



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 November 2009

**Interinstitutional File:
2000/0177 (CNS)**

**16113/09
ADD 1**

PI 122

ADDENDUM TO THE NOTE

from : General Secretariat of the Council
to : Council (Competitiveness)
No. prev. doc. : 16313/09 PI 131 COUR 82
No. Cion prop. : 10786/00 PI 49
Subject : Proposal for a Council Regulation on the Community patent
- General approach

Delegations will find in Annex a revised proposal for a Council Regulation on the European Union patent drawn up by the Presidency for discussion at the meeting of the Council (Competitiveness) on 4 December 2009.

In view of the entry into force on 1 December 2009 of the Lisbon Treaty, the term "Community" has been replaced by "European Union", where appropriate, throughout the text (see Art. 1 of the Treaty on European Union as amended by the Lisbon Treaty).

**Proposal for a
COUNCIL REGULATION
on the European Union patent
(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union and in particular Article 118, first subparagraph, of the latter,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Whereas:

- (1) The activities of the European Union (hereafter "EU") include the establishment of an internal market characterized by the abolition of obstacles to the free movement of goods and the creation of a system ensuring that competition in the internal market is not distorted. The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products to an EU dimension helps to attain these objectives. A patent to which uniform protection is given and which produces uniform effects throughout the EU should feature amongst the legal instruments which undertakings have at their disposal.

¹ Proposal for a Council Regulation on the Community patent, COM/2000/0412 final - CNS 2000/0177 *, OJ C 337, 28.11.2000, p. 278.

² European Parliament legislative resolution on the proposal for a Council Regulation on the Community patent (COM(2000) 412 - C5-0461/2000 - 2000/0177(CNS), OJ C 127E, p. 519-526.

³ Opinion of the Economic and Social Committee on the Proposal for a Council Regulation on the Community patent, OJ C 2001 155, p. 80.

- (1a) A cost effective, legally secure European Union patent (hereafter "EU patent") would in particular benefit Small and Medium-Sized Enterprises (hereafter: SMEs) and would be complementary to the Small Business Act for Europe. The creation of such a unitary title should make access to the patent system easier, less costly and less risky, which would be of particular importance for SMEs.
- (1b) The availability of a unitary title providing for equal protection throughout the entire territory of the EU would enhance and help raise effectiveness of the fight against counterfeiting and patent infringement to the benefit of inventors, businesses and society at large. A complete geographical coverage without any loopholes would ensure effective patent protection at all external borders of the EU and would help to prevent the entry of counterfeit products into the European Single Market on the basis of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights⁴.
- (2) The Convention on the Grant of European Patents of 5 October 1973 as amended by a revision act of 29 November 2000 (hereafter: EPC) established the European Patent Office (hereafter: EPO) and entrusted it with the task of granting European patents. The expertise offered by the EPO should be used in the granting of the EU patent.
- (2a) The EPO would play a central role in the administration of EU patents and would alone be responsible for examination of applications and the grant of EU patents. Enhanced partnership should however enable for the European Patent Office to make regular use, where appropriate, of the result of any search carried out by central industrial property offices of the member states of the European Patent Organisation on a national patent application the priority of which is claimed in a subsequent filing of a European patent application.

⁴ OJ L 196, 2.8.2003, p. 7.

- (2aa) All central industrial property offices, including those which do not perform searches in the course of a national patent granting procedure can have an essential role under the enhanced partnership, inter alia by giving advice and support to potential applicants for EU patents, in particular SMEs, by receiving applications, by forwarding applications to the EPO, and by disseminating patent information. National patent offices should be compensated for these activities through the distribution of annual renewal fees.
- (2b) Applications for EU patents should be filed directly with the EPO or via the national patent office of a Member State.
- (2c) The level of procedural fees for processing an application for an EU patent should be the same regardless of where the application is filed and should be related to the costs of handling the EU patent.
- (3) The accession of the EU to the EPC would enable it to be included in the system of law established by the EPC as a territory for which a unitary patent can be granted. The pre-grant stage of the EU patent should thus principally be governed by the EPC. This Regulation should in particular establish the law applicable to the EU patent once granted.
- (3a) The EPO should also be entrusted with the task of administering the EU patent in the post-grant stage, for example, as regards the collection and distribution of renewal fees to Member States and the management of the Register of EU Patents.
- (4a) To the extent that this Regulation does not provide otherwise the substantive law applicable to the EU patent, for example as regards patentability, the scope of patent protection and the limitation of the effects of the patent, should be governed by the pertinent provisions of the EPC and national law where this complies with EU law.

