

Edgar Filing: INTERSHOP COMMUNICATIONS AG - Form F-6 POS

INTERSHOP COMMUNICATIONS AG  
Form F-6 POS  
February 06, 2003

As filed with the Securities and Exchange Commission on  
February 5, 2003 Registration No. 333-11642

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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POST-EFFECTIVE AMENDMENT NO. 2 TO  
FORM F-6  
REGISTRATION STATEMENT  
UNDER

THE SECURITIES ACT OF 1933 AS Amended FOR DEPOSITARY SHARES EVIDENCED BY  
DEPOSITARY RECEIPTS

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INTERSHOP Communications Aktiengesellschaft  
(Exact name of issuer of deposited securities as specified in its charter)

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INTERSHOP COMMUNICATIONS STOCK CORPORATION  
(Translation of issuer's name into English)

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FEDERAL REPUBLIC OF GERMANY  
(Jurisdiction of incorporation or organization of issuer)

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CITIBANK, N.A.  
(Exact name of depositary as specified in its charter)

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111 Wall Street  
New York, New York 10043  
(212) 657-5100  
(Address, including zip code, and telephone number, including  
area code, of Depositary's principal executive offices)

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CT Corporation System  
111 Eighth Avenue  
New York, New York 10011  
212) 894-8940  
(Name, address, including zip code, and telephone number, including  
area code of agent for service)

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Copies to:

John W. Campbell, Esq.  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105  
Telephone: (415) 268-7197

Frettra M. Miller, Esq.  
Citibank, N.A.  
111 Wall Street 15th Floor Zone9  
New York, New York 10043  
Telephone: (212) 657-2150

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It is proposed that this filing become effective under Rule 466:

immediately upon filing.  
 on (Date) at (Time).

If a separate registration statement has been filed to register the deposited shares, check the following box .

This Post-Effective Amendment No. 2 to the Registration Statement on Form F-6 (Commission File No. 333-11642) may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

PART I

INFORMATION REQUIRED IN PROSPECTUS

Item 1. DESCRIPTION OF SECURITIES TO BE REGISTERED

CROSS REFERENCE SHEET

Item Number and Caption -----	Location in Form of  American Depositary Receipt ("Receipt") Filed Herewith as Prospectus -----
1. Name and address of Depositary	Face of Receipt - Introductory ----- Paragraph.
2. Title of Receipts and identity of deposited securities	Face of Receipt - Top center ----- and Introductory Paragraph.
Terms of Deposit:	
(i) The amount of deposited securities represented by one American Depositary Share	Face of Receipt - Upper right ----- corner, introductory paragraph
(ii) The procedure for voting,	Reverse of Receipt - Paragraphs -----

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if any, the deposited securities	(16) and (17).
(iii) The collection and distribution of dividends	Reverse of Receipt - Paragraph ----- (14)
(iv) The transmission of notices, reports and proxy soliciting material	Face of Receipt - Paragraphs ----- (13) and (16).
(v) The sale or exercise of rights	Reverse of Receipt - Paragraphs ----- (14) and (16).
(vi) The deposit or sale of securities resulting from dividends, splits or plans of reorganization	Reverse of Receipt - Paragraphs ----- (14) and (18).
(vii) Amendment, extension or termination of the deposit agreement	Reverse of Receipt - Paragraphs ----- (22) and (23) (no provision for extension).
(viii) Rights of holders of Receipts to inspect the transfer books of the depository and the list of holders of Receipts	Face of Receipt - Paragraph ----- (13).
(ix) Restrictions upon the right to deposit or withdraw the underlying securities	Face of Receipt - Paragraphs ----- (2), (3), (4), (6), (7) and (9).
(x) Limitation upon the liability of the depository	Face of Receipt - Paragraph 7 ----- Reverse of Receipt - Paragraphs ----- (19) and (20);
3. Fees and charges which may be imposed directly or indirectly against holders of Receipts	Face of Receipt - Paragraph (10) -----
Item 2. AVAILABLE INFORMATION	Face of Receipt - Paragraph (13) -----

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2(a). Intershop Communications AG is subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended, and, accordingly, files certain reports with the Securities and Exchange Commission (the "Commission"). These reports and other information can be inspected and copied at the public reference facility maintained by the Commission located at Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549.

