Article 36 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. 36

MPÖ

Stimmenwürdigung

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Dokumente der MDK

E 1972  34  M/146/R 2  Art. 36
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 2
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 27 to 54
Artikel 34
Stimmenwägung

(1) Jeder Vertragsstaat kann für die Annahme und Änderung der Gebührenordnung sowie, falls dadurch die finanzielle Belastung der Vertragsstaaten vergrößert wird, für die Feststellung des Haushaltsplans und eines Berichtigungs- oder Nachtragshaushaltsplans der Organisation nach einer ersten Abstimmung, in der jeder Vertragsstaat über eine Stimme verfügt, unabhängig vom Ausgang der Abstimmung verlangen, daß unverzüglich eine zweite Abstimmung vorgenommen wird, in der die Stimmen nach Absatz 2 gewogen werden. Diese zweite Abstimmung ist für den Beschuß maßgebend.

(2) Die Zahl der Stimmen, über die jeder Vertragsstaat in der neuen Abstimmung verfügt, errechnet sich wie folgt:

a) Die sich für jeden Vertragsstaat ergebende Prozentzahl des in Artikel 38 Absätze 3 und 5 vorgesehenen Aufbringungsschlüssels für die besonderen Finanzbeiträge wird mit der Zahl der Vertragsstaaten multipliziert und durch fünf dividiert.

b) Die so errechnete Stimmenzahl wird auf eine ganze Zahl aufgerundet.

c) Dieser Stimmenzahl werden fünf weitere Stimmen hinzugezählt.

d) Die Zahl der Stimmen eines Vertragsstaats beträgt jedoch höchstens 30.

Kapitel V
Finanzvorschriften

Artikel 35
Deckung der Ausgaben

Die Ausgaben der Organisation werden gedeckt:

a) durch eigene Mittel der Organisation;

b) durch Zahlungen der Vertragsstaaten aufgrund der für die Aufrechterhaltung der europäischen Patente in diesen Staaten erhobenen Gebühren;

c) gegebenenfalls durch besondere Finanzbeiträge der Vertragsstaaten;

d) gegebenenfalls durch die in Artikel 146 Absatz 1 vorgesehenen Einnahmen.

Artikel 36
Eigene Mittel der Organisation

Eigene Mittel der Organisation sind das Aufkommen an Gebühren, die in diesem Übereinkommen vorgesehen sind, sowie alle sonstigen Einnahmen.

Article 34
Weighting of votes

(1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot.

(2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows:

(a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 38, paragraphs 3 and 5, shall be multiplied by the number of Contracting States and divided by five;

(b) the number of votes thus given shall be rounded upwards to the next higher whole number;

(c) five additional votes shall be added to this number;

(d) nevertheless no Contracting State shall have more than 30 votes.

Chapter V
Financial provisions

Article 35
Cover for expenditure

The expenditure of the Organisation shall be covered:

(a) by the Organisation's own resources;

(b) by payments by the Contracting States in respect of renewal fees for European patents levied in these States;

(c) where necessary, by special financial contributions by the Contracting States; and

(d) where appropriate, by the revenue provided for in Article 146, paragraph 1.

Article 36
The Organisation's own resources

The Organisation's own resources shall be the yield from the fees laid down in this Convention, and also all receipts, whatever their nature.
MÜNCHNER DIPLOMatische KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTEILUNGSVERFAHRENS 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
délabrés 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
Article 34

23. The Netherlands delegation submitted a drafting proposal with regard to paragraph 2 (cf. Working Document No. 11) with a view to specifying that the words "the percentage" in paragraph 2(a) refer to the numerator and not to the entire fraction.

The Conference was of the opinion that such a stipulation was not indispensable.

24. The Conference adopted the text of paragraph 2(d) which still appeared between square brackets.

In accordance with a request from the Greek delegation, the number of votes which each Contracting State will have by virtue of Article 34, paragraph 2, is given in Annex III to these minutes.

