Article 35 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.

Art35eTPEPC1973
### Art. 35

#### MPÜ

**Abstimmungen**

<table>
<thead>
<tr>
<th>Entwurf, der dem nebeneinstehenden 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/33/70</td>
<td>a</td>
<td>BR/34/70</td>
<td>Rdn. 10-17</td>
</tr>
<tr>
<td>BR/33/70</td>
<td>m</td>
<td>BR/34/70</td>
<td>Rdn. 29-32</td>
</tr>
<tr>
<td>BR/33/70</td>
<td>a</td>
<td>BR/53/70</td>
<td>Rdn. 5-9</td>
</tr>
<tr>
<td>BR/33/70</td>
<td>b</td>
<td>BR/53/70</td>
<td>Rdn. 10-15</td>
</tr>
<tr>
<td>BR/33/70</td>
<td>35a</td>
<td>BR/87/71</td>
<td>Rdn. 81</td>
</tr>
<tr>
<td>BR/88/71</td>
<td>35a</td>
<td>BR/125/71</td>
<td>Rdn. 96-103</td>
</tr>
<tr>
<td>BR/88/71</td>
<td>35b</td>
<td>BR/125/71</td>
<td>Rdn. 104</td>
</tr>
<tr>
<td>BR/88/71</td>
<td>35m</td>
<td>BR/125/71</td>
<td>Rdn. 117-120</td>
</tr>
<tr>
<td>VE 1971 (Ue)</td>
<td>35n</td>
<td>BR/168/72</td>
<td>Rdn. 65</td>
</tr>
<tr>
<td>BR/184/72</td>
<td>33</td>
<td>BR/209/72</td>
<td>Rdn. 7</td>
</tr>
</tbody>
</table>

#### Dokumente der MDK

<table>
<thead>
<tr>
<th>E 1972</th>
<th>33</th>
<th>M/1o</th>
<th>S. 42</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>33</td>
<td>M/11</td>
<td>S. 54</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>M/47/II/III</td>
<td>S. 4</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>M/108/II/R 4</td>
<td>S. 7</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>M/130/II/R 6</td>
<td>S. 15</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>M/146/R 2</td>
<td>Art. 35</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>M/PR/II</td>
<td>S. 125</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 35

Voting rules

(1) The Administrative Council shall take its decisions other than those referred to in paragraph 2 by a simple majority of the Contracting States represented and voting.

(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 87, Article 95, Article 134, Article 151, paragraph 3, Article 154, paragraph 2, Article 155, paragraph 2, Article 156, Article 157, paragraphs 2 to 4, Article 160, paragraph 1, second sentence, Article 162, Article 163, Article 166, Article 167 and Article 172.

(3) Abstentions shall not be considered as votes.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 2
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 27 to 54
Article 33
Voting rules

(1) Unchanged from 1972 published text

(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 31, Article 37, paragraph 1, Article 38, paragraphs 2 and 5, Article 44, Article 85, Article 94, Article 134, Article 151, paragraph 2, Article 154, paragraph 2, Article 155, Article 156, paragraphs 2 to 4, Article 159, paragraph 1, second sentence, Article 161, Article 162, Article 165, Article 166 and Article 171.

(3) Unchanged from 1972 published text
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
16a
18a
19
21
22
28
31
33
166
176

Implementing Regulations:

Protocol on Privileges and Immunities
of the European Patent Organisation

Protocol on the Centralisation of the
European Patent System and on its
Introduction

Rules
9
12
Article 33
Voting rules

(1) Unchanged from 1972 published text

(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 31, Article 37, paragraph 1, Article 38, paragraphs 2 and 5, Article 44, Article 85, Article 94, Article 134, Article 151, paragraph 3, Article 154, paragraph 2, Article 155, Article 156, paragraphs 2 to 4, Article 159, paragraph 1, second sentence, Article 161, Article 162, Article 165 and Article 171.

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

- 1973 -

Munich, 19 September 1973

M/108/II/R 4

Original: English/French/German

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

Articles of the Convention:

<table>
<thead>
<tr>
<th>Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
</tr>
<tr>
<td>17</td>
</tr>
<tr>
<td>23</td>
</tr>
<tr>
<td>25</td>
</tr>
<tr>
<td>28</td>
</tr>
<tr>
<td>29</td>
</tr>
<tr>
<td>33</td>
</tr>
<tr>
<td>143</td>
</tr>
<tr>
<td>145</td>
</tr>
<tr>
<td>159</td>
</tr>
<tr>
<td>163</td>
</tr>
<tr>
<td>164</td>
</tr>
<tr>
<td>165</td>
</tr>
<tr>
<td>167</td>
</tr>
<tr>
<td>173</td>
</tr>
<tr>
<td>176</td>
</tr>
</tbody>
</table>

Protocol on Privileges and Immunities of the European Patent Organisation:

<table>
<thead>
<tr>
<th>Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
</tr>
</tbody>
</table>
European Patent Office without invoking any reason for objection known to him. If a reason for objection is not invoked until after the party has made statements before a Board of Appeal or the Enlarged Board of Appeal, the party shall be required to provide evidence that the reason for objection did not arise or become known to him until after he had made the statements."

9. Article 22a (new)

see point 6

10. Article 23

"... The members of the Examining Divisions shall be responsible for the issue of such opinions."

11. Article 33

"... Article 156, paragraphs 2 to 4, Article 159, paragraph 1, second sentence, Article 161, ..."

12. Article 38

"(3) ..... (b) ... patent applications filed by persons having their seat or residence in each Contracting State in the other Contracting States."

13. Article 68

see point 33 (Rule 87)
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/47/I/II/III
Original: German

CONFERENCE DOCUMENT

Drawn up by: The delegation of the Federal Republic of Germany
Subject: Proposals for amendments to the draft texts
in Artikel 13 genannten Streitsachen nicht gerecht-
ferigt sei, weil selbst nach dem endgültigen Aufbau
des Europäischen Patentamts nicht mit mehr als ein
oder zwei Streitfällen im Jahr zu rechnen sei.

Nach den Erfahrungen, die in anderen größeren
internationalen Organisationen, z.B. bei der Kom-
mision der Europäischen Gemeinschaften gemacht
worden sind, muß bezweifelt werden, ob diese
Annahme zutreffend ist. Nach deutscher Auffassung
ist mit einer wesentlich höheren Zahl von Streit-
fällen zu rechnen, so daß die Einsetzung eines
eigenen Spruchkörpers am Sitz des Europäischen
Patentamts gerechtfertigt wäre. Ein solcher Spruch-
körper bei der Zentrale des Europäischen Patent-
amts würde angesichts der räumlichen Entfernung
zum Sitz des Verwaltungsgerichts der Interna-
tionalen Arbeitsorganisation in Genf dem Anlie-
gen der Mehrheit der Bediensteten Rechnung tragen,
personenrechtliche Streitigkeiten unter möglichst
geringem Kosten- und Zeitaufwand am Sitz der
Europäischen Patentorganisation entscheiden zu
lassen.

Es wird daher vorgeschlagen, anstelle des Verwal-
tungsgerichts der Internationalen Arbeitsorgani-
sation einen Beschwerdeausschuß aus rechtskundi-
gen Mitgliedern des Europäischen Patentamts selbst
einzusetzen, die richterliche Unabhängigkeit ge-
nießen.

Artikel 22

3 Absatz 3 schränkt die Möglichkeit der Beteiligten,
ein Mitglied der Beschwerdekammer oder der Großen
Beschwerdekammer abzuleiten, zeitlich
nicht ein. Da durch verspätete Ablehnungsanträge
das Verfahren ungebührlich verzögert werden kann,
wird angeregt, das Ablehnungsgesetz einzuschränken:
Eine Ablehnung sollte dann nicht mehr möglich
sein, wenn in Kenntnis des Ablehnungsgrundes
Anträge gestellt oder Stellungnahmen abgegeben
worden sind.

Artikel 33

4 Nach Artikel 159 Abs. 1 Satz 2 kann der Verwal-
tungsrat für die Einstellung des Personals bis zum
Erlass des Personalstatuts und der Beschäftigungs-
bedingungen allgemeine Grundsätze erlassen. Da
diesen Grundsätzen präjudizielle Bedeutung zukom-
men könnte, wird vorgeschlagen, auch für die nach
Artikel 159 Abs. 1 Satz 2 vom Verwaltungsrat zu
fassenden Beschlüsse die nach Artikel 33 Abs. 2
erforderliche qualifizierte Mehrheit vorzusehen.

justified since it is unlikely that the European
Patent Office even at full strength would have more
than one or two cases a year.

