Article 79 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. 79
MPÜ
Benennung von Vertragsstaaten

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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Article 79

Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the designation fee. The designation fees shall be paid within twelve months after filing the European patent application or, if priority has been claimed, after the date of priority; in the latter case, payment may still be made up to the expiry of the period specified in Article 78, paragraph 2, if that period expires later.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the European patent application. Designation fees shall not be refunded.
Vorschlag:
Die Überschrift erhält folgende Fassung: „Ablehnungsgründe“.

14 Absatz 2 am Ende
„... ne pas pouvoir participer au règlement d'une affaire...“ ([an der Erledigung einer Sache] nicht mitwirken zu können, ...“). Dieser Ausdruck ist nach französischer Terminologie nicht korrekt.

Vorschlag:
Der Text erhält folgende Fassung: „... ne pouvoir concourir au jugement d'une affaire...“ ([„Glaubt ein Mitglied... oder aus einem sonstigen Grund an der Entscheidung nicht mitwirken zu können, so...“]).

Artikel 77 – Benennung von Vertragsstaaten

15 Überschrift im französischen Text
„Désignation des Etats contractants“. Die Formulierung dürfte fehlerhaft sein und könnte eine falsche Vorstellung vom Inhalt des Artikels geben. Es handelt sich hier nämlich offensichtlich nicht darum, anzugeben, welches die Vertragsstaaten des Übereinkommens sind, sondern darum, die Staaten zu benennen, für deren Hoheitsgebiet der Schutz beantragt wird.

Vorschlag:
Die französische Überschrift erhält folgende Fassung: „Désignation d'Etats“ ([„Benennung von Vertragsstaaten“]) oder „Désignation d'un ou de plusieurs Etats“ ([„Benennung eines oder mehrerer Vertragsstaaten“]).

16 Absatz 1
Der Text betreffend die Staaten „in denen für die Erfindung Schutz begehrt wird“ ist unzutreffend gefaßt und vermittelt die (falsche) Vorstellung, daß das Schutzbegehren in dem betreffenden Staat (oder in seinem Hoheitsgebiet) zu formulieren ist.

Vorschlag:
Der Text erhält folgende Fassung: „Im Antrag... sind der Vertragsstaat oder die Vertragsstaaten, für dessen oder deren Hoheitsgebiet für die Erfindung Schutz begehrt wird, zu benennen.“

Artikel 105 – Beschwerdefähige Entscheidungen

17 Absatz 2
Die Bestimmung ist allzu wörtlich aus dem Deutschen übersetzt („ist nur zusammen mit der End-
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTVERFAHRENS 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)

CONFÉRENCE DIPLOMATIQUE DE MUNICH
POUR L’INSTITUTION D’UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
(1973)

(Munich, 10 septembre - 6 octobre 1973)

STELLUNGNAHMEN
zu den vorbereitenden Dokumenten
herausgegeben von der
Regierung der Bundesrepublik Deutschland

COMMENTS
on the preparatory documents
published by the
Government of the Federal Republic of Germany

PRISES DE POSITION
sur les documents préparatoires
publiées par le
Gouvernement de la République fédérale d’Allemagne

1973
d) die Zeichnungen, auf die sich die Beschreibung oder die Patentansprüche beziehen;
e) eine Zusammenfassung.

(2) Für die europäische Patentanmeldung sind die Anmeldegebühr und die Rechercengebühr innerhalb eines Monats nach Einreichung der Anmeldung zu entrichten.

(3) Die europäische Patentanmeldung muß den Erfordernissen genügen, die in der Ausführungsvorschrift vorgeschrieben sind.

Vgl. Regeln 26 (Erteilungsantrag), 27 (Inhalt der Beschreibung), 28 (Erfordernisse der europäischen Patentanmeldung betreffend Mikroorganismen), 29 (Form und Inhalt der Patentansprüche), 30 (Patentansprüche verschiedener Kategorien), 31 (Gebührenpflichtige Patentansprüche), 32 (Form der Zeichnungen), 33 (Form und Inhalt der Zusammenfassung), 34 (Umschläge und Umschlagangelegenheiten), 35 (Allgemeine Bestimmungen über die Form der Anmeldungunterlagen), 36 (Unterlagen nach Einreichung der europäischen Patentanmeldung) und 89 (Berichtigung von Mängeln in den beim Europäischen Patentamt eingereichten Unterlagen).

--- Artikel 77 ---

Benennung von Vertragsstaaten

(1) Im Antrag auf Erteilung des europäischen Patents sind der Vertragsstaat oder die Vertragsstaaten, in denen die Erfindung geschützt werden soll, zu benennen.

(2) Für die Benennung eines Vertragsstaats ist die Benennungsgebühr zu entrichten. Die Benennungsgebühren sind innerhalb von zwölf Monaten nach Einreichung der europäischen Patentanmeldung oder, wenn eine Priorität in Anspruch genommen worden ist, nach dem Prioritätstag zu entrichten; im letztgenannten Fall kann die Zahlung noch bis zum Ablauf der in Artikel 76 Absatz 2 genannten Frist erfolgen, wenn diese Frist später abläuft.


Vgl. Regeln 15 (Einreichung einer neuen europäischen Patentanmeldung durch den Brechtigen), 23 (Vorschriften für europäische Teilanmeldungen) und 70 (Feststellung eines Rechtsverhältnisses)

--- Artikel 78 ---

Anmeldetag

Der Anmeldetag einer europäischen Patentanmeldung ist der Tag, an dem die vom Anmelder eingereichten Unterlagen enthalten:

a) einen Hinweis, daß ein europäisches Patent beantragt wird;

b) any drawings referred to in the description or the claims;
c) an abstract.

