Article 126 E

Travaux Préparatoires
(EPC 1973)

Comment:

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
Art. 126
MPÜ
Beendigung von Zahlungsverpflichtungen

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

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

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

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

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

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

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

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

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

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

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

REPORT

by Mr. Paul Braendli, Lic. iur.
Vice-Director of the Federal Intellectual Property Office (Switzerland)

on the results of Main Committee I's proceedings

ANNEX II

REPORT

by Mr. R. Bowen
Assistant Comptroller, British Patent Office

on the results of Main Committee II's proceedings

ANNEX III

REPORT

by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)

on the results of Main Committee III's proceedings

ANNEX IV

REPORT

by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office

on the results of the Credentials Committee’s proceedings
with regard to full powers for signing the Convention
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MINUTES
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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 125 — Reference to general principles

665. In connection with Article 125, it was established at the request of the United Kingdom delegation that there was majority agreement in the Main Committee on the following: that it was a generally recognised principle of procedural law in the Contracting States that a person can be granted only one European patent for the same invention in respect of which there are several applications with the same date of filing.

666. The Norwegian delegation stated that it could not agree to this principle in its present general form since under Scandinavian law it was possible in theory to grant two patents to an applicant for the same invention.

667. The FICIP delegation wondered what was meant in this instance by the same application or the same patent; did it mean that the content was substantially the same or that the patent claims were substantially the same?

668. The United Kingdom delegation interpreted it as meaning that the patent claims were the same.

669. It was furthermore established, at the request of the United Kingdom delegation, that it was the unanimous opinion of the Main Committee that the European Patent Office had the right to correct any inadvertent errors on its part.

Article 126 — Termination of financial obligations

670. At the suggestion of the Belgian delegation, the Main Committee referred Article 126 to the Drafting Committee to see whether a more suitable heading could be found.

Article 127 — Register of European Patents

671. The Austrian delegation proposed that it should be made clear that entries in the Register of Patents could be made, not only on the basis of the Convention, but also on the basis of the Implementing Regulations (M/41, point 5).

672. The German and Netherlands delegations considered such clarification superfluous in view of Article 163 (164).

673. The Austrian delegation accordingly withdrew the proposal.

674. The Austrian delegation further proposed that Article 127 be so worded that legal amendments concerning the European patent made during the opposition proceedings which, in any case, were entered in the relevant national patent registers, should also be entered in the European Register of Patents. Awareness of such entries could be of particular importance for opponents. The Austrian delegation also felt that it should be made clear that no entry could be made in the Register of European Patents once the opposition proceedings had been concluded (M/41, points 6-8).

675. The German delegation maintained that the Austrian delegation's request was already covered since Rule 62 (61) together with Rule 20 laid down that the transfer of the European patent during the opposition period or during opposition proceedings had to be entered in the Register of European Patents at the request of an interested party.

It did not consider it worthwhile fixing the final deadline for entries in the Register of European Patents in the Convention; the German delegation felt that it would be preferable to leave the matter as it now stood in Rule 62 (61) which could be more easily amended if the need arose.

676. The Swiss delegation came to the conclusion that the present flexible arrangement governing entries in the Register of European Patents was more expedient than a rigid provision in the Convention.

677. The Austrian delegation pointed out that its reason for proposing that a final deadline for entries in the Register of European Patents be fixed in the first place was that under Austrian law, entries in the register had legal effect and consequently, contradictory entries in the national register on the one hand, and in the European Register on the other, could give rise to problems.

678. The Chairman replied that entries in the Register of European Patents created no rights or obligations towards third parties but only vis-à-vis the European Patent Office. Accordingly, differences between entries in the Register of European Patents and those in national registers should have no adverse consequences.

679. In view of the outcome of the discussion, the Austrian delegation withdrew its proposal even though this might cause it some difficulty.

Article 128 — Inspection of files

680. The Swedish delegation proposed that Article 128 and in particular paragraphs 1 and 4 be amended so that instead of having to wait for the patent application to be published the files would be made available for unrestricted inspection 18 months after either the date of filing or the priority date (M/53/III, point 7).

