Rule 80 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.
Regel 80
MPU
Öffentliche Zustellung

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"   " | M/PR/G | S. 202/203 |

| "   " | "   " | 786/787   |
designated Contracting States. The valid interests of an assumed infringer in the retroactive revocation of the patent may thus be upheld. In this connection it may be noted that this amendment has raised the opposition proceedings another step towards the level of actual revocation proceedings.

A further procedural amendment was made to Article 104 whereby any person who has been given notice by the proprietor as a result of a claimed patent infringement may also intervene in the opposition proceedings, if he proves that he has instituted proceedings to establish that the act in question did not infringe the patent. This text takes into account the fact that national laws of Contracting States allow such actions for negative declaratory judgments.

9. Appeals procedure (Articles 105-111/Rules 65-68)

Corresponding to the amendment to Article 98 with reference to the possibility of continuing the opposition proceedings despite the lapse of the patent, the Committee decided also to allow an appeal against a decision of the Opposition Division in such cases and to amend Article 105 accordingly. It was consequently made clear in Article 106 that all parties to proceedings of the first instance are also parties to appeal proceedings, even if they do not actively participate in the proceedings, so that for example a decision concerning costs by the Boards of Appeal which differs from the decision of the lower department will be binding for all parties.

The discussions during the earlier stages of the negotiations concerning the length of the time limit for filing an appeal were – as was to be expected – resumed in the Main Committee. An exchange of opinions showed that the division of the time limit for filing an appeal, as provided for in Article 107, into a time limit for filing the appeal and a time limit for filing the grounds for appeal, was generally welcomed. In the interests of the applicants and especially of their representatives who have such a multiplicity of time limits to observe, the Main Committee divided the time limits into one of two months for the notice of appeal, which also applies to the payment of the fee for appeal, and one of four months for filing the grounds for appeal; both time limits are to commence from the time when notification is given of the contested decision. This amendment made it necessary to adjust the one-month time limit for interlocutory revision, which now begins from the receipt of the grounds for appeal (Article 108). If the potential appellant waits until the end of each time limit – which experience leads us to expect – an appeal which is not immediately allowed will not reach the Board of Appeal earlier than five months after the contested decision has been taken! Whether this is compatible with the previously defended principle of streamlining the proceedings, remains to be seen.

In Article 109, paragraph 3, it was specified in respect of the appeals procedure that the deemed withdrawal of a European patent application in the event of failure to reply to an invitation from the Board of Appeal is not valid in proceedings against decisions of the Legal Division. In Article 111 the Committee expressly maintained in the interests of clear legal relationships that the parties to appeal proceedings should also be parties to any proceedings before the Enlarged Board of Appeal. Such a principle could easily be derived from Articles 112/115.

10. General principles governing procedure (Articles 112-126/Rules 69-92)

Some points of the general rules governing procedure were discussed in the Main Committee. In order to avoid improper delays in proceedings an assurance was given in Article 115 that repeated requests for oral proceedings could be refused by the European Patent Office under certain conditions. In Article 116 and in Rule 73 the peculiarities of the national laws of Contracting States were taken into account in respect of the taking of evidence, on the basis of letters rogatory, by authorities in the Contracting States and, in addition to the giving of evidence under oath by a party, witness or expert, provisions were made for other binding forms of evidence which enable the truth to be established. With reference to the communication of the possibility of appeal in accordance with Rule 69, paragraph 2, the principle that parties may invoke errors in the communication was abandoned; errors are however almost entirely excluded because reference must always be made in the communication to the relevant provisions of Articles 105-107, the text of which must be attached.

The rules governing time limits and the arrangements for dealing with unobserved time limits were adopted by the Committee with the following amendments. In Article 120 the time limit concerning the request for further processing of the European patent application was adapted to the new time limit for filing appeals and was therefore quite rightly reduced from three to two months. There was a detailed discussion on the concept of "force majeure" required in accordance with Article 121 for the re-establishment of rights. This condition was generally felt to be too strict because it would justify re-establishment only in the rarest cases. The Committee also considered conditions such as those of the "unavoidable event" or of the "legitimate excuse" which are based on national laws of Contracting States. After comparing the laws of various States, the Committee finally agreed, in accordance with the conclusions of the Working Party which it had set up, that the justification for the re-establishment of rights was an impediment which, in spite of all due care required by the circumstances having been taken, had led to the non-observance of the time limit. The Committee also endorsed the general opinion that in reality justice is done to this obligation to take all due care only if the applicant or proprietor and his assistants, especially his representatives, have complied with it. In addition, the Committee considered that Article 121 was to be interpreted in a restrictive manner.

