Rule 85 E

Travaux Préparatoires
(EPC 1973)

Comment:

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### Regel 85

**MPÜ**

**Verlängerung von Fristen**

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\( \text{786/787} \)
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 of 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 be "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
paragraph 1 of this Rule provided the necessary flexibility to allow for other difficulties which representatives might encounter during the initial period of operation of the European Patent Office.

**Rule 86 (85) — Extension of time limits**

2395. The Italian delegation wondered whether the text of this Rule in fact achieved the desired aim. In the event of it being impossible for documents to be delivered on the day on which the time limit had expired, the Rule extended the deadline to the first day thereafter on which the European Patent Office was open for receipt of documents. However, it was highly unlikely that in the event of a strike the mail would be delivered immediately on the day the strike ended. The Italian delegation therefore thought that the text should be amended.

2396. The Chairman stated that paragraph 1 did not cover the case of a strike, but the case where a time limit expired on a day on which the European Patent Office was not open for reasons other than a strike. In such a case the time limit was extended automatically to the next day. The problem raised by the Italian delegation only applied with regard to paragraph 2.

2397. The United Kingdom delegation pointed out that paragraph 2 was drafted to cover the case with which the Italian delegation was concerned. This paragraph stipulated that the President of the European Patent Office should determine the end of the period in which there was a general interruption in the delivery of mail and he would therefore be able to take into account the time necessary for normalising the situation after the interruption of work.

2398. The Italian delegation was satisfied with this interpretation.

2399. The Committee agreed to instruct the Drafting Committee to harmonise the German language version with the English and French versions.

**Rule 87 (86) — Amendment of the European patent application**

2400. The German delegation withdrew its proposal as given in M/47, page 16, since it referred to a proposal made by the Belgian delegation concerning Article 64, and this matter had been settled by an amendment to Article 122.

2401. The CEIF delegation suggested that the following sentence should be added to the end of paragraph 3: “except where such amendments will bring restrictions to the scope of the application which are borne out by the description and/or the drawings” (M/22, point 12). The intention of this provision was to permit the applicant to amend the claims and the drawings not just once but more than once.

2402. No Governmental delegation supported this suggestion by the CEIF.

**Rule 88 (87) — Different claims, description and drawings for different States**

2403. The Norwegian delegation wondered what the situation would be should the European Patent Office discover the existence of a prior national right in a given Contracting State. In such a case, would not the European Patent Office be obliged to disregard this national application, and leave the problem to the national legislation concerned?

2404. The Chairman replied to this question in the affirmative. The European Patent Office would take account only of prior European rights and not of prior national rights. During the Luxembourg Conference, it had been clearly stated that the European Patent Office could inform the applicant of the existence of a prior national right in a certain State, but that it could not itself take such a prior national right into account since it was only in the event of subsequent national proceedings that such a prior national right could form the basis for any claim.

**Rule 89 (88) — Correction of errors in documents filed with the European Patent Office**

2405. The Irish delegation owned that this provision corresponded to Rule 91, paragraph 1(b) of the PCT, but wondered whether it was really necessary to stipulate that “anyone” would immediately realise that nothing else would have been intended than what was offered as the correction. In view of the complexity of some chemical formulae, a general rule of this nature seemed extremely harsh.

2406. The Swiss delegation thought that in practical terms this provision was hardly likely to apply. Patent applications were in fact prepared with a man skilled in the art in mind and should be comprehensible to a man skilled in the art. For that reason the Swiss delegation thought that the word “anyone” should be deleted and replaced by a reference to the knowledge of a man skilled in the art.

2407. The Committee agreed to refer this point to the Drafting Committee for more satisfactory wording.

**Rule 94 (93) — Parts of the file not for inspection**

2408. The UNICE delegation wondered whether the name of the inventor should be included in the communicable documents where he had expressed the wish not to be mentioned by name.

2409. The delegation of the Federal Republic of Germany recalled that this problem had already been discussed, and the conclusions reached had been that the mention of the inventor by name could be omitted from the parts of the file for inspection if the inventor expressed such a wish. The President of the European Patent Office should therefore have the power to exclude reference to the inventor by name from the parts of the file for inspection.

2410. The UNICE delegation declared itself satisfied by this reply.

**Rule 95 (94) — Procedures for the inspection of files**

2411. The Finnish delegation observed that Rule 99 provided that no administrative fee was payable where files were communicated to third parties by Courts or Public Prosecutors' Offices of the Contracting States. It wondered whether it would not be advisable to apply the same principle in Rule 95 by deleting the last sentence of paragraph 1.

2412. The Swedish and Norwegian delegations supported this proposal.

2413. The delegation of the Federal Republic of Germany believed that to do away with the administrative fee would cause a significant increase in the number of requests to inspect files. In view of the unavoidable administrative costs involved in the organisation of this service it seemed only reasonable to charge an administrative fee for it.

2414. The French delegation also opposed this proposal, on the grounds that it did not seem fair that applicants as a body should bear financial costs incurred for the benefit of an individual.

2415. The Committee rejected the Finnish delegation's proposal by eight votes to five, with one abstention.
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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 85

Extension of time limits

(1) If a time limit expires on a day on which the European Patent Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered in the locality in which the European Patent Office is located, the time limit shall extend until the first day thereafter on which the European Patent Office is open for receipt of documents and on which ordinary mail is delivered.

(2) If a time limit expires on a day on which there is a general interruption or subsequent dislocation in the delivery of mail in a Contracting State or between a Contracting State and the European Patent Office, the time limit shall extend to the first day following the end of the period of interruption or dislocation for parties resident in the State concerned or who have appointed representatives with a place of business in that State. In the case where the State concerned is the State in which the European Patent Office is located, this provision shall apply to all parties. The duration of the above-mentioned period shall be as stated by the President of the European Patent Office.

(3) Paragraphs 1 and 2 shall apply **mutatis mutandis** to the time limits provided for in the Convention in the case of transactions to be carried out with the competent authority within the meaning of Article 75, paragraph 1(b).
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 11
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 83 to 106
Rule 86

Extension of time limits

(1) Only concerns French text.

(2) Unchanged from 1972 published text.

