Article 160 E

Travaux Préparatoires
(EPC 1973)

Comment:
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Art. 160
MPÜ
Ernennung von Bediensteten während einer Übergangszeit

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the difference being compensated by an additional payment would not come to the same thing.

89. The delegation of the Federal Republic of Germany considered that there was a psychological difference even if both methods led to the same result as far as the actual amount of money was concerned. It was important that full-time members of the Boards should not feel themselves to be less favourably placed than persons carrying out the same activities on a part-time basis. This might well be the case if different criteria were applied for calculating remuneration and allowances. Moreover, the assumption that the members of the Boards would be employed at Grade A 3 should be accepted as valid since the whole projected pay structure might otherwise be upset.

The delegation of the Federal Republic of Germany then proposed that the remuneration and allowances of the persons referred to in Article 159, paragraph 2, should be based on the highest step of Grade A 3 and that the daily rate thus arrived at should be supplemented by an additional payment to be fixed by the Administrative Council in the light of individual circumstances.

90. This proposal was supported by the Swiss delegation.

91. The Netherlands delegation wondered whether it would not be better to allow the Administrative Council complete discretion in fixing the amount of remuneration and allowances since it was this body which would be drawing up the provisions governing the categories and incremental steps in question.

92. This matter was then put to the vote, in which there were three delegations for and four delegations against the German proposal, and thirteen abstentions.

93. The delegation of the Federal Republic of Germany thereupon withdrew its proposal on the last paragraph of point 2 of the Recommendation (M/11, point 15).

94. The delegation of the Federal Republic of Germany then raised the question of the legal form of the Recommendation and the parties to which it should be addressed. It felt that it would not be proper for the Conference to adopt a decision concerning, inter alia, the remuneration of part-time members of Boards of Appeal, since this would be binding not only on the Interim Committee but to be set up now but also on the Administrative Council to be set up at a later date. The correct procedure would be for the Conference to recommend the Interim Committee to prepare an Administrative Council decision which would, inter alia, settle the question of the remuneration and allowances of the persons referred to in Article 159, paragraph 2, in the manner desired by the Main Committee.

95. The Netherlands delegation considered that it would be odd if such a recommendation dealt only with the remuneration and allowances of part-time members of the Boards of Appeal, and not those of the rest of the staff. It would perhaps be more correct to incorporate the present Recommendation in the Recommendation on preparations for the opening of the European Patent Office (M/8) or to deal with it in the same way as the draft Service Regulations.

96. The United Kingdom delegation was of the opinion that the content of the Recommendation in question was of great psychological importance in that it would demonstrate to those using the patent grant procedure that part-time members of the Boards of Appeal were highly qualified. The Boards of Appeal would have an important role to play in the future development of European patent law. This was also particularly true of the Revocation Boards under the Community Patent Convention, which would consistently be staffed by the same persons, and the Recommendation as such — though not in the form of a decision — must therefore be retained.

97. The delegation of the Federal Republic of Germany was against incorporating the content of the Recommendation in M/8, because if this was done it would have to be considerably shortened. The Conference should simply note the Recommendation and refer it to the Interim Committee for consideration at a later date. The content of the Recommendation would thus remain as it stood and future users of the European Patent Office could go by Article 159 of the Convention, which gave an important indication of the professional qualifications of future members of the Boards of Appeal. The Conference documents would indicate what arrangements the Main Committee felt should be made as regards the remuneration and allowances of part-time members of the Boards.

98. In the opinion of the French delegation the Recommendation on preparations for the opening of the European Patent Office (M/8) was so broadly drafted as to enable the Interim Committee to prepare both general provisions for the Service Regulations and special provisions for the persons referred to in Article 159 of the Convention. The Recommendation under discussion should be adopted by the Conference and be addressed to the relevant body, i.e. probably the Administrative Council.

99. Upon a proposal by the Netherlands delegation the Main Committee finally agreed as follows:

The Main Committee approved the content of the Recommendation regarding the status and remuneration of the employees referred to in Article 159, paragraph 2, of the Convention and expressed the wish that the Interim Committee and the Administrative Council would act upon it when the time came.

II. Meeting on 25 September 1973

A. Discussion of the results of the proceedings of the Drafting Committee

100. Except where otherwise specified below, the Main Committee approved the financial provisions re-examined the day before by its Drafting Committee, as contained in M/132/III/R 1, and agreed to forward them to the Committee of the Whole.

Article 38 (40) — Level of fees and payments — Special financial contributions

101. The Danish delegation wondered whether the end of paragraph 3(b) should not be worded as follows: "applications filed in another Contracting State by natural or legal persons having their residence or principal place of business in that Contracting State".

102. The Chairman stated that it was more correct to use the plural here, since the object was to compare the number of applications filed by persons from a particular Contracting State in each of the other Contracting States and to take the second highest number of such applications.

103. The French delegation supported this view.

104. The Main Committee agreed to leave all three versions of paragraph 3(b) unchanged.

105. The Main Committee also noted that the reference in paragraph 3(b) to the "residence" or "principal place of business" of natural or legal persons corresponded in all three languages with the terminology used by Main Committee I in similar contexts in other parts of the Convention and in particular in the provisions concerning representation.

106. At the request of the Luxembourg delegation, supported by the Belgian and French delegations, the Main Committee decided that in the French text of paragraph 7 the word "versées" should be replaced by "remboursées".
event be made without the authorisation of the Administrative Council.

72. The French delegation's patent expert admitted that the statement of his colleague responsible for financial matters had led him to reconsider his position. Paragraphs 1 and 2 had to be interpreted as meaning that one-twelfth of the budget appropriations per heading or other division for the preceding accounting period was the limit, in excess of which the Administrative Council could not account authorise appropriations. This was what was meant by the words "subject to the observance of the other provisions laid down in paragraph 1". The Administrative Council could only authorise expenditure in excess of one-twelfth of the appropriations provided for in the draft budget. This interpretation was not inapt as Article 45 applied not only to the build-up period of the European Patent Office but permanently, and would therefore cover cases in which the estimates of appropriations for a particular heading in the draft budget were smaller than in the preceding budget. Furthermore, the Working Party on Finance had probably been less concerned with the possibility of large purchases than with current expenditure which might be incurred at the beginning of an accounting period.

73. The Chairman noted that this interpretation of paragraph 2 was precisely the opposite of the one on which the Swiss delegation had based its proposed amendment. At the present stage of the discussions there seemed to be no other solution than to take a vote on the Swiss proposal for clarifying paragraph 2. If the proposal was rejected, paragraph 2 would remain in its present form which evidently allowed of several interpretations. Each delegation would then be at liberty to submit a new proposal for clarifying the present text.

74. In the subsequent vote 2 delegations were in favour of and 5 delegations against the Swiss proposal; 13 delegations abstained.

75. The Swiss delegation proposed that in paragraph 3 "shall, on a provisional basis", be substituted for "shall continue to". It considered that the payments referred to in paragraph 3 were just as provisional as those in paragraph 4, i.e. subject to the final calculation of payments (M/54/I/II/III, page 5).

76. The Main Committee referred this proposal, which it considered was of a purely drafting nature, to the Drafting Committee.

Article 46 (48) — Budget implementation

77. The Italian delegation proposed specifying in paragraph 2 that the President of the European Patent Office could only transfer appropriations from one heading to another similar heading.

78. The Netherlands delegation felt that it would be difficult to determine which headings were similar.

79. The United Kingdom delegation said that the intention of this provision was to give the President of the European Patent Office a certain degree of discretion in the use of appropriations. It would be for the Financial Regulations, to be adopted by the Administrative Council, to lay down the details governing the transfer of appropriations.

80. The Italian delegation thought that it would be sufficient if the Financial Regulations were clarified in the way it had proposed.

Article 47 (49) — Auditing of accounts

81. The Main Committee referred a drafting proposal from the Swiss delegation concerning paragraph 4 (M/54/I/II/III, page 6) to the Drafting Committee.

Article 48 (50) — Financial Regulations

82. The delegation of the Federal Republic of Germany thought that there was no need to state in sub-paragraph (f) that the Administrative Council had powers to set up a Budget and Finance Committee and therefore proposed that the sub-paragraph be amended accordingly (M/11, point 5). It explained that it assumed that the Administrative Council would have to set up such a Committee and that its composition and duties would be laid down in the Financial Regulations.

83. The Main Committee referred this proposal to the Drafting Committee and requested the latter to examine whether the text proposed by the delegation of the Federal Republic of Germany was preferable to the present text.

84. At the request of the delegation of the Federal Republic of Germany, the Chairman noted that the Main Committee thought that the present list in Article 48 (50) did not preclude financial estimates of an indicative nature covering several years being provided for in the Financial Regulations.

Article 146 — Cover for expenditure for carrying out special tasks

85. The Main Committee referred two drafting proposals concerning paragraph 1, submitted by the United Kingdom delegation (M/40, point 23) and the delegation of the Federal Republic of Germany (M/47/I/II/III, point 19) respectively, to the Drafting Committee.

B. Recommendation regarding the status and remuneration of the employees referred to in article 159, paragraph 2, of the Convention (M/7)

86. The delegation of the Federal Republic of Germany proposed that the remuneration and allowances paid to the persons referred to in the second and third paragraphs of point 2 should not be based on the remuneration of an employee in Grade A 1, step 6 (M/11, point 14).

It put forward the following arguments in support of its proposal: in drafting this provision, the Working Party on Personnel Matters of the Luxembourg Inter-Governmental Conference had held the view that persons employed during a transitional period on a daily basis and in a subsidiary capacity as members of the Boards of Appeal or of the Enlarged Board of Appeal of the European Patent Office should receive higher pay than persons subsequently employed full-time and permanently as members of the Boards of Appeal. Thus Grade A 1, step 6, had been chosen as the basis for calculating the remuneration and allowances of such persons. The German delegation agreed with the principle that these persons should be comparatively well paid; however the Recommendation as it now stood would be prejudicial to their subsequent grading. It therefore felt that the basis for calculating the remuneration and allowances of part-time members of the Boards of Appeal and of the Enlarged Board of Appeal should be the grade in which they would subsequently be recruited full-time, i.e. A 3, and that they should receive an additional payment to compensate for the fact that they would only be employed at the European Patent Office on a daily basis.

87. The United Kingdom delegation felt that the considerations put forward by the Federal Republic of Germany might be valid for some countries but not for all. Comparing it with the situation in the United Kingdom, it was better to leave the Recommendation in its present form.

88. The Chairman wondered whether calculating the remuneration and allowances of the members of the Boards of Appeal on a higher basis or alternatively on a lower basis with
under agreements concluded with inter-governmental organisations. It also considered that an agreement with INPADOC would come under private law.

170. The Austrian delegation stated that its proposal would not result in the exclusion of other information centres.

171. The United Kingdom delegation felt that the present text of Article 10 together with Article 31 (30), paragraph 3, clearly defined the respective powers of the President and the Administrative Council to conclude agreements. If the proposal were accepted, the interpretation given to the scope of Article 10 would no longer be valid.

172. The Committee voted on the Austrian proposal in M/78/I/II which was accepted and referred to the Drafting Committee.

