect of the period for requesting re-establishment of rights.

(4) The department competent to decide on the omitted act shall decide on the request for re-establishment of rights.

CHAPTER VI

AMENDMENTS AND CORRECTIONS

Rule 137

Amendment of the European patent application

(1) Before receiving the European search report, the applicant may not amend the description, claims or drawings of a European patent application unless otherwise provided.

(2) After receipt of the European search report, the applicant may, of his own volition, amend the description, claims and drawings.

(3) After receipt of the first communication from the Examining Division, the applicant may, of his own volition, amend once the description, claims and drawings, provided that the amendment is filed at the same time as the reply to the communication. No further amendment may be made without the consent of the Examining Division.

(4) Amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept.

Rule 138

Different claims, description and drawings for different States

If the European Patent Office is informed of the existence of a prior right under Article 139, paragraph 2, the European patent application or European patent may, for such State or States, contain

claims and, where appropriate, a description and drawings which are different from those for the other designated States.

Rule 139

Correction of errors in documents filed with the European Patent Office

Linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. However, if the request for such correction concerns the description, claims or drawings, the correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction.

Rule 140

Correction of errors in decisions

In decisions of the European Patent Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected.

CHAPTER VII

INFORMATION ON PRIOR ART

Rule 141

Information on prior art

The European Patent Office may invite the applicant to provide, within a period to be specified, information on prior art taken into consideration in the examination of national or regional patent applications and concerning an invention to which the European patent application relates.

CHAPTER VIII

INTERRUPTION OF PROCEEDINGS

Rule 142

Interruption of proceedings

(1) Proceedings before the European Patent Office shall be interrupted:

- (a) in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of the person authorised by national law to act on his behalf. To the extent that the above events do not affect the authorisation of a representative appointed under Article 134, proceedings shall be interrupted only on application by such representative;
- (b) in the event of the applicant for or proprietor of a patent, as a result of some action taken against his property, being prevented by legal reasons from continuing the proceedings;
- (c) in the event of the death or legal incapacity of the representative of an applicant for or proprietor of a patent, or of his being prevented for legal reasons

resulting from action taken against his property from continuing the proceedings.

(2) When, in the cases referred to in paragraph 1(a) or (b), the European Patent Office has been informed of the identity of the person authorised to continue the proceedings, it shall notify such person and, where applicable, any third party, that the proceedings will be resumed as from a specified date.

(3) In the case referred to in paragraph 1(c), the proceedings shall be resumed when the European Patent Office has been informed of the appointment of a new representative of the applicant or when the Office has informed the other parties of the appointment of a new representative of the proprietor of the patent. If, three months after the beginning of the interruption of the proceedings, the European Patent Office has not been informed of the appointment of a new representative, it shall communicate to the applicant for or proprietor of the patent:

- (a) where Article 133, paragraph 2, is applicable, that the European patent application will be deemed to be withdrawn or the European patent will be revoked if the information is not submitted within two months of this communication; or
- (b) otherwise, that the proceedings will be resumed with the applicant for or proprietor of the patent as from the notification of this communication.

(4) Any periods, other than those for requesting examination and paying renewal fees, in force at the date of interruption of the proceedings, shall begin again as from the day on which the proceedings are resumed. If such date is less than two months before the end of the period within which the request for examination must be filed, such a request may be filed within two months of such date.

CHAPTER IX INFORMATION TO THE PUBLIC

Rule 143

Entries in the European Patent Register

(1) The European Patent Register shall contain the following entries:

- (a) number of the European patent application;
- (b) date of filing of the application;
- (c) title of the invention;
- (d) classification symbols assigned to the application;
- (e) the Contracting States designated;
- (f) particulars of the applicant for or proprietor of the patent as provided in Rule 41, paragraph 2(c);
- (g) family name, given names and address of the inventor designated by the applicant for or proprietor of the patent, unless he has waived his right to be mentioned under Rule 20, paragraph 1;
- (h) particulars of the representative of the applicant for or proprietor of the patent as provided in Rule 41, paragraph 2(d); in the case of several representatives only the particulars of the

representative first named, followed by the words "and others" and, in the case of an association referred to in Rule 152, paragraph 11, only the name and address of the association;

- (i) priority data (date, State and file number of the previous application);
- (j) in the event of a division of the application, the numbers of all the divisional applications;
- (k) in the case of a divisional application or a new application under Article 61, paragraph 1(b), the information referred to in sub-paragraphs (a), (b) and (i) with regard to the earlier application;
- (l) date of publication of the application and, where appropriate, date of the separate publication of the European search report;
- (m) date of filing of the request for examination;
- (n) date on which the application is refused, withdrawn or deemed to be withdrawn;
- (o) date of publication of the mention of the grant of the European patent;
- (p) date of lapse of the European patent in a Contracting State during the opposition period and, where appropriate, pending a final decision on opposition;
- (q) date of filing opposition;
- (r) date and purport of the decision on opposition;
- (s) dates of stay and resumption of proceedings in the cases referred to in Rules 14 and 78;
- (t) dates of interruption and resumption of proceedings in the case referred to in Rule 142;
- (u) date of re-establishment of rights where an entry has been made under sub-paragraphs (n) or (r);
- (v) the filing of a request for conversion under Article 135, paragraph 3;
- (w) rights and transfer of such rights relating to an application or a European patent where these Implementing Regulations provide that they shall be recorded.
- (x) date and purport of the decision on the request for limitation or revocation of the European patent;
- (y) date and purport of the decision of the Enlarged Board of Appeal on the petition for review.

(2) The President of the European Patent Office may decide that entries other than those referred to in paragraph 1 shall be made in the European Patent Register.

Rule 144

Parts of the file excluded from inspection

The parts of the file excluded from inspection under Article 128, paragraph 4, shall be:

- (a) the documents relating to the exclusion of or objections to members of the Boards of Appeal or of the Enlarged Board of Appeal;
- (b) draft decisions and notices, and all other documents, used for the preparation of decisions and notices, which are not communicated to the parties;
- (c) the designation of the inventor, if he has waived his right to be mentioned under Rule 20, paragraph 1;

- (d) any other document excluded from inspection by the President of the European Patent Office on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the European patent.

Rule 145

Procedures for the inspection of files

(1) Inspection of the files of European patent applications and patents shall either be of the original document, or of copies thereof, or of technical means of storage if the files are stored in this way.

(2) The President of the European Patent Office shall determine all file-inspection arrangements, including the circumstances in which an administrative fee is payable.

Rule 146

Communication of information contained in the files

Subject to the restrictions laid down in Article 128, paragraphs 1 to 4, and in Rule 144, the European Patent Office may, upon request, communicate information concerning any file relating to a European patent application or European patent, subject to the payment of an administrative fee. However, the European Patent Office may refer to the option of file inspection where it deems this to be appropriate in view of the quantity of information to be supplied.

Rule 147

Constitution, maintenance and preservation of files

(1) The European Patent Office shall constitute, maintain and preserve files relating to all European patent applications and patents.

(2) The President of the European Patent Office shall determine the form in which these files shall be constituted, maintained and preserved.

(3) Documents incorporated in an electronic file shall be considered to be originals.

(4) Any files shall be preserved for at least five years from the end of the year in which:

- (a) the application is refused or withdrawn or is deemed to be withdrawn;
- (b) the patent is revoked by the European Patent Office; or
- (c) the patent or the corresponding protection under Article 63, paragraph 2, lapses in the last of the designated States.

(5) Without prejudice to paragraph 4, files relating to applications which have given rise to divisional applications under Article 76 or new applications under Article 61, paragraph 1(b), shall be preserved for at least the same period as the files relating to any one of these last applications. The same shall apply to files relating to any resulting European patents.

