Article 57 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.
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| E 1972                                                   | 55                          | M/146/R 3                               | Art. 57                |
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|                                                        | 55                          | M/PR/G                                  | S. 200/184             |
First Preliminary Draft
Convention relating to a European Patent Law
Articles 11 to 29

Bonn, 14 March 1961
(b) The Reimer Proposal also gives definitions of "industrial" and "agricultural" (cf. Reimer Proposal, Section 2, paragraph 2). It will be necessary to examine whether that further definition should be included in a European patent law or whether the definition proposed in Article 13 can be taken to be adequate to cover all the desired possibilities for patentable inventions.
Re Article 13

Industrial application

1. Documents:
   (a) Gajac Study, French text p. 2, German text p. 3
   (b) Reimer Proposal Section 2

2. Comments:
   (a) Article 13 sets out to define the concept "industrial application". The question was not studied during the deliberations of the Co-ordinating Committee. The Draft Nordic patent law contains no express provision on the subject. Nevertheless the Committee of Experts of the Council of Europe considered that "industrial application" was one of the concepts to be standardised.

   A question for consideration is whether at least some general definition should be given of the concept of "industrial application" in European patent law or whether such a specific definition would be superfluous since no precise definition of the concept exists in national law either.

   But it should be noted that the concept of "industrial application" is apparently interpreted differently in the individual countries of the Common Market and that, in particular, purely agricultural processes are not regarded as patentable in all countries.
Comments

on the first Preliminary Draft Convention
relating to a European patent law
of 14 March 1961

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(Articles 11 to 29)
It further agreed to submit the whole of point 2 to specialists to check that the terms used were in accordance with the wishes of the drafters, particularly regarding the meaning of the words "purely biological processes".

After discussing the second paragraph of point 2 of the second variant, the Working Party decided to delete it and incorporate it in the first paragraph which would be worded as follows:

2. "New plant varieties or new animal species and purely biological processes for producing them".

The German text was to be adapted to the French text with the word "Erfindungen" (inventions) in particular being deleted.

The new version of Article 12 was adopted subject to the opinion of the experts on paragraph 2 of the second variant.

The meeting was adjourned at 12.30 hrs. and resumed at 15.00 hrs.

Article 13

Mr. De Muyser and Mr. De Reuse asked whether the reference to the manufacture or use of the subject-matter of an invention was enough to cover all possible applications.

The Chairman, supported by Mr. Fressonnet, explained that the subject-matter of an invention could also be a new application of a known substance obtained by a process already used. The implementation of a new application constituted a use of the subject-matter of the invention. He therefore felt that the wording of Article 13 covered all possible eventualities. A corresponding explanation would be given in the report sent with the proposed texts to the Co-ordinating Committee.

The new text of Article 13 was adopted.
withdrawn, they would have to consider a special provision that protection would not be effective in that State.

Mr. Fressonnet asked whether it would not be possible to dispense with Article 13 by suitably amending Article 11.

The Chairman replied that the aim of Article 13 was to avoid any restrictive interpretation of the industrial nature of patentable inventions.

Mr. De Muyser argued that in the expression "for industrial or agricultural purposes", the word "agricultural" placed next to the word "industrial" effectively restricted the sense of "industrial", since the industrial application of an invention could relate to other human activities.

In response to this observation, the Working Party instructed the Drafting Committee to find a formulation allowing as wide an interpretation as possible. In view of the importance of agriculture, it would be appropriate to mention it by way of example in the text using the adverb "particularly".

Mr. van Benthem was afraid that the words "in any other way" placed too great a stress on the industrial nature and underplayed the need for practical implementation of the invention. The expression could lead to patents being granted for inventions not susceptible of application.

The Chairman decided to leave resolution of that question until later.

Discussion of Article 14 of the Preliminary Draft

The Chairman pointed out that the Co-ordinating Committee had given specific instructions that the concept of absolute novelty be used.

There were two variants to Article 14.

The first (Reimer draft) was based on the criterion of the state of the art. The second, based on the Nordic draft, provided for a more general criterion.
3. Alternative advocated by Mr. Lannoy

The application could be filed with the European Office but it was for national legislation to require that inventions possibly concerning national defence be submitted to national authorities. That solution was implicit in the wording of Article 12, paragraph 3, which would be superfluous if the European Office could never decide whether an invention was to be kept secret.

