

JOINT DECLARATION

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY

At the time of signing the Agreement relating to Community Patents.

HAVE ADOPTED the following Resolutions attached as Annex I, the contents of which appeared in the corresponding Resolutions attached to the Final Act of the 1975 Luxembourg Conference on the Community Patent:

- Resolution concerning prior use or possession,
- Resolution on common rules on the granting of compulsory licences in respect of Community patents;

HAVE ADOPTED the following Declarations attached as Annex II, the contents of which appeared in the Annex to the Joint Declaration adopted by the 1985 Luxembourg Conference on the Community Patent:

- Declaration on the adjustment of national patent law,
- Declaration on the operation of the Common Appeal Court during a transitional period;

HAVE ADOPTED the following Decision attached as Annex III, the contents of which result from the Decision on preparations for the commencement of activities of the special departments of the European Patent Office, annexed to the Final Act of the 1975 Luxembourg Conference, and from the supplementary Decision to the previously cited Decision, annexed to the Joint Declaration adopted by the 1985 Luxembourg Conference:

- Decision on preparations for the commencement of the activities of the special departments of the European Patent Office and of the Common Appeal Court;

HAVE ADOPTED the following Resolution and Declarations attached as Annex IV:

- Declaration relating to the special agreements referred to in Article 7 (4) and Article 8 of the Agreement relating to Community Patents,
- Resolution on the establishment of the scale of renewal fees for Community patents,
- Declaration on the jurisdiction rules in the Protocol on Litigation,
- Declaration on a possible modification of the conditions of entry into force of the Agreement relating to Community Patents.

ANNEX I

RESOLUTION

CONCERNING PRIOR USE OR POSSESSION

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY,

Upon signature of the Agreement relating to Community Patents,

Desiring to enable those who have used or possessed an invention the subject-matter of a Community patent before the date of filing or, where priority has been claimed, the date of priority of that patent, to avail themselves under uniform conditions of a right, based on such use or possession, throughout the territories of the Contracting States,

Recognizing that fulfilment of this aim will require a revision of Article 37 of the Community Patent Convention.

HAVE DECIDED to commence in good time the procedure for revising this Agreement in order to create a right, based on prior use or possession of an invention which is the subject-matter of a Community patent, which shall have uniform effect throughout the territories of the Contracting States.

RESOLUTION

ON COMMON RULES ON THE GRANTING OF COMPULSORY LICENCES IN RESPECT OF COMMUNITY PATENTS

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY,

Upon signature of the Agreement relating to Community Patents,

Desiring to reinforce the unitary character of Community patents by rules providing that compulsory licences in respect of those patents are to be granted by common authorities on the basis of criteria laid down in those rules,

Recognizing nevertheless that it is necessary for the Contracting States to be able to grant compulsory licences in respect of Community patents within the meaning of Article 45 (4) of the Community Patent Convention, in the public interest, for example in the interest of national defence,

Whereas, with this proviso, the retention of powers of the national authorities to grant compulsory licences in respect of Community patents can only be envisaged for a short transitional period because of fundamental legislative differences affecting the free movement of goods protected by patents and the elimination of the distortion of competition,

HAVE DECIDED to commence the work, as soon as the Agreement enters into force, to enable the Agreement to be supplemented by common rules on the granting of compulsory licences in respect of Community patents.

ANNEX II

DECLARATION

ON THE ADJUSTMENT OF NATIONAL PATENT LAW

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY,

Upon signature of the Agreement relating to Community Patents,

Noting that since the signing of the Community Patent Convention of 15 December 1975 legislative procedures have been completed in several Member States with a view to eliminating as far as possible the differences between national patent law and the common system of law for patents resulting from the said Convention,

TAKE NOTE of the undertaking by the Government of each Member State in which these procedures have not been completed or are yet to be begun to endeavour to adjust its law relating to national patents so as to bring it into conformity, as far as practicable, with corresponding provisions of the European Patent Convention, the Agreement relating to Community Patents and the Patent Cooperation Treaty.

DECLARATION

ON THE OPERATION OF THE COMMON APPEAL COURT DURING A TRANSITIONAL PERIOD

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY,

Upon signature of the Agreement relating to Community Patents and, in particular, of the Protocol on the Settlement of Litigation concerning the Infringement and Validity of Community Patents,

Considering that, during a period of unforeseeable duration, the revenue derived from renewal fees for the Community patent will be less than the cost of the additional tasks entrusted to the European Patent Office and the expenditure resulting from the operation of the Common Appeal Court,

EXPRESS their firm intention to make every effort to ensure that, during this period, the Common Appeal Court is set up progressively, with its numbers being paid on the basis of the number of cases brought before it and staff being recruited in line with the increase in requirements,

RECOMMEND the Administrative Committee to take these objectives into account in the decisions it takes, in particular pursuant to Article 11 of the Protocol on the Settlement of Litigation concerning the Infringement and Validity of Community Patents.