Article 50, paragraph 2(a)

25. The Conference had before it a proposal from the Swiss delegation (cf. Working Document No. 6). This document had previously been examined by the Co-ordinating Committee (cf. BR/213/72, point 4).

26. The Conference recorded its agreement on the conclusions of the Co-ordinating Committee, to the effect that the restriction implicit in the words "as such" should apply to discoveries alone and not to scientific theories or mathematical methods.
MINUTES

of the

6th meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
Article 34 (35o)

Weighting of votes

(1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot.

(2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows:

(a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 38, paragraph 3, shall be multiplied by the number of Contracting States and divided by five;

(b) the number of votes thus given shall be rounded upwards to the next higher whole number;

(c) five additional votes shall be added to this number;

(d) nevertheless each Contracting State shall have a maximum of 30 votes.

Note to Article 34

This Article, and in particular paragraph 2(d) will be re-examined in the light of the scale of contributions adopted (cf. Article 38)
DRAFT CONVENTION

ESTABLISHING A EUROPEAN SYSTEM

FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
on whether, instead of the percentage as per the contributions provided for in Article 42 c, paragraph 3, the percentage of the total financial contribution of each State should be taken as the criterion.

The Conference decided to re-examine this Article taking into account the scale of contributions which had still to be determined. An important aspect of this re-examination was to be whether the total number of votes allocated to a Contracting State should be limited to a maximum of 30.

**Article 35 o (The Secretariat of the Administrative Council)**

124. The Conference noted that the Administrative Council was not to engage the staff necessary for the performance of its duties itself but that such staff would be placed at its disposal by the European Patent Office.

**Article 35 p (Privileges and Immunities)**

125. This provision, which related to the privileges and immunities to be enjoyed by the Administrative Council, was deleted, as the Conference had extended Article 35 to the members of the Administrative Council and certain other persons taking part in its work.
Fees and the second the adoption and amendment of the budget, if the financial burden of the Contracting States would thereby be increased. According to this compromise, the other decisions listed in paragraph 1 were not subject to weighting of votes. However, the Conference provisionally left open the question of whether the reduction of the period provided for in Article 159, paragraph 1, and the determination of the expiry of the transitional period also provided for in the same Article should be subject to weighting of votes. It would decide this question when the final results of the future examination of Article 159 were known.

122. The Conference also had to decide whether, as one delegation proposed, the votes should be weighted for the first vote or whether, as proposed by Working Party II, there should be an initial vote in which each Contracting State would have one vote and the result of which could be modified, on request only, by a second, weighted vote. Some delegations first advocated weighting the votes for the initial vote because this would be simpler. They were told in reply that the second vote was only envisaged for urgent cases. It was the experience of other international organisations that a second vote was seldom or never required. The proposal that the first vote should be weighted was therefore withdrawn.

123. Some delegations stated that they were not yet able to judge the consequences of the details of the scale of contributions (paragraph 2) and therefore reserved their positions. The German delegation reserved its position...
(the Paris Union Convention, the PCT and the International Patent Classification Convention) do not provide for weighting of votes, although the largest States make the highest contributions; this was justifiable, as these States drew the greatest advantage from their conventions. Similar considerations could be applied in connection with the Convention establishing a European System for the Grant of Patents. Moreover, the European Patent Office was to be self-supporting in the long run, with the result that a long-term differentiation between the individual Contracting States did not need to be considered.

Other delegations advocated weighting of votes and opposed these arguments as follows: the comparison with other international industrial property organisations was not valid, as they allowed any State to opt out of an increase in contributions with which it did not agree. It would not be feasible to draw up such rules for the European Patent Office because its duties could not be restricted or extended to adapt to changes in its financial situation. It was indeed the aim of the Contracting States that in the long run the European Patent Office should be self-supporting, but under Article 42 c, the Contracting States would have to make special financial contributions in emergencies, with the result that the expenditure borne by the individual States, which would depend on the interest rate and the date of repayment, could, in the final analysis, be decisively influenced by decisions of the Administrative Council.