(3)
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973

M/ 140/I/R 11

Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 26 SEPTEMBER 1973

Rules of the Implementing Regulations:

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Regel 72, Absatz (1), Satz 2

37 **Vorschlag:**

Die Worte „einen Monat“ sind zu ersetzen durch „zwei Monate“.

**Begründung:**

Es muß berücksichtigt werden, daß die Beteiligten infolge großer Entfernung vom Sitz des Patentamtes und umfangreicher Übersetzungsarbeiten erhebliche Zeit zur Information ihrer Vertreter und zu einer ausreichenden Vorbereitung eine mündliche Verhandlung benötigen.

Regel 86, Absatz (2)

38 **Vorschlag:**

Das Wort „erstreckt“ ist zu ersetzen durch „verlängert“; die Worte „auf der“ sind zu ersetzen durch „um 2 Wochen nach dem“.

**Begründung:**

Es ist für die Beteiligten in der Regel nicht möglich, dafür zu sorgen, daß ein Schriftstück beim Europäischen Patentamt schon an dem Tage eintrifft, an dem die Störung wegfällt. Es genügt allerdings eine kurze, mit diesem Tage beginnende Nachfrist.

Regel 102, Absatz (4), Satz 2

39 **Vorschlag:**

Der Satz 2 ist zu streichen und durch folgende Bestimmung zu ersetzen:

„Wird die Vollmacht nicht rechtzeitig eingereicht und begründet der Vertreter innerhalb dieser Frist glaubhaft die Unmöglichkeit zur Beibringung der Vollmacht, so hat das Europäische Patentamt eine Nachfrist zu gewähren.“

**Begründung:**


Regel 103

40 **Vorschlag:**

Die Regel sollte ergänzt werden durch einen Hinweis darauf, daß der Vertreter auch gelöscht werden kann, wenn ihm durch ein rechtskräftiges Urteil die Qualifikation für die Eintragung in die Liste abgeräumt worden ist.
STELLUNGNAHME DER

UNEPA
Union Europäischer Patentanwälte

COMMENTS BY
UNEPA
Union of European Patent Agents

PRISE DE POSITION DE
L’UNEPA
Union des Conseils en brevets européens

(1) English translation submitted by UNEPA
(2) La traduction française a été fournie par l’UNEPA
ministration peut prévoir . . . d’autres personnes morales qui ont leur siège sur le territoire . . .

Begründung:

Die vorgeschlagene Ausdrucksweise soll sicherstellen, daß der englische und der französische Text dem im deutschen Text verwendeten Ausdruck „Sitz“ entsprechen.

b) Im englischen Text sollte in der letzten Zeile des Absatzes 3 der Ausdruck „economic links“ durch den Ausdruck „economic connections“ ersetzt werden.

paragraph 3 should read as follows: “The Administrative Council may determine . . . other legal persons which have their seat within the territory . . .”.

Reason:

This proposal is intended to ensure that the terms used in the English and French texts correspond to the term “Sitz” used in the German text.

(b) It is proposed that in the English text, in the last line of paragraph 3, the words “economic links” be replaced by “economic connections”.

9 Artikel 138 Absatz 1 Buchstabe d

Diese Bestimmung sollte wie folgt formuliert werden:

„d) der Schutzbereich des europäischen Patents erweitert worden ist;”

Begründung:


9 Article 138, paragraph 1(d)

It is proposed that this sub-paragraph be worded as follows:

“If the protection conferred by the European patent has been extended;”

Reason:

The deletion of the words “contrary to Article 122, paragraph 3” and “during opposition proceedings” would authorise each Contracting State to include as a ground for revocation in its national law any extension of the protection conferred by the European patent, in particular by an amendment to the claims, during national revocation or limitation proceedings. The Member States of the European Communities wish to make use of this possibility in the Second Convention by providing as a ground for revocation of a Community patent not only any extension of the protection during the opposition proceedings but also any extension of protection, in particular by an amendment to the claims, during the limitation or revocation proceedings which will be centralised and take place before the special departments of the European Patent Office. However, unless such a possibility is open to them under Article 138 of the First Convention, they will be unable to apply such a measure.

10 Artikel 141

Es sollte ein neuer Absatz 2 folgenden Wortlauts angefügt werden:


10 Article 141

It is proposed that a second paragraph worded as follows, be added:

“(2) Any renewal fees falling due within two months after the publication of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for, under national law shall not be charged.”
Article 105

Il est proposé d’insérer un nouveau paragraphe la ainsi rédigé :

«(1a) Un recours peut être formé contre la décision de la division d’opposition même s’il a été renoncé au brevet européen ou si celui-ci s’est éteint pour tous les États désignés.»

Motivation :

Cette proposition constitue un complément à la proposition d’un nouveau paragraphe 2a pour l’article 98 (cf. point 4 ci-dessus). Une telle disposition pourrait ne pas être indispensable si l’on estime que le droit au recours reste ouvert indépendamment de la question de savoir si le brevet qui a fait l’objet de la décision contestée est ou non encore en vigueur. Toutefois, il semble préférable de prévoir expressément cette possibilité afin d’éviter que l’on ne puisse, par une argumentation a contrario, faire valoir que l’absence d’une disposition correspondante à l’article 98, paragraphe 2a, constitue une indication de l’intention de vouloir exclure le recours dans un tel cas.

Article 106

Il est proposé de supprimer les mots «à l’exception de celles qui ont renoncé à ce droit» à la dernière phrase.

Motivation :

Il a été considéré que les parties à une procédure ayant conduit à une décision qui fait l’objet d’un recours restent ipso jure parties à la procédure de recours et que ce principe doit être maintenu pour éviter des difficultés notamment au cas où l’instance de recours réformerait la décision de l’instance précédente également en ce qui concerne la répartition des frais entre les parties. Les mots dont la suppression est proposée peuvent être interprétés comme un abandon dudit principe ce qui n’était pas l’intention. On a voulu exprimer que la qualité de parties devant l’instance de recours reconnue aux parties devant l’instance précédente n’implique pas l’obligation pour celles qui n’y auraient pas d’intérêt à participer de manière active à la procédure de recours, mais cette non-obligation reste acquise même sans disposition expresse.