CHAPTER X

LEGAL AND ADMINISTRATIVE CO-OPERATION

Rule 148

Communications between the European Patent Office and the authorities of the Contracting States

(1) Communications between the European Patent Office and the central industrial property offices of the Contracting States which arise out of the application of this Convention shall be effected directly between these authorities. Communications between the European Patent Office and the courts or other authorities of the Contracting States may be effected through the intermediary of the said central industrial property offices.

(2) Expenditure in respect of communications under paragraph 1 shall be borne by the authority making the communications, which shall be exempt from fees.

Rule 149

Inspection of files by or via courts or authorities of the Contracting States

(1) Inspection of the files of European patent applications or of European patents by courts or authorities of the Contracting States shall be of the original documents or of copies thereof; Rule 145 shall not apply.

(2) Courts or Public Prosecutors' offices of the Contracting States may, in the course of their proceedings, communicate to third parties files or copies thereof transmitted to them by the European Patent Office. Such communications shall be effected in accordance with Article 128 and shall not be subject to any fee.

(3) The European Patent Office shall, when transmitting the files, draw attention to the restrictions which may, under Article 128, paragraphs 1 and 4, apply to file inspection by third parties.

Rule 150

Procedure for letters rogatory

(1) Each Contracting State shall designate a central authority to receive letters rogatory issued by the European Patent Office and to transmit them to the court or authority competent to execute them.

(2) The European Patent Office shall draw up letters rogatory in the language of the competent court or authority or shall attach to such letters rogatory a translation into that language.

(3) Subject to paragraphs 5 and 6, the competent court or authority shall apply national law as to the procedures to be followed in executing such requests and, in particular, as to the appropriate measures of compulsion.

(4) If the court or authority to which the letters rogatory are transmitted is not competent to execute

them, the letters rogatory shall be sent forthwith to the central authority referred to in paragraph 1. That authority shall transmit the letters rogatory either to the competent court or authority in that State, or to the European Patent Office where no court or authority is competent in that State.

(5) The European Patent Office shall be informed of the time when, and the place where, the enquiry or other legal measure is to take place and shall inform the parties, witnesses and experts concerned.

(6) If so requested by the European Patent Office, the competent court or authority shall permit the attendance of members of the department concerned and allow them to question any person giving evidence either directly or through the competent court or authority.

(7) The execution of letters rogatory shall not give rise to any reimbursement of fees or costs of any nature. Nevertheless, the State in which letters rogatory are executed has the right to require the Organisation to reimburse any fees paid to experts or interpreters and the costs arising from the procedure under paragraph 6.

(8) If the law applied by the competent court or authority obliges the parties to secure evidence and the competent court or authority is not able itself to execute the letters rogatory, that court or authority may, with the consent of the European Patent Office, appoint a suitable person to do so. When seeking such consent, the competent court or authority shall indicate the approximate costs which would result from this procedure. If the European Patent Office gives its consent, the Organisation shall reimburse any costs incurred; otherwise, the Organisation shall not be liable for such costs.

CHAPTER XI REPRESENTATION

Rule 151

Appointment of a common representative

(1) If there is more than one applicant and the request for grant of a European patent does not name a common representative, the applicant first named in the request shall be deemed to be the common representative. However, if one of the applicants is obliged to appoint a professional representative, this representative shall be deemed to be the common representative, unless the applicant first named has appointed a professional representative. The same shall apply to third parties acting in common in filing a notice of opposition or intervention and to joint proprietors of a European patent.

(2) If the European patent application is transferred to more than one person, and such persons have not appointed a common representative, paragraph 1 shall apply *mutatis mutandis*. If such application is not

possible, the European Patent Office shall invite such persons to appoint a common representative within a period to be specified. If this invitation is not complied with, the European Patent Office shall appoint the common representative.

Rule 152

Authorisations

(1) The President of the European Patent Office shall determine the cases in which a signed authorisation shall be filed by representatives acting before the European Patent Office.

(2) Where a representative fails to file such an authorisation, the European Patent Office shall invite him to do so within a period to be specified. The authorisation may cover one or more European patent applications or European patents and shall be filed in the corresponding number of copies.

(3) Where the requirements of Article 133, paragraph 2, have not been satisfied, the same period shall be specified for the appointment of a representative and the filing of the authorisation.

(4) A general authorisation may be filed enabling a representative to act in respect of all the patent transactions of a party. A single copy shall suffice.

(5) The President of the European Patent Office may determine the form and content of:

- (a) an authorisation relating to the representation of persons under Article 133, paragraph 2;
- (b) a general authorisation.

(6) If a required authorisation is not filed in due time, any procedural steps taken by the representative, other than the filing of a European patent application, shall be deemed not to have been taken, without prejudice to any other legal consequences provided for by this Convention.

(7) Paragraphs 2 and 4 shall apply to the withdrawal of an authorisation.

(8) A representative shall be deemed to be authorised until the termination of his authorisation has been communicated to the European Patent Office.

(9) Unless it expressly provides otherwise, an authorisation shall not terminate vis-à-vis the European Patent Office upon the death of the person who gave it.

(10) If a party appoints several representatives, they may act either jointly or singly, notwithstanding any provisions to the contrary in the communication of their appointment or in the authorisation.

(11) The authorisation of an association of representatives shall be deemed to be an authorisation of any representative who can provide evidence that he practises within that association.

Rule 153

Attorney evidentiary privilege

(1) Where advice is sought from a professional representative in his capacity as such, all communications between the professional representative and his client or any other person, relating to that purpose and falling under Article 2 of the Regulation on discipline for professional representatives, are permanently privileged from disclosure in proceedings before the European Patent Office, unless such privilege is expressly waived by the client.

(2) Such privilege from disclosure shall apply, in particular, to any communication or document relating to:

- (a) the assessment of the patentability of an invention;
- (b) the preparation or prosecution of a European patent application;
- (c) any opinion relating to the validity, scope of protection or infringement of a European patent or a European patent application.

Rule 154

Amendment of the list of professional representatives

(1) The entry of a professional representative shall be deleted from the list of professional representatives if he so requests or if, despite repeated reminders, he fails to pay the annual subscription to the Institute before the end of September of the year for which the subscription is due.

(2) Without prejudice to any disciplinary measures taken under Article 134a, paragraph 1(c), the entry of a professional representative may be deleted *ex officio* only:

- (a) in the event of his death or legal incapacity;
- (b) where he is no longer a national of one of the Contracting States, unless he was granted an exemption under Article 134, paragraph 7(a);
- (c) where he no longer has his place of business or employment within one of the Contracting States.

(3) Any person entered on the list of professional representatives under Article 134, paragraphs (2) or (3), whose entry has been deleted shall, upon request, be re-entered on that list if the conditions for deletion no longer exist.

PART VIII

IMPLEMENTING REGULATIONS TO PART VIII OF THE CONVENTION

Rule 155

Filing and transmission of the request for conversion

(1) The request for conversion referred to in Article 135, paragraph 1(a) or (b), shall be filed within three

months of the withdrawal of the European patent application, or of the communication that the application is deemed to be withdrawn, or of the decision refusing the application or revoking the European patent. The effect of the European patent application under Article 66 shall lapse if the request is not filed in due time.

(2) When transmitting the request for conversion to the central industrial property offices of the Contracting States specified in the request, the central industrial property office concerned or the European Patent Office shall attach to the request a copy of the file relating to the European patent application or European patent.

(3) Article 135, paragraph 4, shall apply if the request for conversion referred to in Article 135, paragraphs 1(a) or (2), is not transmitted before the expiry of a period of twenty months from the date of filing or, if priority has been claimed, the date of priority.

Rule 156

Information to the public in the event of conversion

(1) The documents accompanying the request for conversion under Rule 155, paragraph 2, shall be made available to the public by the central industrial property office under the same conditions and to the same extent as documents relating to national proceedings.

(2) The printed specification of the national patent resulting from the conversion of a European patent application shall mention that application.