The Main Committee extended the maximum duration of time limits to be set by the European Patent Office under Rule 85 from four to six months for certain special circumstances. However, a proposal was not accepted which aimed to make provision for a one-month extension, on request, of any time limit for representatives who in the proceedings had to draw up documents to the European Patent Office in a language other than the official language of their State or residence. The Committee recognised unanimously that during a transitional period such translation difficulties should be deemed to "certain special circumstances" within the meaning of paragraph 1 of Rule 85, in so far as the parties complied with their obligation to take due care in obtaining translations.

The provision in Article 124 concerning the procedure for drawing up supplementary search reports provided a large amount of material for discussion. This Article was deleted. The Committee considered it unnecessary to impose search costs on the applicant in the event of his making necessary an additional search due to an amendment to the claims. This financial problem could be settled by slightly increasing the standard amount of the main search fee. After lengthy discussions the Committee reached the majority decision that additional fees for additional searches which were drawn up outside the procedure for international search reports under Article 156, could be dispensed with, especially since such an additional cost would have an unfavourable visual effect in the Convention. At the same time the Committee stated expressly
ANNEX I
REPORT
by Mr. Paul Braendli, Lic. iur.
Vice-Director of the Federal Intellectual Property Office (Switzerland)
on the results of Main Committee I's proceedings

ANNEX II
REPORT
by Mr. R. Bowen
Assistant Comptroller, British Patent Office
on the results of Main Committee II's proceedings

ANNEX III
REPORT
by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)
on the results of Main Committee III's proceedings

ANNEX IV
REPORT
by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office
on the results of the Credentials Committee's proceedings
with regard to full powers for signing the Convention
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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
Rule 30

Public notification

(1) If the address of the addressee cannot be established, notification shall be effected by public notice.

(2) The President of the European Patent Office shall determine how the public notice is to be given and the beginning of the period of one month on the expiry of which the document shall be deemed to have been notified.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 10
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 54 to 82
Regel 80
Zustellung durch unmittelbare Übergabe


Vgl. Artikel 118 (Zustellung)

Rule 80
Notification by delivery by hand

Notification may be effected on the premises of the European Patent Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Cf. Article 118 (Notification)

Regel 81
Öffentliche Zustellung

(1) Kann der Aufenthaltsort des Empfängers nicht festgestellt werden, so wird durch öffentliche Bekanntmachung zugestellt.

(2) DerPräsident des Europäischen Patentamts bestimmt, in welcher Weise die öffentliche Bekanntmachung erfolgt und wann die Frist von einem Monat zu laufen beginnt, nach deren Ablauf das Schriftstück als zugestellt gilt.

Vgl. Artikel 118 (Zustellung)

Rule 81
Public notification

(1) If the address of the addressee cannot be established, notification shall be effected by public notice.

(2) The President of the European Patent Office shall determine how the public notice is to be given and the beginning of the period of one month on the expiry of which the document shall be deemed to have been notified.

Cf. Article 118 (Notification)

Regel 82
Zustellung an Vertreter

(1) Ist ein Vertreter bestellt worden, so werden die Zustellungen an den Vertreter gerichtet.

(2) Sind mehrere Vertreter für einen Beteiligten bestellt, so genügt die Zustellung an einen von ihnen.

(3) Haben mehrere Beteiligte einen gemeinsamen Vertreter, so genügt die Zustellung nur eines Schriftstücks an den gemeinsamen Vertreter.

Vgl. Artikel 118 (Zustellung)

Rule 82
Notification to representatives

(1) If a representative has been appointed notifications shall be addressed to him.

(2) If several such representatives have been appointed for a single interested party, notification to any one of them shall be sufficient.

(3) If several interested parties have a common representative notification of a single document to the common representative shall be sufficient.

