Rule 23 E

Travaux Préparatoires
(EPC 1973)

Comment:

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
Regel 23
MPÜ
Ausstellungsbescheinigung

<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>BR/42/70</td>
<td>12 Nr. 1</td>
<td>BR/43/70</td>
<td>Rdn. 12</td>
</tr>
</tbody>
</table>

Dokumente der MDK

<table>
<thead>
<tr>
<th>E 1972</th>
<th>R 23</th>
<th>M/15</th>
<th>S. 1244–126</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>M/28</td>
<td>S. 348</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/54/I/II/III</td>
<td>S. 23</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/121/I/R 7</td>
<td>S. 5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/140/I/R 11</td>
<td>S. 5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/146/R 8</td>
<td>R 23</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/PR/I</td>
<td>S. 83/84</td>
</tr>
</tbody>
</table>
taken to delete the paragraph in accordance with a proposal by the Drafting Committee.

2041. The Swiss delegation wondered whether any purpose was served by citing in the proposed paragraph 2 the statement referred to in Article 79 (81), as this could give rise to the fallacious assumption that the statement in question was not the chief constituent of the designation of the inventor but rather a mere incidental.

2042. The delegation of the Federal Republic of Germany considered that in view of Article 90 (91), paragraph 5, the statement indicating the origin of the right to the patent should be referred to in paragraph 2.

2043. The Main Committee referred the matter to the Drafting Committee and adopted paragraph 2*.

2044. The Main Committee adopted paragraph 4 as proposed.

2045. The Austrian delegation asked what action could be taken by an inventor in the absence of paragraph 5.

2046. The Chairman replied that inventors who had not received the notification under paragraph 4 as a result of an oversight on the part of the European Patent Office might be tempted to lodge a claim for damages against the European Patent Office. Paragraph 5 was intended to forestall that eventuality.

The Chairman noted that the Main Committee shared his point of view and that it accordingly adopted paragraph 5.

**Rule 19 — Rectification or cancellation of the designation of an inventor**

2047. A proposal by the delegation of the Federal Republic of Germany (M/118/I) formed the basis for the Main Committee's discussions on the adjustments to be made to Rule 19 consequent upon the decision taken concerning the designation of inventors (see point 2038 supra).

2048. The delegation of the Federal Republic of Germany pointed out that a new sentence embodying a reference to Rule 17, paragraphs 2 to 5, was to be added to paragraph 1; in particular, the relevant data concerning the application should be communicated to the new inventor designated in the rectification.

2049. The Chairman pointed out that the proposed reference to Rule 17 would apply only to cases where a person who had not previously been mentioned was designated as the inventor. If, on the other hand, a person had previously been wrongly designated as the inventor and this were rectified, there would then be no further need for him to be notified in accordance with Rule 17 if he had consented to the rectification.

2050. The Netherlands delegation considered that the person wrongly designated as the inventor should be required to give his consent to any rectification. Such consent would perhaps be unnecessary in cases where a final decision under Article 59 (61) was taken in favour of the real inventor.

2051. The Chairman held that in such cases the final decision would, as a matter of general legal principle, be deemed to have replaced the consent of the person wrongly designated as the inventor.

2052. The UNICE delegation wondered if it interpreted the second half of the first sentence correctly in assuming that a third party could — albeit with the consent of the applicant or proprietor — file a request for the rectification of the designation of an inventor.

2053. The Chairman considered that the provision in question did not mean that just anybody was entitled to file a request for the rectification of the designation of an inventor. Such requests could be filed only by the inventor, the applicant or the proprietor, and any request by the inventor would require the consent of the applicant or the proprietor.

The Chairman noted that the Main Committee was in agreement with this interpretation.

2054. The UNICE delegation subsequently proposed that this provision be simplified along the lines of Rule 17 by stipulating that only the applicant or the proprietor had the right to file such requests.

