Article 84 E

Travaux Préparatoires
(EPC 1973)

Comment:
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Art. 84
MPÜ
Patentansprüche

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" 82 M/146/R 4 Art. 84
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 145/R 4
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 84 to 111
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-a-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.


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
Minutes of the proceedings of the Committee of the Whole

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

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

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

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

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

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

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

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

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

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

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

II. Report on the work of Main Committee II

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

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

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

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

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

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

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

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

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

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

15. Main Committee III’s rapporteur, Mr. Fressonnet, Deputy Director of the National Industrial Property Office
MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
b) die Benennung mindestens eines Vertragsstaats;
c) Angaben, die es erlauben, die Identität des Anmel-
ders festzustellen;
d) in einer der in Artikel 14 Absätze 1 und 2 vorgesehe-
en Sprachen eine Beschreibung und einen oder mehrere
Patentansprüche, selbst wenn die Beschreibung und die
Patentansprüche nicht den übrigen Vorschriften dieses
Übereinkommens entsprechen.

Artikel 79
Erfindernennung

In der europäischen Patentanmeldung ist der Erfinder zu
nenen, wenn das nationale Recht zumindest eines der
benannten Vertragsstaaten die Erfindernennung für
nationale Patentanmeldungen vorschreibt.

Vgl. Regeln 17 (Einreichung der Erfindernennung), 18 (Bekannt-
machung der Erfindernennung) und 19 (Berichtigung oder
Widerruf der Erfindernennung)

Artikel 80
Einheitlichkeit der Erfindung

Die europäische Patentanmeldung darf nur eine einzige
Erfindung enthalten oder eine Gruppe von Erfindungen,
die untereinander in der Weise verbunden sind, daß sie
eine einzige allgemeine erfundene Idee verwirklichen.

Vgl. Regeln 29 (Form und Inhalt der Patentansprüche) und 30
(Patentansprüche verschiedener Kategorien)

Artikel 81
Offenbarung der Erfindung

Die Erfindung ist in der europäischen Patentanmeldung
so deutlich und vollständig zu offenbaren, daß ein
Fachmann sie ausführen kann.

Vgl. Regel 28 (Erfordernisse europäischer Patentanmeldungen
betreffend Mikroorganismen)

Artikel 82
Patentansprüche

Die Patentansprüche müssen den Gegenstand angeben,
für den Schutz begehrt wird. Sie müssen deutlich, knapp
gefaßt und von der Beschreibung gestützt sein.

Vgl. Regel 29 (Form und Inhalt der Patentansprüche)

Artikel 79
Identification of the inventor

The European patent application shall identify the
inventor where the national law of at least one of the
designated Contracting States requires such identifica-
tion to be supplied for national patent applications.

Cf. Rules 17 (Designation of the inventor), 18 (Publication of
the mention of the inventor) and 19 (Rectification or cancel-
tion of the designation of an inventor)

Article 80
Unity of invention

The European patent application shall relate to one
invention only or to a group of inventions so linked as to
form a single general inventive concept.

Cf. Rules 29 (Form and content of claims) and 30 (Claims in
different categories)

Article 81
Disclosure of the invention

A European patent application must disclose the
invention in a manner sufficiently clear and complete for
it to be carried out by a person skilled in the art.

Cf. Rule 28 (Requirements of applications relating to micro-
organisms)

Article 82
The claims

The claims shall define the matter for which protection
is sought. They shall be clear and concise and be
supported by the description.

Cf. Rule 29 (Form and content of claims)
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
délarbés par la
Conférence intergouvernementale pour l'institution d'un système européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d'Allemagne

1972
Re: Article 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)
Paragraph 1 should be transferred to the Convention.

Note:

Reference et al. shall not be construed as limiting the claim.

(1) If the European patent application containing claims, the technical features mentioned in the claim shall be transferred to the description of the invention, or "as illustrated in part ... of the description", or "as described in paragraph ... of the description", or "as illustrated in part ... of the description", as the case may be.