681. The Netherlands delegation wondered whether this would mean that copies of all patent applications would, after 18 months, have to be made available for inspection of the files.

682. The Swedish delegation considered that this would certainly not be necessary for all patent applications but only for those which competitors of the applicant wished to inspect.

683. The United Kingdom delegation pointed out that patent applications would probably be published very shortly after expiry of the 18-month period from the date of filing or priority date. If only a short period — about 1 month — was going to elapse before publication, it would not be worthwhile setting up a special section in the European Patent Office for inspection (with its own staff and a special library). Moreover, it would not be right to allow the files to be inspected before the provisional protection deriving from the application had begun; this would be afforded only on publication.

684. The German delegation also drew attention to this point. It furthermore pointed out that practice of making as yet unpublished applications available to third parties could detract from novelty. For these reasons it had no alternative but to reject the Swedish proposal.

685. The Swiss delegation opposed the Swedish proposal mainly on the grounds that during the period between the date of making available the files for inspection and the publication of the application, the applicant would have no provisional legal protection.

686. The IAPIP delegation agreed with the German delegation's views.

687. Having considered these objections, the Swedish delegation withdrew its proposal.

688. The Main Committee referred to the Drafting Committee a drafting proposal from the German delegation relating to paragraph 4 (M/47/III, point 42).

689. The Swiss delegation proposed that paragraph 5 (b) be supplemented to the effect that the date of any priority claim concerning third parties could also be given or published since if this date were not given, third parties could draw false conclusions (M/31, point 5, and M/54/III, page 21).

690. The United Kingdom delegation pointed out that publication of the priority date could, in some cases, conflict with Article 30, paragraph 2, of the Patent Cooperation Treaty. This problem could be overcome by including, among the information which could be given, in addition to the priority
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(Munich, 10 September to 5 October, 1973)

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Government of the Federal Republic of Germany
Article 126

Termination of financial obligations

(1) Rights of the Organisation to the payment of a fee to the European Patent Office shall be extinguished after four years from the end of the calendar year in which the fee fell due.

(2) Rights against the Organisation for the refunding by the European Patent Office of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.

(3) The period laid down in paragraphs 1 and 2 shall be interrupted in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgment enters into force.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 5
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee
Subject: Convention: Articles 112 to 139
(2) Ansprüche gegen die Organisation auf Rückernstattung von Gebühren oder von Geldbeträgen, die bei der Entrichtung einer Gebühr zuviel gezahlt worden sind, durch das Europäische Patentamt erlöschen nach vier Jahren nach Ablauf des Kalenderjahres, in dem der Anspruch entstanden ist.

(3) Die in den Absätzen 1 und 2 vorgesehene Frist wird im Fall des Absatzes 1 durch eine Aufforderung zur Zahlung der Gebühr und im Fall des Absatzes 2 durch eine schriftliche Geltendmachung des Anspruchs unterbrochen. Diese Frist beginnt mit der Unterbrechung erneut zu laufen und endet spätestens sechs Jahre nach Ablauf des Jahrs, in dem sie ursprünglich zu laufen begonnen hat, es sei denn, daß der Anspruch gerichtlich geltend gemacht worden ist; in diesem Fall endet die Frist frühestens ein Jahr nach der Rechtskraft der Entscheidung.

Vgl. Regel 92 (Versicht auf Beitreibung)

Kapitel II
Unterrichtung der Öffentlichkeit und Behörden

Artikel 127
Europäisches Patentregister


Vgl. Regeln 19 (Berichtigung oder Widerruf der Erfindernennung) und 93 (Eingriffen in das europäische Patentregister)

Artikel 128
Akteneinsicht

(1) Einsicht in die Akten europäischer Patentanmeldungen, die noch nicht veröffentlicht worden sind, wird nur mit Zustimmung des Anmelders gewährt.