The Working Party decided to leave the question open. But the wording of Article 12, paragraph 3, was retained for the time being to draw attention to the problem.

The Working Party instructed its Chairman to examine the matter in depth and to submit a study on the matter at a later date.

The Chairman explained the approach he intended to adopt. The ideal solution to avoid the above-mentioned drawbacks would be not to allow secret patents to come before the European Office. To that end there should be national screening. It seemed unnecessary for the Convention to require Member States to provide for such a procedure. The problem could be resolved by national legislation.

The meeting was adjourned at 12.30 hrs. and resumed at 15:15 hrs.

Discussion of Article 13 of the Preliminary Draft

The delegations approved the content of Article 13. However the Netherlands delegation filed a reservation concerning technical processes in agriculture.

The Chairman pointed out that it would be difficult to exclude inventions concerning agriculture from patentability under the European Convention because of the opposition of a single State. If the Netherlands reservation was not
Proceedings of the 1st meeting of the Patents Working Party held at Brussels from 17 to 28 April 1961
Article 13
Industrial Application

An invention shall be considered to be susceptible of industrial application if its subject-matter can be made or used in any kind of industry including agriculture or if it lends itself in any other way to use for industrial purposes.
national law on pharmaceutical products would not be limited by European law.

Mr. Fressonnet reserved his views on this matter without wishing to go back on the principle set out in the European Convention.

The Working Party decided to delete the words in brackets in Article 13.

To take account of Mr. Roscioni's wish to simplify the task of national judges applying the European Patent Convention and the Council of Europe Convention by harmonising the texts of the two Conventions, the Chairman envisaged expanding Article 13 by inserting in the first sentence the provision in Article 2(1) of the Council of Europe Convention and then continuing the text of Article 13 after inserting the word "particularly".

Mr. van Benthem, who had taken part in the drafting of the Council of Europe text, pointed out that it had not been discussed in detail. He preferred a precise wording such as that in Article 13, which could be regarded as a wide interpretation of the Council of Europe provision.

The Working Party felt that Article 2(1) of the Council of Europe text was merely a programme containing no definitions. It was therefore possible to fill in the details in that programme in the national law of the Contracting States and in the European Convention. Article 13 was in any case compatible with the Strasbourg text. The Article was adopted. The words in brackets would be deleted.

**Article 14**

The French delegation proposed removing mention of prior rights from paragraph 3 of Article 14 and inserting it in Article 12.

The Chairman pointed out that there were two alternative methods of dealing with
to prevent the Office from granting patents for inventions that were clearly contrary to "ordre public" but without requiring the Office to know in detail all the provisions of national law on "ordre public".

The Working Party decided to delete the brackets around the term "to the fundamental principles of".

The second variant of Article 12 was referred to the Drafting Committee.

The meeting adjourned at 12.45 hrs. and resumed at 15.00 hrs.

Continuation of the second reading of Article 12

Turning to sub-paragraph 2, the Working Party decided to adopt the wording used in Article 2(2) of the draft Council of Europe Convention.

The Chairman then proposed that sub-paragraph 3 be deleted but that there be incorporated in Article 62 an exception from the national authorities' obligation to transmit to the European Patent Office European applications filed with them if the subject-matter of the application had to be kept secret for national defence reasons.

The Working Party adopted that proposal and instructed the Drafting Committee to determine whether Contracting States should be obliged to convert any European application for which the patent had to be kept secret into a national application with the same priority. The Drafting Committee would report to the Working Party at the subsequent meeting in Munich.

Article 13

The Netherlands delegation first withdrew its reservation about Article 13.

After specifically discussing pharmaceutical products, the Working Party concluded that each Contracting State could cause compulsory licences to be granted for a European patent protecting such a product if public interest so required. Such licences would be limited to the territory of the State concerned. In that way
Proceedings of the 5th meeting of the Patents Working Party held at Brussels from 2 to 18 April 1962
Article 14 (13)

Industrial application

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.
VE MAY 1962

PRELIMINARY DRAFT CONVENTION

RELATING TO A

EUROPEAN PATENT LAW
Mr. De Muys er was worried that the mention of "agricultural" would give Article 14 a restrictive connotation.

