Rule 71 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 71
MPÜ
Ladung zur mündlichen Verhandlung

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\[\text{186}/\text{187}\]
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 which taxes 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
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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
Chapter II
Oral proceedings and taking of evidence

Rule 71
Summons to oral proceedings

(1) The parties shall be summoned to oral proceedings provided for in Article 116 and their attention shall be drawn to paragraph 2 of this Rule. At least one month's notice of the summons shall be given unless the parties agree to a shorter period.

(2) If a party who has been duly summoned to oral proceedings before the European Patent Office does not appear as summoned, the proceedings may continue without him.
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 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 eintritt, 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 aberkannt worden ist.

Regel 72, paragraph 1, 2nd sentence

37 Proposal:

The words “one month” are to be replaced by “two months”.

Grounds:

It must be considered that since they may be far away from the seat of the Patent Office and owing to the considerable amount of translation involved, the parties concerned require reasonable time for instructing their agents and for sufficient preparation for an oral hearing.

Regel 86, paragraph 2

38 Proposal:

In the German text, the word “erstreckt” is to be replaced by “verlängert”; in the English text, line 5, the words “shall extend to” are to be replaced by the words: “shall be prolonged to two weeks after”. ()

Grounds:

As a rule, it is not possible for the parties concerned to ensure that a written statement arrives at the European Patent Office on the day on which the postal trouble subsides. A short subsidiary period beginning with this day is sufficient.

Regel 102, paragraph 4, 2nd sentence

39 Proposal:

The 2nd sentence is to be deleted and replaced by the following condition:

“If such an authorisation is not filed in due time before the due time the representative states the reason why it was not possible to file the authorisation, the European Patent Office shall allow a supplementary term.”

Grounds:

The present wording causes an unnecessary hardship on an applicant who for reasons which he could not foresee is not in a position to send the authorisation within the appropriate time to his representative. The result of ignoring the term should not be a refusal of the patent application.

Rule 103

40 Proposal:

The Rule should be completed by a reference to the fact that the representative can be cancelled if he has been deprived by a legal judgment of his qualification for entry in the list.
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
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

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

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

________________________

1973
Mitteilung nach Absatz 1 eine Entscheidung des Europäischen Patentamts beantragen. Eine solche Entscheidung wird nur getroffen, wenn das Europäische Patentamt die Auffassung des Antragstellers nicht teilt.

Vgl. Artikel 14 (Sprachen des Europäischen Patentamts), 75 (Übermittlung europäischer Patentanmeldungen), 77 (Bennung von Vertragsstaaten), 84 (Jahregebühren für die europäische Patentanmeldung), 88 (Eingangsprüfung), 90 (Formalprüfung), 93 (Prüfungsantrag), 95 (Prüfung der europäischen Patentanmeldung), 96 (Zurückweisung oder Erteilung), 98 (Einspruch), 104 (Beiritt des vermeintlichen Patentrechtse), 107 (Frist und Form), 109 (Prüfung der Beschwerde), 120 (Weiterbehandlung der europäischen Patentanmeldung), 121 (Wiederbesetzung in den vorigen Stand), 123 (Angaben über nationale Patentanmeldungen), 124 (Ergänzender europäischer Rechenerichtsbericht), 135 (Umwandlungsantrag), 136 (Ereignung und Übermittlung des Antrags), 156 (Internationaler Rechenerichtsbericht) und 161 (Stufenweise Ausdehnung des Tätigkeitsbereiches des Europäischen Patentamts)

Regel 71
Form der Bescheide und Mitteilungen


Vgl. Artikel 88 (Eingangsprüfung), 90 (Formalprüfung), 93 (Prüfungsantrag), 95 (Prüfung der europäischen Patentanmeldung), 100 (Prüfung des Einspruchs), 109 (Prüfung der Beschwerde), 114 (Einwendungen Dritter), 116 (Beweisaufnahme), 123 (Angaben über nationale Patentanmeldungen), 124 (Ergänzender europäischer Rechenerichtsbericht), 128 (Aktenzeichen) und 161 (Stufenweise Ausdehnung des Tätigkeitsbereichs des Europäischen Patentamts)

Kapitel II
Mündliche Verhandlung und Beweisaufnahme

Regel 72
Ladung zur mündlichen Verhandlung

(1) Zur mündlichen Verhandlung nach Artikel 115 werden die Beteiligten unter Hinweis auf Absatz 2 geladen. Die Ladungsfrist beträgt mindestens einen Monat, sofern die Beteiligten nicht mit einer kürzeren Frist einverstanden sind.