### PROSPECTUS

The Prospectus consists of the Form of American Depositary Receipt, included as Exhibit A to the Form of Amendment No. 2 to Deposit Agreement filed as Exhibit (a)(i) to this Post-Effective Amendment No. 2 to Form F-6 Registration Statement and incorporated herein by reference.

### PART II

#### INFORMATION NOT REQUIRED IN PROSPECTUS

##### Item 3. EXHIBITS

(a)(i) Form of Amendment No. 2 to Deposit Agreement, by and among Intershop Communications AG, a Stock Corporation (Aktiengesellschaft) organized under the laws of Germany and its successors (the "Company"), Citibank, N.A., a national banking association organized under the laws of the United States of America and acting solely as depository (the "Depository"), and all Holders and Beneficial Owners of American Depositary Shares ("ADSs"), evidenced by American Depositary Receipts ("ADRs"), issued thereunder including the amended Form of ADR to be issued thereunder. Filed herewith as Exhibit (a)(i).

(a)(ii) Amendment No. 1 to Deposit Agreement, dated as of February 25, 2002, by and among the Company, the Depository, and all Holders and Beneficial Owners of ADRs, evidencing ADSs, issued thereunder. Filed herewith as Exhibit (a)(ii).

(a)(iii) Deposit Agreement, dated as of September 29, 2000, by and among the Company, the Depository, and all Holders and Beneficial Owners of ADSs, evidenced by ADRs, issued thereunder, (including the form of American Depositary Receipt to be issued thereunder).\*

(b) Any other agreement, to which the Depository is a party relating to the issuance of the American Depositary Shares registered hereby or the custody of the deposited securities represented thereby. - None.

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(c) Every material contract relating to the deposited securities between the Depositary and the Company in effect within the last three years. - None.

(d) Opinion of counsel to the Depositary, as to the legality of the securities to be registered.\*

(e) Power of Attorney for the Company.\*

(f) Rule 466 Certification - Filed herewith as Exhibit (f).

Item 4. UNDERTAKINGS

a) The Depositary hereby undertakes to make available at the principal office of the Depositary in the United States, for inspection by holders of the ADRs, any reports and communications received from the issuer of the deposited securities which are both (1) received by the Depositary as the holder of the deposited securities, and (2) made generally available to the holders of the underlying securities by the issuer.

b) The Depositary hereby undertakes to prepare a separate document stating the amount of any fee charged and describing the service for which it is charged and to deliver promptly a copy of such fee schedule without charge to anyone upon request. The Depositary undertakes to notify each registered holder of an ADR at least thirty (30) days before any change in the fee schedule.

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\*Previously filed and incorporated by reference to Registration Statement No. 333-11642

SIGNATURES  
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Pursuant to the requirements of the Securities Act of 1933, as amended, Citibank, N.A., on behalf of the legal entity created by the Deposit Agreement dated as of September 29, 2000, as amended by Amendment No. 1 to Deposit Agreement, dated as of February 25, 2002, as proposed to be amended by the form of Amendment No. 2 to Deposit Agreement (as so amended, the "Deposit Agreement") by and among Intershop Communications Stock Corporation, Citibank, N.A., as depositary, and all Holders and Beneficial Owners of American Depositary Shares ("ADSs"), evidenced by American Depositary Receipts ("ADRs"), issued thereunder, certifies that it has reasonable grounds to believe that all the requirements for filing on Form F-6 are met and has duly caused this Post-Effective Amendment No. 2 to Form F-6 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on the 5th day of February, 2003.