2055. The delegation of the Federal Republic of Germany failed to see why a designated inventor should be debarred from making rectifications, with the consent of the applicant or the proprietor, for example in cases where the information given concerning him was incorrect.

2056. None of the delegations supported the proposal by the UNICE delegation.

2057. The UNICE delegation also wondered why provision had been made for the cancellation of an incorrect designation, as cancellation would require a new inventor to be designated and was therefore tantamount to rectification.

2058. The Main Committee referred the matter to the Drafting Committee for examination.

2059. With the present wording of paragraph 1, at least as it stood in English, the EIRMA delegation doubted whether it would be possible, for example, for a third person who had been wrongly omitted to be added to two persons correctly designated as inventors, as there would be no person wrongly designated as an inventor who would be entitled to consent to the rectification.

2060. The delegation of the Federal Republic of Germany pointed out that, at least so far as the German version was concerned, such a procedure presented no problem, inasmuch as an addition to an incomplete designation constituted a rectification.

2061. The EIRMA delegation stated that it would be satisfied if the Main Committee made it clear that in the case which it had just referred to additions could be made to the designation of the inventor.

2062. Thereupon, the Main Committee proceeded accordingly.

2063. The delegation of IFIA recorded the provisional agreement of its member associations to the compromise solution to the whole problem of the designation of the inventor set out in M/118/I, and approved by the Main Committee.

2064. Further statements with regard to Rule 19 are set out under points 278 — 280 and 323 — 325.

**Rule 23 — Certificate of exhibition**

2065. The Norwegian delegation withdrew its proposal concerning Rule 23 (M/28, point 18).

2066. The Swiss delegation proposed supplementing Rule 23 in such a way that the opening date of the exhibition and, where the first disclosure of the invention did not coincide with the opening date, the date of the disclosure should also be stated in the certificate of exhibition (M/54/I/II/III, page 23). It pointed out in support of this that without such a statement, it would be exceptionally difficult, if not altogether impossible, to ascertain whether an invention had been disclosed within the period of six months laid down in Article 53 (55), paragraph 1.

2067. The Main Committee adopted this proposal, which was supported by the French and Portuguese delegations.

2068. The Swiss delegation also proposed, in connection with Rule 23, the inclusion of a new provision whereby the President of the European Patent Office would have to keep a list of recognised exhibitions and publish it in the Official Journal of the European Patent Office (M/54/I/II/III, page 9).
<table>
<thead>
<tr>
<th>Contents</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 (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</td>
<td>199</td>
</tr>
<tr>
<td>Final Meeting (M/PR/K/2)</td>
<td></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
Chapter IV

Certification of exhibition

Rule 23

Certificate of exhibition

The applicant must, within four months of the filing of the European patent application, file the certificate referred to in Article 55, paragraph 2, issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition, and stating that the invention was in fact exhibited there. This certificate shall also state the opening date of the exhibition and, where the first disclosure of the invention did not coincide with the opening date of the exhibition, the date of the first disclosure. This certificate must be accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.
AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTEILUNGSVERFAHREN

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

RÈGLEMENT D'EXÉCUTION
DE LA 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 8
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 1 to 26
Chapter IV

Certification of exhibition

Rule 23

Certificate of exhibition

The applicant must, within four months of the filing of the European patent application, file the certificate referred to in Article 53, paragraph 2, issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition, and stating that the invention was in fact exhibited there. This certificate shall also state the opening date of the exhibition and, where the first disclosure of the invention did not coincide with the opening date of the exhibition, the date of the first disclosure. This certificate must be accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973
M/140/I/R 11
Original: English/French/German

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

Rules of the Implementing Regulations:

Rules
2
13
17
19
23
24
26
42
44
45
46
47
48
52
64
80
86
95
Chapter IV
Certification of exhibition

Rule 23
Certificate of exhibition

The applicant must, within four months of the filing of the European patent application, file the certificate referred to in Article 53, paragraph 2, issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition, and stating that the invention was in fact exhibited there. This certificate shall also state the opening date of the exhibition and, where the first disclosure of the invention did not coincide with the opening date of the exhibition, the date of the first disclosure. This certificate must be accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 21 September 1973
M/121/I/R 7
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 20 SEPTEMBER 1973

Articles of the Convention:
Article 14
Article 50
Article 124

Rules of the Implementing Regulations:
Rule 23
Rule 24
Rule 25
Rule 26
Rule 27
Rule 23

Proposal: Insert the following sentence between the first and second sentences of this Rule.