The Chairman thought that the aim of both the Strasbourg Draft and the Brussels text was to have the criterion of industrial application extended as widely as possible. Nonetheless he would hesitate to suggest adopting the Brussels text in Strasbourg. It might reveal differences between the views of the various countries taking part in the Strasbourg negotiations that were concealed by the rather vague wording of the Strasbourg Draft. The position was different regarding the Brussels Draft which, while conforming with the Strasbourg text, had to be more explicit.

After some discussion, the Working Party decided to retain the current wording since, in practice, the various applications could be covered either by "industrial" or by "agricultural" in the wide sense of the terms.

At the instigation of Mr. Singer, the Drafting Committee was instructed to re-examine the German text of Article 14.

**Article 15 (17 + 18)**

Article 15 was adopted.

**Article 16(19)**

Mr. van Benthem pointed out that in paragraph 1, the word "reassign" had been replaced by "transfer" as reassignment was only possible if there had been a previous assignment.

The Chairman observed that the problem was one that concerned Mr. Roscioni who was still absent and he asked a member of the Drafting Committee to explain the matter to Mr. Roscioni. If that meeting produced no results, discussions could be reopened within the Working Party.
next meeting of the Council of Europe Committee of Experts, Mr. van Benthem wanted to know the views of the other delegations on a possible proposal for incorporating a stricter rule in the Council of Europe Draft. He pointed out that the Strasbourg Draft left the States free to give their nationals wider protection. In other words, should the minimum protection rule be transformed into that of maximum protection?

Mr. De Muyser and Mr. Degavre were prepared to accept such a proposal in order to guarantee inventors greater legal certainty.

Mr. Pfanner thought that, having regard to its discussions with interested circles, the German delegation would not be able to accept such a proposal in Strasbourg.

The Chairman said that, as set out in the Council of Europe Draft, the proposal gave rise to some legal uncertainty. But that uncertainty existed only for inventors from countries that gave wider protection than the minimum protection under the Draft.

Article 12 was adopted.

Article 13(16)

Discussion was postponed until the French delegation arrived in order to decide whether the word "particularly" should be retained even though the Strasbourg Draft was worded differently.

Article 14(13)

Mr. van Benthem explained that Article 14 followed the principle of the Strasbourg Draft but was more explicit. That was in fact why the Netherlands delegation was proposing that the Strasbourg Draft adopt the wording of the European Convention.
Proceedings of the 6th meeting of the Patents Working Party held at Munich from 13 to 23 June 1962
Article 13. Inventive step
An invention shall be considered as involving an inventive step if it is not obvious having regard to the state of the art.

Article 14. Industrial application
An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

CHAPTER II—RIGHT TO THE PATENT

Article 15. Right to obtain a European patent
(1) The right to a European patent shall belong to the inventor or his assignee.

(2) For the purposes of procedure before the European Patent Office, the person making the patent application shall be deemed to be entitled to exercise the right referred to in paragraph 1.

Article 16. Obtaining
(1) If the essential elements of a patent application or of a European patent have been unlawfully obtained from the invention of another, the person injured by such obtaining may request that the application or the patent be assigned to him.

(2) After a period of five years from the date of the grant of the provisional European patent, the right referred to in paragraph 1 may no longer be exercised, except in a case where the proprietor of the patent acquired the patent in bad faith.

(3) As from the date of the notification to the European Patent Office that an action under paragraph 1 has been brought, the proprietor of the provisional European patent may not surrender the patent save with the consent of the person who has brought the action.

(4) If an action has been brought under paragraph 1 the European Patent Office shall stay the proceedings for confirmation of the provisional European patent, unless the person having brought the action consents to their continuance; such consent shall be irrevocable.

(5) If a final decision is given in favour of a person who has brought an action under paragraph 1, that person may, within a period of three months following the final decision, file a new application in respect of the same invention, the application being deemed to have been filed on the date of the earlier application. The earlier application for a European patent shall be deemed to have been withdrawn and any provisional European patent shall be deemed to have lapsed once the injured party has filed a new application.

(6) Following the final decision, any proceedings for confirmation of the provisional European patent stayed under the terms of paragraph 4, shall be resumed. However, if the decision is in favour of the person who has brought
Translation of a Draft Convention relating to a European Patent Law

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The Working Party discussed the concept of obviousness. It preferred the German word "naheliegender". The Dutch, French and Italian versions of the Convention were to translate the term as closely as possible. Article 13 was transmitted to the Drafting Committee which was to take the wording of the Strasbourg Draft into account.