ANNEX III

DECISION

ON PREPARATIONS FOR THE COMMENCEMENT OF THE ACTIVITIES OF THE SPECIAL DEPARTMENTS OF THE EUROPEAN PATENT OFFICE AND OF THE COMMON APPEAL COURT

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY,

Upon signature of the Agreement relating to Community Patents,

Having regard to the Decision of 15 December 1975 on preparations for the commencement of the activities of the special departments of the European Patent Office,

Having regard to the supplementary Decision to the above Decision, adopted on 18 December 1985,

HAVE ADOPTED THE FOLLOWING DECISION:

1. The Community Patent Interim Committee set up by the Decision of 15 December 1975 shall be confirmed. It shall comprise Representatives of all the Member States and of the Commission of the European Communities; Articles 11, 12, 14 (2), 15, 17 and 18 (1) and (3) of the Community Patent Convention shall apply *mutatis mutandis*. The Interim Committee may draw up Rules of Procedure to supplement these provisions,
2. It shall be the duty of the Interim Committee to take all preparatory measures to enable the special departments of the European Patent Office and the Common Appeal Court to begin their activities in due time.
3. The preparations for the commencement of the activities of the special departments of the European Patent Office and of the Common Appeal Court may be carried out by working parties.
4. The Interim Committee may invite intergovernmental and international non-governmental organizations to attend its meetings and those of the working parties as observers.
5. The duty of the Interim Committee to prepare for the commencement of the activities of the special departments of the European Patent Office shall cease when the Select Committee of the Administrative Council meets pursuant to Article 84 (1) (a) of the Community Patent Convention. The Interim Committee shall be disbanded when the Administrative Committee of the Common Appeal Court meets for the first time.

ANNEX IV

DECLARATION

RELATING TO THE SPECIAL AGREEMENTS REFERRED TO IN ARTICLE 7 (4) AND ARTICLE 8
OF
THE AGREEMENT RELATING TO COMMUNITY PATENTS

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY,

Upon signature of the Protocol on a possible modification of the conditions of entry into force of the Agreement relating to Community Patents,

Considering that the creation of the Community patent system is inseparable from the attainment of the objectives of the Treaty and thus linked with the Community legal order,

RECOGNIZE that, if a special agreement within the meaning of Article 7 (4) or Article 8 of the Agreement relating to Community Patents is to be negotiated before the latter is in force in respect of all the Member States of the European Community, any signatory State which is not party to the Agreement relating to Community Patents shall participate in the negotiations and the conclusion of such a special agreement.

RESOLUTION

ON THE ESTABLISHMENT OF THE SCALE OF RENEWAL FEES FOR COMMUNITY PATENTS

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY,

Upon signature of the Agreement relating to Community Patents,

Recognizing the financial costs of the arrangements for translation of the specifications of Community patents to be borne by the proprietors of Community patents,

INVITE the Select Committee of the Administrative Council of the European Patent Organization to take due account of this factor among others when establishing the scale of renewal fees for Community patents.

DECLARATION**ON THE JURISDICTION RULES IN THE PROTOCOL ON LITIGATION**

THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES,

Upon signature of the Agreement relating to Community Patents,

Noting the démarche by the Member States of the European Free Trade Association (EFTA) concerning the provisions relating to jurisdiction in the Protocol on the Settlement of Litigation concerning the Infringement and Validity of Community Patents,

Desirous of preserving the unity of the legal system established by the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, done at Lugano on 16 September 1988,

EXPRESS their willingness to enter into negotiations with the Member States of EFTA at the earliest opportunity with a view to concluding with those countries, before the entry into force of the Protocol on Litigation, an instrument which, in accordance with the approach which emerged on 30 November 1989 from a preliminary contact between the Member States of the European Communities and the Member States of EFTA, would be designed to:

- consent to the non-application of Article 14 (2) of the Protocol on Litigation to defendants domiciled in a Member State of EFTA that is a Contracting State to the Lugano Convention,
- agree upon the exclusive jurisdiction of the Community patent courts established by the Protocol on Litigation with regard to such defendants in proceedings concerned with infringement and validity,
- recognize the jurisdiction of the Community patent courts of the Member State of the European Communities in which the Common Appeal Court will have its seat, to give judgment on the same defendants for acts committed within the territory of any Member State of the European Communities also where the plaintiff is domiciled within the territory of one of those States.

DECLARATION**ON A POSSIBLE MODIFICATION OF THE CONDITIONS OF ENTRY INTO FORCE OF THE AGREEMENT RELATING TO COMMUNITY PATENTS**

Upon signature of the Protocol on a possible modification of the conditions of entry into force of the Agreement relating to Community Patents, the Governments of the Member States of the European Economic Community agree that if on 31 December 1991 the Protocol has not yet entered into force a Conference of Representatives of the Governments of the Member States of the European Economic Community shall be convened by the Presidency of the Council of the European Communities in order to find unanimously the means of ensuring that the Community patent system is implemented at the time of the completion of the Internal Market.

En fe de lo cual los plenipotenciarios abajo firmantes, debidamente habilitados para este fin, han firmado la presente Declaración común.

Til bekræftelse heraf har undertegnede befuldmægtigede, som er behørigt befuldmægtigede hertil, underskrevet denne fælleserklæring.

Zu Urkund dessen haben die hierzu gehörig befugten unterzeichneten Bevollmächtigten diese gemeinsame Erklärung unterschrieben.