173. The United Kingdom delegation pointed out that in Article 28 (30) there was an explicit reference to an intergovernmental organisation; Article 31 (33), paragraph 3, should therefore be amended to include such a reference as well. The Article under examination dealt with agreements to be concluded by the President on behalf of the Organisation with international organisations. Obviously this was limited to fairly important agreements and excluded agreements with non-governmental organisations. The President of the Office would be competent to conclude such agreements under Article 10.

174. The German, French and Netherlands delegations shared the view expressed by the United Kingdom delegation.

175. The Committee accepted the United Kingdom proposal on Article 31 (33) and referred it to the Drafting Committee.

Article 33 (35) — Voting rules

176. The Committee referred this Article to the Drafting Committee and asked it to examine also the German delegation’s proposals in M/11, point 4 and M/47, point 11.

Article 143 — Special departments of the European Patent Office

177. The Committee referred the proposal from the Member States of the European Communities in M/14 to the Drafting Committee for examination.

Article 145 — Select committee of the Administrative Council

Paragraph 1

178. The United Kingdom delegation feared that this proposal might be interpreted in conjunction with Article 30 (32) as meaning that the select committee would be considered as a body set up by the Administrative Council of the European Patent Organisation and proposed that this paragraph be supplemented by the words: “At the request of the group of Contracting States”.

179. The Committee understood the concern expressed by the United Kingdom delegation and referred the provision in question to the Drafting Committee so that an unambiguous wording could be found.

Article 159 (160) — Appointment of employees during a transitional period

Paragraph 2

180. The Committee did not adopt a proposal from UNEPA (M/62/I/II, point 8) that the words “for example” be inserted before the words “national courts”.

Article 165 (166) — Accession

Paragraph 2 (j (b))

181. The Yugoslav delegation proposed in M/77/I/II that the words “at the invitation of the Administrative Council” be deleted to enable States which did not take part in the preparatory work to accede freely to the Convention.

182. The Swiss delegation considered that the text of the basic draft provided for all the desired options and should not therefore be amended.

183. The Yugoslav delegation then withdrew its proposal.

184. The Committee referred Article 165 to the Drafting Committee and asked it to consider the drafting proposal submitted by the United Kingdom delegation in M/40, point 25.

Article 167 (168) — Territorial field of application

185. The Committee recorded its agreement on a proposal from the United Kingdom delegation in M/40, point 26, to the effect that the words “unless the State concerned has earlier ceased to be a party to the Convention, pursuant to Article 171, paragraph 4” be deleted.

Article 173 (174) — Denunciation

186. The Committee recorded its agreement on a proposal by the German delegation that the last part of the second sentence be deleted in line with the amendment to Article 167, paragraph 3.

Article 176 (177) — Languages of the Convention

Paragraph 2

187. The Committee established that this provision did not in any way detract from the right of States to prepare and publish translations of the Convention in their official languages. However, only translations approved by the Administrative Council could be considered official texts within the meaning of this Article.

B. Article 166 (167) of the Convention

I. Positions of the Delegations

1001. The Committee began by holding a general exchange of views on the problems raised by the provisions relating to reservations.

1002. The Spanish delegation pointed out that it had submitted a proposal for an amendment to Article 166 which was set out in M/29. The Spanish proposal was based on a position which had already been stated during the discussions of the Luxembourg Inter-Governmental Conference. The reason for the proposal was that some countries would be unable to agree immediately to the incorporation of certain rules of the Convention in their legal systems without seriously weakening the present structure of some sectors of industry whose economic development was not yet sufficiently advanced. It was for this reason that, when the Luxembourg Inter-Governmental Conference opted for the maximum solution, provision had had to be made for the entry of reservations in certain cases and Article 166 of the draft Convention had been drafted. However, from the outset, the Spanish delegation had maintained that the scope for reservations provided was inadequate. The Spanish Government felt that the provision should chiefly be extended in two respects: chemical products should be included and provision should be made for the possibility of extending the ten-year
Report on the meeting of the Plenary
(Final meeting — 4 and 5 October 1973)

Opening of the session
1. The President of the Conference began the final session of the Plenary by establishing its programme of work.

Presentation of the General Report
2. The General Rapporteur, Mr. van Benthem, presented the General Report as set out in M/165/K. The President of the Conference thanked Mr. van Benthem on behalf of the Plenary for his General Report.

Adoption of the Convention, Implementing Regulations and Protocols
3. The President of the Conference presented to the Plenary the texts submitted to it by the Committee of the Whole for signature: the drafts of the Convention on the Grant of European Patents, the Implementing Regulations, the Protocol on Jurisdiction and the Recognition of Decisions in respect of the Right to the Grant of a European Patent, the Protocol on Privileges and Immunities of the European Patent Organisation, the Protocol on the Centralisation of the European Patent System and on its Introduction and the Protocol on the Interpretation of Article 69 of the Convention, contained in M/146/R 1 to 14, as amended by M/160/K.

In accordance with Rule 38, paragraph 1, of the Rules of Procedure of the Conference, these six drafts were put to the vote combined as one, and adopted unanimously with one abstention.

Adoption of the Decision on Preparations for the Opening of the European Patent Office
4. The President called upon the Plenary to adopt the Decision on Preparations for the Opening of the European Patent Office, contained in M/146/R 15, as amended by M/160/K, which had been submitted to it by the Committee of the Whole.

The Decision was adopted unanimously with one abstention.

Adoption of the Decision on Training Staff for the European Patent Office
5. The President called upon the Plenary to adopt the Decision on Training Staff for the European Patent Office, contained in M/146/R 15, as amended by M/160/K, which had been submitted by the Committee of the Whole.

The Decision was adopted unanimously with one abstention.

Adoption of the Declaration concerning Section IV, paragraph 1, of the Protocol on Centralisation
6. The President called upon the Plenary to adopt the Declaration concerning Section IV, paragraph 1, of the Protocol on Centralisation, contained in M/148/R 14, which had been submitted to it by the Committee of the Whole.

The Declaration was adopted unanimously with one abstention.

Declaration by the Turkish delegation
7. The Turkish delegation made a declaration on behalf of the Turkish Government with regard to the votes which had been taken. The Turkish delegation explained that the fact that it had abstained in no way meant that the Turkish Government was against the Convention, or that it would not eventually participate in it. The Turkish Government wished to examine the whole of the Convention once more and this was the sole reason why the Turkish delegation had abstained. The Turkish delegation felt that in due time, after a detailed study of the procedure set up and all the documents, the Turkish Government would decide to become a party to the Convention, as provided for in the Convention itself. The Turkish delegation confirmed that this statement covered all the votes taken so far and was intended to explain its general position. It requested that these observations be recorded.

The President of the Conference thanked the Turkish delegation for this statement and agreed that it was in the general interest that it should be recorded in the minutes.

Recommendation on documentation for patent search
8. The President of the Conference pointed out that the content of the Recommendation by the Inter-Governmental Conference on documentation for patent search, contained in Preparatory Document M/6, had been incorporated into the Protocol on Centralisation and had therefore already been dealt with by the Plenary.

Recommendation regarding the status and remuneration of the employees referred to in Article 159 (160), paragraph 2
9. The President informed the Plenary that the Committee of the Whole had proposed that the Recommendation by the Inter-Governmental Conference regarding the status and remuneration of the employees referred to in Article 159 (160), paragraph 2, of the Convention, contained in Preparatory Document M/7, should not be dealt with by the Conference but should be referred to the Interim Committee set up by the Decision on preparations for the opening of the European Patent Office, which had just been adopted. The President suggested that the Plenary act in accordance with this proposal, since the Interim Committee would be responsible for other staff matters.

This was approved by the Plenary.

Request for admission by INCOPOSA
10. The Chairman of the Steering Committee reminded the Plenary that at its opening meeting it had been presented with a request by INCOPOSA, an international organisation representing the staff of a number of patent offices, for admission to the Conference as an observer organisation. The Conference had taken no decision on this request at its opening meeting, but had referred it to the Steering Committee for further examination. The Steering Committee had examined the request, but as it was not competent to take a decision on the admittance of this organisation to the Conference, it had decided to grant some members of INCOPOSA permission under Rule 48 of the Rules of Procedure of the Conference to attend meetings of the Committees of the Conference. INCOPOSA had in fact made use of this authorisation by sending several of its members to the meetings of the Main Committees. The request for admission as an observer organisation could be considered to be settled in that the Conference was now in its final stage and it did not appear reasonable to admit a further organisation now that the substantial work had been completed.
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Article 160

Appointment of employees during a transitional period

(1) Until such time as the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office have been adopted, the Administrative Council and the President of the European Patent Office, each within their respective powers, shall recruit the necessary employees and shall conclude short-term contracts to that effect. The Administrative Council may lay down general principles in respect of recruitment.

(2) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities. They may be appointed for a term of less than five years, though this shall not be less than one year, and may be reappointed.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 6
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 140 to 166
Article 159

Appointment of employees during a transitional period

(1) Until such time as the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office have been adopted, the Administrative Council and the President of the European Patent Office, each within their respective powers, shall recruit the necessary employees and shall conclude short-term contracts to that effect. The Administrative Council may lay down general principles in respect of recruitment.

(2) Unchanged from 1972 published text
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 19 September 1973

M/108/II/R 4
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II
AT THE MEETING ON 18 SEPTEMBER 1973

Articles of the Convention:

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Protocol on Privileges and Immunities of the European Patent Organisation:

Article 22
8. Article 159 Paragraph 2

Proposal: Before the words "national Courts" insert "for example".

Grounds: The Administrative Council should also have the possibility of appointing during the transitional period other technically or legally qualified persons as members of the Board of Appeal or the Enlarged Board of Appeal.

II. Rules of the Implementing Regulations

Rule 2 Paragraph 2

Proposal: Paragraph 2 should be supplemented by the following sentence: "At the wish of a party the oral remarks can be translated into the language of the proceedings."

Grounds: The parties must have the opportunity of understanding anything that is said by an employee of the European Patent Office participating in the proceedings. It may be in the, understandable, interest of the European Patent Office that one of their employees speaks during the proceedings in a language other than the language of the proceedings. In turn the European Patent Office should realize that one of the parties may not understand contributions made in this language and therefore it is necessary - but is also sufficient - to rule that a translation into the language of the proceedings be made if a party so requests.

Rule 28 Paragraph 4

Proposal: Paragraph (4) of the Comment M/21 UNEPA No. 27 should be amended as follows: "After publication of the mention of the granting of the European patent, the deposited sample is handed over directly from the culture collection at the request of a third party, whereby said third party, as long as one of the patents of the Contracting States is still in force, must declare that he will not make available the microorganism to other persons. The name and address of the said third party must be notified to the patentee so long as one of the patents of the Contracting States is still in force."
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973
M/62/I/II
Original: German/English/French

CONFERENCE DOCUMENT

Drawn up by: Union of European Patent Agents (UNEPA)

Subject: Additional comments
V. PROTOKOLL ÜBER VORRECHTE UND BEFREIUNGEN

Artikel 14


ANLAGE

REDAKTIONELLE VORSCHLÄGE

I. ZUM ÜBEREINKOMMEN

Artikel 22

17 Im deutschen Text sollten entsprechend den beiden anderen Fassungen die Worte „selbst beteiligt sind“ durch „ein persönliches Interesse haben“ ersetzt werden.

