RULES OF PROCEDURE
OF THE ADMINISTRATIVE COUNCIL
OF THE EUROPEAN PATENT ORGANISATION
THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 33, paragraph 2(b) and (e), thereof,

HAS DECIDED AS FOLLOWS:¹

Part 1: Attendance at meetings

Article 1

Members

(1) The names of the Representative and the alternate Representative (hereinafter referred to as "Members") appointed by each Contracting State to the Administrative Council (hereinafter referred to as the "Council") in accordance with Article 26, paragraph 1, of the European Patent Convention shall be notified by that State to the President of the European Patent Office. The President of the European Patent Office shall notify the Contracting States and Members thereof.

(2) Members shall take up their duties on the day on which the President receives notification of their appointment.

(3) Members may take part in all deliberations of the Council and may vote on behalf of their Contracting State.

(4) Any Member prevented from attending a meeting may arrange to be represented by another member of his/her delegation (Article 2, paragraph 2). The Council Secretariat (Article 6) shall be informed thereof in writing.

Article 2

Delegations

(1) Unless the Council decides otherwise in a particular case, Members may be assisted by advisers or experts (Article 26, paragraph 2, of the European Patent Convention). The Council Secretariat (Article 6) shall be informed of their names in writing.

(2) The delegation of each Contracting State shall be composed of its Members together with their advisers and experts.

Article 3

States with right of accession

Representatives of States which have the right to accede to the European Patent Convention in accordance with Article 166, paragraph 1, of that Convention may, until their ratification or accession takes effect, take part in those...
deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3).

Article 4
Chair

(1) The Chairperson of the Administrative Council (hereinafter referred to as the "Chairperson") elected in accordance with Article 27, paragraph 1, of the European Patent Convention shall be responsible for the work of the Council and the exercise of its functions. In the exercise of this duty the Chairperson shall closely co-operate with the President of the European Patent Office. All the provisions of the present Rules of Procedure concerning the Chairperson shall apply mutatis mutandis to the Deputy Chairperson and to the ad hoc Chairperson referred to in paragraph 4 of the present article.

(2) The Chairperson shall preside over the meetings of the Council. At any time during the discussion, Members may raise objections to the Chairperson's conduct of business. If the Chairperson does not uphold the objection, any Member may call for an immediate decision by the Council.

(3) If the office of Chairperson or Deputy Chairperson of the Council falls vacant, the Council shall at its next meeting elect a new Chairperson or Deputy Chairperson, in accordance with Article 27 of the European Patent Convention.

(4) In the event of neither the Chairperson nor the Deputy Chairperson being able to attend a meeting of the Council, the meeting shall be opened by the longest serving Member, who shall immediately invite the Council to elect an ad hoc Chairperson. The ad hoc Chairperson shall then preside over the meeting while the Chairperson and Deputy Chairperson are absent.
Article 5

Board

(1) A Board may be set up in accordance with Article 28 of the European Patent Convention.

(2) Without prejudice to the responsibilities of the Budget and Finance Committee, the duties of the Board shall be to assist the Chairperson in preparing the work of the Council.

(3) Further details of the Board's function and working arrangements shall be laid down by the Council in its decision setting up the Board and in related subsequent decisions. This/these may in particular include further duties entrusted by the Council to the Board.

Article 6

Council Secretariat

(1) Pursuant to Article 32 of the European Patent Convention, the President of the European Patent Office shall place a secretariat (hereinafter referred to as the „Council Secretariat”) at the disposal of the Council.

(2) The Council Secretariat shall draft the Minutes (Article 12), be responsible for all organisational aspects of the proceedings of the Council and advise the Chairperson on organisational matters.

Article 7

Other participants

President of the European Patent Office

(1) The President of the European Patent Office shall take part in all the deliberations of the Council (Article 29, paragraph 2, of the European Patent Convention). Unless the Council decides otherwise in a particular case, he/she may be assisted by other employees of the European Patent Office.

1 Decision of the Administrative Council CA/D 4/03.

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to Article 28 of the European Patent Convention and to Article 5 of the Rules of Procedure of the Administrative Council,

HAS DECIDED AS FOLLOWS:

Article 1

1. A Board of the Administrative Council shall be set up.

2. The Board shall comprise the Chairman, Deputy Chairman and three further members of the Administrative Council. It shall assist the Chairman in preparing the Administrative Council's work. At the invitation of the Chairman, the chairmen of the Budget and Finance Committee and the Committee on Patent Law shall be regularly involved in the Board's discussions.