Article 133, paragraphes 2 et 3

a) Il est proposé de remplacer :

– dans le texte en langue anglaise, les termes «registered place of business» par «seat» (1);
– dans le texte en langue française, le terme «établissement» par «siège». De plus, la dernière

(1) Hinweis zu Nr. 8:

Das selbe Ausdruck sollte auch in folgenden Bestimmungen verwendet werden:

a) Übereinkommen
   Artikel 14 Absatz 2
   Regel 26 Absatz 2 Buchstabe c
   Regel 56 Buchstabe a
   Regel 76 Absatz 2 Buchstabe a
   Regel 79 Absatz 2
   Regel 86 Absatz 2
   Regel 93 Absatz 1 Buchstabe f
   Regel 95 Absatz 2

b) Anerkennungsprotokoll
   Artikel 2

(1) Note to No. 8:

The same term should be used in the following provisions:

(a) Convention
   Article 14, paragraph 2
   Rule 26, paragraph 2(c)
   Rule 56(a)
   Rule 76, paragraph 2(a)
   Rule 79, paragraph 2
   Rule 86, paragraph 2
   Rule 93, paragraph 1(f)
   Rule 95, paragraph 2

(1) Note concerning No 8:

La même expression devrait être utilisée dans les dispositions suivantes:

a) Convention
   Article 14, paragraphe 2
   Règle 26, paragraphe 2, lettre c)
   Règle 56, lettre a)
   Règle 76, paragraphe 2, lettre a)
   Règle 79, paragraphe 2
   Règle 86, paragraphe 2
   Règle 93, paragraphe 1, lettre f)
   Règle 95, paragraphe 2

c) Protocole sur la reconnaissance
   Article 2

93
6 Artikel 105

Es sollte ein neuer Absatz 1 a folgenden Wortlauts eingefügt werden:


Begründung:


7 Artikel 106

Die Worte „mit Ausnahme derjenigen, die auf ihre Beteiligung an diesem Verfahren verzichtet haben“ im letzten Satz sollten gestrichen werden.

Begründung:

Derjenige, der an dem Verfahren beteiligt war, das zu der angefochtenen Entscheidung geführt hat, bleibt am Beschwerdeverfahren beteiligt; bei diesem Grundsatz sollte es sein Bewenden haben, damit Schwierigkeiten insbesondere für den Fall vermieden werden, daß die Beschwerdeinstanz die Entscheidung der Vorinstanz auch hinsichtlich der Ver teilung der Kosten auf die Beteiligten ändern sollte. Die Worte, deren Streichung vorgeschlagen wird, könnten als Abweichung von diesem Grundsatz aufgefaßt werden, was indes nicht beabsichtigt ist. Vielmehr soll ausgedrückt werden, daß die Beteilig ung der Parteien des Verfahrens der Vorinstanz am Beschwerdeverfahren nicht bedeutet, daß jeder am Beschwerdeverfahren aktiv teilnehmen muß; dies braucht aber nicht ausdrücklich bestimmt zu werden.

8 Artikel 133 Absätze 2 und 3

a) – im englischen Text sollte der Ausdruck „registered place of business“ durch den Ausdruck „seat“ ersetzt werden (1);

– im französischen Text sollte der Ausdruck „établissement“ durch den Ausdruck „siège“ ersetzt werden. Außerdem sollte der letzte Satz des Absatzes 3 wie folgt lauten: „... Le Conseil d’ad-

7 Article 106

It is proposed that the words “with the exception of those who have abandoned that right” in the last sentence should be deleted.

Reason:

It was considered that parties to proceedings resulting in a decision against which an appeal is filed continue to be parties to the appeal proceedings ipso jure and that this principle must be retained to avoid difficulties particularly where the appeals body amends the decision of the lower instance and such amendment also relates to the division of costs between the parties. The words which it is proposed to delete could be interpreted as a departure from this principle. This was not the intention; the intention was to make it clear that although the parties to the proceedings before the lower instance are recognised as parties to the appeal proceedings, this does not mean that persons not wishing to take an active part in the latter proceedings will be forced to do so: this is however clear without any express provision being necessary.

8 Article 133, paragraphs 2 and 3

(a) It is proposed that:

– in the English text, the words “registered place of business” be replaced by “seat” (1);

– in the French text, the word “établissement” be replaced by “siège”. In addition the last sentence of
STELLUNGSNAHME
DER MITGLIEDSTAATEN DER EUROPÄISCHEN GEMEINSCHAFTEN

COMMENTS
BY THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

PRISE DE POSITION
DES ÉTATS MEMBRES DES COMMUNAUTÉS EUROPÉENNES
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)

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
Regel 85
Dauer der Fristen

Ist im Übereinkommen oder in dieser Ausführungsordnung eine Frist vorgesehen, die vom Europäischen Patentamt zu bestimmen ist, so darf diese Frist auf nicht weniger als zwei Monate und auf nicht mehr als vier Monate festgesetzt werden. In besonders gelagerten Fällen kann die Frist vor Ablauf auf Antrag verlängert werden.

Vgl. Artikel 119 (Fristen)

Regel 86
Verlängerung von Fristen

(1) Läuft eine Frist an einem Tag ab, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken nicht geöffnet ist oder an dem gewöhnliche Postsendungen aus anderen als den in Absatz 2 genannten Gründen am Sitz des Europäischen Patentamts nicht zugestellt werden, so erstreckt sich die Frist auf den nachfolgenden Tag, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken geöffnet ist und an dem gewöhnliche Postsendungen zugestellt werden.

(2) Läuft eine Frist an einem Tag ab, an dem die Postzustellung in einem Vertragsstaat oder zwischen einem Vertragsstaat und dem Europäischen Patentamt allgemein unterbrochen oder im Anschluß an eine solche Unterbrechung gestört ist, so erstreckt sich die Frist für Beteiligte, die in diesem Staat ihren Wohnsitz oder Sitz haben oder einen Vertreter mit Geschäftssitz in diesem Staat bestellt haben, auf den ersten Tag nach Beendigung der Unterbrechung oder Störung. Ist der betreffende Staat der Sitzstaat des Europäischen Patentamts, so gilt diese Vorschrift für alle Beteiligten. Die Dauer der Unterbrechung oder Störung der Postzustellung wird in einer Mitteilung des Präsidenten des Europäischen Patentamts bekanntgegeben.