Artikel 23

18 Der Text dieses Artikels sollte hinsichtlich der Verpflichtung des Europäischen Patentamts, technische Gutachten zu erstatten, überprüft werden, da zumindest die deutsche und englische Fassung nicht mit der französischen Fassung übereinstimmen scheinen.

V. PROTOCOL ON PRIVILEGES AND IMMUNITIES

Article 14

16 At the last meeting of the Inter-Governmental Conference, the German delegation reserved the right to return to the wording of this Article (see point 108 of the minutes of the meeting). After further examination it still considers that it must be expressly stated in Article 14 that its provisions are without prejudice to Articles 7 and 17.

ANNEX

PROPOSALS FOR DRAFTING AMENDMENTS

I. THE CONVENTION

Article 22

17 In the German text the words “selbst beteiligt sind” should be replaced by “ein persönliches Interesse haben”, to correspond with the versions in the two other languages.

Article 23

18 The part of this Article dealing with the obligation of the European Patent Office to give technical opinions should be re-examined since the German and English versions do not appear to correspond with the French version.
Regel 73

10 Absatz 4 erscheint unvollständig. Wird ein Beteiligter selbst vernommen, so muß ein anderer Beteiligter die Möglichkeit haben, sachdienliche Fragen an den vernommenen Beteiligten zu richten. Absatz 4 sollte daher insoweit ergänzt werden.

11 Im Zusammenhang mit Absatz 4 darf darauf hingewiesen werden, daß eine ausdrückliche Vorschrift darüber fehlt, in welcher Weise die vernommene Person gegen sachfremde oder in ungehöriger Form gestellte Fragen geschützt werden kann. Die Bundesregierung geht davon aus, daß ein solcher Schutz für die erste Instanz durch interne Weisungen des Präsidenten nach Artikel 10 und für die zweite Instanz durch Bestimmungen der Verfahrensordnung (vgl. Regel 11) gewährleistet wird.

Regel 77

12 Absatz 1 sollte dahin ergänzt werden, daß neben der Niederschrift auch das Tonbandprotokoll zugelassen wird. Außerdem sollte der in Absatz 1 genannte Katalog der in die Niederschrift aufzunehmenden Angaben um Angaben über Ort und Tag der Verhandlung sowie über die mitwirkenden Personen ergänzt werden.

III.
BESTIMMUNGEN
DES ANERKENNUNGSprotocols

Artikel 3


IV.
EMPFHEHLUNG
betreffend den Status und die Vergütung
der in Artikel 159 Absatz 2 des Übereinkommens
genannten Bediensteten

14 Nach Ziffer 2 dieser Empfehlung sollen die an die nach Artikel 159 Absatz 2 des Übereinkommens angestellten Personen zu entrichtenden Bezüge nach der Dienstaltersstufe 6 der Besoldungsgruppe A/1 gezahlt werden. Da die Mitglieder der Beschwerde-

Rule 73

10 Paragraph 4 appears to be incomplete. Where a party to the proceedings is himself heard, the other party must be able to put relevant questions to him. Paragraph 4 should therefore be supplemented to this effect.

11 As regards paragraph 4, it should be noted that there is no express provision as to how a person being heard may be protected against irrelevant questions or questions put in an improper way. The German Government assumes that in the case of the departments of the first instance such protection is provided by the internal instructions given by the President pursuant to Article 10 and in the case of departments of the second instance by the provisions of the Rules of Procedure (see Rule 11).

Rule 77

12 Paragraph 1 should be supplemented so as to include tape-recordings of the proceedings in addition to the minutes. Details of the place and date of the proceedings and the persons involved should be added to the items to be contained in the minutes as listed in paragraph 1.

III.
PROVISIONS
OF THE PROTOCOL ON RECOGNITION

Article 3

13 In order to align with Article 58, paragraph 1, 2nd sentence, of the Convention, to which Article 3 of the Protocol on the Recognition of Decisions refers, the words in the German text “der Anspruch auf Erteilung eines europäischen Patents” should be replaced by “das Recht auf das europäische Patent” (English text unchanged).

IV.
RECOMMENDATION
regarding the status and remuneration of the employees referred to in Article 159, paragraph 2, of the Convention

14 Under paragraph 2 of this Recommendation, persons appointed under Article 159, paragraph 2, of the Convention shall receive the remuneration of an employee of Grade A1, step 6. Since the members of the Boards of Appeal and the Enlarged
STELLUNGNAHME

DER REGIERUNG DER BUNDESREPUBLIK DEUTSCHLAND

COMMENTS

BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

PRISE DE POSITION

DU GOUVERNEMENT DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
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 EUROPEEN
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

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

______________________________

1973
ELFTER TEIL
ÜBERGANGSBESTIMMUNGEN

Artikel 158
Verwaltungsrat während einer Übergangszeit

(1) Die in Artikel 168 Absatz 1 genannten Staaten bestellen ihre Vertreter im Verwaltungsrat; auf Einladung der Regierung der Bundesrepublik Deutschland tritt der Verwaltungsrat nicht später als zwei Monate nach Inkrafttreten des Übereinkommens zusammen, um insbesondere den Präsidenten des Europäischen Patentamts zu ernennen.

(2) Die Amtszeit des ersten nach Inkrafttreten des Übereinkommens ernannten Präsidenten des Verwaltungsrats beträgt vier Jahre.


Artikel 159
Ernennung von Bediensteten während einer Übergangszeit

(1) Bis zum Erlaß des Statuts der Beamten und der für die sonstigen Bediensteten des Europäischen Patentamts geltenden Beschäftigungsbedingungen stellen der Verwaltungsrat und der Präsident des Europäischen Patentamts im Rahmen ihrer Zuständigkeit das erforderliche Personal ein und schließen zu diesem Zweck befristete Verträge. Der Verwaltungsrat kann für die Einstellung des Personals allgemeine Grundsätze aufstellen.

(2) Während einer Übergangszeit, deren Ende der Verwaltungsrat bestimmt, kann der Verwaltungsrat nach Anhörung des Präsidenten des Europäischen Patentamts zu Mitgliedern der Großen Beschwerdekammer oder der Beschwerdekammern auch technisch vorgedarbte oder rechtkundige Mitglieder nationaler Gerichte oder Behörden der Vertragsstaaten ernennen, die ihre Tätigkeit in den nationalen Gerichten oder Behörden weiterhin ausüben können. Sie können für einen Zeitraum ernannt werden, der weniger als fünf Jahre beträgt, jedoch mindestens ein Jahr betragen muß; sie können wiederernannt werden.

Artikel 160
Erstes Haushaltsjahr


PART XI
TRANSITIONAL PROVISIONS

Article 158
Administrative Council during a transitional period

(1) The States referred to in Article 168, paragraph 1, shall appoint their representatives to the Administrative Council; on the invitation of the Government of the Federal Republic of Germany, the Administrative Council shall meet no later than two months after the entry into force of this Convention, particularly for the purpose of appointing the President of the European Patent Office.

(2) The duration of the term of office of the first Chairman of the Administrative Council appointed after the entry into force of this Convention shall be four years.

(3) The term of office of two of the elected members of the first Board of the Administrative Council set up after the entry into force of this Convention shall be five and four years respectively.

Article 159
Appointment of employees during a transitional period

(1) Until such time as the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office have been drawn up, the Administrative Council and the President of the European Patent Office, each within their respective powers, shall recruit the necessary employees and shall conclude short-term contracts to that effect. The Administrative Council may lay down general principles in respect of recruitment.

(2) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities. They may be appointed for a term of less than five years, though this shall not be less than one year, and may be reappointed.

Article 160
First accounting period

(1) The first accounting period of the Organisation shall extend from the date of entry into force of this Convention to 31 December of the same year. If that date falls within the second half of the year, the accounting period shall extend until 31 December of the following year.
M/1
8. Dezember 1972
8 December 1972
8 décembre 1972

ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE 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
In support of the observation made by the United Kingdom delegation, the representative of the IIB pointed out that, in view of the nature of the pension scheme now in force at the IIB (pension fund), it would probably be necessary to lay down transitional measures for IIB staff who are integrated into the European Patent Office, since the draft now submitted to the Conference was based on a budgetary system.

119. As to the future the Conference agreed that the Pension Scheme – as for the Service Regulations Scheme – was to serve as a working basis for the Interim Committee. It need not be brought up to date, taking into account the last developments on the subject, and did not have to be dealt with at the Diplomatic Conference.

120. Following a suggestion by the Chairman of Working Party III (BR/125/72), the Conference agreed that there should be a reference to the pension scheme in Articles 13 and 31 of the Convention.

(iii) Arrangements for the employees referred to in Article 157, paragraph 2, of the Draft Convention

121. The Conference approved the arrangements for the appointment of temporary members of the Boards of Appeal and the Enlarged Board of Appeal under Article 157, paragraph 2, above, which were proposed by Working Party III. These arrangements are set out in a recommendation of the Co-ordinating Committee (BR/203/72, point B in the Annex).
MINUTES

of the

6th meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
Article 157 (158, paragraph 3 + 160b)

Appointment of employees during a transitional period

(1) Until such time as the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office have been drawn up, the Administrative Council and the President of the European Patent Office, each within their respective powers, shall recruit the necessary employees and shall conclude short-term contracts to that effect. The Administrative Council may lay down general principles in respect of recruitment.

(2) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities. They may be appointed for a term of less than five years, though this shall not be less than one year, and may be reappointed.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
161. The Italian, French and Austrian delegations stated that they thought it very important that the problem should be carefully examined, taking into account the desirability of the greatest possible number of European countries being able to take part in the Convention.

162. The Conference thought the problem was worth thinking about but that, in view of its nature, there was no need to refer it to Working Party I. At its 6th meeting the Conference could examine any proposals which might be submitted to it.

**Article 160b (Appointment of senior officials during a transitional period)**

163. The United Kingdom delegation expressed a reservation on this provision, since members of legal authorities or services outside the European Patent Office would thus be called upon.
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)
Article 160b

Appointment of senior officials during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities.

(2) By derogation from Article 58, paragraph 1, the members referred to in the preceding paragraph may be appointed for a term of less than five years, though this shall not be less than one year. They may be reappointed.
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
After the Working Party had decided to retain incompatibility between membership of the Boards and Enlarged Board of Appeal and membership of the Receiving Section or Examining Divisions or Opposition Divisions (Article 58, paragraph 2), the discussion turned to the ad hoc appointment of members of national courts. Certain delegations pointed out that certain completely independent officials took part in national patent proceedings without being "members of a court". In view of these observations, the Working Party laid down that during a transitional period the expiry of which would be determined by the Administrative Council, "technically or legally qualified members of national courts and authorities of Contracting States" may be appointed as members of the Enlarged Board of Appeal or of the Boards of Appeal for a term of one to five years. However, the German delegation made a reservation with regard to this decision.

In view of its transitional nature, the provision in question was inserted as Article 160b.

As under the terms of this provision ad hoc members may continue to perform their national duties, the problem of the statutory, financial and fiscal position of these officials arose. The Working Party felt that these questions could be dealt with in special regulations and requested that Working Party III draw up the necessary provisions.

BR/135 e/71 lor/prk .../...
which the Administrative Council might establish should only be for information or liaison. This proposal was not supported by the other delegations.