The Conference finally reached a compromise whereby the weighting of votes was limited to two cases, the first being the adoption (and amendment) of the Rules relating to
As a further consequence of the elimination of the unanimity requirement, the Conference deleted paragraph 2. Those delegations that had advocated the retention of this provision on constitutional grounds were assured that in no event would decisions of this nature which would be likely to infringe national laws be contemplated by the Administrative Council.

The Conference noted that in practice the 3/4 majority provided for in paragraph 3 and the 2/3 majority provided for in paragraph 4 would give much the same number. For reasons of simplicity it therefore decided to provide for a 3/4 majority for all the decisions referred to in these two paragraphs. The Conference also added to this list the decisions provided for in Article 42 b, paragraph 1, and Article 42 c, paragraph 2. All decisions not mentioned, including the decision to set up the Board, merely require a simple majority, as provided for in paragraph 5.

The Conference finally discussed whether the 3/4 majority and the simple majority should be calculated from the total number of Contracting States or from the number of Contracting States represented and voting in the Administrative Council. It decided in favour of the second solution and specified that abstentions should not be counted as votes.

Article 35 n (Weighting of votes)

Several delegations opposed the principle of weighting of votes. They pointed out that other international conventions for the protection of industrial property.../...
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)
Article 35n continued:

(3) However, the total number of votes allocated to any one Contracting State may not exceed $\frac{1}{5}$ times the total number of votes allocated to any other Contracting State.

Note to Article 35n:

This Article will be re-examined in the light of the scale of contributions adopted (cf. Article 42c).
Article 35n
Weighting of votes

(1) In respect of the following decisions:

A. the adoption or amendment

(a) of the provisions of the Administrative and Financial Regulations of the European Patent Office relating to the administrative structure of that Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, of the salary scales of the said officials and employees, and of the nature and rules for the grant of the supplementary benefits which may be accorded to them;

(c) the Rules relating to fees;

B. the adoption of the budget of the European Patent Office and of any amending or supplementary budgets;

C. the reduction of the time-limit laid down in Article 88, paragraph 2, for the making of a request for examination, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with the provisions of paragraph 2. The decision shall be determined by the result of this second ballot.

(2) In this second ballot, each Contracting State shall have 5 votes, to which shall be added a number of votes equal to the quotient resulting from the division of the number retained as the coefficient allocated to that State in the scale for the financial contributions, by the weighting defined in the second subparagraph of this paragraph. The number of votes thus given shall be rounded upwards to the higher whole number.

The weighting shall be equal to the quotient resulting from the division of the sum of the coefficients allocated to the Contracting States in the scale for the financial contributions, by the number obtained by multiplying the number of Contracting States by twenty.

Note to Article 35n, paragraph 1.C:
This provision in particular will have to be harmonised with Article 159.

BR/88 e/71 gc
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
5. The delegations will find
   (i) in II of the present minutes,
       the general comments made on the provisions to
       be laid down for the Administrative Council,
   (ii) in III of the present minutes,
       the main comments made on the various Articles
       concerning the Council made by the Working
       Party at its first working meeting. The texts
       so far adopted by the Working Party are contained
       in BR/33/70.

II

GENERAL COMMENTS ON THE PROVISIONS
RELATING TO THE ADMINISTRATIVE COUNCIL

6. The Working Party examined whether the provisions
    relating to the Administrative Council should be fully in-
    corporated in the text of the Convention proper, or whether
    the latter should simply contain the general principles
    governing the Administrative Council, all other provisions
    being contained in an annexed Protocol. The Working Party
    was of the opinion that it would be expedient to include all
    the provisions in question in the Convention, save for certain
    rules of procedure which, in accordance with existing precedents,
    would be laid down separately.
2. The Working Party agreed to appoint Mr. TUXEN, Director, Patentdirektoratet (Denmark) as Vice-Chairman.