Article 14

After reading the opinions of the international associations, the Working Party discussed UNICE's comments on the drafting regarding the term "in any kind of industry, including agriculture".

Mr. Fressonnet underlined the very broad meaning of the word "industry".

Mr. Pfanner added that the word even covered the army and the professions. The Chairman concluded by saying that the text would have to remain unchanged so as not to deviate from the Strasbourg Draft. Article 14 was transmitted to the Drafting Committee.
Proceedings of the 10th meeting
of the Patents Working Party
held at Brussels from
16 to 27 September 1963

MINUTES
Article 14

Industrial application

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.
Amendments to the Preliminary Draft Convention relating to a European Patent Law

(Articles 1 to 175)

This document replaces document 11.155/IV/64-E of 2 October 1964 (Articles 1 to 103)
Certain delegations observed, however, that the system proposed by the Netherlands delegation would give rise to difficulties connected with the fact that several prior rights having different contents could be made the subject of opposition proceedings in different countries.

The Netherlands delegation was invited to consider the procedural provisions which could be adopted later in the event of a solution less restrictive than that laid down in paragraph 4 being decided upon.

**Article 12 - Non-prejudicial disclosures**

27. Article 12 corresponds to Article 4, paragraph 4 of the 1963 Strasbourg Convention.

**Article 13 - Inventive step**

28. The matter referred to in Article 13 is the subject of Article 5 of the Strasbourg Convention, which leaves to the Signatory States the option of totally or partially excluding the earlier application in deciding whether there has been an inventive step.

The Working Party was unable to reach a joint position on the second sentence of Article 13, for which it has provisionally accepted two variants.

**Article 14 - Industrial application**

29. Article 14 corresponds to Article 3 of the 1963 Strasbourg Convention.

BR/7 e/69 (kel/PA/che

.../...
MINUTES

do the meeting of Working Party I
(Luxembourg, 8 - 11 July 1969)

I

1. The first working meeting of Working Party I, set up by the Conference, was held at Luxembourg from Tuesday 8 to Friday 11 July 1969.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Brussels on 21 May 1969, the Chair was taken by Dr. HAERTHEL, President of the German Patent Office.

In addition to the Commission of the European Communities, the following inter-governmental organisations, which had been invited to take part in the work of the Working Party, were represented: BIRPI, the General Secretariat of the Council of Europe and the International Patent Institute (1).

(1) See annexed list of participants in the meeting of the Working Party.
Article 14
Industrial application

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

Note to Article 14:

Article 14 corresponds to Article 3 of the Strasbourg Convention.

BR/70 e/70 fm.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS
- Secretariat -

Brussels, 21 December 1970
BR/70/70

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

(Articles drafted by Working Parties I, II, III and IV)

BR/70 e/70 gc
had to be obvious to a person skilled in the art, did not, however, need to be defined any more precisely, since it was self-evident from the references to Article 11, paragraph 2 in Articles 13 and 74 that it was the filing date on the date of priority as the case may be.

Article 14 - Industrial application

26. After the German delegation had withdrawn its proposed amendment (BR/GT I/74/70, page 6), the Working Party decided against undertaking an alignment in Article 33, paragraph 4 of the PCT.

Article 118 - Functions of the European Patent Office in the context of the Patent Co-operation Treaty

27. The Working Party agreed to delete this Article, since its provisions were repeated individually in the following Articles: paragraph 1 was unnecessary because of the already existing Articles 119 and 121; in place of paragraph 2, a new Article 121a would be adopted, and in place of paragraph 3, a new Article 121b.

Article 119 - The European Patent Office as a receiving Office

28. Apart from a textual correction in paragraph 1, the Working Party, on the basis of Article 9, paragraph 2, of the PCT, limited the possibility of the European Patent Office acting as a receiving Office pursuant to paragraph 3 to instances in which the applicant is a resident or national of a State party to the Paris Convention.

BR/94 e/71 aut/KM/prk
MINUTES

of the 7th meeting of Working Party I
held at Luxembourg from 26 to 29 January 1971

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

1. The Working Party held its seventh meeting at Luxembourg from Tuesday 26 to Thursday 28 January 1971 with Dr. HAERTHEL, President of the German Patent Office, in the Chair.

The meeting was attended by representatives of the Commission of the European Communities, WIPO/OMPI and the International Patent Institute (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", Mr. J.V. VAN BENTHEM, held its meetings directly after the deliberations of the Working Party, and also on the morning of 29 January 1971.

