Rule 30 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.

Rule30eTPEPC1973
Regel 30  
MPU  
Patentansprüche verschiedener Kategorien

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Outcome of the work of the "Implementing Regulations" Sub-Committee
of Working Party I
(15 to 18 September 1970)

PRELIMINARY DRAFT IMPLEMENTING REGULATIONS
Re. Articles 62, 63, 64, 66, 69, 70, 71, 79 and 85
of the first preliminary draft Convention
32. The majority of the sub-Committee decided to adopt a broader solution on this matter than that contained in the corresponding provision of the PCT, since the latter did not in any case rule out the application of more liberal rules. The solution chosen provides that one and the same application may include, in addition to an independent claim for a product or a process, not only one but several independent claims in respect of different categories. These different claims must, of course, comply with the basic principle of unity of invention enunciated in Article 70 of the First Preliminary Draft.

33. The Swedish and British delegations, preferring the stricter PCT text, made a point of stating that they reserved the right to raise this question again in Working Party I. The British delegation stressed that too liberal a provision might complicate the search to be carried out by the IIB. The Chairman wished to have the problem taken up again at a future meeting, and hoped that the sub-Committee would be able to reach a solution on this point which would receive unanimous support.

34. The provision adopted maintains the principle expressed in the PCT. An application may contain several independent claims in the same category, provided that the principle of unity of invention is complied with. However, the sub-Committee did not consider it necessary to repeat the supplementary condition contained in the PCT, whereby, in this case, it must not be easily possible to cover the claims by a single generic claim only. To avoid any abuses, the principle of unity must be paramount.
MINUTES
of the 2nd meeting of Working Party I sub-Committee on
"Implementing Regulations"
(Luxembourg, 15-18 September 1970)

I

1. The second working meeting of the sub-Committee
   instructed by Working Party I to draw up draft Implementing
   Regulations to the Convention was held at Luxembourg from
   Tuesday 15 to Friday 18 September 1970, with
   Mr. PRESSONNET, Deputy Director, French Industrial Property
   Institute, in the Chair.

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

(1) See the list of participants in Annex I.
on both the European Patent Office and the International Patent Institute, which will have no power to assess whether or not an application complying with this provision satisfies the requirement of unity of invention. The provision therefore expresses what the Sub-Committee considers to be basically a single inventive concept under Article 70 of the First Preliminary Draft Convention. On the other hand, it does not prevent the applicant going beyond the possibilities provided for. But if he does so, he will have no guarantee of satisfying the requirement of unity of invention, and the relevant bodies will be empowered to assess whether or not he does so.

33. It was also made clear that where an application contains a claim for a product, another claim for a process for the manufacture of the product and a third claim for the use of the product, the application will not be covered by the guarantee given by the provision adopted if the claim for the product has been the subject of a previous application. In such a case there is no longer unity of invention, as the basic claim which provided the link between the two other claims has disappeared.

Re. Article 70, No. 2 - Claims in the same category

34. The Swedish delegation stated that it maintained its reservation and that it was in favour of this provision reproducing the full text of Rule 13.3 of the Regulations under the PCT (see BR/5170, point 34).
apparent that too liberal a text might frequently impose upon the International Patent Institute the cumbersome task of making searches concerning different inventive concepts for one and the same report on the state of the art.

31. The Sub-Committee therefore decided to adopt a new provision which would follow Rule 13.2 of the Regulations under the PCT in permitting two possibilities for including independent claims in different categories in the same application while still respecting the requirements of unity. However, it also added a third possibility permitting the accumulation of independent claims for a product, a process for the manufacture of the product and a means for carrying out the process. This third possibility was, however, put between square brackets, as it is to be re-examined after consultation of the interested circles. The Sub-Committee also agreed that none of the possibilities mentioned could be combined with any other of these possibilities.

32. During the discussion the Sub-Committee defined the scope of the provision in question in order to remove any ambiguity which had arisen following the adoption of the previous wording. The provision gives the applicant a guarantee: namely that he will fulfil the requirement of unity of invention if he complies with the conditions of this provision when drawing up the list of independent claims in different categories. This provision will be binding
in which certain time limits had not been observed. The Chairman of the Sub-Committee instructed this delegation to locate such cases and, if appropriate, to make a proposal in this respect.

The Sub-Committee felt that it should draw the attention of Working Party I at the appropriate time to the fact that certain Articles in the First Preliminary Draft Convention should refer not only to other Articles of the Convention, but also to the Implementing Regulations. This affects, for example, Articles 88, 155, 159 and 161 of the First Preliminary Draft Convention.

Re. Article 70, No. 1 - Claims in different categories

29. As this provision had only been adopted by a majority decision at the second meeting of the Sub-Committee, the Chairman had decided to resume its examination at a later date with a view to obtaining a unanimous decision. (See BR/50/70, page 31 and BR/51/70, points 32 and 33). Subsequently, observations had been submitted by the United Kingdom delegation (BR/GT I/64/70), the Swedish delegation (BR/GT I/78/70) and the International Patent Institute (BR/GT I/75/70).

30. On the basis of these documents, a discussion was held as to whether the Implementing Regulation to be adopted on unity of invention in the case of claims in different categories should be as strict as Rule 13.2 of the Regulations under the PCT, or whether it should be more liberal, retaining the wording adopted earlier. It became

BR/68 e/70 lor/KM/fm

.../...
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 23 December 1970
BR/68/70

- Secretariat -

MINUTES

of the 4th meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 23-27 November 1970)

I.

