Rule 83 E

Travaux Préparatoires
(EPC 1973)

Comment:
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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 83

**MPÜ**

**Berechnung der Fristen**

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX IV
REPORT
by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office
on the results of the Credentials Committee's proceedings
with regard to full powers for signing the Convention
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Chapter IV
Time limits

Rule 83
Calculation of time limits

(1) Periods shall be laid down in terms of full years, months, weeks or days.

(2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided.

(3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.
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 83
Heilung von Zustellungsmängeln

Kann das Europäische Patentamt die formgerechte Zustellung eines Schriftstücks nicht nachweisen oder ist das Schriftstück unter Verletzung von Zustellungs- vorschriften zugegangen, so gilt das Schriftstück als an dem Tag zugestellt, den das Europäische Patentamt als Tag des Zugangs nachweist.

Vgl. Artikel 118 (Zustellung)

Rule 83
Irregularities in the notification

Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt.

Cf. Article 118 (Notification)

Kapitel IV
Fristen

Regel 84
Berechnung der Fristen

(1) Die Fristen werden nach vollen Tagen, Wochen, Monaten oder Jahren berechnet.

(2) Bei der Fristberechnung wird mit dem Tag begonnen, der auf dem Tag folgt, an dem das Ereignis eingetreten ist, aufgrund dessen der Fristbeginn festgelegt wird; dieses Ereignis kann eine Handlung oder der Ablauf einer früheren Frist sein. Besteht die Handlung in einer Zustellung, so ist das maßgebliche Ereignis der Zugang des zugestellten Schriftstücks, sofern nichts anderes bestimmt ist.

(3) Ist als Frist ein Jahr oder eine Anzahl von Jahren bestimmt, so endet die Frist in dem maßgeblichen folgenden Jahr in dem Monat und an dem Tag, die durch ihre Benennung oder Zahl dem Monat und Tag entsprechen, an denen das Ereignis eingetreten ist; hat der betreffende nachfolgende Monat keinen Tag mit der entsprechenden Zahl, so läuft die Frist am letzten Tag dieses Monats ab.

(4) Ist als Frist ein Monat oder eine Anzahl von Monaten bestimmt, so endet die Frist in dem maßgeblichen folgenden Monat an dem Tag, der durch seine Zahl dem Tag entspricht, an dem das Ereignis eingetreten ist; hat der betreffende nachfolgende Monat keinen Tag mit der entsprechenden Zahl, so läuft die Frist am letzten Tag dieses Monats ab.

(5) Ist als Frist eine Woche oder eine Anzahl von Wochen bestimmt, so endet die Frist in der maßgeblichen Woche an dem Tag, der durch seine Benennung dem Tag entspricht, an dem das Ereignis eingetreten ist.

Vgl. Artikel 119 (Fristen)

Chapter IV
Time limits

Rule 84
Calculation of time limits

(1) Periods shall be laid down in terms of full years, months, weeks or days.

(2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided.

(3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Cf. Article 119 (Time limits)

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ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

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

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

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

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
The ICC was in favour of the date of dispatch, and IAPIP considered that the decisive factor should be the date on the postmark. CNIPA, EIRMA (with the majority of their representatives), FEMIPT, IFIA and UNEPA, on the other hand, wanted the date of receipt of the document by the applicant to determine the beginning of the period.

140. In this connection UNEPA raised the question of which was to be the determining date in the converse situation of the applicant having to send a document to the European Patent Office. It was pointed out that in such cases the date of receipt of the document at the European Patent Office would have to be the decisive date.

Re. Article 141, No. 3, IR (Duration of time limits)

141. IAPIP felt that it was not right that time limits could only be extended "in certain special cases"; it should always be possible to extend them "on reasoned request".

Article 142 (Restitutio in integrum)

142. IFIA wanted the possibility of restitutio in integrum extended to cover cases of negligence as well as those of force majeure.

Re. Article 145, No. 5, IR (Notification of possibility of appeal)

143. IAPIP was opposed to the provision of paragraph 2, according to which the parties may not invoke the omission of or any errors contained in the notification of possibility of appeal.

BR/169 e/72 ley/SL/prk .../...
Article 138 (Different claims, description and drawings for different States)

137. The ICC had doubts as to whether it was wise to provide in the second sentence, that the European Patent Office could require an applicant to produce a different description and different drawings for certain designated States in the event of the content of an earlier European patent application forming part of the state of the art for the States in question, pursuant to Article 11, paragraph 3. In its opinion the content of the (later) European application should be considered in its entirety. In such cases it would be preferable if the European Patent Office were to insert before the different sets of claims a note explaining how these sets of claims could be understood in the light of the description and drawings. It therefore recommended that the second sentence be deleted.