(3) Die Absätze 1 und 2 sind auf Fristen, die im Übereinkommen vorgesehen sind, in Fällen entsprechend anzuwenden, in denen Handlungen bei der zuständigen Behörde im Sinn des Artikels 73 Absatz 1 Buchstabe b vorzunehmen sind.

Vgl. Artikel 119 (Fristen)

Kapitel V
Änderungen und Berichtigungen

Regel 87
Änderung der europäischen Patentanmeldung

(1) Vor Erhalt des europäischen Recherchenberichts darf der Anmelder die Beschreibung, die Patentansprüche oder die Zeichnungen der europäischen Patentanmeldung nicht ändern, soweit nichts anderes vorgeschrieben ist.

Vgl. Artikel 119 (Fristen)

Rule 85
Duration of time limits

Where the Convention or these Implementing Regulations specify a period to be determined by the European Patent Office, such period shall not be less than two months nor more than four months. In certain special cases, the period may be extended upon request, presented before the expiry of such period.

Cf. Article 119 (Time limits)

Rule 86
Extension of time limits

(1) If a time limit expires on a day on which the European Patent Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered in the locality in which the European Patent Office is located, the time limit shall extend until the first day thereafter on which the European Patent Office is open for receipt of documents and on which ordinary mail is delivered.

(2) If a time limit expires on a day on which there is a general interruption or subsequent dislocation in the delivery of mail in a Contracting State or between a Contracting State and the European Patent Office, the time limit shall extend to the first day following the end of the period of interruption or dislocation for parties resident in the State concerned or who have appointed representatives with a place of business in that State. In the case where the State concerned is the State in which the European Patent Office is located, this provision shall apply to all parties. The duration of the above-mentioned period shall be as stated by the President of the European Patent Office.

(3) Paragraphs 1 and 2 shall apply mutatis mutandis to the time limits provided for in the Convention in the case of transactions to be carried out with the competent authority within the meaning of Article 73, paragraph 1(b).

Cf. Article 119 (Time limits)

Chapter V
Amendments and corrections

Rule 87
Amendment of the European patent application

(1) Before receiving the European search report the applicant may not amend the description, claims or drawings of a European patent application except where otherwise provided.
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTVERTEILUNGSVERFAHREN

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

1972
the application itself, could not benefit from an extension of the time limit because of an interruption in delivery of mail at the Headquarters of the European Patent Office.

The Conference accepted this observation and consequently enlarged paragraph 2 to provide that the extension of the time limit should be valid for all parties in the event of the delivery of mail being interrupted in the State in which the Patent Office has its seat.

85. The question was also discussed as to whether the extension of the time limit to one day following the end of the interruption was not too brief. Proposals that a period of 3 or 7 days – similar to the PCT rules – should be chosen were not adopted. The opinion finally prevailed that a rigid rule could not be laid down once and for all, and that it was preferable to empower the President of the European Patent Office to determine the period of the interruption and, where necessary, of the consequent disruption of delivery, as each case arose.

Rule 92

36. It was made clear in paragraph 4, first sentence, that the interrupted time limits – apart from exceptions – begin again as from the day on which the proceedings are resumed.
Rule 86
Rule 87
Article 121

83. The Conference clarified the relationship of these two provisions, to each other and to Article 121 of the Convention on Restitutio in integrum, since differing views were still held on this matter. In particular, the Conference wished to make it clear that the limitations which Article 121, paragraph 5, imposed on the re-establishment of rights should not hold good in the case of an interruption of postal services (formerly Rule 87); in other words, that in such case all time limits would be extended. This clarification was arrived at as follows:

- firstly, paragraph 3 of Article 121 of the Convention was deleted and, in its place, the legal basis for dealing with an interruption of postal services was set out in Article 119 (a); the case of interruption of postal services will thereby be systematically separated from that of re-establishment;

- secondly, Rule 87 was inserted as a new paragraph 2 in Rule 86; the case of an interruption of postal services will thereby be regarded as a case of extension of time limits.

84. The representative of WIPO pointed out that, in his opinion, the former Rule 87 (now Rule 86, paragraph 2) was not in line with Article 2 of the Paris Convention inasmuch as the applicant from a third State who, in accordance with Article 132, paragraph 2, required no representative for...
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)
44. The Committee also clarified the relationship between Article 121 and Rule 87 by providing in Article 121, in a new paragraph 8, that the Rule was to constitute a derogation from the conditions for the application of the restitutio in integrum system, although the right of each interested party to resort to the restitutio in integrum procedure could not be brought into question.

45. The WIPO representative wondered about the compatibility or otherwise of Rule 87 with the Paris Union Convention in so far as these provisions could only be applied in the event of postal strikes in the Contracting States and not in the other Member States of the Paris Union Convention. He reserved the right to return to the question at the next Meeting of the Conference.
that specific provisions were required to cover postal strikes but that the extension of such provisions to cover other cases of force majeure as might be determined by the European Patent Office would place it in very delicate situations and could jeopardise legal certainty.

41. The Committee then examined the advisability of excluding certain time limits from extension under the envisaged provision. It finally decided that no time limits, not even the priority period laid down in Article 85, paragraph 1, would be excluded from the possibility of extension in the event of a postal strike.

42. The Committee agreed that the provisions envisaged should also be applicable to the time limits laid down in the Convention in the event of action to be taken with the national industrial property offices referred to in Article 73, paragraph 1(b).

43. In conclusion, the Committee adopted these provisions, which now appear as Rule 87. The Committee also clarified the relationship between this new rule and the former Rule 85 on the extension of time limits, which has now become Rule 86, by stating in the latter Rule that it only covered the case of non-delivery of mail in the locality in which the European Patent Office was situated for reasons other than the interruption of postal services.
Rule 87

39. The attention of the Committee was drawn to a proposal from the United Kingdom delegation that special provision should be made for the event of postal strikes (BR/GT I/151/72, points 5 ff.).

