Article 26 E

Travaux Préparatoires
(EPC 1973)

Comment:
The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
### Art. 26

**MPÜ**

**Zusammensetzung**

<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr. im Entwurf/ Dokument</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstelle im Dokument</th>
</tr>
</thead>
<tbody>
<tr>
<td>BR/33/70</td>
<td>c</td>
<td>BR/53/70</td>
<td>Rdn. 16</td>
</tr>
<tr>
<td>BR/88/71</td>
<td>35c</td>
<td>BR/125/71</td>
<td>Rdn. 105-108</td>
</tr>
<tr>
<td>BR/139/71</td>
<td>66 Nr. 1</td>
<td>BR/169/72</td>
<td>Rdn. 60</td>
</tr>
</tbody>
</table>

**Dokumente der MDK**

| Z 1972 | 24 | M/146/R 1 | Art. 26 |
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 1
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 1 to 26
Artikel 25
Vorsitz
(1) Der Verwaltungsrat wählt aus den Vertretern der Vertragsstaaten und deren Stellvertretern einen Präsidenten und einen Vizepräsidenten. Der Vizepräsident tritt im Falle des Verhinderungs des Präsidenten von Amts wegen an dessen Stelle.

(2) Die Amtszeit des Präsidenten und des Vizepräsidenten beträgt drei Jahre. Wiederwahl ist zulässig.

Artikel 26
Präsidium
(1) Beträgt die Zahl der Vertragsstaaten mindestens acht, so kann der Verwaltungsrat ein aus fünf seiner Mitglieder bestehendes Präsidium bilden.

(2) Der Präsident und der Vizepräsident des Verwaltungsrats sind von Amts wegen Mitglieder des Präsidiums; die drei übrigen Mitglieder werden vom Verwaltungsrat gewählt.


(4) Das Präsidium nimmt die Aufgaben wahr, die ihm der Verwaltungsrat nach Maßgabe der Geschäftsordnung zuweist.

Artikel 27
Tagungen
(1) Der Verwaltungsrat wird von seinem Präsidenten einberufen.

(2) Der Präsident des Europäischen Patentamts nimmt an den Beratungen teil.

(3) Der Verwaltungsrat hält jährlich eine ordentliche Tagung ab; außerdem tritt er auf Antrag eines Drittels der Vertragsstaaten zusammen.

(4) Der Verwaltungsrat berät aufgrund einer Tagesordnung nach Maßgabe seiner Geschäftsordnung.

(5) Jede Frage, die auf Antrag eines Vertragsstaats nach Maßgabe der Geschäftsordnung auf die Tagesordnung gesetzt werden soll, wird in die vorläufige Tagesordnung aufgenommen.

Artikel 25
Chairmanship
(1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman in the event of his being prevented from attending to his duties.

(2) The duration of the term of office of the Chairman and the Deputy Chairman shall be three years. It shall be renewable.

Article 26
Board
(1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members.

(2) The Chairman and the Deputy Chairman of the Administrative Council shall be members of the Board ex officio; the other three members shall be elected by the Administrative Council.

(3) The term of office of the members elected by the Administrative Council shall be three years. This term of office shall not be renewable.

(4) The Board shall perform the duties given to it by the Administrative Council in accordance with the Rules of Procedure.

Article 27
Meetings
(1) Meetings of the Administrative Council shall be convened by its Chairman.

(2) The President of the European Patent Office shall take part in the deliberations of the Administrative Council.

(3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.

(4) The deliberations of the Administrative Council shall be based on a agenda, and shall be held in accordance with its Rules of Procedure.

(5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.
(3) Die Mitglieder der Kammern sind für ihre Entscheidungen an Weisungen nicht gebunden; sie sind insoweit nur diesem Übereinkommen unterworfen.

(4) Vorbehaltlich der Genehmigung des Verwaltungsrats werden die Verfahrensordnungen der Beschwerdekammern und der Großen Beschwerdekammer nach Maßgabe der Ausführungsordnung erlassen.

Artikel 22
Ausschließung und Ablehnung

(1) Die Mitglieder der Beschwerdekammern und der Großen Beschwerdekammer dürfen nicht an der Erledigung einer Sache mitwirken, an der sie selbst beteiligt sind, in der sie vorher als Vertreter eines Beteiligten tätig gewesen sind oder an deren abschließender Entscheidung in der Vorinstanz sie mitgewirkt haben.

(2) Glaubt ein Mitglied der Beschwerdekammer oder der Großen Beschwerdekammer aus einem der in Absatz 1 genannten Gründe oder aus einem sonstigen Grund nicht mitwirken zu können, so teilt es dies der Kammer mit.

