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**INFORMATION
INFORMATORISCHE AUFZEICHNUNG
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**NOTE D'INFORMATION
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TER DOCUMENTIE**

Brussels, November 1975

LUXEMBOURG CONFERENCE ON THE COMMUNITY PATENT
(17 November-15 December 1975)

At the invitation of the Council of the European Communities, the final conference for the adoption and signature of the draft Convention for the European Patent for the Common Market (Community patent) is to be held in Luxembourg from 17 November to 15 December 1975. Those taking part in the Conference are the Nine Member States and the Commission of the European Communities. The seven non-Community States which are signatories to the Munich Convention of 1973 on the Grant of European Patents (Austria, Greece, Liechtenstein, Monaco, Norway, Sweden and Switzerland), the World Intellectual Property Organisation, the Council of Europe, the Secretariat General of EFTA, the International Patent Institute and fourteen private international organisations have been invited to attend as observers.

The Luxembourg Conference will bring to a conclusion the work on the creation of a body of European patent law begun by the Six in 1959 on the initiative of the Commission and resumed in 1969. The final conference, which was originally to have been held in May 1974, was postponed at the request of the Government of the United Kingdom. In the meantime, agreement was reached among the Nine on a number of questions the clarification of which the United Kingdom had made a condition for its agreement to the signature of the Convention.

A necessary complement

For the Member States of the Community the Community Patent Convention represents a necessary complement to the first Convention signed in Munich in 1973 by sixteen European States. As a result of this first Convention, the European Patent Office, which is due to open in 1977, will grant European patents which, from the date on which they are granted, have the effect of national patents in the States which are parties to the Munich Convention, i.e. they are subject in principle to the national provisions of the Contracting State in which they have effect.

In Order to ensure that once it is granted the European patent is subject to the same legal provisions in all Member States of the Community, the Community Patent Convention creates a uniform body of patent law.

This Community patent has the same effect in all Member States as regards exercise of the rights conferred by the Community patent and can be transferred or revoked only as a single entity. The previous draft provided that the procedure for the grant of a European patent would enable the protection of a patent to be obtained only in respect of the Member States as a whole. The latest version of the draft provides for an exception to this rule. During a ten-year transitional

period applicants have a choice between the Community patent, which extends to all Member States, and a European patent covering only one or only some of the Member States. In addition, a new provision has been added to the draft, which under national courts may rule in certain cases that the Community patent is without effect in the Member State in question. This provision means abandoning the unitary nature of the Community patent.

No splitting of the Common Market

One of the main aims of the Community Patent Convention is the dismantling of territorial barriers to the marketing of patent-protected products. The draft therefore prohibits the splitting of the common market into nine national sub-markets. Products protected by the Community patent or by national patents may circulate freely on the basis of the "economic clauses of the draft" if the patentee or his licensee has put them into circulation in any Member State.

A Protocol attached to the draft Convention provides that during a transitional period of from five to ten years these economic clauses are not to be applied. Adoption of this Protocol would enable patentees, during the above-mentioned transitional period, to exercise control over the marketing of their products and to isolate national markets from one another.

Observation by the Commission

In two Opinions addressed to the Member States on 4 April 1974 and 26 September 1975* the Commission declared itself in favour of signature of the Community Patent Convention, but pointed out that adoption of the Protocol and of a proposal before the Luxembourg Conference for an amendment which would restrict the scope of the economic clauses, to the detriment of the free movement of goods, is incompatible with Community law.

The Convention will be signed by the representatives of the governments of the Member States at a Council meeting on 15 December of this year.

*OJ No. L 261, 9.10.1975