PART IX

IMPLEMENTING REGULATIONS TO PART X OF THE CONVENTION

Rule 157

The European Patent Office as a receiving Office

(1) The European Patent Office shall be competent to act as a receiving Office within the meaning of the PCT if the applicant is a resident or national of a Contracting State to this Convention and to the PCT. Without prejudice to paragraph 3, if the applicant chooses the European Patent Office as a receiving Office, the international application shall be filed directly with the European Patent Office. Article 75, paragraph 2, shall apply *mutatis mutandis*.

(2) Where the European Patent Office acts as a receiving Office under the PCT, the international application shall be filed in English, French or German. The President of the European Patent Office may determine that the international application and any related item shall be filed in more than one copy.

(3) If an international application is filed with an authority of a Contracting State for transmittal to the European Patent Office as the receiving Office, the Contracting State shall ensure that the application reaches the European Patent Office not later than two weeks before the end of the thirteenth month from filing or, if priority is claimed, from the date of priority.

(4) The transmittal fee for the international application shall be paid within one month of filing the application.

Rule 158

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

(1) In the case of Article 17, paragraph 3(a) PCT, an additional international search fee shall be paid for each further invention for which an international search is to be carried out.

(2) In the case of Article 34, paragraph 3(a) PCT, an additional fee for international preliminary examination shall be paid for each further invention for which the international preliminary examination is to be carried out.

(3) Where an additional fee has been paid under protest, the European Patent Office shall examine the protest in accordance with Rule 40.2(c) to (e) or Rule 68.3(c) to (e) PCT, subject to payment of the prescribed protest fee. Further details concerning the procedure shall be determined by the President of the European Patent Office.

Rule 159

The European Patent Office as a designated
or elected Office – Requirements for entry
into the European phase

(1) In respect of an international application under Article 153, the applicant shall perform the following acts within thirty-one months from the date of filing of the application or, if priority has been claimed, from the priority date:

- (a) supply, where applicable, the translation of the international application required under Article 153, paragraph 4;
- (b) specify the application documents, as originally filed or as amended, on which the European grant procedure is to be based;
- (c) pay the filing fee provided for in Article 78, paragraph 2;
- (d) pay the designation fees if the period under Rule 39 has expired earlier;
- (e) pay the search fee, where a supplementary European search report has to be drawn up;
- (f) file the request for examination provided for in Article 94, if the period under Rule 70, paragraph 1, has expired earlier;
- (g) pay the renewal fee in respect of the third year

provided for in Article 86, paragraph 1, if the fee has fallen due earlier under Rule 51, paragraph 1;

(h) file, where applicable, the certificate of exhibition referred to in Article 55, paragraph 2, and Rule 25.

(2) The Examining Division shall be competent to take decisions of the European Patent Office under Article 25, paragraph 2(a) PCT.

Rule 160

Consequences of non-fulfilment
of certain requirements

(1) If either the translation of the international application or the request for examination is not filed in due time, or if the filing fee or the search fee is not paid in due time, or if no designation fee is paid in due time, the European patent application shall be deemed to be withdrawn.

(2) The designation of any Contracting State in respect of which the designation fee has not been paid in due time shall be deemed to be withdrawn.

(3) If the European Patent Office notes that the application or the designation of a Contracting State is deemed to be withdrawn under paragraph 1 or 2, it shall communicate this to the applicant. Rule 112, paragraph 2, shall apply *mutatis mutandis*.

Rule 161

Amendment of the application

Without prejudice to Rule 137, paragraphs 2 to 4, the application may be amended once, within one month from a communication informing the applicant accordingly. The application as amended shall serve as the basis for any supplementary search which has to be performed under Article 153, paragraph 7.

Rule 162

Claims incurring fees

(1) If the application documents on which the European grant procedure is to be based comprise more than fifteen claims, claims fees shall be paid for the sixteenth and each subsequent claim as laid down in the Rules relating to Fees within the period under Rule 159, paragraph 1.

(2) If the claims fees are not paid in due time, they may still be paid within one month from a communication concerning the failure to observe the time limit. If within this period amended claims are filed, the claims fees due shall be computed on the basis of such amended claims.

(3) Any claims fees paid within the period under paragraph 1 and in excess of those due under paragraph 2, second sentence, shall be refunded.

(4) Where a claims fee is not paid in due time, the claim concerned shall be deemed to be abandoned.

Rule 163

Examination of certain formal requirements by the European Patent Office

(1) Where the designation of the inventor under Rule 19, paragraph 1, has not yet been made within the period under Rule 159, paragraph 1, the European Patent Office shall invite the applicant to make the designation within two months.

(2) Where the priority of an earlier application is claimed and the file number of the previous application or the copy thereof provided for in Rule 52, paragraph 1, and Rule 53 have not yet been submitted within the period under Rule 159, paragraph 1, the European Patent Office shall invite the applicant to furnish that number or copy within two months. Rule 53, paragraphs 2 and 3, shall apply.

(3) Where, at the expiry of the period under Rule 159, paragraph 1, a sequence listing complying with the standard provided for in the Administrative Instructions under the PCT is not available to the European Patent Office, the applicant shall be invited to file a sequence listing complying with the rules laid down by the President of the European Patent Office within two months. Rule 30, paragraphs 2 and 3, shall apply *mutatis mutandis*.

(4) Where, at the expiry of the period under Rule 159, paragraph 1, the address, the nationality or the State in which his residence or principal place of business is located is missing in respect of any applicant, the European Patent Office shall invite the applicant to furnish these indications within two months.

(5) Where, at the expiry of the period under Rule 159, paragraph 1, the requirements of Article 133, paragraph 2, have not been satisfied, the European Patent Office shall invite the applicant to appoint a professional representative within two months.

(6) If the deficiencies noted under paragraphs 1, 4 or

5 are not corrected in due time, the European patent application shall be refused. If the deficiency noted under paragraph 2 is not corrected in due time, the right of priority shall be lost for the application.

Rule 164

Consideration of unity by the European Patent Office

(1) Where the European Patent Office considers that the application documents which are to serve as the basis for the supplementary search do not meet the requirements of unity of invention, a supplementary search report shall be drawn up on those parts of the application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims.

(2) Where the examining division finds that the application documents on which the European grant procedure is to be based do not meet the requirements of unity of invention, or protection is sought for an invention not covered by the international search report or, as the case may be, by the supplementary search report, it shall invite the applicant to limit the application to one invention covered by the international search report or the supplementary search report.

Rule 165

The Euro-PCT application as conflicting application under Article 54, paragraph 3

A Euro-PCT application shall be considered as comprised in the state of the art under Article 54, paragraph 3, if in addition to the conditions laid down in Article 153, paragraph 3 or 4, the filing fee under Rule 159, paragraph 1(c) has been paid.

Done at Munich, 6 March 2008

**EPC - PROTOCOL ON THE CENTRALISATION OF THE EUROPEAN
PATENT SYSTEM AND ON ITS INTRODUCTION
(PROTOCOL ON CENTRALISATION)**

of 5 October 1973

Section I

- (1a) 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 branch located at The Hague. In addition, the Administrative Council of the European Patent Organisation may allocate further duties in the field of searching to that branch.
- (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, 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.

- (3a) A sub-office of the European Patent Office for searching European patent applications shall be set up in Berlin (West) 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 with regard to searching.
- (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.

Section II

Subject to the provisions of Sections III and IV, 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 Preliminary Examining Authorities under the Patent Cooperation Treaty. This obligation shall apply only to the extent to which the European Patent Office may examine European patent applications in accordance with Article 162, paragraph 2, of the Convention and shall not apply until two years after the date on which the European Patent Office has begun examining activities in the areas of technology concerned, on the basis of a five-year plan which shall progressively extend the activities of the European Patent Office to all areas of technology and which may be amended only by decision of the Administrative Council. The procedures for implementing this

obligation shall be determined by decision of the Administrative Council.

