Rule 93 E

Travaux Préparatoires (EPC 1973)

Comment:

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
### Regel 93

**MPU**

**Von der Einsicht ausgeschlossene\* Aktenteile**

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ANNEX I

REPORT

by Mr. Paul Braendli, Lic. iur.
Vice-Director of the Federal Intellectual Property Office (Switzerland)
on the results of Main Committee I's proceedings

ANNEX II

REPORT

by Mr. R. Bowen
Assistant Comptroller, British Patent Office
on the results of Main Committee II's proceedings

ANNEX III

REPORT

by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)
on the results of Main Committee III's proceedings

ANNEX IV

REPORT

by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office
on the results of the Credentials Committee's proceedings
with regard to full powers for signing the Convention
chemical, food and pharmaceutical products. He pointed out, however, that if its proposal were rejected, the Greek delegation would remain free to submit another proposal, narrower in scope and entailing deletion of use in relation to food and pharmaceutical products only.

The Greek proposal was rejected by 9 votes against, 8 in favour and 1 abstention.

65. The Greek delegation announced a new proposal along the lines mentioned by the Chairman, although it went further than suggested by some delegations, because it did not mention food and pharmaceutical products in the second half of the sentence.

66. The French delegation stated that it would have to reject this proposal because processes of manufacture of food and pharmaceutical products must at all events be protected.

67. At a subsequent meeting the Greek delegation submitted the following compromise proposal for the second half of paragraph 2 (a) of Article 167 (M/154 G):

"...this reservation shall not affect protection conferred by the patent in so far as it involves a process of manufacture or use of chemical products or a process of manufacture of pharmaceutical or food products."

68. This proposal was adopted by the Committee of the Whole, which instructed the General Drafting Committee to include it in the existing text of the Article.

B. Implementing Regulations

Rule 28 (R/9) — Requirements of European patent applications relating to micro-organisms

69. The Committee of the Whole adopted the revised version of this Rule drawn up by the General Drafting Committee on the basis of the conclusions reached by Main Committee I.

Rule 50 (R/9) — Information about publication

70. The Committee of the Whole adopted the version of this Rule as submitted by the Drafting Committee, paragraph 2 of which was based on the proposal put forward by the Austrian delegation in Main Committee I (M/PR/I, point 2272).

Rule 65 (R/10 and M/151 R/16) — Rejection of the appeal as inadmissible

71. The Chairman of the General Drafting Committee stated that, further to a proposal by the Norwegian delegation that the procedure for remedying deficiencies in the case of appeals should be the same as that applicable in the case of opposition, Main Committee I had instructed the Drafting Committee to examine the possibility of more closely aligning Rules 65 and 56 (M/PR/I, point 2299). Bearing in mind the fact that in Article 108 Main Committee I had divided the time limit for appeal into the period within which notice of appeal must be filed (two months) and that within which a written statement setting out the grounds of appeal must be filed (four months) (M/PR/I, point 462), the General Drafting Committee proposed the following wording, which it did not however consider to be absolutely essential:

"... rejected as inadmissible, unless each deficiency has been remedied before the relevant time limit laid down in Article 108 has expired."

72. The Norwegian delegation still found this solution somewhat harsh compared with the possibilities laid down in Rule 56. It suggested that a paragraph corresponding to paragraph 2 of Rule 56 be included in Rule 65.

73. The Austrian delegation shared this view.

74. The Netherlands delegation feared that because of the shorter time limits applicable to appeals, there would not be sufficient time for arrangements along the lines of the proposed paragraph 2.

75. The Norwegian delegation considered that even in the case of appeals there would be sufficient time for remediating those minor deficiencies with which paragraph 2 was concerned.

