Article 7 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.
Art. 7
MPÜ
Dienststellen des Europäischen Patentamts

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PART III—THE EUROPEAN PATENT OFFICE

CHAPTER I—STATUS AND GENERAL ORGANISATION

Article 31. Legal status

(1) The European Patent Office is an organisation common to the Contracting States and endowed with administrative and financial autonomy.

(2) The activities of the European Patent Office shall be controlled by the [Administrative Council].

Note:
This Article does not touch on the question whether the European Patent Office shall be dependent on a broader international institution of which the Administrative Council would be the controlling body. Such control would be carried out under the conditions laid down by the general convention.

Article 32. Legal Character

(1) The European Patent Office shall be a legal entity.

(2) In each of the Contracting States, the European Patent Office shall have the maximum legal capacity given to legal entities by the national law; in particular, it may acquire or transfer immovables and movables and institute proceedings in its own name.

(3) The President of the European Patent Office shall exercise the legal capacity of that Office.

Note:
With regard to paragraph 3, the question will have to be examined, whether and to what extent the competency of the President in financial matters ought to be subject to the authority of the Administrative Council.

Article 33. Location of Head Office and of Branches for information and liaison

(1) 1st Variant
The European Patent Office shall be located at......................

2nd Variant
The location of the European Patent Office shall be determined by unanimous decision of the [Administrative Council].

3rd Variant
The location of the European Patent Office shall be determined by common agreement on the part of the Contracting States.

(2) By unanimous decision, the [Administrative Council] may, if need be, create Branches of the European Patent Office for the purpose of information and liaison, in conjunction with the central industrial property services of the Contracting States or in conjunction with the [International Patents Institute at The Hague].
Translation of a
Draft Convention relating to
a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
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the Office, in so far as, in the interests of the applicants or the patent agents, it did not appear desirable to centralise all appeals at the Patent Office if the examinations were carried out in the various Branches. Another system could consist in arranging to have travelling Members of the Boards of Appeal. The choice between these two suggestions could, however, be made to depend on the needs later revealed by practice.

The Working Party did not discuss the British delegation's suggestions. It was agreed that the British delegation would in due course put in a working document explaining in detail the views which it had set out. Article 33 may therefore be the subject of further discussions on the basis of the Working Party's deliberations on the above-mentioned suggestions.

Article 34 - Languages

56. As regards paragraph 2, it was noted that there must be appropriate provisions to ensure that the translation of an application filed in a language other than one of the three Patent Office languages effectively corresponds to the content of the application itself.

57. Paragraph 4 a) can be discussed further, since the question of whether provision should be made for translation of the applications themselves into the languages of the Contracting States for which protection has been requested is open to review.

58. As regards paragraph 5, see the note in document BR/6/69. It should be noted that the latter is based on the provision in the second sentence of Article 34, paragraph 5 of the EFTA Draft. It will however be
of examination on the basis of the official languages in which applications were submitted. Applications drawn up in English could thus be dealt with in Great Britain by a Branch of the European Patent Office as such, independent of the British Patent Office; applications drawn up in German could be examined at a Branch located at, say, Munich, and applications drawn up in French could be examined at a Branch, the location of which remained to be determined. It appeared, in fact, that the examination of applications implied, even more than research work as to novelty, confidential relations between applicant and examiner, and a very sound knowledge of the language of the application by the latter. And it would probably be very difficult to recruit a sufficient number of examiners satisfying these requirements in a single place, in view of the fact that the examiners would probably not be prepared to enter into sufficiently long contracts in a foreign country.

Recognising that it was important to avoid different practices being adopted in the Branches of the European Patent Office as such, the British delegation believed that this problem, which would arise anyway, even within the single Office, could be solved by appropriate measures, such as ensuring close liaison between examiners of the different Branches and the Office itself, central instructions put out by the Office, checks carried out by the Patent Office on the various Branches, and, finally, meetings which could be arranged between different examiners in the same field.

As regards appeals, it might be appropriate to provide that Members of the Boards of Appeal be attached to the Branches of
Article 33 - Location and branches for information and liaison

54. The Working Party adopted the first variant appearing in the 1965 Draft, considering it necessary, for practical reasons, for the location of the Patent Office to be fixed by the time of the signature of the Convention.

As regards the wording of paragraph 2, the Working Party deleted the expression "by unanimous decision" to be found in the 1965 Draft, on the understanding that reference is made to the later provisions governing the Administrative Council as regards the procedure by which the latter will adopt its decisions.

In addition, the Working Party was of the opinion that, for reasons of expediency, it would be advisable to restrict to the Contracting States the possibility afforded by the provisions of paragraph 2 of creating branches for information and liaison. However, the provisions relating to the Administrative Council could provide that the latter may, where appropriate, conclude agreements with non-Contracting countries should this prove necessary.

Finally, the Working Party decided to delete paragraph 3 of the 1965 Draft, since the expression "if need be", appearing in paragraph 2, seemed to be adequate.

55. The British delegation set out its ideas on the setting up of Branches of the European Patent Office as such, independently of the question of the location of the Office itself. In its opinion, these Branches would not act as information and liaison agencies, but would be competent to take decisions in the same way as the central European Patent Office.

It noted in this respect that, for reasons of efficiency, it seemed appropriate to distribute the tasks
MINUTES

of 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. HAERTEL, President of the
German Patent Office.

In addition to the Commission of the European Commu-
nities, 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.
DRITTER TEIL

DAS EUROPÄISCHE PATENTAMT

KAPITEL I

Rechtsstellung und allgemeine Organisation

Artikel 30 (früher Artikel 31)

Rechtsstellung

(1) Das Europäische Patentamt ist eine gemeinsame Einrichtung der Vertragsstaaten mit verwaltungsmäßiger und finanzieller Selbständigkeit.

(2) Die Tätigkeit des Europäischen Patentamts wird vom Verwaltungsrat überwacht.

Artikel 31 (früher Artikel 31a)

Zuweisung von Aufgaben durch ein besonderes Übereinkommen


Artikel 32

Rechtsnatur

(1) Das Europäische Patentamt besitzt Rechtspersönlichkeit.

(2) Das Europäische Patentamt besitzt in jedem Vertragsstaat die weitestgehende Rechts- und Geschäfts-fähigkeit, die juristischen Personen nach dessen Rechtsvorschriften zuerkannt ist; es kann insbesondere begleichliches und unbewegliches Vermögen erwerben und veräußern sowie vor Gericht stehen.

(3) Der Präsident des Europäischen Patentamts vertritt das Europäische Patentamt gerichtlich und außergerichtlich.

Artikel 33

Sitz und Informations- oder Verbindungsstellen

(1) Das Europäische Patentamt hat seinen Sitz in ...........


PART III

THE EUROPEAN PATENT OFFICE

CHAPTER I

Status and general organisation

Article 30 (former Article 31)

Legal status

(1) The European Patent Office is an organisation common to the Contracting States and endowed with administrative and financial autonomy.

(2) The activities of the European Patent Office shall be supervised by the Administrative Council.

Article 31 (former Article 31a)

Assignment of tasks by means of a special agreement

The European Patent Office may be given additional tasks by a special agreement within the meaning of Article 8. Special organs common to the States entering into this agreement may be set up within the European Patent Office in order to carry out such additional tasks; such organs shall be subject to the supervision of a select committee of the Administrative Council.

Article 32

Legal character

(1) The European Patent Office shall have legal personality.

(2) In each of the Contracting States, the European Patent Office shall enjoy the most extensive legal capacity accorded to legal persons under the national law; it may, in particular, acquire or transfer movable and immovable property and may sue and be sued in its own name.

(3) The President of the European Patent Office shall exercise the legal capacity of that Office.

Article 33

Location and Branches for information and liaison

(1) The European Patent Office shall be located at .......

(2) By decision of the Administrative Council, branches of the European Patent Office may be created if need be for the purpose of information and liaison, in the Contracting States or with the International Patent Institute at The Hague or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.
ERSTER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTERTeilUNGVERFAHREN

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

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

— 1970 —
53. **Article 29**: Supplementary application of national law in legal transactions

The Working Party discussed a note submitted by the Netherlands delegation (BR/GT I/85/70), who reserved the right to put the matter before the Working Party again. At the present stage, the Working Party agreed not to retain the draft which it had previously adopted (BR/48/70) and to confine itself to a note, since the matter had in any case to be referred to the Government legal experts.

