Article 17 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. 17
MPÜ
Recherchenabteilung

<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr. im Entwurf/Dokument</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstelle im Dokument</th>
</tr>
</thead>
<tbody>
<tr>
<td>nur Dokumente der MDK</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>≥ 1972</td>
<td>16a *</td>
<td>M/59/I/II</td>
<td>S. 2</td>
</tr>
<tr>
<td>&quot;</td>
<td>16a</td>
<td>M/130/II/R 6</td>
<td>S. 8</td>
</tr>
<tr>
<td>&quot;</td>
<td>16a</td>
<td>M/146/R 1</td>
<td>Art. 17</td>
</tr>
<tr>
<td>&quot;</td>
<td>16a (neu)</td>
<td>M/PR/II</td>
<td>S. 121</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Art. 16a wird vom Ausschuß neu eingeführt</td>
<td></td>
</tr>
</tbody>
</table>

* * unavailable
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>7</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary</td>
<td>9</td>
</tr>
<tr>
<td>Opening Meeting</td>
<td></td>
</tr>
<tr>
<td>(M/PR/K/1)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of the Credentials Committee (M/PR/V)</td>
<td>25</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee I (M/PR/I)</td>
<td>27</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee II (M/PR/II)</td>
<td>109</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee III (M/PR/III)</td>
<td>155</td>
</tr>
<tr>
<td>Minutes of the proceedings of the Committee of the Whole (M/PR/G)</td>
<td>163</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Final Meeting (M/PR/K/2)</td>
<td>199</td>
</tr>
<tr>
<td>List of participants</td>
<td>211</td>
</tr>
</tbody>
</table>
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 46-a

Search Divisions

The Search Divisions shall be in the branch at The Hague. They shall be responsible for drawing up European search reports.
CONVENTION

ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

(EUROPEAN PATENT CONVENTION)

PROJET DE CONVENTION

INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 1

Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 1 to 26
Article 16 a

Search Divisions

The Search Divisions shall be in the branch at The Hague. They shall be responsible for drawing up European search reports.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 24 September 1973

M/130/II/R 6
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II
AT THE MEETING ON 24 SEPTEMBER 1973

Articles of the Convention:  Articles 1
                                 4
                                 6
                                 7
                                 9
                                15
                               16
                               16d
                               18a
                               19
                              21
                              22
                              28
                             31
                            33
                            166
                            176

Implementing Regulations:  Rules 9
                              12

Protocol on Privileges and Immunities of the European Patent Organisation

Protocol on the Centralisation of the European Patent System and on its Introduction
ARTICLE 16a - Search Divisions

The Search Divisions shall be responsible for the drawing up of the European search reports.

ARTICLE 28 - Attendance of observers

(1) Deleted

(2) to (4) Unchanged.

ARTICLE 89 - Transmission of the application documents to the International Patent Institute

Deleted

ARTICLE 91 - The drawing up of the European search report

(1) If a European patent application has been accorded a date of filing and is not deemed to be withdrawn by virtue of Article 88, paragraph 3, the Search Division shall draw up the European search report on the basis of the claims, with due regard to the description and any drawings in the form prescribed in the Implementing Regulations.

(2) Deleted

(3) Once it has been drawn up, the applicant shall be notified of the European search report and of copies of any cited documents.

ARTICLE 95 - Examination of the European patent application

(1) If the applicant for a European patent has filed the request for examination before he has been notified of the European search report, the European Patent Office shall invite him after the notification of the report to indicate, within a period to be determined, whether he desires to proceed further with the European patent application.

(2) and (3) Unchanged.

ARTICLE 124 - Supplementary European search report

(1) In all cases and at any time where the European Patent Office considers this to be necessary, a supplementary European search report shall be drawn up.

(2) and (3) Unchanged.

ARTICLE 156 - International search report

(1) Unchanged.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973

M/ 59/I/II

Original: French

CONFERENCE DOCUMENT

Drawn up by: French delegation

Subject: Incorporation of the IIB into the European Patent Office as the Directorate-General for Searching
Proposals for amendments to the Convention and the Implementing Regulations
forwarded. The Committee signified its agreement to the content of the Belgian delegation's proposal and referred it for examination to the Drafting Committee.

90. The Committee also recorded its agreement to the German delegation's proposal in M/47/I/II/III, point 1, which detailed the responsibilities of the Receiving Section as regards publication of the application and the search report.

