Rule 88 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 88

MPÜ

Berichtigung von Mängeln in den beim EPA eingereichten Unterlagen

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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 anyone 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 such 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 other forms 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
paragraph 1 of this Rule provided the necessary flexibility to allow for other difficulties which representatives might encounter during the initial period of operation of the European Patent Office.

Rule 86 (85) — Extension of time limits

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

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

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

2398. The Italian delegation was satisfied with this interpretation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2412. The Swedish and Norwegian delegations supported this proposal.

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

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

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

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 28

Correction of errors in documents filed with the European Patent Office

Linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. However, if the request for such correction concerns a description, claims or drawings, the correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction.
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
Rule 89

Correction of errors in documents filed with the European Patent Office

Linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. However, if the request for such correction concerns a description, claims or drawings, the correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973
M/ 142/I/R 13
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 27 SEPTEMBER 1973

Articles of the Convention:

Articles 59
162

Rules of the Implementing Regulations:

Rules 51
69
70
73
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89
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97
100
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107


Articles 3
6

Recommendation on preparations for the opening of the European Patent Office

Decision on Training Staff for the European Patent Office

**Artikel 67**

13 Die Erklärung, die nationalen Gerichten als Leitlinie dienen soll und deren Annahme der Konferenz empfohlen wird, wird begrüßt.

**Artikel 68 Absatz 3**

14 Der englische und der französische Text weichen von der deutschen Fassung hinsichtlich der genauen Bedeutung des Wortes „enger“ ab.

**Artikel 76 – Regel 29**


16 In der deutschen Fassung werden die Worte „festzulegen“ und „Festlegung“ benutzt; sie sollten mit dem in Artikel 82 verwendeten Wort „angeben“ in Einklang gebracht werden.

**Artikel 86 Absatz 1 – Regel 38 Absatz 2**

17 Obgleich anerkannt ist, daß eine Priorität zum Zeitpunkt der Anmeldung beantragt werden muß, besteht stets die Möglichkeit von Schreibfehlern bei der Angabe des Datums und des Landes. Diese werden möglicherweise erst bei der Einreichung der Prioritätsunterlage oder anlässlich der Formalprüfung beim Patentamt entdeckt. Ange- sichts der Regel 41 wird um Bestätigung darum gebeten, daß die Regel 89 auch für die Berichtigung solcher Fehler gilt.

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Preliminary Examining Authority under Chapter II of PCT; it is desirable that, in the practice of examination at the European Patent Office, the criteria for inventive level be identical. It is recommended therefore that a new Rule be adopted (between Rules 23 and 24) equivalent to Rule 65 of PCT.

**Article 67**

13 The declaration, to be used by National Courts as a guideline and recommended for adoption by the Conference, is welcomed.

**Article 68 (3)**

14 The English and French texts differ from the German text in respect of the exact meaning of the word “enger”.

**Article 76 – Rule 29**

15 It is regretted that the use of the word “Wherever” in the English text implies strict rules for drafting claims. Although this word appears in Rule 6.3 of PCT, that Treaty allows redrafting of claim in the national phase to suit the national legislation of the country in which infringement will be determined. The applicant must have freedom to draft his claims with an eye to future infringement suits, if he is to be encouraged to use the European Patent System. The claim should define the extent of protection (Article 67). It is not the right place to define prior art, as is required by the Rule.

16 In the German text, the words “festzulegen” and “Festlegung” are used, but these should be reconciled with the word “angeben” appearing in Article 82.

**Article 86 (1) – Rule 38 (2)**

17 Although it is accepted that a claim to priority should be made at the date of filing, there always exists the possibility of clerical errors in date and country. This may only be discovered when the priority document is to be filed or upon formal examination at the Patent Office. In the light of Rule 41, confirmation is sought that Rule 89 is applicable to the correction of such errors.
STELLUNGNAHME DES

CNIPA
Committee of National Institutes of Patent Agents

COMMENTS BY

CNIPA
Committee of National Institutes of Patent Agents

PRISE DE POSITION DU

CNIPA
Committee of National Institutes of Patent Agents
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

CONFÉRENCE DIPLOMATIQUE DE MUNICH
POUR L’INSTITUTION D’UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

STELLUNGNAHMEN
zu den vorbereitenden Dokumenten
herausgegeben von der
Regierung der Bundesrepublik Deutschland

COMMENTS
on the preparatory documents
published by the
Government of the Federal Republic of Germany

PRISES DE POSITION
sur les documents préparatoires
publiées par le
Gouvernement de la République fédérale d’Allemagne

1973
(2) Nach Erhalt des europäischen Recherchenberichts und vor Erhalt des ersten Bescheids der Prüfungsabteilung kann der Anmelder von sich aus die Beschreibung, die Patentansprüche und die Zeichnungen ändern.