- (4b) The EU patent should constitute a third option. Applicants should remain free to apply instead for a national or a European patent. This Regulation is without prejudice to the right of the Member States to grant national patents and should not replace Member States' laws on patents or European patent law as established by the EPC.
- (6) Negative effects of an exclusive right created by an EU patent should be mitigable through a system of compulsory licences. This is without prejudice to the application of EU competition law by the Commission or national authorities. The [European and EU Patents Court] should be entrusted with the grant of compulsory licences in situations not falling under EU competition law.
- (7) The jurisdictional system for the EU patent should be part of the [European and EU Patents Court] having jurisdiction for both European and EU patents. This jurisdiction is established and governed by [quote title of the legal instrument].
- (8) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, in particular the creation of a unitary right with effect throughout the EU can be achieved only by the EU. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (9) Whereas the creation of the EU patent by this Regulation is part of a comprehensive patent reform, which also involves changes to the EPC and the establishment of a unified patent litigation system based upon an international agreement to be concluded between the EU, its Member States and certain other Contracting Parties to the EPC, ratified in accordance with the Member States' Constitutional requirements.

HAS ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1

Scope of application

This Regulation applies to all EU patents within the meaning of Article 2 (1) and to all applications for such patents.

Article 2

EU patent

1. The EU patent is a European patent designating the EU, granted by the EPO under the provisions of the EPC 5.
2. The EU patent shall have a unitary character. It shall have equal effect throughout the EU and may only be granted, limited, transferred, declared invalid or lapse in respect of the whole of the EU.
3. The EU patent shall have an autonomous character. Subject to paragraph 4, it shall be subject only to this Regulation and to the general principles of EU law. The provisions of this Regulation shall be without prejudice to the application of EU competition law or the law of Member States with regard to criminal liability, unfair competition and mergers.
4. The EPC shall apply to EU patents and to applications for EU patents to the extent that this Regulation does not provide for specific rules.

⁵

<http://www.epo.org/patents/law/legal-texts/epc.html>

Article 3

Application to the sea and submarine areas and to space

1. This Regulation shall also apply to the sea and submarine areas adjacent to a Member State's territory in which that Member State exercises sovereign rights or jurisdiction in accordance with international law.
2. This Regulation shall apply to inventions created or used in outer space, including on celestial bodies or on spacecraft, which are under the jurisdiction and control of one or more Member States in accordance with international law.

CHAPTER II PATENT LAW

SECTION 1 RIGHT TO THE PATENT

Article 4

Right to the EU patent

1. The right to the EU patent shall belong to the inventor or his/her successor in title.
2. If the inventor is an employee, the right to the EU 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/her place of business to which the employee is attached.

3. If two or more persons have made an invention independently of each other, the right to the EU patent shall belong to the person whose application for the EU patent has the earliest date of filing or, where applicable, the earliest date of priority. This provision shall apply only if the first application for the EU patent has been published under Article 93 of the EPC.

Article 5

Claiming the right to the EU patent

1. If the EU patent has been granted to a person who is not entitled to it under Article 4(1) and (2), the person entitled to it under that Article may, without prejudice to any other right or remedy which may be open to him/her, claim to have the patent transferred to him/her.
2. Where a person is entitled to only part of the EU patent, that person may, in accordance with paragraph 1, claim to be made a joint proprietor.
3. Legal proceedings in respect of the rights referred to in paragraphs 1 and 2 may be instituted only within a period of three years after the date on which the EU Patent Bulletin, referred to in Article 57, publishes the mention of the grant of the EU patent. This provision shall not apply if the proprietor of the patent knew, at the time of the grant or of the acquisition of the patent, that he/she was not entitled to the patent.
4. The fact that legal proceedings have been instituted shall be entered in the Register of EU Patents, referred to in Article 56. The final decision in the legal proceedings or any withdrawal thereof shall also be entered.

Article 6

Effect of change of proprietorship of the EU patent

1. Where there is a complete change of proprietorship of an EU patent as a result of legal proceedings referred to in Article 5, licences and other rights shall lapse upon the registration of the person entitled to the patent in the Register of EU Patents.