Legal entity created by the Deposit Agreement for the issuance of American Depositary Receipts evidencing American Depositary Shares each representing one (1) Bearer Ordinary Share, no par value, of Intershop Communications Stock Corporation, as amended by Amendment

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No. 1 to Deposit Agreement and proposed to be further amended by Form of Amendment No. 2 to Deposit Agreement.

CITIBANK, N.A., as Depositary

By: /s/ Jo Ann Ward

-----  
Name: Jo Ann Ward  
Title: Vice President

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, INTERSHOP Communications Stock Corporation certifies that it has reasonable grounds to believe that all the requirements for filing on Form F-6 are met and has duly caused this Post-Effective Amendment No. 2 to Form F-6 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Fina, on the 30th day of January, 2003.

INTERSHOP Communications Stock Corporation

By: /s/ Stephan Schambach

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Name: Stephan Schambach  
Title: Chairman of the Management Board,  
Chief Executive Officer and  
Vorstandsversitzender

Pursuant to the requirements of the Securities Act of 1933, as amended, this Post-Effective Amendment No. 2 to Form F-6 Registration Statement has been signed by the following persons in the capacities indicated on the

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dates indicated.

Signatures	Title	Date
/s/ Stephan Schambach	Chairman of the Management Board, Chief Executive	January 30, 2003
-----		
Stephan Schambach	Officer	

Signature of Authorized Representative of the Registrant

Pursuant to the requirements of the Securities Act of 1933, the undersigned, the duly authorized representative in the United States of the registrant, has signed this Registration Statement on Form F-6, or amendment thereto, in his capacity as an authorized officer of INTERSHOP Communications Stock Corporation in \_\_\_\_\_ on February 3, 2003.

INTERSHOP COMMUNICATIONS STOCK CORPORATION

By: /s/ Gary Di Orio  
-----  
Name: Gary Di Orio  
Title: President

Index to Exhibits

Exhibit	Document	Sequentially Numbered Page
-----	-----	-----
(a) (i)	Form of Amendment No. 2 to Deposit Agreement	
(a) (ii)	Amendment No. 1 to Deposit Agreement, dated February 25, 2002	

(f)

Rule 466 Certification

(a) (i) Form of Amendment No. 2 to Deposit Agreement

INTERSHOP Communications Stock Corporation

AND

CITIBANK, N.A.,  
As Depositary

AND

HOLDERS AND BENEFICIAL OWNERS OF AMERICAN  
DEPOSITARY SHARES EVIDENCED BY  
AMERICAN DEPOSITARY RECEIPTS

-----  
Amendment No. 2

to

Deposit Agreement

Dated as of \_\_\_\_\_, 2003

AMENDMENT NO. 2 TO DEPOSIT AGREEMENT

AMENDMENT NO. 2 TO DEPOSIT AGREEMENT, is made as of \_\_\_\_\_, 2003 (the "Amendment"), by and among INTERSHOP Communications AG, a Stock Corporation (Aktiengesellschaft) organized under the laws of Germany and its successors (the "Company"), CITIBANK, N.A., a national banking association organized under the laws of the United States of America and acting solely as depositary (the "Depositary"), and all Holders and Beneficial Owners of American Depositary Shares evidenced by American Depositary Receipts issued under the Deposit Agreement.

W I T N E S S E T H A T



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WHEREAS, the parties hereto entered into that certain Deposit Agreement, dated as of September 29, 2000 as amended by Amendment No. 1 to Deposit Agreement, dated as of February 25, 2002, as so amended (the "Deposit Agreement"), to establish a facility to provide for the deposit of the Company's Bearer Ordinary Shares no par value (the "Shares") and the creation of American Depositary Receipts ("ADRs"), evidencing American Depositary Shares ("ADSs"), representing the Shares so deposited and for the execution and delivery of such ADRs evidencing such ADSs;

WHEREAS, the Company has elected to change the ratio of Shares to ADSs (as set forth in Section 1.2 of the Deposit Agreement) from (i) five (5) Shares to one (1) ADS to (ii) one (1) Share to one (1) ADS, and desires to amend the Deposit Agreement to effect such change; and,