On the basis of the experience of other large
international organisations, e.g. the Commission
of the European Communities, it is doubtful whether
this assumption is correct. In the opinion of the
German Government a much higher number of
disputes must be reckoned with, which means that
the setting up of a tribunal at the European Patent
Office would be justified. In view of its distance
from the Administrative Tribunal of the Inter-
national Labour Organisation in Geneva the setting
up of such a tribunal at the European Patent Office
would correspond with the desire of the majority of
employees for disputes to be settled with as little
expenditure of time and money as possible at the
European Patent Organisation.

It is therefore proposed that, instead of resorting to
the Administrative Tribunal of the International
Labour Organisation, an appeals committee should
be set up composed of members of the legal
profession at the European Patent Office itself and
having judicial independence.

Article 22

3 Paragraph 3 does not fix a time limit within which a
party must make objections to any member of a
Board of Appeal or of the Enlarged Board of
Appeal. Since late objections may delay the pro-
cedings unduly, it is proposed that the time of
objection should be limited; an objection should no
longer be possible after applications have been filed
or statements made in full knowledge of the
grounds for objection.

Article 33

4 Pursuant to Article 159, paragraph 1, 2nd sentence,
the Administrative Council may lay down general
principles in respect of recruitment until such time
as the Service Regulations and the conditions of
employment have been drawn up. Since such
principles may set a precedent for subsequent rules,
it is proposed that the qualified majority required
under Article 33, paragraph 2, should also be laid
down for decisions taken by the Administrative
Council pursuant to Article 159, paragraph 1, 2nd
sentence.
STELLUNGNAHME
DER REGIERUNG DER BUNDESREPUBLIK DEUTSCHLAND

COMMENTS
BY THE GOVERNMENT OF THE FEDERAL
REPUBLIC OF GERMANY

PRISE DE POSITION
DU GOUVERNEMENT DE LA
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
1 Ihrer Majestät Regierung stimmt den Entwürfen des Übereinkommens, der Protokolle sowie der sonstigen Texte generell zu und möchte vorerst vorbehaltlich des Rechts, weitere als wünschenswert erscheinende Änderungen anzulegen, folgende Vorschläge unterbreiten.

ALLGEMEINES

2 Wir würden es für zweckmäßig halten, daß die unter Nummer 49 des Berichts über die Konferenz vom Juni 1972 enthaltenen Feststellungen auch in den Bericht über die Diplomatische Konferenz aufgenommen werden.

ÜBEREINKOMMEN

Artikel 21

3 Obgleich wir es begrüßen, daß die Mitglieder der Beschwerdekammern und der Großen Beschwerdekammer Personen mit großer Verantwortung sein werden, geht es unseres Erachtens zu weit vorzuschieben, daß sie unter keinen Umständen während ihrer fünfjährigen Amtszeit ihres Amts enthoben werden können.

Unseres Erachtens sollten daher am Schluß des Absatzes 1 die Worte „es sei denn, daß der Verwaltungsrat aufgrund des Artikels 11 Absatz 4 einen entsprechenden Beschuß faßt“ angefügt und in Artikel 33 Absatz 2 die Worte „Artikel 11 Absatz 4“ eingefügt werden.

Artikel 23

4 Wir sind der Ansicht, daß nationale Gerichte auf technische Gutachten des Europäischen Patentamts großen Wert legen könnten. Wir nehmen an, daß der Präsident, falls eine Partei in einem Gerichtsverfahren um Gelegenheit zu einem Kreuzverhör („to cross-examine“) nachsucht, zu diesem Zweck ein Mitglied der Prüfungsabteilung abrufen würde, das für die Erstattung des Gutachtens zuständig war.

Artikel 26

5 Wir treten dafür ein, daß der zweite Satz des Absatzes 3 gestrichen wird. Dieser Satz könnte zum zwangsläufigen Ausschluß eines bewährten Mitglieds führen.

Artikel 50

6 Wir möchten, daß der Begriff „therapeutische Behandlung“ („treatment by therapy“) so verstanden wird, daß er die Behandlung von Krankheiten betrifft und sich bei Tieren nicht auf Behandlungen bezieht, die beispielsweise darauf abzielen, die Menge oder die Qualität des Enderzeugnisses zu steigern.

1 Her Majesty's Government generally approves the drafts of the Convention, Protocols and Regulations and, while reserving the right to suggest such further amendments as appear desirable, wishes for the time being to present the following proposals.

GENERAL

2 We would prefer the understandings recorded under paragraph 49 of the minutes of the Conference in June 1972 to be mentioned also in the records of the Diplomatic Conference.

CONVENTION

Article 21

3 Although we appreciate that the members of the Boards of Appeal and the Enlarged Board of Appeal will be responsible people, we think it is going too far to provide that in no circumstances may they be removed from office during their five-year term.

We think therefore that the words "except by decision of the Administrative Council under Article 11, paragraph 4," should be added at the end of paragraph 1 and that "Article 11, paragraph 4" should be inserted in Article 33, paragraph 2.

Article 23

4 It seems to us that national courts could attach great weight to technical opinions issued by the European Patent Office. We assume that if a party to the court proceedings requests the opportunity to cross-examine, the President would make available for this purpose a member of the Examining Division responsible for the issue of the opinion.

Article 26

5 We favour deletion of the second sentence of paragraph 3. This sentence could result in the automatic exclusion of a member of proven worth.

Article 50

6 We should like it to be understood that "therapy" is concerned with the treatment of illness or disease and does not extend, in the case of animals, to treatments effected with a view e.g. to increasing the quantity or quality of the ultimate product.
STELLUNGNAHME

DER REGIERUNG DES VEREINIGTEN KÖNIGREICHS

COMMENTS

BY THE UNITED KINGDOM GOVERNMENT

PRISE DE POSITION

DU GOUVERNEMENT DU ROYAUME-UNI
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
hervorgegeben 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
a) Artikel 17 Absatz 2 dahingehend, daß die Prüfungsabteilungen aus einem einzigen technisch vorgebildeten Prüfer bestehen, wenn die Erfahrungen dies rechtfer- tigen;
b) die Dauer der in diesem Übereinkommen festgesetz- ten Fristen; dies gilt für die in Artikel 93 genannte Frist nur unter den in Artikel 94 festgelegten Voraussetzun- gen;
c) die Ausführungsordnung.
(2) Der Verwaltungsrat ist befugt, in Übereinstimmung mit diesem Übereinkommen folgende Vorschriften zu erlassen und zu ändern:
a) die Finanzordnung;
b) das Statut der Beamten sowie die Beschäftigungsbe- dingungen für die sonstigen Bediensteten des Euro- päischen Patentamts, ihre Besoldung sowie die Art der zusätzlichen Vergütung und die Verfahrensrichtlinien für deren Gewährung;
c) die Versorgung und Erhöhungen der Versor- gungsbezüge entsprechend einer Erhöhung der Dienst- bezüge;
d) die Gehälterordnung;
e) seine Geschäftsordnung.
(3) Der Verwaltungsrat ist befugt, den Präsidenten des Europäischen Patentamts zu ermächtigen, Verhandlungen über den Abschluß von Abkommen mit Staaten oder internationalen Organisationen zu führen und diese Abkommen mit Genehmigung des Verwaltungsrats für die Europäische Patentorganisation zu schließen.

Artikel 32
Stimmrecht

(1) Stimmberichtigt im Verwaltungsrat sind nur die Vertragsstaaten.
(2) Jeder Vertragsstaat verfügt über eine Stimme, so- weit nicht Artikel 34 anzuwenden ist.

Artikel 33
Abstimmungen

(1) Der Verwaltungsrat faßt seine Beschlüsse vorbehalt- lich Absatz 2 mit der einfachen Mehrheit der vertretenen Vertragsstaaten, die eine Stimme abgeben.
(2) Dreiviertelmehrheit der vertretenen Vertragsstaaten, die eine Stimme abgeben, ist für die Beschlüsse erfor- derlich, zu denen der Verwaltungsrat nach den Artikeln 7, 11 Absatz 1, 31, 37 Absatz 1, 38 Absätze 2 und 5, 44, 85, 94, 134, 151 Absatz 3, 154 Absatz 2, 155, 156 Absätze 2 bis 4, 161, 162, 165 und 171 befugt ist.
(3) Stimmenthaltung gilt nicht als Stimmabgabe.