2. If, before the institution of legal proceedings has been registered,
 - (a) the proprietor of the patent has used the invention within the territory of the EU or made effective and serious preparations to do so,
or
 - (b) a licensee of the patent has obtained his/her licence and has used the invention within the territory of the EU or made effective and serious preparations to do so,

he/she may continue such use provided that he/she requests a non-exclusive licence of the patent from the new proprietor whose name is entered in the Register of EU Patents. Such request must be made within the period prescribed in the implementing regulations. A licence shall be granted for a reasonable period and upon reasonable terms.

3. Paragraph 2 shall not apply if the proprietor of the patent or the licensee was acting in bad faith at the time when he/she began to use the invention or to make preparations to do so.

SECTION 2
EFFECTS OF THE EU PATENT AND THE EU PATENT
APPLICATION

Article 7

Right to prevent the direct use of the invention

The EU patent shall confer on its proprietor the right to prevent any third party not having his/her consent from:

- (a) making, offering, putting on the market or using a product which is the subject-matter of the patent, or importing or stocking the product for these purposes;
- (b) using a process which is the subject-matter of the patent or, when the third party knows, or it is obvious in the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent, from offering the process for use within the EU;
- (c) offering, putting on the market, using, importing or stocking for these purposes a product obtained directly by a process which is the subject-matter of the patent.

Article 8

Right to prevent the indirect use of the invention

1. In addition to the right conferred pursuant to Article 7, the EU patent shall confer on its proprietor the right to prevent any third party not having his/her consent from supplying or offering to supply within the EU to any person, other than a party entitled to exploit the patented invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or it is obvious in the circumstances, that these means are suitable and intended for putting that invention into effect.

2. Paragraph 1 shall not apply when the means are staple commercial products, except when the third party induces the person supplied to commit acts prohibited by Article 7.
3. Persons performing the acts referred to in Article 9(a) to (b.1) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.

Article 9

Limitation of the effects of the EU patent

The rights conferred by the EU patent shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes relating to the subject-matter of the patented invention;
- (b.1) acts carried out solely for the purpose of conducting the necessary tests and trials in accordance with Article 13 of Directive 2001/82/EC⁶ or Article 10 of Directive 2001/83/EC;⁷ in respect of any patent covering the product within the meaning of either of the said Directives;
- (c) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription nor acts concerning the medicine so prepared;
- (d) the use on board vessels of countries other than Member States of the patented invention, in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of Member States, provided that the invention is used there exclusively for the needs of the vessel;

⁶ Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products, OJ L 311, 28.11.2001, p. 1, as amended by Directive 2004/28/EC of the European Parliament and of the Council of 31 March 2004, OJ L 136, 30.4.2004, p. 58.

⁷ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, OJ L 311, 28.11.2001, p. 67, as last amended by Directive 2008/29/EC of the European Parliament and of the Council of 11 March 2008, OJ L 81, 20.3.2008, p. 51.

- (e) the use of the patented invention in the construction or operation of aircraft or land vehicles or other means of transport of non-Member States, or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter the territory of Member States;
- (f) the acts specified in Article 27 of the Convention on International Civil Aviation of 7 December 1944⁸, where these acts concern the aircraft of a country other than a Member State;
- (g) the use by a farmer of the product of his/her crop for propagation or multiplication on his/her own holding, provided that the reproductive vegetable material was sold or otherwise commercialized by the holder of the patent or with his/her consent to the farmer, for agricultural purposes. The scope and the detailed methods of this use are laid down in Article 14 of Regulation (EC) No. 2100/94⁹;
- (h) the use by a farmer of protected livestock for farming purposes, on condition that the breeding animals or other animal reproductive material was sold or otherwise commercialized to the farmer by the holder of the patent or with his/her consent. Such use includes the provision of the animal or other animal reproductive material for the purposes of his/her agricultural activity, but not the sale as part of or for the purpose of commercial reproductive activity;
- (i) the acts allowed pursuant to Articles 5 and 6 of Directive 91/250/EEC on the legal protection of computer programs by copyright¹⁰, in particular, by its provisions on decompilation and interoperability;
- (j) the acts allowed pursuant to Article 10 of Directive 98/44/EC on the legal protection of biotechnological inventions¹¹.

⁸ International Civil Aviation Organization (ICAO), "Chicago Convention", Document 7300/9 (9th edition, 2006).

⁹ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, OJ L 227, 1.9.1994, p 1.

¹⁰ Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ L 122, 17.05.1991, p. 42.