WHEREAS, pursuant to Section 6.1 of the Deposit Agreement, the Company and the Depositary deem it necessary and desirable to amend the Deposit Agreement and the Form of ADR annexed thereto as Exhibit A for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Depositary hereby agree to amend the Deposit Agreement as follows:

ARTICLE I

DEFINITIONS

-----

SECTION 1.01. Definitions. Unless otherwise defined in this Amendment, -----  
all capitalized terms used, but not otherwise defined, herein shall have the meaning given to such terms in the Deposit Agreement.

ARTICLE II

AMENDMENTS TO DEPOSIT AGREEMENT

-----

SECTION 2.01. Deposit Agreement. All references in the Deposit -----  
Agreement to the term "Deposit Agreement" shall, as of the Effective Date (as herein defined), refer to the Deposit Agreement, dated as of September 29, 2000, as amended by Amendment No. 1 to Deposit Agreement, dated as of February 25, 2002, and as further amended by this Amendment.

SECTION 2.02. Change of Ratio. All references made in the Deposit -----  
Agreement to each ADS representing five (5) Shares shall, as of the Effective Date (as defined herein), refer to each ADS representing one (1) Share.

ARTICLE III

AMENDMENTS TO THE FORM OF ADR

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SECTION 3.01. Change of Ratio. All references in the ADRs issued and  
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outstanding as of the Effective Date made to each ADS representing five (5)  
Shares shall as of the Effective Date (as defined herein) refer to each ADS  
representing one (1) Share.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties. The Company  
-----  
represents and warrants to, and agrees with, the Depository and the Holders,  
that:

(a) This Amendment, when executed and delivered by the Company, and the  
Deposit Agreement and all other documentation executed and delivered by  
the Company in connection therewith, will be and have been,  
respectively, duly and validly authorized, executed and delivered by  
the Company, and constitute the legal, valid and binding obligations of  
the Company, enforceable against the Company in accordance with their  
respective terms, subject to bankruptcy, insolvency, fraudulent  
transfer, moratorium and similar laws of general applicability relating  
to or affecting creditors' rights and to general equity principles; and

(b) In order to ensure the legality, validity, enforceability or  
admissibility into evidence in Germany of this Amendment or the Deposit  
Agreement as amended hereby, and any other document furnished hereunder  
or thereunder, as of the date hereof, neither of such agreements need  
to be filed or recorded with any court or other authority in Germany,  
nor does any stamp or similar tax need to be paid in Germany on or in  
respect of such agreements; and

(c) All of the information provided to the Depository by the Company in  
connection with this Amendment is true, accurate and correct.

ARTICLE V

MISCELLANEOUS  
-----

SECTION 5.01. Effective Date. This Amendment is dated as of the  
-----  
date set forth above and shall be effective as of such date (the "Effective  
Date").

SECTION 5.02. New Receipts. From and after the Effective Date, the  
-----  
Depository shall arrange to have new ADRs printed or amended that reflect the  
change to the form of Receipt effected by this Amendment. All Receipts issued  
hereunder after the Effective Date, once such new Receipts are available,  
whether upon the deposit of Shares or other Deposited Securities or upon the  
transfer, combination or split-up of existing Receipts, shall be substantially  
in the form of the specimen Receipt attached as Exhibit A hereto. However,  
Receipts issued prior or subsequent to the date hereof, which do not reflect the

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change to the form of Receipt effected hereby, do not need to be called in for exchange and may remain outstanding until such time as the Holders thereof choose to surrender them for any reason under the Deposit Agreement. The Depositary is authorized and directed to take any and all actions deemed necessary to effect the foregoing.

SECTION 5.03. Notice of Amendment to Holders. The Depositary is hereby directed to send notices informing the Holders of: (i) the terms of this Amendment; (ii) the Effective Date of this Amendment; and, (iii) that the Holders shall be given the opportunity, but that it is unnecessary, to surrender outstanding ADRs.