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

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

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

BR/68 e/70 ley/KM/bm
(2) Wird Absatz 1 nicht entsprochen, so fordert das Europäische Patentamt den Beteiligten auf, innerhalb einer von Europäischen Patentamt zu bestimmenden Frist den Mangel zu beseitigen.

(3) Entspricht der Beteiligte rechtzeitig der Aufforderung des Europäischen Patentamts, so bleibt ihm der Tag des Eingangs des nicht unterzeichneten Schriftstücks erhalten. Entspricht er der Aufforderung nicht rechtzeitig, so gilt das Schriftstück als nicht eingegangen; dies gilt nicht für den Antrag auf Erteilung eines europäischen Patents.

Zu Artikel 66
Nummer 11
Telegraphische und fernschriftliche Eingaben im Verfahren


(2) Wird das in Absatz 1 genannte Schriftstück nicht rechtzeitig eingereicht, so gilt das Telegramm oder das Fernschreiben als nicht eingegangen.

(3) Die Absätze 1 und 2 sind auf die Unterlagen der europäischen Patentanmeldung nicht anzuwenden.

Zu Artikel 70
Nummer 1
Patentansprüche verschiedener Kategorien

Artikel 70 des Übereinkommens ist so auszulegen, daß in einer europäischen Patentanmeldung insbesondere enthalten sein können:

a) neben einem unabkömmlichen Patentanspruch für ein Erzeugnis ein unabhängiger Patentanspruch für ein besonders angepaßtes Verfahren zu dessen Herstellung und ein unabhängiger Patentanspruch für eine Verwendung des Erzeugnisses oder

b) neben einem unabkömmlichen Patentanspruch für ein Verfahren ein unabhängiger Patentanspruch für eine Vorrichtung oder ein Mittel, die zur Ausführung des Verfahrens besonders entwickelt wurden.

Zu Artikel 70
Nummer 2
Patentansprüche der gleichen Kategorie

Vorbehaltlich Artikel 70 des Übereinkommens können in einer europäischen Patentanmeldung zwei oder mehr unabhängige Patentansprüche der gleichen Kategorie (Erzeugnis, Verfahren, Vorrichtung oder Anwendung) enthalten sein, sofern es mit Rücksicht auf den Gegenstand der Anmeldung nicht zweckmäßig ist, diesen in einem einzigen Anspruch wiedergeben.

(2) Where the provisions of paragraph 1 have not been observed, the European Patent Office shall invite the party concerned to comply therewith within a time limit to be laid down by that Office.

(3) If the party concerned complies with the behest of the European Patent Office in good time, he shall retain the benefit of the date of submission of the invalid document. Failing this, the document shall be deemed not to have been received; this sanction, however, shall not apply to the request for the grant of a European patent.

Re. Article 66
No. 11
Telegraphic and telex communications during the course of proceedings

(1) Documents furnished during the course of proceedings before the European Patent Office may, by way of exception to the provisions of Articles . . . (Re. Article 66, Nos. 9 and 10), be sent to the European Patent Office by telegram or telex. However, a document reproducing the contents of such telegram or telex and complying with the requirements of these Regulations must be produced within two weeks as from the receipt of the said telegram or telex.

(2) In the event of failure to produce the document referred to in paragraph 1 in good time, the telegram or telex shall be deemed not to have been received.

(3) The provisions of paragraphs 1 and 2 shall not be applicable in respect of the documents making up European patent applications.

Re. Article 70
No. 1
Claims in different categories

Article 70 of the Convention shall be construed as permitting, in particular, that one and the same European patent application may include:

(a) in addition to an independent claim for a product, an independent claim for a process specially adapted for the manufacture of the product, and an independent claim for a use of the product; or

(b) in addition to an independent claim for a process, an independent claim for an apparatus or means specifically designed for carrying out the process.

Re. Article 70
No. 2
Claims in the same category

Subject to Article 70 of the Convention, a European patent application may contain two or more independent claims in the same category (product, process, apparatus or use) where it is not appropriate, having regard to the subject-matter of the application, to cover this subject-matter by a single claim.
SECOND PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
with
FIRSTPRELIMINARY 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 —
COPRICE suggested, and was seconded by FIRMA, that sub-paragraphs (a) and (b) should be combined to form a single provision allowing independent claims for a process, a use, an apparatus and a product in the same application; to this end, the word "or" at the end of (a) should be replaced by "and".

IFICPI put forward very general objections to this provision of the Implementing Regulations; in its opinion an examiner could be led to confirm the unity of an invention only in cases where the claims conformed to the pattern set out in this provision, whereas there would be other cases of unity. On the other hand,IFICPI asked whether unity could be denied even if the claims were in conformity with the conditions set out in Re. Article 70, No. 1.

Article 71 (Disclosure of the invention)

69. CNIPA proposed that the problem posed by the use in an invention of a micro-organism not generally available, which had not yet been solved in the Convention, should be dealt with along the lines advocated in the Banks Report (No. 552).

Re. Article 71, No. 1, IR (Number of claims)

70. CNIPA, IFICPI and UNEPA recommended that it should be made clear in paragraph 1 that the fees for the eleventh and every following claim would only be levied once.
Article 69 (Failure to pay the fees required for the application or to provide a translation)

65. See point below for the reply to the question raised by UNEPA as to whether in certain cases referred to in the Convention, an application should be deemed to have been withdrawn or whether an extension of the time limit should be made for certain operations (cf. point 73 below).

Article 69a (Naming of the inventor)

66. COPRICE expressed the opinion that failure to name the inventor should result only in the designation of any State which required the inventor to be named being deemed to have been withdrawn, rather than in the fiction of the withdrawal of the whole application.