(2) A European patent application shall be subject to the payment of the filing fee and the search fee within one month after the filing of the application.

(3) A European patent application must satisfy the conditions laid down in the Implementing Regulations.

Cf. Rules 26 (Request for grant), 27 (Content of the description), 28 (Requirements of applications relating to microorganisms), 29 (Form and content of claims), 30 (Claims in different categories), 31 (Claims incurring fees), 32 (Form of the drawings), 33 (Form and content of the abstract), 34 (Prohibited matter), 35 (General provisions governing the presentation of the application documents), 36 (Documents filed subsequently) and 89 (Correction of errors in documents filed with the European Patent Office)

--- Article 77 ---

Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the designation fee. The designation fees shall be paid within twelve months after filing the European patent application or, if priority has been claimed, after the date of priority; in the latter case, payment may still be made up to the expiry of the period specified in Article 76, paragraph 2, if that period expires later.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the European patent application. Designation fees shall not be refunded.

Cf. Rules 15 (Filing of a new European patent application by the person entitled to apply), 22 (Provisions for European divisional applications) and 70 (Noting of loss of rights)

--- Article 78 ---

Date of filing

The date of filing of a European patent application shall be the date on which documents filed by the applicant contain:

a) an indication that a European patent is sought:
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
élabrés 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
33. Furthermore, on the same subject, the Working Party agreed that for a divisional application the applicant could designate all the States designated in the initial application or just some of them; what he could not do was to designate other States. The Working Party made the appropriate addition to Article 137a, paragraph 3.

34. The United Kingdom delegation wanted to know whether it would be fairest to reimburse designation fees already paid in the case provided for in Article 124 where an application for a European patent was converted into an application for a national patent. It proposed that the third sentence of Article 67, paragraph 3, be deleted to this end.

The United Kingdom delegation reserved the right to raise this point at the next meeting of the Conference.

Article 68 (Date of filing)

35. The Working Party aligned the drafting of the French text on the German and English texts.

Article 69a (Naming of the inventor)

36. The United Kingdom delegation drew the Working Party's attention to the problems arising from the rules laid down with regard to naming of the inventor in the light of Article 67, paragraph 4. If, for example, naming of the inventor was required in one of the EEC Member States, the result of absence of naming would be, under the terms of Article 69a, Article 77, paragraph 2(g), and Article 78, paragraph 6, that the naming was deemed to be withdrawn.
In this connection, the German delegation drew the Working Party's attention to the mechanics of the system currently in force, which corresponded to that under the PCT. Contrary to what had been thought previously, the applicant now had to designate the States in which he required the invention to be protected at the moment of filing the application; he no longer had twelve months. However, he did have a period of twelve months to pay the designation fee to allow him to judge whether he would retain his designation for a particular country.

Hence this delegation, supported by other delegations, was not able to accept the United Kingdom delegation's suggestion, although appreciating the advantage it had of simplifying the procedure.

Finally, the United Kingdom delegation withdrew its suggestion and the Working Party adopted the similar proposals made by the Netherlands delegation and the Chairman.

32. The problem next arose in this context as to whether designation fees should be paid for a divisional application (Article 137a). The Working Party thought that they should be paid since it considered that a divisional application should be treated like a normal application.

With regard to the period during which that fee ought to be paid the Working Party favoured one month from the date of filing the divisional application (Article 137a, paragraph 4).
Article 67 (Designation of Contracting States)  
Article 137a (European divisional applications)

31. The Working Party studied the question as to how consideration might be given to the remarks put forward by the interested circles concerning payment of the designation fee (cf. BR/168/72, point 85) when a priority was claimed.

The Chairman and the Netherlands delegation submitted similar suggestions, i.e. that the regulation provided for in paragraph 2 of Article 67 be retained and a stipulation be added that should the period laid down for payment of the filing and search fees expire after the end of the period specified in Article 67, paragraph 2, the first period would apply (cf. BR/GT I/149/72 and BR/GT I/145/72 respectively). Thus, if a priority were claimed, the applicant had a period of one month after the filing date, whereas under the present text, if the priority date was eleven months or more before the filing date the applicant had to pay the designation fee within a period of from 31 to 0 days as the case might be.

The United Kingdom delegation, however, thought that it would be preferable to align the provisions concerning payment of the designation fee on those laid down for the payment of the filing and search fees by making provision, in both cases, for a period of one month after the filing date. This delegation did not think it necessary to grant a period of twelve months for payment of the designation fee in the case of no priority being claimed.

BR/177 e/72 aut/KM/gc .../...
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 13 April 1972
BR/177/72

- Secretariat -

REPORT

on the 11th meeting of Working Party I
held in Luxembourg from 28 February to 3 March 1972

1. Working Party I held its 11th meeting in Luxembourg from 28 February to 3 March 1972 with Dr Haertel, President of the Deutsches Patentamt in the Chair.

Representatives of the Commission of the European Communities, the IIB and WIPO attended the meeting as observers. The Representatives of the Council of Europe sent apologies for absence. Those present at the 11th meeting are listed in Annex I to this report.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/143/72; it was agreed that Articles 153 and 154 would be dealt with by the Co-ordinating Committee at its next meeting scheduled for 15 to 19 May 1972. The provisional agenda is contained in Annex II to this report.

3. The Drafting Committee of Working Party I was chaired by Mr van Benthem, President of the Octrooiraad.

The results of the Drafting Committee's work were circulated under reference BR/176/72.