(a) Artikel 17, paragraph 2, so as to provide, in the light of experience, that an Examining Division shall consist of a single technical examiner;
(b) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 93 only in the conditions laid down in Article 94;
(c) the Implementing Regulations.
(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions:
(a) the Financial Regulations;
(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature, and rules for the grant, of any supplementary benefits;
(c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;
(d) the Rules relating to Fees;
(e) its Rules of Procedure.
(3) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements on behalf of the European Patent Organisation with States and with international organisations.

Artikel 32
Voting rights

(1) The right to vote in the Administrative Council shall be restricted to the Contracting States.
(2) Each Contracting State shall have one vote, subject to the application of the provisions of Article 34.

Artikel 33
Voting rules

(1) The Administrative Council shall take its decisions other than those referred to in paragraph 2 by a simple majority of the Contracting States represented and voting.
(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 31, Article 37, paragraph 1, Article 38, paragraphs 2 and 5, Article 44, Article 85, Article 94, Article 134, Article 151, paragraph 3, Article 154, paragraph 2, Article 155, Article 156, paragraphs 2 to 4, Article 161, Article 162, Article 165 and Article 171.
(3) Abstentions shall not be considered as votes.
MÜNCHNER DIPLOMATICHE 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
(i) that only the most important provisions should remain in the Convention,

(ii) that in principle the provisions providing for sanctions should remain in the Convention, and lastly

(iii) that all the provisions which the Administrative Council would be empowered to amend should be incorporated in the Implementing Regulations.

I. EXAMINATION OF THE DRAFT CONVENTION (BR/184/72)

(a) Articles which had been re-drafted

5. Mr VAN BENTHEM drew the attention of the Committee to a number of provisions which had been entirely redrafted in comparison with the Second Preliminary Draft Convention as it had stood after the 5th meeting of the Conference.

6. It was noted that it would be preferable at a later date to indicate at each Article of the Convention any rules in the Implementing Regulations relating to the provision in question. This would enable an overall view to be obtained of all the rules envisaged in connection with any one provision of the Convention.

In addition, observations were made about the following provisions:

Articles 32 and 33

7. Paragraph 3 of Article 32 has become paragraph 3 of Article 33, since it is a voting rule.
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 HAERMEL, 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 icc/xii/prk

.../...
Article 33 (35a)

Voting rules

(1) The Administrative Council shall take its decisions other than those referred to in paragraph 2 by a simple majority of the Contracting States represented and voting.

(2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 31, Article 37, paragraph 1, Article 38, paragraphs 2 and 3, Article 44, Article 85, Article 94, Article 149, paragraph 3, Article 152, paragraph 2, Article 153, Article 154, paragraphs 2 to 4, Article 159, Article 162 and Article 168.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
8 to 24 March and 10 to 20 April 1972)
oral proceedings using an official language of one of the Contracting States other than one of the three working languages of the European Patent Office. The Conference noted that **Article 34, No. 2** already made provision for a reduction in fees on behalf of parties in the situation in question.

**Article 35a** (Adoption and amendment of general rules)

65. The Conference endorsed the principle proposed by Working Party I, making provision for the Administrative Council to be enabled to amend Article 55, paragraph 2, in such a way that an Examining Division might be composed of a single technical examiner (**paragraph 1(a)**). The Conference also noted that this option seemed to have obtained acceptance among most of the interested circles.

The Conference nevertheless thought it necessary to lay down that such a decision could only be taken by a qualified majority of three-quarters of the Administrative Council. **Article 35n** was duly amended to that effect (**BR/160/72**).

As regards the request made by certain organisations (cf. **BR/169/72**, point 43) that, when applying paragraph 1(a), the option should not be ruled out of retaining - for certain areas of technology - an Examining Division made up of three examiners, it was noted that this provision gave the Administrative Council the power to act according to the conditions obtaining.
MINUTES

of the

5th Meeting of the Inter-Governmental Conference
for the Setting up of a European System
for the Grant of Patents

Parts 1 and 3

(Luxembourg, 24-25 January and 2-4 February 1972)
Article 35n
Voix requises dans les votes

(1) Requiert la majorité des trois-quarts des voix des États contractants représentés et votants :

a) les décisions visées à l'article 35a, paragraphe 1, lettres b) et c), et paragraphes 2 et 3 ;

b) l'adoption du budget de l'Office européen des brevets et, éventuellement, des budgets modificatifs ou additionnels, ainsi que les décisions visées aux articles 43, paragraphe 1 et 44, paragraphe 2 ;

c) la nomination du Président de l'Office européen des brevets ;

d) les décisions visées à l'article 35c ;

e) l'adoption et la modification du règlement intérieur du Conseil d'administration.

(2) Les autres décisions du Conseil d'administration requièrent la majorité simple des voix des États contractants représentés et votants.

(3) L'abstention n'est pas considérée comme un vote.

Article 35o
Pondération des voix

(1) Pour l'adoption et la modification du règlement relatif aux taxes ainsi que, si la charge financière des États contractants s'en trouve accrue, pour l'adoption du budget de l'Office européen des brevets et, éventuellement, des budgets modificatifs ou additionnels, tout État contractant peut exiger, après un premier scrutin dans lequel chaque État contractant dispose d'une voix et quel que soit le résultat de ce scrutin, qu'il soit procédé immédiatement à un second scrutin dans lequel les voix sont pondérées conformément aux dispositions du paragraphe 2 du présent article. La décision résulte de ce second scrutin.

(2) Le nombre de voix dont chaque État contractant dispose dans le nouveau scrutin se calcule comme suit :

a) le nombre correspondant au pourcentage qui résulte pour chaque État contractant de la clé de répartition des contributions financières exceptionnelles prévue à l'article 44, paragraphe 3, est multiplié par le nombre d'États contractants et divisé par cinq ;

b) le nombre de voix ainsi calculé est arrondi au nombre entier supérieur ;

c) à ce nombre de voix s'ajoutent cinq voix supplémentaires ;

d) toutefois, aucun État contractant ne peut disposer de plus de trente voix.

Bemerkung zu Artikel 35o:
Dieser Artikel, insbesondere Absatz 2 Buchstabe d, wird unter Berücksichtigung des noch festzulegenden Aufbringungsschlüssels erneut geprüft werden (siehe Artikel 44).

Note to Article 35o
This Article, and in particular paragraph 2(d) will be re-examined in the light of the scale of contributions adopted (cf. Article 44).

Remarque concernant l'article 35o :
Cet article, et notamment le paragraphe 2, lettre d), sera réexaminé compte tenu de la clé de répartition qui sera adoptée (cf. article 44).
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

sowie

ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

und

ERSTER VORENTWURF 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 —
As a further consequence of the elimination of the unanimity requirement, the Conference deleted paragraph 2. Those delegations that had advocated the retention of this provision on constitutional grounds were assured that in no event would decisions of this nature which would be likely to infringe national laws be contemplated by the Administrative Council.

The Conference noted that in practice the 3/4 majority provided for in paragraph 3 and the 2/3 majority provided for in paragraph 4 would give much the same number. For reasons of simplicity it therefore decided to provide for a 3/4 majority for all the decisions referred to in these two paragraphs. The Conference also added to this list the decisions provided for in Article 42 b, paragraph 1, and Article 42 c, paragraph 2. All decisions not mentioned, including the decision to set up the Board, merely require a simple majority, as provided for in paragraph 5.

The Conference finally discussed whether the 3/4 majority and the simple majority should be calculated from the total number of Contracting States or from the number of Contracting States represented and voting in the Administrative Council. It decided in favour of the second solution and specified that abstentions should not be counted as votes.

120. Article 35 n (Weighting of votes)

Several delegations opposed the principle of weighting of votes. They pointed out that other international conventions for the protection of industrial property
In connection with this Article it was examined whether the right of the Administrative Council to set up committees should be expressly laid down in the Convention. As the Conference was of the opinion that such committees should have just as little power of decision as that vested in the Board, it considered it sufficient to deal with the matter in the Rules of Procedure of the Administrative Council.

The Conference deferred examination of the question of whether different rules should be applicable to the setting up of a finance committee.

**Article 35 m (Voting Rules)**

The German, Netherlands and United Kingdom delegations proposed providing for a majority of only three-quarters in all the cases which, under paragraph 1, required unanimity. The difficulty of arriving at a unanimous decision would in many cases necessarily lead to undesirable delays in the entry into force of decisions. It was also hardly advisable to allow, in Article 162, that the Convention itself could be revised without the agreement of all the Contracting States when decisions of far less import taken by the Administrative Council required unanimity. The Conference adopted this proposal.