"This certificate shall also state the opening date of the exhibition and, where the first disclosure of the invention did not coincide with the opening date of the exhibition, the date of the first disclosure."

Reason: Observation of the period of six months laid down in Article 53 will have to be checked both by the European Patent Office and by the courts in any subsequent revocation proceedings. If the dates are not stated in the certificate in accordance with the above proposal, it will be considerably difficult if not impossible to ascertain them at a later date.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/54/I/II/III
Original: German

CONFERENCE DOCUMENT

Drawn up by: The Swiss delegation
Subject: Proposals for amendments to the draft texts
Gebühr durch das Europäische Patentamt weiterbearbeitet wird oder nicht, gemäß Artikel 52 Absatz 3 zum Stand der Technik gehört. Nach Ansicht Norwegens ist diese Konsequenz nicht wünschenswert und sollte durch eine Änderung des Artikels 157 Absatz 1 ausgeschlossen werden.

16 Hinsichtlich des Entwurfs einer Ausführungsordnung beschränkt sich die norwegische Regierung auf folgende Bemerkungen:


Aus den vorhergehenden Absätzen der Regel 2 ergibt sich, daß Erklärungen in einer anderen Sprache als der Amtssprache in mehreren Fällen in eine andere Amtssprache als die Verfahrenssprache übersetzt werden können. Nach norwegischer Auffassung sollte die Erklärung in diesen Fällen in der Sprache der Übersetzung aufgenommen werden. Anderenfalls muß die Erklärung zweimal übersetzt werden, bevor sie in die Niederschrift aufgenommen werden kann, und noch zweimal, wenn der die Erklärung Abgebende die Niederschrift genehmigt (Regel 77 Absatz 2). Das könnte leicht zu Misverständnissen führen.

18 In Verbindung mit der Regel 23 über die Ausstellungsbescheinigung wird vorgeschlagen, daß der Anmelder auch den Nachweis erbringen muß, daß die betreffende Ausstellung tatsächlich unter den frühesten internationale Ausstellungen fällt.

19 Nach der Regel 67 Absatz 3 Buchstabe g und der Regel 69 Absatz 2 sind die Entscheidungen des Europäischen Patentamts zu begründen. Entscheidungen können jedoch mehrheitlich getroffen werden, und in solchen Fällen müßte dies besonders erwähnt werden. Mitglieder, die eine andere Auffassung vertreten, sollten darüber hinaus Gelegenheit erhalten, ihre Gründe darzulegen.

fee. In the Norwegian opinion, this consequence is unfortunate and should be precluded by an amendment to Art. 157(1).

16 As regards the Draft Implementing Regulations the Norwegian Government will limit itself to the following remarks:

17 According to Rule 2(6) statements made in one of the official languages of the European Patent Office during oral proceedings shall be entered in the minutes in the language employed. However, statements made in any other language shall always be entered in the language of the proceedings.

It follows from the preceding paragraphs of Rule 2 that statements made in other languages than the official ones may in several instances be translated into another official language than the language of the proceedings. In the Norwegian view, the statement should in these cases be entered in the language of the translation. Otherwise the statement has to be translated twice before it can be entered in the minutes, and twice again when the person who submitted the statement is going to approve the minutes (Rule 77(2)). This might easily give cause to misunderstandings.

18 In connection with Rule 23 on certificate of exhibition it is proposed that the applicant also should be obliged to furnish a proof, stating that the exhibition concerned actually falls within the terms of the Convention on International Exhibitions.