SECTION 5.04. Indemnification. The Company agrees to indemnify and hold harmless the Depositary (and any and all of its directors, employees and officers) for any and all liability it or they may incur as a result of the terms of this Amendment and the transactions contemplated herein.

SECTION 5.05. Ratification. Except as expressly amended hereby, the terms, covenants and conditions of the Deposit Agreement as originally executed shall remain in full force and effect.

SECTION 5.06. Counterparts. This Amendment may be executed in two or more parts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Company and the Depositary have caused this Amendment to be executed by representatives thereunto duly authorized as of the date set forth above.

INTERSHOP COMMUNICATIONS AG

By:
Name:
Title:

CITIBANK, N.A., as Depositary

By:
Name:
Title:

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(a) (ii) Amendment No. 1 to Deposit Agreement, dated February 25, 2002

INTERSHOP Communications Stock Corporation  
AND

CITIBANK, N.A.,  
As Depositary

AND

HOLDERS AND BENEFICIAL OWNERS OF AMERICAN  
DEPOSITARY SHARES EVIDENCED BY  
AMERICAN DEPOSITARY RECEIPTS

-----  
Amendment No. 1  
to  
Deposit Agreement

Dated as of February 25, 2002

AMENDMENT NO. 1 TO DEPOSIT AGREEMENT

AMENDMENT NO.1 TO DEPOSIT AGREEMENT, is made as of February 25, 2002 (the "Amendment"), by and among INTERSHOP Communications AG a (Aktiengesellschaft), a Stock Corporation organized and existing under the laws of Germany and its successors (the "Company"), CITIBANK, N.A., a national banking association organized under the laws of the United States of America and acting solely as depositary (the "Depositary"), and all Holders and Beneficial Owners of American Depositary Shares evidenced by American Depositary Receipts issued under the Deposit Agreement.

WITNESSETH THAT

WHEREAS, the parties hereto entered into that certain Deposit Agreement, dated as of September 29, 2000 (the "Deposit Agreement"), to establish a facility to provide for the deposit of the Company's Bearer Ordinary Shares no par value (the "Shares") and the creation of American Depositary Receipts ("ADRs"), evidencing American Depositary Shares ("ADSs"), representing the Shares so deposited and for the execution and delivery of such ADRs evidencing such ADSs;

WHEREAS, the Company has elected to change the ratio of Shares to ADSs (as set forth in Section 1.2 of the Deposit Agreement) from (i) one (1) Share to

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two (2) ADSs to (ii) five (5) Shares to one (1) ADS, and desires to amend the Deposit Agreement to effect such change; and,

WHEREAS, pursuant to Section 6.1 of the Deposit Agreement, the Company and the Depositary deem it necessary and desirable to amend the Deposit Agreement and the Form of ADR annexed thereto as Exhibit A for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Depositary hereby agree to amend the Deposit Agreement as follows:

ARTICLE I

DEFINITIONS  
-----

SECTION 1.01. Definitions. Unless otherwise defined in this Amendment,  
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all capitalized terms used, but not otherwise defined, herein shall have the meaning given to such terms in the Deposit Agreement.

ARTICLE II

AMENDMENTS TO DEPOSIT AGREEMENT  
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SECTION 2.01. Deposit Agreement. All references in the Deposit Agreement  
-----  
defined), refer to the Deposit Agreement, dated as of September 29, 2000, and as amended by this Amendment.

SECTION 2.02. Change of Ratio. All references made in the Deposit  
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Agreement to two (2) ADSs representing one (1) Share shall, as of the Effective Date (as defined herein), refer to one (1) ADS representing five (5) Shares.

ARTICLE III

AMENDMENTS TO THE FORM OF ADR  
-----

SECTION 3.01. Change of Ratio. All references in the ADRs issued and  
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outstanding as of the Effective Date made to two (2) ADSs representing one (1) Share shall as of the Effective Date (as defined herein) refer to one (1) ADS representing five (5) Shares.