BR/177 e/72 cyd/AH/prk

.../...
Article 67 (Designation of Contracting States)

62. **CNIPA** proposed that the period laid down in paragraph 2 for the payment of the designation fee be extended from 12 to 13 months so that the applicant would still have a whole month in which to make the payment in the event of the priority period having expired completely.

In the case of divisional applications which in accordance with Article 137a, paragraph 3, had the date of filing and possibly also the priority date of the earlier application, it would in many cases be impossible to observe the period allowed for payment; a special rule to cover such cases was therefore desirable.

63. In connection with paragraph 3, **IFIA** proposed that the possibility of the designation fees being refunded be provided for.

Article 68 (Date of filing)

64. **FICPI** raised the question of whether the "whole day principle", which Article 68 clearly aimed at introducing, was in fact clearly expressed in other provisions of the Convention; in Article 11; paragraph 3, for example, there was a reference to "earlier applications". FICPI suggested that this possible lack of precision should be removed by introducing a new paragraph 2 into Article 68, to the effect that European patent applications with the same date of filing were to be considered to have been filed at the same time.

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

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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)
Article 67 - Designation of Contracting States

85. The Conference agreed that the proposals of one organisation regarding paragraph 2, that a period of 13 months instead of 12 months from the date of priority be fixed for the payment of the designation fee, should be examined by Working Party I.

86. The Conference rejected the proposal of one organisation in connection with paragraph 3, that provision be made for the possibility of a repayment of the designation fees (cf. BR/169/72, point 63), since even the PCT does not provide for a repayment of the designation fees paid to the International Office where a date of filing has been recognised.

Article 68 - Date of filing

87. The Drafting Committee was instructed to examine whether it would not be better to adapt the conditional construction used in the French version of Article 68 (..."si elle comporte" ..... "si elle contient" ...) to the other two versions.

Article 69 - Failure to pay the filing fee or to provide a translation

88. The Conference rejected the request by IFIA for an addition to be made to Article 69 (cf. BR/169/72, point 54), in conjunction with the request concerning Article 66, which was also rejected, that the naming of the inventor should be a requirement of the application (see point 83 above).

BR/168 e/72 eld/KM/gc

.../...
MINUTES

of the

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

Parts 1 and 3

(Luxembourg, 24-25 January and 2-4 February 1972)
(4) Sofern eine Gruppe von Vertragsstaaten von der Ermächtigung in Artikel 8 Gebrauch gemacht hat, kann sie vorschreiben, daß ihre Benennung nur gemeinsam erfolgen kann und daß die Benennung eines Teils der Vertragsstaaten der Gruppe als Benennung aller dieser Vertragsstaaten gilt.

**Artikel 68**

**Anmeldetag**

Der Anmeldetag einer europäischen Patentanmeldung ist der Tag, an dem folgende Erfordernisse erfüllt sind:

a) die Anmeldung muß einen Hinweis enthalten, daß sie eine europäische Patentanmeldung darstellt, und mindestens einen Vertragsstaat gemäß Artikel 67 Absatz 1 benennen;

b) die Anmeldung muß Angaben enthalten, die es erlauben, die Identität des Anmelders festzustellen;

c) die Anmeldung muß in einer der in Artikel 34 Absätze 1 und 2 vorgesehenen Sprachen eine Beschreibung und Patentansprüche enthalten, selbst wenn diese nicht den anderen Vorschriften dieses Übereinkommens entsprechen.

**Artikel 69**

**Nichtentrichtung der Anmeldegebühr und fehlende Übersetzung**

Die europäische Patentanmeldung gilt als zurückgenommen,

a) wenn die in Artikel 66 Absatz 3 vorgeschriebene Gebühr nicht innerhalb der vorgeschriebenen Frist entrichtet wird oder

b) wenn im Fall des Artikels 34 Absatz 2 die Übersetzung der Patentanmeldung nicht innerhalb der dort genannten Frist vorgelegt worden ist.

**Artikel 69a**

**Erfindernennung**

In der europäischen Patentanmeldung ist der Erfinder zu benennen, wenn das nationale Recht zumindest eines der benannten Vertragsstaaten vorschreibt, daß für eine nationale Anmeldung der Erfinder im Zeitpunkt der nationalen Anmeldung oder zu einem späteren Zeitpunkt zu benennen ist.

**Artikel 70**

**Einheitlichkeit der Erfindung**

Die europäische Patentanmeldung darf nur eine einzige Erfindung enthalten oder eine Gruppe von Erfindungen, die untereinander in der Weise verbunden sind, daß sie eine einzige allgemeine erfinderische Idee verwirklichen.

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 8, this group may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

**Article 68**

**Date of filing**

The date of filing of a European patent application shall be the date on which it satisfies the following conditions:

a) an indication is given that the application is for a European patent, and at least one Contracting State is designated in accordance with Article 67, paragraph 1;

b) information has been given identifying the applicant;

c) there are, in one of the languages referred to in Article 34, paragraphs 1 and 2, a description and claims, even though they do not comply with the other requirements of this Convention.

**Article 69**

**Failure to pay the filing fee or to provide a translation**

An application for a European patent shall be deemed to be withdrawn:

a) if the fee provided for in Article 66, paragraph 3, has not been paid within the prescribed time limit, or

b) if the translation of the application, in the case provided for in Article 34, paragraph 2, has not been produced within the time limit referred to in that Article.

**Article 69a**

**Naming of the inventor**

The application for a European patent shall identify the inventor where the national law of at least one of the designated Contracting States requires such identification to be supplied at the time of filing a national application or at any time thereafter.

**Article 70**

**Unity of invention**

The application for a European patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.
(4) Eine europäische Patentanmeldung, deren Gegenstand unter Geheimschutz gestellt worden ist, wird nicht an das Europäische Patentamt weitergeleitet.


