Rule 89 E

Travaux Préparatoires
(EPC 1973)

Comment:
The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
### Regel 89

**MPÜ**

**Berichtigung von Fehlern in Entscheidungen**

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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 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
Rule 89

Correction of errors in decisions

In decisions of the European Patent Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected.
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 90
Berichtigung von Fehlern in Entscheidungen

In Entscheidungen des Europäischen Patentamts können nur sprachliche Fehler, Schreibfehler und offenbare Unstimmigkeiten berichtigt werden.

Vgl. Artikel 90 (Formalprüfung), 95 (Zurückweisung oder Erteilung), 101 (Widerruf oder Aufrechterhaltung), 103 (Kosten), 110 (Entscheidung über die Beschwerde) und 111 (Entscheidung oder Stellungnahme der Großen Beschwerdekammer)

Kapitel VI
Unterbrechung des Verfahrens

Regel 91
Unterbrechung des Verfahrens

(1) Das Verfahren vor dem Europäischen Patentamt wird unterbrochen:

a) im Fall des Todes oder der Handlungsunfähigkeit des Anmelders oder Patentinhabers oder der Person, die nach dem Heiratsrecht des Anmelders oder Patentinhabers zu dessen Vertretung berechtigt ist. Solange die genannten Ereignisse die Vertretungsbefugnis eines nach Artikel 134 bestellten Vertreters nicht berühren, tritt eine Unterbrechung des Verfahrens jedoch nur auf Antrag dieses Vertreters ein;

b) wenn der Anmelder oder Patentinhaber aufgrund eines gegen sein Vermögen gerichteten Verfahrens aus rechtlichen Gründen verhindert ist, das Verfahren vor dem Europäischen Patentamt fortzusetzen;

c) im Fall des Todes oder der Handlungsunfähigkeit des Vertreters des Anmelders oder Patentinhabers.

(2) Wird dem Europäischen Patentamt bekannt, wer in den Fällen des Absatzes 1 Buchstaben a und b die Berechtigung erlangt hat, das Verfahren vor dem Europäischen Patentamt fortzusetzen, so teilt es dieser Person und gegebenenfalls den übrigen Beteiligten mit, daß das Verfahren nach Ablauf einer von ihm zu bestimmenden Frist wieder aufgenommen wird.

(3) Im Fall des Absatzes 1 Buchstabe c wird das Verfahren wieder aufgenommen, wenn dem Europäischen Patentamt die Bestellung eines neuen Vertreters des Anmelders angezeigt wird oder das Europäische Patentamt die Anzeige über die Bestellung eines neuen Vertreters des Patentinhabers den übrigen Beteiligten zuge stellt hat. Hat das Europäische Patentamt drei Monate nach dem Beginn der Unterbrechung des Verfahrens noch keine Anzeige über die Bestellung eines neuen Vertreters erhalten, so teilt es dem Anmelder oder Patentinhaber mit:

a) im Fall des Artikels 133 Absatz 2, daß die europäische Patentanmeldung als zurückgenommen gilt oder das europäische Patent widerrufen wird, wenn die Anzeige nicht innerhalb von zwei Monaten nach Zustellung dieser Mitteilung erfolgt, oder,

Rule 90
Correction of errors in decisions

In decisions of the European Patent Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected.

Cf. Articles 90 (Examination as to formal requirements), 95 (Refusal or grant), 101 (Revocation or maintenance of the patent), 103 (Costs), 110 (Decision in respect of appeals) and 111 (Decision or opinion of the Enlarged Board of Appeal)

Chapter VI
 Interruption of proceedings

Rule 91
 Interruption of proceedings

(1) Proceedings before the European Patent Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of the person authorised by national law to act on his behalf. To the extent that the above events do not affect the authorisation of a representative appointed under Article 134, proceedings shall be interrupted only on application by such representative;

(b) in the event of the applicant for or proprietor of a European patent, as a result of some action taken against his property, being prevented by legal reasons from continuing the proceedings before the European Patent Office;

(c) in the event of the death or legal incapacity of the representative of the applicant for or proprietor of a European patent.

(2) When, in the cases referred to in paragraph 1(a) and (b), the European Patent Office has been informed of the identity of the person authorised to continue the proceedings before the European Patent Office, the European Patent Office shall communicate to such person and to any interested third party that the proceedings shall be resumed as from a date to be fixed by the European Patent Office.