Section III

(1) The central industrial property office of any State party to the Convention in which the official language is not one of the official languages of the European Patent Office, shall be authorised to act as an International Searching Authority and as an International Preliminary Examining Authority under the Patent Cooperation Treaty. Such authorisation shall be subject to an undertaking by the State concerned to restrict such activities to international applications filed by nationals or residents of such State and by nationals or residents of States parties to the Convention which are adjacent to that State. The Administrative Council may decide to authorise the central industrial property office of any State party to the Convention to extend such activities to cover such international applications as may be filed by nationals or residents of any non-Contracting State having the same official language as the Contracting State in question and drawn up in that language.

(2) For the purpose of harmonising search activities under the Patent Cooperation Treaty within the framework of the European system for the grant of patents, co-operation shall be established between the European Patent Office and any central industrial property office authorised under this Section. Such co-operation shall be based on a special agreement which may cover e.g. search procedures and methods, qualifications required for the recruitment and training of examiners, guidelines for the exchange of search and other services between the offices as well as other measures needed to establish the required control and supervision.

Section IV

(1a) For the purpose of facilitating the adaptation of the national patent offices of the States parties to the Convention to the European patent system, the Administrative Council may, if it considers it desirable, and subject to the conditions set out below, entrust the central industrial property offices of such of those States in which it is possible to conduct the proceedings in one of the official languages of the European Patent Office with tasks concerning the examination of European patent applications drawn up in that language which, pursuant to Article 18, paragraph 2, of the Convention, shall, as a general rule, be entrusted to a member of the Examining Division. Such tasks shall be carried out within the framework of the proceedings for grant laid down in the Convention; decisions on such applications shall be taken by the Examining Division composed in accordance with Article 18, paragraph 2.

(b) Tasks entrusted under sub-paragraph (a) shall not be in respect of more than 40 % of the total number of European patent applications filed; tasks

entrusted to any one State shall not be in respect of more than one-third of the total number of European patent applications filed. These tasks shall be entrusted for a period of 15 years from the opening of the European Patent Office and shall be reduced progressively (in principle by 20 % a year) to zero during the last 5 years of the period.

(c) The Administrative Council shall decide, while taking into account the provisions of sub-paragraph (b), upon the nature, origin and number of the European patent applications in respect of which examining tasks may be entrusted to the central industrial property office of each of the Contracting States mentioned above.

(d) The above implementing procedures shall be set out in a special agreement between the central industrial property office of the Contracting State concerned and the European Patent Organisation.

(e) An office with which such a special agreement has been concluded may act as an International Preliminary Examining Authority under the Patent Cooperation Treaty, until the expiry of the period of 15 years.

(2a) If the Administrative Council considers that it is compatible with the proper functioning of the European Patent Office, and in order to alleviate the difficulties which may arise for certain Contracting States from the application of, paragraph 2, it may entrust searching in respect of European patent applications to the central industrial property offices of those States in which the official language is one of the official languages of the European Patent Office, provided that these offices possess the necessary qualifications for appointment as an International Searching Authority in accordance with the conditions laid down in the Patent Cooperation Treaty.

(b) In carrying out such work, undertaken under the responsibility of the European Patent Office, the central industrial property offices concerned shall adhere to the guidelines applicable to the drawing up of the European search report.

(c) The provisions of paragraph 1(b), second sentence, and sub-paragraph (d) of this Section shall apply to this paragraph.

Section V

(1) The sub-office referred to in, paragraph 1(c), shall be authorised to carry out searches, among the documentation which is at its disposal and which is in the official language of the State in which the sub-office is located, in respect of European patent applications filed by nationals and residents of that State. This authorisation shall be on the understanding that the procedure for the grant of European patents will not be delayed and that additional costs will not be incurred for the European Patent Organisation.

(2) The sub-office referred to in paragraph 1 shall be authorised to carry out, at the option of an applicant for a European patent and at his expense, a search on

his patent application among the documentation referred to in paragraph 1. This authorisation shall be effective until the search provided for in Article 92 of the Convention has been extended, in accordance with, to cover such documentation and shall be on the understanding that the procedure for the grant of European patents will not be delayed.

(3) The Administrative Council may also extend the authorisations provided for in paragraphs 1 and 2, under the conditions of those paragraphs, to the central industrial property office of a Contracting State which does not have as an official language one of the official languages of the European Patent Office.

Section VI

The search provided for in Article 92 of the Convention shall, in principle, be extended, in respect of all European patent applications, to published patents, published patent applications and other relevant documents of

Contracting States not included in the search documentation of the European Patent Office on the date referred to in Article 162, paragraph 1, of the Convention. The extent, conditions and timing of any such extension shall be determined by the Administrative Council on the basis of a study concerning particularly the technical and financial aspects.

Section VII

The provisions of this Protocol shall prevail over any contradictory provisions of the Convention.

Section VIII

The decisions of the Administrative Council provided for in this Protocol shall require a three-quarters majority (Article 35, paragraph 2, of the Convention). The provisions governing the weighting of votes (Article 36 of the Convention) shall apply.

**EPC - PROTOCOL ON JURISDICTION AND THE RECOGNITION OF DECISIONS
IN RESPECT OF THE RIGHT TO THE GRANT OF A EUROPEAN PATENT
(PROTOCOL ON RECOGNITION)**

of 5 October 1973

Section I

Article 5

Jurisdiction

Article 1

(1) The courts of the Contracting States shall, in accordance with Articles 2 to 6, have jurisdiction to decide claims, against the applicant, to the right to the grant of a European patent in respect of one or more of the Contracting States designated in the European patent application.

(1) If the parties to a dispute concerning the right to the grant of a European patent have concluded an agreement, either in writing or verbally with written confirmation, to the effect that a court or the courts of a particular Contracting State shall decide on such a dispute, the court or courts of that State shall have exclusive jurisdiction.

(2) For the purposes of this Protocol, the term "courts" shall include authorities which, under the national law of a Contracting State, have jurisdiction to decide the claims referred to in paragraph 1. Any Contracting State shall notify the European Patent Office of the identity of any authority on which such a jurisdiction is conferred, and the European Patent Office shall inform the other Contracting States accordingly.

(2) However, if the parties are an employee and his employer, paragraph 1 shall only apply in so far as the national law governing the contract of employment allows the agreement in question.

(3) For the purposes of this Protocol, the term "Contracting State" refers to a Contracting State which has not excluded application of this Protocol pursuant to Article 167 of the Convention.

Article 6

In cases where neither Articles 2 to 4 nor Article 5, paragraph 1, apply, the courts of the Federal Republic of Germany shall have exclusive jurisdiction.

Article 7

The courts of Contracting States before which claims referred to in Article 1 are brought shall of their own motion decide whether or not they have jurisdiction pursuant to Articles 2 to 6.

Article 2

Subject to Articles 4 and 5, if an applicant for a European patent has his residence or principal place of business within one of the Contracting States, proceedings shall be brought against him in the courts of that Contracting State.

Article 8

(1) In the event of proceedings based on the same claim and between the same parties being brought before courts of different Contracting States, the court to which a later application is made shall of its own motion decline jurisdiction in favour of the court to which an earlier application was made.

Article 3

Subject to Articles 4 and 5, if an applicant for a European patent has his residence or principal place of business outside the Contracting States, and if the party claiming the right to the grant of the European patent has his residence or principal place of business within one of the Contracting States, the courts of the latter State shall have exclusive jurisdiction.

(2) In the event of the jurisdiction of the court to which an earlier application is made being challenged, the court to which a later application is made shall stay the proceedings until the other court takes a final decision.

Section II

Recognition

Article 4

Subject to Article 5, if the subject-matter of a European patent application is the invention of an employee, the courts of the Contracting State, if any, whose law determines the right to the European patent pursuant to Article 60, paragraph 1, second sentence, of the Convention, shall have exclusive jurisdiction over proceedings between the employee and the employer.