The United Kingdom delegation explained that the former Rule 85 as it stood was inadequate because it only covered the case of an interruption in the postal service in the locality of the European Patent Office. Moreover, the restitutio in integrum system did not seem suited to strike situations, as individual requests were required in order to set it in motion. These were the reasons why the United Kingdom delegation proposed laying down a new provision allowing for a general extension of time limits for parties affected by postal strikes in the event of an interruption in the delivery of mail in a Contracting State or between a Contracting State and the European Patent Office where such an interruption was confirmed by a communication from the President of the European Patent Office.

40. The following questions arose in the course of the discussion of the United Kingdom delegation's proposal.

Some delegations wondered about the justification of providing for a treatment for postal strikes that differed from that provided for other cases of force majeure. In this connection it was noted that the European Patent Office should have the right to extend time limits for other cases of force majeure affecting a whole range of people rather than individual applicants, as for example in the event of a natural disaster. The Committee nevertheless considered...
MINUTES

of the
second meeting of the Co-ordinating Committee
held in Brussels from 15 to 19 May 1972

1. The second meeting of the Co-ordinating Committee was held in Brussels from 15 to 19 May 1972 with Dr HAERTEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, of the IIB and of WIPO took part as observers. The representatives of the Council of Europe sent their apologies for being unable to attend. The list of those taking part in the meeting is given in Annex I to this report.

2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:
Article 87

Interruption of postal services

(1) If the final day of a time limit is a day on which there is a general interruption in the delivery of mail in a Contracting State or between a Contracting State and the European Patent Office as stated in a communication from the President of the European Patent Office, the time limit shall extend to the first day following the end of the interruption for parties resident in the State concerned and representatives with a place of business in that State.

(2) Paragraph 1 shall apply mutatis mutandis to the time limits provided for in the Convention, in the case of transactions to be carried out with the competent authority within the meaning of Article 73, paragraph 1(b), of the Convention.
Article 86 (Re. 141, No. 2)

Extension of time limits

(1) If the last day of a period is a day on which the European Patent Office is not open for receipt of documents or on which, for reasons other than those referred to in Article 87, ordinary mail is not delivered in the locality in which the European Patent Office is situated, the period shall be extended until the first day thereafter on which the European Patent Office is open for receipt of documents and on which ordinary mail is delivered.

(2) Paragraph 1 shall apply mutatis mutandis to the time limits provided for in the Convention in the case of transactions to be carried out with the competent authority within the meaning of Article 73, paragraph 1 (b), of the Convention.
Where the Convention or these Implementing Regulations specify a period to be determined by the European Patent Office, such period shall not be less than two months nor more than four months. In certain special cases, the period may be extended upon request, presented before the expiry of such period.
DRAFT IMPLEMENTING REGULATIONS
TO THE CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
Re. Article 141, No. 2 (Extension of time limits)

89. The United Kingdom delegation requested an extension of this provision in order to take account of the case of postal strikes, not only in the State in which the European Patent Office is located (case referred to in paragraph 1), but also in another Contracting State or in the event of communications being interrupted between one Contracting State and the European Patent Office, since these cases were not provided for in paragraph 2.

The Working Party did not adopt this proposal at the present stage since several delegations considered that these cases could be covered by Article 142, or by the proposals to be examined in respect of the re-establishment of rights.

The United Kingdom delegation pointed out that Article 142 did not provide an appropriate solution; this provision is only applicable upon application in each individual case: the application must be formulated "within a period of two months," which would hardly be conceivable in the event of a very short strike; finally, the application of the Scandinavian system in the event of a strike presupposes payment of a fee, whereas Re. Article 141, No. 2, is applied automatically.

The Working Party did not adopt a position on the United Kingdom delegation's request, which can be re-examined once the Working Party has adopted a position on the general system for the re-establishment of rights.
calculated in such a way as to be longer than the time limit for appeal and corresponding to the time required for an office to take a decision on a reply from an applicant: since the time limit for appeal was two months, the possibility for the re-establishment of a right was that of a four-month period. It was furthermore noted that the re-establishment of rights was provided only with regard to the non-observance of a time limit set by the office in question.

Owing to lack of time, the Working Party was not able to examine in depth the consequences to be drawn for the Convention from such a system. Certain delegations were of the opinion that a four-month time limit would be too long. One delegation expressed the opinion that no provision should be made for re-establishment of rights before the date of publication of the application. Lastly, it was observed that if the re-establishment of rights according to the system of the Scandinavian countries was introduced, it should be applied vis-à-vis all parties in the course of opposition proceedings and not only in favour of the applicant for or proprietor of the patent.

The Chairman suggested in conclusion that a proposal should be presented for the next meeting of the Working Party, based on the Scandinavian system, in which case, Article 142 could be limited to the re-establishment of rights in respect of time limits laid down in the Convention or in the Implementing Regulations. The Working Party would examine at that stage the question raised by the interested circles as to what would happen when a right had lapsed without the applicant being responsible therefor.

The Swiss delegation reserved the right to return to the question whether Article 142 could be extended to the re-establishment of the priority period.
because the file would be open for public inspection as from publication. Nevertheless, a new provision, \textit{Re. Article 60, No. 1}, was laid down, authorising the President to take measures for the publication of these claims by means of an entry in the European Patent Bulletin of information relating to them.

\textbf{Article 138 (Different claims, description and drawings for different States)}

87. The Working Party, which had been entrusted with examining the advisability of maintaining the second sentence of this provision, found no grounds for its deletion. It was noted, in this respect, that if the European Patent Office requested an amended description or amended drawings in order to take account of the situation referred to in this Article, this would not imply the publication of separate specifications, since a single specification could, if necessary, comprise one or more different descriptions.

\textbf{Article 141 (Time limits)}

\textbf{Article 142 (Restitutio in integrum)}

\textit{Re. Article 141, No. 2} (Extension of time limits)

88. The Working Party had been instructed to study the problem of the re-establishment of rights following the expiry of a specified time limit, excluding the cases of application of Article 142, and drawing on the system in force in the Scandinavian countries. It based itself on a note submitted by the Swedish delegation for this purpose (BR/GT I/148/72).

This system was based on the fact that the applicant could be re-established in his rights even if he had not respected a time limit conditioned before the payment of a fee prescribed for this purpose. He enjoyed a time limit
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 141 (Time limits)

151. Certain organisations had, in another connection, expressed a general desire that the possibility might be created, as in Scandinavian law, of resuming proceedings for which a time limit was prescribed, after that time limit had expired, where necessary upon payment of a fee (cf. BR/169, point 73).