Artikel 66
Erfordernisse der Anmeldung

(1) Die europäische Patentanmeldung muß enthalten:

a) einen Antrag auf Erteilung des europäischen Patents;

b) eine Beschreibung der Erfindung:

c) einen oder mehrere Patentansprüche, die den Gegenstand angeben, für den Schutz begehrt wird;

d) gegebenenfalls die Zeichnungen, auf die sich die Beschreibung oder die Patentansprüche beziehen;

e) eine Zusammenfassung.

(2) - gestrichen - (siehe Artikel 68 Buchstabe c).

(3) Für die europäische Patentanmeldung ist die Anmeldegebühr zu entrichten, die in der Gebührenordnung zu diesem Übereinkommen vorgeschrieben ist. Die Gebühr ist spätestens bis zum Ablauf eines Monats nach dem Anmeldetag zu entrichten.

(4) Die Zusammenfassung dient ausschließlich der technischen Information und kann nicht für andere Zwecke, insbesondere nicht für die Bestimmung des begehrtten Schutzes, herangezogen werden.

Artikel 67
Benennung von Vertragsstaaten

(1) Im Antrag auf Erteilung des europäischen Patents sind der Vertragsstaat oder die Vertragsstaaten, in denen für die Erfindung Schutz begehrt wird, zu benennen.

(2) Für die Benennung eines Vertragsstaats ist die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebene Gebühr zu zahlen. Erfolgt die Zahlung nicht bis zum Ablauf einer Frist von zwölf Monaten nach dem Anmeldetag oder, wenn eine Priorität in Anspruch genommen worden ist, nach dem Prioritätstag oder, wenn mehrere Prioritäten in Anspruch genommen worden sind, nach dem Tag der frühesten Priorität, so gilt die Benennung als zurückgenommen.


(4) An application for a European patent, the subject of which has been made secret, shall not be forwarded to the European Patent Office.

(5) Applications for European patents which do not reach the European Patent Office before the end of the fourteenth month as from the date of filing or, if a priority has been claimed as from the date of priority, shall be deemed to be withdrawn. The filing fee paid under Article 66 shall be refunded.

Article 66
Requirements of the application

(1) An application for a European patent shall contain:

(a) a request for the grant of a European patent;

(b) a description of the invention;

(c) one or more claims;

(d) any drawings referred to in the description or the claims;

(e) an abstract.

(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 prescribed by the Rules relating to Fees adopted pursuant to this Convention. This fee must be paid within one month after the filing date.

(4) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, in particular not for the purpose of interpreting the scope of the protection sought.

Article 67
Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed by the Rules relating to Fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the date of filing or, if a priority has been claimed, as from the date or the earliest date of priority, the designation shall be deemed to be withdrawn.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.
SECOND PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

with

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

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

SECOND AVANT-PROJET DE CONVENTION INSTITUANT UN
SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS

ainsi que

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS

et

PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

APRIL
— 1971 —
(w) Articles 152 to 154 - Professional representation, compulsory representation and authorisation

The question of representation should be discussed later (see point 78 above).

(x) Article 159 - Period within which a request for examination may be made during a transitional period

Should the Administrative Council's option be maintained of shortening the period for making the request for examination, the length of which still has to be specified for a transitional period? [Article 159, paragraph 1, second sentence] (IFICCI, FICPI)

81. Item 6 on the agenda: Discussion of procedure for the 4th Meeting of the Intergovernmental Conference from 20 to 30 April 1971

The Working Party discussed the question of how the results of their work and of the work of the Sub-Committees should profitably be dealt with at the next Meeting of the Conference. In this connection it considered that the delegations to the Intergovernmental Conference should be requested to submit in writing any requests for amendments to the texts.

Item 7 on the agenda: Other business

82. The Working Party agreed as follows for its future programme of work:

The reports of the delegations of Working Party I and of the General Rapporteur on amendments to the published First Preliminary Draft of 1970, which were to be submitted to the Conference, should reach the Secretariat by BR/94 e/71 aut/EM/prk
(t) **Article 116 - Decision or opinion of the Enlarged Board of Appeal on certain points of law**  
The Working Party considered that the question of which text of paragraph 1(b) was preferable, should be discussed with the government legal experts. (See observations by the ICC and CPCCI)

(u) **Article 122 - International search report**  
Should the international search report completely replace the report on the state of the art to be drawn up by the IIB? Should the European Patent Office or the IIB decide on the need for a supplementary report on the state of the art? Should the IIB prepare in every case a report on the state of the art and only consider any international report that might be available? (ICC, CNIPA, CEIF, EIRMA, FICPI, UNEPA, UNICE)

Should fees be levied for any necessary additional report drawn up by the IIB? Could a proportion of the fees be refunded to the applicant if necessary? (CNIPA, FICPI)

(v) **Article 137 - Supplementary report on the state of the art**  
Should a fee be levied for a supplementary report on the state of the art or should it be incorporated into the fee for the main report on the state of the art or even into the filing fee? (FICPI)
(p) Article 79 - Obtaining of the report on the state of the art
(i) With regard to the question on combining the filing fee with the search fee, see under point (1) on Article 66.

(ii) With regard to the question, whether the report on the state of the art should be replaced by the international search report for PCT-applications, see under point (u) on Article 122.