54. **Article 33**: Location and Branches for information and liaison

It is recalled that, considering its position on Branch Examining Offices (BR/49/70 point 129), the UK delegation reserved the right to put forward an amendment to the present provision at a later date.

55. **Article 34(2)**: Languages

Cf. BR/70/70 on this subject.

56. **Article 35**: Privileges and immunities

The Working Party deleted the note to this Article in view of the provisions adopted by Working Party II, which lay down that the members of the Administrative Council shall enjoy the privileges and immunities in question.

57. **Article 36**: Administration

The note was deleted (cf. BR/70/70, Chapter I (a), (b), (c)).

BR/87 e/71 nan/38/prk ···/···
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 28 February 1971
BR/87/71

MINUTES
of the meeting of Working Party I
held at Luxembourg from 30 November to 2 December 1970
and of the meeting held on 3 December 1970 by that Working
Party, acting in its capacity as Co-ordinating Committee

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

1. The Working Party held its sixth meeting at
Luxembourg from Monday, 30 November to Wednesday,
2 December 1970, with Dr. HAERTHEL, President of the German
Patent Office, in the Chair.

Representatives of the Commission of the European
Communities, WIPO-BIRPI and the International Patent
Institute took part in the meeting (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 (Patent Office),
Mr. J. B. van BENTHEM, held its meetings directly after the
deliberations of the Working Party.

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.
(2) For the list of participants, see Annex II.
already imposed by the budget, whose adoption falls to the Administrative Council. The Working Party, while recognizing the existence of these limitations, believed that they would not apply to every case where a special authorisation from the Administrative Council to the President would seem desirable to it. The Working Party accordingly adopted the text contained in paragraph 2 (f), it being understood that the adoption of this provision would require the amendment of Article 32 (3) of the Draft Convention.

The Working Party agreed to re-examine, where appropriate, the limit of 20 kilograms of fine gold, laid down in the second sub-section of (f), in the light of the financial provisions of the Convention, to be drawn up by Working Party IV.

16. As regards paragraph 3 (a) the Working Party agreed that this provision could, where appropriate, be re-examined once the final provisions of the Convention had been drawn up.

It was further noted that this paragraph, which deals with the "International functions" of the Administrative Council, could be incorporated as a separate Article.

**Article b - Preparatory duties of the Administrative Council**

17. No comment.
13. The question was raised of whether the power of the Council to appoint auditors should be specifically mentioned in paragraph 2. Subject to the financial provisions for the Convention, to be drawn up by Working Party IV, the Working Party believed it was not essential to provide for the appointments of auditors in the body of the Convention itself. This could indeed come under certain rules to be included in the Financial Regulations.

14. As regards paragraph 2(e), the Working Party, while providing that disciplinary action may be taken in regard to the members of the Boards of Appeal and of the Enlarged Board of Appeal, believed it necessary to stipulate that in taking any such disciplinary action, the independence of the members of the said Boards must be respected. For this reason, it laid down that such disciplinary action may only be taken if the provisions of the Service Regulations applicable to the members in question are observed. The Service Regulations must therefore define the guarantees enjoyed by the members of the Boards of Appeal and of the Enlarged Board of Appeal.

The Working Party agreed not to make specific mention of the possibility allowed the Council to take disciplinary action in regard to the President and the Vice-President of the European Patent Office.

15. As regards paragraph 2(f), the Working Party noted that article 32 (3) of the Draft Convention, in the version drawn up by Working Party I and adopted by the Conference, gives power to the President of the European Patent Office to exercise the legal capacity of that Office. The Working Party wondered whether this power entrusted to the President should not, for certain important acts, be subject to an authorisation to be granted to the latter by the Council for each case. In this context, mention was made of the limitations
On the other hand, the Working Party did provisionally adopt (while waiting to know the final contents of the Implementing Regulations) a solution to be applied only to those cases where unanimity is required. This solution consists in allowing any Contracting State to declare, upon the adoption of a decision, that its entry into force requires, by virtue of that State's national constitution, the completion of certain formalities of internal law. Under this system, such a decision would only enter into force when the State concerned had notified the Administrative Council of the completion of such formalities. The text adopted to this end has been incorporated in Article m(2) by the Working Party.

12. The Working Party wondered whether the list of decisions contained in paragraph 1(b) should be completed by reference to:

(i) the list of posts
(ii) the staff complement
(iii) the establishment plan of the European Patent Office.

It did not eventually complete the said provision in this manner, for the following reasons:

As regards the list of posts, where this is understood as an abstract description of the duties of each grade, it was of the opinion that such a list would be contained in the Service Regulations; and, where this is understood as an establishment plan of the Office, it would be contained in the provisions of the Administrative Regulations provided for in B (a). Finally, the numbers of officials and other employees would be laid down for each Class in the budget of the European Patent Office, to be adopted by the Administrative Council under paragraph 2 (b).
Working Parties, between the Convention itself and the Implementing Regulations remained completely open, as had been pointed out by Working Party I. Accordingly, the Working Party noted that the provision relating to the power of the Administrative Council to amend the Implementing Regulations could be re-examined at a later stage, in the light of the contents of the Implementing Regulations. Since it was not yet certain what the contents of the Implementing Regulations would be, the Working Party was not able to affirm immediately that the Administrative Council will be able to exercise its power to amend the Implementing Regulations without this in certain (admittedly limited) cases entailing recourse by any given Contracting State to certain procedures of internal law (such as parliamentary approval) before the latter could finally approve the amendments in question.

At this stage in the proceedings, the Working Party considered it expedient to examine the means allowing any difficulties which might face the Administrative Council to be solved, in view of the problems brought forward above. To this end, it considered a first proposal consisting in delaying the entry into force of the decisions of the Council for a fixed period, during which any State faced with such problems should be able to complete the required formalities. After thorough examination, the Working Party rejected this proposal. It did indeed appear difficult to the Working Party to fix a priori a standard period for entry into force for all future decisions of the Council, when the administrative requirements of the European Patent Office could call for the immediate or early entry into force of such decisions.
9. It was further agreed that the order of the various provisions contained in Part III bis and examined by the Working Party was provisional and could be reconsidered at a later stage.

III

MAIN COMMENTS ON THE VARIOUS ARTICLES RELATING TO THE ADMINISTRATIVE COUNCIL

PART III bis OF THE CONVENTION

The Administrative Council of the European Patent Office

CHAPTER I

Article a - Powers of decision of the Administrative Council

10. In paragraph 1 (a), the Working Party provided that the Administrative Council shall have the power to amend the Implementing Regulations to the Convention. It was of the opinion that the responsibilities of the Administrative Council did not extend to the adoption of these Regulations, which should indeed be drawn up at the same time as the Convention itself. The Working Party therefore assumed that it would be for the diplomatic Conference to decide on the manner in which the Implementing Regulations were to be adopted.

11. The Working Party further noted that the question of the distribution of the various provisions drawn up by Working Party I, and of those to be drawn up by the other
I

1. The first working meeting of Working Party II, set up by the Conference at the latter's meeting of 13-16 January 1970, was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Luxembourg on 16 January 1970, the Chair was taken by Mr. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and the International Patent Institute (IIB) took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe, who had also been invited to take part in the meeting, apologized for being unable to attend (1).

(1) See list of participants in the meeting of the Working Party given in Annex II. As regards Annex I, see point 38 on page 16.
Article b

Preparatory duties of the Administrative Council

The Administrative Council shall be empowered:

(a) to prepare Conferences for the revision of this Convention;

(b) to prepare such adaptations to this Convention as may be rendered necessary by the accession of third countries.
Article a contd.

(3) Furthermore, the Administrative Council shall:

A. give its decision on requests for accession to this Convention formulated by third countries;

B. conclude or amend on behalf of the European Patent Office:

(a) the agreement with the International Patent Institute laying down the procedures for its collaboration with the European Patent Office;

(b) any agreement with the International Bureau provided for in the Patent Co-operation Treaty, for the purposes of applying Articles 117 to 123 of this Convention;

(c) the agreements with Contracting States to the Co-operation Treaty which are not Contracting States to this Convention referred to in Article 119, paragraph 2;

(d) any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;

C. decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Co-operation Treaty, in the case provided for in Article 119, paragraph 3;

D. decide upon the creation of branches for information and liaison purposes in the Contracting States or with the International Patent Institute or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or the organisation concerned.