At a subsequent meeting the Committee of the Whole first of all approved the abovementioned proposal by the General Drafting Committee for supplementing paragraph 1 of Rule 65, subject to the proviso that this provision only related to deficiencies resulting from failure to comply with the requirements of Rule 64 (b). Notwithstanding the objections of the German delegation, which considered that there should be stricter rules for appeals proceedings, it also adopted a proposal which had been submitted in the meantime by the Norwegian delegation (M/155/G) for the inclusion of a new paragraph 2 corresponding to paragraph 2 of Rule 56.

Rule 84 (R/11) — Duration of time limits

76. The Committee of the Whole approved the deletion of paragraph 2 made by the General Drafting Committee on the basis of the conclusions of Main Committee I (M/PR/I, point 2394).

Rule 93 (R/11) — Parts of the file not for inspection

77. In accordance with the discussions in Main Committee I (M/PR/I, point 2409) the General Drafting Committee specifically provided in sub-paragraph (e) that the designation of the inventor should not be disclosed where he had renounced his title as inventor.

The Committee of the Whole adopted this solution.

Rule 99 (R/11) — Procedure for letters rogatory

78. Further to a proposal by the Italian delegation (M/PR/I, point 2427) referred to it by Main Committee I, the General Drafting Committee submitted an amended version of paragraph 4 of this Rule.

This version was adopted by the Committee of the Whole.

Rule 106 (R/11) — Amendment of the list of professional representatives during a transitional period

79. The Chairman of the General Drafting Committee referred to the lengthy discussions which had been held on this Rule in Main Committee I. Although, after clarifying the interpretation to be given to this Rule, Main Committee I had concluded that the text need not be amended (M/PR/I, point 2519), the Drafting Committee had decided to refer to "other" requirements in paragraph 1 (b) instead of "further" requirements, in order to make the interpretation agreed by Main Committee I quite clear.

80. The Chairman of the Committee of the Whole confirmed that the other requirements referred to in paragraph 1 (b) were requirements other than those mentioned in paragraph 1 (e).

81. The Committee of the Whole approved the amendment submitted by the General Drafting Committee.

C. Protocol on Recognition (M/146 R/12)

82. Further to a proposal made by the IAPIP delegation in Main Committee I and the Committee's decision in this
paragraph 1 of this Rule provided the necessary flexibility to allow for other difficulties which representatives might encounter during the initial period of operation of the European Patent Office.

Rule 86 (85) — Extension of time limits

2395. The Italian delegation wondered whether the text of this Rule in fact achieved the desired aim. In the event of it being impossible for documents to be delivered on the day on which the time limit had expired, the Rule extended the deadline to the first day thereafter on which the European Patent Office was open for receipt of documents. However, it was highly unlikely that in the event of a strike the mail would be delivered immediately on the day the strike ended. The Italian delegation therefore thought that the text should be amended.

2396. The Chairman stated that paragraph 1 did not cover the case of a strike, but the case where a time limit expired on a day on which the European Patent Office was not open for reasons other than a strike. In such a case the time limit was extended automatically to the next day. The problem raised by the Italian delegation only applied with regard to paragraph 2.

2397. The United Kingdom delegation pointed out that paragraph 2 was drafted to cover the case with which the Italian delegation was concerned. This paragraph stipulated that the President of the European Patent Office should determine the end of the period in which there was a general interruption in the delivery of mail and he would therefore be able to take into account the time necessary for normalising the situation after the interruption of work.

2398. The Italian delegation was satisfied with this interpretation.

2399. The Committee agreed to instruct the Drafting Committee to harmonise the German language version with the English and French versions.

Rule 87 (86) — Amendment of the European patent application

2400. The German delegation withdrew its proposal as given in M/47, page 16, since it referred to a proposal made by the Belgian delegation concerning Article 64, and this matter had been settled by an amendment to Article 122.

2401. The CEIF delegation suggested that the following sentence should be added to the end of paragraph 3: "except where such amendments will bring restrictions to the scope of the application which are borne out by the description and/or the drawings" (M/22, point 12). The intention of this provision was to permit the applicant to amend the claims and the drawings not just once but more than once.