19 According to Rules 67(3)(g) and 69(2) decisions of the European Patent Office shall contain reasons. Decisions may, however, be taken by a majority and in such cases this fact ought to be mentioned separately. The dissenting members should moreover have the opportunity of stating their reasons.
STELLUNGNAHME
DER NORWEGISCHEN REGIERUNG

COMMENTS
BY THE NORWEGIAN GOVERNMENT

PRISE DE POSITION
DU GOUVERNEMENT NORVÉGIEN
Art. 53(1)(b) anerkannt sind, führen, die der Allgemeinheit zugänglich sein soll.”

55 Eine derartige Bestimmung würde der Bestimmung der Regel 28(2) entsprechen.

Einreichen der europäischen Patentanmeldung

56 Es wird vorgeschlagen, in der Regel 24(4), Zeilen 2–4, „einer Zentralbehörde für den gewerblichen Rechtsschutz eines Vertragsstaats“ zu ersetzen durch „einer in Art. 73(1)(b) genannten Behörde“.

Korrektur der Prioritätsbeanspruchung

57 Aus Regel 41 und Regel 89 ist nicht ganz klar ersichtlich, ob Irrtümer bei der Angabe des Datums oder Staates der Erstanmeldung korrigierbar sind. Im Hinblick auf die nachfolgenden Punkte ist es schwer einzusehen, warum eine Korrektur nicht statthaft sein sollte, in Anbetracht dessen, daß

a) die Prioritätsbeanspruchung sich auf vergangene Ereignisse gründet, die der Anmelder zum oder nach dem Einreichdatum der europäischen Patentanmeldung nicht abändern kann und die mit Sicherheit leicht feststellbar sind und außerdem stets der Regel 38(3) entsprechen müssen,

b) die Prioritätsbeanspruchung die Erstellung des Recherchenberichtes nicht erleichtert, da sich gemäß der Regel 44(3) die Recherche auch auf Offenbarungen zwischen dem Prioritätsdatum und dem Einreichdatum erstrecken soll,

c) die Allgemeinheit keinerlei Nachteil erleidet, solange Korrekturen des Prioritätsdatums vor der Veröffentlichung durchgeführt werden.

58 Es wird daher vorgeschlagen, am Ende der Regel 41(2) folgendes anzufügen:

„Diese Bestimmung soll den Anmelder nicht daran hindern, die Prioritätsbeanspruchung gemäß Regel 89 innerhalb der in der Regel 38(3) vorgeschriebenen Frist zur Einreichung einer Kopie der vorhergehenden Anmeldung zu korrigieren oder zu ergänzen.”

59 Es sei darauf hingewiesen, daß es gemäß Regel 41(3) schon jetzt möglich ist, das Prioritätsdatum in einem Fall zu korrigieren, und es ist schwerlich einzusehen, warum eine Korrektur in anderen Fällen unzulässiger sein sollte.

Später eingereichte oder fehlende Zeichnungen

60 Bei später eingereichten Zeichnungen hat der Anmelder die Möglichkeit, gemäß Regel 43(1) und 43(2) entweder den Anmeldetag zu verschieben oder auf die Zeichnungen zu verzichten und die Bezugnahmen auf diese in der Anmeldung zu streichen.

Art. 53(1)(b) and shall hold this list available to the general public.”

55 Such a provision would be analogous to that of Rule 28(2).

Filing of the European Patent Application

56 In Rule 24(4), lines 3–4, it is proposed to replace “a central industrial property office of a Contracting State” by “an authority mentioned in Art. 73(1)(b)”.

Correction of Priority Claim

57 It is not entirely clear from Rule 41 and Rule 89 whether errors in the statement of the date or state of first filing are correctible. It is difficult to see why correction should not be permissible, seeing that 

(a) the priority claim is based on past events in which the applicant can make no change at or after the filing date of the European patent application, and which are easy to establish with certainty, and besides always must be established under Rule 38(3),

(b) the priority claim is of no avail for the establishment of the search report seeing that under Rule 44(3) the search should extend to disclosure published between the date of priority and the date of filing,

(c) the general public will not suffer any inconvenience as long as correction of the priority date takes place before publication.