The Working Party decided to appoint Mr. CLIVA, Central Patents Department, Ministry of Industry (Italy), as general rapporteur to the Conference for the Working Party.

The Working Party also appointed the following rapporteurs:

(i) a member of the Swiss delegation for the provisions relating to the Administrative Council of the European Patent Office,

(ii) a member of the French delegation for the final provisions of the Convention,

(iii) a member of the Irish delegation for the Protocol on Privileges and Immunities.

3. The Working Party set up a Drafting Committee under the Chairmanship of Mr. MOSER, Federal Political Department (Switzerland).

In view of the Conference's working languages, the members of the Committee were drawn from the French, Irish and Swiss delegations. The Drafting Committee held meetings daily after the meetings of the Working Party.

4. The Working Party's work was conducted in the light of the fact that it would have to be in a position to submit its conclusions to the Conference before 31 October 1970, as had been agreed by the Conference at its meeting of 13 - 16 January 1970 (cf. BR/26/70, point 45, in fine page 25).
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 20 March 1970
BR/34/70

SECRETARIAT

MINUTES

of the meeting of Working Party II
(Luxembourg, 4-6 March 1970)

I

1. The first working meeting of Working Party II, set up
by the Conference at the latter's meeting of 13-16 January 1970,
was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working
Party at its inaugural meeting held at Luxembourg on
16 January 1970, the Chair was taken by Mr. LABRY, Counsellor
at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and
the International Patent Institute (IIB) took part in the
meeting as observers. The representative of the General
Secretariat of the Council of Europe, who had also been
invited to take part in the meeting, apologized for being
unable to attend (1).

(1) See list of participants in the meeting of the Working
Party given in Annex II. As regards Annex I, see point 38
on page 16.

BR/34 e/70 kel/RT/mrk

.../...
paragraph is illustrated by means of a token calculation accompanied by a commentary, contained in Annex I to these minutes. This Annex was drawn up by the Chairman of the Working Party.

The Working Party reserved its position as regards the details for operating this system, particularly as regards the two parameters (multiplying factor of 20 and number of fixed votes of 5). Examination of these details will be resumed once the scale of contributions to be laid down by Working Party IV is known.

39. In order to prevent the method of calculating the votes attributed to each Contracting State leading to too marked differences, the Working Party, drawing on a provision of the above-mentioned Hague Agreement establishing the IIB, laid down a maximum limit for the number of votes. Provisionally, this limit is set at 5 times the number of votes attributed to the Contracting State having the smallest number of votes. The Working Party however reserved the right to re-examine this limitation once the scale of contributions is known.

Article o - Secretariat of the Administrative Council

40. No comment.

Article p - Privileges and immunities

41. The Working Party reserved the right to review the drafting of this Article, which has been adopted provisionally, when the Protocol on privileges and immunities is drawn up. At this point, the Working Party will be able to ascertain whether the text of Article p should cover not only the privileges and immunities of the members of the Council, but also any to be enjoyed by the Council itself and by the staff of its Secretariat.

BR/34 e/70 kel/RT/mrk
apparent to the Working Party that it was not sufficient in defining these decisions to refer to any financial implications they might have. For this reason, the Working Party decided to draw up a list giving the decisions subject to such a ballot by reason of either their financial implications or their importance. This list is contained in paragraph 1 of this Article.

36. As regards the decisions of this list referred to in C_of_paragraph_1 (reduction of the time-limit laid down for making a request for examination) the Working Party discussed whether weighting should, as was finally agreed, be restricted to reduction only of the time-limit concerned, or whether it should also apply to any extension of this time-limit. The Working Party finally restricted itself to the case of a reduction in the time-limit, in view of its possible financial implications (greater number of examiners). One delegation, while accepting this solution, pointed out that in view of the importance at a more general level of an amendment either way of the time-limit laid down in Article 88 (2) of the Draft Convention, it would have preferred that every decision on this matter be dealt with by the system of weighted votes.