(3) Claims shall not, except where absolutely necessary, refer, in respect of the technical features mentioned in the claim, to the invention contained in the number of the claims shall be reasonable in consideration of the nature of the invention.

Re. Article 66, No. 3 continued
most appropriate or possible.

referring back to several preceding claims, shall be grouped together to the extent and in the

ATT dependent claim referring back to a single preceding claim, and all dependent claims

an appropriate dependent claim.

A dependent claim shall also be admissible where the claim to which refers is directly refers to the literal
form or an alternative.

alternative shall not serve as a basis for any other claim which literally refers back to the

alternative written in the form of an alternative. A claim which refers back to the form of an

any dependent claim which refers directly to more than one other claim shall refer to each

feature claimed.

features claimed.

Preferred at the beginning, a reference to the other claim and then state the additional

features which include all the features of any other claim (dependent claim) which constitute

Re: Article 66, No. 3 Continued
Re: Article 66
No. 3

Form and contents of claims

(1) Claims shall be clear and concise. They (the claims) shall be fully supported by the description.

(2) The definition of the matter for which protection is sought shall be in terms of the technical features of the invention. Wherever appropriate, claims shall contain:

(a) a statement indicating the title of the invention and those technical features of the invention which are necessary for the definition of the claimed subject matter but which, in combination, are part of the prior art;

(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.

(3) Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.
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
The new text is, in its view, compatible with Article 27, paragraph 4, of the PCT.

**Article 74 - Effect of priority right**

44. It was pointed out in the Working Party that the Inter-Governmental Conference had referred to its Drafting Committee the addition proposed by the delegation acting as rapporteur (cf. BR/168/72, point 94).

**Article 75 - Claiming priority**

45. With regard to Article 75, paragraph 1, a number of delegations had expressed the wish that a time limit be stipulated for lodging the declaration indicating the date and country of the previous filing (cf. BR/168/72, point 96). To make it possible to correct later such indications which had been given in due time but which were erroneous, Working Party I decided to broaden Re_Article 145; No. 48; it was made clear in the second sentence that the requirement that the error should be obvious should apply only to the description, claims or drawings.

46. In connection with paragraph 2, the question was raised of whether the period for producing the copy of the first application should be extended from 16 to 20 months.

The Working Party considered it preferable to make no change in the light of Rule 17.1 of the Regulations under the PCT.

BR/177 e/72 lor/MGT/gc
39. The Working Party also agreed that it was not necessary for the micro-organism to be available to the public in one of the designated Contracting States.

40. With regard to the question of the nature of the collection in which the micro-organism should be deposited, the Working Party decided that it must not necessarily be an official collection, and that a collection recognised by the President of the European Patent Office would be sufficient. It considered, however, that a private collection, especially one kept by the applicant himself, would not be acceptable as a rule. Recognised collections would be indicated in the Official Journal of the European Patent Office (paragraph 1(a) and 2).

41. As for the time when the specimen of the micro-organism should be deposited, the Working Party decided that this should be not later than the date of filing of the application. However, if the applicant were to withdraw his application at a later date, he should be able to withdraw his specimen too (paragraph 1(e)).

Moreover, the specimen would have to be made available to the public not later than the date of publication of the application (paragraph 1(b)).

Article 71a - The claims

42. The Working Party decided to comply with the request of a number of the non-governmental international organisations by deleting the word "fully" (cf. BR/168/72, point 92).
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 cyd/AH/prk .../...
Fiction of the withdrawal of the application

73. Several organisations raised the question of whether provision should not be made, at least in some cases, for a possibility of remedying the situation which would result from the fiction of the withdrawal of the application, as provided for at various points in the Convention, following failure to observe time limits.