Cf. Article 118 (Notification)
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

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

PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
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
elaborés 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
Re. Article 161, No. 6 - Notification by delivery by hand

47. No comments.

Re. Article 161, No. 7 - Notification by ordinary letter

48. No comments.

Re. Article 161, No. 8 - Public notification

49. The purpose of this provision is to establish a specific date from which time limits for appeals are to run, in cases in which the European Patent Office is not in a position to deliver a notification to the person in question because his address is unknown to it (for example, after a removal).

Re. Article 161, No. 9 - Notification to professional representatives

50. When adopting this provision, the United Kingdom delegation expressed a reservation on paragraph 3 of the proposal concerning notifications to be made to several representatives. This reservation is bound up with the whole problem of professional representation (Article 171 of the Preliminary Draft Convention) which will have to be reviewed after due consultation with the interested circles (see BR/49/70, points 41 to 43).

Re. Article 161, No. 10 - Appointment of a common representative

51. The Sub-Committee agreed to base this provision on Rule 4.8(b) of the Regulations under the PCT, which lays down that in the event of no common representative having
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

MINUTES

of the 4th meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 23-27 November 1970)

I.

1. The fourth meeting of the Sub-Committee instructed by
Working Party I to draw up draft Implementing Regulations to
the Convention was held at Luxembourg, from Monday 23 to
Friday 27 November 1970, with Mr. PRESSONNET, Deputy Director,
French Industrial Property Institute, in the Chair.

In addition to the national delegations represented in
the Sub-Committee, the meeting was attended by WIPO and the
International Patent Institute (1).

(1) See the list of participants in Annex I.

BR/68 e/70 ley/KM/bm
Ad article 161

Numéro 7

Signification publique

(1) Si le domicile du destinataire ou le lieu où il réside ne peut être déterminé, la signification est faite sous forme de publication.

(2) La signification publique est faite par affichage de la pièce à signifier au tableau public de l'Office européen des brevets. L'affichage de la pièce peut être remplacé par celui d'un avis indiquant où il peut être pris connaissance de la pièce. L'existence de la signification publique est mentionnée au Bulletin européen des brevets en même temps qu'il est procédé à l'affichage.

(3) Le document est réputé signifié un mois après la date de l'affichage.
Groupe de travail "BREVETS"

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

VE AO 1964

Avant-projet
de règlement d'application de la convention
relative à un droit européen des brevets

4419/IV/63-F
nécessaire comme le deuxième exemple cité par le Président.

Le groupe marque son accord et transmet cette disposition au Comité de rédaction.

**Article 161 - No 7**

Le Comité de rédaction est chargé de préciser dans le deuxième paragraphe que la publication au bulletin ne contiendra qu'un avis portant sur la signification publique effectuée.

Au sujet du paragraphe 3, le groupe préfère prévoir un délai unique d'un mois pour tous les cas.

Le numéro 7 est transmis au Comité de rédaction.

**Article 161 - No 8**

Le groupe décide de supprimer les paragraphes 1 et 2. Ceci aurait pour conséquence que le problème est entièrement laissé aux législations nationales.

Par contre, le troisième paragraphe paraît nécessaire. Le Comité de rédaction est chargé de modifier le titre du numéro 7.

**Article 161 - No 9**

La précision apportée par le premier paragraphe paraît souhaitable, parce que les droits nationaux sont divergents sur ce point. Le numéro est transmis au Comité de rédaction.
Résultats de la neuvième session
du groupe de travail " Brevets "
qui s'est tenue à Munich
du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 161
Numéro 7

Signification publique

(1) Lorsque le lieu où séjourne le destinataire ne peut être déterminé, la signification a lieu par publication (signification publique).

(2) La signification publique a lieu par affichage de la pièce à signifier au tableau d'affichage officiel de l'Office européen des brevets. L'affichage de la pièce peut être remplacé par l'affichage d'un avis indiquant qu'il peut être pris connaissance de la pièce et où cela peut se faire. La signification publique est publiée au Bulletin européen des brevets en même temps qu'il est procédé à l'affichage.