As a result of the unanimity requirement being eliminated, the voting rules laid down in paragraph 1 B, C and D were also deleted.

.../...
MINUTES

of the

4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents

(Luxembourg, 20 to 28 April 1971)
Article 35m continued:

(4) The following shall require a two-third majority of the votes of the Contracting States:

(a) the adoption and amendment of the other rules and regulations referred to in Article 35a, paragraph 1 B;
(b) the decisions under Article 35a, 1 C;
(c) the adoption of the budget of the European Patent Office and of any amending or supplementary budgets;
(d) the adoption and amendment of the Rules of Procedure of the Administrative Council;
(e) the appointment of the President of the European Patent Office.

(5) All other decisions of the Council shall require a simple majority of the votes of the Contracting States.
Article 35m
Voting rules

(1) A. The following shall require the unanimous vote of the Contracting States:

(a) amendment of the Implementing Regulations to this Convention referred to in Article 35a, paragraph 1 A;
(b) the decisions referred to in Article 35a, paragraph 1 E;
(c) the decisions referred to in Article 35a, paragraph 3.

B. Any Contracting State which is not represented at a meeting of the Administrative Council may vote in writing.

C. If, within two months following the date of a communication addressed to it to this end by the President of the Administrative Council, any Contracting State not represented at a Council meeting has not stated its position, it shall be deemed not to be opposed to the adoption of the decision in question. In such an event, and subject to the provisions of paragraph 2, the decision in question shall take effect four months after the date of the above-mentioned communication from the President of the Council.

D. Abstentions shall not prejudice the adoption of the decisions referred to in the present paragraph.

(2) If one or more Contracting States declare that the entry into force of a decision under paragraph 1 requires, by virtue of their national constitution, the execution of certain formalities, such decision shall only take effect after the last of the Contracting States having made a statement to this effect has notified the Administrative Council that the required formalities have been completed.

(3) The following shall require a majority of three-quarters of the votes of the States represented in the Administrative Council:

(a) a decision to convene a Conference for the purpose of reviewing the Convention, as referred to in Article 162, paragraph 2, and
(b) a decision on the accession of a State, as referred to in Article 165, paragraph 2.

BR/38 3/71 cc
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
Thus the Conference took into account the fact that a collegial body such as the Administrative Council which, moreover only meets at certain intervals, might hardly be in a position to conclude such agreements itself.

103. The Conference also added further powers for the Administrative Council to those contained in paragraphs 1, 2 and 3, as Working Party II had not been able to consider them when drafting Article 35a. For purposes of simplification, the Conference divided the now completed Article 35a into three separate Articles (35ac, 35ab and 35cc, BR/118/71, pages 3 to 6).

Article 35b (Preparatory duties of the Administrative Council)

104. The Conference deleted this Article. The power to prepare revision conferences, together with the power to convene such conferences, is already covered in the previous Article. The power to prepare such adaptations to the Convention as may be rendered necessary by the accession of third countries did not, in the opinion of the Conference, need to be laid down expressly. Should the necessity for such adaptations arise a revision conference would have to be convened, as in the case of other amendments.

Article 35c (Representation of Contracting States)

105. The Conference decided that only the representatives of the Contracting States could be members of the Administrative Council, and worded paragraph 1 accordingly. The representatives of the inter-governmental organisations
MINUTES

of the

4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 20 to 28 April 1971)
Article 35b
Preparatory duties of the Administrative Council

The Administrative Council shall be empowered:

(a) to prepare Conferences for the revision of this Convention;

(b) to prepare such adaptations to this Convention as may be rendered necessary by the accession of third countries.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
Thus the Conference took into account the fact that a collegial body such as the Administrative Council which, moreover only meets at certain intervals, might hardly be in a position to conclude such agreements itself.

103. The Conference also added further powers for the Administrative Council to those contained in paragraphs 1, 2 and 3, as Working Party II had not been able to consider them when drafting Article 35a. For purposes of simplification, the Conference divided the now completed Article 35a into three separate Articles (35aa; 35ab; and 35cc; BR/116/71; pages 3 to 6).

**Article 35b** (Preparatory duties of the Administrative Council)

104. The Conference deleted this Article. The power to prepare revision conferences, together with the power to convene such conferences, is already covered in the previous Article. The power to prepare such adaptations to the Convention as may be rendered necessary by the accession of third countries did not, in the opinion of the Conference, need to be laid down expressly. Should the necessity for such adaptations arise a revision conference would have to be convened, as in the case of other amendments.

**Article 35c** (Representation of Contracting States)

105. The Conference decided that only the representatives of the Contracting States could be members of the Administrative Council, and worded paragraph 1 accordingly. The representatives of the inter-governmental organisations
Council for not acting without its approval in certain cases (see point 97 above). The Conference accordingly deleted sub-paragraph (f).

101. The Austrian delegation proposed that a new sub-paragraph (g) in paragraph 2 should lay down that it is the responsibility of the Administrative Council to instruct the President of the European Patent Office, at the request of a Contracting State, to make a report. The Conference did not agree to this request, because the Administrative Council's power to instruct the President to make a report is already implicit in its general supervisory rights. The Conference did not however see the expediency of obliging the Administrative Council to comply with the request of a single Contracting State.

102. In connection with paragraph 3 B the Conference noted that the necessity might arise for the European Patent Office to conclude agreements other than those listed in this provision. It therefore replaced this list with a provision drawn up in general terms. Acting on a request made by the Netherlands delegation and endorsed by the Austrian delegation, the Conference also laid down the respective responsibilities of the Administrative Council and the President of the European Patent Office for the conclusion of agreements with States or international organisations, making the President responsible for the actual negotiations and the conclusion of the agreements, although he must obtain the approval of the Administrative Council before opening the negotiations and concluding the agreements.

BR/125 e/71 ley/KM/prk.../...
President and the Administrative Council. This does not mean that dealings undertaken by the President without the required approval are to be invalidated because approval was not obtained, but that the President is to be responsible to the Administrative Council for them (cf. point 100).

98. The Conference did not endorse the United Kingdom delegation's proposal that in paragraph 1.E the Administrative Council should be empowered to amend the time-limit laid down in Article 88, paragraph 2. It was the Conference's opinion that this time limit constituted such an essential feature of the deferred examination system that, except in the case referred to in Article 159, amendment should only be possible by means of a revision of the Convention.

99. In order to make a clear distinction between the duties of the Administrative Council (supervision of the activities of the European Patent Office) and those of the President (direction of the European Patent Office), the Conference deleted sub-paragraph (a) from paragraph 2.

100. In connection with paragraph 2(f) it was agreed that the Administrative Council must be empowered to specify the cases in which the President of the European Patent Office must obtain the prior approval of the Administrative Council before he undertakes actions at law. The Conference was however of the opinion that it was not necessary to restrict the President's powers of representation in respect of third parties. The desired aim would also be achieved just as satisfactorily if the President were to be responsible to the Administrative
CHAPTER I a
Powers and Functions of the Administrative Council

Article 35a (Powers of decision of the Administrative Council)

96. The Conference noted in connection with paragraph 1 A that this provision only lays down that the Administrative Council is competent to amend the Implementing Regulations, whereas the Diplomatic Conference is to adopt them. It therefore considered that it would be expedient to specify in a final provision that the Implementing Regulations form an integral part of the Convention (see point 127 under Article 161a). (BR/121/71, Page 5).

97. The Conference deleted from paragraph 1 B(a) the power of the Administrative Council to adopt Administrative Regulations, as all the administrative regulations required are either contained in the Implementing Regulations or may be adopted by the President of the European Patent Office as part of his task of directing its business, in which he is supervised by the Administrative Council.

The power provided for in sub-paragraph (d) to adopt any other rules necessary for the implementation of the Convention allows the Administrative Council, in the Conference's opinion, to determine the cases in which the President of the European Patent Office will require the approval of the Administrative Council to exercise the legal capacity of the European Patent Office internally. This condition of approval is not however to restrict the President's power to represent the European Patent Office externally but is to apply only to the internal relations between the
MINUTES
of the
4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 20 to 28 April 1971)
Article 35a continued:

(c) the agreements with Contracting States to the Patent Co-operation Treaty which are not Contracting States to this Convention referred to in Article 119, paragraph 2;

(d) any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;

C. decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Patent Co-operation Treaty, in the case provided for in Article 119, paragraph 3;

D. decide upon the creation of branches for information and liaison purposes in the Contracting States or with the International Patent Institute at The Hague or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or the organisation concerned.

1. Note to Article 35a, paragraph 1 (E):

It should be re-examined whether provision should be made for an exception, as provided for in E 2nd sentence, to be made for other time-limits.