Article 9

(1) Subject to the provisions of Article 11, paragraph 2, final decisions given in any Contracting State on the right to the grant of a European patent in respect of one or more of the Contracting States designated in the European patent application shall be recognised without requiring a special procedure in the other Contracting States.

(2) The jurisdiction of the court whose decision is to

be recognised and the validity of such decision may not be reviewed.

Article 10

Article 9, paragraph 1, shall not be applicable where:

(a) an applicant for a European patent who has not contested a claim proves that the document initiating the proceedings was not notified to him regularly and sufficiently early for him to defend himself; or

(b) an applicant proves that the decision is incompatible with another decision given in a

Contracting State in proceedings between the same parties which were started before those in which the decision to be recognised was given.

Article 11

(1) In relations between any Contracting States the provisions of this Protocol shall prevail over any conflicting provisions of other agreements on jurisdiction or the recognition of judgments.

(2) This Protocol shall not affect the implementation of any agreement between a Contracting State and a State which is not bound by the Protocol.

**EPC - PROTOCOL ON PRIVILEGES AND IMMUNITIES
OF THE EUROPEAN PATENT ORGANISATION
(PROTOCOL ON PRIVILEGES AND IMMUNITIES)**

of 5 October 1973

Article 1

(1) The premises of the Organisation shall be inviolable.

(2) The authorities of the States in which the Organisation has its premises shall not enter those premises, except with the consent of the President of the European Patent Office. Such consent shall be assumed in case of fire or other disaster requiring prompt protective action.

(3) Service of process at the premises of the Organisation and of any other procedural instruments relating to a cause of action against the Organisation shall not constitute breach of inviolability.

Article 2

The archives of the Organisation and any documents belonging to or held by it shall be inviolable.

Article 3

(1) Within the scope of its official activities the Organisation shall have immunity from jurisdiction and execution, except

(a) to the extent that the Organisation shall have expressly waived such immunity in a particular case;

(b) in the case of a civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organisation, or in respect of a motor traffic offence involving such a vehicle;

(c) in respect of the enforcement of an arbitration award made under Article 23.

(2) The property and assets of the Organisation, wherever situated, shall be immune from any form of requisition, confiscation, expropriation and sequestration.

(3) The property and assets of the Organisation shall also be immune from any form of administrative or provisional judicial constraint, except in so far as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to or operated on behalf of the Organisation.

(4) The official activities of the Organisation shall, for the purposes of this Protocol, be such as are strictly necessary for its administrative and technical operation, as set out in the Convention.

Article 4

(1) Within the scope of its official activities the

Organisation and its property and income shall be exempt from all direct taxes.

(2) Where substantial purchases for the exercise of its official activities, and in the price of which taxes or duties are included, are made by the Organisation, appropriate measures shall, whenever possible, be taken by the Contracting States to remit or reimburse to the Organisation the amount of such taxes or duties.

(3) No exemption shall be accorded in respect of duties and taxes which are no more than charges for public utility services.

Article 5

Goods imported or exported by the Organisation for the exercise of its official activities shall be exempt from duties and charges on import or export other than fees or taxes representing services rendered, and from all prohibitions and restrictions on import or export.

Article 6

No exemption shall be granted under Articles 4 and 5 in respect of goods purchased or imported for the personal benefit of the employees of the European Patent Office.

Article 7

(1) Goods belonging to the Organisation which have been acquired or imported under Article 4 or Article 5 shall not be sold or given away except in accordance with conditions laid down by the Contracting States which have granted the exemptions.

(2) The transfer of goods and provision of services between the various buildings of the Organisation shall be exempt from charges or restrictions of any kind; where appropriate, the Contracting States shall take all the necessary measures to remit or reimburse the amount of such charges or to lift such restrictions.

Article 8

The transmission of publications and other information material by or to the Organisation shall not be restricted in any way.

Article 9

The Contracting States shall accord the Organisation the currency exemptions which are necessary for the exercise of its official activities.

Article 10

(1) With regard to its official communications and the transfer of all its documents, the Organisation shall in each Contracting State enjoy the most favourable treatment accorded by that State to any other international organisation.

(2) No censorship shall be applied to official communications of the Organisation by whatever means of communication.

Article 11

The Contracting States shall take all appropriate measures to facilitate the entry, stay and departure of the employees of the European Patent Office.

Article 12

(1) Representatives of Contracting States, alternate Representatives and their advisers or experts, if any, shall enjoy, while attending meetings of the Administrative Council and of any body established by it, and in the course of their journeys to and from the place of meeting, the following privileges and immunities:

- (a) immunity from arrest or detention and from seizure of their personal luggage, except when found committing, attempting to commit, or just having committed an offence;
- (b) immunity from jurisdiction, even after the termination of their mission, in respect of acts, including words written and spoken, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by one of the persons referred to above, nor in the case of damage caused by a motor vehicle belonging to or driven by such a person;
- (c) inviolability for all their official papers and documents;
- (d) the right to use codes and to receive documents or correspondence by special courier or sealed bag;
- (e) exemption for themselves and their spouses from all measures restricting entry and from aliens' registration formalities;
- (f) the same facilities in the matter of currency and exchange control as are accorded to the representatives of foreign Governments on temporary official missions.

(2) Privileges and immunities are accorded to the persons referred to in paragraph 1, not for their personal advantage but in order to ensure complete independence in the exercise of their functions in connection with the Organisation. Consequently, a Contracting State has the duty to waive the immunity in all cases where, in the opinion of that State, such immunity would impede the course of justice and where it can be waived without prejudicing the purposes for which it was accorded.

Article 13

(1) Subject to the provisions of Article 6, the President of the European Patent Office shall enjoy the privileges and immunities accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations of 18 April 1961.

(2) However, immunity from jurisdiction shall not apply in the case of a motor traffic offence committed by the President of the European Patent Office or damage caused by a motor vehicle belonging to or driven by him.

Article 14

The employees of the European Patent Office:

- (a) shall, even after their service has terminated, have immunity from jurisdiction in respect of acts, including words written and spoken, done in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by an employee of the European Patent Office, nor in the case of damage caused by a motor vehicle belonging to or driven by an employee;
- (b) shall be exempt from all obligations in respect of military service;
- (c) shall enjoy inviolability for all their official papers and documents;
- (d) shall enjoy the same facilities as regards exemption from all measures restricting immigration and governing aliens' registration as are normally accorded to staff members of international organisations, as shall members of their families forming part of their household;
- (e) shall enjoy the same privileges in respect of exchange regulations as are normally accorded to the staff members of international organisations;
- (f) shall enjoy the same facilities as to repatriation as diplomatic agents in time of international crises, as shall the members of their families forming part of their household;
- (g) shall have the right to import duty-free their furniture and personal effects at the time of first taking up their post in the State concerned and the right on the termination of their functions in that State to export free of duty their furniture and personal effects, subject to the conditions considered necessary by the Government of the State in whose territory the right is exercised and with the exception of property acquired in that State which is subject to an export prohibition therein.

Article 15

Experts performing functions on behalf of, or carrying out missions for, the

Organisation shall enjoy the following privileges and immunities, to the extent that they are necessary for the carrying out of their functions, including during journeys made in carrying out their functions and in the course of such missions:

- (a) immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken, except in the case of a motor traffic offence committed by an expert or in the case of damage caused by a motor vehicle belonging to or driven by him; experts shall continue to enjoy this immunity after they have ceased to be employed by the Organisation;
- (b) inviolability for all their official papers and documents;
- (c) the exchange facilities necessary for the transfer of their remuneration.

Article 16

(1) The persons referred to in Articles 13 and 14 shall be subject to a tax for the benefit of the Organisation on salaries and emoluments paid by the Organisation, subject to the conditions and rules laid down by the Administrative Council within a period of one year from the date of the entry into force of the Convention. From the date on which this tax is applied, such salaries and emoluments shall be exempt from national income tax. The Contracting States may, however, take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources.