(3) Tout document contenant une citation est considéré comme signifié deux mois après la date de l'affichage. Lorsqu'un document ne contient pas de citation, il doit être considéré comme signifié un mois après la date de l'affichage.
Projet concernant le règlement d'exécution de la convention relative à un droit européen des brevets

Propositions relatives à l'application des articles 160 à 163 de la Convention
Zu Artikel 161
Nummer 7

Öffentliche Zustellung

(1) Kann der Aufenthaltsort des Empfängers nicht festgestellt werden, so wird durch öffentliche Bekanntmachung zugestellt.

(2) Die öffentliche Zustellung wird dadurch bewirkt, daß das zuzustellende Schriftstück an der Amtstafel des Europäischen Patentamts ausgehängt wird. Statt des Schriftstücks kann eine Benachrichtigung ausgehängt werden, in der anzugeben ist, wo das Schriftstück eingesehen werden kann. Gleichzeitig mit dem Aushang wird die Tatsache der öffentlichen Zustellung im Europäischen Patentblatt bekanntgemacht.

(3) Das Schriftstück gilt als einen Monat nach dem Tag des Aushangs zugestellt.
Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht
Die Gruppe erklärt sich einverstanden und überweist diese Vorschrift an den Redaktionsausschuß.

**Artikel 161 Nr. 7**

Der Redaktionsausschuß soll im zweiten Absatz klarstellen, daß die öffentliche Bekanntmachung im Amtsblatt nur einen Hinweis auf die erfolgte öffentliche Zustellung enthalten solle.

Zu Absatz 3 bevorzugt die Gruppe eine für alle Fälle einheitliche Frist von einem Monat.

Nummer 7 wird an den Redaktionsausschuß weitergeleitet.

**Artikel 161 Nr. 8**

Die Arbeitsgruppe beschließt Absatz 1 und 2 zu streichen. Das hätte zur Folge, daß dieses Problem völlig der nationalen Gesetzgebung überlassen bleibt.

Dagegen erscheine der 3. Absatz notwendig. Der Redaktionsausschuß wird beauftragt, die Überschrift der Nummer 7 zu ändern.

**Artikel 161 Nr. 9**

Die in Absatz 1 erfolgte Klarstellung erscheint wünschenswert, weil die nationalen Rechte diesbezüglich unterschiedlich sind. Die Nummer wird dem Redaktionsausschuß überwiesen.
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 161
Nummer 7

Öffentliche Zustellung

(1) Kann der Aufenthaltsort des Empfängers nicht festgestellt werden, so wird durch öffentliche Bekanntmachung zugestellt (öffentliche Zustellung).

(2) Die öffentliche Zustellung wird dadurch bewirkt, daß das zuzustellende Schriftstück an der Amtstafel des Europäischen Patentamts ausgehängt wird. Statt des Schriftstücks kann eine Benachrichtigung ausgehängt werden, in der anzugeben ist, daß und wo das Schriftstück eingesehen werden kann. Gleichzeitig wird die öffentliche Zustellung im Europäischen Patentblatt bekanntgemacht.

(3) Das Schriftstück, das eine Ladung enthält, gilt als an dem Tage zugestellt, an dem seit dem Tag des Aushangs zwei Monate verstrichen sind. Enthält das Schriftstück keine Ladung, so ist es an dem Tage als zugestellt anzusehen, an dem seit dem Tage des Aushangs ein Monat verstrichen ist.
Arbeitsentwurf

tzu einer
Ausführungssordnung

zum
Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 160 bis 163

des Abkommens
that Article 156, paragraph 3, was to be interpreted as an authorisation for the Administrative Council to provide for the levy of a search fee for each and every international patent application, irrespective of whether additional searches within the meaning of this provision should be carried out in the individual cases.

11. Information to the public of official authorities, legal and administrative co-operation (Articles 127-132, Rules 93-100)

Only a few amendments were made to these provisions. The inspection of files under Article 128 was supplemented so as to provide more precise information for the general public; thus, before the publication of the European patent application, not only the date of filing may be made known to third parties, but also the date, State and file number of any application of which the priority is claimed. The provisions of Articles 130/132 were drafted more generally so that the European Patent Office could make agreements concerning exchanges of information and exchanges of publications not only with States which were not a party to the Convention and with international patent granting authorities, such as WIPO, but also with any other organisations, especially documentation centres such as INPADOC. It was also specified at the same time that the substantive content of applications which had not yet been published could not be the subject of such exchanges of information. In addition, the Administrative Council was authorised in Article 130, paragraph 3, to make provisions in respect of exchanges of information with the last-named organisations which derogated from the restrictions on the inspection of files, in so far as the confidential treatment of the information was guaranteed.