BR/33 e/70 br

.../...
Article a contd.

(f) give, in each particular case, to the President of the European Patent Office, to whom the President of the Administrative Council shall to this end address a written communication, an authorisation to exercise the legal capacity of the European Patent Office for the purposes of:

- actions at law with the exception of those of an urgent or protective nature, or those in which the European Patent Office has been made a defendant,

- acts relating to the disposal of immovable property, or relating to the disposal of movable property when the sum involved exceeds the exchange value of 20 kilograms of fine gold, as well as acts affecting, in the two cases referred to above, the ownership of such property.

Note:

Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3), which should be completed as follows: "in accordance with the provisions laid down in Article a, paragraph 3 (f)".
Article 2 contd.

C. amend the procedure for requests for examination, in accordance with the provisions of Article 89, paragraphs 1 to 3.

Note:

The Working Party, to take into account the note to Articles 54 and 55, proposes to introduce a new paragraph D as follows:

D. amend Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions.

(2) In addition, the Administrative Council shall:

(a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office;

(b) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;

(c) audit and approve each year the accounts and inventories and the balance sheet;

(d) approve the annual management reports of the President of the European Patent Office;

(e) appoint the senior officials referred to in Article 37, subject to the conditions laid down in that Article, and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them;
PART III bis

THE ADMINISTRATIVE COUNCIL
OF THE EUROPEAN PATENT OFFICE

CHAPTER I

POWERS AND FUNCTIONS

Article 1

Powers of decision of the Administrative Council

(1) The Administrative Council shall be competent to:

A. amend the Implementing Regulations to this Convention;

B. adopt or amend:

(a) the Administrative and Financial Regulations of the European Patent Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature and the rules for the grant of the supplementary benefits which may be accorded to them;

(c) the Rules relating to fees;

(d) any other rules necessary for the implementation of this Convention;
FIRST PRELIMINARY DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)
79. **Article 138** : Notification of the grounds

The adoption of this new provision, which deals with prior notification of the grounds on which a decision of the Office is to be based, enabled the Working Party to delete Articles 78, paragraph 5, 96, paragraph 2, 105, paragraph 4, 115, paragraph 5.

80. **Article 139** : Oral proceedings

The adoption of this provision, concerning oral proceedings before the European Patent Office, enabled the Working Party to delete Articles 84, 106 and 114.

81. **Article 35a, paragraph 1, sub-paragraph E** : Powers of decision of the Administrative Council

Following a previous decision, the Working Party decided to add a sub-paragraph E, authorising the Administrative Council to amend the time limits laid down in the Convention independently of any revision under Article 162 and subject to the provisions of Article 159. The Working Party reserved the right to study whether other time limits in the Convention should be excluded from the simplified procedure for amendment contained in sub-paragraph E.

82. **Article 68, paragraph (c)** : Date of the application

At the request of the Swiss delegation, the Working Party agreed to examine at one of its next meetings a note in which the Swiss delegation will explain the reasons which in its opinion justify mentioning drawings, as well as description and claims, in paragraph (c).

BR/87 e/71 nan/BS/prk
MINUTES

of the meeting of Working Party I

held at Luxembourg from 30 November to 2 December 1970

and of the meeting held on 3 December 1970 by that Working
Party, acting in its capacity as Co-ordinating Committee

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

1. The Working Party held its sixth meeting at
Luxembourg from Monday, 30 November to Wednesday,
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Patent Office, in the Chair.

Representatives of the Commission of the European
Communities, WIPO-BIRPI and the International Patent
Institute took part in the meeting (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 (Patent Office),
Mr. J. B. van BENTHEM, held its meetings directly after the
deliberations of the Working Party.

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.
(2) For the list of participants, see Annex II.
already imposed by the budget, whose adoption falls to
the Administrative Council. The Working Party, while
recognizing the existence of these limitations, believed
that they would not apply to every case where a special
authorisation from the Administrative Council to the
President would seem desirable to it. The Working Party
accordingly adopted the text contained in paragraph 2 (f),
it being understood that the adoption of this provision
would require the amendment of Article 32 (3) of the
Draft Convention.

The Working Party agreed to re-examine, where
appropriate, the limit of 20 kilograms of fine gold, laid
down in the second sub-section of (f), in the light of
the financial provisions of the Convention, to be drawn up
by Working Party IV.

16. As regards paragraph 3 (a) the Working Party agreed
that this provision could, where appropriate, be re-examined
once the final provisions of the Convention had been drawn
up.

It was further noted that this paragraph, which deals
with the "International functions" of the Administrative
Council, could be incorporated as a separate Article.

Article b - Preparatory duties of the Administrative
Council

17. No comment.
13. The question was raised of whether the power of the Council to appoint auditors should be specifically mentioned in paragraph 2. Subject to the financial provisions for the Convention, to be drawn up by Working Party IV, the Working Party believed it was not essential to provide for the appointments of auditors in the body of the Convention itself. This could indeed come under certain rules to be included in the Financial Regulations.

14. As regards paragraph 2(e), the Working Party, while providing that disciplinary action may be taken in regard to the members of the Boards of Appeal and of the Enlarged Board of Appeal, believed it necessary to stipulate that in taking any such disciplinary action, the independence of the members of the said Boards must be respected. For this reason, it laid down that such disciplinary action may only be taken if the provisions of the Service Regulations applicable to the members in question are observed. The Service Regulations must therefore define the guarantees enjoyed by the members of the Boards of Appeal and of the Enlarged Board of Appeal.

The Working Party agreed not to make specific mention of the possibility allowed the Council to take disciplinary action in regard to the President and the Vice-President of the European Patent Office.

15. As regards paragraph 2(f), the Working Party noted that Article 32 (3) of the Draft Convention, in the version drawn up by Working Party I and adopted by the Conference, gives power to the President of the European Patent Office to exercise the legal capacity of that Office. The Working Party wondered whether this power entrusted to the President should not, for certain important acts, be subject to an authorisation to be granted to the latter by the Council for each case. In this context, mention was made of the limitations
On the other hand, the Working Party did provisionally adopt (while waiting to know the final contents of the Implementing Regulations) a solution to be applied only to those cases where unanimity is required. This solution consists in allowing any Contracting State to declare, upon the adoption of a decision, that its entry into force requires, by virtue of that State's national constitution, the completion of certain formalities of internal law. Under this system, such a decision would only enter into force when the State concerned had notified the Administrative Council of the completion of such formalities. The text adopted to this end has been incorporated in Article m (2) by the Working Party.

12. The Working Party wondered whether the list of decisions contained in paragraph 1 (b) should be completed by reference to:

(i) the list of posts
(ii) the staff complement
(iii) the establishment plan of the European Patent Office.

It did not eventually complete the said provision in this manner, for the following reasons:

As regards the list of posts, where this is understood as an abstract description of the duties of each grade, it was of the opinion that such a list would be contained in the Service Regulations; and, where this is understood as an establishment plan of the Office, it would be contained in the provisions of the Administrative Regulations provided for in B (a). Finally, the numbers of officials and other employees would be laid down for each Class in the budget of the European Patent Office, to be adopted by the Administrative Council under paragraph 2 (b).
Working Parties, between the Convention itself and the Implementing Regulations remained completely open, as had been pointed out by Working Party I. Accordingly, the Working Party noted that the provision relating to the power of the Administrative Council to amend the Implementing Regulations could be re-examined at a later stage, in the light of the contents of the Implementing Regulations. Since it was not yet certain what the contents of the Implementing Regulations would be, the Working Party was not able to affirm immediately that the Administrative Council will be able to exercise its power to amend the Implementing Regulations without this in certain (admittedly limited) cases entailing recourse by any given Contracting State to certain procedures of internal law (such as parliamentary approval) before the latter could finally approve the amendments in question.

At this stage in the proceedings, the Working Party considered it expedient to examine the means allowing any difficulties which might face the Administrative Council to be solved, in view of the problems brought forward above. To this end, it considered a first proposal consisting in delaying the entry into force of the decisions of the Council for a fixed period, during which any State faced with such problems should be able to complete the required formalities. After thorough examination, the Working Party rejected this proposal. It did indeed appear difficult to the Working Party to fix a priori a standard period for entry into force for all future decisions of the Council, when the administrative requirements of the European Patent Office could call for the immediate or early entry into force of such decisions.
9. It was further agreed that the order of the various provisions contained in Part III bis and examined by the Working Party was provisional and could be reconsidered at a later stage.