2402. No Governmental delegation supported this suggestion by the CEIF.

Rule 88 (87) — Different claims, description and drawings for different States

2403. The Norwegian delegation wondered what the situation would be should the European Patent Office discover the existence of a prior national right in a given Contracting State. In such a case, would not the European Patent Office be obliged to disregard this national application, and leave the problem to the national legislation concerned?

2404. The Chairman replied to this question in the affirmative. The European Patent Office would take account only of prior European rights and not of prior national rights. During the Luxembourg Conference, it had been clearly stated that the European Patent Office could inform the applicant of the existence of a prior national right in a certain State, but that it could not itself take such a prior national right into account since it was only in the event of subsequent national proceedings that such a prior national right could form the basis for any claim.

Rule 89 (88) — Correction of errors in documents filed with the European Patent Office

2405. The Irish delegation owned that this provision corresponded to Rule 91, paragraph (1b) of the PCT, but wondered whether it was really necessary to stipulate that "anyone" would immediately realise that nothing else would have been intended than what was offered as the correction. In view of the complexity of some chemical formulae, a general rule of this nature seemed extremely harsh.

2406. The Swiss delegation thought that in practical terms this provision was hardly likely to apply. Patent applications were in fact prepared with a man skilled in the art in mind and should be comprehensible to a man skilled in the art. For that reason the Swiss delegation thought that the word "anyone" should be deleted and replaced by a reference to the knowledge of a man skilled in the art.

2407. The Committee agreed to refer this point to the Drafting Committee for more satisfactory wording.

Rule 94 (93) — Parts of the file not for inspection

2408. The UNICE delegation wondered whether the name of the inventor should be included in the communicable documents where he had expressed the wish not to be mentioned by name.

2409. The delegation of the Federal Republic of Germany recalled that this problem had already been discussed, and the conclusions reached had been that the mention of the inventor by name could be omitted from the parts of the file for inspection if the inventor expressed such a wish. The President of the European Patent Office should therefore have the power to exclude reference to the inventor by name from the parts of the file for inspection.

2410. The UNICE delegation declared itself satisfied by this reply.

Rule 95 (94) — Procedures for the inspection of files

2411. The Finnish delegation observed that Rule 99 provided that no administrative fee was payable where files were communicated to third parties by Courts or Public Prosecutors' Offices of the Contracting States. It wondered whether it would not be advisable to apply the same principle in Rule 95 by deleting the last sentence of paragraph 1.

2412. The Swedish and Norwegian delegations supported this proposal.

2413. The delegation of the Federal Republic of Germany believed that to do away with the administrative fee would cause a significant increase in the number of requests to inspect files. In view of the unavoidable administrative costs involved in the organisation of this service it seemed only reasonable to charge an administrative fee for it.

2414. The French delegation also opposed this proposal, on the grounds that it did not seem fair that applicants as a body should bear financial costs incurred for the benefit of an individual.

2415. The Committee rejected the Finnish delegation's proposal by eight votes to five, with one abstention.
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)
published by the
Government of the Federal Republic of Germany
Rule 93

Parts of the file not for inspection

The parts of the file which shall be excluded from inspection pursuant to Article 128, paragraph 4, shall be:

(a) the documents relating to the exclusion of objections to members of the Boards of Appeal or of the Enlarged Board of Appeal;

(b) draft decisions and opinions, and all other documents, used for the preparation of decisions and opinions, which are not communicated to the parties;

(c) the designation of the inventor if he has renounced his title as inventor under Rule 18, paragraph 3;

...any other document excluded from inspection by the President of the European Patent Office on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the resulting patent.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 11
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 83 to 106
Regel 94
Von der Einsicht ausgeschlossene Aktenteile