While dealing with the provisions of Article 131, the Main Committee discussed a proposal which, in the light of the procedure laid down in the Protocol on Recognition, aimed to supplement the prescribed legal co-operation between the European Patent Office and the Contracting States by an obligation for the Contracting States to provide legal assistance amongst themselves. This interesting idea was rejected generally because the proposed extension was considered to be an intrusion into international legal aid between Contracting States and also an obligation which far exceeded the purpose of the Convention. A further idea to allow the European Patent Office to intervene as an international notification authority in certain proceedings concerning European patents, also found little approval.

12. Representation (Articles 133-134, 162/Rules 101-103, 107)

The provisions of the Convention and the Implementing Regulations concerning representation before the European Patent Office were already discussed with the organisations concerned during the earlier stages of the negotiations and were, as far as possible adapted to their proposals and wishes. Fortunately this situation meant that the principles established by the Inter-Governmental Conference were no longer questioned as to their substance. In particular, the principle that during a transitional period the representatives' status would basically be controlled by the national law of Contracting States and afterwards by European law, remained uncontested. The general principles concerning representation in Article 133 were also unchanged. The Main Committee generally considered that these principles should also be valid for the transitional period. The Committee also specified that legal persons could be represented not only by their employees — as laid down in paragraph 3 of Article 133 — but also by their departments. Such representation by their departments is regarded as a matter of course, is understood from paragraph 1 of Article 133 and does not need to be expressly laid down.

However, material for discussion was provided by the following points: the uninterrupted change from the transitional period to the permanent arrangements, in particular with reference to the continued effects of national requirements, the reasons for the deletion of professional representatives from the list, questions concerning place of business and other individual problems. The following is a report on the main questions:

(a) Conditions of admission

The Main Committee again discussed the question raised in the earlier negotiations concerning possession of the nationality of a Contracting State as a condition of entry on the list of professional representatives. The majority concluded that this condition should be laid down in Article 162 not only in respect of the permanent solution, but also in respect of the transitional period, in order to avoid the improper acquisition of representation rights after the publication of the Convention. The status quo was taken into account in so far that failure to have the nationality of a Contracting State would not prevent entry on the list, if the representative had a place of business or employment and the right of representation in a Contracting State on 5 October 1973, i.e. at the time of the signing of the Convention.

(b) Restrictions on authorisation to represent

The question arose as to whether restrictions on representation arising from national law should also be valid in respect of proceedings before the European Patent Office during the transitional period. The Committee unanimously considered that such restrictions based on specific rules of national law, in particular on the legislation of the Federal Republic of Germany, are not justified in respect of European proceedings. The corresponding provisions of Article 162, paragraphs 2 and 6, were therefore deleted.

(c) Questions concerning place of business

Article 134 provided that the representatives entered on the list were entitled to establish a place of business in the Federal Republic of Germany and the Netherlands for the purpose of practising their profession before the European Patent Office. In view of proceedings before national authorities carrying out duties on behalf of the European Patent Office, as provided for in the Protocol on Centralisation, the Main Committee supplemented Article 134 accordingly. Professional representatives should consequently also be able to establish a place of business in the Contracting States concerned. There was also discussion of a provision which would have expressly granted the right to practise a profession to a professional representative, his associates, employees and colleagues and the right of establishment to these persons including their families. It was said in reply to the advocates of such a provision, who considered it to be a necessary adjunct to the right of residence, that this would be to bring a "foreign body" into the Convention and might possibly conflict with existing agreements in the field of public law. The Committee thereupon rejected the proposed supplement, but noted on the other hand that the stipulated right to a place of business in accordance with Article 134, paragraphs 3 and 4, would be meaningful only if its recognition were dealt with sensibly.