¹¹ Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, OJ L 213, 30.7.1998, p. 13.

Article 9a

Government use

Any provision in the law of a Member State allowing non-commercial use of national patents by or for the government may be applied to EU patents, but only to the extent that the use is necessary for essential defence or national security. The patentee should be informed as soon as reasonably possible about the act and be compensated in respect of the act by the government concerned. Any dispute as to whether an EU patent has been used as provided for in this Article or over the amount of compensation shall be decided by the national courts of the Member State concerned.

Article 10

EU exhaustion of the rights conferred by the EU patent

The rights conferred by the EU patent shall not extend to acts concerning the product covered by that patent which are carried out within the territories of the Member States after that product has been put on the market in the EU by the proprietor of the patent or with his/her consent, unless there are legitimate grounds for the proprietor to oppose further commercialization of the product.

Article 11

Rights conferred by the EU patent application after publication

1. Compensation reasonable in the circumstances may be claimed from a third party who, in the period between the date of publication of an application for an EU patent and the date of publication of the mention of the grant of the EU patent, has made any use of the invention which, after that period, would be prohibited by virtue of the EU patent.
2. In determining the reasonable compensation, the [European and EU Patents Court] shall take into account all relevant aspects, such as the economic consequences to the injured party of the use made of the invention, as well as the undeserved profits made by the person using the invention and the behaviour and the good or bad faith of the parties. The compensation shall not be punitive.

Article 12

Right based on prior use of the invention

1. An EU patent may not be invoked against a person who, in good faith and for business purposes, had used the invention in the EU or had made effective and serious preparations for such use before the filing date or, where priority has been claimed, the priority date of the application on the basis of which the patent is granted (hereinafter referred to as "the prior user"); the prior user shall have the right, for business purposes, to continue the use in question or to use the invention as planned during the preparations.
2. The right of the prior user may not be transferred either during the user's lifetime or following his/her death other than with the user's undertaking or that part of the undertaking in which the use or the preparations for use took place.

Article 13

Process patents: burden of proof

1. If the subject-matter of an EU patent is a process for obtaining a new product, the same product when produced without the consent of the proprietor shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process.
2. The reversal of the burden of proof provided for in paragraph 1 shall apply equally where there is a strong likelihood that the same product was obtained by the process and the holder of the EU patent has not been able, despite reasonable efforts, to determine what procedure has actually been used.

In adducing proof to the contrary, the legitimate interests of the defendant in protecting his/her manufacturing and trade secrets shall be taken into account.

Article 13a

Conversion into a European patent application designating one or more Member States

Any application for an EU patent may be converted into an application for a European patent designating one or more Member States, by a request filed with the EPO up to the grant of the EU patent and under the conditions specified by the provisions of the EPC.

SECTION 3

THE EU PATENT AS AN OBJECT OF PROPERTY

Article 14

Dealing with the EU patent as a national patent

1. Unless otherwise specified in Articles 15 to 24, the EU patent as an object of property shall be dealt with in its entirety, and for the whole of the EU, as a national patent of the Member State in which, according to the Register of EU Patents:
 - (a) the applicant for the patent had his/her residence or place of business on the date of filing of the application for the EU patent;
 - (b) where subparagraph (a) does not apply, the applicant had an establishment on that date.

In all other cases, the Member State referred to shall be that in which the EPO has its seat.

2. If two or more persons are mentioned in the Register of EU Patents as joint applicants, paragraph 1(a) shall apply to the joint applicant first mentioned. If this is not possible, paragraph 1(a) shall apply to the joint applicants next mentioned in order of entry. Where paragraph 1(a) does not apply to any of the joint applicants, paragraph 1(b) shall apply.

Article 15

Transfer

1. The transfer of the EU patent shall be made in writing and shall require the signature of the parties to the contract, except when it is a result of a judgment; otherwise it shall be void. The transfer shall be entered in the Register of EU Patents.
2. Subject to Article 6(1), a transfer shall not affect rights acquired by third parties before the date of transfer.
3. A transfer shall, to the extent to which it is verified by such written documents referred to in paragraph 1, have effect vis-à-vis third parties only after entry in the Register of EU Patents. Nevertheless, a transfer, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights after the date of the transfer but who knew of the transfer on the date on which the rights were acquired.

Article 16

Rights in rem

1. The EU patent may, independently of the undertaking, be given as security or be the subject of rights in rem.
2. At the request of one of the parties, the rights referred to in paragraph 1 shall be entered in the Register of EU Patents and published in the EU Patent Bulletin.