138. EIRMA proposed that Article 138 be extended to cover the case of a Contracting State taking advantage of the reservation option provided for in Article 159, paragraph 1(a); in this case too the applicant ought to be allowed to file different claims for the State concerned.

Re. Article 141, No. 1, IR (Calculation of time limits)

139. In connection with paragraph 2, second sentence, the question was raised as to when a time limit should begin when determined by a measure taken in respect of a party to the proceedings: it would have to begin either with the dispatch of the document concerned by the European Patent Office or with the receipt of the document by the party to the proceedings.

BR/169 e/72 ley/SL/prk
MINUTES

of the

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

Part II

Hearing of the non-governmental international organisations
on the Second Preliminary Draft of a Convention
establishing a European System for the
Grant of Patents

(Luxembourg, 26 January to 1 February 1972)
Indeed it would be unreasonable to deduce from the fact that these provisions had been linked for reasons of convenience to Article 141 of the Convention that they only covered the time limits referred to in that Article, i.e. those time limits set by the European Patent Office. This was also made clear in the introductory note to the First Preliminary Draft of the Implementing Regulations which reserved the question of the allocation of Articles between the Convention and the Implementing Regulations.

It was evident from this finding that the text of Re. Article 141, No. 2, also applied to the time limits relating to priority.

(b) In order to clarify all the rules relating to time limits, the Working Party decided to change Article 141 of the Convention into a general provision, while specifying that the Implementing Regulations laid down:

(i) the method of calculation and the conditions under which time limits fixed by the Convention or determined by the European Patent Office could be extended,

(ii) the minimum and maximum duration of the time limits determined by the European Patent Office.

The calculation of time limits therefore continued to be governed by Re. Article 141, No. 1 (unamended); the extension of time limits by Re. Article 141, No. 2 (which had undergone a slight drafting amendment); the minimum and maximum duration of time limits to be set by the European Patent Office, which was governed by Article 141 of the Second Preliminary Draft Convention, had been dealt with in a new Re. Article 141, No. 3, without any alteration in its substance.
21. The Working Party furthermore decided to harmonise the drafting of paragraph 1 in the three languages, in order to cover the time limits set by the European Patent Office as well as those time limits laid down directly by the Convention or by its Implementing Regulations.

22. The United Kingdom delegation proposed that the time limits relating to priority (Articles 73, paragraph 1 and 75 paragraph 1) should be excluded from the list given in paragraph 5, in order that the re-establishment of rights should be possible in this case also. Indeed it could happen that events of force majeure, independent of the will of the applicant, such as strikes, delays in the dispatch of mail, etc., might lead to the loss of priority rights as a result of the expiry of the time limit.

The Working Party was, by a majority, of the opinion that it was not expedient to pursue such a suggestion, since the problem could be better solved under Re. Article 141, No. 2 which deals explicitly with the extension of time limits in such cases.

23. The Working Party's discussions on this question, carried out on the basis of a working document from the United Kingdom delegation (working document No. 4 of 23 November 1971), led the Working Party to reorganise the content of Article 141 and of Re. Article 141, Nos. 1 and 2, on the one hand, and to set out clearly the relationship between Article 142 and Re. Article 141, No. 2, on the other.

(a) Firstly, the Working Party specified that Re. Article 141, No. 2 (extension of time limits) applied to all the time limits laid down in the Convention and in its Implementing Regulations, as well as to the time limits set by the European Patent Office.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING-UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

BRUSSELS, 16 DECEMBER 1971
BR/144/71

MINUTES

of the 10th meeting of Working Party I,
held in Luxembourg from 22 to 26 November 1971

1. Working Party I held its 10th meeting in Luxembourg from 22 to 26 November 1971, with Dr. HAERTHEL, President of the Deutsches Patentamt, in the Chair.

Representatives from the Commission of the European Communities, the IIB and WIPO attended the meeting as observers. The Council of Europe representatives sent their apologies for being unable to attend. For the list of those present at the 10th meeting see Annex I to these minutes.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/133/71 on the understanding that item 3 would also cover the examination of a number of problems including those referred to in BR/GT I/138/71. The provisional agenda is given in Annex II to these minutes.