58 It is therefore suggested to add at the end of Rule 41(2):

“This provision shall not preclude the applicant from correcting or supplementing the claim to priority under Rule 89 within the term prescribed in Rule 38(3) for filing the copy of the previous application.”

59 The attention is drawn to the fact that under Rule 41(3) it is already possible to correct the priority date in one situation, and it is difficult to see why correction should be more objectionable in other situations.

Late-filed or Missing Drawings

60 In the case of late filing of the drawings, the applicant has the option, under both Rule 43(1) and 43(2), of either having the application re-dated or abandoning the drawings and the references to them in the application.

Gemeinsame Benennung zu Zwecken des Gemeinschaftspatentabkommens

52 Es ist von Seiten der FICPI schon früher darauf hingewiesen worden, daß eine gewisse Klärung der Benennungsmaßnahmen gemäß Art. 149 wünschenswert wäre. Die FICPI zieht es jedoch vor, ihre weiteren Bemerkungen für die erwarteten endgültigen Dokumente betreffend das Gemeinschaftspatent zurückzubehalten.

Gebrauch anderer Sprachen als der Verfahrenssprache bei mündlichen Verfahren

53 Die durch Regel 2(1) vorgesehene große Beweglichkeit, die das Recht einer Partei beinhaltet, eine andere Sprache als die Verfahrenssprache zu benützen, ohne davon eine Mitteilung zu machen, wenn sie selbst für die Übersetzung in die Verfahrenssprache sorgt, scheint tatsächlich notwendig zu sein. Dies betrifft insbesondere Parteien aus Ländern mit nationalen Sprachen, die nicht englisch, französisch oder deutsch sind, da sie bei besonderen Gegebenheiten, wie z.B. Krankheit des üblichen Vertreters, im letzten Moment einen Stellvertreter bestellen müssen, der vielleicht die gleiche Amts­sprache wie der übliche Vertreter nicht beherrscht oder der vielleicht überhaupt keine der Amtssprachen genügend beherrscht, um zu plädieren. Wenn allerdings die Partei eine Mitteilung gibt, so wäre es vorteilhaft, diese Mitteilung wenigstens einen Monat vorher nicht nur dem Patentamt, sondern auch den anderen Beteiligten zu übermitteln. Es wird daher die folgende Abänderung zu bedenken geben:

In der Regel 2(1), Zeile 5, die Worte „spätestens zwei Wochen“ zu streichen und durch die Worte „und allen anderen Beteiligten spätestens einen Monat“ zu ersetzen.

Ausstellungen, die gemäß Art. 53 anerkannt sind

54 In vielen Ländern stoßen Anmelder oft auf beachtliche Schwierigkeiten, festzustellen, welche Ausstellungen innerhalb eines Übereinkommens als internationale Ausstellungen anerkannt sind. Es wird daher vorgeschlagen, der Regel 23 einen zweiten Absatz anfügen, der etwa wie folgt lauten könnte: „(2) Der Präsident des Europäischen Patentamts soll eine Liste der Ausstellungen, die gemäß

follow that under Art. 110 the Board of Appeal can accept amendments. This is in accordance with the wishes expressed in the FICPI report 7203-08, last paragraph of “Comments on Art. 137b(4)”. This would again mean that the Board of Appeal can admit an alternative contention (Hilfsantrag). If this understanding of Art. 110(1) is correct, no amendment is proposed.

Joint Designation for the Purposes of the Community Patent Convention

52 It has been pointed out earlier by the FICPI that a certain clarification of the designation rules under Art. 149 would be desirable. However, the FICPI prefers to reserve further comment for its notes on the forthcoming final documents for the Community Patent Convention.