III

MAIN COMMENTS ON THE VARIOUS ARTICLES RELATING TO THE ADMINISTRATIVE COUNCIL

PART III bis OF THE CONVENTION

The Administrative Council of the European Patent Office

CHAPTER I

Article a - Powers of decision of the Administrative Council

10. In paragraph 1(a), the Working Party provided that the Administrative Council shall have the power to amend the Implementing Regulations to the Convention. It was of the opinion that the responsibilities of the Administrative Council did not extend to the adoption of these Regulations, which should indeed be drawn up at the same time as the Convention itself. The Working Party therefore assumed that it would be for the diplomatic Conference to decide on the manner in which the Implementing Regulations were to be adopted.

11. The Working Party further noted that the question of the distribution of the various provisions drawn up by Working Party I, and of those to be drawn up by the other
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 20 March 1970
BR/34/70

- Secretariat -

MINUTES
of the meeting of Working Party II
(Luxembourg, 4–6 March 1970)

I

1. The first working meeting of Working Party II, set up by the Conference at the latter's meeting of 13–16 January 1970, was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Luxembourg on 16 January 1970, the Chair was taken by Mr. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and the International Patent Institute (IIB) took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe, who had also been invited to take part in the meeting, apologized for being unable to attend (1).

(1) See list of participants in the meeting of the Working Party given in Annex II. As regards Annex I, see point 38 on page 16.

BR/34 e/70 kel/RT/mrk

.../...
15. The Working Party finally agreed that a solution totally reconciling the three requirements set out under (i), (ii) and (iii) was hardly possible. It felt that, under these circumstances, the least objectionable course would perhaps be to accept a solution which would involve practical difficulties for the European Patent Office, but which would safeguard both the rights acquired by applicants and the interests of States which had not ratified the revised text. It therefore decided in favour of the first solution (1). However, the Working Party did not feel that it could by itself assess the seriousness of the practical difficulties entailed by this solution as regards the working of the European Patent Office, such an assessment lying more within the scope of Working Party I. For this reason, it was decided to adopt this solution, on the understanding that it would be submitted to Working Party I, which was to be asked whether it was compatible with the smooth operation of the European Patent Office.

Article c - Signature - Ratification

16. In this provision, the intention of the Working Party was to limit signature of the Convention to the States taking part in the Inter-Governmental Conference (17 countries) or which had been offered the option of taking part in it (Malta and Monaco).

For subsequent accession by other European States, see Article d(2) below.

Article d - Accession

17. The Working Party pointed out that the accession of States able to be parties to the Convention from the time the latter was open for signature should be effected automatically as soon as such State expressed the wish to
feel it was in his interest to delay the examination procedure, as he was allowed to do by the Convention. One delegation pointed out the drawbacks that would be entailed in obliging the applicant to transfer his application, even if the amendment of the provisions of the Convention affected his application only to an insignificant extent.

14. The Working Party also examined a proposal by the French delegation. The system advocated concerned all the applications under consideration, making no distinction between applications designating one or more States which had not ratified and the rest. They should, as a matter of principle, be examined on the basis of the law previously in force, unless the nature of the amendments to the Convention affected the applicant's acquired right to the grant of a European Patent. As for applications which designated States which had not ratified, the applicant was free to request transfer to the national authorities if he did not want the European Patent Office to continue with the examination of his application.

In opposition to this proposal, the Working Party reaffirmed the principle that reviewing Conferences should not be circumscribed by present rulings and that all that was needed was to adopt rules for applications designating States which had not ratified the revised text, in so far as those States were concerned. One delegation, moreover, pointed out that this proposal dealt with the acquired rights of the applicant, without there being any agreement as to the substance of these rights. This delegation added that the choice allowed the applicant was superfluous since his rights were sufficiently protected by the first and second considerations of the French delegation's proposal.
13. The Working Party thereupon applied itself to seeking a formula which would avoid these disadvantages and the Danish delegation put forward a number of suggestions to this end:

(i) The first suggestion drew a distinction according to whether or not the revised text provided for applications under consideration to be subject to the former provisions. If so, the EPO would apply the same rules when examining applications in respect of a State which had not ratified. If not, applications relating to that State would be transferred to the competent national authorities.

(ii) A second suggestion laid down that the EPO should examine the applications in question, unless States which had not ratified called for the transfer of applications relating to them to their national authorities.

(iii) The third suggestion, finally, was that the applications in question should be examined by the EPO in accordance with the law previously in force only if the applicants had asked for them to be examined within two months following the entry into force of the amendment. Otherwise the transfer to the national authorities would follow automatically.

The main objection put forward to these different systems was that they did not take the interests of the applicant sufficiently into account. The Working Party felt that although the third solution did not totally rule out the right of the applicant to choose the system to be applied and would not cause any lasting difficulties for the European Patent Office, it constituted an infringement of the rights of the applicant, who might
Some delegations were, however, of the opinion that patents could continue to be granted for some time in respect of these States, on the basis of the Convention to which they were parties, without this constituting an infringement of their rights.

(iii) The Working Party realised that the first two requirements could be met only by ensuring the continuation of the unrevised text, for a limited period. It recognised that, depending on the nature and scope of the amendments the simultaneous existence of two legal systems could create problems of implementation for the European Patent Office and that it would be desirable to avoid such difficulties as far as possible.

12. The first solution submitted to the Working Party made provision for applications under consideration at the date of entry into force of the revised text to be examined by the European Patent Office in accordance with the law applicable before the entry into force of the revised text. It was pointed out that this provision applied to patent applications designating States which had not ratified the new text, only in so far as these States were concerned. This system reconciled the first two requirements described under (i) and (ii) but failed to take account of the interests of the European Patent Office, which would be compelled to apply two different legal systems for a period of anything up to seven years, depending on the solution adopted by the Convention on the matter of deferred examination. Moreover, applications designating both States which had agreed to the revised text and other States, would have to be kept separate for examination according to the different provisions. One delegation, whose national law makes provision for the patent examination procedure, stressed the practical difficulties of such a solution.

BR/53 e/70 son/PB/prk
11. Examination of the problems relating to such applications revealed that the issue at stake was to reconcile three not altogether compatible requirements:

(i) to protect the acquired rights of applicants;
(ii) to respect the wishes of States which had not ratified the revised text;
(iii) to avoid the European Patent Office running into operational difficulties.

(i) The Working Party agreed that an applicant held certain rights which ought to be protected, whatever subsequent amendments might be made to the Convention under whose rules he filed his application. The Working Party did not, however, come to an agreement as to the nature of the rights acquired by the applicant, since their content varied considerably according to the different national legal systems. Some delegations felt that an applicant was entitled to have his application examined under the system in force at the time of filing. Another delegation, however, felt that the applicant's only right was to obtain a patent in accordance with the regulations in force at the time of its granting. The Working Party was of the opinion, nevertheless, that it did not seem indispensable for the wording of this provision to specify this concept of acquired right.

(ii) The Working Party agreed that there could be no question of adopting any solution which took no account of the wishes of the States; one that would, in other words, have the effect of imposing on them a legal system to which they were not parties.
moment, its intention to ratify the revised text, could not, in the event, suspend the time limit following which the said State would cease to be a party to the Convention.

9. The Working Party agreed to draw the attention of its "Supplementing Regulations" sub-Committee to the need to provide for publication in the Official journal of the European Patent Office, both of the amendments referred to in Article 2 and of the situation of the States in relation to the revised text, in order to ensure that private individuals were kept informed. It was pointed out that this note was also relevant to accessions to the Convention, to denunciations, and to the various declarations relating to the territorial field of application.

Article 2 - Reservation of acquired rights in cases of non-ratification

10. As the principle of acquired rights for patents granted before the revision raised no problems, the Working Party examined the case of applications under consideration by the European Patent Office at the time of entry into force of the revised text. It considered that it would be up to each reviewing Conference to decide what should be done about these applications as regards the States which had agreed to the revised text. Since, however, the rules drawn up by the reviewing Conference could not be imposed on any States which abstained from ratifying the new text - because, on this assumption, these States would be excluded from the new legal system - it would be advisable to lay down a ruling in the Convention itself on what was to be done about applications, which designated one or more such States, in so far as these States were concerned.
gratification of the revised text, this being the same majority as had been adopted in the decision on accession (See Article d):

7. The Working Party agreed to extend to one year the period provided for in Paragraph 4(a). Thus, the entry into force of the revised text, on the expiry of this period, would mark the point at which those States which had not ratified the revised text would cease to be parties to the Convention. The Working Party felt it necessary to leave each State sufficient time, in view of the necessary internal procedures, to decide whether it would be expedient to ratify the revised text or to be excluded from the Convention, with effect from the time when the State could be sure that the revision would come into force, by reason of the deposit of a sufficient number of instruments of ratification.