(3) Nach Erhalt des ersten Bescheids der Prüfungsabteilung kann der Anmelder von sich aus die Beschreibung, die Patentansprüche und die Zeichnungen einmal ändern, sofern die Änderung gleichzeitig mit der Erwiderung auf den Bescheid eingereicht wird. Weitere Änderungen können nur mit Zustimmung der Prüfungsabteilung vorgenommen werden.

Vgl. Artikel 122 (Änderungen)

(2) After receiving the European search report and before receipt of the first communication from the Examining Division, the applicant may, of his own volition, amend the description, claims and drawings.

(3) After receipt of the first communication from the Examining Division the applicant may, of his own volition, amend once the description, claims and drawings provided that the amendment is filed at the same time as the reply to the communication. No further amendment may be made without the consent of the Examining Division.

Cf. Article 122 (Amendments)

Regel 88
Unterschiedliche Ansprüche, Beschreibungen und Zeichnungen für verschiedene Staaten

Stellt das Europäische Patentamt fest, daß für einen oder mehrere der benannten Vertragsstaaten der Inhalt einer früheren europäischen Patentanmeldung nach Artikel 52 Absätze 3 und 4 zum Stand der Technik gehört, so kann die europäische Patentanmeldung oder das europäische Patent für diesen Staat oder diese Staaten unterschiedliche Patentansprüche und, wenn es das Europäische Patentamt für erforderlich hält, unterschiedliche Beschreibungen und Zeichnungen enthalten.

Vgl. Artikel 95 (Prüfung der europäischen Patentanmeldung), 97 (Veröffentlichung des europäischen Patents), 102 (Veröffentlichung einer neuen Patentschrift) und 122 (Änderungen)

Rule 88
Different claims, description and drawings for different States

If the European Patent Office notes that in respect of one or some of the designated Contracting States, the content of an earlier European patent application forms part of the state of the art pursuant to Article 52, paragraphs 3 and 4, the European patent application or European patent may contain for such State or States claims and, if the European Patent Office considers it necessary, a description and drawings which are different from those for the other designated Contracting States.

Vgl. Artikel 95 (Examination of the European patent application), 97 (Publication of a European patent), 102 (Publication of a new specification) and 122 (Amendments)

Regel 89
Berichtigung von Mängeln in den beim Europäischen Patentamt eingereichten Unterlagen

Sprachliche Fehler, Schreibfehler und Unrichtigkeiten in den beim Europäischen Patentamt eingereichten Unterlagen können auf Antrag berichtigt werden. Betrifft jedoch der Antrag auf Berichtigung die Beschreibung, die Patentansprüche oder die Zeichnungen, so muß die Berichtigung derart offensichtlich sein, daß jedermann sofort erkennen kann, daß nichts anderes beabsichtigt sein konnte als das, was als Berichtigung vorgeschlagen wird.

Vgl. Artikel 76 (Erfordernisse der europäischen Patentanmeldung) und 86 (Inanspruchnahme der Priorität)

Rule 89
Correction of errors in documents filed with the European Patent Office

Linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. However, if the request for such correction concerns a description, claims or drawings, the correction must be obvious in the sense that anyone would immediately realise that nothing else would have been intended than what is offered as the correction.

Cf. Articles 76 (Requirements of the European patent application) and 86 (Claiming priority)
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
élabors 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
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 .../...
The rest of the amendments made to this Article merely concern the wording: addition to the time and deletion of the note; the obligation on the IIB to send the abstract was already contained in Article 79, paragraph 4.

Article 82 - Amendment of documents

Re. Article 145, No. 4 - Ex officio correction

Re. Article 145, No. 4a - Correction of obvious errors in documents submitted to the European Patent Office

59. In connection with the simplification of the procedure up to the request for examination, the question of combining Articles 82, 83 and 95a, which deal with the amendment of the documents, the claims and the application, to form a single Article was discussed. This question is to be discussed on the basis of a proposal from the German delegation at the Working Party's next meeting.

59. With particular reference to Article 82, the Working Party came to the conclusion that, without prejudice to any later decision to combine the three Articles referred to under point 58, it would be expedient not to mention in this Article the possibility of correcting linguistic or clerical errors and obvious mistakes (last half of paragraph 1), but to lay down, at the proposal of the United Kingdom delegation: Working document No. 7, page 37, a more general provision.
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/CT 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 Octrooiraad; and after his departure, that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).

BR/135 e/71 prk
(Unrevised translation)
Correction of obvious errors in documents submitted to the European Patent Office

Obvious linguistic errors, errors of transcription and mistakes in any document submitted to the European Patent Office may be corrected on request. The correction shall be obvious in the sense that anyone would immediately realise that nothing else would have been intended than what is offered as the correction.
SECOND PRELIMINARY DRAFT OF THE CONVENTION
ESTABLISHING
A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 22 October 1971 -
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