(3) In the case referred to in paragraph 1(c), the proceedings shall be resumed when the European Patent Office has been informed of the appointment of a new representative of the applicant or when the European Patent Office has notified to the other parties the communication of the appointment of a new representative of the proprietor of the patent. If, three months after the beginning of the interruption of the proceedings, the European Patent Office has not been informed of the appointment of a new representative, it shall communicate to the applicant for or proprietor of the patent:

(a) where Article 133, paragraph 2, is applicable, that the European patent application will be deemed to be withdrawn or the European patent will be revoked if the information is not submitted within two months after this communication is notified,
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
determined by the provisions of national law. One
delegation however had expressed a preference for the
retention of this provision, which constituted an
alignment of national laws on the point in question.

Rule 91

29. The Committee decided by a majority to delete the
first paragraph which corresponded to Article 146 of the
Second Preliminary Draft of the Convention. Indeed, it
was of the opinion, firstly, that the wording of this
provision would make it difficult to apply since in each
individual case it could be argued that a correction
entailed disadvantages, either for the applicant for or
proprietor of a patent, or for third parties; secondly,
according to a general administrative principle, irregularities committed in proceedings could be rectified.
Taking into account this last point, the Committee amended
the wording of paragraph 2 by providing for a specific
limitation on the type of errors which could be rectified
in decisions of the European Patent Office, i.e. linguistic
errors, errors of transcription and obvious mistakes.
Moreover, with regard to the interpretation of the words
"obvious mistakes", the Committee concluded that the
obvious nature of mistakes should be judged with regard
to the entire file, and not on the sole basis of the text
of the decision. In this instance, therefore, the
definition of "obvious mistakes", set out in another
context in Rule 90 would not be applicable.
MINUTES

of the

second meeting of the Co-ordinating Committee

held in Brussels from 15 to 19 May 1972

1. The second meeting of the Co-ordinating Committee was held in Brussels from 15 to 19 May 1972 with Dr HAERTEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, of the IIB and of WIPO took part as observers. The representatives of the Council of Europe sent their apologies for being unable to attend. The list of those taking part in the meeting is given in Annex I to this report.

2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:
Article 91 (146 + Re. 145, No. 4)

Correction of errors made by the European Patent Office

(1) Any errors committed by the European Patent Office in proceedings before it may be corrected according to rules laid down by the President of the Office, in so far as such correction does not directly entail any disadvantages for the applicant or proprietor of the patent or for third parties.

(2) Linguistic errors, errors of transcription and obvious mistakes contained in decisions of the European Patent Office, in the Register of European Patents and in publications of the European Patent Office may be corrected.
DRAFT IMPLEMENTING REGULATIONS
TO THE CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
-10 to 20 April 1972)
Re. Article 145, No. 4a, which was newly inserted into the Implementing Regulations for this purpose, provides that such mistakes in any document submitted to the European Patent Office may be corrected on request. Its wording is closely aligned on Rule 91.1 a and b of the Rules under the PCT. Special exceptions, for example the subsequent designation of a State, were not included in the new provision.

60. The Working Party also considered that it would not be feasible to combine the new Re. Article 145, No. 4a, IR, with the already existing Re. Article 145, No. 4, IR, which covers the rectification of errors in decisions, publications and the Register of European Patents, to form a single provision.

61. In Article 82, paragraph 2, the reference to Article 79, paragraph 5, had to be deleted, as the content of the latter had been substantially altered (see point 50(b) above).

Article 85 - Publication of the European Patent application, and
Re. Article 85, No. 1, IR - Publication of European patent applications and European patent specifications

62. In order to preclude misunderstandings, it was made clear in Article 85, paragraph 1, that the publication of the application is to contain the description, the claims and any drawings in the form in which they were originally filed. The only amendment to paragraph 3 concerned the wording.

BR/135 e/71 ley/prk .../...
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 Octrooi raad, and after his departure, that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).
Zu Artikel 145
Nummer 3
Form der Entscheidungen des Europäischen Patentamts
(1) Findet eine mündliche Verhandlung vor dem Europäischen Patentamt statt, so können die Entscheidungen verkündet werden. Später sind die Entscheidungen schriftlich abzufassen und den Beteiligten zuzustellen.
(2) Die Entscheidungen, die mit der Beschwerde angefochten werden können, und die Endentscheidungen der Beschwerdekammer werden mit Gründen versehen.