8. This set of safeguards enabled the Working Party to rule that any States having failed to ratify the revised text or to abide by it would cease to be parties to the Convention with effect from the entry into force of the revised text (Paragraph 4(b)). One delegation suggested providing for each proposed amendment to be accompanied by a vote on the issue of whether, in each particular case, refusal to ratify the revised text should entail exclusion from the Convention. This system was found to be too complicated and liable to give rise to scarcely acceptable consequences, since it would result either in the application of two different texts of the Convention, or in imposing a new legal system on States which had not agreed to it.

In this same context, it was agreed that a declaration by a Contracting State, making known, at a given
MAIN CONTENTS MADE ON THE FINAL AND GENERAL PROVISIONS

Part VI bis of the Convention
Final and general provisions

Article a - Revision

5. The overriding preoccupation of the Working Party was, in the event of an amendment not being accepted by all the States, to avoid two different texts being in force simultaneously. The solution adopted by the Working Party was to lay down that all States which had not ratified the revised text would cease to be parties to the Convention. Nevertheless, in order to avoid, as far as possible, such situations as might arise as consequence of these provisions, the Working Party adopted certain adjustments (See points 6, 7 and 8 below).

6. The Working Party was at pains to avoid a proliferation of amendments, bearing in mind the serious consequences of the entry into force of a revised text for any States which might be unable to ratify or abide by the revised Convention once the revised text came into force. The Working Party accordingly decided against the principle of a reviewing Conference, meeting periodically, and preferred to leave it to the Administrative Council to decide when such meetings would be appropriate. The Working Party also agreed to fix a rather high quorum for deliberations at any reviewing conference which might be held. This enabled it to agree to a reduction, in relation to the Chairman's initial proposal, in the majorities required both for the adoption and for the
- Secretariat -

MINUTES
of the Meeting of Working Party II
(Luxembourg, 1-4 September 1970 - 2nd meeting)

I

1. The second meeting of Working Party II was held at Luxembourg, from Tuesday 1 to Friday 4 September 1970 under the Chairmanship of Mr. R. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities and the International Patent Institute attended the meeting as observers. (1).

2. The Working Party would draw attention to the provisional nature of the wording of the texts it adopted.

Bearing in mind the timetable laid down for the meetings of the other Working Parties, the outcome of which might lead the Working Party to revise some of the provisions which it had previously adopted, in particular those relating to the Administrative Council;

...(1)

(1) The list of those attending the meeting is given in the Annex.

BR/53 e/70 son/PB/prk
ARTIKEL 30
Rechtsstellung

(1) Das Europäische Patentamt ist eine gemeinsame Einrichtung der Vertragsstaaten mit verwaltungsmäßiger und finanzieller Selbständigkeit.

(2) Die Tätigkeit des Europäischen Patentamts wird vom Verwaltungsrat überwacht.

ARTIKEL 31
Zuweisung von Aufgaben durch ein besonderes Übereinkommen


ARTIKEL 32
Rechtsnatur

(1) Das Europäische Patentamt besitzt Rechtspersönlichkeit.

(2) Das Europäische Patentamt besitzt in jedem Vertragsstaat die weitestgehende Rechts- und Geschäftsfähigkeit, die juristischen Personen nach dessen Rechtsvorschriften zuerkannt ist; es kann insbesondere bewegliches und unbewegliches Vermögen erwerben und veräußern sowie vor Geficht stehen.

(3) Der Präsident des Europäischen Patentamts vertritt das Europäische Patentamt gerichtlich und außergerichtlich.

ARTIKEL 33
Sitz und Informations- oder Verbindungsstellen

(1) Das Europäische Patentamt hat seinen Sitz in...


PART III
THE EUROPEAN PATENT OFFICE
CHAPTER 1
Status and general organisation

ARTICLE 30
Legal status

(1) The European Patent Office is an organisation common to the Contracting States and endowed with administrative and financial autonomy.

(2) The activities of the European Patent Office shall be supervised by the Administrative Council.

ARTICLE 31
Assignment of tasks by means of a special agreement

The European Patent Office may be given additional tasks by a special agreement within the meaning of Article 8. Special organs common to the States entering into this agreement may be set up within the European Patent Office in order to carry out such additional tasks; such organs shall be subject to the supervision of a select Committee of the Administrative Council.

ARTICLE 32
Legal character

(1) The European Patent Office shall have legal personality.

(2) In each of the Contracting States, the European Patent Office shall enjoy the most extensive legal capacity accorded to legal persons under the national law; it may, in particular, acquire or transfer movable and immovable property and may sue and be sued in its own name.

(3) The President of the European Patent Office shall exercise the legal capacity of that Office.

ARTICLE 33
Location and Branches for information and liaison

(1) The European Patent Office shall be located at...

(2) By decision of the Administrative Council, branches of the European Patent Office may be created if need be for the purpose of information and liaison, in the Contracting States or with the International Patent Institute at The Hague or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren
sowie
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren
und
ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

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 —
One organisation (FICPI) proposed an alternative solution to the effect that in the Contracting States where patents of addition may be granted in respect of improvements, developments or supplements to an earlier national patent, a European patent for such improvements to an earlier patent could be registered in the States in question as a patent of addition and made subject to the rules of the relevant national law.

37. Three organisations (IAPIP, EIRMA and IFIA) advocated that patents of addition might be granted throughout the term of validity of the parent patent.

Article 33 (Location and Branches for information and liaison)

38. The IGO expressed the wish that the decision on the location should be taken on the basis of considerations which would make for the operation of the European Patent Office on the most economic lines possible.

Article 34 (Languages) and Re. Article 34, No. 1 (Legal authenticity and time limit for the filing of a translation of the application).

39. CEIF and FIMIP considered that the arrangements laid down in the Implementing Regulations concerning the language to be used in oral proceedings (Re. Article 34, No. 5) were less favourable towards parties whose language was not one of those laid down in Article 34, paragraph 1; one way in which to remedy this situation might be to charge the costs of interpretation to the European Patent Office.

BR/169 e/72 son/AV/prk
MINUTES

of the

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

Part II

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

(Luxembourg, 26 January to 1 February 1972)
which the Administrative Council might establish should only be for information or liaison. This proposal was not supported by the other delegations.

Article 160b (Appointment of senior officials during a transitional period)

128. In the discussion on the "running-in" of the European Patent Office, the United Kingdom delegation pointed out that it was unlikely that the members of the Boards of Appeal and the Enlarged Board of Appeal would be employed full-time during the first few years of operation of the European Patent Office. It therefore proposed that it should be possible for ad hoc appointments to be made during a transitional period: this would take the form of a temporary suspension of Article 58, paragraphs 1 and 2.

The Working Party recognised this problem and certain delegations were in favour of the solution proposed by the United Kingdom delegation as this would also allow both technically qualified staff of the European Patent Office and members of national courts to be appointed. Other delegations were opposed to appointing officials of the European Patent Office as members of the Boards of Appeal or the Enlarged Board of Appeal for constitutional reasons (independence of judges) and practical reasons (insufficient number of technically qualified staff for the duties of the Examining Division, the Boards of Appeal and the Enlarged Board of Appeal to be carried out by officials who have to be different under the provisions of Article 135).

BR/135 e/71 lor/prk
(c) One delegation suggested that it might be preferable, after an initial period, for the European Patent Office itself to be responsible for training its officials, as in the case of national offices. That would imply, however, that the training role of the CEIPI at Strasbourg would be only temporary and this might give rise to financial problems.

All the delegations expressed great interest in the ideas put forward by the Chairman, who agreed to draw up a document along these lines to be submitted to the Working Party before 1 January 1972. The French delegation also agreed to submit a document by the same date on the present activities of the CEIPI at Strasbourg and on the developments which could be envisaged by the French authorities, particularly in view of the international role which the Centre might be called upon to play. On the basis of these documents, steps should be taken to enable the Inter-Governmental Conference of June 1972 to take a decision on the general lines of this plan.