67. See also the observations on Article 17, points 31-33.

Re. Article 70, No. 1, IR (Claims in different categories)

68. CEIF expressed the wish that both this provision and Re. Article 70, No. 2, would not be too narrowly worded, so that some leeway would be left to administrative practice. To this end the words "specially adapted" (process) contained in (a) should be deleted, and a clause added at the end of (b) to the effect that the unity of the invention could not be refuted on the sole ground that products or processes were not defined co-extensively in such claims.

BR/169 e/72 ley/SH/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)

BR/169 e/72 ley/KM/prk
as far as that State was concerned. This posed the problem of whether compliance with the provision laid down in Article 67, paragraph 4, necessarily meant that designation of all the Member States of the EEC was deemed to be withdrawn.

The German delegation was aware of this problem, but it thought that it should first be examined within the context of the Second Convention. The delegations of States which were not parties to that Convention would be able to raise the problem at the Diplomatic Conference on the First Convention.

Finally, the Working Party took note of the United Kingdom delegation's observation.

Res. Article 70, No. 1 (Claims in different categories)

37. The Working Party examined a proposal made by the Swiss delegation (BR/GT I/158/72) with a view to increasing the number of possible combinations between independent claims in different categories in view of the requirement for flexibility in this area which had been voiced by the interested circles during the hearing.

The Working Party adopted by majority decision the Swiss delegation's proposal, which entailed the addition to this provision of a new sub-paragraph (c).
Report on the 11th meeting of Working Party I
held in Luxembourg from 28 February to 3 March 1972

1. Working Party I held its 11th meeting in Luxembourg from 28 February to 3 March 1972 with Dr Haertel, President of the Deutsches Patentamt in the Chair.

Representatives of the Commission of the European Communities, the IIB and WIPO attended the meeting as observers. The Representatives of the Council of Europe sent apologies for absence. Those present at the 11th meeting are listed in Annex I to this report.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/143/72; it was agreed that Articles 153 and 154 would be dealt with by the Co-ordinating Committee at its next meeting scheduled for 15 to 19 May 1972. The provisional agenda is contained in Annex II to this report.

3. The Drafting Committee of Working Party I was chaired by Mr van Benthem, President of the Octrooiraad.

The results of the Drafting Committee's work were circulated under reference BR/176/72.

BR/177 e/72 oyd/AH/prk
Claims in different categories

Article 70 of the Convention shall be construed as permitting, in particular, that one and the same European patent application may include:

(a) in addition to an independent claim for a product, an independent claim for a process specially adapted for the manufacture of the product, and an independent claim for a use of the product, or;

(b) in addition to an independent claim for a process, an independent claim for an apparatus or means specifically designed for carrying out the process, or;

(c) in addition to an independent claim for a product, an independent claim for a process specially adapted for the manufacture of the product and an independent claim for an apparatus or means specifically designed for carrying out the process.

Note

The provision between square brackets does not appear in Rule 13.2 of the Regulations under the PCT, which, however, does not preclude the application of more liberal rules.
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 16th February 1971
BR/90/71

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

- Stage reached on 29th January 1971 -

BR/90 e/71 prk
attempt to avoid the payment of fees. Other delegations did not share this opinion and considered that a precise text would have the advantage of creating a clear situation for the applicant and avoiding long discussions between the latter and the European Patent Office as regards the unity of invention.

Re. Article 70, No. 2 (Claims in the same category)

174. The Conference decided to amend this provision by bringing it more into line with Rule 13.3 of the Regulations under the PCT in order to place a certain limitation on the use of independent claims in the same category. Such a use would only be allowed when it was impossible to cover the subject of the application by a single claim.

Re. Article 79, No. 1 (Report on the state of the art)

175. The Austrian delegation asked for clarifications on the present documentation facilities of the IIB and on the intentions of that institution as regards the extension of its facilities in the future.

As information on this subject appears in the report that the IIB has undertaken to communicate to the Conference (see point 42), the examination of this question has been postponed.
Re. Article 66, No. 3 (Form and contents of claims)

172. In view of its importance, the Conference decided to transfer the provision in paragraph 1 to the text of the Convention itself, as Article 71a. (1)

Re. Article 70, No. 1 (Claims in different categories)

173. Starting from a proposal by the United Kingdom delegation, the Conference discussed at great length the problem of unity of invention. The proposal was to delete the text of (c) which appeared in square brackets and which allowed unity of invention in the case of a first claim for a product, of a second for a process for the manufacture of the product and of a third for a means designed for carrying out the process.

The Conference decided to delete the provision in (c). In the course of the discussion, it was stressed that this provision did not appear in Rule 13.2 of the Regulations under the PCT, which did not, however, preclude the application of more liberal rules. Several delegations were in favour of a more liberal attitude towards the unity of invention by the European Patent Office. However, certain delegations preferred to allow the European Patent Office to establish its own set of precedents in this matter. If the European Patent Office were to be bound by a text, applicants might abuse the possibilities offered by the provision in (c) in an

(1) BR/121/71, p. 3.