Article 160b (Appointment of senior officials during a transitional period)

128. In the discussion on the "running-in" of the European Patent Office, the United Kingdom delegation pointed out that it was unlikely that the members of the Boards of Appeal and the Enlarged Board of Appeal would be employed full-time during the first few years of operation of the European Patent Office. It therefore proposed that it should be possible for ad hoc appointments to be made during a transitional period: this would take the form of a temporary suspension of Article 58, paragraphs 1 and 2.

The Working Party recognised this problem and certain delegations were in favour of the solution proposed by the United Kingdom delegation as this would also allow both technically qualified staff of the European Patent Office and members of national courts to be appointed. Other delegations were opposed to appointing officials of the European Patent Office as members of the Boards of Appeal or the Enlarged Board of Appeal for constitutional reasons (independence of judges) and practical reasons (insufficient number of technically qualified staff for the duties of the Examining Division, the Boards of Appeal and the Enlarged Board of Appeal to be carried out by officials who have to be different under the provisions of Article 135).

BR/135 e/71 lor/prk
MINUTES

of the 9th meeting of Working Party I

held from 12 to 22 October 1971, in Luxembourg

1. Working Party I held its 9th meeting in Luxembourg from 12 to 22 October 1971, with Dr. Haertel, President of the German Patent Office, in the Chair.

Representatives from the IIB and WIPO took part in the meeting as observers. The representatives of the Commission of the European Communities and the Council of Europe sent their apologies for being unable to attend. See Annex I to these minutes for the list of those present at the 9th meeting.

2. Working Party I adopted the provisional agenda as contained in BR/CT I/120/71 and attached to this document as Annex II.

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

BR/135 e/71 prk
(Unrevised translation)
Article 160b

Appointment of senior officials during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities.

(2) By derogation from Article 58, paragraph 1, the members referred to in the preceding paragraph may be appointed for a term of less than five years, though this shall not be less than one year. They may be reappointed.
SECOND PRELIMINARY DRAFT OF THE CONVENTION
ESTABLISHING
A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 22 October 1971 -

BR/134 e/71
so that they could take note of the wording finally chosen, since this provision also fell within their terms of reference.

II.

EXAMINATION OF THE REPORT BY WORKING PARTY IV ON THE FINANCING OF THE EUROPEAN PATENT OFFICE (BR/GT IV/37/70)

43. The Working Party examined the new version of the Report on the financing of the European Patent Office drawn up in the light of the comments made by the delegations of the previous meeting.

Introduction - General (pages 1 to 3 of the Report)

44. The first paragraph of page 3 of the Report was amended so as to bring it into line with the new text of Article 42c which does not rule out the possibility of the European Patent Office calling for special financial contributions at any given moment, even after the end of the period during which contributions should normally be used to cover the deficit of the European Patent Office.
38. **Article 53 - Financial Regulations**

The Working Party extended the scope of paragraph (b) to cover the payments provided for in Article 42b (new) and the advances provided for in Article 42d (new).

39. The Working Party also inserted a new paragraph (d) covering the provisions on the fixing of interest rates, previously spread out over a number of Articles.

40. The Working Party considered that the scale of contributions should, in view of its importance, be laid down in the Convention itself and not in the Financial Regulation as previously envisaged.

41. **Article 187 - First accounting period of the European Patent Office**

In drafting paragraphs 1 and 2, the Working Party took account of the new version of Article 4 whereby the European Patent Office will be established with effect from the entry into force of the Convention (see BR/48/70).

42. **Paragraph 3** was amended in such manner that the Administrative Council will be entrusted under the Convention with the task of laying down, should it deem it necessary, general principles governing recruitment made during the transitional period. It was decided to communicate the new version of Article 187 to Working Parties I and III,
MINUTES

of the third meeting of Working Party IV
(Luxembourg, 13-15 October 1970)

1. The third meeting of Working Party IV was held in Luxembourg, from 13 to 15 October 1970, with Mr. E. ARMITAGE, Comptroller General, Patent Office, London, in the Chair.

The representatives of the International Patent Institute at The Hague and of WIPO/BIRPI took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe apologised for his absence. (1)

2. The Working Party began by examining, on the basis of various working documents (BR/GT IV/31/70 and BR/GT IV/36/70 with Addendum), the financial provisions of the First Preliminary Draft Convention establishing a European System for the Grant of Patents (Articles 42-53 and Article 187). It adopted these provisions as set out in BR/56/70.

(1) The list of participants is given in the Annex.

BR/GT IV/41 e/70 lor/RT/fm

.../...
Article 187

28. Article 187 deals with the first accounting period of the European Patent Office. In the first paragraph, the French text of the first sentence and the English and French texts of the second sentence were slightly amended. The second paragraph of Article 187, which regulates the call on interest free advances, has been recast so that the reasons for it no longer appear in the provisions of this paragraph.

29. Paragraph 3, regulating initial recruitment, was adopted as it stood, subject to the agreement of Working Parties I and III, which are also competent in this matter. The Secretariat will send a note to this effect to Working Parties I and III.

The note at the bottom of the page was deleted.

Article 187a

30. The Question whether, after the adoption of Articles 42d and 42g, it will still be necessary to maintain the provisions of Article 187a, has not yet been definitely settled.

31. The examination of the financial provisions of the Preliminary Draft of a Convention establishing a European System for the Grant of Patents was closed by a remark by the Chairman of the Working Party that the provisions will have to be read a second time when Working Party IV meets in October.

BR/GT IV/32 e/70 ond/PA/cm .../...
M I N U T E S

of the second meeting of Working Party IV
(Luxembourg, 6 - 9 July 1970)

1. The second meeting of Working Party IV was held in Luxembourg, from 6 to 9 July 1970 with Mr. E. ARMITAGE, Comptroller General of the Patent Office, London, in the chair.

As at the first meeting, the representatives of the International Patent Institute at The Hague took part in the meeting as observers. The representatives of the Council of Europe and of WIPO/BIRPI apologised for their absence (1).

I. - ORGANISATION OF THE WORK

2. On the proposal of the Chairman, Working Party IV decided to organise its work as follows:

(1) The list of participants is annexed to this document.

BR/GT IV/32 e/70 ond/PA/bm
In Article 16G:

The term "establishment of the European Patent Office" should be defined.

Note:

Conclude short-term contracts to that effect.

Within their respective powers, shall recruit the necessary staff and shall
draw up, the administrative Council, and the President of the Office, each
determine in accordance with the scale referred to in Article 7Gd, paragraph 2.

If that date falls within the second half of the year, the accounts period
shall extend until 31 December of the following year.

If that date falls within the second half of the year, the accounts period
shall extend until 31 December of the following year.

The first accounting period of the European Patent Office shall extend
to壮观 approved by Working Party XV

PART XIX

ARTICLE 127

INTERNATIONAL AND GENERAL PROVISIONS

CHAPTER I

INTERNATIONAL PROVISIONS
The text of sub-section (d) has not yet been dealt with by Working Party I/4,

(1) the scale referred to in Article 42, paragraph 3,

(a) the method and procedure whereby the contributions of the contractor to the budget and for the rendering and accounting of accounts,

(b) the procedure relating to the establishment and improvement of

The Pensions Regulations shall in particular establish:

Pensions Regulations

Article 22
and make arrangements for their supervision.

(c) establish rules concerning the representation of candidates and accountants.

States shall be made available to the European Patent Office to determine the method and procedure whereby the contributions of contracting States shall be made available to the European Patent Office.

Refer to the establishment and implementation of the budget and for the procedures in particular, the procedure shall:

The administrative council shall:

1962 Draft

Functions of the administrative council in financial matters

Article 53
Patent law as drafted by the EC "Patentee Working Party"
the financial provisions of the Direct Convention relating to a European
compared specifically with

(meeting 6 to 9 July 1970)

or drawn up by the Drafting Committee

Text which is approved in principle by Working Party IV

Articles 42 to 47, 51 to 52 and 187

FOR A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PRELIMINARY DRAFT CONVENTION

- Secretariat -

Preussen, 14 July 1970
73. As a result of this decision, Working Party I recommends Working Party IV to draft Article 187 in such a way that the first accounting period begins when the Convention comes into force.

74. The Working Party further agreed that the Administrative Council is also to be regarded as established as from the coming into force of the Convention, and that it must meet very soon after this date and nominate the President of the EPO so that the Office will in fact be capable of acting. It was therefore considered necessary to include in the provisions governing the Administrative Council a provision to the effect that within a term which is still to be specified after the Convention comes into force, the Contracting States must nominate the members of the Administrative Council, and laying down that within a further term the Administrative Council must hold its first meeting.

75. The Working Party decided that paragraph 3 of Article 187 is to be examined at the December meeting in the light of BR/GT/ IV/33/70.

BR/49 e/70 ley/PA/em
70. As regards paragraph 4 of the Chairman's proposal, the wish was expressed that it should be made clear that the European patent application must have been filed at the EPO. Furthermore, in the event of the EPO informing the applicant of the fictitious withdrawal, time should run, not from the date of filing with the EPO but from the date of dispatch of the application.

71. The Working Party agreed in conclusion that its Chairman is to submit a new proposal for Article 186, the primary purpose of which is to ensure that the applicant does not lose the filing date if the application is not processed. The question of whether the application fee must be paid in the event of a request for conversion into a national application merits special attention. Consideration is also to be given to the problem that arises when, in accordance with Article 34, paragraph 2, the application is initially filed in the language of one of the Contracting States and it is subsequently desired to convert it into a national application of another State. It was stressed that other Articles might also have to be amended to conform to the new version of Article 186.

**Article 187 - First accounting period of the European Patent Office**

72. In connection with Article 187, the drafting of which falls within the competence of Working Party IV, the question of the date on which the EPO is to be regarded as "established" in the legal sense of the term was discussed.

Working Party I came to the conclusion that the EPO will be established by the coming into force of the Convention itself, and therefore on the date on which the Convention comes into force, with the result that no subsequent act is required. It decided to amend Article 4 so that this would be clearly stated.
MINUTES
of the meeting of Working Party I
Luxembourg, 7 - 11 September 1970

Agenda item 1 (1): Opening of the meeting and adoption of the provisional agenda

1. The fifth working meeting of Working Party I was held at Luxembourg from Monday 7 to Friday 11 September 1970, with Dr. HAERTHEL, President of the German Patent Office, in the Chair.

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

2. The Drafting Committee, under the Chairmanship of the President of the Netherlands "Octrooiraad", Mr. J.B. van BENTHEM, held its meetings directly after the meetings of the Working Party.

(1) See Annex I for provisional agenda (BR/GT 1/51/70).
(2) See Annex II for list of those attending the meeting of the Working Party.
Enfin, le groupe prend connaissance des avis des associations internationales et du Royaume-Uni concernant cet article.

**Article 182**

Cet article prévoit une procédure d'arbitrage. Il est biffé à la demande des experts des Ministères de la Justice.

**Article 183**

Cet article traite de la procédure devant les tribunaux nationaux en d'autres matières que la contrefaçon.

Le groupe décide de n'examiner cet article qu'après avoir eu connaissance de la nouvelle rédaction qui interviendra à l'article 174 au sujet de la compétence des tribunaux nationaux en matière de contrefaçon. Ce texte ne sera établi dans sa forme définitive qu'après la réunion avec le groupe Jenard.