Article 33 (Location and branches for information and liaison)

In connection with the discussion on Article 88a and on the problem of the "running-in" of the European Patent Office, the Working Party examined a proposal by the United Kingdom delegation (BR/GT I/113/71) to amend Article 33, paragraph 2, by removing the restriction that branch offices
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
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)
Article 35b
Preparatory duties of the Administrative Council

The Administrative Council shall be empowered:

(a) to prepare Conferences for the revision of this Convention;

(b) to prepare such adaptations to this Convention as may be rendered necessary by the accession of third countries.
Article 35a continued:

(c) the agreements with Contracting States to the Patent Co-operation Treaty which are not Contracting States to this Convention referred to in Article 119, paragraph 2;

(d) any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;

C. decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Patent Co-operation Treaty, in the case provided for in Article 119, paragraph 3;

D. decide upon the creation of branches for information and liaison purposes in the Contracting States or with the International Patent Institute at The Hague or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or the organisation concerned.

1. Note to Article 35a, paragraph 1 (E):
   It should be re-examined whether provision should be made for an exception, as provided for in E 2nd sentence, to be made for other time-limits.

2. Note to Article 35a, paragraph 2 (f):
   Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3), which should be completed as follows: "in accordance with the provisions laid down in Article 35a, paragraph 2 (f)".
Article 35a continued:

(2) In addition, the Administrative Council shall:

(a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office;

(b) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;

(c) audit and approve each year the accounts and inventories and the balance sheet;

(d) approve the annual management reports of the President of the European Patent Office;

(e) appoint the senior officials referred to in Article 37, subject to the conditions laid down in that Article, and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them;

(f) give, in each particular case, to the President of the European Patent Office, to whom the President of the Administrative Council shall to this end address a written communication, an authorisation to exercise the legal capacity of the European Patent Office for the purposes of:

- actions at law with the exception of those of an urgent or protective nature, or those in which the European Patent Office has been made a defendant,

- acts relating to the disposal of immovable property, or relating to the disposal of movable property when the sum involved exceeds the exchange value of 20 kilograms of fine gold, as well as acts affecting, in the two cases referred to above, the ownership of such property.

(3) Furthermore, the Administrative Council shall:

A. give its decision on requests for accession to this Convention formulated by third countries;

B. conclude or amend on behalf of the European Patent Office:

(a) the agreement with the International Patent Institute at The Hague laying down the procedures for its collaboration with the European Patent Office;

(b) any agreement with the International Bureau provided for in the Patent Co-operation Treaty, for the purposes of applying Articles 117 to 123 of this Convention.

BR/88 e/71 gc
CHAPTER Ia (1)

Powers and functions of the Administrative Council

Article 35a

Powers of decision of the Administrative Council

(1) The Administrative Council shall be competent to:

A. amend the Implementing Regulations to this Convention;

B. adopt or amend:

(a) the Administrative and Financial Regulations of the European Patent Office;
(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature and the rules for the grant of the supplementary benefits which may be accorded to them;
(c) the Rules relating to fees;
(d) any other rules necessary for the implementation of this Convention;

C. take the decisions referred to in Article 159;

D. amend Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions;

E. amend the time limits laid down in this Convention independently of any revision under Article 162. This shall not apply to the time limit laid down in Article 88, paragraph 2, subject to the provisions of Article 159.

(1) The provisions of Chapters Ia, Ib and Ic will require to be harmonised with the other provisions of the Convention at a later date.

The position of these Chapters in the Convention is provisional.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
Thus the Conference took into account the fact that a collegial body such as the Administrative Council which, moreover only meets at certain intervals, might hardly be in a position to conclude such agreements itself.

103. The Conference also added further powers for the Administrative Council to those contained in paragraphs 1, 2 and 3, as Working Party II had not been able to consider them when drafting Article 35a. For purposes of simplification, the Conference divided the now completed Article 35a into three separate Articles (35ab, 35ac and 35cc: BR/116/71, pages 3 to 6).

Article 35b (Preparatory duties of the Administrative Council)

104. The Conference deleted this Article. The power to prepare revision conferences, together with the power to convene such conferences, is already covered in the previous Article. The power to prepare such adaptations to the Convention as may be rendered necessary by the accession of third countries did not, in the opinion of the Conference, need to be laid down expressly. Should the necessity for such adaptations arise a revision conference would have to be convened, as in the case of other amendments.

Article 35c (Representation of Contracting States)

105. The Conference decided that only the representatives of the Contracting States could be members of the Administrative Council, and worded paragraph 1 accordingly. The representatives of the inter-governmental organisations
Council for not acting without its approval in certain cases (see point 97 above). The Conference accordingly deleted sub-paragraph (f).

101. The Austrian delegation proposed that a new sub-
paragraph (g) in paragraph 2 should lay down that it is
the responsibility of the Administrative Council to
instruct the President of the European Patent Office, at
the request of a Contracting State, to make a report. The
Conference did not agree to this request, because the
Administrative Council's power to instruct the President
to make a report is already implicit in its general
supervisory rights. The Conference did not however see
the expediency of obliging the Administrative Council to
comply with the request of a single Contracting State.

102. In connection with paragraph 3 B the Conference
noted that the necessity might arise for the European
Patent Office to conclude agreements other than those
listed in this provision. It therefore replaced this
list with a provision drawn up in general terms. Acting
on a request made by the Netherlands delegation and
endorsed by the Austrian delegation, the Conference also
laid down the respective responsibilities of the
Administrative Council and the President of the European
Patent Office for the conclusion of agreements with
States or international organisations, making the
President responsible for the actual negotiations and
the conclusion of the agreements, although he must
obtain the approval of the Administrative Council before
opening the negotiations and concluding the agreements.
President and the Administrative Council. This does not mean that dealings undertaken by the President without the required approval are to be invalidated because approval was not obtained, but that the President is to be responsible to the Administrative Council for them (cf. point 100).

98. The Conference did not endorse the United Kingdom delegation's proposal that in paragraph 1E the Administrative Council should be empowered to amend the time-limit laid down in Article 88, paragraph 2. It was the Conference's opinion that this time limit constituted such an essential feature of the deferred examination system that, except in the case referred to in Article 159, amendment should only be possible by means of a revision of the Convention.

99. In order to make a clear distinction between the duties of the Administrative Council (supervision of the activities of the European Patent Office) and those of the President (direction of the European Patent Office), the Conference deleted sub-paragraph (a) from paragraph 2.

100. In connection with paragraph 2(f) it was agreed that the Administrative Council must be empowered to specify the cases in which the President of the European Patent Office must obtain the prior approval of the Administrative Council before he undertakes actions at law. The Conference was however of the opinion that it was not necessary to restrict the President's powers of representation in respect of third parties. The desired aim would also be achieved just as satisfactorily if the President were to be responsible to the Administrative
CHAPTER I a

Powers and Functions of the Administrative Council

Article 35a (Powers of decision of the Administrative Council)

96. The Conference noted in connection with paragraph 1 A that this provision only says down that the Administrative Council is competent to amend the Implementing Regulations, whereas the Diplomatic Conference is to adopt them. It therefore considered that it would be expedient to specify in a final provision that the Implementing Regulations form an integral part of the Convention (see point 127 under Article 161a). (BR/121/71, Page 5).

97. The Conference deleted from paragraph 1 B(a) the power of the Administrative Council to adopt Administrative Regulations, as all the administrative regulations required are either contained in the Implementing Regulations or may be adopted by the President of the European Patent Office as part of his task of directing its business, in which he is supervised by the Administrative Council.

The power provided for in sub-paragraph (d) to adopt any other rules necessary for the implementation of the Convention allows the Administrative Council, in the Conference's opinion, to determine the cases in which the President of the European Patent Office will require the approval of the Administrative Council to exercise the legal capacity of the European Patent Office internally. This condition of approval is not however to restrict the President's power to represent the European Patent Office externally but is to apply only to the internal relations between the
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP
OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 7 July 1971
BR/125/71

MINUTES

of the

4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 20 to 28 April 1971)

BR/125 e/71 lev/KM/bp
Article 7 (33)

Location and branches for information and liaison

(1) The Organisation shall have its seat at ..., where the European Patent Office shall be located.