BR/125 e/71 ght/KM/prk
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)
a) neben einem unabhängigen Patentanspruch für ein Erzeugnis ein unabhängiger Patentanspruch für ein besonders angepaßtes Verfahren zu dessen Herstellung und ein unabhängiger Patentanspruch für eine Verwendung des Erzeugnisses oder

b) neben einem unabhängigen Patentanspruch für ein Verfahren ein unabhängiger Patentanspruch für eine Vorrichtung oder ein Mittel, die zur Ausführung des Verfahrens besonders entwickelt wurden, oder

c) neben einem unabhängigen Patentanspruch für ein Erzeugnis ein unabhängiger Patentanspruch für ein besonders angepaßtes Verfahren zu dessen Herstellung und ein unabhängiger Patentanspruch für eine Vorrichtung oder ein Mittel, die zur Ausführung des Verfahrens besonders entwickelt wurden.

Vgl. Artikel 76 (Erfordernisse der europäischen Patentanmeldung) und 80 (Einheitlichkeit der Erfindung)

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Regel 31
Gebührenpflichtige Patentansprüche

(1) Enthält eine europäische Patentanmeldung bei der Einreichung mehr als zehn Patentansprüche, so ist für jeden weiteren Patentanspruch eine Anspruchsgebühr zu entrichten. Die Anspruchsgebühren sind bis zum Ablauf eines Monats nach Einreichung der Anmeldung zu entrichten.

(2) Absatz 1 ist entsprechend anzuwenden, wenn die europäische Patentanmeldung zum Zeitpunkt der Mitteilung der Prüfungsabteilung nach Regel 52 Absatz 4 mehr gebührenpflichtige Patentansprüche als bei ihrer Einreichung oder erst zu diesem Zeitpunkt mehr als zehn Patentansprüche enthält. Anspruchsgebühren, die zum Zeitpunkt dieser Mitteilung fällig werden, sind innerhalb der in der genannten Vorschrift vorgeschriebenen Frist zu entrichten.

(3) Wird die Anspruchsgebühr für einen Patentanspruch nicht rechtzeitig entrichtet, so gilt dies als Verzicht auf diesen Patentanspruch. Eine fällig gewordene Anspruchsgebühr, die entrichtet worden ist, wird nicht zurückgezahlt.

Vgl. Artikel 76 (Erfordernisse der europäischen Patentanmeldung)

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Rule 31
Claims incurring fees

(1) Any European patent application comprising more than ten claims at the time of filing shall, in respect of each claim over and above that number, incur payment of a claims fee. The claims fee shall be payable within one month after the filing of the application.

(2) Paragraph 1 shall apply mutatis mutandis where the European patent application comprises more claims incurring fees at the date of the communication of the Examining Division made in accordance with Rule 52, paragraph 4, than at the time of filing, or where it comprises more than ten claims at that date only. The claims fee incurred at the date of that communication shall be payable within the period laid down in that provision.

(3) If the claims fee for any claim is not paid in due time, the claim concerned shall be deemed to be abandoned. No claims fee duly paid shall be refunded.

Cf. Article 76 (Requirements of the European patent application)

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Regel 32
Form der Zeichnungen

(1) Auf Blättern, die Zeichnungen enthalten, darf die benutzte Fläche 26,2 cm mal 17 cm nicht überschreiten. Die Blätter dürfen keine Umrahmungen um die benutzbare oder benutzte Fläche aufweisen. Die Mindestränder sind folgende:

| Oberer Rand:      | 2,5 cm |
| Linker Seitenrand:| 2,5 cm |
| Rechter Seitenrand:| 1,5 cm |
| Unterer Rand:     | 1 cm   |

Rule 32
Form of the drawings

(1) On sheets containing drawings, the usable surface area shall not exceed 26.2 cm x 17 cm. These sheets shall not contain frames round the usable or used surface. The minimum margins shall be as follows:

| top   | 2.5 cm |
| left side | 2.5 cm |
| right side | 1.5 cm |
| bottom | 1 cm   |
b) einen kennzeichnenden Teil, der durch die Worte „dadurch gekennzeichnet“ oder „gekennzeichnet durch“ eingeleitet wird und die technischen Merkmale bezeichnet, für die in Verbindung mit den unter Buchstabe a angegebenen Merkmalen begehrt wird.

(2) Vorbehaltlich Artikel 80 können in einer europäischen Patentanmeldung zwei oder mehr unabhängige Patentansprüche der gleichen Kategorie (Erzeugnis, Verfahren, Vorrichtung oder Verwendung) enthalten sein, sofern es mit Rücksicht auf den Gegenstand der Anmeldung nicht zweckmäßig ist, diesen in einem einzigen Anspruch wiederzugeben.

(3) Zu jedem Patentanspruch, der die wesentlichen Merkmale der Erfindung wiedergibt, können ein oder mehrere Patentansprüche aufgestellt werden, die sich auf besondere Ausführungsarten dieser Erfindung beziehen.

(4) Jeder Patentanspruch, der alle Merkmale eines anderen Patentanspruchs enthält (abhängiger Patentanspruch), hat, wenn möglich in seiner Einleitung, eine Bezugnahme auf den anderen Patentanspruch zu enthalten und nachfolgend die zusätzlichen Merkmale anzuzeigen, für die Schutz begehrt wird. Ein abhängiger Patentanspruch ist auch zulässig, wenn der Patentanspruch, auf den er sich unmittelbar bezieht, selbst ein abhängiger Patentanspruch ist. Alle abhängigen Patentansprüche, die sich auf einen oder mehrere vorangegangene Patentansprüche beziehen, sind soweit wie möglich und auf die zweckmäßigste Weise zusammenzufassen.


(6) Die Patentansprüche dürfen sich, wenn dies nicht unbedingt erforderlich ist, im Hinblick auf die technischen Merkmale der Erfindung nicht auf Bezugnahmen auf die Beschreibung oder die Zeichnungen stützen. Sie dürfen sich insbesondere nicht auf Hinweise stützen wie: „wie beschrieben in Teil . . . der Beschreibung“ oder „wie in Abbildung . . . der Zeichnung dargestellt“. 