Von der Akteneinsicht sind nach Artikel 128 Absatz 4 folgende Aktenteile ausgeschlossen:

a) Vorgänge über die Frage der Ausschließung oder Ablehnung von Mitgliedern der Beschwerdekammern oder der Großen Beschwerdekammer;

b) Entwürfe zu Entscheidungen und Bescheiden sowie sonstige Schriftstücke, die der Vorbereitung von Entscheidungen und Bescheiden dienen und den Beteiligten nicht mitgeteilt werden;

c) andere Schriftstücke, die vom Präsidenten des Europäischen Patentamts von der Einsicht ausgeschlossen werden, weil die Einsicht in diese Schriftstücke nicht dem Zweck dient, die Öffentlichkeit über die europäische Patentanmeldung oder das darauf erteilte europäische Patent zu unterrichten.

Vgl. Artikel 128 (Akteneinsicht)

Regel 95
Durchführung der Akteneinsicht

(1) Die Einsicht in die Akten europäischer Patentanmeldungen und europäischer Patente wird in das Original oder in eine Kopie gewährt. Für die Akteneinsicht ist eine Verwaltungsgebühr zu entrichten.


(3) Auf Antrag wird die Akteneinsicht durch Erteilung von Kopien gewährt. Diese Kopien sind gebührenpflichtig.

(4) Auf Antrag stellt das Europäische Patentamt beglaubigte Kopien der europäischen Patentanmeldung gegen Entrichtung einer Verwaltungsgebühr aus.

Vgl. Artikel 128 (Akteneinsicht)

Regel 96
Auskunft aus den Akten

Das Europäische Patentamt kann vorbehaltlich der in Artikel 128 Absätze 1 bis 4 und Regel 94 vorgesehenen Ausnahmen auf Antrag und gegen Entrichtung einer Verwaltungsgebühr Auskünfte aus den Akten europäischer Patentanmeldungen oder europäischer Patente erteilen. Das Europäische Patentamt kann jedoch verlan-

Rule 94
Parts of the file not for inspection

The parts of the file which shall be excluded from inspection pursuant to Article 128, paragraph 4, shall be:

(a) the documents relating to the exclusion of or objections to members of the Boards of Appeal or of the Enlarged Board of Appeal;

(b) draft decisions and opinions, and all other documents, used for the preparation of decisions and opinions, which are not communicated to the parties;

(c) any other document excluded from inspection by the President of the European Patent Office on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the resulting patent.

Cf. Article 128 (Inspection of files)

Rule 95
Procedures for the inspection of files

(1) Inspection of the files of European patent applications and of European patents shall be of the original documents or of copies thereof. It shall be subject to the payment of an administrative fee.

(2) The inspection shall take place on the premises of the European Patent Office. However, on request, inspection of copies of the files shall take place on the premises of the central industrial property office of the Contracting State on whose territory the person making the request has his ordinary residence or place of business.

(3) On request, inspection of the files shall be effected by means of issuing copies of file documents. Such copies shall incur fees.

(4) The European Patent Office shall issue on request certified copies of the European patent application upon payment of an administrative fee.

Cf. Article 128 (Inspection of files)

Rule 96
Communication of information contained in the files

Subject to the exceptions provided for in Article 128, paragraphs 1 to 4, and in Rule 94, the European Patent Office may, upon request, communicate information concerning any file of a European patent application or European patent subject to the payment of an administrative fee. However, the European Patent Office may
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

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

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

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

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPEÉEN
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
Compte rendu de la réunion du 11 juillet 1963

Ad article 162 - N° 1

Le Président ouvre la séance à 9 heures. Il explique au groupe le sens de la disposition. Si quelqu'un prétend vis-à-vis d'un tiers avoir fait une invention alors que le brevet n'est pas encore délivré, il doit permettre à ce tiers de juger la valeur de cette invention. Cette disposition qui s'inspire de la législation scandinave est acceptée par le groupe et transmise au Comité de rédaction.