(2) By decision of the Administrative Council, branches of the European Patent Office may be created if need be for the purpose of information and liaison, in the Contracting States and with the International Patent Institute at The Hague or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.
Draft Convention

Establishing a European System

for the Grant of Patents

(Stage reached on 20 May 1972)
181. The Conference also agreed to make provision for the Government of the Federal Republic of Germany to be that with which the instruments of ratification of the Convention were to be deposited. Articles 161 to 164, 170, 173 and 174 of the Convention were supplemented pursuant to this decision.

E. RECOMMENDATION BY THE INTER-GOVERNMENTAL CONFERENCE TO THE DIPLOMATIC CONFERENCE ON BEGINNING PREPARATIONS FOR THE OPENING OF THE EUROPEAN PATENT OFFICE (item 8 on the Agenda)

182. The Conference examined the draft recommendation submitted by the Co-ordinating Committee, as contained in BR/204/72.

The Conference adopted this recommendation subject to the following observations and some drafting amendments.

183. With regard to point 2, the Conference agreed that the preparation of the special agreements contained in the Protocol on Centralisation should also be entrusted to the Interim Committee. The Conference was referring both to the agreements provided for in Section IV of the said Protocol and to the task of preparing the integration of the IIB with the European Patent Office, in respect of which the representatives of the IIB had submitted a proposal in Working Document No. 29.
177. The Conference recorded its unanimous agreement on the proposal contained in BR/213/72. One delegation abstained.

178. Dr HAERTEL then spoke on behalf of the German delegation, whose thanks he expressed for the Conference's unanimous decision in favour of Munich. He wished to give complete assurances that the Government of the Federal Republic of Germany would do its utmost to justify the confidence thus placed in it, so that the European Patent Office would be able to commence operation in 1976, and to create conditions such that the aims of the Patent Office might be achieved.

Dr HAERTEL went on to say that in view of the decision which had been taken, he was empowered to declare, on behalf of his Government, that it would invite the delegations to a Diplomatic Conference to be held in Munich during 1973.

179. The Netherlands delegation also wished to thank the Conference for the decision it had taken and for the confidence it had shown in the Netherlands Government. It especially wished to thank the United Kingdom and Luxembourg delegations.

180. At the suggestion of the Co-ordinating Committee, the Conference adopted a different terminology for the Hague branch and the information branches. A series of drafting amendments were made in consequence.

BR/219 e/72 oyd/AH/prk
(ii) BR/213/72 submitted by the German and Netherlands delegations.

174. Mr SAVIGNON took the Chair for the Conference's discussions on this point.

175. The Luxembourg delegation referred to the policy of welcoming European institutions, which the Luxembourg Government had always followed. In this connection, it also recalled Article 3 of the Decision of the Member States of the European Communities concerning the provisional installation of certain Community institutions and departments. On this basis, the Luxembourg Government had in the past sent a memorandum to the States attending the Conference. However, as the work proceeded, the Luxembourg Government had reconsidered its position and had not officially informed the Conference of the city of Luxembourg's application to be the headquarters of the European Patent Office. The Luxembourg delegation stated that it reserved the right to submit this application if agreement on another site could not be reached.

176. The President recalled that the Netherlands Government had submitted the application of The Hague and that the Netherlands delegation had submitted a proposal jointly with the German delegation (BR/213/72), and said that if this proposal was not adopted, the Netherlands delegation reserved the right to re-submit the application of The Hague. For this reason, the Chairman proposed that the Conference should first of all discuss this proposal.
171. The French delegation remarked that paragraphs 2 to 4 were doubtless intended to ensure a comparable standard between European and international searches. However, this was a permanent objective, since the standard could vary over a period of time. The French delegation noted that although it was ready to support the Chairman's proposal, one should not ignore the eventuality of an international search of undeniable quality undertaken by an international authority which did not take sufficient account of the European search. This was why the French delegation was requesting that any interpretation should not rule out this possibility.

The Chairman noted that in such an eventuality paragraphs 2 to 4 ought in fact to be applied.

172. Finally, the Conference recorded its agreement that the main aim of paragraphs 2 to 4 was to guarantee an equivalent standard between European and international searches. It also recorded its agreement on the text of Article 154, deleting the square brackets round paragraphs 2 to 4.

(c) Article 7 of the draft Convention

173. The Conference was apprised of the following proposals:

(i) BR/195/72 and Working Document No. 2 submitted by the United Kingdom delegation;

BR/219 e/72 cyd/AH/prk .../...
MINUTES

of the

6th meeting of the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
VII. Article 7 of the Draft Convention

39. The Committee observed that it was not its responsibility to take a decision regarding the applications which had been made for the seat of the Organisation. It therefore merely discussed the procedure whereby the Conference could decide this matter.

The Committee agreed to suggest to the Conference that it decide first of all on the proposal made by the German and Netherlands delegations (BR/213/72), since it would depend on the decision on this proposal whether or not the Netherlands delegation would withdraw the application of The Hague for the seat of the European Patent Office. If the proposal contained in the above-mentioned document were to be adopted by the Conference, it would no longer be necessary to vote on the other applications.

40. The Committee also agreed that it should propose that the Conference take the decision as to the seat after having decided on the Protocol on the Centralisation of the European Patent System and on its Introduction, and on Article 154.

41. With regard to the proposal contained in BR/213/72, the Committee agreed that it should be considered that the branches for information and liaison to be set up under paragraph 3 would form parts of the European Patent Office. It was also agreed that the Drafting Committee should use different terminology to distinguish between the branch referred to in paragraph 2 and those referred to in paragraph 3.
MINUTES

of the

3rd meeting of the Co-ordinating Committee
(Luxembourg, 23, 24 and 27 June 1972)

1. During the 6th Meeting of the Inter-Governmental Conference the Co-ordinating Committee met several times under the Chairmanship of Dr. K. HAERTEL to prepare the Conference's discussions of the proposals submitted to it by various delegations.
Artikel 6
Sitz

(1) Die Organisation hat ihren Sitz in München.

(2) Das Europäische Patentamt wird in München errichtet. Es hat eine Zweigstelle in Den Haag, der die Eingangs- und Formalprüfung sowie die Veröffentlichung der europäischen Patentanmeldungen obliegt.

Artikel 7
Dienststellen des Europäischen Patentamts


Artikel 8
Vorrechte und Befreiungen


Artikel 9
Haftung

(1) Die vertragliche Haftung der Organisation bestimmt sich nach dem Recht, das auf den betreffenden Vertrag anzuwenden ist.

Artikel 6
Seat

(1) The Organisation shall have its seat at Munich.

(2) The European Patent Office shall be set up at Munich. It shall have a branch at The Hague which shall be responsible for the examination on filing, the examination as to formal requirements and the publication of the European patent application.

Artikel 7
Sub-offices of the European Patent Office

By decision of the Administrative Council, sub-offices of the European Patent Office may be created if need be for the purpose of information and liaison, in the Contracting States and with the International Patent Institute at The Hague or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.

Artikel 8
Privileges and immunities

The Protocol on Privileges and Immunities of the European Patent Organisation annexed to this Convention, shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the European Patent Office and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in the territory of each Contracting State, the privileges and immunities necessary for the performance of their duties.

Artikel 9
Liability

(1) The contractual liability of the Organisation shall be governed by the law applicable to the relevant contract.
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTEITELLUNGSVERFAHRENS 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
INCORPORATION OF THE IIB INTO THE
EUROPEAN PATENT OFFICE
AS THE DIRECTORATE-GENERAL FOR SEARCHING

PROPOSALS FOR AMENDMENTS TO THE CONVENTION
AND THE IMPLEMENTING REGULATIONS

The French delegation previously suggested for the reasons
set forth in M/26 of 9 May 1973 (Nos. 9 to 12) that the Conference
should make the necessary adjustments to the Convention and the
Implementing Regulations "in order to incorporate the IIB into
the European Patent Office".

It proposes the following amendments which it considers would
have to be made if this suggestion were adopted.

CONVENTION

ARTICLE 6 - Seat

(1) Unchanged.

(2) The European Patent Office shall be set up at Munich.
It shall have a branch at The Hague comprising the
Receiving Section and the Search Divisions.

(NOTE: This wording takes account of the French proposal,
submitted elsewhere, concerning the Receiving
Section)

ARTICLE 7 - Sub-offices of the European Patent Office

By decision of the Administrative Council, sub-offices of the
European Patent Office may be created if need be for the purpose
of information and liaison, in the Contracting States and with
(......) inter-governmental organisations in the field of
industrial property, subject to the approval of the Contracting
State or organisation concerned.