En attendant, l'article 183 sera inscrit sur la liste des articles à revoir.

**Article 184**

Cet article traitant de la procédure d'arbitrage en cas d'usurpation est également supprimé pour les mêmes raisons que l'article 182.

**Article 185**

Cet article est relatif au conseil d'administration. Il sera examiné plus tard puisqu'il s'agit d'une matière politique. Il est inscrit sur la liste des articles à revoir.

**Article 186**

Cet article traite de l'extension progressive du champ d'activité de l'Office. À ce sujet, le groupe prend acte des remarques de l'UNICE.

**Article 187**

Cet article traite du premier exercice budgétaire de l'Office. Il est destiné à figurer dans la convention générale.

**Article 188**

Cet article a pour objet le dépôt national préalable.
Résultats de la quatorzième session
du groupe de travail "Brevets"
qui s'est tenue à Munich
du 1er au 12 juin 1964
nement du Conseil d'administration, la rémunération du président de l'Office européen et des fonctionnaires en fonction avant l'ouverture de cet Office ainsi que la couverture des dépenses d'équipement.

Article 188
Dépôt national préalable

(1) Chacun des États contractants peut prescrire que les personnes ayant leur domicile ou leur siège sur son territoire ne peuvent déposer une demande de brevet européen que si cette demande se fonde sur une ou plusieurs demandes de brevet national déposées dans les dits États et constituant des premiers dépôts au sens de l'article 4 de la convention de Paris pour la protection de la propriété industrielle. Cette prescription ne s'applique pas aux personnes qui, lors de leur premier dépôt, n'avaient pas encore leur domicile ou leur siège sur le territoire de l'État considéré.

(2) L'État contractant qui use de la faculté prévue au paragraphe 1, le notifie à l'Office européen des brevets.

(3) La demande de brevet européen ne peut se rapporter qu'à l'invention qui fait l'objet de la ou des demandes de brevet national.

(4) Le déposant est tenu de fournir à l'Office européen des brevets, sur sa demande, dans un délai à déterminer qui expire au plus tôt quatre mois après le dépôt de la demande de brevet européen, les documents visés à l'article 74, paragraphe 2. Si ces documents ne sont pas fournis en temps utile, la section d'examen rejette la demande de brevet européen. L'article 77, paragraphes 1, 3 et 4, est applicable par analogie.

(5) Dans la procédure de confirmation du brevet européen provisoire et dans la procédure d'annulation du brevet européen définitif, les article 100 et 127 s'appliquent si la prescription prévue au paragraphe 3 n'est pas satisfaite.

CHAPITRE II
DÉPÔT COMMUN POUR LA DELIVRANCE DES BREVETS NATIONAUX

Article 189
Dépôt commun auprès de l'Office européen des brevets

(1) Dès l'ouverture de l'Office européen des brevets, des dépôts communs comportant une requête en délivrance de brevets nationaux dans tous les États contractants, peuvent être effectués dans les domaines de la technique pour lesquels les demandes de brevet européen ne sont pas encore reçues.

(2) Le dépôt commun est effectué conformément aux dispositions de l'article 66, paragraphes 1 et 2.

(3) Le dépôt commun est réputé dépôt national dans chacun des États contractants.
CHAPITRE I
DISPOSITIONS TRANSITOIRES ET GENERALES

Article 185
Réunion du Conseil d'administration

Le gouvernement dépositaire des instruments de ratification convoque le Conseil d'administration dans le délai d'un mois à compter de l'entrée en vigueur de la présente convention.

Article 186
Extension progressive du champ d'activité
de l'Office européen des brevets

(1) Les demandes de brevet européen ne sont reçues que du jour de l'ouverture de l'Office européen des brevets. La réception des demandes est limitée, à l'origine, à certains domaines de la technique, pour être étendue progressivement aux autres domaines.

(2) La date de l'ouverture de l'Office européen des brevets et les domaines de la technique pour lesquels sont reçues les demandes de brevet européen sont déterminées par le Conseil d'administration sur proposition du président dudit Office.

(3) Les domaines de la technique pour lesquels des demandes de brevet européen sont reçues sont fixés par référence aux classes de la classification internationale mentionnée à l'article 62.

Article 187
Premier exercice budgétaire de l'Office européen des brevets

(1) Le premier exercice budgétaire de l'Office européen des brevets s'étend de la date de l'ouverture de cet Office au 31 décembre suivant. Si cette date est située dans le deuxième semestre, cet exercice s'étend jusqu'au 31 décembre de l'année suivant celle de l'ouverture.

(2) Jusqu'à l'établissement du budget applicable au premier exercice, les Etats contractants font des avances sans intérêts qui viennent en déduction des contributions financières afférentes à l'exécution de ce budget.

(3) Jusqu'à l'établissement du statut des fonctionnaires et du régime applicable aux autres agents de l'Office européen des brevets, prévus à l'article 38, le Conseil d'administration et le président de l'Office européen des brevets, chacun dans le cadre de sa compétence, recrutent le personnel nécessaire et concluent à cet effet des contrats de durée limitée.

Remarque

Pour la période de mise en vigueur de la présente convention antérieure à l'ouverture de l'Office européen des brevets, il conviendra de prévoir, dans la convention générale ou dans un protocole annexe, des dispositions financières permettant le fonction-
COMITE DE COORDINATION EN MATIERE DE PROPRIETE INDUSTRIELLE INSTITUE PAR LES ETATS MEMBRES ET LA COMMISSION DE LA COMMUNAUTE ECOLOGIQUE EUROPÉENNE

AVANT-PROJET DE CONVENTION
relatif à un droit européen des brevets
élaboré par le groupe de travail «brevets»

VORENTWURF EINES ABKOMMENS
über ein europäisches Patentrecht
ausgearbeitet von der Arbeitsgruppe „Patente”

SCHEMA DI CONVENZIONE
sul diritto europeo dei brevetti
predisposto dal Gruppo di lavoro «brevetti»

VOORONTWERP VERDRAG
betreffende een Europees octrooirecht
opgesteld door de werkgroep «octrooien»

Textes allemand et français
Deutscher und französischer Text

1962
PART XI—TRANSITIONAL PROVISIONS

CHAPTER I—TRANSITIONAL AND GENERAL PROVISIONS

Article 185. Meeting of the [Administrative Council]

The Government [with whom instruments of ratification are deposited] shall convene a meeting of the [Administrative Council] within one month after the entry into force of this Convention.

Article 186. Progressive expansion of the field of activity of the European Patent Office

(1) Applications for European patents shall not be accepted before the day on which the European Patent Office opens. To begin with, the acceptance of applications shall be restricted to certain technical fields subsequently to be progressively extended to other fields.

(2) The date of the opening of the European Patent Office and the technical fields for which applications for European patents will be accepted shall be fixed by the [Administrative Council] on the recommendation of the President of the Office.

(3) The technical fields for which applications for European patents will be accepted shall be fixed with reference to the International Classification referred to in Article 62.

Article 187. First accounting period of the European Patent Office

(1) The first accounting period of the European Patent Office shall extend from the date of opening of the Office to 31st December of the same year. If the day of opening falls within the second half of the year, the accounting period shall extend until 31st December of the year following the opening of the Office.

(2) Until the budget relating to the first accounting period has been drawn up, the Contracting States shall make interest-free loans which shall be deducted from their financial contributions pertaining to the carrying out of this budget.

(3) Until such time as the conditions of service for officials and other employees of the European Patent Office provided for under Article 38 have been drawn up, the [Administrative Council] and the President of the Office, each within their respective powers, shall recruit the necessary staff and shall conclude short-term contracts to that effect.

Note:
For the period between the entry into force of this Convention and the opening of the European Patent Office, the general convention or an additional protocol, should include financial provisions allowing for the operation of the [Administrative Council], the salaries of the President of the European Office and of its officials who have begun their duties before the opening of the Office, and to cover the costs of its initial equipment.

70
Translation of a
Draft Convention relating to
a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
FIVE SHILLINGS NET
Article 180 (148, 2e variante)
est adopté.

Article 181 (149)
est adopté.

Article 182 (223)

M. Gajac explique que les crochets dans la
première phrase doivent indiquer que l'État en cause doit
être désigné dans les textes définitifs.

Le Président propose alors d'indiquer par une
note au bas de la page que le gouvernement visé par l'article
182 est le gouvernement auprès duquel les instrument de
ratification seront déposés.

Le Comité de rédaction est chargé de réexaminer
le texte. Il est entendu que cette disposition ainsi que
toutes les dispositions transitoires doivent être soumises
à l'examen par les experts des ministères de l'affaires
étrangères.

Article 183 (221)
est adopté.

Article 184 (222)

M. van Benthem suggère de supprimer la remarque,
mais il est prêt à se rallier à la majorité.

Le groupe décide de laisser subsister la remarque
à l'intention du Comité de coordination.

Article 185 (124)
est adopté.

.../....
Résultats de la sixième session
du groupe de travail "Brevets"
qui s'est tenue à Munich
du 13 au 23 juin 1962
article 184 (222)

Premier exercice budgétaire de l'Office européen des brevets

(1) Le premier exercice budgétaire de l'Office européen des brevets s'étend de la date de l'ouverture de cet Office au 31 décembre suivant. Si cette date est située dans le deuxième anmois, cet exercice s'étend jusqu'au 31 décembre de l'année suivant celle de l'ouverture.

(2) Jusqu'à l'établissement du budget applicable au premier exercice, les États contractants font des avances sans intérêts qui viennent en déduction des contributions financières afférentes à l'exécution de ce budget.

(3) Jusqu'à l'établissement du statut des fonctionnaires et du régime applicable aux autres agents de l'Office européen des brevets, prévus à l'article 38, le Conseil d'administration et le Président de l'Office européen des brevets, chacun dans le cadre de sa compétence, recrutent le personnel nécessaire et concluent à cet effet des contrats de durée limitée.

Remarque :

Pour la période de mise en vigueur de la présente Convention antérieure à l'ouverture de l'Office européen des brevets, il conviendra de prévoir dans la Convention générale ou dans un Protocole annexe, des dispositions financières permettant le fonctionnement du Conseil d'administration, la rémunération du Président de l'Office européen et des fonctionnaires en fonction avant l'ouverture de cet Office ainsi que la couverture des dépenses d'équipement.
AVANT-PROJET DE CONVENTION
RELATIF À
UN DROIT EUROPÉEN DES BREVETS

= VE Mai 1962
Le Président lui répond que cela est en effet possible. On a procédé de la même manière lors de la révision du Traité de l'Institut International à La Haye en 1961.

La séance est levée à 18 h 15 heures.
tats pratiques du fonctionnement de l'Office. Si pareilles dispositions se révélaient nécessaires une révision de la Convention pourrait tenir compte des propositions du Président de l'Office.

L'article 56 est supprimé.

Discussion de l'article 215 de l'avant-projet

Le groupe est unanimement d'accord pour traiter de la même façon les brevets et demandes de brevets nationaux et les modèles d'utilité et les demandes de modèles d'utilité nationaux.

Il incombe au Comité de rédaction de rédiger une disposition tenant compte de ce principe, de préférence en un seul article pour éviter des répétitions.