(2) Ist ein zu einer mündlichen Verhandlung ordnungsgemäß geladener Beteiligter vor dem Europäischen Patentamt nicht erschienen, so kann das Verfahren ohne ihn fortgesetzt werden.

Vgl. Artikel 115 (Mündliche Verhandlung)
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
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
This provision stems from the idea contained in the note to the provision Re. Article 97 (BR/59/70, page 5). As a result of a decision taken by Working Party I, the word "hearing" was deleted and the more general expression "oral proceedings" was retained. This improved wording was to be extended to all the relevant texts in the First Preliminary Draft Convention and the Implementing Regulations. In this connection, see also the amendment to Re. Article 159, No. 1, paragraph 1.

Re. Article 139, No. 2 - Conduct of oral proceedings

35. This Article refers to the conduct of oral proceedings before the Boards of Appeal, Examining Divisions and Opposition Divisions. See the two footnotes to the text.

Re. Article 159, No. 1 - Summons

36. See point 34.

Re. Article 159, No. 7 - Interruption of proceedings

37. The Sub-Committee decided to add a fourth paragraph to this Article which it had previously adopted (cf. BR/67/70). This new paragraph prescribes that the interruption of proceedings shall be mentioned in the Register and in the Bulletin as is the case for suspension of proceedings. In fact it is of particular interest to the public that it should be kept informed of the interruption of proceedings particularly with a view to knowing whether the time limit for making a request for examination has expired or not.
of view reserving the right to re-examine it later if other
delcgations put forward any proposals on this subject.

Re. Article 128, No. 1 - National publications in the event
of conversion of a European patent application

32. The Sub-Committee adopted this provision which was
contained in the proposals put forward by the Chairman
of Working Party I, the Working Party having decided to
transfer it to the Implementing Regulations. The provision
of this text was considered indispensable since it imposes
an obligation on the States and thus guarantees that any
application for a European patent which is converted to an
application for a national patent will be communicated to
the public.

Re. Article 130, No. 2 - Renewal fees due in respect of
applications for divisional European patents

33. The United Kingdom delegation drew the Sub-Committee's
attention to the question of establishing which date is to
be taken into consideration for the duration of the validity
of a divisional patent (the date of filing of the original
application or not). The Sub-Committee decided to discuss
this question again at a subsequent meeting.

Re. Article 139, No. 1 - Failure of parties to appear at
oral proceedings

34. The provision adopted lays down that the oral
proceedings may continue even if a party fails to appear.

BR/84 e/71 nan/KM/prk

.../...
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 1st April 1971
BE/84/71

MINUTES

of the 5th meeting of the "Implementing Regulations" Sub-Committee
of Working Party I

(Luxembourg, 12 - 14 January 1971)

I

1. The fifth meeting of the "Implementing Regulations"
Sub-Committee was held in Luxembourg from 12 to 14 January
1971, with Mr FRESSONNET, 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 repre-
sentatives of WIPO/OMPI and the International Patent
Institute.(1)

2. The Drafting Committee met each day, under the Chair-
manship of Mr NEERVOORT, Secretary of the Octrooiraad,
following the Sub-Committee's meetings.

(1) See the list of participants in Annex I.
Ad article 182

Numéro 1

Convocation

(1) Les parties sont convoquées pour la procédure orale.

(2) Si une partie régulièrement convoquée pour la procédure orale ne se présente pas, l'audience peut avoir lieu et la décision être prise en son absence.
Ad article 83

Numéro 1

Convocation

(1) Si la section d'examen désire entendre le demandeur, elle doit le convoquer, à moins que le demandeur renonce à la convocation.

(2) Si le demandeur régulièrement convoqué ne s'est pas présenté à l'audition, la section d'examen peut renoncer à l'entendre.
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
Article 63. Remarque préliminaire

Cet article prévoit que la section d'examen entend d'office ou sur requête, si elle le juge utile, le demandeur ou toute autre partie à la procédure.

Sur proposition du Président, le groupe décide de supprimer les mots "toute autre partie à la procédure". En effet, depuis les modifications des articles 17 et 158, il n'y a plus de cas où d'autres parties pourraient être entendues.

Ac. 63 numéro 1

Ce numéro est relatif à la convocation du demandeur.

Le Président fait observer que cette disposition est nécessaire étant donné qu'il n'existe point de norme générale européenne en la matière.