(7) Sind der europäischen Patentanmeldung Zeichnungen beigefügt, so sollen die in den Patentansprüchen genannten technischen Merkmale mit Bezugzeichnen, die auf diese Merkmale hinweisen, versehen werden, wenn dies das Verständnis des Patentanspruchs erleichtert; die Bezugzeichnen sind in Klammern zu setzen. Die Bezugzeichnen dürfen nicht zu einer einschränkenden Auslegung des Patentanspruchs herangezogen werden.

Cf. Articles 76 (Requirements of the European patent application), 80 (Unity of invention) and 82 (The claims)

**Vgl. Artikel 76 (Erfordernisse der europäischen Patentanmeldung), 80 (Einheitlichkeit der Erfindung) und 82 (Patentansprüche)**

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**Regel 30**

**Patentansprüche verschiedener Kategorien**

Artikel 80 ist so auszulegen, daß in einer europäischen Patentanmeldung insbesondere enthalten sein können:

(b) a characterising portion – preceded by the expression "characterised in that" or "characterised by" – stating the technical features which, in combination with the features stated in sub-paragraph (a), it is desired to protect.

(2) Subject to Article 80, a European patent application may contain two or more independent claims in the same category (product, process, apparatus or use) where it is not appropriate, having regard to the subject-matter of the application, to cover this subject-matter by a single claim.

(3) Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.

(4) Any claim which includes all the features of any other claim (dependent claim) shall contain, if possible at the beginning, a reference to the other claim and then state the additional features which it is desired to protect. A dependent claim shall also be admissible where the claim it directly refers to is itself a dependent claim. All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most appropriate way possible.

(5) The number of the claims shall be reasonable in consideration of the nature of the invention claimed. If there are several claims, they shall be numbered consecutively in arabic numerals.

(6) Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or drawings. In particular, they shall not rely on such references as: "as described in part ... of the description", or "as illustrated in figure ... of the drawings".

(7) If the European patent application contains drawings, the technical features mentioned in the claims shall preferably, if the intelligibility of the claim can thereby be increased, be followed by reference signs relating to these features and placed between parentheses. These reference signs shall not be construed as limiting the claim.

**Rule 30**

**Claims in different categories**

Article 80 shall be construed as permitting in particular, that one and the same European patent application may include:
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTeilungsVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

VORBEREITENDE DOKUMENTE
ausgearbeitet von der
Regierungskonferenz über die Einführung eines europäischen Patenterteilungsverfahrens
herausgegeben von der
Regierung der Bundesrepublik Deutschland

PREPARATORY DOCUMENTS
drawn up by the
Inter-Governmental Conference for the setting up of a European System for the Grant of Patents
and published by the
Government of the Federal Republic of Germany

DOCUMENTS PRÉPARATOIRES
élaborés par la
Conférence intergouvernementale pour l'institution d'un système européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d'Allemagne

1972
Artikel 76, Regel 27 Absatz 1d

Die derzeitige Formulierung „... außerdem sind gegebenenfalls die vorteilhaften Wirkungen ... anzuzeigen“ wäre bei erschöpfender Auslegung unangemessen; es ist wünschenswert, diese Auflage auf die Angabe einiger vorteilhafter Wirkungen zu beschränken.

Artikel 80, Regel 30

Es wird vorgeschlagen, die Worte „besonders angepaßtes“ zu streichen, da diese Forderung unbegründet erscheint.

Artikel 86 Absatz 3

Es sollte klargestellt werden, daß nicht nur für ein und dieselbe Anmeldung, sondern auch für ein und denselben Patentanspruch dieser Anmeldung mehrere Prioritäten in Anspruch genommen werden können.

Artikel 90, Regel 41 Absatz 2

Die in dieser Regel enthaltene unangemessene Auflage sollte durch die Möglichkeit ersetzt werden, innerhalb einer begrenzten Frist nach der Einreichung der Anmeldung die beanspruchten Prioritäten anzugeben oder die sich hierauf beziehenden Angaben zu berichtigen.

Artikel 92, Regeln 49, 50 und 52

Es wird festgestellt, daß für die Rücknahme einer Anmeldung keine Bestimmung eigens vorgesehen ist, obwohl sich das Recht hierzu aus der Regel 49 Absatz 2 ergibt.

Die Bestimmung in Regel 50 Absatz 3 ist nach Ansicht des FEMIPI so wichtig, daß sie in Artikel 92 aufgenommen werden sollte.

Artikel 97

Es wird empfohlen, in der Patentschrift auch die von den Prüfern im Verlauf des Verfahrens genannten Unterlagen aufzuführen.

Artikel 104

Es wird vorgeschlagen, dem Dritten, der vom Patentinhaber eine Aufforderung zur Unterlassung erhalten und eine Klage zur Feststellung eingereicht hat, daß keine Patentverletzung vorliegt, dieselben Rechte eingeräumt werden wie dem beitretenden Patentverletzer.

Article 76; Rule 27, paragraph 1(d)

The present wording „... and state the advantageous effects, if any, of...“ would, if interpreted as requiring an exhaustive list, be much too excessive; this provision should be limited to a requirement for certain advantageous effects to be specified.

Article 80; Rule 30

It is suggested that the phrase “specifically designed” should be deleted since it would seem to constitute an unjustified requirement.