Σε πίστωση των ανωτέρω οι υπογεγραμμένοι πληρεξούσιοι, δεόντως εξουσιοδοτημένοι προς τούτο, υπέγραψαν την παρούσα κοινή δήλωση.

In witness whereof, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Joint Declaration.

En foi de quoi, les plénipotentiaires soussignés, dûment habilités à cette fin, ont signé la présente déclaration commune.

Dá fhianú sin, shínigh na Lánchumhachtaigh seo thíos, arna n-údarú go cuí chuige sin, an Dearbhú Comhpháirteach seo.

In fede di che, i plenipotenziari sottoscritti, debitamente abilitati a tale fine, hanno firmato la presente dichiarazione comune.

Ten blijke waarvan de ondergetekende gevolmachtigden, naar behoren daartoe gemachtigd, deze Gemeenschappelijke Verklaring hebben ondertekend.

Em fé do que, os plenipotenciários abaixo-assinados, devidamente habilitados para o efeito, apuseram as suas assinaturas na presente Declaração Comum.

Hecho en Luxemburgo, el quince de diciembre de mil novecientos ochenta y nueve.

Udfærdiget i Luxembourg, den femtende december nitten hundrede og niogfirs.

Geschehen zu Luxemburg am fünfzehnten Dezember neunzehnhundertneunundachtzig.

Έγινε στο Λουξεμβούργο, στις δέκα πέντε Δεκεμβρίου χίλια εννιακόσια ογδόντα εννέα.

Done at Luxembourg on the fifteenth day of December in the year one thousand nine hundred and eighty-nine.

Fait à Luxembourg, le quinze décembre mil neuf cent quatre-vingt-neuf.

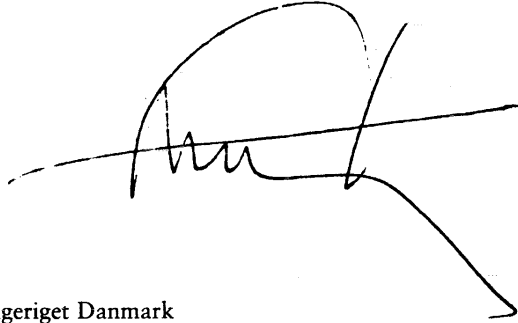
Arna dhéanamh i Lucsamburg, an cúigiú lá déag de mhí na Nollag míle naoi gcéad ochtó a naoi.

Fatto a Lussemburgo, addì quindici dicembre millenovecentottantanove.

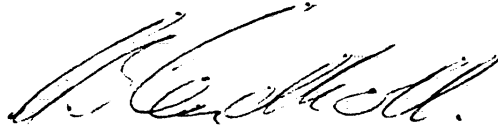
Gedaan te Luxemburg, de vijftiende december negentienhonderd negentachtig.

Feito no Luxemburgo, em quinze de Dezembro de mil novecentos e oitenta e nove.

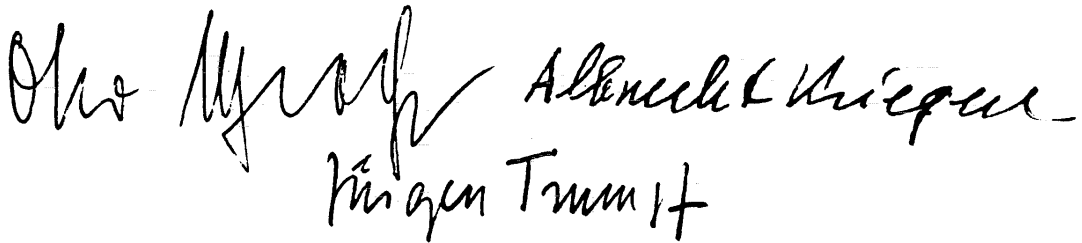
Pour le gouvernement du royaume de Belgique
Voor de Regering van het Koninkrijk België



For regering for Kongeriget Danmark



Für die Regierung der Bundesrepublik Deutschland



Olaf Meyer Albrecht Krieger
König von Trumitz

Για την κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



Pour le gouvernement de la République française

Jadette Cresson

For the Government of Ireland
Thar ceann Rialtas na hÉireann

David O'Kelly

Per il governo della Repubblica italiana

Vincenzo Scotti

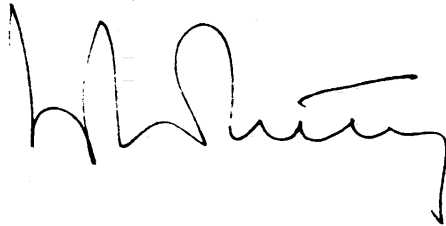
Pour le gouvernement du grand-duché de Luxembourg

Lucien Kirsch

Voor de Regering van het Koninkrijk der Nederlanden

P. C. Meerman

Pelo Governo da República Portuguesa

A handwritten signature in black ink, appearing to be 'M. Sá-Couto', written in a cursive style.

For the Government of the United Kingdom of Great Britain and Northern Ireland

A handwritten signature in black ink, appearing to be 'John Redwood', written in a cursive style.