**UNEPA** in particular pointed out that although the Convention did ensure the possibility of re-establishment of rights in the event of failure to observe time limits, in the first place this had to be the result of force majeure, and secondly it could lead to lengthy proceedings, possibly before the Board of Appeal. An example worthy of emulation was furnished by the laws of certain Scandinavian countries, which allowed operations to be carried out after expiry of the time limit on payment of a fine. Of course, some distinction would have to be made between different cases of failure to observe time limits: although a loss of rights would be justified in cases of failure to pay renewal fees and in other cases in which it would be essential to avoid a delay in the proceedings, it would not for example be justified in the cases referred to in Article 92, paragraph 2, Article 95, paragraph 7b, or Article 150, paragraph 2; the cases referred to in Article 69, for example, would have to be re-examined in order to ascertain whether it would be possible to allow for an extension of the time limit, even if it were only a short one.

**FICPI** also referred to the laws of some of the Scandinavian countries, which it considered to have solved this problem in a satisfactory manner. There were arguments in favour of a differentiated rule in this Convention. In general, it should not be possible to extend time limits occurring before the publication of the application (such as that referred to in Article 69), but there should be no objection after publication, as the European Patent Office
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)
Article 69a - Naming of the inventor

89. The Conference instructed the Drafting Committee to examine whether the desire expressed by one organisation, that the failure to name the inventor should not simply result in the application being deemed to be withdrawn (cf. BR/169/72, point 66), should be reflected in this Article.

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

90. The Conference agreed that Rev. Article 70, No. 1, of the Implementing Regulations required to be re-examined in relation to the definitive version of Rev. Article 66, No. 3.

Article 71 - Disclosure of the invention

91. The Conference instructed Working Party I to examine whether, at the request of one organisation, the problem of the depositing of a micro-biological culture not available to the public could be settled in a manner similar to that recommended for British law by the Banks Report (No. 552).

Article 71a - The claims

92. The Conference decided that Working Party I should examine the questions whether, as most of the organisations proposed, the word "fully" should be deleted and whether it should be replaced by a less restrictive wording.
M I N U T E S

of the

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

Parts 1 and 3

(Luxembourg, 24-25 January and 2-4 February 1972)
Artikel 71

Offenbarung der Erfindung

Die Erfindung ist in der europäischen Patentanmeldung so deutlich und vollständig zu offenbaren, daß ein Fachmann sie ausführen kann.

Artikel 71a

Patentansprüche

Die Patentansprüche müssen den Gegenstand angeben, für den Schutz begehrt wird. Sie müssen deutlich und knapp gefaßt und in vollem Umfang von der Beschreibung gestützt sein.

Artikel 72

Erfordernisse der Ausführungsordnung für die europäische Patentanmeldung

Die europäische Patentanmeldung muß den Erfordernissen genügen, die in der Ausführungsordnung zu diesem Übereinkommen vorgeschrieben sind.

KAPITEL II

Priorität

Artikel 73

Prioritätsrecht


(2) Als prioritätsbegründend wird jede Anmeldung anerkannt, der nach dem nationalen Recht des Staats, in dem die Anmeldung eingereicht worden ist, oder nach zwei- oder mehrseitigen Verträgen die Bedeutung einer vorschriftsmäßigen nationalen Anmeldung zukommt.

(3) Unter vorschriftsmäßiger nationaler Anmeldung ist jede Anmeldung zu verstehen, die zur Festlegung des Tags ausreicht, an dem die Anmeldung in dem betreffenden Staat eingereicht worden ist, wobei das spätere Schicksal der Anmeldung ohne Bedeutung ist.

(4) Als erste Anmeldung, von deren Einreichung an die Prioritätsfrist läuft, wird auch eine jüngere Anmeldung angesehen, die denselben Gegenstand betrifft wie eine erste ältere in demselben Staat eingereichte Anmeldung, sofern diese ältere Anmeldung bis zur Einreichung der jüngeren Anmeldung zurückgenommen, fallengelassen oder zurückgewiesen worden ist, und zwar bevor sie öffentlich ausgelegt worden ist und ohne daß Rechte bestehen geblieben sind; ebensoviele darf diese ältere Anmeldung schon Grundlage für die Inanspruchnahme des Prioritätsrechts gewesen sein. Die ältere Anmeldung kann in diesem Fall nicht mehr als Grundlage für die Inanspruchnahme des Prioritätsrechts dienen.