(q) Article 80 - Transmission of the report on the state of the art
Should the report on the state of the art be transmitted by the EIB to the European Patent Office and to the applicant simultaneously? (CNIPA, IFIA)

(r) Article 88 - Request for examination
The Working Party considered that the question of whether a request for examination might in future be lodged by a third party, notwithstanding the new text of Article 88, paragraph 2, or whether this possibility should hold good for a transitional period, was one which should be discussed further with the interested circles. (See observations by the FICPI)

(s) Article 111 - Time-limit and form of appeal
Should the period within which the grounds for appeal could be set out in greater detail (Article 111, third sentence) be extended? Should it, if necessary, be fixed by the Board of Appeal? (FICPI, IFIA, UNEPA)
(m) **Articles 66 to 68**
Questions on organisation of the procedure: see under (o) on Articles 77 and 78.

(n) **Article 74 - Effect of priority right**
Should there be a reference in Article 74 to Article 21, paragraph 1? See under (g) on Article 21.

(o) **Article 77 - Examination of the European patent application for formal and obvious deficiencies**

**Article 78 - Notification and refusal of the application**

(i) Who should be responsible for carrying out the formal examination provided for in Article 77, paragraph 1: the EPO, the national receiving Office (in the case of Article 64, paragraph 1(b)), or the IIB? Which parts of the formal examination should be undertaken by which authorities if the work is divided up among them? (ICC, CNIPA, CEIF, EIRMA, UNICE)

(ii) Should the EPO carry out alone the examination for obvious deficiencies provided for in Article 77, paragraph 2, or should the IIB undertake a share of this examination, e.g. examination of unity of invention?(1) (ICC, CNIPA, CEIF, EIRMA, FICPI, UNICE)

(iii) Should not the EPO only enter the proceedings when the IIB has drawn up the search report? (ICC, CNIPA, CEIF, EIRMA, UNICE)

(iv) Would it be advisable to organise co-ordination of the EPO departments responsible for the novelty search with the IIB departments, which were preparing the search reports? (UNICE)

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(1) The majority of the Working Party refused to abandon altogether the examination for obvious deficiencies.
of the opinion that it would suffice to insert in Article 74 a reference to Article 21, paragraph 1. (CNIPA, EIRMA, FICPI, UNICE)

(b) **Article 22 - Unitary character of the European patent application**

Is it perfectly clear from this provision that a European patent application can be filed jointly by several applicants and that rights limited to certain countries can be assigned to different assignees in proceedings before the European Patent Office? (CEIF)

Apart from this question, the equivalence of the texts in the three languages should be examined. (CEIF)

(i) **Article 23 - Assignment of a European patent application**

Should the Convention specify that an entry in the European Patent Register had the same effect at national level as an entry in the national register? (CEIF)

(k) **Article 28 - Contractual licensing of a European patent application**

Should protection be granted to the licensee recorded in the European Patent Register against the proprietor of the application? (CEIF)

(l) **Article 66 - Requirements of the application**

Should the filing fee be combined with the fee for obtaining the report on the state of the art (Article 79)? (IOC, CNIPA, EIRMA, FICPI)
(d) Article 15 - Right to the grant of a European patent
If several people had made an invention independently of each other and had filed applications at different times, should the first application be deemed non-existent if it has been withdrawn or refused before publication? A provision of this nature would (according to EIRMA) make it possible for the person filing the second application to receive a patent notwithstanding Article 11, paragraph 3.

This would not be achieved (according to EIRMA) by deleting the third sentence of Article 15, paragraph 1.

(e) Article 19 - Rights conferred by a European patent application after publication
Should there be a provision, corresponding to Article 29 PCT, that a published European patent application should be accorded at least the same provisional protection as national applications? (CNIPA)

(f) Article 20 - Extent of the protection conferred by a European patent
There should be an examination of the equivalence of the texts in the three languages concerning the words "Inhalt der Ansprüche", "terms of the claims" and "teneur des revendications" - also with reference to Article 8 of the Strasbourg Convention of 27.11.1963; if necessary, a legal definition might be introduced. (ICC, CNIPA, EIRMA, UNICE).

(g) Article 21 - European patents of addition
Should the beginning of the period for filing an application for a European patent of addition be based on the date of priority of the application for a national patent of addition? Several organisations were
Apart from the textual amendments referred to under point 79, the Working Party decided to undertake no immediate amendment to the Preliminary Draft on the basis of the observations made by the international organisations, but to adopt the procedure set out under point 77 (recommendation to the Inter-Governmental Conference). The points on which the Working Party recommends acceptance or rejection of the proposal's made by the international organisations can be found in the above-mentioned document BR/100/71. The only problems set out below are those for which the Working Party is to recommend further examination.

(a) Article 9 - Patentable inventions
Possible new text for Article 9, paragraph 2, especially sub-paragraphs (a), (b) and (e) (observations by CEIF and UNICE);

(b) Article 11, paragraphs 2 and 3 - Novelty
Should the expression "contents of earlier applications for European patents" in Article 11, paragraph 3 be aligned more closely on the Strasbourg Convention of 27.11.1963, by being replaced by "contents of applications for European patents, which have earlier filing dates ..."? (FICPI)

(c) Article 11, paragraph 3 - Novelty
Should an earlier European application form an obstacle to the grant of a European patent under Article 11, paragraph 3 even where the inventor is the same person in both cases? (So-called Self-collision (FICPI)"

The Swedish delegation was asked in this connection to establish by the next meeting whether real difficulties had arisen in the Scandinavian countries in this context.
MINUTES
of the 7th meeting of Working Party I
held at Luxembourg from 26 to 29 January 1971

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Item 1 on the agenda (1): Opening of the meeting and adoption
of the provisional agenda

1. The Working Party held its seventh meeting at Luxembourg from Tuesday 26 to Thursday 28 January 1971 with Dr. HAERTHEL, President of the German Patent Office, in the Chair.