Use of Languages other than the Language of the Proceedings in Oral Proceedings

53 The very great flexibility provided for in Rule 2(1) seems in fact to be necessary, including the right of a party to use a language other than the language of the proceedings without giving notice provided that he makes provisions for interpretation into the language of the proceedings. This particularly applies to parties domiciled in countries having national languages other than English, French or German, seeing that in special situations such as illness of the normal representative they may have, in the very last moment, to appoint a substitute who may not master the same official language as the normal representative, or may even not master any of the official languages at all sufficiently for pleading. However, in the situation where a party does give notice, it would be preferable that such notice should be given at least one month in advance and should be communicated not only to the Patent Office but also to any other parties to the case. The following amendment is therefore suggested for consideration:

In Rule 2(1), lines 5–6 cancel “at least two weeks” and substitute “and to any other party to the case at least one month”.

Exhibitions recognised under Art. 53

54 In many countries applicants frequently encounter considerable difficulties in establishing which exhibitions are recognised within the terms of the Convention on International Exhibitions. It is therefore suggested, in Rule 23, to add a second paragraph reading as follows:

“(2) The President of the European Patent Office shall keep a list of exhibitions recognised under
STELLUNGNAHME DER

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

COMMENTS BY

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

PRISE DE POSITION DE LA

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

(1) Deutsche Übersetzung vorgelegt von FICPI
(2) La traduction française a été fournie par la FICPI
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFÉRENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

STELLUNGNAHMEN
zu den vorbereitenden Dokumenten
herausgegeben von der
Regierung der Bundesrepublik Deutschland

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

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

1973
Regel 22
Besondere Angaben bei der Eintragung von Lizenzen

(1) Eine Lizenz an einer europäischen Patentanmeldung wird im europäischen Patentregister als ausschließliche Lizenz bezeichnet, wenn der Anmelder und der Lizenznehmer dies beantragen.

(2) Eine Lizenz an einer europäischen Patentanmeldung wird im europäischen Patentregister als Unterlizenz bezeichnet, wenn sie von einem Lizenznehmer erteilt wird, dessen Lizenz im europäischen Patentregister eingetragen ist.

---------
Vgl. Artikel 71 (Vertragliche Lizenzen)

Rule 22
Special indications for the registration of a licence

(1) A licence in respect of a European patent application shall be recorded in the Register of European Patents as an exclusive licence if the applicant and the licensee so require.

(2) A licence in respect of a European patent application shall be recorded in the Register of European Patents as a sub-licence where it is granted by a licensee whose licence is recorded in the said Register.

---------
Cf. Article 71 (Contractual licensing)

Kapitel IV
Ausstellungsbescheinigung

Regel 23
Ausstellungsbescheinigung

Der Anmelder muß innerhalb von vier Monaten nach Einreichung der europäischen Patentanmeldung die in Artikel 53 Absatz 2 genannte Bescheinigung einreichen, die während der Ausstellung von der Stelle erteilt wird, die für den Schutz des gewerblichen Eigentums auf dieser Ausstellung zuständig ist, und in der bestätigt wird, daß die Erfindung dort tatsächlich ausgestellt worden ist. Der Bescheinigung muß eine Darstellung der Erfindung beigefügt sein, die mit einem Beglaubigungsvermerk der vorstehend genannten Stelle versehen ist.

---------
Vgl. Artikel 53 (Unschädliche Offenbarungen)

Chapter IV
Certification of exhibition

Rule 23
Certificate of exhibition

The applicant must, within four months of the filing of the European patent application, file the certificate referred to in Article 53, paragraph 2, issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition, and stating that the invention was in fact exhibited there. This certificate must be accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.

---------
Cf. Article 53 (Non-prejudicial disclosures)
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

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

PROJET DE RÈGLEMENT D’EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFERENDE 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
Re. Article 1, No. 1 - Patent classification in use by the European Patent Office

10. The Office is to use the Strasbourg international classification. The Sub-Committee decided to draft this provision in a suitably flexible manner, in order that the Office might be able to make use of other classifications should this be necessary. One delegation recalled that the terminology of the international classification would have to be reviewed in the light of the conclusions of the joint "Council of Europe - BIRPI" Working Party.