Article 17

Levy of Execution

1. The EU patent may be levied in execution.
2. At the request of one of the parties, the levy of execution shall be entered in the Register of EU Patents of this Regulation and published in the EU Patent Bulletin.

Article 18

Insolvency proceedings

1. The only insolvency proceedings in which an EU patent may be involved shall be those instituted in the Member State within the territory of which the centre of a debtor's main interests is situated.
2. In the case of joint proprietorship of an EU patent, paragraph 1 shall apply to the share of the joint proprietor.
3. Where an EU patent is involved in insolvency proceedings, on request of the competent national authority an entry to this effect shall be made in the Register of EU Patents and published in the EU Patent Bulletin.

Article 19

Contractual licensing

1. The EU patent may be licensed in whole or in part for the whole or part of the EU. A licence may be exclusive or non-exclusive.
2. The rights conferred by the EU patent may be invoked against a licensee who breaches any restriction in the licensing contract.
3. Article 15(2) and (3) shall apply to the grant or transfer of a licence in respect of an EU patent.

Article 20

Licences of right

1. The proprietor of an EU patent may file a written statement with the EPO that he/she is prepared to allow any person to use the invention as a licensee in return for appropriate compensation. In that case, the renewal fees for the EU patent which fall due after receipt of the statement shall be reduced under the conditions specified in the EPC. Where there is a complete change of proprietorship of the patent as a result of legal proceedings under Article 5, the statement shall be deemed withdrawn on the date of entry of the name of the person entitled to the patent in the Register of EU Patents.
2. The statement may be withdrawn at any time by a written communication to this effect to the EPO, provided that no-one has yet informed the proprietor of the patent of his/her intention to use the invention. Such withdrawal shall take effect from the date of receipt of that communication by the EPO. The amount by which the renewal fees were reduced shall be paid within one month after withdrawal; Article 25(2) shall apply, but the six-month period shall start upon expiry of the above period.
3. The statement may not be filed while an exclusive licence is recorded in the Register of EU Patents or a request for the recording of such a licence has been filed at the EPO.
4. On the basis of the statement, any person shall be entitled to use the invention as a licensee. A licence obtained under the terms of this Article shall, for the purposes of this Regulation, be treated as a contractual licence.
5. No request for recording an exclusive licence in the Register of EU Patents shall be admissible after the statement has been filed, unless it is withdrawn or deemed withdrawn.
6. The Member States may not grant licences of right in respect of an EU patent.

Article 21

Grant of compulsory licences

1. The [European and EU Patents Court] may grant a compulsory licence for lack or insufficiency of exploitation of an EU patent to any person filing an application four years or later after the patent application was filed and three years or later after the patent was granted if the patent proprietor has not exploited the patent in the EU on reasonable terms or has not made effective and serious preparations to do so, unless he/she provides legitimate reasons to justify his/her inaction, and on the condition that the grant of the compulsory licence is required in the public interest. In determining the lack or insufficiency of exploitation of the patent, no distinction shall be made between products originating within the EU and products imported to the EU from a member of the World Trade Organization.
2. On request, the [European and EU Patents Court] may grant a compulsory licence in respect of an EU patent (first patent) to the proprietor of a national or EU patent (second patent) or plant variety right who cannot exploit his/her second patent or plant variety right without infringing the first patent, valid for the territory of the second patent or plant variety right, provided that the invention or new plant variety claimed in the second patent or plant variety right involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent. The owner of the first patent shall be entitled to a cross-licence on reasonable terms to exploit the second patented invention or protected plant variety.

Where on the corresponding conditions as above in this paragraph a proprietor of an EU patent is granted a compulsory licence in respect of a first national patent or national or Community plant variety right, the owner of the first patent or plant variety right shall be entitled to a cross-licence on reasonable terms to use the patented invention of the dependent EU patent for the territory of the first patent or plant variety right.