Article 86, paragraph 3

It should be stated that multiple priorities may be claimed not only in respect of one and the same application but also in respect of one and the same claim of that application.

Article 90; Rule 41, paragraph 2

The excessive requirement laid down under this Rule should be replaced by the possibility of indicating the priorities claimed or of correcting statements concerning the latter within a specific period from the filing of the application.

Article 92; Rules 49, 50 and 52

It is pointed out that there is no express provision relating to the withdrawal of an application, although the right to withdrawal is implicit in Rule 49, paragraph 2.

In addition, the provision of Rule 50, paragraph 3, is of such great importance in the view of FEMIPI, that it should be inserted in Article 92.

Article 97

It is recommended that the patent specification should also mention the documents cited by the examiners during the procedure.

Article 104

It is suggested that any third party against whom a suit is brought by the patentee and who has filed a declaratory action to confirm that there has been no infringement, should have the same rights as the intervening infringer.
Ausnahme unter der Bedingung in Aussicht genommen werden, daß die Staaten, die davon Gebrauch machen, diese Übergangszeit dazu nutzen, alle geeigneten wirtschaftlichen und rechtlichen Maßnahmen zu ergreifen, um sich nach diesem Zeitraum den Staaten anschließen zu können, die von Anfang an das gemeinsame Recht akzeptieren.


Diese Staaten sollten darauf hingewiesen werden, daß es widersprüchlich wäre, sich mit dem Gemeinsamen Markt zu assoziieren oder ihm beizutreten zu wollen, und sich gleichzeitig zu weigern, innerhalb dieses Zeitraums die Patentierbarkeit in dem Umfang, wie sie innerhalb der Europäischen Wirtschaftsgemeinschaft gilt, anzuerkennen.


Regel 30 – Patentansprüche verschiedener Kategorien

Rule 30 – Claims in different categories
11 CEIF welcomes that this Rule explicitly provides that the same European patent application may include the manufacturing process of the product that is the object of the principal claim as well as the means for carrying out the process or vice-versa. CEIF however thinks that there is no justification for the requirement that the process has to be “specially adapted” for the manufacture of the product, or that the apparatus of means has to be “specifically designed” for carrying out the process, and consequently CEIF asked for the deletion of the words “specially adapted” and “specifically designed”.

250
abgeändert werden sollte. Die gewünschten Änderungen sind in der Anlage 3 erläutert.

Regel 30 (a)

35 Es wird vorgeschlagen, die Worte „besonders angepaßtes“ zu streichen.

Regel 40

36 Es ist wünschenswert, die Regel 40 so zu verbessern, daß sie keine Bezugnahme auf die gesamte Regel 36 (1) enthält. Die Regel 36 (1) nimmt ihrerseits nämlich Bezug auf Vorschriften, die den Bereich der reinen Formvorschriften überschreiten.

Regel 41

37 Es besteht Anlaß, eine größere Freiheit für die Korrektur der Prioritätsangaben einzuräumen, d.h. der Anmelder sollte eine Frist von zwei Monaten haben, um solche Korrekturen vornehmen zu können.

Regel 70 (2)

38 Es ist unumgänglich, daß das Europäische Patentamt dem Betroffenen mitteilt, ob es seinem Antrag stattgegeben hat, damit es die Weiterbehandlungsgebühr entrichten kann.

Regel 99 (3)


ANLAGE 1

40 Vorschlag für eine Neufassung des Artikels 162

„Zugelassene Vertreter während einer Übergangszeit

(1) Während einer Übergangszeit, deren Ende der Verwaltungsrat bestimmt, kann in Abweichung von Artikel 134 Absatz 2 in die Liste der zugelassenen Vertreter jede natürliche Person eingetragen werden, die die folgenden Voraussetzungen erfüllt:

a) Die Person muß ihren Geschäftssitz oder Arbeitsplatz im Gebiet eines Vertragsstaats haben;

amended. The amendments desired are set forth in Annex 3.

Rule 30(a)

35 It is proposed that the words "specially adapted" be deleted.

Rule 40

36 The wording of Rule 40 should be improved so that it does not refer to the whole of Rule 36, paragraph 1, since the latter refers to provisions which go beyond simple physical requirements.

Rule 41

37 Greater freedom should be granted as concerns the correction of statements as to priority, i.e. applicants should be allowed two months in which to remedy deficiencies.

Rule 70, paragraph 2

38 The European Patent Office must inform the person concerned of whether it has complied with his request so that he may pay the fee for further processing.

Rule 99, paragraph 3

39 UNICE considers that the Convention should include a provision laying down that all the departments concerned must observe the principle of confidentiality.

ANNEX 1

40 Proposal for a new text for Article 162

"Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must have his place of business or employ-
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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

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

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1973
Rule 30
Claims in different categories

Article 72 shall be construed as permitting in particular, that one and the same European patent application may include:

(a) in addition to an independent claim for a product, an independent claim for a process specially adapted for the manufacture of the product; and an independent claim for a use of the product;

(b) in addition to an independent claim for a process, an independent claim for an apparatus or means specifically designed for carrying out the process; or

(c) in addition to an independent claim for a product, an independent claim for a process specially adapted for the manufacture of the product, and an independent claim for an apparatus or means specifically designed for carrying out the process.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 9
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 27 to 53
5. Filing and requirements of the European patent application (Articles 73-84 and Rules 24-37)

During its discussion of Article 73, the Main Committee was faced with the question of which office of the European Patent Office the European patent application should be filed at. In the interests of the applicant, it gave him the choice of Munich or The Hague and amended Article 73, paragraph 1(a) and Article 74, paragraph 1, accordingly.