   The meeting was attended by representatives of the Commission of the European Communities, WIPO/OMPI and the International Patent Institute (2). The representative of the General Secretariat of the Council of Europe sent his apologies for being unable to attend.

2. The Drafting Committee, under the Chairmanship of the President of the Netherlands "Octrooiraad", Mr J.V. VAN BENTHEM, held its meetings directly after the deliberations of the Working Party, and also on the morning of 29 January 1971.

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(1) For the provisional agenda (BR/GT I/101/71), see Annex I.
(2) For the list of those attending the meeting of the Working Party, see Annex II.
Article 67 (former Article 68a)
Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed in the Rules relating to fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the filing of the application for a European patent or, if a priority has been claimed, as from the date or the earliest date of priority, the designation shall be deemed to be withdrawn.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 8, this group may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

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

(Articles drafted by Working Parties I, II, III and IV)
Certain delegations considered this proposal impractical in view of Article 64(3), since the European Patent Office would then incur responsibility for checking the applicant's position as regards compliance with such provisions.

The French delegation was invited to submit a note to the Working Party explaining the difficulties it saw in Article 64 in its present form.

62. **Article 65**: Forwarding of applications for European patents

The Working Party did not take a position on the periods shown in brackets in Article 65. It will re-examine the matter when revising those parts of the Preliminary Draft which have to be harmonised with the PCT.

63. **Article 66**: Requirements of the application

The note was deleted in view of the new text of Articles 66(1)(e) and 79 concerning the abstract.

64. **Article 67**: Designation of Contracting States

The note to paragraph 2 was deleted, since this matter comes under a provision of the Rules relating to Fees.

65. **Article 69**: Failure to pay the filing fee or to provide a translation

The note was deleted in view of the provisions of the Implementing Regulations.

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MINUTES
of the meeting of Working Party I
held at Luxembourg from 30 November to 2 December 1970
and of the meeting held on 3 December 1970 by that Working Party, acting in its capacity as Co-ordinating Committee

Item 1 on the agenda (1) : Opening of the meeting and adoption of the provisional agenda

1. The Working Party held its sixth meeting at Luxembourg from Monday, 30 November to Wednesday, 2 December 1970, with Dr. HAERTEL, President of the Gernar Patent Office, in the Chair.

Representatives of the Commission of the European Communities, WIPO-BIRPI and the International Patent Institute took part in the meeting (2). The representative of the General Secretariat of the Council of Europe sent his apologies for being unable to attend.

2. The Drafting Committee, under the chairmanship of the President of the Netherlands Octrooiraad (Patent Office), Mr. J. B. van BENTHEM, held its meetings directly after the deliberations of the Working Party.

(1) For the provisional agenda (BR/GT 1/62/70), see Annex I.
(2) For the list of participants, see Annex II.
(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 8, this group may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

Article 68 (former Article 68b)
Date of the application
An application for a European patent shall be deemed to be filed on the date on which the following conditions are satisfied:
(a) an indication is given that the application is for a European patent, and at least one Contracting State is designated in accordance with Article 67, paragraph 1,
(b) information has been given identifying the applicant,
(c) the application contains a description and claims, even though they do not comply with the requirements of this Convention.

Article 69 (former Article 68c)
Failure to pay the filing fee or to provide a translation
An application for a European patent shall be deemed to be withdrawn:
(a) if the fee provided for in Article 66, paragraph 3, has not been paid within the prescribed time limit, or
(b) if the translation of the application, in the case provided for in Article 34, paragraph 2, has not been produced within the time limit referred to in that Article.

Article 70 (former Article 69)
Unity of invention
The application for a European patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.
[(3) Die in Absatz 2 Satz 2 vorgesehene Frist beträgt:

a) für eine europäische Patentanmeldung, für die eine Priorität nicht in Anspruch genommen worden ist, vier Monate, gerechnet vom Zeitpunkt der Anmeldung, und

b) für eine europäische Patentanmeldung, für die eine Priorität in Anspruch genommen worden ist, vierzehn Monate, gerechnet vom Prioritätszeitpunkt.]

[(4) Eine europäische Patentanmeldung, deren Gegenstand unter Geheimschutz gestellt worden ist, wird nicht an das Europäische Patentamt weitergeleitet.

[(5) Europäische Patentanmeldungen, die nicht bis zum Ablauf des vierzehnten Monats nach der Einreichung der Patentanmeldung oder, wenn eine Priorität in Anspruch genommen worden ist, nach dem Prioritätszeitpunkt dem Europäischen Patentamt zugehen, gelten als zurückgenommen. Eine gemäß Artikel 66 bereits entrichtete Anmeldegebühr wird zurückgezahlt.]

**Artikel 66 (früher Artikel 68)**

**Erfordernisse der Anmeldung**

(1) Die europäische Patentanmeldung muß enthalten:

a) einen Antrag auf Erteilung des europäischen Patents;

b) eine Beschreibung der Erfindung;

c) einen oder mehrere Patentansprüche, die definieren, wofür Schutz begehrt wird;

d) gegebenenfalls die Zeichnungen, auf die sich die Beschreibung oder die Patentansprüche beziehen.

(2) Die Anmeldung muß in einer der in Artikel 34 Absätze 1 und 2 vorgesehenen Sprachen abgefaßt sein.

(3) Für die europäische Patentanmeldung ist die Anmeldegebühr zu entrichten, die in der Gebührenordnung zu diesem Übereinkommen vorgeschrieben ist. Die Gebühr ist spätestens bis zum Ablauf eines Monats nach dem Zeitpunkt der Anmeldung zu entrichten.