(1) For the provisional agenda (BR/GT I/101/71), see Annex I.
(2) For the list of those attending the meeting of the Working Party, see Annex II.

BR/94 e/71 son/KM/prk .../...
Gehören zu dem Stand der Technik auch Unterlagen im Sinn des Artikels 52 Absatz 3, so werden diese bei der Beurteilung der erfinderischen Tätigkeit nicht in Betracht gezogen.

**Artikel 55**
Gewerbliche Anwendbarkeit

Eine Erfindung gilt als gewerblich anwendbar, wenn ihr Gegenstand auf irgendeinem gewerblichen Gebiet einschließlich der Landwirtschaft hergestellt oder benutzt werden kann.

**Kapitel II**
Zur Einreichung und Erlangung des europäischen Patents berechtigte Personen — Erfindernennung

**Artikel 56**
Recht zur Anmeldung europäischer Patente

Jede natürliche oder juristische Person und jede einer juristischen Person nach dem für sie maßgebenden Recht gleichgestellte Gesellschaft kann die Erteilung eines europäischen Patents beantragen.

**Artikel 57**
Mehre Anmelder

Die europäische Patentanmeldung kann auch von gemeinsamen Anmeldern oder von mehreren Anmeldern, die verschiedene Vertragsstaaten benennen, eingereicht werden.

Vgl. Regeln 26 (Erteilungsantrag) und 101 (Bestellung eines gemeinsamen Vertreters)

**Artikel 58**
Recht auf das europäische Patent


**Article 55**
Industrial application

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

**Chapter II**
Persons entitled to apply for and obtain European patents — Mention of the inventor

**Article 56**
Entitlement to file a European patent application

A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it.

**Article 57**
Multiple applicants

A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting States.

Cf. Rules 26 (Request for grant) and 101 (Appointment of a common representative)

**Article 58**
Right to a European patent

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee the right to the European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has his place of business to which the employee is attached. If two or more persons have made an invention independently of each other, the right to the European patent shall belong to the person whose European patent application has the earliest date of filing; however, this provision shall apply only if this first application was published under Article 92 and shall only have effect in respect of the Contracting States designated in that application as published.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE 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
Article 57

Industrial application

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 3
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 55 to 83
official languages instead of only the language of the proceedings.

2. Patentability (Articles 50-53)

The provisions of substantive law on patentability were not amended as to substance. The exceptions listed in Article 50, paragraph 2, were confirmed by the Main Committee as basic principles of the Convention. Certain drafting improvements however now make it completely clear that the various types of subject-matter, acts and activities listed are only excluded as such from patentability and that therapeutic and diagnostic methods are not patentable on the grounds that they lack industrial application.

The exception to patentability laid down in Article 51 in respect of inventions the publication of which would be contrary to "ordre public" or morality was reinforced by a duty to examine on the part of the European Patent Office (see Rule 34).

An improved wording of Article 52, paragraph 5, now ensures the patentability of known chemicals for such uses in therapeutic and diagnostic methods as do not form part of the state of the art. In this connection the Main Committee was also of the opinion that only a first use, irrespective of whether it is with regard to humans or animals, fulfils the requirements of this provision.

With respect to non-prejudicial disclosure the Main Committee amended Article 53 to provide that an abusive disclosure in relation to the person entitled shall not be prejudicial if it occurred no earlier than six months before the filing of the application. This amendment means that, taking into account the concept of novelty contained in Article 52, paragraphs 3 and 4, cases of abusive disclosure after the date of filing of the application by the person entitled are dealt with in the same way as a disclosure within six months preceding the date of filing of the European patent application. The Main Committee decided not to extend the definition of the international exhibitions referred to in Article 53 not only because such an amendment would diverge from the Strasbourg Convention but also because exhibition priorities as such are a dangerous instrument for the applicant.

In discussing Article 54 a proposal for supplementing this provision to the effect that any technological advance proven by the applicant should be taken into account in deciding whether there has been an inventive step was rejected, mainly because it was feared that too much weight might be given to this factor.

3. Position of the inventor (Articles 58, 59, 60, 79, 90 and Rules 17, 19, 26, 42)

The Main Committee gave detailed consideration to a proposal to give the inventor a better and stronger legal position in the system set up by the Convention than that afforded by the drafts. The main proposal sought to compel the applicant to designate the inventor at the time of filing the application and at the same time to prove his entitlement to the invention by producing a certificate of transfer drawn up by the inventor or some other conclusive document.