It was pointed out that the situation could be made easier in this connection, either by informing the person involved in the proceedings beforehand or by extending the time limit, upon payment of a special fee. In the latter case there would obviously have to be consideration as to which time limits could be individually extended.

The Conference decided that Working Party I should again consider and examine the problem of time limits which are not respected. In this connection the provisions of Article 142 (cf. point 153) and Re. Article 145, No. 11, should also be taken into account. The Swedish delegation was requested to inform the Working Party of the relevant rule in Swedish law.

Re. Article 141, No. 2 (Extension of time limits)

152. At the request of the United Kingdom delegation, the Conference decided to refer these provisions to Working Party I for examination, in the hope that a more general wording could be found which would make clear, in particular, that a time limit would also be extended in the event of a postal strike.
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)
Re. Article 141
No. 2

Extension of time limits

(1) If the last day of a period is a day on which the European Patent Office is not open for receipt of documents or on which ordinary mail is not delivered in the locality in which the European Patent Office is situated, the period shall be extended until the first day thereafter on which the European Patent Office is open for receipt of documents and on which ordinary mail is delivered.

(2) +
FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 6 December 1971
BR/139/71

- Secretariat -

DOCUMENT CORRECTING

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

and

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 26 November 1971 -

BR/139 e/71
(c) This general body of regulations on time limits made it possible for the Working Party to consider the question of the relationship between Article 142, paragraph 5, and Re. Article 141, No. 2 as being resolved, in particular as regards priority time limits and the time limit for the submission of requests for examination. It was indeed quite clear, in view of the fact that Article 141 now covered all time limits, both those laid down by the Convention and those to be fixed by the European Patent Office, that the exclusion of the restitution in integrum in the case of certain time limits, could not under any circumstances prevent the application of the relevant rules on the extension of time limits.

Re. Article 145, No. 11 (Noting of certain legal consequences)

24. On the basis of a proposal by the British delegation, the Working Party examined whether it would be appropriate to make provision, in paragraph 1 of this Article for the cases referred to in Article 142, paragraph 1 and in Re. Article 136, No. 7, paragraph 3. The Working Party agreed to make provision for these two cases under a new sub-paragraph (g). This would also cover the case referred to in Article 88, paragraph 2. It was however pointed out that the list included in that provision might prove to be incomplete and that it might therefore be appropriate to seek a general formulation, covering all cases in which a request was deemed not to have been made following non-payment of fees.

25. The Working Party next examined whether it would be advisable to include in this same provision cases in which the right to claim priority had been lost, by virtue of the provisions of Article 78, paragraphs 2a and 2b. While confirming that, in the event of loss of priority there was, under Article 75, paragraphs 1, 2 and 2a, no question of there being a fiction as in the other cases referred to in Re. Article 145, No. 11, the Working Party recorded its agreement that the procedure under this provision should be extended to cover this case, for which purpose it duly amended the wording of sub-paragraph (f).
Indeed it would be unreasonable to deduce from the fact that these provisions had been linked for reasons of convenience to Article 141 of the Convention that they only covered the time limits referred to in that Article, i.e. those time limits set by the European Patent Office. This was also made clear in the introductory note to the First Preliminary Draft of the Implementing Regulations which reserved the question of the allocation of Articles between the Convention and the Implementing Regulations.

It was evident from this finding that the text of Re. Article 141, No. 2, also applied to the time limits relating to priority.

(b) In order to clarify all the rules relating to time limits, the Working Party decided to change Article 141 of the Convention into a general provision, while specifying that the Implementing Regulations laid down:

(i) the method of calculation and the conditions under which time limits fixed by the Convention or determined by the European Patent Office could be extended,

(ii) the minimum and maximum duration of the time limits determined by the European Patent Office.

The calculation of time limits therefore continued to be governed by Re. Article 141, No. 1 (unamended); the extension of time limits by Re. Article 141, No. 2 (which had undergone a slight drafting amendment); the minimum and maximum duration of time limits to be set by the European Patent Office, which was governed by Article 141 of the Second Preliminary Draft Convention, had been dealt with in a new Re. Article 141, No. 3, without any alteration in its substance.
21. The Working Party furthermore decided to harmonise the drafting of paragraph 1 in the three languages, in order to cover the time limits set by the European Patent Office as well as those time limits laid down directly by the Convention or by its Implementing Regulations.

22. The United Kingdom delegation proposed that the time limits relating to priority (Articles 73, paragraph 1 and 75 paragraph 1) should be excluded from the list given in paragraph 5, in order that the re-establishment of rights should be possible in this case also. Indeed it could happen that events of force majeure, independent of the will of the applicant, such as strikes, delays in the dispatch of mail, etc., might lead to the loss of priority rights as a result of the expiry of the time limit.

The Working Party was, by a majority, of the opinion that it was not expedient to pursue such a suggestion, since the problem could be better solved under Ra. Article 141, No. 2 which deals explicitly with the extension of time limits in such cases.

23. The Working Party's discussions on this question, carried out on the basis of a working document from the United Kingdom delegation (working document No. 4 of 23 November 1971), led the Working Party to reorganise the content of Article 141 and of Re. Article 141, Nos. 1 and 2, on the one hand, and to set out clearly the relationship between Article 142 and Re. Article 141, No. 2, on the other.

(a) Firstly, the Working Party specified that Re. Article 141, No. 2 (extension of time limits) applied to all the time limits laid down in the Convention and in its Implementing Regulations, as well as to the time limits set by the European Patent Office.
MINUTES

of the 10th meeting of Working Party I,
held in Luxembourg from 22 to 26 November 1971

1. Working Party I held its 10th meeting in Luxembourg from 22 to 26 November 1971, with Dr. HAERTHEL, President of the Deutsches Patentamt, in the Chair.

Representatives from the Commission of the European Communities, the IIB and WIPO attended the meeting as observers. The Council of Europe representatives sent their apologies for being unable to attend. For the list of those present at the 10th meeting see Annex I to these minutes.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/133/71 on the understanding that item 3 would also cover the examination of a number of problems including those referred to in BR/GT I/138/71. The provisional agenda is given in Annex II to these minutes.