(2) Wer nachweist, daß der Anmelder sich ihm gegenüber auf seine europäische Patentanmeldung berufen hat, kann vor der Veröffentlichung dieser Anmeldung und ohne Zustimmung des Anmelders Akteneinsicht verlangen.

(3) Nach der Veröffentlichung einer europäischen Teilanmeldung oder einer nach Artikel 59 Absatz 1 eingezeichneten neuen europäischen Patentanmeldung kann jedermann Einsicht in die Akten der früheren Anmeldung ungeachtet deren Veröffentlichung und ohne Zustimmung des Anmelders verlangen.

Cf. Rule 92 (Waiving of enforced recovery procedures)

Chapter II
Information to the public or official authorities

Article 127
Register of European Patents

The European Patent Office shall keep a register, to be known as the Register of European Patents, which shall contain those particulars the registration of which is provided for by this Convention. No entry shall be made in the Register prior to the publication of the European patent application. The Register shall be open to public inspection.

Cf. Rules 19 (Rectification or cancellation of the designation of an inventor) and 93 (Entries in the Register of European Patents)

Article 128
Inspection of files

(1) The files relating to European patent applications, which have not yet been published, shall not be made available for inspection without the consent of the applicant.

(2) Any person who can prove that the applicant for a European patent has invoked the rights under the application against him may obtain inspection of the files prior to the publication of that application and without the consent of the applicant.

(3) Where a European divisional application or a new European patent application filed under Article 59, paragraph 1, is published, any person may obtain inspection of the files of the earlier application prior to the publication of that application and without the consent of the relevant applicant.
Artikel 123
Angaben über nationale Patentanmeldungen
(1) Die Prüfungsabteilung und die Beschwerdekammer können den Anmelder auffordern, innerhalb einer von ihr zu bestimmenden Frist die Staaten anzugeben, in denen er nationale Patentanmeldungen für die Erfindung oder einen Teil der Erfindung eingereicht hat, die Gegenstand der europäischen Patentanmeldung ist, und die Aktenzeichen der genannten Anmeldungen mitzuteilen.
(2) Kommt der Anmelder einer Aufforderung nach Absatz 1 nicht rechtzeitig nach, so gilt die europäische Patentanmeldung als zurückgenommen.

Vgl. Regeln 70 (Feststellung eines Rechtsverlusts) und 71 (Form der Bescheide und Mitteilungen)

Artikel 124
Ergänzender europäischer Recherchenbericht
(1) Das Europäische Patentamt kann, wenn es dies für erforderlich erachtet, beim Internationalen Patentinstitut jederzeit einen ergänzenden europäischen Recherchenbericht einholen.
(2) Die Kosten für den ergänzenden europäischen Recherchenbericht trägt der Anmelder, wenn a) er die Einholung des Berichts, insbesondere durch Änderung der Patentansprüche, veranlasst hat oder b) der Bericht eingeholt wird, um einen internationalen Recherchenbericht zu ergänzen.
(3) Im Fall des Absatzes 2 fordert das Europäische Patentamt den Anmelder auf, innerhalb eines Monats die Zusatzrecherengebühr zu entrichten. Wird die Gebühr nicht rechtzeitig entrichtet, so gilt die europäische Patentanmeldung als zurückgenommen.

Vgl. Regeln 67 (Prüfung der Beschwerde), 70 (Feststellung eines Rechtsverlusts) und 71 (Form der Bescheide und Mitteilungen)

Artikel 125
Heranziehung allgemeiner Verfahrensgrundsätze
Soweit dieses Übereinkommen Vorschriften über das Verfahren nicht enthält, berücksichtigt das Europäische Patentamt die in den Vertragsstaaten im allgemeinen anerkannten Grundsätze des Verfahrensrechts.

Artikel 126
Beendigung von Zahlungsverpflichtungen
(1) Ansprüche der Organisation auf Zahlung von Gebühren an das Europäische Patentamt erlöschen nach vier Jahren nach Ablauf des Kalenderjahrs, in dem die Gebührfällig geworden ist.