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**Article 66 (former Article 68)**

**Requirements of the application**

(1) An application for a European patent shall contain:

a) a request for the grant of a European patent;

b) a description of the invention:

(c) one or more claims defining the protection applied for:

d) any drawings referred to in the description or the claims.

(2) The application shall be written in one of the languages referred to in Article 34, paragraphs 1 and 2.

(3) An application for a European patent shall be subject to the payment of the filing fee prescribed in the Rules relating to fees adopted pursuant to this Convention. This fee must be paid within one month after the filing date.

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**Artikel 67 (früher Artikel 68a)**

**Benennung von Vertragsstaaten**

(1) Im Antrag auf Erteilung des europäischen Patents sind der Vertragsstaat oder die Vertragsstaaten, in denen für die Erfindung Schutz begehrt wird, zu benennen.

(2) Für die Benennung eines Vertragsstaats ist die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebene Gebühr zu zahlen. Erfolgt die Zahlung nicht bis zum Ablauf einer Frist von 12 Monaten nach der Einreichung der europäischen Patentanmeldung oder, wenn eine Priorität in Anspruch genommen worden ist, nach dem Prioritätszeitpunkt oder, wenn mehrere Prioritäten in Anspruch genommen worden sind, nach dem Zeitpunkt der frühesten Priorität, gilt die Benennung als zurückgenommen.

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**Article 67 (former Article 68a)**

**Designation of Contracting States**

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed in the Rules relating to fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the filing of the application for a European patent or, if a priority has been claimed, as from the date or the earliest date of priority, the designation shall be deemed to be withdrawn.
INTER-GOVERNMENTAL
CONFERENCE FOR THE SETTING
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FIRST PRELIMINARY DRAFT OF A
CONVENTION ESTABLISHING A
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OF PATENTS

CONFÉRENCE
INTERGOUVERNEMENTALE POUR
L'INSTITUTION D'UN SYSTÈME
EUROPEEN DE DÉLIVRANCE
DE BREVETS

PREMIER AVANT-PROJET DE
CONVENTION INSTITUANT UN
SYSTÈME EUROPÉEN DE
DÉLIVRANCE DE BREVETS

- 1970 -
34. As regards the consequences of failure to pay designation fees, the Working Party adopted a system similar to that laid down in Article 68 (see point 31 above).

35. The Working Party examined the question of whether the European patent could be requested for one Contracting State only (see also Article 2a, doc. BR/6/69). It concluded that it was advisable, subject to the provisions of paragraph 4, to allow the designation of a single State, since it would be easy for an applicant to get round any prohibition of the designation of a single Contracting State. What is more, the same principle has been adopted in the PCT plan.

**Article 68b – Date of the application**

36. This provision incorporates the gist of Article 68, paragraph 3, of the 1965 Draft. In addition, in order to incorporate a similar provision of the PCT plan, it specifies that the application must contain information identifying the applicant.

**Article 68c (new) – Failure to pay the filing fee or to provide a translation**

37. Cf. 31 above.

**Article 69 – Unity of invention**

38. The wording of this provision is analogous to that of the corresponding rule of the PCT plan.

**Article 70 – Disclosure of the invention**

39. The Working Party agreed that the Implementing Regulations could lay down certain details concerning the formulation of applications and, in particular, of the description and the claims similar to those laid down in the text which have been drafted for revising the Strasbourg Convention on the unification of certain points of Substantive Law relating to Patents for Invention.

**Article 71 – Requirements of the Implementing Regulations**

40. No comment.

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patent with the same office up to the last day of the 12 month priority period, claiming the priority of the first application in support of the later application. If, in such a case, the applicant were to add new elements as compared with the first application, the competent authorities would then only have two months in which to examine whether the new application necessitates the invention being made secret. One delegation reserved its position as regards the period provided for in paragraph 2a (b) for this reason.

30. It was agreed that the provisions of this Article which are shown in square brackets will have to be re-examined by the Working Party in the light of the discussions to be held on further new Articles which will deal with the links between the PCT plan and this Convention.

**Article 68 - Requirements of the application**

31. The Working Party thought it to be advisable to lay down a time limit for the payment of filing fees in paragraph 2. The consequences of failure to pay are dealt with in the new Article 68c.

32. The Working Party reserved examination of whether the applicant should be required to submit an abstract of the application, as provided for in the PCT plan. It felt that this matter could be re-examined in the light of comments from the interested circles.

**Article 68a (new) - Designation of Contracting States**

33. This new provision follows the broad outline of the corresponding provisions of the PCT plan. The Working Party was of the opinion that applicants should not have to follow two different designation systems.

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INTER-GOVERNMENTAL CONFERENCE  
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- Secretariat -

MINUTES

of the meeting of Working Party I  
(Luxembourg, 14 - 17 October 1969)

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I

1. The second working meeting of Working Party I was held at Luxembourg from Tuesday 14 to Friday 17 October 1969, with Dr. HAERTTEL, President of the German Patent Office, in the Chair.

The Commission of the European Communities, BIRPI, the General Secretariat of the Council of Europe and the International Patent Institute took part in the meeting (1).

2. The Working Party agreed to appoint the following as rapporteurs:

- a member of the Swiss delegation for Articles 54 to 65 (organisation of the departments - register, publications, classification - relations with national authorities);

(1) See Annex I for list of participants in the meeting of the Working Party.

