



## **RESOLUTION 2**

### **DISCLAIMERS**

**FICPI**, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession of more than 70 countries, assembled at its Executive Committee meeting held in Prague, Czech Republic from October 7 to 9, 2002, passed the following Resolution :

**Noting with concern** European Patent Office Technical Board of Appeal Decision T 323/97 which appears to rule that the introduction of a disclaimer having no basis in the originally-filed application is contrary to Article 123(2) EPC;

**Noting with approval** that a question addressing the allowability of such disclaimers is to be put to the Enlarged Board of Appeal;

**Observing** that many granted patents may become incurably invalid if T 323/97 is upheld;

**Observing** that the addition of a disclaimer may be the only way of excluding from the scope of a claim prior art previously unknown to the applicant;

**Observing** that a disclaimer introduced into an application during examination cannot be deleted during a subsequent opposition without the patentee falling into the "the inescapable trap" resulting from the combined effects of Articles 123(2) EPC and 123(3) EPC;

**Expresses** the opinion that the addition of a disclaimer that simply excludes subject matter from the scope of a claim does not result in any change to the objective technical problem addressed by the invention or to the subject-matter disclosed in the application and is hence not contrary to Article 123(2) EPC.