Le paragraphe premier vise les formes dans lesquelles la convocation doit être faite et constitue une garantie pour le demandeur.

Le paragraphe 2 donne à l'Office la faculté de ne pas re convoquer un demandeur défaillant. Il lui accorde ainsi la faculté de le convoquer une nouvelle fois dans le cas où, par exemple, il se serait excusé.

M. Pressonnet déclare que la rédaction du paragraphe premier pourrait être améliorée. Il devrait préciser davantage que le demandeur ne peut être entendu que sur convocation.

Le numéro 1 est transmis au Comité de rédaction.

Ac. 85. Remarque préliminaire

L'article 65 est relatif à la demande d'un brevet européen provisoire.
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 83

Numéro 1

Convocation

(1) Si le demandeur doit être entendu par la section d'examen il est convoqué en vue de l'audition.

(2) Si le demandeur convoqué régulièrement en vue de l'audition ne s'est pas présenté, la section d'examen peut renoncer à son audition.
Bonn, le 10 avril 1963.

Projet
de
règlement d'exécution
de la
convention relative à un droit européen des brevets

Propositions pour l'exécution des
articles 76 à 87
de la convention
Zu Artikel 182
Nummer 1

Ladung

(1) Zur mündlichen Verhandlung werden die Beteiligten geladen.

(2) Ist ein ordnungsgemäß geladener Beteiligter zur mündlichen Verhandlung nicht erschienen, so kann ohne ihn verhandelt und entschieden werden.
Zu Artikel 83
Nummer 1
Ladung

(1) Beabsichtigt die Prüfungsstelle den Anmelder zu hören, so hat sie ihn zu laden, sofern er nicht auf die Ladung verzichtet.

(2) Ist der ordnungsgemäß geladene Anmelder zur Anhörung nicht erschienen, so kann die Prüfungsstelle auf seine Anhörung verzichten.
ARBEITSGRUPPE
"Patente"

Brüssel, den 20. Januar 1964

VERTRAULICH

Vorentwurf

einer Ausführungsordnung zum Abkommen über
ein europäisches Patentrecht
Auge zu behalten, dass alle die Anmeldung betreffenden Eintragungen gleichzeitig veröffentlicht werden sollen.

\textit{Artikel 83 Vorbemerkung}

Dieser Artikel bestimmt, dass die Prüfungsabteilung den Anmelder oder sonstige Beteiligte von Amts wegen oder auf Antrag anhört, wenn sie es für sachdienlich erachtet.

Auf Vorschlag des Vorsitzenden beschliesst die Gruppe, die Worte "sonstige Beteiligte" zu streichen. Tatsächlich gibt es nach Änderung der Artikel 17 und 158 keine Fälle mehr, in denen sonstige Beteiligte angehört werden könnten.

\textit{Artikel 83 Nr. 1}

Diese Vorschrift bezieht sich auf die Ladung des Anmelders.

Der Vorsitzende weist auf die Notwendigkeit dieser Vorschrift hin, da auf diesem Gebiet keine allgemeine europäische Norm besteht.

Absatz 1 regelt die Form der Ladung und stellt eine Garantie für den Anmelder dar.

Absatz 2 gibt dem Patentamt die Möglichkeit, von der ursprünglichen Ladung eines nicht erschöpften Anmelders abzusagen. Es gibt ihm ebenso die Möglichkeit, ihn noch einmal zu laden, wenn er beispielsweise entschuldigt war.

Herr Fressonnet ist der Ansicht, dass die Fassung des ersten Absatzes noch verbessert werden könnte. Es müsse noch mehr klargemacht werden, dass der Anmelder nur auf Ladung gehört werden könne.

Nummer 1 wird an den Redaktionsausschuss überwiesen.

\textit{Artikel 85 Vorbemerkung}

\textit{Artikel 85} bezieht sich auf die Anmeldung eines vorläufigen europäischen Patents.

\ldots/\ldots
Arbeitsgruppe "Patente"

7669/IV/63-D
Orig. F

Brüssel, den 6. November 1963

Vertraulich

Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht

7669/IV/63-D
(1) Soll der Anmelder von der Prüfungsstelle gehört werden, so wird er zu der Anhörung geladen.

(2) Ist der ordnungsgemäß geladene Anmelder zur Anhörung nicht erschienen, so kann auf seine Anhörung verzichtet werden.
Arbeitsentwurf

tzu einer

Ausführungssordnung

zum

Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 76 bis 87

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 arrangements 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. A