3. The Working Party I Drafting Committee met first under the chairmanship of Mr. van BENTHEM, President of the Octrooi raad, and, following his departure, under that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).

BR/144 e/71 ley/prk
Unrevised translation
The Working Party agreed with this proposal. It was understood that if a divisional application contained new material, the attention of the applicant should be drawn to this point so that he might remove this material. If he did not, the divisional application would be rejected for not complying with Article 83a. The applicant would always have the option, if the new material constituted an invention, to divide the application subsequently without claiming the priority of the original application for the divisional application.

157. In view of the decision taken on Article 83a, the Working Party decided also to amend Article 101a, paragraph 1(c) and Article 133, paragraph 1(c), so that extension of the subject-matter of the original application would constitute a ground for opposition or revocation where a patent had been granted on the basis of a divisional application.

Re. Article 141, No. 1, paragraph 2

158. The WIPO representative proposed that this provision be aligned on the PCT by changing the relevant event for calculating periods in the second sentence of this paragraph from the receipt of a notification to its dispatch.

The delegations discussed this proposal in the light of national experience. However, the Working Party felt that the discussion should not be taken further until it had heard the views of the interested circles, for whom the problem was fairly important. It was therefore decided to draw their attention to this point in the invitation to be sent to them for the January 1972 meeting.

BR/135 e/71 ley/prk
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

MINUTES

of the 9th meeting of Working Party I
held from 12 to 22 October 1971, in Luxembourg

1. Working Party I held its 9th meeting in Luxembourg from 12 to 22 October 1971, with Dr. Haertel, President of the German Patent Office, in the Chair.

Representatives from the IIB and WIPO took part in the meeting as observers. The representatives of the Commission of the European Communities and the Council of Europe sent their apologies for being unable to attend. See Annex I to these minutes for the list of those present at the 9th meeting.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/120/71 and attached to this document as Annex II.

3. The Drafting Committee of Working Party I met first under the chairmanship of Mr. van BENTHEM, President of the Octrooireaad, and after his departure, that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).

BR/135 e/71 prk
(Unrevised translation)
Zu Artikel 141
Nummer 1

Berechnung der Fristen

(1) Die Fristen werden nach vollen Tagen, Wochen, Monaten oder Jahren berechnet.

(2) Bei der Fristberechnung wird mit dem Tag begonnen, der auf den Tag folgt, an dem das Ereignis eingetreten ist, aufgrund dessen der Fristbeginn festgelegt wird; dieses Ereignis kann eine Handlung oder der Ablauf einer früheren Frist sein. Besteht die Handlung in einer Zustellung, so ist das maßgebliche Ereignis der Zugang des zugestellten Schriftstücks, sofern nichts anderes bestimmt ist.

(3) Ist als Frist ein Jahr oder eine Anzahl von Jahren bestimmt, so endet die Frist in dem maßgeblichen folgenden Jahr in dem Monat und an dem Tag, die durch ihre Benennung oder Zahl dem Monat und Tag entsprechen, an denen das Ereignis eingetreten ist; hat der betreffende nachfolgende Monat keinen Tag mit der entsprechenden Zahl, so läuft die Frist am letzten Tag dieses Monats ab.

(4) Ist als Frist ein Monat oder eine Anzahl von Monaten bestimmt, so endet die Frist in dem maßgeblichen folgenden Monat an dem Tag, der durch seine Zahl dem Tag entspricht, an dem das Ereignis eingetreten ist; hat der betreffende nachfolgende Monat keinen Tag mit der entsprechenden Zahl, so läuft die Frist am letzten Tag dieses Monats ab.

(5) Ist als Frist eine Woche oder eine Anzahl von Wochen bestimmt, so endet die Frist in der maßgeblichen Woche an dem Tag, der durch seine Benennung dem Tag entspricht, an welchem das Ereignis eingetreten ist.

Zu Artikel 141
Nummer 2

Verlängerung von Fristen

(1) Der letzte Tag der Frist ein Tag, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken nicht geöffnet ist oder an dem gewöhnliche Postsendungen am Ort des Sitzes des Europäischen Patentamts nicht zugestellt werden, so erstreckt sich die Frist auf den nächstfolgenden Tag, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken geöffnet ist und an dem gewöhnliche Postsendungen zugestellt werden.