(3) Die Mitglieder der Beschwerdekammern oder der Großen Beschwerdekammer können von jedem Beteiligten aus einem der in Absatz 1 genannten Gründe oder wegen Besorgnis der Befangenheit abgelehnt werden. Die Ablehnung kann nicht mit der Staatsangehörigkeit der Mitglieder oder damit begründet werden, daß kein Mitglied der Kammer die Staatsangehörigkeit des Antragstellers besitzt.

(4) Die Beschwerdekammern und die Große Beschwerdekammer entscheiden in den Fällen der Absätze 2 und 3 ohne Mitwirkung des betroffenen Mitglieds.

Artikel 23
Technische Gutachten


Kapitel IV
Der Verwaltungsrat

Artikel 24
Zusammensetzung

(1) Der Verwaltungsrat besteht aus den Vertretern der Vertragsstaaten und deren Stellvertretern. Jeder Vertragsstaat ist berechtigt, einen Vertreter und einen Stellvertreter für den Verwaltungsrat zu bestellen.

Artikel 23
Technical opinion

At the request of the competent national court trying an infringement or revocation action, the European Patent Office shall be obliged, against payment of an appropriate fee, to give a technical opinion concerning the European patent which is the subject of the action. The Examining Divisions shall be responsible for the issue of such opinions.

Chapter IV
The Administrative Council

Article 24
Membership

(1) The Administrative Council shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council.
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

VORBEREITENDE DOKUMENTE
ausgearbeitet von der
Regierungskonferenz über die Einführung eines europäischen Patenterteilungsverfahrens
herausgegeben von der
Regierung der Bundesrepublik Deutschland

PREPARATORY DOCUMENTS
drawn up by the
Inter-Governmental Conference for the setting up of a European System for the Grant of Patents
and published by the
Government of the Federal Republic of Germany

DOCUMENTS PRÉPARATOIRES
élaborés par la
Conférence intergouvernementale pour l'institution d'un système européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d'Allemagne

1972
information purposes, as well as publishing it at the same time as the application.

Re. Article 66, No. 1 (Form and contents of the request for grant of a patent)

60. IFIA wondered whether the first line of paragraph 3 had exactly the same meaning in all three languages.

Re. Article 66, No. 3 (Form and contents of claims)

61. UNICE, supported by IAPIP, CEIF, CNIPA, EIRMA, FICPI and UNEPA, pleaded for the applicant to be allowed a greater degree of freedom than provided for in paragraph 3 in drawing up his dependent claims. It was considered generally that there was no need for the Convention to follow the strict rules of the PCT on this point. Certain organisations wanted to delete paragraph 3(b) and allow the European Patent Office to adopt its own rules (FICPI and UNEPA). CNIPA thought that exact provisions should not be laid down, but that the applicant should be free to draw up his claims in the form which he considered most appropriate, taking into account the fact that methods of interpreting claims varied according to the national courts, which would have to decide on the matter. More generally, CNIPA considered that Re. Article 66, Nos. 2, 3, 4, 5 and 7 could be deleted and that the very detailed provisions they contained could be adopted by the President of the Patent Office.

EIRMA and COPRICE favoured a compromise solution.

BR/169 e/72 ght/AV/prk .../...
MINUTES

of the

5th Meeting of the Inter-Governmental Conference
for the Setting up of a European System
for the Grant of Patents

Part II

Hearing of the non-governmental international organisations
on the Second Preliminary Draft of a Convention
establishing a European System for the
Grant of Patents

(Luxembourg, 26 January to 1 February 1972)
Re. Article 66

No. 1

Form and contents of the request for grant of a patent

(1) +

(2) +

(a) to (d) +

(e) where appropriate, indication that the application constitutes a divisional application. In such cases the request shall indicate the number of the patent application to which the divisional application refers;

(f) to (j) +

(3) +
Article 66

Requirements of the application

(1) +

(2) - deleted - (Cf. Article 68, sub-paragraph (c))

(3) An application for a European patent shall be subject to the payment of the filing fee and the fee for the report on the state of the art prescribed by the Rules relating to Fees adopted pursuant to this Convention. These fees must be paid within one month after the filing date.

(4) - deleted - (Cf. Article 79, paragraph 4a, second sentence)

Note to Article 66:
- deleted -

BR/139 e/71 prk
DOCUMENT CORRECTING

SECOND PRELIMINARY DRAFT OF THE CONVENTION
ESTABLISHING
A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

and

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 26 November 1971 -
referred to in Article 35d are not to be considered as members of the Administrative Council, but will attend its meetings as observers.

106. The Conference had to decide whether each Contracting State should appoint only one member, who may be represented in the event of him being prevented, or whether each State should from the beginning appoint both a Representative and an alternate Representative. In the interests of continuity, preference was given to the second solution. A further reason in favour of the second solution was that it allowed the President and the Vice-President of the Administrative Council (Article 35f) and the members of the Board (Article 35g) to be elected not only from among the Representatives of the States but also from among the alternate Representatives.