BR/10 e/69 REL/PA/mk
Article 68a (new)

Designation of Contracting States

Working Party text

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed in the Rules relating to fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the filing of the application for a European patent or, if a priority has been claimed, as from the date or the earliest date of priority, the designation shall be deemed to be withdrawn.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 68a, this group may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

Note:

The question of what is to be done in the event of payment of only part of the fee provided for in paragraph 2 has been left to the Rules relating to fees. A provision on the lines of Rule 15.5 of the PCT-draft will be adopted.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

--- Secretariat ---

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

Articles 54 to 96
prepared by Working Party I
(14 October to 17 October 1969)

compared synoptically with

- the 1962 and 1965 versions of the Draft Convention as established by the PEC "Patents" Working Party and

- the Draft of an open European Patent Convention drawn up by the Member States of the European Free Trade Association

BR/9 e/69 mk
208. The Swiss delegation said it would be prepared to do so. It nonetheless requested that, in the French version, paragraph 2 ("objet d'une demande") should be brough into line with paragraph 1 ("éléments contenus dans une demande"), as was already the case in the English and German versions.

209. The delegation of the Federal Republic of Germany pointed out that, in its view, elements of the divisional application which extended beyond the earlier application could perhaps not be deleted, but should merely receive the date of filing of the divisional application.

210. Summing up, the Chairman noted that the Main Committee was agreed on the following interpretation of paragraph 2*: where a divisional application comprised new examples not to be found in the earlier application, these examples were allowable if they did not extend beyond the content of the earlier application. They were not, however, deemed to have been filed on the date of the earlier application but belonged to the state of the art only as from the date of filing of the divisional application. Where a divisional application comprised new examples extending beyond the content of the original version of the earlier application, these examples were not allowable. They should not, however, be deleted but should be dealt with in exactly the same manner as the other category of new examples.

211. The Main Committee referred examination of the French version (see point 208 above) to the Drafting Committee.

Article 75 (77) — Forwarding of European patent applications

212. The delegation of the International Chamber of Commerce wondered why different time limits were laid down in paragraphs 3 and 5. Under paragraph 3, the national office had either 4 or, in the case of priority applications, 14 months in which to forward to the European Patent Office European applications. Under paragraph 5, however, the European patent application was deemed to be withdrawn if it did not reach the European Patent Office within 14 months of filing or the date of priority. It wondered whether it might not be advisable for a single time limit of 14 months to be set out in paragraph 3, or for the time limit in paragraph 5 to be 4 months.

213. The Chairman replied by pointing out that paragraphs 3 and 5 were designed to deal with two distinct points. Paragraph 3 laid down how much time national patent offices were allowed for forwarding to the European Patent Office applications not liable to secrecy. The applicant's interests did not suffer if his application was forwarded to the European Patent Office more than 4 months after filing, provided no more than 14 months were allowed to lapse. On the other hand, paragraph 5 laid down the sanction to be imposed in the event of the application not being forwarded to the European Patent Office within 14 months. Here, in accordance with the PCT, it made no difference whether applications were filed with or without priority.

214. The CNIPA delegation said it was very surprised that under paragraph 3 applications which were not forwarded punctually to the European Patent Office were deemed to be withdrawn, despite the fact that the applicant had no influence over the forwarding procedure.

215. The United Kingdom delegation pointed out that, in practice, applicants could make enquiries at the national offices as to the processing of their applications.

216. The EIRMA delegation pointed out that, under Article 135, paragraph 1(a), a European patent application could be converted into a national application if it were not forwarded punctually to the European Patent Office and that, in such cases, the applicant suffered no loss of rights. Nonetheless, it considered it advisable to review the time limits and sanctions laid down in paragraphs 3 and 5.

217. The Main Committee referred paragraph 5 to the Drafting Committee, with the request that it review its wording in the light of the above remarks.

Article 76 (78) — Requirements of the European patent application

218. With reference to the proposal it made in M/52/I/II/III, point 10, the Netherlands delegation raised the question of whether it was really necessary to include an abstract in the requirements laid down in paragraph 1. It was true that at the Luxembourg Conference it had already been decided to do so — partly with reference to the PCT, which also prescribed an abstract; nonetheless, there were still some doubts in the Netherlands as to whether an abstract was really essential.

219. The United Kingdom delegation considered that experience in Great Britain had demonstrated that an abstract was of value. It did not want it to be omitted from the procedure from the outset but if, subsequently, it should prove to be an unnecessary complication, it could agree to the Administrative Council being given power to dispense with the abstract in the list of requirements for the application.

220. The Swedish delegation was also in favour of the retention of the abstract, but would likewise be prepared to give the Administrative Council the power to have the abstract deleted.

221. The French delegation was in favour of the retention of the abstract. It would not be prepared to give the Administrative Council the power to decide on the deletion of the abstract.

222. The delegation of the Federal Republic of Germany was in complete agreement with the French delegation. It also drew attention to the difference between the content of patent claims and the content of the abstract. While patent claims delimited the protection of the patent, the purpose of the abstract was to provide a summary of everything set out in the claims, description and diagrams. In many cases, the abstract would thus contain more than the patent claims and it would therefore be regrettable if this source of information were to be relinquished.

223. Following these comments, the Netherlands delegation withdrew its proposal. Paragraph 1, as worded in M/I, was thereby adopted.

224. The Netherlands delegation said it interpreted paragraph 2 as meaning that the filing fee did not necessarily have to be the same for all applications, but that it could vary depending on the length of the description and the number of claims, for example.

225. The Chairman said that he shared this view. Filing fees were, moreover, to be laid down by the Rules relating to Fees, and were, therefore, a matter for the Administrative Council.

Article 77 (79) — Designation of Contracting States

226. The Chairman noted that no proposals had been put forward regarding Article 77.

Article 79 (81) — Identification of the inventor

227. The Danish, Finnish, Norwegian and Swedish delegations proposed that the question of the identification of the inventor and related questions, which had already been settled by the Luxembourg Inter-Governmental Conference after