(2) Paragraph 1 shall not apply to pensions and annuities paid by the Organisation to the former employees of the European Patent Office.

Article 17

The Administrative Council shall decide the categories of employees to whom the provisions of Article 14, in whole or in part, and Article 16 shall apply and the categories of experts to whom the provisions of Article 15 shall apply. The names, titles and addresses of the employees and experts included in such categories shall be communicated from time to time to the Contracting States.

Article 18

In the event of the Organisation establishing its own social security scheme, the Organisation and the employees of the European Patent Office shall be exempt from all compulsory contributions to national social security schemes, subject to the agreements made with the Contracting States in accordance with the provisions of Article 25.

Article 19

(1) The privileges and immunities provided for in this Protocol are not designed to give to employees of the European Patent Office or experts performing functions for or on behalf of the Organisation personal advantage. They are provided solely to ensure, in all circumstances, the unimpeded functioning of the Organisation and the complete independence of the persons to whom they are accorded.

(2) The President of the European Patent Office has the duty to waive immunity where he considers that such immunity prevents the normal course of justice and that it is possible to dispense with such immunity without prejudicing the interests of the Organisation. The Administrative Council may waive immunity of the President for the same reasons.

Article 20

(1) The Organisation shall co-operate at all times with the competent authorities of the Contracting States in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning public health, labour inspection or other similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Protocol.

(2) The procedure of co-operation mentioned in paragraph 1 may be laid down in the complementary agreements referred to in Article 25.

Article 21

Each Contracting State retains the right to take all precautions necessary in the interests of its security.

Article 22

No Contracting State is obliged to extend the privileges and immunities referred to in Article 12, Article 13, Article 14, sub-paragraphs (b), (e) and (g) and Article 15, sub-paragraph (c) to:

- (a) its own nationals;
- (b) any person who at the time of taking up his functions with the Organisation has his permanent residence in that State and is not an employee of any other inter-governmental organisation whose staff is incorporated into the Organisation.

Article 23

(1) Any Contracting State may submit to an international arbitration tribunal any dispute concerning the Organisation or an employee of the European Patent Office or an expert performing functions for or on its behalf, in so far as the Organisation or the employees and experts have claimed a privilege or an immunity under this Protocol in circumstances where that immunity has not been waived.

(2) If a Contracting State intends to submit a dispute to arbitration, it shall notify the Chairman of the Administrative Council, who shall forthwith inform each Contracting State of such notification.

(3) The procedure laid down in paragraph 1 of this Article shall not apply to disputes between the Organisation and the employees or experts in respect of the Service Regulations or conditions of employment or, with regard to the employees, the Pension Scheme Regulations.

(4) No appeal shall lie against the award of the arbitration tribunal, which shall be final; it shall be binding on the parties. In case of dispute concerning the import or scope of the award, it shall be incumbent upon the arbitration tribunal to interpret it on request by either party.

Article 24

(1) The arbitration tribunal referred to in Article 23 shall consist of three members, one

arbitrator nominated by the State or States party to the arbitration, one arbitrator nominated by the Administrative Council and a third arbitrator, who shall be the chairman, nominated by the said two arbitrators.

(2) The arbitrators shall be nominated from a panel comprising no more than six arbitrators appointed by each Contracting State and six arbitrators appointed by the Administrative Council. This panel shall be established as soon as possible after the Protocol enters into force and shall be revised each time this proves necessary.

(3) If, within three months from the date of the notification referred to in Article 23, paragraph 2, either party fails to make the nomination referred to in paragraph 1 above, the choice of the arbitrator shall, on request of the other party, be made by the President of the International Court of Justice from the persons included in the said panel. This shall also apply, when so requested by either party, if within one month from the date of appointment of the second arbitrator, the first two arbitrators are unable to agree on the

nomination of the third arbitrator. However, if, in these two cases, the President of the International Court of Justice is prevented from making the choice, or if he is a national of one of the States parties to the dispute, the Vice-President of the International Court of Justice shall make the aforementioned appointments, provided that he himself is not a national of one of the States parties to the dispute; if such is the case, the member of the International Court of Justice who is not a national of one of the States parties to the dispute and who has been chosen by the President or Vice-President shall make the appointments. A national of the State applying for arbitration may not be chosen to fill the post of the arbitrator whose appointment devolves on the Administrative Council nor may a person included in the panel and appointed by the Administrative Council be chosen to fill the post of an arbitrator whose appointment devolves on the State which is the claimant. Nor may a person of either of these categories be chosen as chairman of the Tribunal.

(4) The arbitration tribunal shall draw up its own rules of procedure.

Article 25

The Organisation may, on a decision of the Administrative Council, conclude with one or more Contracting States complementary agreements to give effect to the provisions of this Protocol as regards such State or States, and other arrangements to ensure the efficient functioning of the Organisation and the safeguarding of its interests.

RULES RELATING TO FEES OF THE EUROPEAN PATENT CONVENTION

of 20 October 1977
as adopted by decision of the Administrative Council
of the European Patent Organisation
of 14 December 2007

Article 1

General

The following shall be levied in accordance with the provisions contained in these Rules:

- (a) fees due to be paid to the European Patent Office (hereinafter referred to as the Office) as provided for in the Convention and in the Implementing Regulations and the fees and expenses which the President of the Office lays down pursuant to Article 3, paragraph 1;
- (b) fees and expenses pursuant to the Patent Cooperation Treaty (hereinafter referred to as the PCT), the amounts of which may be fixed by the Office.

- an international search (Rule 16.1 PCT and Rule 158, paragraph 1) 1 700

3. Designation fee for each Contracting State designated (Article 79, paragraph 2), designation fees being deemed paid for all Contracting States upon payment of seven times the amount of this fee 85

3a. Joint designation fee for the Swiss Confederation and the Principality of Liechtenstein 85

Article 2

Fees provided for in the Convention and in the Implementing Regulations

The fees due to be paid to the Office under Article 1 shall be as follows:

| | EUR | | |
|--|-------|---|--------------------------------|
| 1. Filing fee (Article 78, paragraph 2) where | | - for the 3rd year | 400 |
| - the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is filed online | 100 | - for the 4th year | 500 |
| - the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is not filed online | 180 | - for the 5th year | 700 |
| | | - for the 6th year | 900 |
| | | - for the 7th year | 1 000 |
| | | - for the 8th year | 1 100 |
| | | - for the 9th year | 1 200 |
| | | - for the 10th and each subsequent year | 1 350 |
| 2. Search fee in respect of | | 5. Additional fee for belated payment of a renewal fee for the European patent application (Rule 51, paragraph 2) | 50% of the belated renewal fee |
| - a European or supplementary European search on an application filed on or after 1 July 2005 (Article 78, paragraph 2, Rule 62, Rule 64, paragraph 1, Article 153, paragraph 7) | 1 050 | | |
| - a European or supplementary European search on an application filed before 1 July 2005 (Article 78, paragraph 2, Rule 64, paragraph 1, Article 153, paragraph 7) | 760 | 6. Examination fee (Article 94, paragraph 1) in respect of | |
| | | - an application filed before 1 July 2005 | 1 565 |