Re. Article 5 - Persons entitled to apply for a European Patent

11. The Sub-Committee considered it premature to lay down implementing regulations for Article 5 of the First Preliminary Draft, since Working Party I will probably have to discuss this Article again with regard to the PCT text signed in Washington on 19 June 1970.

Re. Article 12, No. 1 - Disclosure of the invention at an international exhibition

12. In adopting this provision, the Sub-Committee took care to make it more favourable for the applicant. The latter will be allowed a period of 4 months from the filing date in which to prove, by means of an official certificate, that he has exhibited the invention. Further, such a certificate would be accompanied by an accurate identification of the invention.

BR/43 e/70 ond/RT/cm
MINUTES

of the meeting of Working Party I sub-Committee on
"Implementing Regulations"
(Luxembourg, 24-26 June 1970)

1. The first working meeting of the sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention (cf. BR/GT I/41/70, page 26, point 50) was held at Luxembourg on 24 to 26 June 1970. In accordance with the decision taken by the sub-Committee at its inaugural meeting held at Luxembourg on 2 April 1970, the Chair was taken by Mr. FRESSIONNET, Deputy Director, French Industrial Property Institute (cf. BR/GT I/40/70). In addition to the national delegations represented in Working Party I, the meeting was attended by the IIB (The Hague) (1).

(1) Annex I gives the provisional agenda for the meeting and Annex II contains the list of those taking part in the meeting.
Invoke Article 12(2)(b).

(3) Pending to observe the provisions of paragraphs 1 and 2, shall lead to loss of the right to

patent by an identical invention of the same invention duly authenticated by the above-mentioned authority.

Pending to observe the provisions of paragraphs 1 and 2, the authority may be consulted to that effect that the invention was in fact exhibited there. The authority may be consulted to that effect that the application has been made at or before the exhibition by the authority responsible for the protection of industrial property at that exhibition.

(2) The applicant must within four months of filing the application submit a certificate issued at the above-mentioned authority.

European Patent Application. (1) The situation described in Article 12(2)(b) of the Convention must be invoked on filing the application.

The situation described in Article 12(2)(b) of the Convention must be invoked on filing the application.

Text drawn up by the Sub-committee.

Discussion of the invention at an international exhibition.

Number 1

Re. Article 12
Preliminary Draft Implementing Regulations

Preliminary Draft Implementing Regulations

Outcomes of the work of the "Implementation Regulations" sub-committee

Secretary

Inter-Governmental Conference

BR/42/70

Progress: 4 July 1970

BR/42/70

For the Grant of Patents
For the Setting Up of a European System
2069. The Chairman pointed out that under the Convention on international exhibitions of 22 November 1928, the International Exhibition Bureau had to notify recognised exhibitions to the World Intellectual Property Organization in Geneva (WIPO). He felt that the proposed provision was not required, since the President of the European Patent Office could, on his own initiative, request WIPO to forward these notifications, for publication in the Official Journal of the European Patent Office.

2070. The Swiss delegation thus felt that under these circumstances, it could be left to the President of the European Patent Office to clear up this matter, and withdrew its proposal.

**Rule 24 — General provisions**

2071. The delegation of the Federal Republic of Germany proposed supplementing paragraph 2 by laying down that at least the nature and number of the documents submitted should also be recorded in the receipt (M/47/I/II/III, point 24).

2072. The Main Committee adopted this proposal, which was supported by the Netherlands delegation.

2073. With regard to a proposal from the French delegation to insert "or other competent authority of that State" in paragraph 4 (M/26, point 27), the Chairman drew attention to the fact that even where, pursuant to Article 75 (77), paragraph 1, the patent application is filed with any other competent authority, it must in any case be forwarded by the central authority of the State in question to the European Patent Office. He thus felt that the wording of paragraph 4 was in fact correct.