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ARTICLE IV

REPRESENTATIONS AND WARRANTIES  
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SECTION 4.01. Representations and Warranties. The Company  
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represents and warrants to, and agrees with, the Depositary and the Holders,  
that:

(a) This Amendment, when executed and delivered by the Company, and the Deposit Agreement and all other documentation executed and delivered by the Company in connection therewith, will be and have been, respectively, duly and validly authorized, executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; and

(b) In order to ensure the legality, validity, enforceability or admissibility into evidence in Germany of this Amendment or the Deposit Agreement as amended hereby, and any other document furnished hereunder or thereunder, as of the date hereof, neither of such agreements need to be filed or recorded with any court or other authority in Germany, nor does any stamp or similar tax need to be paid in Germany on or in

respect of such agreements; and

(c) All of the information provided to the Depositary by the Company in connection with this Amendment is true, accurate and correct.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. Effective Date. This Amendment is dated as of the date set  
-----  
forth above and shall be effective as of such date (the "Effective Date").

SECTION 5.02. New Receipts. From and after the Effective Date, the  
-----  
Depositary shall arrange to have new ADRs printed or amended that reflect the change to the form of Receipt effected by this Amendment. All Receipts issued hereunder after the Effective Date, once such new Receipts are available, whether upon the deposit of Shares or other Deposited Securities or upon the transfer, combination or split-up of existing Receipts, shall be substantially in the form of the specimen Receipt attached as Exhibit A hereto. However, Receipts issued prior or subsequent to the date hereof, which do not reflect the change to the form of Receipt effected hereby, do not need to be called in for exchange and may remain outstanding until such time as the Holders thereof choose to surrender them for any reason under the Deposit Agreement. The Depositary is authorized and directed to take any and all actions deemed necessary to effect the foregoing.

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SECTION 5.03. Notice of Amendment to Holders. The Depositary is hereby  
-----  
directed to send notices informing the Holders of: (i) the terms of this  
Amendment; (ii) the Effective Date of this Amendment; and, (iii) that the  
Holders shall be given the opportunity, but that it is unnecessary, to surrender  
outstanding ADRs.

SECTION 5.04. Indemnification. The Company agrees to indemnify and hold  
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harmless the Depositary (and any and all of its directors, employees and  
officers) for any and all liability it or they may incur as a result of the  
terms of this Amendment and the transactions contemplated herein.

SECTION 5.05. Ratification. Except as expressly amended hereby, the  
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terms, covenants and conditions of the Deposit Agreement as originally executed  
shall remain in full force and effect.

IN WITNESS WHEREOF, the Company and the Depositary have caused this  
Amendment to be executed by representatives thereunto duly authorized as of the  
date set forth above.

INTERSHOP COMMUNICATIONS AG  
By: /s/ Stephan Schambach  
-----  
Name: Stephan Schambach  
-----  
Title: CEO  
-----

CITIBANK, N.A., as Depositary  
By: /s/ Brian Teitelbaum  
-----  
Name: Brian Teitelbaum  
-----  
Title: Vice President  
-----

(a) (ii) Amendment No. 1 to Deposit Agreement, dated February 25, 2002

(f) Rule 466 Certification

CERTIFICATION UNDER RULE 466

The Depositary, Citibank, N.A., represents and certifies the following:

- (1) That it previously had filed a Registration Statement on Form F-6 (Registration No. 333-11642), which the Commission declared effective with terms of deposit identical to the terms of this Post-Effective Amendment No. 2 to this Form F-6 Registration Statement except for the number of foreign securities a Depositary Share represents.
- (2) That its ability to designate the date and time of effectiveness under Rule 466 has not been suspended.

Citibank, N.A., as Depositary

By: /s/ Frettra M. Miller

-----  
Name: Frettra M. Miller  
Title: Vice President and Senior  
Counsel