3. The President of the European Patent Office shall take part in the Board's discussions.

4. ( ... )

Article 2

This decision shall enter into force on 1 July 2003.
Observers

(2) Unless the Council decides otherwise in a particular case, observers (Article 30 of the European Patent Convention) may take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3).

Board of Auditors

(3) The Board of Auditors may take part in all the deliberations of the Council (Article 77, paragraph 4, of the Financial Regulations of the European Patent Organisation).

Staff representatives

(4.1) Unless the Council decides otherwise in a particular case, and subject to sub-paragraph (2), up to four staff representatives may take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3).

(4.2) Administrative approval for their participation shall be at the discretion of the President of the European Patent Office.

Part 2: Procedure

Article 8
Convocation

(1) The Council shall define its work programme and schedule its ordinary meetings for each calendar year in advance.

(2) The Chairperson shall give notice of convocation of the Council at least fourteen calendar days before the beginning of the meeting.

(3) Meetings of the Council shall normally be held at the European Patent Office in Munich.

Article 9
Agenda

I. Provisional agenda

(1) The Chairperson shall draw up the provisional agenda for each meeting and indicate the provisional order in which the agenda items are to be discussed. This information shall be circulated at least fourteen calendar days before the beginning of the meeting.

(2) Requests for inclusion of items/submission of documents

(2.1) Subject to the limitations set out in this paragraph, the Chairperson shall include in the provisional agenda the items in respect of which a request for inclusion has been received at least sixteen calendar days before the beginning of the meeting from a Member, from the Chairperson of any Committee,
Working Party or other subsidiary body established by the Council, from the Board of Auditors (Article 7, paragraph 3), from the Council Secretariat or from the President of the European Patent Office, and for which the necessary documents have been submitted. The Council Secretariat may only request to put items on the provisional agenda and submit documents when these relate to its responsibilities as set out in Article 6, paragraph 2.

(2.2) Requests to have items put on the provisional agenda and documents from:

(a) states with right of accession (Article 3) and observers (Article 7, paragraph 2) shall be submitted via the Chairperson or the President of the European Patent Office.

(b) the staff representatives (Article 7, paragraph 4) shall be submitted via the President of the European Patent Office.

(2.3) Requests to have items put on the provisional agenda and documents received:

(a) up to eight calendar days before the meeting begins shall be transmitted to Members and other participants without delay.

(b) after that date shall also be transmitted, but such items and documents shall be put on the provisional agenda for the following Council meeting or dealt with by written procedure (Article 10, paragraphs 4 to 9) unless the Council proceeds under paragraph 9 of the present article.

(3)¹ The Chairperson shall allocate each item on the provisional agenda to Category A, B or C. Unless the Chairperson decides otherwise, category A shall be for items which the Budget and Finance Committee or another subsidiary body directly preparing the Council decision has already approved by a three quarters’ majority and which the Council can adopt without discussion. Category A shall also comprise all items for which the supporting documents are submitted, within the applicable deadlines under Article 9(2.1), for information only. Category B shall be for items requiring discussion by the Council. Category C shall be for confidential items which the Council discusses and adopts in closed session comprising the Members, the President and the assisting employees of the European Patent Office (Article 7, paragraph 1), and the Board of Auditors (Article 7, paragraph 3).

The Chairperson may change the category of individual items on the provisional agenda at any time prior to the beginning of the meeting.

(4) Each item on the provisional agenda shall also be accompanied by one of the abbreviations below to indicate the purpose for which a document is being submitted:

inf = for information

opn = for opinion

dec = for decision

¹ Revised by decision of the Administrative Council CA/162/10 Rev. 1.
II. Final agenda

(5) At the beginning of each meeting, the Chairperson shall, where necessary, supply Members with a list of requests and documents received up to eight calendar days before the start of the meeting. Inclusion of such requests and documents in the final agenda shall be subject to the approval of the Council by a three-quarters’ majority.

(6) Any Member or the President of the European Patent Office may request that an item be transferred from Category A to Category B.

(7) The Council shall adopt the agenda and the order in which the agenda items are to be discussed at the beginning of each meeting.