2074. The French delegation did not contradict this view.

2075. The Main Committee adopted this proposal.

**Rule 25 — Provisions for European divisional applications**

2076. The French delegation proposed that, instead of referring to the date of receipt by the European Patent Office of the earlier application, the first clause of paragraph 1(a) should refer to the date upon which the applicant was informed that the Office had received the application (M/26, point 28).

2077. The Chairman pointed out that this would place the applicant in a worse position than would the original proposal, which provided that the divisional application could be filed at almost any time after the despatch of the earlier application.

2078. The United Kingdom delegation agreed with the Chairman's comments, particularly for cases where the earlier application was filed directly with the European Patent Office.

2079. The French delegation explained that its proposal was intended to cover only cases where the earlier application was filed not directly with the European Patent Office but with the central industrial property office of a Contracting State.

The delegation would submit an appropriate drafting proposal.

2080. At a later meeting of the Main Committee the French delegation withdrew the proposal it had submitted in the meantime (M/110/I).

2081. The Main Committee referred to the Drafting Committee a drafting proposal by the French delegation concerning paragraph 1(a)(M/26, points 29 and 30).

2082. The CEIF delegation, referring to Article 49, paragraph 2, of the Convention of the Union of Paris (Lisbon revision), suggested that divisional applications on the initiative of the applicant should also be allowed after the first communication from the Examining Division (see M/22, point 2).

2083. This suggestion was not taken up by any Government delegation.

2084. The IAIP delegation raised the question of whether a divisional application could also be filed in appeal proceedings; this seemed to be precluded by paragraph 1(a).

2085. The Chairman referred to Rule 67 (66), paragraph 1, which laid down that the provisions relating to proceedings before the department which had made the decision from which the appeal was brought were to be applicable to appeal proceedings mutatis mutandis. He felt that in the course of appeal proceedings an applicant could still divide an application on which the Examining Division had not yet taken a final decision, provided the Board of Appeal considered this to be justified.

2086. The IAIP delegation suggested replacing the word "justified" at the end of paragraph 1(a) by a more flexible word.

2087. This suggestion was not taken up by any Government delegation.

**Rule 26 — Request for grant**

2088. The Main Committee referred to the Drafting Committee a drafting proposal by the Member States of the European Communities concerning paragraph 2(c) (see M/14, point 8).

2089. The Main Committee referred to the Drafting Committee a drafting proposal by the Netherlands delegation concerning paragraph 2(g) (see M/32, point 29).

2090. With reference to a proposal by the delegation of the Federal Republic of Germany (M/118/I), the Main Committee discussed a drafting amendment to Rule 26 consequent upon its decision on the question of the designation of the inventor (see point 2038).

2091. The delegation of the Federal Republic of Germany said that the only amendment would be that the designation of the inventor in the request for grant was compulsory if the applicant was also the inventor. The present paragraph 3(b) should accordingly be deleted.

2092. The Chairman pointed out that the French version of paragraph 2(k) in M/118/I was incorrect and should perhaps be worded as follows:

"la désignation de l'inventeur, si le demandeur est l'inventeur*.

2093. With reference to paragraph 2(f) and the newly proposed (k), the FICPI delegation asked whether, when the applicant and inventor were one and the same and designation of the inventor in the request for grant was thus compulsory, the request could also be signed by the representative of the applicant. For foreign applications in particular this possibility ought really to exist in practice*.

2094. The Chairman said there was no doubt that the representative had just as much right to sign the request as the applicant.

2095. The delegation of the International Chamber of Commerce suggested that where the applicant was also the inventor a statement to that effect should be required of the applicant.

2096. The Main Committee referred this suggestion to the Drafting Committee for examination.

2097. Referring to Rule 17, paragraph 2 (see point 2043), the Chairman raised the question of whether the designation of the inventor should also be contained in a separate document — rather than in the request for grant — in the case where the

* See also point 326.