3. The Working Party I Drafting Committee met first under the chairmanship of Mr. van BENTHEM, President of the Octrooiraad, and, following his departure, under that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).
Zu Artikel 141
Nummer 1

Berechnung der Fristen

(1) Die Fristen werden nach vollen Tagen, Wochen, Monaten oder Jahren berechnet.

(2) Bei der Fristberechnung wird mit dem Tag begonnen, der auf den Tag folgt, an dem das Ereignis eingetreten ist, aufgrund dessen der Fristbeginn festgelegt wird; dieses Ereignis kann eine Handlung oder der Ablauf einer früheren Frist sein. Besteht die Handlung in einer Zustellung, so ist das maßgebliche Ereignis der Zugang des zugestellten Schriftstücks, sofern nichts anderes bestimmt ist.

(3) Ist als Frist ein Jahr oder eine Anzahl von Jahren bestimmt, so endet die Frist in dem maßgeblichen folgenden Jahr im Monat und an dem Tag, die durch ihre Benennung oder Zahl dem Monat und Tag entsprechen, an denen das Ereignis eingetreten ist; hat der betreffende nachfolgende Monat keinen Tag mit der entsprechenden Zahl, so läuft die Frist am letzten Tag dieses Monats ab.

(4) Ist als Frist ein Monat oder eine Anzahl von Monaten bestimmt, so endet die Frist in dem maßgeblichen folgenden Monat an dem Tag, der durch seine Zahl dem Tag entspricht, an dem das Ereignis eingetreten ist; hat der betreffende nachfolgende Monat keinen Tag mit der entsprechenden Zahl, so läuft die Frist am letzten Tag dieses Monats ab.

(5) Ist als Frist eine Woche oder eine Anzahl von Wochen bestimmt, so endet die Frist in der maßgeblichen Woche an dem Tag, der durch seine Benennung dem Tag entspricht, an welchem das Ereignis eingetreten ist.

Zu Artikel 141
Nummer 2

Verlängerung von Fristen

(1) Ist der letzte Tag der Frist ein Tag, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken nicht geöffnet ist oder an dem gewöhnliche Postsendungen am Ort des Sitzes des Europäischen Patentamts nicht zugestellt werden, so erstreckt sich die Frist auf den nächstfolgenden Tag, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken geöffnet ist und an dem gewöhnliche Postsendungen zugestellt werden.

(2) Absatz 1 ist auf Fristen, die im Übereinkommen oder in dieser Ausführungsordnung vorgesehen sind, in Fällen entsprechend anzuwenden, in denen Handlungen bei der zuständigen Behörde im Sinne des Artikels 64 Absatz 1 Buchstabe b des Übereinkommens vorzunehmen sind.

Zu Artikel 142
Nummer 1

Wiedereinsetzung in den vorigen Stand

(1) Der Antrag auf Wiedereinsetzung in den vorigen Stand ist schriftlich einzureichen. Der Antrag gilt erst als gestellt, wenn die in der Gebührenordnung zum Übereinkommen vorgeschriebene Gebühr entrichtet worden ist.

Re. Article 141
No. 1

Calculation of time limits

(1) Periods shall be laid down in terms of full years, months, weeks or days.

(2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided.

(3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and, on the day having the same number as the month and the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Re. Article 141
No. 2

Extension of time limits

(1) If the last day of the period is a day on which the European Patent Office is not open for receipt of documents or on which ordinary mail is not delivered in the locality in which the European Patent Office is situated, the period shall be extended until the first day thereafter on which the European Patent Office is open for receipt of documents and on which ordinary mail is delivered.

(2) Paragraph 1 shall apply mutatis mutandis to the time limits provided for in the Convention or in these Implementing Regulations in the case of transactions to be carried out with the competent authority within the meaning of Article 64, paragraph 1(b), of the Convention.

Re. Article 142
No. 1

Restitutio in integrum

(1) Applications for re-establishment of the applicant’s rights shall be presented in writing. Such applications shall not be considered to be made until after the fee prescribed by the Rules relating to Fees adopted pursuant to the Convention has been paid.
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES
PATENTERTEILUNGSVERFAHREN

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

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren

sowie

ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren

und

ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

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

— 1971 —
Session du 1er au 12 juillet 1963

Compte-rendu de la réunion du 10 juillet 1963 (+)

Le Président ouvre la séance à 9 heures 30 et souhaite la bienvenue à M. NUNZIATA.

A) Article 155 - N° 5 (suite)

Il donne la parole à M. Pressonnet qui, au sujet du paragraphe 2, se demande si on ne pourrait y prévoir une disposition qui éteindrait par analogie la prorogation prévue au paragraphe 1, au cas où un paiement de taxe n'aurait pu avoir lieu du fait de la fermeture d'une banque ou d'un bureau de poste, par suite d'une grève, par exemple.

Le Président lui répond que ce cas est réglé par l'article 156, 1, qui vise la force majeure.

A la suite d'une nouvelle intervention de M. Pressonnet, il est précisé que le paragraphe 3 vise les jours fériés de l'office établis en fonction des jours fériés légaux du pays du siège.

Le numéro 5 est transmis au Comité de rédaction. En outre, le Président charge ce Comité d'examiner la liste contenue dans ses propositions des dispositions de la Convention concernant les délais, afin d'unifier les textes.

(+) Par exception, le compte-rendu provisoire de la réunion du 9 juillet 1963 sera envoyé avec celui de la dernière réunion.

.../...
Le groupe transmet également au Comité de rédaction ce numéro relatif à l'expiration du délai.

Le groupe transmet au Comité de rédaction ce numéro relatif à la prorogation du délai. Il faudra biffer les mots: "de la date".

Le numéro qui règle l'incidence des demandes et jours fériés dans le calcul des délais, est transmis au Comité de rédaction.