(8) After decisions on A items not requiring discussion have been taken, Members, representatives of observers (Article 30 of the European Patent Convention), the Board of Auditors, the chairpersons of subsidiary bodies, and the President of the European Patent Office may make a statement for inclusion in the minutes.

(9) With the unanimous agreement of the Council, at any time prior to the end of the meeting

(a) questions and documents that are urgent or in the special interest of the Organisation may be added to the agenda

and

(b) items on the agenda may be deleted, carried over to a subsequent meeting, amended or reassigned to a different category (paragraph (3) of the present article) or position in the order for discussion.

Article 10

Voting

I. Voting at meetings

(1) Voting shall be by a show of hands, unless any Member requests either a secret ballot or a roll call before voting has commenced. Subject to Article 35(2) and (3) EPC 2000¹ and divergent provisions in these Rules of Procedure, the Council shall take its decisions by a simple majority of the Contracting States represented and voting.

(2) Immediately after a first vote by a show of hands, the result of which shall be ascertained and made known by the Chairperson, any Member may demand a second vote by roll call, which shall then replace the first.

(3) In the event of a vote by roll call, the Chairperson shall call the roll of the delegations in the alphabetical order of the names of the Contracting States in their respective languages, beginning with the delegation of the Contracting State whose name he/she has drawn by lot.

¹ Amended by decision of the Administrative Council CA/D 39/07.
II. Written procedure

(4) By derogation from paragraphs 1 to 3, on a proposal from either the Chairperson or the President of the European Patent Office the Council may take a vote by written procedure in accordance with the following provisions.

(5) If a vote is to be taken by written procedure, the Chairperson shall communicate the wording of the proposal at issue to all Members and to the President of the European Patent Office. At the same time the Chairperson shall invite Members to inform him/her, within fourteen calendar days,

(a) whether they agree to use the written procedure

and

(b) whether they approve the proposal.

(6) A proposal submitted for voting by written procedure may not be amended; it shall be approved or rejected in its entirety.

(7) The proposal shall be deemed to be adopted if

(a) three quarters of the Contracting States have agreed to the use of the written procedure

and

(b) the Contracting States have approved the Chairperson’s proposal by whichever majority is required under Articles 34 to 36 of the European Patent Convention.

(8) If a proposal submitted for voting by written procedure fails to achieve the majorities required in accordance with the above provisions, it shall be included in the provisional agenda of the Council’s next meeting.

(9) The Chairperson shall maintain a list of decisions taken by written procedure. At the beginning of each meeting of the Council, the Chairperson shall inform the participants of any decisions taken by written procedure since its last meeting.

Article 11
Interpreting

Interpreting from each of the languages English, French and German into each of the other two languages shall be provided throughout each meeting of the Council, unless the Council unanimously decides to dispense therewith.
Article 12
Minutes

(1) A summary of the decisions taken at each meeting of the Council shall be forwarded to Members no later than fourteen calendar days after the end of the meeting.

(2) The draft minutes shall be approved at the following meeting of the Council, and the original copy of the minutes, as approved, shall be signed by the Chairperson. The signed copy of the minutes shall be kept in the archives of the Council Secretariat.

(3) The final text of the minutes shall be forwarded to Members no later than 30 calendar days after its approval.

Article 13
Confidentiality

(1) All persons taking part in meetings and receiving documents shall preserve the confidentiality of proceedings and votes relating to Category C items (Article 9, paragraph 3), of associated documents and of other documents marked confidential, regardless of the manner of their transmission.

(2) Non confidential documents may be made available to third parties or to the public, unless the Council decides otherwise in a particular case.

(3) Persons taking part in meetings shall, as such, have no right to inspect the files of, or to request any information concerning, European patent applications or patents, except insofar as they are available to the public.

Article 14
Committees, working parties and other subsidiary bodies

(1) The Council may establish committees, working parties or other subsidiary bodies to advise it on particular questions.

(2) Unless provided otherwise in this article, each subsidiary body shall establish its own procedure on a proposal from its chairperson.

(3) The President of the European Patent Office shall have the right to attend, or be represented at, any meeting of a subsidiary body.

(4) Documents submitted to a subsidiary body and reports on its deliberations shall be drawn up in English, French and German.