| | | | |
|--|---|---|-------------------------|
| - an application filed on or after 1 July 2005 | 1 405 | - in the event of late payment of a fee | 50% of the relevant fee |
| - an international application filed on or after 1 July 2005 for which no supplementary European search report is drawn up (Article 153, paragraph 7) | 1 565 | - in the event of late paragraph 3 | 210 |
| | | - other cases | 210 |
| 7. Fee for grant, including fee for printing the European patent specification (Rule 71, paragraph 3), where the application documents to be printed comprise: | | 13. Fee for re-establishment of rights / fee for requesting restoration/ fee for reinstatement of rights (Rule 136, paragraph 1, Rule 26bis.3(d) PCT, Rule 49ter.2(d) PCT, Rule 49.6(d)(i) PCT) | 550 |
| 7.1 not more than 35 pages | 790 | 14. Conversion fee (Article 135, paragraph 3, and Article 140) | 60 |
| 7.2 more than 35 pages | 790 | 14a. Fee for late furnishing of a sequence listing (Rule 30, paragraph 3) | 200 |
| | plus EUR 12 for the 36 th and each subsequent page | 15. Claims fee for the 16th and each subsequent claim (Rule 45, paragraph 1, Rule 71, paragraph 6, and Rule 162, paragraph 1) | 200 |
| 8. Fee for printing a new specification of the European patent (Rule 82, paragraph 2, Rule 95, paragraph 3) | | 16. Fee for the awarding of costs (Rule 88, paragraph 3) | 60 |
| - flat-rate fee | 60 | 17. Fee for the conservation of evidence (Rule 123, paragraph 3) | 60 |
| 9. Surcharge for late performance of the acts required to maintain the European patent in amended form (Rule 82, paragraph 3, Rule 95, paragraph 3) | | 18. Transmittal fee for an international application (Rule 157, paragraph 4) | 110 |
| - flat-rate fee | 100 | 19. Fee for the preliminary examination of an international application (Rule 58 PCT and Rule 158, paragraph 2) | 1 675 |
| 10. Opposition fee (Article 99, paragraph 1, and Article 105, paragraph 2) | 670 | 20. Fee for a technical opinion (Article 25) | 3 345 |
| 10a. Limitation or revocation fee (Article 105a, paragraph 1) | | 21. Protest fee (Rules 40.2(e) and 68.3(e) PCT) | |
| - request for limitation | 1 000 | - for international applications still pending on 13 December 2007 | 1 120 |
| - request for revocation | 450 | - for international applications filed on or after 13 December 2007 (Rule 158, paragraph 3) | 750 |
| 11. Fee for appeal (Article 108) | 1 120 | | |
| 11a. Fee for petition for review (Article 112a, paragraph 4) | 2 500 | | |
| 12. Fee for further processing (Rule 135, paragraph 1) | 210 | | |

Article 3

Fees, expenses and prices laid down by the President of the Office

(1) The President of the Office shall lay down the amount of the administrative fees provided for in the Implementing Regulations and, where appropriate, the

amount of the fees and expenses for any services rendered by the Office other than those specified in Article 2.

(2) He shall also lay down the prices of the publications referred to in Articles 93, 98, 103 and 129 of the Convention.

(3) The amounts of the fees provided for in Article 2 and of the fees and expenses laid down in accordance with paragraph 1 shall be published in the Official Journal and on the website of the European Patent Office.

Article 4

Due date for fees

(1) Fees in respect of which the due date is not specified in the provisions of the Convention or of the PCT or of the Implementing Regulations thereto shall be due on the date of receipt of the request for the service incurring the fee concerned.

(2) The President of the Office may decide not to make services within the meaning of paragraph 1 dependent upon the advance payment of the corresponding fee.

Article 5

Payment of fees

(1) The fees due to the Office shall be paid in euro:

- (a) by payment or transfer to a bank account held by the Office;
- (b) by payment or transfer to a Giro account held by the Office; or
- (c) by delivery or remittance of cheques made payable to the Office.

(2) The President of the Office may allow other methods of paying fees than those set out in paragraph 1.

Article 6

Particulars concerning payments

(1) Every payment must indicate the name of the person making the payment and must contain the necessary particulars to enable the Office to establish immediately the purpose of the payment.

(2) If the purpose of the payment cannot immediately be established, the Office shall require the person making the payment to notify it in writing of this purpose within such period as it may specify. If he does not comply with this request in due time the payment shall be considered not to have been made.

Article 7

Date to be considered as the date on which payment is made

(1) The date on which any payment shall be considered to have been made to the Office shall be as follows:

- (a) in the cases referred to in Article 5, paragraph 1(a)

and (b): the date on which the amount of the payment or of the transfer is actually entered in a bank account or a Giro account held by the Office;

- (b) in the case referred to in Article 5, paragraph 1(c): the date of receipt of the cheque at the Office, provided that the cheque is met.

(2) Where the President of the Office allows, in accordance with the provisions of Article 5, paragraph 2, other methods of paying fees than those set out in Article 5, paragraph 1, he shall also lay down the date on which such payments shall be considered to have been made.

(3) Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it should have been made, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment

- (a) fulfilled one of the following conditions in a Contracting State within the period within which the payment should have been made:
 - (i) he effected the payment through a banking establishment or a post office;
 - (ii) he duly gave an order to a banking establishment or a post office to transfer the amount of the payment;
 - (iii) he despatched at a post office a letter bearing the address of the Office and containing a cheque within the meaning of Article 5, paragraph 1(c), provided that the cheque is met; and
- (b) paid a surcharge of 10 % on the relevant fee or fees, but not exceeding EUR 150; no surcharge is payable if a condition according to sub-paragraph (a) has been fulfilled not later than ten days before the expiry of the period for payment.

(4) The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3(a) was fulfilled and, where required, pay the surcharge referred to in paragraph 3(b), within a period to be specified by it. If he fails to comply with this request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.

Article 8

Insufficiency of the amount paid

(1) A time limit for payment shall in principle be deemed to have been observed only if the full amount of the fee has been paid in due time. If the fee is not paid in full, the amount which has been paid shall be refunded after the period for payment has expired. The Office may, however, in so far as this is possible within the time remaining before the end of the period, give the person making the payment the opportunity to pay the amount lacking. It may also, where this is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment.

- (2) Where the amount paid in designation fees is

insufficient to cover the designation fees payable for all the Contracting States, the amount paid shall be applied according to the specifications to be made by the applicant by the time of payment at the latest. If the applicant makes no such specifications, the fees shall be deemed to be paid only for as many designations as are covered by the amount paid and in the order in which the Contracting States are listed in the request for grant.

Article 9

Refund of search fees

(1) The search fee paid for a European or supplementary European search shall be fully refunded if the European patent application is withdrawn or refused or deemed to be withdrawn at a time when the Office has not yet begun to draw up the search report.

(2) Where the European search report is based on an earlier search report prepared by the Office on an application whose priority is claimed or an earlier application within the meaning of Article 76 of the Convention or of Rule 17 of the Convention, the Office shall refund to the applicant, in accordance with a decision of its President, an amount which shall depend on the type of earlier search and the extent to which the Office benefits from the earlier search report when carrying out the subsequent search.

Article 10

Refund of the fee for a technical opinion

An amount of 75 % of the fee for a technical opinion under Article 25 of the Convention shall be refunded if the request for a technical opinion is withdrawn at a time when the Office has not yet begun to draw up the technical opinion.

Article 11

Refund of examination fee

The examination fee provided for in Article 94, paragraph 1, of the Convention shall be refunded:
(a) in full if the European patent application is

withdrawn, refused or deemed to be withdrawn before the Examining Divisions have assumed responsibility;

(b) at a rate of 75 % if the European patent application is withdrawn, refused or deemed to be withdrawn after the Examining Divisions have assumed responsibility but before substantive examination has begun.

Article 12

Refund of insignificant amounts

Where too large a sum is paid to cover a fee, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund. The President of the Office shall determine what constitutes an insignificant amount.

Article 13

Decisions fixing costs which are subject to appeal

In accordance with Rule 97, paragraph 2, of the Convention, decisions fixing the amount of costs of opposition proceedings may be appealed if the amount is in excess of the fee for appeal.

Article 14

Reduction of fees

(1) The reduction laid down in Rule 6, paragraph 3, of the Convention shall be 20 % of the filing fee, examination fee, opposition fee, appeal fee, fee for the petition for review or the limitation or revocation fee.