It was not contested that the rights of the inventor should be adequately protected in the Convention. The Main Committee therefore decided unanimously that in respect of all European patent applications, irrespective of which States were designated in them, the filing of a statement identifying the inventor should be a compulsory requirement, with the result that if it were not complied with, the application would be deemed to be withdrawn. However, the Main Committee rejected the proposal to require the production of proof that the applicant was the inventor's successor in title for three main reasons: there would be difficulties in obtaining such a document in individual cases; it could not be produced where the transfer took place in the due course of law; and finally it would put the European Patent Office in the extremely difficult situation of having to apply the national law of the Contracting States in examining such documents. Similarly, an alternative proposal, to require proof of being the inventor's successor in title only where the national law of at least one of the designated Contracting States required such proof in respect of national patent applications, could not be adopted as this would have caused the same difficulties. In order that the rights of the inventor should nevertheless be protected, the Main Committee finally adopted a compromise solution whereby, if the applicant were not the inventor or not the sole inventor, he would be obliged to file a statement, which would be an integral part of the designation of the inventor indicating the legal basis of his acquisition of the invention. In addition, this designation of the inventor by the applicant would be notified to the inventor, thus allowing him where necessary to invoke his rights in due time. Corresponding amendments were made to Articles 79 and 90 and to Rules 17, 19, 26 and 42.

4. Effects of the European patent and the European patent application (Articles 61-68)

The main subject of discussion in this respect was Article 67 which defines the protection conferred by the European patent and the European patent application.

The Main Committee adopted by a majority a provision which also occurs in the Draft of the Second Convention for the Community patent, whereby the protection conferred on a process is extended to the products directly obtained by that process. This provision, which was inserted in Article 62 and which is already known in the laws of several Contracting States, takes account of the fact that in certain branches of industry, such as the plastics industry, it is not always possible to define a material without reference to its being transmuted by production. At the same time, a similar majority of the Main Committee rejected a proposal that this extended protection be reinforced in the case of an invention relating to the manufacture of a new product by assuming, to the benefit of the proprietor of the patent, that any product of the same nature would be considered to be obtained by the protected process. This proposal to reverse the burden of proof was countered by the argument that it would constitute too great an inroad into the national law of the Contracting States.

Main Committee I also considered, in respect of Article 67, paragraph 2, that the concept of extending the protection conferred by the European patent application included the case of a shift in the protection as a result of an amendment to the claims. With regard to the interpretative statement proposed by the Inter-Governmental Conference in respect of Article 67, it considered that this should be officially adopted unamended by the Diplomatic Conference and should be annexed to the Convention in the form of a declaration.

As regards the right to continue to use the invention, which a third party who has been operating in good faith may invoke under Article 68, paragraph 4(b), where the proprietor of the patent has corrected the translation of the specification, the Main Committee decided by a majority to depart from the draft by providing that this right could be exercised without payment, by analogy with the comparable situation dealt with in Article 121, paragraph 6.
Minutes of the proceedings of the Committee of the Whole

1. The Committee of the Whole, which was established by the Plenary of the Conference and comprised all the Government delegations (see Rule 14 of the Rules of Procedure)*, was, pursuant to paragraph 4 of rule 14, chaired by Dr. Kurt Haertel (Federal Republic of Germany), President of the German Patent Office and Chairman of Main Committee I. Mr. François Savignon (France), Director of the French Industrial Property Office and Chairman of Main Committee II, was First Vice-Chairman; Mr. Edward Armitage (United Kingdom), Comptroller-General of the United Kingdom Patent Office and Chairman of Main Committee III was Second Vice-Chairman.

2. In accordance with Rule 14 of the Rules of Procedure, the terms of reference of the Committee of the Whole were to take decisions on proposals from the General Drafting Committee on drafts established by Main Committees I, II and III and on proposals submitted to it directly and to forward the drafts approved by it to the Plenary of the Conference for adoption.

3. The Committee of the Whole met under the direction of the Chairman from 1 to 4 October 1973.

4. At the meeting on 1 October 1973, the Committee of the Whole received the reports of Main Committees I and II. Main Committee I's report was approved without debate (see Section I below).