La séance est levée à midi. Le groupe ne se réunit pas l'après-midi.
Résultats de la neuvième session du groupe de travail "Brevets" qui s'est tenue à Munich du 1er au 12 juillet 1963.
Remarque :

1. RPCJCE signifie : règlement de procédure de la Cour de justice des Communautés européennes.

2. Le paragraphe 2 devrait être étendu aux délais prévus pour d'autres actes susceptibles d'être accomplis auprès de l'administration mentionnée à l'article 66, paragraphe 1 b) de la Convention, et notamment pour le paiement de la taxe de dépôt, au cas où le groupe de travail déciderait d'autoriser le versement de cette taxe aux services centraux nationaux.
Ad article 155
Numéro 5

Dimanches et jours fériés

(1) Si au siège de l'Office européen des brevets le dernier jour du délai est un dimanche, un jour férié légal ou un jour où les bureaux de l'Office européen des brevets ne sont pas ouverts pour recevoir le dépôt des documents, le délai est prorogé jusqu'au premier jour suivant où les bureaux de l'Office européen des brevets sont ouverts pour recevoir le dépôt des documents.

(2) Le paragraphe 1 s'applique par analogie lorsqu'au siège de l'administration compétente au sens de l'article 66, paragraphe 1 b) de la Convention, auprès de laquelle le dépôt de la demande de brevet européen est effectué, le dernier jour du délai est un dimanche, un jour férié légal ou un jour où les bureaux de ladite administration ne sont pas ouverts pour recevoir le dépôt des demandes.

(3) La liste des jours fériés légaux établie par le Président de l'Office européen des brevets devra être approuvée par le Conseil d'administration et sera publiée au Journal officiel de l'Office européen des brevets.
Ad article 155

Numéro 4

Calcul du délai en cas de prorogation

En cas de prorogation d'un délai, le nouveau délai est calculé à partir de la date de l'expiration du délai initial.
Kurt Haertel

Bonn, le 8 mai 1963

Projet

concernant le

règlement d'application

de la

Convention relative à un droit européen des brevets

Proposition concernant l'application des

articles 153 à 159

de la Convention
Sitzung vom 1. bis 12. Juli 1963

Bericht über die Sitzung vom 10. Juli 1963 (1)

Der Vorsitzende eröffnet die Sitzung um 9.30 Uhr und begrüßt
Herrn NUNZIATA

Artikel 155 Nr. 5 (Fortsetzung)

Er erteilt Herrn Pressonnet das Wort, der zu Absatz 2 die Frage
stellt, ob man dort nicht eine Regelung vorsehen könne, die im Wege der
Analogie die in Absatz 1 vorgesehene Verlängerung auf den Fall ausdehnen
könne, wo eine Zahlung der Gebühr nicht erfolgen konnte, weil Bank oder
Post z.B. infolge eines Streiks geschlossen waren.

Der Vorsitzende erwidert ihm, daß dieser Fall in Artikel 156, Ab-
satz 1 durch die Vorschrift über höhere Gewalt geregelt sei.

Auf einen weiteren Einwand von Herrn Pressonnet wird klargestellt, daß
sich Absatz 3 auf die Feiertage des Amtes in Verbindung mit den gesetzli-
chen Feiertagen des Landes des Amtssitzes beziehe.

Nr. 5 wird an den Redaktionsausschuß überwiesen. Darüber hinaus
beauftragt der Vorsitzende den Redaktionsausschuß, zur Vereinheitlichung der
Texte, die in den von ihm zum Abkommen vorgeschlagenen Regelungen enthalte-
en Liste über die Fristen zu überprüfen.

(1) Ausnahmsweise wird der vorläufige Bericht über die Sitzung vom
9. Juli 1963 zusammen mit dem Bericht über die letzte Sitzung ver-
schickt.
Artikel 155 Nr. 3

Diese Vorschrift über das Fristende wird von der Arbeitsgruppe ebenfalls an den Redaktionsausschuß überwiesen.

Artikel 155 Nr. 4

Die Arbeitsgruppe überweist diese Vorschrift über die Fristverlängerung an den Redaktionsausschuß. Die Worte "de la date" sind zu streichen.

Artikel 155 Nr. 5

Diese Vorschrift regelt den Eingang der Patentsanmeldungen an Sonn- und Feiertagen im Rahmen der Fristenberechnung und wird an den Redaktionsausschuß weitergeleitet.

Die Sitzung wird um 12 Uhr aufgehoben. Die Arbeitsgruppe tritt am Nachmittag nicht zusammen.
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand
Bemerkung:

1. VOGEG bedeutet Verfahrensordnung des Gerichtshofs der Europäischen Gemeinschaften.

2. Absatz 2 ist auch auf die Fristen für sonstige Handlungen auszudehnen, die bei den in Artikel 66 Absatz 1 Buchstabe b) des Abkommens genannten Behörden vorgenommen werden können. Dies gilt insbesondere etwa für die Zahlung der Anmeldegebühr, falls die Arbeitsgruppe beschließt, deren Einzahlung bei den nationalen Zentralbehörden zuzulassen.
Zu Artikel 155
Nummer 5

Sonn- und Feiertage

(1) Ist der letzte Tag der Frist am Sitz des Europäischen Patentamts ein Sonntag, ein gesetzlicher Feiertag oder ein sonstiger Tag, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken nicht geöffnet ist, so erstreckt sich die Frist auf den nächstfolgenden Tag, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken geöffnet ist.

(2) Absatz 1 findet entsprechende Anwendung, wenn der letzte Tag der Frist am Sitz der zuständigen Behörde im Sinne des Artikels 66 Absatz 1 Buchstabe b) des Abkommens, bei der die europäische Patentanmeldung eingereicht wird, ein Sonntag, ein gesetzlicher Feiertag oder ein sonstiger Tag ist, an dem die zuständige Behörde zur Entgegennahme von Anmeldungen nicht geöffnet ist.

(3) Der Präsident des Europäischen Patentamts stellt ein Verzeichnis der gesetzlichen Feiertage auf, das der Zustimmung des Verwaltungsrats bedarf und im Amtsblatt des Europäischen Patentamts zu veröffentlichen ist.
Zu Artikel 155
Nummer 4

Fristberechnung bei Verlängerung

Im Falle der Verlängerung einer Frist wird die neue Frist von dem Ablauf der vorigen Frist an berechnet.
Arbeitsentwurf

zu einer

Ausführungsordnung

zum

Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 153 bis 159

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 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.