À une question de M. Fressonnet, le Président répond qu'il n'est pas nécessaire de prévoir une mesure spéciale dans la Convention pour permettre - comme dans le droit français - au demandeur de notifier à un tiers une copie de sa demande. L'objet de la présente disposition est différent, il s'agit de prévoir une obligation dans le chef du demandeur ou du titulaire du brevet provisoire.

Ad article 162 - N° 2

Ce numéro énumère à titre exemplatif les pièces du dossier qui seront exclues de la communication.

À la suite d'une intervention de M. Fressonnet, il est décidé d'ajouter un texte prévoyant que le Président de l'Office pourra compléter cette liste exemplative. L'énumération ne sera donc pas exhaustive. Il est impossible de prévoir tous les cas. La division d'administration de l'Office décidera dans les cas non prévus. Ainsi amendé, le numéro est transmis au Comité de rédaction.

7669/IV/63-F
Résultats de la neuvième session
du groupe de travail "Brevets"
qui s'est tenue à Munich
du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 162

Numéro 2

Pièces du dossier exclues de la communication

Les pièces du dossier exclues de la communication en vertu de l'article 162, paragraphe 2 de la Convention comprennent notamment:

a) Les documents concernant la demande d'exemption du paiement de taxes et d'autres frais de procédure en vertu de l'article 169, paragraphe 1 de la Convention;

b) Les documents concernant la demande d'octroi de délais supplémentaires pour le paiement des taxes annuelles en vertu de l'article 122 de la Convention;

c) Les documents concernant l'exclusion ou la récusation de membres des chambres de recours ou des chambres des annulations en vertu de l'article 153 de la Convention;

d) Les projets de décisions et d'avis, ainsi que tous les autres documents qui servent à la préparation de décisions et d'avis et ne sont pas communiqués aux parties.
Kurt Haortel

Bonn, le 9 mai 1963

Projet concernant le règlement d'exécution de la convention relative à un droit européen des brevets

Propositions relatives à l'application des articles 160 à 163 de la Convention
Bericht über die Sitzung vom 11. Juli 1963

Artikel 162 Nr. 1

Der Vorsitzende eröffnet die Sitzung um 9 Uhr. Er erläutert der Gruppe den Sinn dieser Vorschrift. Wenn jemand gegenüber einem Dritten behauptet, eine Erfindung gemacht zu haben, während das Patent noch nicht erteilt ist, muß er diesem Dritten gestatten, sich über den Wert dieser Erfindung ein Urteil zu bilden. Diese Vorschrift, die auf die skandinavische Gesetzgebung zurückgehe, wird von der Arbeitsgruppe angenommen und dem Redaktionsausschuß überwiesen.


Artikel 162 Nr. 2

Diese Nummer zählt beispielhaft die Aktenteile auf, die von der Einsicht ausgeschlossen sein sollen.


.../...
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 162
Nummer 2

Von der Einsicht ausgeschlossene Aktenteile

Zu den gemäß Artikel 162 Absatz 2 des Abkommens
von der Einsicht ausgeschlossenen Aktenteilen gehören
insbesondere:

a) Vorgänge über den Antrag auf Befreiung von der
Zahlung von Gebühren und sonstigen Kosten gemäß
Artikel 169 Absatz 1 des Abkommens;

b) Vorgänge über den Antrag auf Stundung der Jahresge-
bühren gemäß Artikel 122 des Abkommens;

b) Vorgänge über die Frage der Ausschließung oder Ab-
lehnung von Mitgliedern der Beschwerdekammern oder
der Nichtigkeitskammern gemäß Artikel 153 des Ab-
kommens;

d) Entwürfe zu Entscheidungen und Bescheiden, sowie
sonstige Schriftstücke, die der Vorbereitung von
Entscheidungen und Bescheiden dienen und den Beteiligten
nicht mitgeteilt werden.
Kurt Haertel

Bonn, den 9. Mai 1963

Arbeitsentwurf

zu einer

Ausführungsordnung

zum

Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 160 bis 163

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

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

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

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

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

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

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

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