(2) Absatz 1 ist auf Fristen, die im Übereinkommen oder in dieser Ausführungsordnung vorgesehen sind, in Fällen entsprechend anzuwenden, in denen Handlungen bei der zuständigen Behörde im Sinne des Artikels 64 Absatz 1 Buchstabe b des Übereinkommens vorzunehmen sind.

Zu Artikel 142
Nummer 1

Wiedereinsetzung in den vorigen Stand

(1) Der Antrag auf Wiedereinsetzung in den vorigen Stand ist schriftlich einzureichen. Der Antrag gilt erst als gestellt, wenn die in der Gebührenordnung zum Übereinkommen vorgeschriebene Gebühr entrichtet worden ist.

Re. Article 141
No. 1

Calculation of time limits

(1) Periods shall be laid down in terms of full years, months, weeks or days.

(2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided.

(3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and, on the day having the same number as the month and the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Re. Article 141
No. 2

Extension of time limits

(1) If the last day of the period is a day on which the European Patent Office is not open for receipt of documents or on which ordinary mail is not delivered in the locality in which the European Patent Office is situated, the period shall be extended until the first day thereafter on which the European Patent Office is open for receipt of documents and on which ordinary mail is delivered.

(2) Paragraph 1 shall apply mutatis mutandis to the time limits provided for in the Convention or in these Implementing Regulations in the case of transactions to be carried out with the competent authority within the meaning of Article 64, paragraph 1(b), of the Convention.

Re. Article 142
No. 1

Restitutio in integrum

(1) Applications for re-establishment of the applicant’s rights shall be presented in writing. Such applications shall not be considered to be made until after the fee prescribed by the Rules relating to Fees adopted pursuant to the Convention has been paid.
FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS
TO THE CONVENTION ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
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
44. In the circumstances, the Chairman decided to maintain this provision in order that those delegations not members of the Sub-Committee should have the opportunity to give their opinion with all the relevant information available.

Re. Article 155, No. 1 - Calculation of the time limits

45. In respect of the calculation of time limits, the Sub-Committee adopted the corresponding rules of the Regulations under the Patent Co-operation Treaty, but slightly modified their wording and added that the time limits may also be calculated in weeks.

Re. Article 155, No. 2 - Extension of time limits

46. No comments.

Re. Article 156, No. 1 - Re-establishment of the rights of an applicant

47. The majority of the members of the Sub-Committee decided to provide for payment of a fee on applications for re-establishment of the rights of an applicant, partly with a view to limiting the number of these applications and partly so that the applicant would bear some of the costs of proceedings.

The German delegation expressed a reservation on this point, considering that it would be equitable that a party who had been victim of a case of "force majeure" should have to pay a fee. Furthermore, this delegation wondered whether the decision under discussion exceeded the intentions of Working Party I.

Finally, the two notes contained in the Chairman's proposals on this article were retained.

BR/60 e/70 ico/KM/prk
MINUTES
of the 3rd meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 20-23 October 1970)

I

1. The third working meeting of the Sub-Committee
   instructed by Working Party I to draw up draft
   Implementing Regulations to the Convention was held at
   Luxembourg, from Tuesday 20 to Friday 23 October 1970,
   with Mr. PRESSONET, Deputy Director, French Industrial
   Property Institute, in the Chair.

   In addition to the national delegations represen-
   ted in the sub-Committee, the meeting was attended by
   BIRPI and the International Patents Institute (IIB) (1).

(1) See the list of participants in Annex I.

BR/60 e/70 oyd/EL/prk

.... / ...
Ad article 155

Numéro 1

Calcul des délais:

(1) Les délais sont fixés en années, mois, semaines ou jours entiers.

(2) Si le point de départ d'un délai est fixé par référence à un acte, ce délai est calculé en excluant le jour de la date de l'acte. Si le point de départ est fixé par référence à une date, le délai est calculé en incluant le jour de cette date.

(3) Si le délai est fixé en mois ou en années, le délai est calculé du jour du commencement du délai au quantième correspondant du jour du mois de la fin du délai. Dans ce cas, si ce quantième n'existe pas dans le mois de la fin du délai, le délai expire à la fin du dernier jour de ce mois.
Groupe de travail "BREVETS"

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

VE AO 1964

Avant-projet

de règlement d'application de la convention relative à un droit européen des brevets
Zu Artikel 155
Nummer 1

Berechnung der Fristen

(1) Die Fristen werden nach vollen Tagen, Wochen, Monaten oder Jahren berechnet.