Discussion de l'article 222 de l'avant-projet

Le Président indique que cette disposition relève des dispositions financières mais constitue une règle transitoire pour le premier exercice budgétaire.

L'article 222 est formulé d'après le Traité de Rome. Il doit être examiné, avec l'ensemble des dispositions financières, par le Comité de coordination et les experts des ministères des finances.

M. Fressonnet ne voit pas d'inconvénient à copier les dispositions financières du Traité de Rome à la condition que la Convention générale prévoie des organes correspondants à ceux prévus dans le Traité de Rome.

M. de Muyser se demande si on ne devrait pas exiger un "droit d'entrée" de la part des nouveaux États contractants pour les faire participer aux frais initiaux de l'établissement de l'Office européen.
Deuxième Partie : COMPTES RENDUS

Avant-projet de convention relatif à un droit européen des brevets
Résultats de la cinquième session
du groupe de travail "Brevets"
qui s'est tenue à Bruxelles
du 2 au 18 avril 1962
une invention doit être protégée dans chaque cas dépend moins de considérations techniques ou juridiques que de la portée économique de l'invention et de la durée de protection recherchée.

L'article 215 n'énumère pas encore tous les dispositions de la Convention dans lesquelles les modèles d'utilité doivent être assimilés aux brevets nationaux. Il ne mentionne encore que deux exemples, à savoir l'article 14 par. 3 et l'article 171. Le groupe de travail devra examiner quelles dispositions doivent figurer également dans cet article. Les modèles d'utilité sont déjà mentionnés à l'article 67. Ils devraient également figurer notamment dans les dispositions relatives à la coexistence des droits de protection, dispositions qui doivent encore être élaborées par le groupe de travail.

Il appartient, semble-t-il, aux rédacteurs de déterminer s'il convient de prévoir l'application de la Convention par analogie aux modèles d'utilité grâce à une disposition générale sous la forme de l'article 215 proposé ou de mentionner les modèles d'utilité dans diverses dispositions. Le groupe de travail n'aurait d'abord à prendre, en ce qui concerne l'article 215, qu'une décision de principe, sans trancher la question de savoir si l'article 215 sera maintenu sous cett forme. C'est pourquoi il est préférable de n'insérer d'abord l'article 215 dans la Convention que sous la forme d'un article pour mémoire.

Ad article 222

Premier exercice budgétaire de l'Office européen des brevets

1. Documents de base
   - -

2. Remarques
   L'article 222 constitue une disposition transitoire et correspond à l'article 246 du traité instituant la C.E.E.
Remarque préliminaire
relative aux
articles 56, 215, 222, 223 et 224

Par ce document divers articles sont soumis au groupe de travail. Les problèmes auxquels ces articles proposent une solution, ne sont apparus qu'au cours de l'étude ou en liaison avec d'autres dispositions. Il a semblé opportun de regrouper ces articles dans le même document.

L'article 56 fait partie par son contenu des dispositions relatives à l'organisation de l'Office européen des brevets. C'est pourquoi il devrait être inséré dans la 3ème section de la première partie (art. 41 à 60).

L'article 215 a le caractère d'une disposition d'application et devrait par conséquent être inséré dans la 3ème section de la deuxième partie, après l'article 211 (classification européenne).

Les articles 222, 223 et 224 sont des dispositions transitoires qui devraient être insérées dans la convention après l'article 221 (extension progressive du champ d'activité de l'Office européen des brevets).

Ad article 56
Transfert d'attribution

1. Documents de base
Remarques
concernant le premier avant-projet de convention
relatif à un droit européen des brevets

Articles divers
(Articles 56, 215, 222, 223 et 224)
Article 222
Premier exercice budgétaire de l'Office européen des brevets

(1) Le premier exercice budgétaire de l'Office européen des brevets s'étend de l'ouverture de cet organisme au 31 décembre de la même année. Si l'ouverture a lieu au cours du deuxième semestre, cet exercice s'étend jusqu'au 31 décembre de l'année suivante.

(2) Jusqu'à l'établissement du budget applicable au premier exercice, les États contractants font des avances sans intérêt qui viennent en déduction des contributions financières afférentes à l'exécution de ce budget.

(3) Jusqu'à l'établissement du statut des fonctionnaires et du régime applicable aux autres agents de l'Office européen des brevets, prévus à l'article 48, le Conseil d'administration et le Président de l'Office européen des brevets, chacun dans le cadre de sa compétence, recrutent le personnel nécessaire et concluent à cet effet des contrats de durée limitée.
Kurt Haertel

Bonn, le 7 mars 1962

CONFIDENTIEL !

Premier avant-projet de convention
relatif à un droit européen des brevets

Articles divers

\[ \text{Articles 56, 215, 222, 223 et 224} \]
so that they could take note of the wording finally chosen, since this provision also fell within their terms of reference.

II.

EXAMINATION OF THE REPORT BY WORKING PARTY IV ON THE FINANCING OF THE EUROPEAN PATENT OFFICE (BR/GT IV/37/70)

43. The Working Party examined the new version of the Report on the financing of the European Patent Office drawn up in the light of the comments made by the delegations of the previous meeting.

Introduction - General (pages 1 to 3 of the Report)

44. The first paragraph of page 3 of the Report was amended so as to bring it into line with the new text of Article 42c which does not rule out the possibility of the European Patent Office calling for special financial contributions at any given moment, even after the end of the period during which contributions should normally be used to cover the deficit of the European Patent Office.

BR/GT IV/41 e/70 ett/RT/fm
38. Article 53 - Financial Regulations

The Working Party extended the scope of paragraph (b) to cover the payments provided for in Article 42b (new) and the advances provided for in Article 42d (new).

39. The Working Party also inserted a new paragraph (d) covering the provisions on the fixing of interest rates, previously spread out over a number of Articles.

40. The Working Party considered that the scale of contributions should, in view of its importance, be laid down in the Convention itself and not in the Financial Regulation as previously envisaged.

41. Article 187 - First accounting period of the European Patent Office

In drafting paragraphs 1 and 2, the Working Party took account of the new version of Article 4 whereby the European Patent Office will be established with effect from the entry into force of the Convention (see BR/48/70).

42. Paragraph 3 was amended in such manner that the Administrative Council will be entrusted under the Convention with the task of laying down, should it deem it necessary, general principles governing recruitment made during the transitional period. It was decided to communicate the new version of Article 187 to Working Parties I and III,
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING-UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 27 November 1970
BR/GT IV/41/70

SECRETARIAT

MINUTES

of the third meeting of Working Party IV
(Luxembourg, 13-15 October 1970)

1. The third meeting of Working Party IV was held in Luxembourg, from 13 to 15 October 1970, with Mr. E. ARMITAGE, Comptroller General, Patent Office, London, in the Chair.

   The representatives of the International Patent Institute at The Hague and of WIPO/BIRPI took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe apologised for his absence. (1)

2. The Working Party began by examining, on the basis of various working documents (BR/GT IV/31/70 and BR/GT IV/36/70 with Addendum), the financial provisions of the First Preliminary Draft Convention establishing a European System for the Grant of Patents (Articles 42-53 and Article 187). It adopted these provisions as set out in BR/56/70.

(1) The list of participants is given in the Annex.

BR/GT IV/41 e/70 lor/RT/fm

.../...
Article 187

28. Article 187 deals with the first accounting period of the European Patent Office. In the first paragraph, the French text of the first sentence and the English and French texts of the second sentence were slightly amended. The second paragraph of Article 187, which regulates the call on interest free advances, has been recast so that the reasons for it no longer appear in the provisions of this paragraph.

29. Paragraph 3, regulating initial recruitment, was adopted as it stood, subject to the agreement of Working Parties I and III, which are also competent in this matter. The Secretariat will send a note to this effect to Working Parties I and III.

   The note at the bottom of the page was deleted.

Article 187a

30. The Question whether, after the adoption of Articles 42d and 42g, it will still be necessary to maintain the provisions of Article 187a, has not yet been definitely settled.

31. The examination of the financial provisions of the Preliminary Draft of a Convention establishing a European System for the Grant of Patents was closed by a remark by the Chairman of the Working Party that the provisions will have to be read a second time when Working Party IV meets in October.

BR/GT IV/32 e/70 ond/PA/cm

.../...
MINUTES

of the second meeting of Working Party IV

(Luxembourg, 6 - 9 July 1970)

1. The second meeting of Working Party IV was held in Luxembourg, from 6 to 9 July 1970 with Mr. E. ARMITAGE, Comptroller General of the Patent Office, London, in the chair.

As at the first meeting, the representatives of the International Patent Institute at The Hague took part in the meeting as observers. The representatives of the Council of Europe and of WIPO/BIRPI apologised for their absence (1).

I. - ORGANISATION OF THE WORK

2. On the proposal of the Chairman, Working Party IV decided to organise its work as follows:

(1) The list of participants is annexed to this document.

BR/GT IV/32 e/70 ond/PA/bm
In Article 166, the term "European Patent Office" should be deleted.

Note:

Conclude short-term contracts of that effect.

[Text continues...]

(2) The budget for the first accounting period of the European Patent Office shall extend until 31 December of the following year.

If that date falls within the second half of the year, the accounting period shall extend until 31 December of the same year.

(1) The first accounting period of the European Patent Office shall extend...
the scale referred to in Article 42, paragraph 2 of the Regulation (EC) No 7]{(1)}

(2) The Regulation (EC) No 7]{(1)}

and the arrangement for their supervision.

(3) The Rules concerning the responsibilities of the Chemist and Accountant.

(4) The method and procedure whereby the Contracting Parties shall in particular establish:

- the contract for the production and adjustment of accounts;
- the budget and for the performance and adjustment of accounts;
- the procedure relating to the establishment and implementation of regulations.

Text approved by the Working Party IV

Procedural Regulations

Article 33
and make arrangements for their supervision.
(c) establish rules concerning the responsibility of cashiers and accountants

States shall be made accountable to the European Patent Office!
determine the method and procedure whereby the contributions of contracting

Renders and auditors of accounts!
Retain to the establishment and implementation of the budget and for the
Revise the financial regulations specifically in particular, the procedure

The

1962 Draft

Functions of the Administrative Council in Financial Matters
Article 23

40
Patent law as directed by the ECC "patente" Working Party

the financial provisions of the draft Convention relating to a European compared sympathetically with

meeting 6 to 9 July 1970

or drawn up by the Drafting Committee

extension approved in principle by Working Party 1A

4to 42 45 to 58 and 187

FOR A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PRELIMINARY DRAFT CONVENTION

- Secretariat -

Preface, 14 July 1970
73. As a result of this decision, Working Party I recommends Working Party IV to draft Article 187 in such a way that the first accounting period begins when the Convention comes into force.

74. The Working Party further agreed that the Administrative Council is also to be regarded as established as from the coming into force of the Convention, and that it must meet very soon after this date and nominate the President of the EPO so that the Office will in fact be capable of acting. It was therefore considered necessary to include in the provisions governing the Administrative Council a provision to the effect that within a term which is still to be specified after the Convention comes into force, the Contracting States must nominate the members of the Administrative Council, and laying down that within a further term the Administrative Council must hold its first meeting.