3. The [European and EU Patents Court] may grant a compulsory license in respect of an EU patent under the conditions set out in the Regulation (EC) No 816/2006 of the European parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems.
4. In times of national emergency or in other situations of extreme urgency, including those relating to a public interest of extreme importance, the [European and EU Patents Court] may authorise at the request of a Member State the exploitation of an EU patent.
5. In the case of semi-conductor technology, exploitation shall be possible without the authorisation of the right holder only in the situations set out in paragraph 4.
6. A licence or exploitation set out in paragraphs 1 and 2 may be granted only if the proposed user has made efforts to obtain authorization from the patent holder on reasonable commercial terms and conditions, and if such efforts have not been successful within a reasonable period of time. However, the authority granting the licence may derogate from this condition in the situations set out in paragraph 4. In these situations, the right holder shall be informed as soon as reasonably possible.
7. The detailed rules of application and the procedures to be used for applying the principles set out in this Article shall be governed by the Agreement on, and the Statute and the Rules of Procedure of the [European and EU Patents Court].

Article 22

Conditions applicable to compulsory licences

When granting the compulsory licence under Article 21, the [European and EU Patents Court] shall specify the type of use covered and the conditions to be met. The following conditions shall apply:

- (a) the scope and duration of the exploitation shall be limited to the purpose for which it was authorized;
- (b) the exploitation shall be non-exclusive;
- (c) the exploitation shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (d) the exploitation shall be authorized predominantly for the supply of the internal market of the EU;
- (e) the [European and EU Patents Court] may, on reasoned request of the patent holder, the holder of a contractual license or the holder of the compulsory license, change the conditions set by the authorisation or decide to cancel the authorization, subject to adequate protection of the legitimate interests of the persons so authorized, if and when the circumstances which led to it either change or cease to exist and are unlikely to recur;
- (f) the licence holder shall pay the right holder adequate remuneration in the circumstances of each individual case, taking into account the economic value of the authorization;
- (g) in the case of a compulsory licence in respect of a dependent patent or a plant variety right, the exploitation authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent or plant variety right.

Article 23

Effects vis-à-vis third parties

1. Legal acts referred to in Articles 16 to 22 concerning an EU patent shall have effects vis-à-vis third parties in all the Member States only after entry in the Register of EU Patents.
Nevertheless, such an act, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights concerning the patent after the date of that act but who knew of the act at the date on which the rights were acquired.
2. Paragraph 1 shall not apply in the case of a person who acquires the EU patent or a right concerning the EU patent by way of transfer of the whole of the undertaking or by any other universal succession.

Article 24

The application for an EU patent as an object of property

1. Articles 9a and 14 to 19 and Article 21(3) to (6), and Article 22 shall apply to the application for an EU patent, whereby it is understood that all references to the Register of EU Patents include references to the European Patent Register provided for by the EPC.
2. The rights acquired by third parties in respect of an application for an EU patent referred to in paragraph 1 shall continue to be effective with regard to the EU patent granted upon that application.

CHAPTER III
RENEWAL, LAPSE AND INVALIDITY OF THE EU PATENT

SECTION 1
RENEWAL AND LAPSE

Article 25

Renewal fees

1. Annual renewal fees in respect of EU patents shall be paid to the EPO. These fees shall be due in respect of the years following the year in which the EU Patent Bulletin referred to in Article 57 mentions the grant of the EU patent.
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 that date, provided that an additional fee is paid at the same time.
3. Any renewal fee in respect of an EU patent falling due within two months after the publication of the mention of the grant of the EU patent shall be deemed to have been validly paid if it is paid within the period mentioned in paragraph 2. No additional fee shall be charged in this case.

Article 26

Surrender

1. The EU patent may be surrendered only in its entirety.
2. Surrender must be declared in writing to the EPO by the proprietor of the patent. It shall not have effect until it is entered in the Register of EU Patents.

3. Surrender shall be entered in the Register of EU Patents only with the agreement of any third party who has a right in rem recorded in the Register or in respect of whom there is an entry in the Register pursuant to Article 5(4), first sentence. If a licence is recorded in the Register, surrender shall be entered only if the proprietor of the patent proves that he/she has previously informed the licensee of his/her intention to surrender; this entry shall be made in accordance with the provisions of the EPC.

Article 27

Lapse

1. The EU patent shall lapse:
 - (a) 20 years after the date of filing of the application;
 - (b) if the proprietor of the patent surrenders it in accordance with Article 26;
 - (c) if a renewal fee and any additional fee have not been paid in due time.
2. The lapse of a patent for failure to pay a renewal fee and any additional fee within the due period shall be deemed to have occurred on the date on which the renewal fee was due.
3. The EPO shall record the lapse of the EU patent in accordance with the provisions of the EPC.