5. At its meeting on 2 October 1973, the Committee of the Whole discussed Main Committee II's report. The discussion and subsequent approval of the report are dealt with below in Section II.

At the same meeting, it heard and approved Main Committee III's report (see Section III below); it also discussed the results of the proceedings of the General Drafting Committee (M/146 R/1 to R/15 and M/151 R/16). These discussions are covered in Section IV below.

6. On 3 October 1973, the Committee of the Whole received and approved the report of the Credentials Committee (see Section V below). The problems of a European School and the European Patent Office building in Munich were then dealt with (see Sections VI and VII).

7. At its last meeting on the morning of 4 October 1973, the Committee of the Whole discussed the organisation and work programme of the Interim Committee. These discussions are presented in Section VIII below. It finally considered a proposal from the Yugoslav delegation for a Resolution on technical assistance (Section IX) and a Recommendation regarding the status and remuneration of certain employees (Section X).

I. Report of the discussions and decisions of Main Committee I

8. The rapporteur of this Main Committee, Mr. Paul Braendli, Vice-Director of the Federal Intellectual Property Office (Switzerland), presented the report on the work of Main Committee I to the Committee of the Whole. The text of this report is given in Annex I.

The report was unanimously adopted by the Committee of the Whole.

II. Report on the work of Main Committee II

9. Subject to a few minor amendments, the Committee of the Whole unanimously approved the report presented by the rapporteur of Main Committee II, Mr. R. Bowen (United Kingdom), Assistant Comptroller of the United Kingdom Patent Office. The text of the report as adopted by the Committee of the Whole is given in Annex II. The discussions concerning the proposals for amendments to the report are summarised in the following paragraphs.

10. As regards the section of the report concerning the Protocol on Centralisation, the Netherlands delegation, commenting on the first sentence in point 16, stated that the obligations of the European Patent Office towards the Member States of the International Patent Institute had simply been clarified rather than extended. However, the French and United Kingdom delegations maintained that the obligations had in fact been extended since the original text had only referred to tasks at present incumbent upon the Institute whereas now tasks entrusted to the IIB after the signing of the Protocol were expressly covered. While disagreeing with this view, the Netherlands delegation did not insist on an amendment.

11. The Netherlands delegation proposed, also with regard to point 16, that the last sentence should state that the EPO would also undertake searches for Member States of the IIB which had not submitted any applications for search before the entry into force of the Convention. This would make provision for those States which, up to the time in question, had submitted no applications for search to the IIB although they were entitled to do so.

The Committee of the Whole agreed to amend the part of the report concerned as follows: "... the Office will also assume this responsibility in respect of a Member State of the Institute which prior to the entry into force of the Convention, has agreed to submit national applications to the Institute for search."

12. The Committee of the Whole adopted a proposal from the Swedish delegation that the idea proposed by the Scandinavian countries at the beginning of point 22 be worded as follows: "Consideration was given to the idea, proposed by the Scandinavian countries, that such work might be entrusted to national offices, possessing the minimum documentation, whether or not they possessed the other qualifications, required of an International Searching Authority under the Patent Cooperation Treaty." It also approved an addition at the end of the third sentence in this point to the effect that national offices would have to "fully" qualify as Searching Authorities.

13. The Austrian delegation suggested that in the English version of point 22, in the middle of page 14, the words "some search work" be used so as not to prejudge the question of the amount of such search work, which had deliberately been left open. The text would therefore read: "difficulties resulting from a renunciation under Section 12, to entrust some search work to national offices whose language is..."

The Committee of the Whole accepted this suggestion. The German and French texts remained unaltered.

14. With regard to the part of the report dealing with Article 166 (Article 167 of the signed version) of the Convention, the Greek delegation proposed that point 11 be amended at the top of page 7 so as to state, not that Main Committee II had accepted the view as to the effects of a reservation, but that it had considered such a possibility. The rapporteur and the Netherlands delegation stated that this view had been generally accepted in Main Committee II.

The Committee of the Whole accordingly decided not to amend the draft which had been submitted.

III. Report on the results of Main Committee III's proceedings

15. Main Committee III's rapporteur, Mr. Fressonnet, Deputy Director of the National Industrial Property Office
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)

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Article 13

Industrial application

An invention shall be susceptible of industrial application if it can be produced or used in an industrial or agricultural undertaking or if it is suitable for use in any other way for industrial or agricultural purposes.