(5) Articles 2 and 4, paragraph 4, and Articles 6, 7, 10, 11, 13, 16 and 17 shall apply, where possible, to subsidiary bodies mutatis mutandis.
Article 15
Specific tasks

The Council may request one or more of its Members or other delegation members (Article 2, paragraph 2) to undertake specific tasks and to make a report to the Council.

Part 3: Final provisions

Article 16  
Travel expenses

(1) The travel expenses incurred by two delegation members per Contracting State in travelling to and from Council functions or in undertaking specific tasks within the meaning of Article 15 shall be reimbursed by the European Patent Organisation at the same level as that payable to permanent employees of the European Patent Office.

(2) Their subsistence expenses shall likewise be reimbursed, in the form of a daily allowance at the same level as that payable to permanent employees of the European Patent Office. The allowance shall be calculated at a flat daily rate.

(3) In addition, the Chairperson shall be reimbursed at the same level for such travel and accommodation expenses as he/she incurs in the performance of his/her duties.

Article 17
Communications

(1) All correspondence with the Council shall be addressed to the Council Secretariat.

(2) In the interests of rapid and efficient correspondence among Members and other participants, the Council shall whenever possible make use of generally available electronic communications facilities, especially electronic mail (e-mail) and the databases of the European Patent Office. The Council Secretariat shall maintain a list of all e-mail addresses and databases relevant to the work of the Council, and shall provide such information to Members and other participants.

(3) Where notices of convocation, notifications, documents and other communications subject to deadlines have to be transmitted, the relevant deadline shall be deemed to be met if within the time limit any of the above is transmitted by e-mail or made available on one of the databases of the European Patent Office.

1 Amended by decision of the Administrative Council CA/D 21/09.
(4) The Council Secretariat shall notify all Members by e-mail when such documents have been made available on one of the databases of the European Patent Office.

(5) The Council Secretariat shall be responsible for ensuring access to such databases for delegations and subsidiary bodies of the Council.

(6) Members, or members of their delegations, shall inform the Council Secretariat by e-mail of all documents not received relating to notified meetings, within three calendar days after the relevant deadline has expired.

Article 18
Specific provisions concerning the settlement of disputes relating to Council decisions [Title VIII (Settlement of disputes) of the Service Regulations for permanent and other employees of the European Patent Office]

(1) Opinions for the Council on requests for review of individual decisions taken by the Council shall be drafted by

(a) the President of the European Patent Office or

(b) in cases of requests for review of individual decisions taken by the Council as the competent appointing authority which are submitted by the members, including the chairmen, of the boards of appeal and the members of the Enlarged Board of Appeal, by the President of the Boards of Appeal.

(2) Taking into account the opinion referred to in paragraph 1, the Council shall take a reasoned decision on the outcome of the review in accordance with Article 109 of the Service Regulations for permanent and other employees of the European Patent Office (hereinafter referred to as "the Service Regulations"). Such a decision may be challenged through an internal appeal under the conditions laid down in Article 110 of the Service Regulations.

(3) The Office shall represent the Council in proceedings before the Appeals Committee, unless the Council decides otherwise in a particular case. In the latter event, the Council shall decide by whom it is to be represented and shall inform the President of the European Patent Office accordingly. In cases referred to in paragraph 1(b), the President of the Boards of Appeal shall be consulted.

(4) The President of the European Patent Office shall represent the European Patent Organisation (Article 5, paragraph 3, of the European Patent Convention) in any proceedings before the Administrative Tribunal of the International Labour Organization in relation to final decisions taken by the Council, and shall forward a copy of the written submissions and the judgment to the Council. In cases referred to in paragraph 1(b), the President of the Boards of Appeal shall be consulted.

1 Amended by decision of the Administrative Council CA/D 13/18.
Correspondence for the Council for the purposes of this Article shall be addressed to the Council Secretariat, for submission to the Council by its Chairperson in accordance with Article 9, paragraph 2, of these Rules. Correspondence for the Appeals Committee shall be addressed direct to the Appeals Committee. If a request for review is submitted to the Council although it is not the competent appointing authority to deal with it, this request shall be referred to the other competent appointing authority, namely the President of the Office, by decision of its Chairperson. The Council shall be regularly informed by its Chairperson, in a written report, of the number of requests thus referred and of the reasons therefor.

Article 19
Entry into force

These Rules shall enter into force on 1 January 2007.

Done at Munich, 7 December 2006