91. The Committee also referred the FEMIPI delegation's proposal (M/23, point 16) to the Drafting Committee in order for it to specify at an appropriate point in the Convention that the branch at The Hague was empowered to receive European patent applications.

92. The French delegation proposed that the text of Article 16 be amended to indicate clearly that even in cases where the request for examination was lodged before the search report was drawn up, the Receiving Section retained responsibility for the file and would continue with the formalities examination up to the date of publication of the search report.

93. The Committee agreed to this proposal, which it referred to the Drafting Committee.

Article 16a (17) — Search Divisions

94. In view of the decision to integrate the IIB into the European Patent Office as the Directorate-General for Searching, the Committee decided to determine in a new Article 16a the responsibilities of the body responsible for drawing up European search reports, namely the Search Divisions.

Article 17 (18) — Examining Divisions

95. Since the proposals from CNIPA (M/20, point 5), CEIF (M/22, point 14) and FEMIPI (M/23, point 17) were not taken up by the Government delegations, they were not considered by the Committee.

96. The Committee referred the drafting proposals submitted by the Luxembourg delegation in M/9, point 9, to the Drafting Committee.

Article 18 (19) — Opposition Divisions

97. The Committee had before it several proposals from the Observer delegations (IAPPI M/24, point 4, CEEP M/30, point 3, CNIPA M/20, point 6, FEMIPI M/23, point 7 and UNICE M/19, point 2) which were primarily aimed at precluding (although the emphasis differed somewhat in certain proposals) a member of an Examining Division from participating in the work of an Opposition Division considering a case relating to a patent where he had been involved in examining the application for that patent.

98. The Portuguese delegation, supported by the Danish and Norwegian delegations, backed a proposal by UNEPA (M/62/I/II, point 2) to the effect that a member of an Examining Division who had taken part in the procedure at the examination stage could no account act as Chairman of an Opposition Division dealing with the same case.

99. The IAPPI representative suggested that the office of rapporteur should also be subject to such provisions governing incompatibility.

100. The German, Austrian, French and Swiss delegations supported the Portuguese delegation's proposal but felt that the member of the Examining Division in question should not be precluded from acting as rapporteur in view of the advantages of his knowledge of the case.

101. Finally, the Committee accepted the Portuguese delegation's proposal and referred it to the Drafting Committee.

Article 19 (21) — Boards of Appeal

102. The Netherlands delegation presented the proposal in M/32, point 4, that the references in paragraphs 3 and 4 to technically qualified members who would act as rapporteurs and would not take part in the decision be deleted.

103. This proposal, which was supported by the UNEPA representative, was approved by the Committee and referred to the Drafting Committee.

Article 21 (23) — Independence of the members of the Boards

104. The Committee went on to consider proposed amendments from the Luxembourg delegation (M/9, point 12), the United Kingdom delegation (M/10, point 3 and M/40, point 8) and a proposal from the Netherlands delegation (M/52/I/II/III, point 3).

105. Apart from some minor drafting amendments referred to the Drafting Committee, the amendments proposed by the United Kingdom, Luxembourg and Netherlands delegations were all concerned with providing for the removal of office of members of the Boards during their term if there were "serious grounds" for so doing. However the proposal of the Netherlands delegation differed slightly from that of the United Kingdom in that such removal could only be effected by a decision of the Administrative Council of the European Patent Organisation on a proposal from the Enlarged Board of Appeal.

106. The United Kingdom delegation, supported by the Swedish delegation, considered that since the power of appointment lay with the Administrative Council, the power of removal should, of course, be conferred upon the same body. However, since the existence of serious grounds had to be established, the decision to remove a member from office should require a three-quarters majority.

107. However, most delegations opted for the Netherlands proposal, which provided for the Administrative Council's decision to be taken by a simple majority.

Article 22 (24) — Exclusion and objection

(a) Paragraphs 1 to 3

108. The Committee referred the observations from the Luxembourg delegation in M/9, point 13, and from the German delegation in M/11, points 3 to 17, to the Drafting Committee.

(b) Paragraph 3a (3)

109. The German delegation submitted a proposal for a new paragraph 3a (M/47/I/II/III, point 18) which would limit the right of objection to a member of a Board where the party in question had already taken a procedural step while being aware of a reason for objection.

110. The Committee agreed on this proposal and referred it to the Drafting Committee.

(c) Paragraph 4

111. This paragraph was the subject of proposals from the Swiss (M/54/I/II/III) and Norwegian delegations (M/61/I/II).

112. The Swiss proposal provided that the Board member objected to could not take part in the vote on the objection.