107. The Conference also considered whether provision should be made for the possibility that a State may be represented by the Representative of another State; this possibility, although limited, existed in other international organisations (IIB, European Communities). The Conference did not provide for this possibility as it did not think it advisable that one Representative should be empowered to vote on behalf of several Contracting States.

108. The members of the Administrative Council are to have the right to co-opt advisers or experts, although the Administrative Council is to be able to restrict this right in its Rules of Procedure. Paragraph 2 was amended accordingly.

BR/125 e/71 ley/KL/prk
Thus the Conference took into account the fact that a collegial body such as the Administrative Council which, moreover only meets at certain intervals, might hardly be in a position to conclude such agreements itself.

103. The Conference also added further powers for the Administrative Council to those contained in paragraphs 1, 2 and 3, as Working Party II had not been able to consider them when drafting Article 35a. For purposes of simplification, the Conference divided the now completed Article 35a into three separate Articles (35a, 35ab, and 35bc; BR/118/71, pages 3 to 6).

**Article 35b** (Preparatory duties of the Administrative Council)

104. The Conference deleted this Article. The power to prepare revision conferences, together with the power to convene such conferences, is already covered in the previous Article. The power to prepare such adaptations to the Convention as may be rendered necessary by the accession of third countries did not, in the opinion of the Conference, need to be laid down expressly. Should the necessity for such adaptations arise a revision conference would have to be convened, as in the case of other amendments.

**Article 35c** (Representation of Contracting States)

105. The Conference decided that only the representatives of the Contracting States could be members of the Administrative Council, and worded paragraph 1 accordingly. The representatives of the inter-governmental organisations
MINUTES

of the

4th Meeting of the Inter-Governmental Conference

for the setting up of a European System

for the Grant of Patents

(Luxembourg, 20 to 28 April 1971)
CHAPTER Ib
Constitution of the Administrative Council

Article 35c
Representation of Contracting States

(1) Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council.

(2) The Representatives of the Contracting States may be assisted by advisers or experts.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
15. The Working Party finally agreed that a solution totally reconciling the three requirements set out under (i), (ii) and (iii) was hardly possible. It felt that, under these circumstances, the least objectionable course would perhaps be to accept a solution which would involve practical difficulties for the European Patent Office, but which would safeguard both the rights acquired by applicants and the interests of States which had not ratified the revised text. It therefore decided in favour of the first solution (1). However, the Working Party did not feel that it could by itself assess the seriousness of the practical difficulties entailed by this solution as regards the working of the European Patent Office, such an assessment lying more within the scope of Working Party I. For this reason, it was decided to adopt this solution, on the understanding that it would be submitted to Working Party I, which was to be asked whether it was compatible with the smooth operation of the European Patent Office.

**Article c - Signature - Ratification**

16. In this provision, the intention of the Working Party was to limit signature of the Convention to the States taking part in the Inter-Governmental Conference (17 countries) or which had been offered the option of taking part in it (Malta and Monaco).

For subsequent accession by other European States, see Article d(2) below.

**Article d - Accession**

17. The Working Party pointed out that the accession of States able to be parties to the Convention from the time the latter was open for signature should be effected automatically as soon as such State expressed the wish to
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 8 October 1970
BR/53/70

- Secretariat -

MINUTES
of the Meeting of Working Party II
(Luxembourg, 1-4 September 1970 - 2nd meeting)

I

1. The second meeting of Working Party II was held at Luxembourg, from Tuesday 1 to Friday 4 September 1970 under the Chairmanship of Mr. R. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities and the International Patent Institute attended the meeting as observers. (1).

2. The Working Party would draw attention to the provisional nature of the wording of the texts it adopted.

Bearing in mind the timetable laid down for the meetings of the other Working Parties, the outcome of which might lead the Working Party to revise some of the provisions which it had previously adopted, in particular those relating to the Administrative Council,

.../...

(1) The list of those attending the meeting is given in the Annex.

BR.53 e/70 scn/PB/prk
CHAPTER II
CONSTITUTION OF THE ADMINISTRATIVE COUNCIL

Article c
Representation of Contracting States

(1) Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council.

(2) The Representatives of the Contracting States may be assisted by advisers or experts.
INTER-GOVERNMENTAL CONFERENCE
FOR THE setting up OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 13 March 1970
BR/33/70

- Secretariat -

FIRST PRELIMINARY DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)

BR/33 e/70 mrk
Chapter IV
The Administrative Council

Article 26

Membership

(1) The Administrative Council shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council.

(2) The members of the Administrative Council may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.