(2) Ist für den Anfang einer Frist ein Ereignis maßgebend, so ist die Frist unter Ausschluß des Tages zu berechnen, auf den das Ereignis fällt. Ist für den Anfang einer Frist ein Tag maßgebend, so wird dieser Tag bei der Berechnung der Frist mitgezählt.

(3) Ist die Frist nach Monaten oder Jahren bemessen, so wird die Frist von dem Tag, an dem die Frist zu laufen beginnt, bis zu dem durch seine Zahl entsprechenden Tag des Monats am Ende der Frist berechnet. Fehlt in diesem Fall in dem Monat, in dem die Frist abläuft, der für ihren Ablauf maßgebende Tag, so endigt die Frist mit dem Ablauf des letzten Tages dieses Monats.
ARBEITSGRUPPE
"Patente"

Brüssel, den 20. Januar 1964

VERTRAULICH

Vorentwurf
einer Ausführungsordnung zum Abkommen über
ein europäisches Patentrecht
AMENDMENTS TO THE MINUTES

of the meeting held from 23 to 27 November 1970

ANNEX III
to BR/84/71

Point 10: delete the last seven lines from "The fiction of the European patent" ...

Point 19: delete the text

Point 20: second-last line, for "see point 50" read "see point 51"

Point 36, 2nd sentence: delete the words "and were known to the International Patent Institute at the date of drawing up the report on the state of the art"

Point 37, 3rd sentence: delete the words "in making Article 122, paragraph 2, of the First Preliminary Draft Convention null and void", and substitute "in making Article 122 of the Convention practically meaningless"

Point 39, last line: for "see also point 43" read "see also point 53"

Point 50: Insert the text under point 52 after deleting the words "No comments"

Point 55, second-last line: for "original application" read "original claims".
MINUTES

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

(Luxembourg, 12 - 14 January 1971)

I

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

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

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

(1) See the list of participants in Annex I.
be re-examined, and also to maintain conformity with the text of the First Preliminary Draft Convention (see BR/48/70, page 24).

Re. Article 155, No. 1 - Calculation of time limits

39. The Sub-Committee agreed to amend the text of this already adopted provision (see BR/59/70) so that there should be no possible ambiguity in paragraph 2. It should be clear that in the case of a notification, the period will begin as from the date of receipt of the document notified (see also point 33).

Re. Article 159, No. 7 - Interruption of proceedings

40. This provision had been adopted at the end of the previous meeting (see BR/60/70, point 60 et seq.), but it had not been possible for the Drafting Committee to complete its wording. See also point 8 of the present Minutes.

Re. Article 159, No. 8 - Belated observations

41. Same comment as made under point 40.

Re. Article 161, No. 1 - General provisions on notifications

42. When adopting this provision the Sub-Committee decided not to use a system of notification by deposit in pigeon-holes, so as to avoid giving an unfair advantage to patent agents and consultants having their offices in the town where the European Patent Office is situated.
MINUTES
of the 4th meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 23-27 November 1970)

I.

1. The fourth meeting of the Sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention was held at Luxembourg, from Monday 23 to Friday 27 November 1970, with Mr. PRESSONNET, Deputy Director, French Industrial Property Institute, in the Chair.

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

(1) See the list of participants in Annex I.
Note:

(5) When a period is expressed as one week or a certain number of weeks, it shall expire on the first day following the last day expressed.

The relevant subsequent week on the day having the same name as the day on which the said event occurred.
The periods shall expire on the last day of the month.

When a period is expressed as one month or a certain number of months, it shall expire on the last day of that month.

When a period is expressed as one year or a certain number of years, it shall expire on the last day of the month having the same number of the relevant subsequent year.

The term "event" shall cover the expiry of another period.

Computation shall start on the day following the day on which the relevant event occurred.

Periods shall be laid down in terms of full years, months, weeks or days.

Text drawn up by the sub-committee.

Calculation of Time Limits

No. 1

He Article 175
PROGRESS REPORT ON THE WORK OF THE SUB-COMMITTEE ON THE IMPLEMENTATION REGULATIONS

(20 to 23 October 1970)

SECRETARIAT

BR/70/99

9 November 1970

FOR THE GRANT OF PRIVILEGES
FOR THE SETTING UP OF A EUROPEAN SYSTEM
INTER-GOVERNMENTAL CONFERENCE
Après un échange de vues, le groupe adopte ce numéro, biffe les crochets autour des mots "ou d'un tiers et transmet le texte au Comité de rédaction. Ce numéro sera également soumis aux experts des Ministères de la Justice.