Article 123
Information concerning national patent applications
(1) The Examining Division and the Board of Appeal may request the applicant to indicate, within a period to be determined by these, the States in which he has made applications for national patents for the whole or part of the invention to which the European patent application relates, and to give the reference numbers of the said applications.
(2) If the applicant fails to reply in due time to a request under paragraph 1, the European patent application shall be deemed to be withdrawn.

Cf. Rules 70 (Noting of loss of rights) and 71 (Form of communications from the European Patent Office)

Article 124
Supplementary European search report
(1) Where it considers this to be necessary, the European Patent Office may at any time obtain a supplementary European search report from the International Patent Institute.
(2) The cost of the supplementary European search report shall be borne by the applicant where:
(a) the applicant has made it necessary for such report to be obtained, in particular when the applicant has amended the claims, or
(b) the report is obtained in order to supplement an international search report.
(3) Where paragraph 2 is applicable, the European Patent Office shall request the applicant to pay the additional search fee within one month. If the fee is not paid in due time, the European patent application shall be deemed to be withdrawn.

Cf. Rules 67 (Examination of appeals), 70 (Noting of loss of rights) and 71 (Form of communications from the European Patent Office)

Article 125
Reference to general principles
In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.

Article 126
Termination of financial obligations
(1) Rights of the Organisation to the payment of a fee to the European Patent Office shall be extinguished after four years from the end of the calendar year in which the fee fell due.
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTEILUNGSVERFAHREN

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
Rule 93

30. The Committee recorded its agreement on the transfer of the first three paragraphs of this Rule to the Convention as Article 125a, by reason of the subject matter dealt with therein. Paragraph 4 was retained in the Implementing Regulations as Rule 93.

Rules 96 and 100

31. In order to avoid the communication of the files of patent applications or of documents by the European Patent Office for inspection by national courts causing delays in the proceedings pending before the European Patent Office, it was stipulated in the new paragraph 1 of Rule 100 that such inspection shall be of the original documents or of copies thereof. In addition, to harmonise the terminology, the word "copy" has been used in both paragraph 1 and paragraph 3 of Rule 96.

32. Concluding this item on the agenda, the Committee adopted the texts submitted by the Drafting Committee for the Draft Convention and Draft Implementing Regulations, account being taken of the amendments which the above-mentioned observations entailed.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 6 June 1972
BR/209/72

MINUTES
of the

second meeting of the Co-ordinating Committee

held in Brussels from 15 to 19 May 1972

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

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

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

BR/209 e/72 i:::X/IM/prk

.../...
CHAPTER VII

Termination of financial obligations

Article 93 (Re. 145, No. 10 + Re. 152, No. 1)

Termination of financial obligations

(1) Rights of the European Patent Office to the payment of a fee shall be extinguished after four years from the end of the calendar year in which the fee fell due.

(2) Rights against the European Patent Office for the refunding of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.

(3) The period laid down in paragraphs 1 and 2 shall be suspended in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. After the suspension it shall begin again and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgement enters into force.

(4) The President of the European Patent Office may waive action for the enforced recovery of any sum due if the sum to be recovered is minimal or if such recovery is too uncertain.
DRAFT IMPLEMENTING REGULATIONS
TO THE CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
10 to 20 April 1972)
Re. Article 159, No. 9 - Form of notices and other communications from the European Patent Office

38. No comments.

Re. Article 159, No. 10 - Lapse

39. The Sub-Committee agreed to adopt this provision while adding a footnote to the text. In fact, the Sub-Committee considered that this Article should be studied in greater detail by government financial experts, with particular reference to establishing the financial consequences of this measure and whether the scope of the text under discussion could be extended or not.