Article 27a

Re-establishment of rights
(Restitutio in integrum)

1. The holder of an EU 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 EPO, shall have his/her rights re-established upon request, if the non-observance of this time limit has the direct consequence, by virtue of the provisions of this Regulation, in the loss of a right or means of redress. The processes of restitutio in integrum laid down in the EPC shall apply.
2. Where the holder of a patent has his/her rights restored, he/she may not invoke his/her rights vis-à-vis a third party who, acting in good faith, began to exploit, or to make effective and serious preparations to exploit in the EU an invention covered by an EU patent during the period between the loss of the right referred to in paragraph 1 and the publication of notification of the restoration of that right.

SECTION 2
REVOCATION AND LIMITATION OF THE EU PATENT

Article 28

Grounds for revocation

1. The EU patent may be revoked only on the grounds that:
 - (a) the subject-matter of the patent is not patentable according to Articles 52 to 57 of the EPC;
 - (b) the 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 patent extends beyond the content of the patent application as filed, or, if the patent was granted on a divisional application or on a new application filed in accordance with Article 61 of the EPC, beyond the content of the earlier application as filed;
 - (d) the protection conferred by the patent has been extended;
 - (e) the proprietor of the patent is not entitled under Article 4(1) and (2) of this Regulation;
 - (f) the subject-matter of the patent is not new having regard to the content of a national patent application or of a national patent made public in a Member State on the date of filing or later or, where priority has been claimed, the date of priority of the EU patent, but with a filing date or priority date before that date.

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

Article 29a

Request for limitation

At the request of the holder of a patent, lodged with the EPO, the EU patent may be subject to limitation in the form of an amendment to the claims. The provisions of the EPC relating to the request for limitation shall apply.

CHAPTER V

IMPACT ON NATIONAL LAW

Article 54

Prohibition of simultaneous protection

1. Where a national patent granted in a Member State relates to an invention for which an EU patent has been granted to the same inventor or to his/her successor in title with the same date of filing, or, if priority has been claimed, with the same date of priority, that national patent shall be ineffective to the extent that it covers the same invention for the same territory as the EU patent, from the date on which:
 - (a) the period for filing an opposition to the decision of the EPO to grant an EU patent has expired without any opposition being filed;
 - (b) the opposition proceedings are concluded with a decision to maintain the EU patent;or
 - (c) the national patent is granted, where this date is subsequent to the date referred to in point (a) or (b), as the case may be.
2. The subsequent lapse or invalidity of the EU patent shall not affect the provisions of paragraph 1.

3. Each Member State may prescribe the procedure whereby the effect of the national patent is determined to have been lost in whole or, where appropriate, in part. It may also prescribe that the loss of effect shall apply from the outset.
4. Simultaneous protection by an EU patent or EU patent application and a national patent or national patent application shall exist prior to the date applicable under paragraph 1.

CHAPTER VI FINAL PROVISIONS

Article 56

Register of EU Patents

The EPO shall keep a Register of EU Patents, which shall contain those particulars whose registration is provided for by this Regulation. The Register shall be open to public inspection.

Article 57

EU Patent Bulletin

The EPO shall periodically publish an EU Patent Bulletin. It shall contain entries made in the Register of EU Patents, as well as other particulars whose publication is prescribed by this Regulation or by the implementing regulation.

Article 61

Translation arrangements

This Regulation shall be accompanied by a separate regulation, which shall govern the translation arrangements for the EU patent, adopted by the Council with unanimity in accordance with Article 118, second subparagraph of the Treaty on the Functioning of the EU. This Regulation shall come into force together with the separate regulation on the translation arrangements for the EU patent.

Article 62

Report on the operation of the EU patent system

Not later than five years from the date on which the first patent designating the EU is granted, the Commission shall present to the Council a report on the operation of the EU patent system and where necessary make appropriate proposals for amending this Regulation. The report shall include assessments of quality and consistency, the deadlines required for decisions and the costs incurred by inventors. Subsequent reports on the operation of the EU patent system shall be presented by the Commission every five years.

Article 63

Entry into force

1. This Regulation shall enter into force on the sixtieth day following that of its publication in the Official Journal of the EU, with due regard to Article 61.
2. Applications for an EU patent may be filed with the EPO from the date on which the EPC takes effect for the EU or from the date the Agreement on the European and EU Patents Court enters into force, whichever is the later point in time.
3. The date referred to in paragraph 2 shall be published in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President