Ad article 72 - N° 1

Le Président déclare que la deuxième phrase de l'article 72, paragraphe 2 devrait être supprimée si le groupe adopte les mesures d'exécution qu'il propose au sujet du calcul des délais.

Il ajoute que toutes ces mesures devraient également être examinées à nouveau avec les experts des Ministères de la Justice.

Le numéro est transmis au Comité de rédaction.

Ad article 155 - N° 2

Le numéro décide le jour à partir duquel doit se compter le délai en distinguant si le point de départ du calcul est un acte donné ou une date déterminée.

Si le calcul doit se faire à partir d'un acte, le jour de la date de cet acte, par exemple une notification, n'est pas compté. Il ne faut pas, en effet, qu'un adversaire s'efforce de raccourcir un délai en notifiant en fin de journée. Tel est le sens du paragraphe 1 qui reprend ainsi une règle de droit romain.

Après un échange de vues, le groupe adopte ce numéro et le transmet 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 155
Numéro 2

Commencement du délai

(1) Lorsqu'un acte constitue le point de départ d'un délai, celui-ci est calculé en excluant le jour de la date de cet acte. Article 80 § 1 alinéa 1 RPCJCE

(2) Lorsque le commencement d'un jour constitue le point de départ d'un délai, celui-ci est calculé en incluant ce jour.

Remarque :
Il se pourrait que le paragraphe 1 rende superflue la disposition de l'article 72, paragraphe 2, première phrase. RFCJCE signifie : règlement de procédure de la Cour de justice des Communautés européennes.
Projet

concernant le

règlement d'application

de la

Convention relative à un droit européen des brevets

Proposition concernant l'application des

articles 153 à 159

de la Convention
Nach einem Meinungsaustausch nimmt die Gruppe diese Vorschrift an, streicht die Klammern um die Worte "oder eines Dritten" und leitet den Text dem Redaktionsausschuß zu. Diese Nummer wird ebenfalls den Sachverständigen der Justizministerien vorgelegt werden.

Artikel 72 Nr. 1

Der Vorsitzende erklärt, daß in Artikel 72 Absatz 2 der zweite Satz gestrichen werden müsse, wenn die Gruppe die von ihm zur Fristenberechnung vorgeschlagenen Ausführungsbestimmungen annehme.

Er fügt hinzu, daß diese Bestimmungen ebenfalls noch einmal mit den Sachverständigen der Justizministerien erörtert werden müssen.

Die Nummer wird an den Redaktionsausschuß überwiesen.

Artikel 155 Nr. 2

Diese Vorschrift setzt den Tag fest, von dem ab die Frist berechnet werden soll und trifft dabei die Unterscheidung, ob als Ausgangspunkt der Berechnung ein Ereignis oder ein bestimmter Zeitpunkt maßgebend ist.

Soll die Berechnung von einem Ereignis ausgehen, dann wird der Tag dieses Ereignisses, zum Beispiel einer Zustellung, nicht mitgerechnet. Es soll nämlich nicht sein, daß ein Gegner sich um eine Verkürzung der Frist dadurch bemüht, daß er erst an Ende dieses Tages zustellt. Dies ist der Sinn von Absatz 1, der damit einen Gedanken des romanischen Rechts aufgreift.

Nach einer kurzen Debatte nimmt die Gruppe diese Nummer an und überweist sie dem Redaktionsausschuß.
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 155

Nummer 2

Fristbeginn

(1) Ist für den Anfang einer Frist ein Ereignis maßgebend, so ist die Frist unter Ausschluß des Tages zu berechnen, auf den das Ereignis fällt.

(2) Ist der Beginn eines Tages der für den Anfang einer Frist maßgebende Zeitpunkt, so wird dieser Tag bei der Berechnung der Frist mitgezählt.

Bemerkung:
Absatz 1 dürfte die Vorschrift des Artikels 72 Absatz 2 Satz 1 entbehrlich machen.

VOEGE bedeutet Verfahrensordnung des Gerichtshofs der Europäischen Gemeinschaften.
Arbeitsentwurf
zu einer
Ausführungsordnung
zum
Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 153 bis 159

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
parties 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
centreing European patents, also found little approval.

12. Representation (Articles 133-134, 162/Rules
101-105, 107)

The provisions of the Convention and the Implementing
Regulations concerning representation before the European
Patent Office were already discussed with the organisations
centred 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 unchallenged.
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 transition-
als 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