Re. Article 159, No. 11 - Noting of certain legal consequences

40. The regulation Re. Article 69, No. 1 (BR/67/70, page 14) drawn up by the Sub-Committee at its meeting in November 1970 is intended to lay down a simplified procedure in the event of the European Patent Office noting that an application for a European patent is deemed to be withdrawn. The use of such a procedure - which reduces the workload of the Office while protecting the applicant's right of appeal - was justified because in reality only simple questions of fact were concerned, for example the payment of a fee within the time required.

On a proposal from the United Kingdom delegation, the Sub-Committee considered that this simplified procedure could be extended to other cases where only simple questions of fact were concerned. Consequently, the Sub-Committee adopted a text in which four new cases were added, and which

BR/84 e/71 nan/KM/prk

.../...
MINUTES

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

(Luxembourg, 12 - 14 January 1971)

I

1. The fifth meeting of the "Implementing Regulations" Sub-Committee was held in Luxembourg from 12 to 14 January 1971, with Mr FRESSONNET, Deputy Director, French Industrial Property Institute, in the Chair.

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

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

(1) See the list of participants in Annex I.
Re: Article 159
No. 10
Lapse

Text drawn up by the Sub-Committee

(1) Rights of the European Patent Office to the payment of a fee shall lapse four years after the end of the calendar year in which the fee fell due.

(2) Rights against the European Patent Office for the refunding of fees or sums of money paid in excess of a fee, shall lapse four years after the end of the calendar year in which the right arose.

(3) The period of lapse shall be suspended in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. After the suspension it shall begin again and shall end at the latest six years after the end of the year in which it originally began.

Note:
It might be considered whether it would be suitable to extend this provision to all sums owed to or by the European Patent Office.

BR/81 e/71 prk
Outcome of the work of the "Implementing Regulations" sub-Committee
of Working Party I
(12 to 14 January 1971)

PRELIMINARY DRAFT IMPLEMENTING REGULATIONS

Re. Articles 16, 17, 28a, 34, 53, 54, 59, 66, 79, 85, 97, 101, 120, 128, 139, 159, 172 and 186

of the first preliminary draft Convention
The German delegation submitted a proposal that provision should be made for an adjustment of the time limit referred to in paragraph 3 in the event of cases pending before national courts. The Group agreed that the reasoning behind this proposal was sound, and adopted it, although in order to avoid any difficulties which might arise from the interpretation of the concept of "lapse" in the various national laws, it was decided that this term should be replaced by "extinction".

It was asked which fees were referred to in the first paragraph of this Article. The Working Party found that this provision could apply to only a very small number of fees, since for the great majority of fees the Convention laid down a general rule that fees had to be paid before the European Patent Office would take the action for which the fees were payable. Thus the fees concerned were the fees and prices laid down by the President of the European Patent Office pursuant to Article 3 of the Rules relating to Fees.

**Article 151 - Costs in opposition proceedings**

A drafting amendment was made to this provision in the English and French versions.

**Article 152 - Enforcement of costs and fines**

The United Kingdom delegation proposed firstly that the express provision made in the first paragraph for the exemption of stakes should be deleted, and secondly that paragraphs 2 and 3 be replaced by a more general...
Re. Article 145, No. 2, IR - Minutes of oral proceedings and preliminary investigations

59. The German delegation submitted a proposal that it should be specified that the minutes referred to in the first paragraph must, in cases of inspection of premises, mention not only the fact that the inspection was made but also the results thereof.

The Working Party agreed to amend the text along these lines.

Re. Article 145, No. 9, IR - Form of notices and other communications from the European Patent Office

60. To make the process simpler, the German delegation proposed the deletion of the requirement that notices and communications be signed by the responsible official.

The Working Party considered that the procedure envisaged in this proposal would make it too difficult for the addressee of documents from the European Patent Office to make any necessary evaluation of the authenticity of the documents, and therefore did not adopt the proposal.