2. Note to Article 35a, paragraph 2 (f):

Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3), which should be completed as follows: "in accordance with the provisions laid down in Article 35a, paragraph 2 (f)".

BR/88 e/71 gc
Article 35 continued:

(2) In addition, the Administrative Council shall:

(a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office;
(b) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;
(c) audit and approve each year the accounts and inventories and the balance sheet;
(d) approve the annual management reports of the President of the European Patent Office;
(e) appoint the senior officials referred to in Article 37, subject to the conditions laid down in that Article, and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them;
(f) give, in each particular case, to the President of the European Patent Office, to whom the President of the Administrative Council shall to this end address a written communication, an authorisation to exercise the legal capacity of the European Patent Office for the purposes of:
   - actions at law with the exception of those of an urgent or protective nature, or those in which the European Patent Office has been made a defendant,
   - acts relating to the disposal of immovable property, or relating to the disposal of movable property when the sum involved exceeds the exchange value of 20 kilograms of fine gold, as well as acts affecting, in the two cases referred to above, the ownership of such property.

(3) Furthermore, the Administrative Council shall:

A. give its decision on requests for accession to this Convention formulated by third countries;

b. conclude or amend on behalf of the European Patent Office:

(a) the agreement with the International Patent Institute at The Hague laying down the procedures for its collaboration with the European Patent Office;
(b) any agreement with the International Bureau provided for in the Patent Co-operation Treaty, for the purposes of applying Articles 117 to 123 of this Convention;
CHAPTER Ia (1)

Powers and functions of the Administrative Council

Article 35a

Powers of decision of the Administrative Council

(1) The Administrative Council shall be competent to:

A. amend the Implementing Regulations to this Convention;

B. adopt or amend:

(a) the Administrative and Financial Regulations of the European Patent Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature and the rules for the grant of the supplementary benefits which may be accorded to them;

(c) the Rules relating to fees;

(d) any other rules necessary for the implementation of this Convention;

C. take the decisions referred to in Article 159;

D. amend Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions;

E. amend the time limits laid down in this Convention independently of any revision under Article 162. This shall not apply to the time limit laid down in Article 88, paragraph 2, subject to the provisions of Article 159.

(1) The provisions of Chapters Ia, Ib and Ic will require to be harmonised with the other provisions of the Convention at a later date.

The position of these Chapters in the Convention is provisional.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
79. Article 138: Notification of the grounds

The adoption of this new provision, which deals with prior notification of the grounds on which a decision of the Office is to be based, enabled the Working Party to delete Articles 78, paragraph 5, 96, paragraph 2, 105, paragraph 4, 115, paragraph 5.

80. Article 139: Oral proceedings

The adoption of this provision, concerning oral proceedings before the European Patent Office, enabled the Working Party to delete Articles 84, 106 and 114.

81. Article 35a, paragraph 1, sub-paragraph E: Powers of decision of the Administrative Council

Following a previous decision, the Working Party decided to add a sub-paragraph E, authorising the Administrative Council to amend the time limits laid down in the Convention independently of any revision under Article 162 and subject to the provisions of Article 159. The Working Party reserved the right to study whether other time limits in the Convention should be excluded from the simplified procedure for amendment contained in sub-paragraph E.

82. Article 68, paragraph (c): Date of the application

At the request of the Swiss delegation, the Working Party agreed to examine at one of its next meetings a note in which the Swiss delegation will explain the reasons which in its opinion justify mentioning drawings, as well as description and claims, in paragraph (c).

BR/87 e/71 nan/BS/prk
MINUTES
of the meeting of Working Party I
held at Luxembourg from 30 November to 2 December 1970
and of the meeting held on 3 December 1970 by that Working
Party, acting in its capacity as Co-ordinating Committee

Item 1 on the agenda (1) : Opening of the meeting and adoption
of the provisional agenda

1. The Working Party held its sixth meeting at
Luxembourg from Monday, 30 November to Wednesday,
2 December 1970, with Dr. HAERTHEL, President of the German
Patent Office, in the Chair.

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

2. The Drafting Committee, under the chairmanship of
the President of the Netherlands Octrooiraad (Patent Office),
Mr. J. B. van BENTHEM, held its meetings directly after the
deliberations of the Working Party.

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.
(2) For the list of participants, see Annex II.
15. The Working Party finally agreed that a solution totally reconciling the three requirements set out under (i), (ii) and (iii) was hardly possible. It felt that, under these circumstances, the least objectionable course would perhaps be to accept a solution which would involve practical difficulties for the European Patent Office, but which would safeguard both the rights acquired by applicants and the interests of States which had not ratified the revised text. It therefore decided in favour of the first solution (1). However, the Working Party did not feel that it could by itself assess the seriousness of the practical difficulties entailed by this solution as regards the working of the European Patent Office, such an assessment lying more within the scope of Working Party I. For this reason, it was decided to adopt this solution, on the understanding that it would be submitted to Working Party I, which was to be asked whether it was compatible with the smooth operation of the European Patent Office.

Article c - Signature - Ratification

16. In this provision, the intention of the Working Party was to limit signature of the Convention to the States taking part in the Inter-Governmental Conference (17 countries) or which had been offered the option of taking part in it (Malta and Monaco).

For subsequent accession by other European States, see Article d(2) below.

Article d - Accession

17. The Working Party pointed out that the accession of States able to be parties to the Convention from the time the latter was open for signature should be effected automatically as soon as such State expressed the wish to
feel it was in his interest to delay the examination procedure, as he was allowed to do by the Convention. One delegation pointed out the drawbacks that would be entailed in obliging the applicant to transfer his application, even if the amendment of the provisions of the Convention affected his application only to a insignificant extent.

14. The Working Party also examined a proposal by the French delegation. The system advocated concerned all the applications under consideration, making no distinction between applications designating one or more States which had not ratified and the rest. They should, as a matter of principle, be examined on the basis of the law previously in force, unless the nature of the amendments to the Convention affected the applicant's acquired right to the grant of a European Patent. As for applications which designated States which had not ratified, the applicant was free to request transfer to the national authorities if he did not want the European Patent Office to continue with the examination of his application.

In opposition to this proposal, the Working Party reaffirmed the principle that reviewing Conferences should not be circumscribed by present rulings and that all that was needed was to adopt rules for applications designating States which had not ratified the revised text, in so far as those States were concerned. One delegation, moreover, pointed out that this proposal dealt with the acquired rights of the applicant, without there being any agreement as to the substance of these rights. This delegation added that the choice allowed the applicant was superfluous since his rights were sufficiently protected by the first and second considerations of the French delegation's proposal.
13. The Working Party thereupon applied itself to seeking a formula which would avoid those disadvantages and the Danish delegation put forward a number of suggestions to this end:

(i) The first suggestion drew a distinction according to whether or not the revised text provided for applications under consideration to be subject to the former provisions. If so, the EPO would apply the same rules when examining applications in respect of a State which had not ratified. If not, applications relating to that State would be transferred to the competent national authorities.

(ii) A second suggestion laid down that the EPO should examine the applications in question, unless States which had not ratified called for the transfer of applications relating to them to their national authorities.

(iii) The third suggestion, finally, was that the applications in question should be examined by the EPO in accordance with the law previously in force only if the applicants had asked for them to be examined within two months following the entry into force of the amendment. Otherwise the transfer to the national authorities would follow automatically.

The main objection put forward to these different systems was that they did not take the interests of the applicant sufficiently into account. The Working Party felt that although the third solution did not totally rule out the right of the applicant to choose the system to be applied and would not cause any lasting difficulties for the European Patent Office, it constituted an infringement of the rights of the applicant, who might
Some delegations were, however, of the opinion that patents could continue to be granted for some time in respect of these States, on the basis of the Convention to which they were parties, without this constituting an infringement of their rights.

(iii) The Working Party realised that the first two requirements could be met only by ensuring the continuation of the unrevised text, for a limited period. It recognised that, depending on the nature and scope of the amendments, the simultaneous existence of two legal systems could create problems of implementation for the European Patent Office and that it would be desirable to avoid such difficulties as far as possible.