ARTICLE 15 - The departments charged with the procedure

For implementing the procedures laid down in this Convention,
there shall be set up within the European Patent Office:

(a) a Receiving Section;

(aa) Search Divisions;

(b) to (e) Unchanged.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973

M/ 59/1/II

Original: French

CONFERENCE DOCUMENT

Drawn up by: French delegation

Subject: Incorporation of the IIB into the European Patent Office as the Directorate-General for Searching
Proposals for amendments to the Convention and the Implementing Regulations
Article 7

Sub-offices of the European Patent Office

By decision of the Administrative Council, sub-offices of the European Patent Office may be created if need be for the purpose of information and liaison, in the Contracting States and with inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 24 September 1973
M/130/II/R 6
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II
AT THE MEETING ON 24 SEPTEMBER 1973

Articles of the Convention:

Articles

1
4
6
7
9
15
16
16a
18a
19
21
22
28
31
33
165
176

Implementing Regulations:

Rules

9
12

Protocol on Privileges and Immunities of the European Patent Organisation

Protocol on the Centralisation of the European Patent System and on its introduction
Article 7.

Sub-offices of the European Patent Office

By decision of the Administrative Council, sub-offices of the European Patent Office may be created if need be, for the purpose of information and liaison, in the Contracting States and with inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 1
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 1 to 26
22. The Austrian and German delegations endorsed the United Kingdom delegation's proposal.

23. The French and Luxembourg delegations, on the other hand, expressed a measure of doubt. For reasons of consistency, they considered it preferable to refrain from associating the exercise by the Organisation of its legal capacity, which was strictly a matter for paragraph 2, with the completely different question of the conferment upon the President of authority to represent the legal person constituted by the Organisation in its dealings with the outside world.

24. The IIB delegation pointed out that the United Kingdom delegation's intention was precisely that of extending the scope of paragraph 3 which, as it stood in the draft form, was confined to the exercise of legal capacity, to embrace the wider concept of representation.

25. In view of these additional clarifications the Committee adopted the United Kingdom delegation's proposal unanimously with one abstention.

Article 6 — Seat

26. When presenting its proposal as set out in M/59/I/II, the French delegation pointed out that Section I of the draft Protocol on Centralisation stipulated that the Member States of the IIB undertook to take all necessary steps to incorporate into the European Patent Office upon the opening of the latter all assets and liabilities and all staff members of the IIB. This would require the Administrative Council to decide upon amendments to the Convention and the Implementing Regulations thereto prior to the opening of the European Patent Office, in order to make allowance for the transfer of tasks from the IIB to the Directorate-General for Searching at the European Patent Office. The French delegation proposed that provision be made in the Convention itself for the incorporation of the IIB into the European Patent Office. A decision in principle along these lines would necessitate amending Article 6, paragraph 2, as follows:

"(2) The European Patent Office shall be set up at Munich. It shall have a branch at The Hague comprising the Receiving Section and the Search Divisions."

27. The Austrian, Belgian, German, Netherlands and United Kingdom delegations supported the French proposal.

28. The Chairman noted that none of the delegations had expressed any objection to the decision in principle on placing the incorporation of the IIB in the Convention itself.

29. With reference to Article 6, paragraph 2, second sentence, the French delegation stated that the proposed wording would not involve any substantive alteration, as the text stipulated that the Receiving Section would be situated at The Hague and thus took account of the fact that the entire procedure up to the request for examination would be conducted there.

30. The Netherlands delegation concurred with this view.

31. The United Kingdom delegation supported the proposal in principle, although it wondered whether the Receiving Section would also be competent to deal with divisional applications submitted in the course of the procedure. In this context it referred to Articles 73 (75) and 74 (76) of the Convention.

32. The German delegation drew attention to the decisions taken by Main Committee I with regard to Articles 73 (75) and 74 (76), whereby it would be possible to file European patent applications either in Munich or at the branch at The Hague.

33. The Chairman noted that this part of the French delegation's proposal as contained in M/59/I/II was also adopted by the Committee and referred it to the Drafting Committee.

Article 7 — Sub-offices of the European Patent Office

34. The French delegation submitted in M/59/I/II a minor drafting change involving the deletion of the reference to the IIB from Article 7.

35. The Chairman noted that this amendment followed from the decision taken as regards the incorporation of the IIB and referred the proposal to the Drafting Committee.

Article 9 — Liability

(a) Paragraph 2

36. The Luxembourg delegation presented its proposal contained in M/9, point 4.

37. The German delegation had no substantive objections to the proposal, although it considered that the clarification requested by the Luxembourg delegation was superfluous. Under German law, for example, it was quite clear that the legislation of the State concerned was applicable not only for determining the extent but also the principle itself of liability.

38. The Luxembourg delegation withdrew its proposal in view of the statement by the delegation of the Federal Republic of Germany.

(b) Paragraph 4

39. The United Kingdom delegation further proposed that paragraph 4(a) should specify that jurisdiction would fall to the courts of the Federal Republic of Germany unless another court or national law were designated. The aim of this supplementary qualification was to ensure not only that the court with jurisdiction could be accurately identified, but also that the parties concerned would be free to determine the law applicable in their contract.

40. The Austrian and French delegations expressed reservations with regard to the proposal on the grounds of the structure of the Article, pointing out that the provisions establishing the law applicable were set forth in paragraphs 1 and 2.

41. In view of these comments the United Kingdom delegation withdrew its proposal.

42. The Committee called upon the Rapporteur to provide an explanation of the purpose of this provision in his report to the Plenary in order to take account of the comments submitted by the Luxembourg delegation in M/9 point 5.

43. The Committee referred to the Drafting Committee the German delegation's proposal contained in M/47, point 37.

Article 10 — Direction

(a) Paragraph 2(a)

44. The Committee recorded its agreement to the proposal by the German delegation in M/47/I/II/III, point 14, in view of the fact that Main Committee I had accepted corresponding proposals by the same delegation on Articles 73 (75), paragraph 1(a), and 74 (76), paragraph 1 (see M/PR/I, point 198).

(b) Paragraph 3

45. The Committee agreed to the Luxembourg delegation's proposal in M/9, point 6, that in addition to the term "absence", express mention be made of indisposition of the President.

46. The Belgian delegation then submitted its proposal in M/33, point 1, whereby in his absence or in the event of his being indisposed, one of the Vice-Presidents would take the
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
(3) The creation of these Branches may be decided upon in order to meet the needs of the European Patent Office or those of Contracting States or the [International Patents Institute at The Hague].

Note:
The third variant of paragraph 1 will in certain countries require the approval on the part of Parliament of an agreement independent of the Convention and exclusively relating to determining the location of the European Patent Office.

**Article 34. Languages**

(1) Subject to the following provisions, the languages in use at the European Patent Office shall be English, French and German.

(2) Persons having their registered place of business or ordinary residence within the territory of one of the Contracting States, the language of which is not referred to in paragraph 1, and nationals of that State who are resident abroad, may file applications for European patents in the language of that State. Nevertheless, a translation in one of the languages referred to in paragraph 1, must be produced within a period of one month from the date of filing.

(3) Subject to the exceptions provided for in the Implementing Regulations, the language of an application for a European Patent or, in the case referred to in paragraph 2, that of the translation, must be used in all dealings with the European Patent Office. If a document has to be produced before the expiration of a time limit, the provisions of paragraph 2 shall correspondingly apply, provided that the translation is produced in the language of the proceedings.

(4) Entries in the Register of European Patents shall be made in the three languages referred to in paragraph 1. In cases of doubt, the entry in the language of the application shall be authentic.

(5) The printed specifications of European patents shall be published in the language of the application or, in the case referred to in paragraph 2, in that of the translation; they shall include a translation of the claims into each of the other two languages referred to in paragraph 1.

(6) The European Patent Bulletin shall be published in the three languages referred to in paragraph 1.

(7) The Official Journal of the European Patent Office shall be published partly in all of the languages of the Contracting States and partly in the three languages referred to in paragraph 1, in conformity with the Implementing Regulations.

**Article 35. Privileges and Immunities**

The European Patent Office and its officials and other employees shall enjoy in the territory of Contracting States those privileges and immunities which are necessary to the carrying out of their tasks in accordance with the terms of the provisions laid down in a special protocol.