75. The Working Party decided that paragraph 3 of Article 187 is to be examined at the December meeting in the light of BR/GT/ IV/33/70.
70. As regards paragraph 4 of the Chairman's proposal, the wish was expressed that it should be made clear that the European patent application must have been filed at the EPO. Furthermore, in the event of the EPO informing the applicant of the fictitious withdrawal, time should run, not from the date of filing with the EPO but from the date of dispatch of the application.

71. The Working Party agreed in conclusion that its Chairman is to submit a new proposal for Article 186, the primary purpose of which is to ensure that the applicant does not lose the filing date if the application is not processed. The question of whether the application fees must be paid in the event of a request for conversion into a national application merits special attention. Consideration is also to be given to the problem that arises when, in accordance with Article 34, paragraph 2, the application is initially filed in the language of one of the Contracting States and it is subsequently desired to convert it into a national application of another State. It was stressed that other Articles might also have to be amended to conform to the new version of Article 186.

Article 187 - First accounting period of the European Patent Office

72. In connection with Article 187, the drafting of which falls within the competence of Working Party IV, the question of the date on which the EPO is to be regarded as "established" in the legal sense of the term was discussed.

Working Party I came to the conclusion that the EPO will be established by the coming into force of the Convention itself, and therefore on the date on which the Convention comes into force, with the result that no subsequent act is required. It decided to amend Article 4 so that this would be clearly stated.

BR/49 e/70 ley/FA/em
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

MINUTES
of the meeting of Working Party I
Luxembourg, 7 - 11 September 1970

Agenda item 1 (1): Opening of the meeting and adoption of the provisional agenda

1. The fifth working meeting of Working Party I was held at Luxembourg from Monday 7 to Friday 11 September 1970, with Dr. HAERTEL, President of the German Patent Office, in the Chair.

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

2. The Drafting Committee, under the Chairmanship of the President of the Netherlands "Octrooiraad", Mr. J.B. van BENTHEM, held its meetings directly after the meetings of the Working Party.

(1) See Annex I for provisional agenda (BR/GT 1/51/70).
(2) See Annex II for list of those attending the meeting of the Working Party.

BR/49 e/70 eld/PA/bcc .../...
Artikel 187

Dieser Artikel behandelt das erste Haushaltsjahr des Europäischen Patentamts. Er wird in das Allgemeine Abkommen übernommen.

Artikel 188

Dieser Artikel behandelt die nationale Voranmeldung.
Ergebnisse der 14. Sitzung
der Arbeitsgruppe "Patente"
vom 1. bis 12. Juni 1964
in München

SITZUNGSBERICHT
der Gehälter für den Präsidenten des Europäischen Patentamts und die Beamten, die vor der Eröffnung des Amtes tätig sind, sowie die Deckung der vorbereitenden Sachausgaben des Europäischen Patentamts ermöglichen.

Artikel 188
Nationale Voranmeldung

(1) Jeder Vertragsstaat kann vorschreiben, dass die Personen mit Sitz oder Wohnsitz in seinem Gebiet eine europäische Patentanmeldung nur einreichen können, wenn sich diese Anmeldung auf eine oder mehrere nationale Patentanmeldungen in den betreffenden Vertragsstaaten gründet, die eine erste Hinterlegung im Sinne des Artikels 4 der Pariser Verbandsüber einkunft zum Schutz des gewerblichen Eigentums darstellen. Diese Bestimmung findet keine Anwendung auf Personen, die im Zeitpunkt ihrer ersten Hinterlegung ihren Sitz oder Wohnsitz noch nicht im Gebiet des betreffenden Staats hatten.

(2) Der Vertragsstaat, der von der in Absatz 1 vorgesehenen Möglichkeit Gebrauch macht, teilt dies dem Europäischen Patentamt mit.

(3) Die europäische Patentanmeldung kann sich nur auf die Erfindung beziehen, die Gegenstand der nationalen Patentanmeldung oder Patentanmeldungen ist.

(4) Der Anmelder ist verpflichtet, dem Europäischen Patentamt auf dessen Verlangen innerhalb einer zu bestimmenden Frist, die frühestens vier Monate nach der Einreichung der europäischen Patentanmeldung endet, die in Artikel 74 Absatz 2 vorgesehenen Unterlagen vorzulegen. Werden diese Unterlagen nicht fristgemäss vorgelegt, so weist die Prüfungsstelle die europäische Patentanmeldung zurück. Artikel 77 Absätze 1, 3 und 4 findet entsprechende Anwendung.

(5) Im Verfahren zur Bestätigung des vorläufigen europäischen Patents und im Verfahren zur Erklärung der Nichtigkeit des endgültigen europäischen Patents finden die Artikel 100 und 127 Anwendung, wenn und soweit der Bestimmung in Absatz 3 nicht genügt ist.

KAPITEL II
GEMEINSAME PATENTANMELDUNG ZUR ERLANGUNG NATIONALER PATENTE
Artikel 189
Gemeinsame Patentanmeldung beim Europäischen Patentamt

(1) Von der Eröffnung des Europäischen Patentamts an können gemeinsame Patentanmeldungen, die den Antrag auf Erteilung nationaler Patente in allen Vertragsstaaten enthalten, für diejenigen Gebiete der Technik eingereicht werden, für die europäische Patentanmeldungen noch nicht entgegengenommen werden.

(2) Die gemeinsame Patentanmeldung ist gemäss den Vorschriften des Artikels 66 Absätze 1 und 2 einsureichen.

(3) Die gemeinsame Patentanmeldung gilt als nationale Hinterlegung in jedem der Vertragsstaaten.
KAPITEL I
ALLEMEINE ÜBERGANGSBESTIMMUNGEN
Artikel 185
Zusammentreten des Verwaltungsrats

Die Regierung, bei der die Ratifikationsurkunden hinterlegt werden, beruft den Verwaltungsrat innerhalb eines Monats nach Inkrafttreten dieses Abkommens ein.

Artikel 186
Stufenweise Ausdehnung des Tätigkeitsbereichs des Europäischen Patentamts

(1) Europäische Patentanmeldungen werden erst vom Tag der Eröffnung des Europäischen Patentamts an entgegengenommen. Die Entgegennahme der Patentanmeldungen ist in der Anfangszeit auf bestimmte Gebiete der Technik beschränkt und wird stufenweise auf die übrigen Gebiete der Technik ausgedehnt.

(2) Den Zeitpunkt der Eröffnung des Europäischen Patentamts und die Gebiete der Technik, für die europäische Patentanmeldungen entgegengenommen werden, bestimmt der Verwaltungsrat auf Vorschlag des Präsidenten des Europäischen Patentamts.

(3) Die Gebiete der Technik, für die europäische Patentanmeldungen entgegengenommen werden, werden unter Angabe der Klassen der in Artikel 62 genannten Internationalen Klassifikation festgelegt.

Artikel 187
Erstes Haushaltsjahr des Europäischen Patentamts


(2) Bis zur Aufstellung des Haushaltsplans für das erste Haushaltsjahr zahlen die Vertragsstaaten unverzinsliche Vorschüsse; diese werden von den Finanzbeiträgen für die Durchführung dieses Haushaltsplans abgezogen.

(3) Bis zur Aufstellung des Statuts der Beamten und der für die sonstigen Bediensteten des Europäischen Patentamts geltenden Beschäftigungsbedingungen gemäß Artikel 38 stellt der Verwaltungsrat und der Präsident des Europäischen Patentamts, jeder im Rahmen seiner Zuständigkeit, das erforderliche Personal ein und schliesst zu diesem Zweck befristete Verträge.

Bemerkung
Für den Zeitraum vom Inkrafttreten dieses Abkommens bis zur Eröffnung des Europäischen Patentamts empfiehlt es sich, in Allgemeinen Abkommen oder in einem dazugehörenden Protokoll Finanzvorschriften aufzunehmen, die die Arbeit des Verwaltungsrats, die Zahlung
COMITÉ DE COORDINATION EN MATIÈRE DE PROPRIÉTÉ INDUSTRIELLE INSTITUÉ PAR LES ÉTATS MÉMBRES ET LA COMMISSION DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE

GEBIETSGESELLSCHAFTS EINSETZT DES MITGLIEDSTAATEN UND DER KOMMISSION DER EUROPÄISCHEN WIRTSCHAFTSGEMEINSCHAFT

COMITATO DI COORDINAMENTO IN MATERIA DI PROPRIETÀ INDUSTRIALE ISTITUITO DAGLI STATI MEMBRI E DALLA COMMISSIONE DELLA COMUNITÀ ECONOMICA EUROPEA

COORDINATIE-COMITE OP HET GEBIED VAN DE INDUSTRIELE EIGENDOM INGESTELD DOOR DE Lid-STATEN EN DE COMMISSIE VAN DE EUROPÉSE ECONOMISCHE GEMEENSCHAP

AVANT-PROJET DE CONVENTION
relatif à un droit européen des brevets
élaboré par le groupe de travail «brevets»

VORENTWURF EINES ABKOMMENS
über ein europäisches Patentrecht
ausgearbeitet von der Arbeitsgruppe „Patente“

SCHEMA DI CONVENZIONE
sul diritto europeo dei brevetti
predisposto dal Gruppo di lavoro «brevetti»

VOORONTWERP VERDRAG
betreffende een Europees octrooirecht
opgesteld door de werkgroep «octrooien»

Textes allemand et français
Deutscher und französischer Text

1962
PART XI—TRANSITIONAL PROVISIONS

CHAPTER I—TRANSITIONAL AND GENERAL PROVISIONS

Article 185. Meeting of the [Administrative Council]

The Government [with whom instruments of ratification are deposited] shall convene a meeting of the [Administrative Council] within one month after the entry into force of this Convention.

Article 186. Progressive expansion of the field of activity of the European Patent Office

(1) Applications for European patents shall not be accepted before the day on which the European Patent Office opens. To begin with, the acceptance of applications shall be restricted to certain technical fields subsequently to be progressively extended to other fields.

(2) The date of the opening of the European Patent Office and the technical fields for which applications for European patents will be accepted shall be fixed by the [Administrative Council] on the recommendation of the President of the Office.

(3) The technical fields for which applications for European patents will be accepted shall be fixed with reference to the International Classification referred to in Article 62.

Article 187. First accounting period of the European Patent Office

(1) The first accounting period of the European Patent Office shall extend from the date of opening of the Office to 31st December of the same year. If the day of opening falls within the second half of the year, the accounting period shall extend until 31st December of the year following the opening of the Office.

(2) Until the budget relating to the first accounting period has been drawn up, the Contracting States shall make interest-free loans which shall be deducted from their financial contributions pertaining to the carrying out of this budget.

(3) Until such time as the conditions of service for officials and other employees of the European Patent Office provided for under Article 38 have been drawn up, the [Administrative Council] and the President of the Office, each within their respective powers, shall recruit the necessary staff and shall conclude short-term contracts to that effect.

Note:

For the period between the entry into force of this Convention and the opening of the European Patent Office, the general convention or an additional protocol, should include financial provisions allowing for the operation of the [Administrative Council], the salaries of the President of the European Office and of its officials who have begun their duties before the opening of the Office, and to cover the costs of its initial equipment.
Translation of a Draft Convention relating to a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
FIVE SHILLINGS NET
Artikel 180 (148 - zweite Fassung)

wurde angenommen.

Artikel 181 (149)

wurde angenommen.