12. The first solution submitted to the Working Party made provision for applications under consideration at the date of entry into force of the revised text to be examined by the European Patent Office in accordance with the law applicable before the entry into force of the revised text. It was pointed out that this provision applied to patent applications designating States which had not ratified the new text, only in so far as these States were concerned. This system reconciled the first two requirements described under (i) and (ii) but failed to take account of the interests of the European Patent Office, which would be compelled to apply two different legal systems for a period of anything up to seven years, depending on the solution adopted by the Convention on the matter of deferred examination. Moreover, applications designating both States which had agreed to the revised text and other States, would have to be kept separate for examination according to the different provisions. One delegation, whose national law makes provision for the patent examination procedure, stressed the practical difficulties of such a solution.
Examination of the problems relating to such applications revealed that the issue at stake was to reconcile three not altogether compatible requirements:

(i) to protect the acquired rights of applicants;
(ii) to respect the wishes of States which had not ratified the revised text;
(iii) to avoid the European Patent Office running into operational difficulties.

(i) The Working Party agreed that an applicant held certain rights which ought to be protected, whatever subsequent amendments might be made to the Convention under whose rules he filed his application. The Working Party did not, however, come to an agreement as to the nature of the rights acquired by the applicant, since their content varied considerably according to the different national legal systems. Some delegations felt that an applicant was entitled to have his application examined under the system in force at the time of filing. Another delegation, however, felt that the applicant's only right was to obtain a patent in accordance with the regulations in force at the time of its granting. The Working Party was of the opinion, nevertheless, that it did not seem indispensable for the wording of this provision to specify this concept of acquired right.

(ii) The Working Party agreed that there could be no question of adopting any solution which took no account of the wishes of the States; one that would, in other words, have the effect of imposing on them a legal system to which they were not parties.

BR/53 e/70 son/PB/prk

.../...
moment, its intention to ratify the revised text, could not, in the event, suspend the time limit following which the said State would cease to be a party to the Convention.

9. The Working Party agreed to draw the attention of its "Suplementing Regulations" sub-Committee to the need to provide for publication in the Official journal of the European Patent Office, both of the amendments referred to in Article 2 and of the situation of the States in relation to the revised text, in order to ensure that private individuals were kept informed. It was pointed out that this note was also relevant to accessions to the Convention, to denunciations, and to the various declarations relating to the territorial field of application.

Article 2 - Reservation of acquired rights in cases of non-ratification

10. As the principle of acquired rights for patents granted before the revision raised no problems, the Working Party examined the case of applications under consideration by the European Patent Office at the time of entry into force of the revised text. It considered that it would be up to each reviewing Conference to decide what should be done about these applications as regards the States which had agreed to the revised text. Since, however, the rules drawn up by the reviewing Conference could not be imposed on any States which abstained from ratifying the new text - because, on this assumption, these States would be excluded from the new legal system - it would be advisable to lay down a ruling in the Convention itself on what was to be done about applications, which designated one or more such States, in so far as these States were concerned.
MINUTES
of the Meeting of Working Party II
(Luxembourg, 1-4 September 1970 - 2nd meeting)

I

1. The second meeting of Working Party II was held at Luxembourg, from Tuesday 1 to Friday 4 September 1970 under the Chairmanship of Mr. R. LABRy, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities and the International Patent Institute attended the meeting as observers. (1).

2. The Working Party would draw attention to the provisional nature of the wording of the texts it adopted.

Bearing in mind the timetable laid down for the meetings of the other Working Parties, the outcome of which might lead the Working Party to revise some of the provisions which it had previously adopted, in particular those relating to the Administrative Council;

(1) The list of those attending the meeting is given in the Annex.

BR/53 e/70 son/PB/prk
Article b

Preparatory duties of the Administrative Council

The Administrative Council shall be empowered:

(a) to prepare Conferences for the revision of this Convention;

(b) to prepare such adaptations to this Convention as may be rendered necessary by the accession of third countries.
FIRST PRELIMINARY DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)
moment, its intention to ratify the revised text, could not, in the event, suspend the time limit following which the said State would cease to be a party to the Convention.

9. The Working Party agreed to draw the attention of its "Supplementing Regulations" sub-Committee to the need to provide for publication in the Official journal of the European Patent Office, both of the amendments referred to in Article a and of the situation of the States in relation to the revised text, in order to ensure that private individuals were kept informed. It was pointed out that this note was also relevant to accessions to the Convention, to denunciations, and to the various declarations relating to the territorial field of application.

Article b - Reservation of acquired rights in cases of non-ratification

10. As the principle of acquired rights for patents granted before the revision raised no problems, the Working Party examined the case of applications under consideration by the European Patent Office at the time of entry into force of the revised text. It considered that it would be up to each reviewing Conference to decide what should be done about these applications as regards the States which had agreed to the revised text. Since, however, the rules drawn up by the reviewing Conference could not be imposed on any States which abstained from ratifying the new text - because, on this assumption, these States would be excluded from the new legal system - it would be advisable to lay down a ruling in the Convention itself on what was to be done about applications, which designated one or more such States, in so far as these States were concerned.
gratification of the revised text; this being the same majority as had been adopted in the decision on accession (See Article d).

7. The Working Party agreed to extend to one year the period provided for in Paragraph 4(e). Thus, the entry into force of the revised text, on the expiry of this period, would mark the point at which those States which had not ratified the revised text would cease to be parties to the Convention. The Working Party felt it necessary to leave each State sufficient time, in view of the necessary internal procedures, to decide whether it would be expedient to ratify the revised text or to be excluded from the Convention, with effect from the time when the State could be sure that the revision would come into force, by reason of the deposit of a sufficient number of instruments of ratification.

8. This set of safeguards enabled the Working Party to rule that any States having failed to ratify the revised text or to abide by it would cease to be parties to the Convention with effect from the entry into force of the revised text (Paragraph 4(b)). One delegation suggested providing for each proposed amendment to be accompanied by a vote on the issue of whether, in each particular case, refusal to ratify the revised text should entail exclusion from the Convention. This system was found to be too complicated and liable to give rise to scarcely acceptable consequences, since it would result either in the application of two different texts of the Convention, or in imposing a new legal system on States which had not agreed to it.

In this same context, it was agreed that a declaration by a Contracting State, making known, at a given
MAIN COMMENTS MADE ON THE FINAL AND GENERAL PROVISIONS

Part VI bis of the Convention
Final and general provisions

Article a - Revision

5. The overriding preoccupation of the Working Party was, in the event of an amendment not being accepted by all the States, to avoid two different texts being in force simultaneously. The solution adopted by the Working Party was to lay down that all States which had not ratified the revised text would cease to be parties to the Convention. Nevertheless, in order to avoid, as far as possible, such situations as might arise as consequence of these provisions, the Working Party adopted certain adjustments (See points 6, 7 and 8 below).

6. The Working Party was at pains to avoid a proliferation of amendments, bearing in mind the serious consequences of the entry into force of a revised text for any States which might be unable to ratify or abide by the revised Convention once the revised text came into force. The Working Party accordingly decided against the principle of a reviewing Conference, meeting periodically, and preferred to leave it to the Administrative Council to decide when such meetings would be appropriate. The Working Party also agreed to fix a rather high quorum for deliberations at any reviewing conference which might be held. This enabled it to agree to a reduction, in relation to the Chairman's initial proposal, in the majorities required both for the adoption and for the
The second meeting of Working Party II was held at Luxembourg, from Tuesday 1 to Friday 4 September 1970, under the Chairmanship of Mr. R. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities and the International Patent Institute attended the meeting as observers. (1).

The Working Party would draw attention to the provisional nature of the wording of the texts it adopted.

Bearing in mind the timetable laid down for the meetings of the other Working Parties, the outcome of which might lead the Working Party to revise some of the provisions which it had previously adopted, in particular those relating to the Administrative Council,

(1) The list of those attending the meeting is given in the Annex.
(3) Furthermore, the Administrative Council shall:

A. give its decision on requests for accession to this Convention formulated by third countries;

B. conclude or amend on behalf of the European Patent Office:

(a) the agreement with the International Patent Institute laying down the procedures for its collaboration with the European Patent Office;

(b) any agreement with the International Bureau provided for in the Patent Co-operation Treaty, for the purposes of applying Articles 117 to 123 of this Convention;

(c) the agreements with Contracting States to the Co-operation Treaty which are not Contracting States to this Convention referred to in Article 119, paragraph 2;

(d) any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;

C. decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Co-operation Treaty, in the case provided for in Article 119, paragraph 3;

D. decide upon the creation of branches for information and liaison purposes in the Contracting States or with the International Patent Institute or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or the organisation concerned.
(f) give, in each particular case, to the President of the European Patent Office, to whom the President of the Administrative Council shall at this end address "written communication, an authorisation to exercise the full capacity of the European Patent Office for the purposes of:

- actions at law with the exception of those of an urgent or protective nature, or those in which the European Patent Office has been made a defendant,

- acts relating to the disposal of immovable property, or relating to the disposal of movable property when the sum involved exceeds the exchange value of "kilograms of fine gold, as well as acts affecting in the two cases referred to above, the owners of such property.