37. The Working Party reserved the right to state its opinion on the cases of the rules and regulations referred to in Article a (1 E) at a later stage, once the subject of these rules and regulations has been more clearly defined.

38. Paragraph 2 lays down the system for weighting votes by attributing a certain number of votes to each of the Contracting States. The practical operation of this
32. It was noted that unanimity, two-thirds majority and simple majority, as provided for respectively in paragraphs 1, 3 and 4, was to be calculated on the basis of the votes allocated to all the Contracting States, and not on the basis of the votes of only those Contracting States whose representatives took part in any given deliberations.

**Article n - Weighting of votes**

33. The Working Party noted its agreement to the principle whereby certain decisions may be subject to a voting procedure where the votes of the Contracting States would be weighted. However, the Working Party noted that experience in the various international organisations active in the field of industrial property showed that in a large number of cases decisions were taken by a general consensus. It therefore appeared expedient to the Working Party to provide for weighting of votes only as a type of "safeguard clause" for the Contracting States bearing the heaviest responsibilities in decisions having financial consequences or having a special importance. In so doing, the Working Party drew on the principle adopted in Article 8 of the Agreement of The Hague, of 6 June 1947, establishing the International Patent Institute, as revised at The Hague on 16 February 1961.

34. The Working Party was of the opinion that this principle should apply only to some of the decisions which require a two-thirds majority under Article m (3).

35. The Working Party had a thorough exchange of views on those of the decisions requiring a two-thirds majority which could be the subject of a second ballot where the votes of the Contracting States would be weighted. It was
MINUTES

of the meeting of Working Party II
(Luxembourg, 4-6 March 1970)

I

1. The first working meeting of Working Party II, set up by the Conference at the latter's meeting of 13-16 January 1970, was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Luxembourg on 16 January 1970, the Chair was taken by Mr. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and the International Patent Institute (IIB) took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe, who had also been invited to take part in the meeting, apologized for being unable to attend (1).

(1) See list of participants in the meeting of the Working Party given in Annex II. As regards Annex I, see point 38 on page 16.
Article n contd.

(2) In this second ballot, each Contracting State shall have 5 votes, to which shall be added a number of votes equal to the quotient resulting from the division of the number retained as the coefficient allocated to that State in the scale for the financial contributions, by the weighting defined in the second sub-paragraph of this paragraph. The number of votes thus given shall be rounded upwards to the higher whole number.

The weighting shall be equal to the quotient resulting from the division of the sum of the coefficients allocated to the Contracting States in the scale for the financial contributions, by the number obtained by multiplying the number of Contracting States by twenty.

(3) However, the total number of votes allocated to any one Contracting State may not exceed \( \lceil 5 \text{ times} \rceil \) the total number of votes allocated to any other Contracting State.

**Note:**

This Article will be re-examined in the light of the scale of contributions adopted by Working Party IV.
Article n

Weighting of votes

(1) In respect of the following decisions:

A. the adoption or amendment

(a) of the provisions of the Administrative and Financial Regulations of the European Patent Office relating to the administrative structure of that Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, of the salary scales of the said officials and employees, and of the nature and rules for the grant of the supplementary benefits which may be accorded to them;

(c) the Rules relating to fees;

B. the adoption of the budget of the European Patent Office and of any amending or supplementary budgets;

C. the reduction of the time-limit laid down in Article 88 (2) for the making of a request for examination,

any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with the provisions of paragraph 2. The decision shall be determined by the result of this second ballot.
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)
Article 34

Weighting of votes

(1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot.

(2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows:

(a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 40, paragraphs 3 and 4, shall be multiplied by the number of Contracting States and divided by five;

(b) the number of votes thus given shall be rounded upwards to the next higher whole number;

(c) five additional votes shall be added to this number;

(d) nevertheless no Contracting State shall have more than 30 votes.