Zu Artikel 145
Nummer 4
Berichtigung von Amts wegen

Zu Artikel 145
Nummer 5
Rechtsmittelbelehrung
(1) Entscheidungen des Europäischen Patentamts, gegen die eine Beschwerde statthaft ist, sind mit einer schriftlichen Belehrung über dieses Rechtsmittel zu versehen; in der Belehrung sind die Beteiligten darauf hinzuweisen, daß die Beschwerde gegen die Entscheidung statthaft ist, innerhalb welcher Frist und in welcher Form die Beschwerde beim Europäischen Patentamt einzulegen ist, und daß die Beschwerdegebühr zu entrichten ist.
(2) Die Beteiligten können aus der Unterlassung der Rechtsmittelbelehrung oder aus in ihr enthaltenen Fehlern keinerlei Ansprüche herleiten.

Zu Artikel 145
Nummer 6
Ausstellung von beglaubigten Abschriften

Zu Artikel 145
Nummer 7
Unterbrechung des Verfahrens
(1) Das Verfahren vor dem Europäischen Patentamt wird unterbrochen:
   a) im Fall des Todes oder der Handlungsunfähigkeit des Anmelders oder Patentinhabers oder der Person, die

Re. Article 145
No. 3.
Form of decisions of the European Patent Office
(1) If there is a hearing in proceedings before the European Patent Office, the decision may be given orally. Subsequently the decision in writing shall be notified to the parties.
(2) Decisions which are open to appeal and the final decision of the Board of Appeal shall include the reasons for such decisions.

Re. Article 145
No. 4
Ex officio rectification
Linguistic or clerical errors or obvious mistakes contained in decisions of the European Patent Office, in the Register of European Patents and in publications of the European Patent Office, may be rectified ex officio.

Re. Article 145
No. 5
Notification of possibility of appeal
(1) Decisions of the European Patent Office which are open to appeal shall be accompanied by a written notification informing the parties that an appeal against the decision may be brought, and stating the period within which and the form in which the appeal may be lodged with the European Patent Office, and specifying the amount of the appeal fee which must be paid.
(2) The parties may invoke neither the omission of the notification nor any errors contained therein.

Re. Article 145
No. 6
Issue of certified copies
The European Patent Office shall issue on request certified copies of the European patent application upon payment of the fee prescribed by the Rules relating to Fees adopted pursuant to the Convention. However, before publication of the application for a European patent, such copies shall be issued only to the applicant for the European patent or to any person authorised by him.

Re. Article 145
No. 7
Interruption of proceedings
(1) Proceedings before the European Patent Office shall be interrupted:
   a) in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of
FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS TO THE CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

sowie

ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

und

ERSTER VORENTWURF EINER GEBHÜRENORDNUNG

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

with

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

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

SECOND AVANT-PROJET DE CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS

ainsi que

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS

et

PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

— 1971 —
52. During the discussion of this Article, the Sub-Committee thought that it would be opportune to formulate here a general provision laying down the form of the decisions taken by the various departments of the European Patent Office and determining particularly when these decisions should be in writing and when they should state the reasons on which they have been based. To this end, the Sub-Committee agreed to include in this article the rule set down in Re. Article 115, which prescribes that decisions concerning appeals may be given orally at the hearing, and that they are later put in writing and notified to the parties (see under 20). See also the Drafting Committee's footnote to the text.

53. It should be noted that the decision to grant a European patent does not have to state the reasons on which it is based. However, if a patent is granted as a result of a decision from the Board of Appeal, such decision must indicate its motivation and set forth the reasons which led the Board of Appeal to take a different decision from that adopted by the Examining Division.