Note:

Adoption of the provision contained in (f) would necessitate an amendment of Article 32, which should be completed as follows: "in accordance with the provisions laid down in Article 32, paragraph 3 (f)."
Article 2 contd.

C. amend the procedure for requests for examination, in accordance with the provisions of Article 89, paragraphs 1 to 3.

Note:—

The Working Party, to take into account the note to Articles 54 and 55, proposes to introduce a new paragraph D as follows:

D. amend Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions.

E. the administrative Council shall:

(a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office;

(b) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;

(c) audit and approve each year the accounts and inventories and the balance sheet;

(d) approve the annual management reports of the President of the European Patent Office;

(e) appoint the senior officials referred to in Article 37, subject to the conditions laid down in that Article, and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them;

BR/33 e/70 bm
PART III bis

- THE ADMINISTRATIVE COUNCIL
- OF THE EUROPEAN PATENT OFFICE

CHAPTER I

POWERS AND FUNCTIONS

Article 1a

Powers of decision of the Administrative Council

(1) The Administrative Council shall be competent to:

A. amend the Implementing Regulations to this Convention;

B. adopt or amend:

(a) the Administrative and Financial Regulations of the European Patent Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature and the rules for the grant of the supplementary benefits which may be accorded to them;

(c) the Rules relating to fees;

(d) any other rules necessary for the implementation of this Convention;
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING-UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 13 March 1970
BR/33/70

- Secretariat -

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

Provisions relating to the Administrative Council
Text drawn up by Working Party II

(4 to 6 March 1970)

BR/33 e/70 mrk
32. It was noted that unanimity, two-thirds majority and simple majority, as provided for respectively in paragraphs 1, 3 and 4, was to be calculated on the basis of the votes allocated to all the Contracting States, and not on the basis of the votes of only those Contracting States whose representatives took part in any given deliberations.

Article 2 - Weighting of votes

33. The Working Party noted its agreement to the principle whereby certain decisions may be subject to a voting procedure where the votes of the Contracting States would be weighted. However, the Working Party noted that experience in the various international organisations active in the field of industrial property showed that in a large number of cases decisions were taken by a general consensus. It therefore appeared expedient to the Working Party to provide for weighting of votes only as a type of "safeguard clause" for the Contracting States bearing the heaviest responsibilities in decisions having financial consequences or having a special importance. In so doing, the Working Party drew on the principle adopted in Article 8 of the Agreement of The Hague, of 6 June 1947, establishing the International Patent Institute, as revised at The Hague on 16 February 1961.

34. The Working Party was of the opinion that this principle should apply only to some of the decisions which require a two-thirds majority under Article m (3).

35. The Working Party had a thorough exchange of views on those of the decisions requiring a two-thirds majority which could be the subject of a second ballot where the votes of the Contracting States would be weighted. It was
might have the effect that the financing of the European Patent Office would depend too heavily and for too long upon the contributions of the Contracting States.

For reasons of efficiency, the Working Party finally agreed that it would be expedient to subject both the adoption and the amendment of the Rules relating to fees and the adoption of the budget (and consequently the fixing of the rates at which the Contracting States would contribute to revenue) to one and the same voting rule: two-thirds majority (subject, however, to the provisions laid down in Article 4 regarding the weighting of votes).

31. As regards decisions requiring unanimity (paragraph 1), the Working Party provided for several mechanisms which should, in its opinion, facilitate the taking of such decisions by the Council:

(i) any Contracting State may abstain, without such abstention prejudicing the adoption of the decision in question;

(ii) any State may vote in writing if it is not represented at a meeting of the Council at which a decision is to be adopted;

(iii) where a State is not represented and fails to state its position within a fixed period, it shall be deemed not to be opposed to the adoption of the decision in question.

With a view to solving any difficulties such as those referred to a propos of Article 4 (A) (cf. point 14, paragraph 3, page 7 above) the Working Party adopted the provision contained in Article 4 (2).
However, the Working Party did not rule out that the Administrative Council could—by way of a gentleman's agreement, for example,—allow, in exceptional cases and in so far as necessary, another language to be used in any particular discussion, provided that the State whose representative used such another language bore the financial consequences of interpretation from that language into the three languages mentioned in paragraph 1.

**Article k - Voting rights**

27. No comment.

**Article l - Select Committees of the Administrative Council**

28. The Working Party believed that certain links should be organised between the Administrative Council and a Select Committee, in particular in order to determine the proportion of the expenses of the European Patent Office which will fall exclusively upon the group of States linked by a special agreement.

In so far as these matters touch upon fields falling under the work of Working Party IV, they should, where appropriate, be studied together with the latter.

**Article m - Voting Rules**

29. The Working Party did not believe it necessary to fix a standard quorum for the deliberations of the Council.

30. The Working Party discussed a proposal whereby the Rules relating to fees could only be adopted or amended by unanimous vote. It agreed that such a requirement would make any increase in these fees too difficult, which
MINUTES

of the meeting of Working Party II
(Luxembourg, 4–6 March 1970)

I

1. The first working meeting of Working Party II, set up by the Conference at the latter's meeting of 13–16 January 1970, was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Luxembourg on 16 January 1970, the Chair was taken by Mr. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and the International Patent Institute (IIB) took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe, who had also been invited to take part in the meeting, apologized for being unable to attend (1).

(1) See list of participants in the meeting of the Working Party given in Annex II. As regards Annex I, see point 38 on page 16.
Article m contd.

(2) If one or more Contracting States declare that the entry into force of a decision under paragraph 1 requires, by virtue of their national constitution, the execution of certain formalities, such decision shall only take effect after the last of the Contracting States having made a statement to this effect has notified the Administrative Council that the required formalities have been completed.

(3) The following shall require a two-third majority of the votes of the Contracting States:

(a) the adoption and amendment of the other rules and regulations referred to in Article a, paragraph 1 B;

(b) the decisions under Article a, 1 C;

(c) the adoption of the budget of the European Patent Office and of any amending or supplementary budgets;

(d) the adoption and amendment of the Rules of Procedure of the Administrative Council;

(e) the appointment of the President of the European Patent Office.

(4) All other decisions of the Council shall require a simple majority of the votes of the Contracting States.

BR/33 e/70 bm
Article m

Voting rules

(1) A. The following shall require the unanimous vote of the Contracting States:

(a) amendment of the Implementing Regulations to this Convention referred to in Article a, paragraph 1 A;
(b) the decisions referred to in Article a, paragraph 3.

B. Any Contracting State which is not represented at a meeting of the Administrative Council may vote in writing.

C. If, within two months following the date of a communication addressed to it to this end by the President of the Administrative Council, any Contracting State not represented at a Council meeting has not stated its position, it shall be deemed not to be opposed to the adoption of the decision in question. In such an event, and subject to the provisions of paragraph 2, the decision in question shall take effect four months after the date of the above-mentioned communication from the President of the Council.

D. Abstentions shall not prejudice the adoption of the decisions referred to in the present paragraph.
FIRST PRELIMINARY DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)
already imposed by the budget, whose adoption falls to the Administrative Council. The Working Party, while recognizing the existence of these limitations, believed that they would not apply to every case where a special authorisation from the Administrative Council to the President would seem desirable to it. The Working Party accordingly adopted the text contained in paragraph 2 (f), it being understood that the adoption of this provision would require the amendment of Article 32 (3) of the Draft Convention.

The Working Party agreed to re-examine, where appropriate, the limit of 20 kilograms of fine gold, laid down in the second sub-section of (f), in the light of the financial provisions of the Convention, to be drawn up by Working Party IV.

16. As regards paragraph 3 (A) the Working Party agreed that this provision could, where appropriate, be re-examined once the final provisions of the Convention had been drawn up.

It was further noted that this paragraph, which deals with the "International functions" of the Administrative Council, could be incorporated as a separate Article.

Article b - Preparatory duties of the Administrative Council

17. No comment.

BR/34 e/70 kel/RT/mrk
13. The question was raised of whether the power of the Council to appoint auditors should be specifically mentioned in paragraph 2. Subject to the financial provisions for the Convention, to be drawn up by Working Party IV, the Working Party believed it was not essential to provide for the appointments of auditors in the body of the Convention itself. This could indeed come under certain rules to be included in the Financial Regulations.