In connection with the requirements of the application under Article 76, the Main Committee examined the need to file the abstract. It considered that if this were not done, there would be a loss of information and therefore maintained this requirement. It also decided to prescribe the compulsory publication of the abstract with the search report under Article 92.

Closely connected with the substantive requirement of disclosing the invention under Article 81 was the problem of making special provisions for European patent applications covering micro-organisms. It was not contested that the relevant provision, Rule 28, should lay down that micro-organisms which are not available to the public should be deposited with a recognised culture collection no later than at the time of filing the application, that the micro-organism should be adequately described in the application, and that the culture collection should be identified either in the application itself or within a short time thereafter. It was also agreed that the disclosure of the micro-organism should be subject to certain measures to protect the applicant. Views differed, however, on the latest time at which the micro-organism should be made available to the public. Contrary to the draft of Rule 28, which provided for this to be no later than the date of publication of the application, it was proposed that the applicant should not be obliged to make the micro-organism available to the public until the time of the grant of the patent, at which point the provisional protection would be lost. The main arguments put forward in defence of this standpoint were that the approach contained in the draft laid an unfair burden on such applicants in comparison to inventors in other fields of technology by requiring the subject-matter of the invention to be deposited, and that the applicant was forced to reveal know-how, thus making it easier for his invention to be copied at a time when it was not yet definite whether or not the application would lead to the grant of a patent.

Those who advocated the approach set out in the draft argued that the public could be considered to be sufficiently informed about the subject-matter of the invention only if the micro-organism were made available to the public at the time of the publication of the application; furthermore, it was only by such a disclosure that the micro-organism could be comprised in the state of the art under Article 52, paragraph 3, with the result that this was the only means whereby duplication of patents could be avoided and legal uncertainty in relation to national patent applications could be removed.

After detailed consideration of the various arguments for and against the two approaches, the Main Committee decided by a majority to retain the solution proposed in the draft and to lay down that the micro-organism should be made available to the public at the latest at the date of publication of the European patent application. At the same time, it added provisions to Rule 28 which gave the applicant far-reaching guarantees against misuse of the disclosed micro-organism during the existence of the provisional protection conferred by the application and the definitive protection of the European patent. These guarantees consisted in requiring that any third party who had access to a sample of the culture would have to make certain undertakings vis-à-vis the culture collection or the applicant for or proprietor of the patent in respect of the ways in which he used the culture. On the other hand, the Main Committee decided, in the same way as in respect of Article 67, not to adopt a procedural rule which would have obliged a third party who used a micro-organism disclosed by the applicant to prove that the culture concerned was not that described in the application, even though the reversal of the burden of proof would have reinforced the legal position of the applicant even further. It was also made clear in Rule 28 that the built-in safety clauses in favour of the applicant did not prejudice any national provisions concerning compulsory licences or uses in the interest of the State. The details governing the deposit, storage and availability of cultures were left to agreements to be concluded between the President of the European Patent Office and the recognised culture collections.

6. Questions of priority (Articles 85-87/Rule 38)

Apart from the amendment to Article 85, paragraph 5, already dealt with above in the chapter on "language questions", the provisions of Articles 85-87 concerning priority led to few amendments. It may be mentioned that the extension of the priority right to States which are not members of the Paris Convention, in accordance with an amendment decided upon by the Committee in the interests of the Contracting States, will apply only if international reciprocity is granted not only in relation to European but also in relation to national applications by Contracting States.

7. Procedure up to grant (Articles 88-97/Rules 39-55)

In so far as individual provisions of Articles 88-97 and the corresponding Rules 39-55 concerning the procedure up to grant have already been discussed in connection with language questions, identification of the inventor and the abstract, reference should be made to the appropriate Chapters 1, 3 and 5.

During the discussion of Articles 93/94 the Committee confirmed the specified period within which requests for examination may be filed and also the possibilities for extending the time limits, both of which are the result of well thought out compromises. The Committee refused in particular to lay down in Article 94 an absolute right for third parties to request examination in the event of the Administrative Council extending a time limit. The need for such a right for third parties depends largely on the length of time by which the period is extended.

8. Opposition procedure (Articles 98-104/Rules 56-64)

The provisions concerning opposition procedure gave rise to very little discussion. A proposal to delete the opposition fee in Article 98, paragraph 1, on the ground that the opponent was to be considered as a person helping to establish the legal facts of the matter, was rejected by the majority. If the fee were to be dispensed with, dilatory opposition would be encouraged. Furthermore, the interests of the opponent are his main incentive and lastly, pursuant to Article 114, any person who wishes to help to establish the legal facts of the matter may present, free of charge, observations concerning the patentability of an invention in respect of which an application has been filed. By a vast majority the Committee also refused to shorten to six months the nine-month opposition period laid down in Article 98, paragraph 1, which had been adopted as a compromise solution at an earlier stage in the negotiations.

In Article 98 and in Rule 61 the Committee added new provisions which also make possible the filing of notice of opposition and consequently the continuation of opposition proceedings when the proprietor has completely surrendered the European patent or when it has lapsed for all the
2201. The Main Committee subsequently held a vote on the following question: If a person who has obtained a sample of a deposited culture were to prepare or sell a product which could have been prepared by means of that sample, should the product thus prepared be deemed to have been prepared by using that sample, until evidence to the contrary has been provided?

6 delegations answered this question in the affirmative, and 10 delegations in the negative.