Re. Article 145, No. 10, IR - Lapse

61. The French delegation's proposal to delete the note to this Article was adopted, as the Working Party felt that all sums owed other than those referred to expressly should be governed by national law. This also satisfied an observation of the same nature made by the United Kingdom delegation in connection with this Article.
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,
held in Luxembourg from 14 to 17 September 1971

Opening of the meeting and adoption of the agenda

1. The Working Party held its 8th meeting in Luxembourg from Tuesday 14 to Friday 17 September 1971, with Dr HAERTHEL, President of the German Patent Office, in the Chair.

This meeting, which was devoted primarily to the examination of certain legal problems connected with the provisions being drawn up, was also attended by legal experts from the countries of the delegations to Working Party I.

Representatives from the Commission of the European Communities, WIPO and the IIB were also present at the meeting (1). The representative of the General Secretariat of the Council of Europe sent his apologies for being unable to attend.

The Working Party adopted the provisional agenda (2).

(1) See Annex I for list of those attending.
(2) See Annex II for the provisional agenda (BR/GT I/109/71) and the list of the provisions of the Second Preliminary Draft Convention and the First Preliminary Draft Implementing Regulations to be examined at the meeting (BR/GT I/111/71).

BR/132 e/71 ley/ME/ad
Zu Artikel 145
Nummer 10

Verjährung

(1) Ansprüche des Europäischen Patentamts auf
Zahlung von Gebühren verjähren in vier Jahren nach
Ablauf des Kalenderjahrs, in dem die Gebühr fällig
geworden ist.

(2) Ansprüche gegen das Europäische Patentamt auf
Rückerstattung von Gebühren oder von Geldbeträgen,
die bei der Entrichtung einer Gebühr zuviel gezahlt
wurden sind, verjähren in vier Jahren nach Ablauf des
Kalenderjahrs, in dem der Anspruch entstanden ist.

(3) Die Verjährung wird im Fall des Absatzes 1 durch
eine Aufforderung zur Zahlung der Gebühr und im Falle
des Absatzes 2 durch eine schriftliche Geltendmachung
des Anspruchs unterbrochen. Sie wird mit der Unter-
brechung erneut in Lauf gesetzt; sie endet spätestens
sechs Jahre nach Ablauf des Jahrs, in dem sie ursprüng-
lieh zu laufen begonnen hat.

Zu Artikel 145
Nummer 11

Feststellung des Eintritts gewisser Rechtsfolgen

(1) Stellt das Europäische Patentamt fest, daß
a) eine europäische Patentanmeldung ganz oder teil-
weise als zurückgenommen gilt,
b) die Benennung eines Vertragsstaats als zurückge-
nommen gilt,
c) die europäische Zusatzpatentanmeldung als Anmel-
dung eines selbständigen europäischen Patents gilt,
d) ein Einspruch oder eine Beschwerde als nicht einge-
legt gilt oder
e) davon auszugehen ist, daß ein Beschwerdeführer auf
seine Beteiligung am Beschwerdeverfahren verzichtet
hat,
so teilt es dies dem Betreffenden gemäß Artikel 148 des
Übereinkommens mit.

(2) Ist der Betreffende der Auffassung, daß die Fest-
stellung des Europäischen Patentamts nicht zutrifft, so
kann er innerhalb einer Frist von zwei Monaten nach
Zustellung der Mitteilung gemäß Absatz 1 eine Ent-
scheidung des Europäischen Patentamts beantragen.
Eine solche Entscheidung wird nur getroffen, wenn das
Europäische Patentamt die Auffassung des Antragstel-
lers nicht teilt.

Zu Artikel 148
Nummer 1

Allgemeine Vorschriften über Zustellungen

(1) In den Verfahren vor dem Europäischen Patentamt
ist Gegenstand der in Artikel 148 des Übereinkommens
vorgesehenen Zustellung entweder das Original des
zuzustellenden Schriftstücks oder eine vom Euro-
päischen Patentamt beglaubigte Abschrift dieses Schrift-
stücks. Jedoch bedürfen Abschriften von Schriftstücken,
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES
PATENTERTeilungsverfahren

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

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

sowie

ERSTER VORENWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

und

ERSTER VORENWURF EINER GEBÜHRENORDNUNG

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

with

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

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

SECOND AVANT-PROJET DE CONVENTION INSTITUANT UN
Système Européen de Délivrance de Brevets

ainsi que

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

et

PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

— 1971 —
Ad article 170 - No 2

Ce numéro règle les cas où le Président de l'Office peut renoncer au recouvrement par contrainte.