(2) Where the European Patent Office has drawn up an international preliminary examination report, the examination fee shall be reduced by 50 %. If the report was established on certain parts of the international application in accordance with Article 34, paragraph 3(c), PCT, the fee shall not be reduced if subject-matter not covered by the report is to be examined.

Done at Munich, of 14 December 2007

ACT
REVISING THE CONVENTION ON THE
GRANT OF EUROPEAN PATENTS

(Munich, 29 November 2000)

**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. The following new Article 4a shall be inserted after Article 4:

Article 4a

Conference of ministers of the Contracting States

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 the Administrative Council.

(2) The Vice-Presidents shall be appointed by the Administrative Council after the President of the European Patent Office 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 the Administrative Council on a proposal from the President of the European Patent Office. They may be re-appointed by 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.

(7) There shall be published in the three official languages of the European Patent Office:

- (a) the European Patent Bulletin;
- (b) the Official Journal of the European Patent Office.

(8) Entries in the European Patent Register shall be made in the three official languages of the European Patent Office. In cases of doubt, the entry in the language of the proceedings shall be authentic.

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 the examination as to formal requirements of European patent applications.

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 European patent application

(2) An Examining Division shall consist of three technical examiners. However, the examination of a European patent application prior to a decision on it 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 Article 112;

(c) deciding on petitions for review of decisions of the Boards of Appeal under 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 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 relating to patents 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.

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

- concerning an international treaty, before the entry into force of that treaty;
- concerning European Community legislation,

before its entry into force or, where that legislation provides for a period for its implementation, before the expiry of that period.

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 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.

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 the 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, and programs for computers;
- (d) presentations of information.

(3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein 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 shall 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 on or after that date, shall be considered as comprised in the state of the art.

(4) 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 such method is not comprised in the state of the art.

(5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in any method referred to in Article 53(c), provided that such use is not comprised in the state of the art.

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

Article 60

Right to a European patent

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee, the right to a European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has his place of business to which the employee is attached.

(2) If two or more persons have made an invention independently of each other, the right to a European patent therefor shall belong to the person whose European patent application has the earliest date of filing, provided this first application has been published.

(3) For the purposes of proceedings before the European Patent Office, the applicant shall be deemed to be entitled to exercise the right to a European patent.

21. 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 European patent 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 European patent application be refused.

(2) Article 76, paragraph 1, shall apply mutatis mutandis to a new European patent application filed under paragraph 1(b).

22. 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.

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

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 such protection as is conferred by Article 64, in the Contracting States designated in the application.

(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, every 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 the said State in circumstances where that person would be liable under national law for infringement of a national patent.

(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:

- (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.

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 above 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.

24. 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, 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.

25. 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.

26. Article 70 shall be amended to read as follows:

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.

(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.

(3) Any Contracting State may prescribe that a translation, as provided for in this Convention, in an official language of that State, 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.

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

- (a) must 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, and Article 67, paragraph 3, have been complied with *mutatis mutandis*;
- (b) may prescribe that any person who, in that State, in good faith is using 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.

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

Article 75

Filing of a European patent application

- (1) A 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) 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 any application is to be filed initially with a national authority or make direct filing with another authority subject to prior authorisation.

28. 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.

29. 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.

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

Article 78

Requirements of a European patent application

(1) A 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) A 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.

31. 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 a 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.

32. 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.

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

Article 86

Renewal fees for a European patent application

(1) Renewal fees for a European patent application 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.

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

Article 87

Priority right

(1) Any person who has duly filed, in or for
(a) any State party to the Paris Convention for the Protection of Industrial Property or
(b) any Member of 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.

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

Article 88
Claiming priority

(1) An applicant 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.

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

Article 90
Examination on filing and examination 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, Articles 88,

paragraph 1, and 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 European patent application shall be refused. Where the deficiency concerns the right of priority, this right shall be lost for the application.

37. Article 91 shall be deleted.

38. 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.

39. 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).

40. 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.

41. Articles 95 and 96 shall be deleted.

42. 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.

43. 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.

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

PART V
OPPOSITION AND LIMITATION PROCEDURE

45. 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.

46. 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.

47. Article 102 shall be deleted.

48. 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.

49. 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 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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 the decision of the Board of Appeal may file a petition for review of the decision by the Enlarged Board of Appeal.

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

- (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.

(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 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.

(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 under review 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 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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 4, 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.

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

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, 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.

62. 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) A 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) A European patent may not be amended in such a way as to extend the protection it confers.

63. 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.

64. Article 126 shall be deleted.

65. 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.

66. 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 has invoked the rights under the European patent 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.

67. 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.

68. 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) 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.

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

Article 133

General principles of representation

(1) Subject to 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.

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

Article 134

Representation before the European Patent Office

(1) 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) 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*.

71. 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 on 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.

72. 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.

73. Article 136 shall be deleted.

74. Article 137 shall be amended to read as follows:

Article 137

Formal requirements for conversion

(1) A European patent application transmitted in accordance with Article 135, paragraph 2 or 3, shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.

(2) Any central industrial property office to which the application is transmitted may require that the applicant shall, within not less than two months:

- (a) pay the national application fee;
- (b) file a translation of the original text of the European patent application in one of the official languages of the State in question and, where appropriate, of the text as amended during proceedings before the European Patent Office which the applicant wishes to submit to the national procedure.

75. 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 grounds that:

- (a) the subject-matter of the European patent is not patentable under Articles 52 to 57;
- (b) 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) 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) the protection conferred by the European patent has been extended; or
- (e) 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.

76. Article 140 shall be amended to read as follows:

Article 140

National utility models and utility certificates

Articles 66, 124, 135, 137 and 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.

77. Article 141 shall be amended to read as follows:

Article 141

Renewal fees for a European patent

(1) Renewal fees for a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 2.

(2) Any renewal fees falling due within two months after the publication of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.

78. 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 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.

79. 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 paragraph 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.

80. Articles 154, 155, 156, 157, 158, 159, 160, 161, 162 and 163 shall be deleted.

81. 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 the 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.

82. 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

For the purpose of determining the extent of protection conferred by a European patent, due account shall be taken of any element which is equivalent to an element specified in the claims.

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 THE STAFF COMPLEMENT)

The European Patent Organisation shall ensure that the proportion of European Patent Office posts assigned to the duty station at The Hague as defined under the 2000 establishment plan and table of posts remains substantially unchanged. Any change in the number of posts assigned to the duty station at The Hague resulting in a deviation of more than ten per cent of that proportion, which proves necessary for the proper functioning of the European Patent Office, shall be subject to a decision by the Administrative Council of the Organisation on a proposal from the President of the European Patent Office after consultation with the Governments of the Federal Republic of Germany and the Kingdom of the Netherlands.

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

PROTOCOL ON THE CENTRALISATION OF THE EUROPEAN PATENT SYSTEM AND ON ITS INTRODUCTION (PROTOCOL ON CENTRALISATION)

Section I

(1a) 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.
- (3a) 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 wording of the provisions of the Convention shall be aligned, where necessary, in the three official languages. The provisions of the Convention may also be renumbered consecutively and the references to other provisions of the Convention may be amended in accordance with the new numbering.

(2) The Administrative Council shall adopt the new text of the Convention by a majority of three quarters of the Contracting States represented and voting. On its adoption, 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 September 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 Articles 3 and 7 of this Revision Act shall be applied provisionally.

ARTICLE 7

TRANSITIONAL PROVISIONS

(1) The revised version of the Convention shall apply

to all European patent applications filed after its entry into force, as well as to all patents granted in respect of such applications. It shall not apply to European patents already granted at the time of its entry into force, or to European patent applications pending at that time, unless otherwise decided by the Administrative Council of the European Patent Organisation.

(2) The Administrative Council of the European Patent Organisation shall take a decision under paragraph 1 no later than 30 June 2001, by a majority of three quarters of the Contracting States represented and voting. Such decision shall become an integral part of this Revision Act.

ARTICLE 8

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 9

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 twenty-ninth 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.