**Rule 29 — Form and content of claims**

2202. The Main Committee referred to the Drafting Committee a form of wording proposed by the delegation of the Federal Republic of Germany for the beginning of paragraph 1 (M/11, point 35).

2203. The Netherlands delegation suggested making an exception in paragraph 6 for chemical and mathematical formulae and for tables (M/52/11/III, page 28, point 5).

2204. The Main Committee referred this proposal for examination to the Working Party, which did not approve it however.

**Rule 30 — Claims in different categories**

2205. The UNICE delegation suggested deleting the words "specially adapted" under (a) and (c). It would be difficult for a person skilled in chemistry to understand these words and they could lead to unnecessary discussions with the examining division.

2206. The Austrian and Swiss delegations supported this suggestion.

2207. The delegations of the Federal Republic of Germany, Sweden and the United Kingdom opposed such an amendment.

The Swedish delegation drew attention to the fact that the present wording was in line with the PCT and the words objected to were intended to express the idea that both the claims should be based on a unitary inventive concept.

2208. In the Swiss delegation's view, the corresponding rule in the PCT could be deviated from in the Implementing Regulations inasmuch as that rule represented only a minimum requirement. It considered that difficulties of interpretation could arise out of the words objected to, since the German wording appeared to suggest that the process should be modified in order to make it possible to manufacture the product, whereas the French version seemed to suggest that the process for manufacturing the product would have to be created for the first time.

The Swiss delegation also proposed the deletion of the words "specifically designed" ("besonders entwickelt" — "spécialement conçu") under (b) and (c).

2209. The Austrian delegation supported the Swiss supplementary proposal. In its view, the words objected to under (a), (b) and (c) would be superfluous if they were intended to express the requirement of unity of invention, since this had already been done in Article 80 (82). Nor was it clear to this delegation what significance these words could otherwise have.

2210. According to the explanations of the United Kingdom delegation, the present wording should be understood to be a carefully evolved compromise solution which gave the applicant the opportunity to draw up separate claims in a single application without having to pay more than one search fee. In the wording now proposed, even more claims could be contained in one application, which would inevitably lead to lower receipts from search fees and could perhaps even result in a loss in renewal fees. The proposal should therefore be rejected. Furthermore, the European Patent Office could also permit combinations of claims other than those expressly referred to in Rule 30 as being unitary.

2211. The UNION delegation supported the Swiss delegation's proposal. It explained that particular significance would be attributed to the possibility of conferring protection on claims for processes in cases where protection of the substances were excluded, as authorised in the case of pharmaceutical or food products under Article 166 (167). Furthermore, the question of the unity of the invention would be examined in every case by the European Patent Office, and division of the application could still be required if the words "specially adapted" were deleted.

2212. In this connection, the Chairman pointed out that in accordance with the interpretative provision of Rule 30, the European Patent Office must regard an invention as being unitary if the circumstances referred to in that provision arose. However, it could also accept unity in further cases. If, therefore, the words objected to were to be deleted, the European Patent Office would have to regard an invention as being unitary if, besides an independent claim to the product, an independent claim to any process for manufacturing this product were to be drawn up.

2213. The French delegation, referring to the fact that this Rule had come into being by way of a compromise, emphasised that it should not be amended.

2214. The Main Committee subsequently took a vote on whether the words "specially adapted" under (a) and (c) and the words "specifically designed" under (b) and (c) should be deleted.

4 delegations voted in favour of this, 10 delegations against it and 1 delegation abstained.

**Rule 32 — Form of the drawings**

2215. The Netherlands delegation, supported by the Swiss delegation, proposed supplementing paragraph 2(h) by adding a new sentence (M/52/11/III, page 28, point 2). It based this proposal on the fact that a similar rule had proved its practical worth in the Netherlands.

2216. The delegations of the Federal Republic of Germany, France and the United Kingdom opposed the proposal.

2217. In the subsequent vote, 4 delegations supported the proposal and 3 delegations opposed it; 8 delegations abstained.

2218. The Netherlands delegation, supported by the Swiss delegation, proposed amending paragraph 2(i) (M/52/11/III, page 28, point 3).

2219. The delegations of the Federal Republic of Germany, France and the United Kingdom opposed this.

2220. In the ensuing vote, 3 delegations supported the proposal, 3 delegations opposed it and 7 abstained.

2221. The Netherlands delegation, supported by the Swiss delegation, proposed the inclusion of a special provision in paragraph 3 for chemical and mathematical formulae and tables (M/52/11/III, page 28, point 4).

2222. The WIPO delegation pointed out that the proposed provision would represent a departure from the corresponding Rule in the PCT.

2223. The delegations of the Federal Republic of Germany, France and the United Kingdom opposed the proposal.

2224. In the ensuing vote, 3 delegations supported the proposal and 4 delegations opposed it; 7 delegations abstained.

**Rule 34 — Prohibited matter**

2225. A suggestion by the Netherlands delegation to align the terminology of paragraph 1(a) of paragraph 1(c) was referred to the Drafting Committee.

2226. The Swiss delegation adopted the position that as inventions whose publication was contrary to "ordre public" or
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
Article 70 of the Convention shall be construed as permitting, in particular, that one and the same European patent application may include:

(a) in addition to an independent claim for a product, at least one independent claim for a process specially adapted for the manufacture of that product,

(b) in addition to an independent claim for a product, at least one independent claim for a use of that product, and,

(c) in addition to an independent claim for a process, at least one independent claim for a device or means specifically designed for carrying out that process.

Note:
The fact that this proposal differs from the corresponding provision in the ECT Regulations does not preclude the application of more liberal rules.