Le Président observe que cette disposition devra être revue avec les experts des Ministères des Finances.

À la demande de M. Freyssonnet, il sera inséré une remarque disant qu'il faudra pour l'application de ce numéro prévoir l'intervention d'un contrôle financier.

Le numéro est transmis au Comité de rédaction.

Ad article 171 - No 1

Adopté et transmis au Comité de rédaction.

Ad article 172

La remarque est transmise au Comité de rédaction.

Ad article 173 - No 1

À une question de M. van Benthom, le Président répond que le mandat initial pourra octroyer au représentant le droit de disposer du brevet selon les articles 25, 26, 29 et 124 de la Convention.

Le numéro est adopté et transmis au Comité de rédaction.

Ad article 180

Ce numéro réglemente la compétence pour la fourniture des avis techniques. Les divisions d'examen sont compétentes. (1). Le Président déterminera quelle division fournit l'avis (2).

.../...
Résultats de la neuvième session du groupe de travail "Brevets" qui s'est tenue à Munich du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 170

Numéro 2

Renonciation au recouvrement par contrainte

Le président de l'Office européen des brevets peut s'abstenir de procéder au recouvrement par contrainte d'une amende ou d'une taxe dont le non-paiement a été constaté par l'édit office:

a) Lorsque la somme à recouvrer est minime;

b) Lorsque le débiteur séjourne à titre permanent en un endroit où le recouvrement n'est pas possible;

c) Lorsque l'Office européen des brevets sait qu'il est vraisemblable que le débiteur ne sera pas à même de payer avant longtemps.
Projet
concernant
le règlement d'exécution
de la
Convention relative à un droit européen des brevets

Proposition relative à l'application des
articles 164 à 217
de la Convention
Artikel 170 Nr. 2

Diese Nummer regelt den Fall, daß der Präsident des Patentamts auf die Beitreibung verzichten kann.

Der Vorsitzende bemerkt, daß diese Vorschrift mit den Sachverständigen der Finanzministerien überprüft werden müsse.

Auf Antrag von Herrn Pressonnet soll eine Bemerkung eingefügt werden, daß zur Anwendung dieser Vorschrift die Mitwirkung einer Finanzkontrolle vorzusehen sei.

Die Vorschrift wird an den Redaktionsausschuß überwiesen.

Artikel 171 Nr. 1

Annahme und Überweisung an den Redaktionsausschuß.

Artikel 172

Die Bemerkung wird an den Redaktionsausschuß überwiesen.

Artikel 173 Nr. 1


Artikel 180

Diese Nummer regelt die Zuständigkeit zur Erstattung technischer Gutachten. Zuständig sind die Prüfungsabteilungen (Absatz 1). Der Präsident bestimmt, welche Prüfungsabteilung das Gutachten erstattet (Absatz 2).
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 170
Nummer 2

Verzicht auf Beitreibung

Der Präsident des Europäischen Patentamts kann von der Beitreibung einer Geldbuße oder einer Gebühr, deren Nichtzahlung durch das Europäische Patentamt festgestellt worden ist, absehen,

a) wenn der beizutreibende Betrag geringfügig ist;

b) wenn sich der Zahlungspflichtige dauernd an einem Orte aufhält, an dem eine Beitreibung nicht möglich ist;

c) wenn dem Europäischen Patentamt bekannt ist, daß der Zahlungspflichtige voraussichtlich dauernd zur Zahlung nicht in der Lage ist.
Arbeitsentwurf
zu einer
Ausführungsordnung
zum
Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 164 bis 205

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

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

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

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

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

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

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

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