Re. Article 159, No. 4 - Ex officio rectification

54. This provision is concerned with errors contained in published documents, and does not duplicate the new Article 159a of the Preliminary Draft Convention, which is concerned with rectification of procedural errors.
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 represented
   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.
Ad article 159
Numéro 5

Rectification d'office

Les erreurs matérielles, les erreurs d'expression et les fautes évidentes contenues dans les décisions de l'Office européen des brevets, dans le registre européen des brevets et dans les publications de l'Office européen des brevets peuvent être rectifiées d'office.
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
Ad. Article 159 - N° 2

Ce numéro traite des procès-verbaux des auditions, des procédures orales et des instructions. Ils sont approuvés par les intéressés, mais pas signés par eux. Ils sont signés par les fonctionnaires qui les dressent. Cette disposition répond à des exigences pratiques, explique M. Sinveer. Il s'agit de permettre aux fonctionnaires de prendre ces dépositions en sténographie, par exemple. Ce numéro est accepté et transmis au Comité de rédaction.

Ad. Article 159 - N° 3

Ce numéro vise la forme des décisions. Il a pour but l'information des instances de recours. Il est adopté sans discussion et transmis au Comité de rédaction.

Ad. Article 159 - N° 4

Ce numéro traite du versement anticipé des taxes. Il est biffé, à la suite d'une intervention de M. Pressonnet. En outre, à l'article 78, paragraphe 1, sont biffés également les mots "à moins que la dite taxe n'ait déjà été versée", puisque ces mots se rapportent également au versement anticipatif de la taxe.

Ad. Article 159 - N° 5

Ce numéro a pour objet les rectifications d'office des décisions. Le Comité de rédaction veillera particulièrement à la concordance des termes français et allemand, et s'inspirera également de la rédaction de l'article 81 de la Convention.

Ad. Article 159 - N° 6

Ce texte déclare, en son paragraphe 1, que les décisions de l'Office sont accompagnées d'un avis indiquant les voies de recours. En son paragraphe 2, il précise que les parties ne peuvent se prévaloir de l'omission de cet avis.
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 159

Numéro 5

Rectification d'office

Les fautes d'orthographe, les fautes de grammaire et les erreurs manifestes contenues dans les décisions de l'Office européen des brevets, dans le registre européen des brevets et dans les publications de l'Office européen des brevets peuvent être rectifiées d'office.
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
Zu Artikel 159
Nummer 5

Berichtigung von Amts wegen

ARBEITSGRUPPE
"Patente"

VERTRAULICH

Brüssel, den 20. Januar 1964

VE 40 1964

Vorentwurf
einer Ausführungsordnung zum Abkommen über
ein europäisches Patentrecht
Artikel 159 Nr. 2


Artikel 159 Nr. 3

Diese Vorschrift regelt die Form der Entscheidungen. Sie dient der Information der Beschwerdeinstanzen. Sie wird ohne Aussprache angenommen und an den Redaktionsausschuß weitergeleitet.

Artikel 159 Nr. 4

Diese Nummer behandelt die vorzeitige Entrichtung der Gebühren. Sie wird auf einen Einwand von Herrn Fressonnet gestrichen. Darüber hinaus werden auch in Artikel 78 Absatz 1 die Worte "es sei denn, daß die Gebühr bereits entrichtet worden ist", ebenfalls gestrichen, weil diese Worte sich auch auf die Vorauszahlung der Gebühr beziehen.

Artikel 159 Nr. 5

Bei dieser Vorschrift geht es um die Berichtigung der Entscheidungen von Amts wegen. Der Redaktionsausschuß soll besonders darauf achten, daß der französische und deutsche Text übereinstimmen und sich gleichzeitig von der Fassung des Artikels 81 des Abkommens leiten lassen.

Artikel 159 Nr. 6

Diese Vorschrift bestimmt in Absatz 1, daß die Entscheidungen des Patentamtes mit einer Rechtsmittelbelehrung versehen sind. Absatz 2 stellt klar, daß die Beteiligten sich nicht auf die Unterlassung der Rechtsmittelbelehrung berufen können.
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 159
Nummer 5

Berichtigung von Amts wegen

Arbeitsentwurf
zu einer
Ausführungssordnung
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 not a party to the Convention and with international patent granting authorities, such as WIPO, but also with any other organisations, especially documentation centres such as INPADOC. It was also specified at the same time that the substantive content of applications which had not yet been published could not be the subject of such exchanges of information. In addition, the Administrative Council was authorised in Article 130, paragraph 3, to make provisions in respect of exchanges of information with the last-named organisations which derogated from the restrictions on the inspection of files, in so far as the confidential treatment of the information was guaranteed.

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

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

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

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

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