14. As regards paragraph 2(e), the Working Party, while providing that disciplinary action may be taken in regard to the members of the Boards of Appeal and of the Enlarged Board of Appeal, believed it necessary to stipulate that in taking any such disciplinary action, the independence of the members of the said Boards must be respected. For this reason, it laid down that such disciplinary action may only be taken if the provisions of the Service Regulations applicable to the members in question are observed. The Service Regulations must therefore define the guarantees enjoyed by the members of the Boards of Appeal and of the Enlarged Board of Appeal.

The Working Party agreed not to make specific mention of the possibility allowed the Council to take disciplinary action in regard to the President and the Vice-President of the European Patent Office.

15. As regards paragraph 2(f), the Working Party noted that Article 32 (3) of the Draft Convention, in the version drawn up by Working Party I and adopted by the Conference, gives power to the President of the European Patent Office to exercise the legal capacity of that Office. The Working Party wondered whether this power entrusted to the President should not, for certain important acts, be subject to an authorisation to be granted to the latter by the Council for each case. In this context, mention was made of the limitations
On the other hand, the Working Party did provisionally adopt (while waiting to know the final contents of the Implementing Regulations) a solution to be applied only to those cases where unanimity is required. This solution consists in allowing any Contracting State to declare, upon the adoption of a decision, that its entry into force requires, by virtue of that State's national constitution, the completion of certain formalities of internal law. Under this system, such a decision would only enter into force when the State concerned had notified the Administrative Council of the completion of such formalities. The text adopted to this end has been incorporated in Article m (2) by the Working Party.

12. The Working Party wondered whether the list of decisions contained in paragraph 1 (b) should be completed by reference to:

(i) the list of posts
(ii) the staff complement
(iii) the establishment plan of the European Patent Office.

It did not eventually complete the said provision in this manner, for the following reasons:

As regards the list of posts, where this is understood as an abstract description of the duties of each grade, it was of the opinion that such a list would be contained in the Service Regulations; and, where this is understood as an establishment plan of the Office, it would be contained in the provisions of the Administrative Regulations provided for in B (a). Finally, the numbers of officials and other employees would be laid down for each Class in the budget of the European Patent Office, to be adopted by the Administrative Council under paragraph 2 (b).
Working Parties, between the Convention itself and the Implementing Regulations remained completely open, as had been pointed out by Working Party I. Accordingly, the Working Party noted that the provision relating to the power of the Administrative Council to amend the Implementing Regulations could be re-examined at a later stage, in the light of the contents of the Implementing Regulations. Since it was not yet certain what the contents of the Implementing Regulations would be, the Working Party was not able to affirm immediately that the Administrative Council will be able to exercise its power to amend the Implementing Regulations without this in certain (admittedly limited) cases entailing recourse by any given Contracting State to certain procedures of internal law (such as parliamentary approval) before the latter could finally approve the amendments in question.

At this stage in the proceedings, the Working Party considered it expedient to examine the means allowing any difficulties which might face the Administrative Council to be solved, in view of the problems brought forward above. To this end, it considered a first proposal consisting in delaying the entry into force of the decisions of the Council for a fixed period, during which any State faced with such problems should be able to complete the required formalities. After thorough examination, the Working Party rejected this proposal. It did indeed appear difficult to the Working Party to fix a priori a standard period for entry into force for all future decisions of the Council, when the administrative requirements of the European Patent Office could call for the immediate or early entry into force of such decisions.
9. It was further agreed that the order of the various provisions contained in Part III bis and examined by the Working Party was provisional and could be reconsidered at a later stage.

III

MAIN COMMENTS ON THE VARIOUS ARTICLES RELATING TO THE ADMINISTRATIVE COUNCIL

PART III bis OF THE CONVENTION

The Administrative Council of the European Patent Office

CHAPTER I

Article 2 - Powers of decision of the Administrative Council

10. In paragraph 1 (a), the Working Party provided that the Administrative Council shall have the power to amend the Implementing Regulations to the Convention. It was of the opinion that the responsibilities of the Administrative Council did not extend to the adoption of these Regulations, which should indeed be drawn up at the same time as the Convention itself. The Working Party therefore assumed that it would be for the diplomatic Conference to decide on the manner in which the Implementing Regulations were to be adopted.

11. The Working Party further noted that the question of the distribution of the various provisions drawn up by Working Party I, and of those to be drawn up by the other
MINUTES
of the meeting of Working Party II
(Luxembourg, 4-6 March 1970)

I

1. The first working meeting of Working Party II, set up by the Conference at the latter's meeting of 13-16 January 1970, was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Luxembourg on 16 January 1970, the Chair was taken by Mr. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and the International Patent Institute (IIB) took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe, who had also been invited to take part in the meeting, apologized for being unable to attend (1).

(1) See list of participants in the meeting of the Working Party given in Annex II. As regards Annex I, see point 38 on page 16.
Article a cont'd.
(3) Furthermore, the Administrative Council shall:

A. give its decision on requests for accession to this Convention formulated by third countries;

B. conclude or amend on behalf of the European Patent Office:

(a) the agreement with the International Patent Institute laying down the procedures for its collaboration with the European Patent Office;

(b) any agreement with the International Bureau provided for in the Patent Co-operation Treaty, for the purposes of applying Articles 117 to 123 of this Convention;

(c) the agreements with Contracting States to the Co-operation Treaty which are not Contracting States to this Convention referred to in Article 119, paragraph 2;

(d) any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;

C. decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Co-operation Treaty, in the case provided for in Article 119, paragraph 3;

D. decide upon the creation of branches for information and liaison purposes in the Contracting States or with the International Patent Institute or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or the organisation concerned.
Article a contd.

(f) give, in each particular case, to the President of the European Patent Office, to whom the President of the Administrative Council shall to this end address a written communication, an authorisation to exercise the legal capacity of the European Patent Office for the purposes of:

- actions at law with the exception of those of an urgent or protective nature, or those in which the European Patent Office has been made a defendant,

- acts relating to the disposal of immovable property, or relating to the disposal of movable property when the sum involved exceeds the exchange value of 20 kilograms of fine gold, as well as acts affecting, in the two cases referred to above, the ownership of such property.

Note:
Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3), which should be completed as follows: "in accordance with the provisions laid down in Article a, paragraph 3 (f)".

BR/33 e/70 bm
Article 2 contd.

C. amend the procedure for requests for examination, in accordance with the provisions of Article 89, paragraphs 1 to 3.

Note:
The Working Party, to take into account the note to Articles 54 and 55, proposes to introduce a new paragraph D as follows:

D. Amend Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions.

(2) In addition, the Administrative Council shall:

(a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office;

(b) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;

(c) audit and approve each year the accounts and inventories and the balance sheet;

(d) approve the annual management reports of the President of the European Patent Office;

(e) appoint the senior officials referred to in Article 37, subject to the conditions laid down in that Article, and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them;

BR/33 e/70 bm
PART III bis
THE ADMINISTRATIVE COUNCIL
OF THE EUROPEAN PATENT OFFICE

CHAPTER I
POWERS AND FUNCTIONS

Article 1

Powers of decision of the Administrative Council

(1) The Administrative Council shall be competent to:

A. amend the Implementing Regulations to this Convention;

B. adopt or amend:

(a) the Administrative and Financial Regulations of the European Patent Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature and the rules for the grant of the supplementary benefits which may be accorded to them;

(c) the Rules relating to fees;

(d) any other rules necessary for the implementation of this Convention;
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

BRUSSELS, 13 MARCH 1970
BR/33/70

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

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)

BR/33 e/70 mrk
under agreements concluded with inter-governmental organisations. It also considered that an agreement with INPADOC would come under private law.

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

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

172. The Committee voted on the Austrian proposal in M/78/1/II which was accepted and referred to the Drafting Committee.

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

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

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

**Article 33 (35) — Voting rules**

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

**Article 143 — Special departments of the European Patent Office**

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

**Article 145 — Select committee of the Administrative Council**

**Paragraph 1**

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

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

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

**Paragraph 2**

180. The Committee did not adopt a proposal from UNEPA (M/62/1/II, point 8) that the words “for example” be inserted before the words “national courts”.

**Article 165 (166) — Accession**

**Paragraph 2 (j (b))**

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

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

183. The Yugoslav delegation then withdrew its proposal.

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

**Article 167 (168) — Territorial field of application**

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

**Article 173 (174) — Denunciation**

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

**Article 176 (177) — Languages of the Convention**

**Paragraph 2**

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

**B. Article 166 (167) of the Convention**

**I. Positions of the Delegations**

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

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