Artikel 182 (223)

Herr Cajac erklärte, die eckigen Klammern im ersten Satz sollten bedeuten, dass im endgültigen Text der betreffende Staat namentlich genannt werden müsse.

Der Vorsitzende schlug daraufhin vor, in einer Bemerkung am Ende der Seite zu sagen, dass in Artikel 182 diejenige Regierung gemeint sei, bei der die Ratifizierungsurkunden hinterlegt würden.

Der Redaktionsausschuss soll den Wortlaut überprüfen. Diese Bestimmung soll ebenso wie alle Übergangsbestimmungen den Sachverständigen der Außenministerien zur Prüfung vorgelegt werden.

Artikel 183 (221)

wurde angenommen.

Artikel 184 (222)

Herr van Eenthem schlug vor, die Bemerkung zu streichen, war jedoch bereit, sich der Mehrheit anzuschliessen.

Die Gruppe beschloss, die Bemerkung als Hinweis für den Koordinierungsausschuss stehen zu lassen.

Artikel 185 (124)

wurde angenommen.
Ergebnisse der sechsten Sitzung
der Arbeitsgruppe "Patente"
vom 13. bis 23. Juni 1962
in München
Artikel 184 (222)

Erstes Haushaltsjahr des Europäischen Patentamts


(2) Bis zur Aufstellung des Haushaltsplans für das erste Haushaltsjahr zahlen die Vertragsstaaten unverzinsliche Vorschüsse; diese werden von den Finanzbeiträgen für die Durchführung dieses Haushaltsplans abgezogen.

(3) Bis zur Aufstellung des Statuts der Beamten und der für die sonstigen Bediensteten des Europäischen Patentamts geltenden Beschäftigungsbedingungen gemäß Artikel 38 stellt der Verwaltungsrat und der Präsident des Europäischen Patentamts, jeder im Rahmen seiner Zuständigkeit, das erforderliche Personal ein und schließt zu diesem Zweck befristete Verträge.

Bemerkung:

Für den Zeitraum vom Inkrafttreten dieses Abkommens bis zur Eröffnung des Europäischen Patentamts empfiehlt es sich, im Allgemeinen Abkommen oder in einem zugehörigen Protokoll Finanzvorschriften aufzunehmen, die die Arbeit des Verwaltungsrato, die Zahlung der Gehälter für den Präsidenten des Europäischen Patentamts und die Beamten, die vor der Eröffnung des Amtes tätig sind, sowie die Deckung der vorbereitenden Sachausgaben des Europäischen Patentamts ermöglichen.
Arbeitsgruppe "Patente"
Redaktionsausschuss

Brüssel, den 26. Mai 1962

STRENG VERTRÄULICH

Vorentwurf

eines Abkommens über ein europäisches Patentrecht
Der Vorsitzende meint, dies sei tatsächlich möglich. So sei man auch bei der Revision des Vertrages über das Internationale Institut in Den Haag im Jahre 1961 vorgehen.

Ende der Sitzung: 18.15 Uhr
nisse der praktischen Arbeit des Patentamts abzuwarten. Sollte sich eine derartige Bestimmung als notwendig erweisen, könne der Vorschlag des Vorsitzenden bei einer Revision des Abkommens berücksichtigt werden.

Artikel 56 wird gestrichen.

Beratung von Artikel 215 des Vorentwurfs

Die Arbeitsgruppe ist der einhellige Auffassung, die nationalen Gebrauchsmuster und Gebrauchsmusteranmeldungen wie die nationalen Patente und Patentanmeldungen zu behandeln.

Der Redaktionsausschuß wird beauftragt, eine diesbezügliche Bestimmung zu entwerfen, und zwar möglichst in einem einzigen Artikel, um Wiederholungen zu vermeiden.

Beratung von Artikel 222 des Vorentwurfs

Der Vorsitzende weist darauf hin, daß diese Vorschrift zu den Finanzbestimmungen gehören, aber für das erste Haushaltsjahr eine Übergangsregelung enthalte.


Herr Fressonnet erklärt, er habe nichts dagegen einzuwenden, die Finanzvorschriften aus dem Rom-Vertrag zu übernehmen, wenn das allgemeine Abkommen die gleichen Organe wie der Rom-Vertrag vorsehe.

Herr de Muyser fragt, ob man nicht von später hinzukommenden Vertragsstaaten eine "Eintrittsgebühr" erheben solle, um auch sie an den ursprünglichen Kosten der Errichtung des Europäischen Patentamts zu beteiligen.
Zweiter Teil: SITZUNGSBERICHTE

Arbeitsentwurf eines Abkommens
Über ein europäisches Patentrecht
Ergebnisse der fünften Sitzung
der Arbeitsgruppe "Patente"
vom 2. bis 18. April 1962
in Brüssel
Zu Artikel 222

Erstes Haushaltsjahr des Europäischen Patentamts

1. Materialien:

2. Bemerkungen:

Artikel 222 ist eine Übergangsvorschrift und entspricht Artikel 246 des EWG-Vertrags.
Vorbemerkung

zu den

Artikeln 56, 215, 222, 223 und 224


Bei den Artikeln 222, 223 und 224 handelt es sich um Übergangsvorschriften, die nach Artikel 221 (Stufenweiser Aufbau des Europäischen Patentamts) in das Abkommen eingereiht werden sollten.
VERTRAULICH!

Bemerkungen
zu dem ersten Arbeitsentwurf
über ein europäisches Patentrecht

Verschiedene Artikel
(Artikel 56, 215, 222, 223 und 224)
Artikel 222
Erstes Haushaltsjahr des Europäischen Patentamts


(2) Bis zur Aufstellung des Haushaltsplans für das erste Haushaltsjahr zahlen die Vertragsstaaten unverzinsliche Vorschüsse; diese werden von den Finanzbeiträgen für die Durchführung dieses Haushaltsplans abgezogen.

(3) Bis zur Aufstellung des Statuts der Beamten und der für die sonstigen Bediensteten des Europäischen Patentamts geltenden Beschäftigungsbedingungen gemäß Artikel 48 stellt der Verwaltungsrat und der Präsident des Europäischen Patentamts, jeder im Rahmen seiner Zuständigkeit, das erforderliche Personal ein und schließt zu diesem Zweck befristete Verträge.
Kurt Haertel

Bonn, den 7. März 1962

VERTRAULICH!

Erster Arbeitsentwurf
eines Abkommens
über ein europäisches Patentrecht

Verschiedene Artikel

Artikel 56, 215, 222, 223 und 224
decision, to be recorded officially, whereby the Conference recommended the Interim Committee to admit INCOPOSA as an observer to its meetings and to the meetings of the working parties where INCOPOSA was concerned with the problems under discussion.

221. With reference to M/157/G submitted by the II.B, the Chairman noted that this organisation basically wished to participate in the working parties, submit proposals and carry out specific functions. These questions would have to be examined and decided by the Interim Committee since they basically fell within the ambit of its Rules of Procedure.

222. The Committee recorded its agreement to this conclusion.

IX. Proposal by the Yugoslav delegation for a Resolution a technical assistance

223. Taking into account
   — that in the future technological development cannot be restricted to national or regional frameworks;
   — that industrialised countries with their economic structure are best able to promote technological progress;
   — that not all countries in the world are able to promote technological progress to the same extent;
   — that the efforts of developing countries to reduce the technological gap in relation to the developed countries should be promoted;
   — that it is necessary to ensure that all countries are able to benefit from the results of technological progress;
— THE CONFERENCE REQUESTS THE EUROPEAN PATENT ORGANISATION
   to make use of all the possibilities available to it to help the developing countries, irrespective of their geographical location, in particular as concerns documentation, the training of staff and all other means likely to bring these countries increasingly closer to the highly developed countries.

224. In support of its proposal for a Resolution, the Yugoslav delegation argued that the future European Patent Organisation would be of great importance not only for the Contracting States but also for all other states as well, including the developing countries. The role played by the Organisation in co-operating with all countries as regards technological progress would depend mainly on the extent to which the technologically less developed countries were able to benefit from the technological knowledge of the technologically highly developed countries.

The Yugoslav delegation therefore considered that, in the same way as numerous other international organisations, the European Patent Organisation in co-operating with the developing countries should endeavour to reduce the technological gap between the developed and the developing countries. It would therefore be appropriate for the Conference to adopt a Resolution requesting the European Patent Organisation to help the technologically less developed countries in their efforts.

225. The German delegation supported the Yugoslav delegation’s proposal. Although by its very nature the European Patent Organisation would be confined to European States, this did not mean that it should operate in isolation from other countries. In fact it would be one of the essential duties of the new European Patent Organisation to co-operate closely with all other countries concerned and all other international organisations, so that it would play its part in promoting the spread of technological knowledge throughout the world. The Yugoslav delegation’s proposal constituted a suitable basis for this purpose, and the German delegation would therefore be very glad if the Committee of the Whole and the Plenary of the Conference were to adopt this proposal.

226. The Netherlands delegation also supported the Yugoslav proposal. However, in order to avoid any duplication of the activities of the various organisations concerned, it proposed that the beginning of the request to the European Patent Organisation be worded as follows: “to make use, taking due account of the efforts already made by other international organisations, of all the possibilities available to it ...”.

227. The United Kingdom delegation shared the view of the Netherlands delegation, but pointed out that this Resolution should not be considered as terminating international co-operation as at present undertaken by national patent offices in the form of aid in training and the communication of documents. It should also be borne in mind that the expression “all the possibilities available to it” also meant that this type of assistance could only be granted within the limits of the resources available to the European Patent Organisation under its budget.

228. The French delegation also supported the Yugoslav proposal since the major importance of the future Organisation would make it essential for it to carry out this kind of task. It was fairly obvious that the European Patent Office would have to co-ordinate with other international organisations, and the French delegation could therefore support the Netherlands proposed amendment and the draft in its original form.

229. The Italian, Greek and Austrian delegations also supported the Yugoslav proposal and the amendment put forward by the Netherlands delegation.

230. The Committee of the Whole unanimously adopted the draft Resolution as amended by the proposal from the Netherlands delegation.

X. Recommendation regarding the status and remuneration of the employees referred to in Article 159, paragraph 2, of the Convention (M/7)

231. The Chairman of the Committee of the Whole stated that Main Committee III had adopted the draft Resolution but had decided not to submit it to the Conference. It had expressed the wish that the Interim Committee and the Administrative Council should comply with this Recommendation at the appropriate time (M/PR/III, point 99).

232. The Committee of the Whole agreed to this procedure.

233. In conclusion the Chairman of the Committee of the Whole claimed that it could be stated without exaggeration that the Convention now being adopted and its subsequent entry into force represented a monumental achievement in the field of European patent law.

The Chairman expressed his warm thanks to all the delegations on the Committee of the Whole, the General Drafting Committee together with its Chairman, Mr. van Benthem and the Secretariat for their efforts which had enabled the extensive amount of work involved to be completed at the proper time.

234. Finally, on behalf of the delegations, the United Kingdom delegation expressed its warmest thanks to the Chairman of the Committee of the Whole for the manner in which he had chaired what were often very difficult discussions. The fact that the work had been brought to a successful conclusion was in the first place due to the circumspection and tact with which Dr. Haertel had guided the creation of the Convention step by step to its completion.