CHAPTER II

Priority

Artikel 73

Priority right

(1) A person who has duly filed in or for any State party to the Paris Convention for the Protection of Industrial Property, an application for a patent or for the registration of a utility model or for a utility certificate or for an inventor's certificate, or his successors in title, shall enjoy, for the purpose of filing an application for a European patent in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.

(2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral treaties shall be recognised as giving rise to a right of priority.

(3) By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed in the country concerned, whatever may be the outcome of the application.

(4) A subsequent application for the same subject-matter as a previous first application within the meaning of paragraph 3 above and filed in the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.
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 —
he has already requested a report on the state of the art from the International Patent Institute, in order to obtain, in that event, a reduction in the fee.

The Sub-Committee considered that this question should be re-examined later when it had been able to acquaint itself with the text of the provision of the Rules relating to Fees which deals with this problem. The representative of the International Patent Institute added that there was already a system of computer control operating in his Institute which made it possible to determine whether a specified search had already been carried out or not.

Re. Article 66, No. 3 - Form and contents of claims

20. The Sub-Committee adopted for paragraph 4 a text proposed by the Swiss delegation which, while including the content of Rule 6.4 of the Regulations under the PCT, has the advantage of being more clearly worded. However, the United Kingdom delegation reserved the right to study this new wording to determine whether it did not seriously differ from the PCT text in question.

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

21. The United Kingdom delegation said that in its opinion, paragraph 4 should be revised. The report on the state of the art ought to mention as such any document published after the date of priority claimed. There should not, however, be a requirement that any document referring to an earlier disclosure should also have been published prior to the date of filing of the European patent application, since pursuant to Article 11, paragraph 3, of the Convention, this document may have been published after the filing of the European patent application.
MINUTES

of the 5th meeting of the "Implementing Regulations" Sub-Committee of Working Party I

(Luxembourg; 12 - 14 January 1971)

I

1. The fifth meeting of the "Implementing Regulations" Sub-Committee was held in Luxembourg from 12 to 14 January 1971, with Mr FRESSONNET, 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 representatives of WIPO/OMPI and the International Patent Institute.(1)

2. The Drafting Committee met each day, under the Chairmanship of Mr NEERVOORT, Secretary of the Octrooiraad, following the Sub-Committee's meetings.

(1) See the list of participants in Annex I.
ambiguity should mention a reference only to one other claim and not to one or more other claims.

For this purpose, the Swiss delegation subsequently submitted to the Sub-Committee a new proposal which will be examined at the next meeting (working document No. 17 of 27 November 1970).

Re. Article 65, No. 5 - Form and content of the abstract

25. The Sub-Committee endeavoured to retain as far as possible the text of Rule 8.1 of the Regulations under the PCT. See also the notes.

Re. Article 69, No. 1 - Notification sent to the applicant informing him that his patent application is deemed to be withdrawn

26. As the Sub-Committee had not been able to reach unanimous agreement at its second meeting, it had decided to postpone its discussion of this provision (see BR/51/70, points 30 and 31). Differences of views had appeared on the fact that the proposed procedure might not give the applicant sufficient opportunity to exercise his rights vis-à-vis the European Patent Office once the latter had noted that the request was deemed to be withdrawn.

The German delegation had subsequently submitted a proposed solution to the Sub-Committee (see Annex IV to the document quoted above) and this was examined, resulting in unanimous agreement.

BR/68 e/70 lor/KM/prk
22. The Sub-Committee resumed its examination of this provision in the light of a working document drawn up by Dr. SINGER, General Rapporteur (BR/GT I/72/70), and a new proposal put forward by the Swiss delegation. (BR/GT I/68/70). It was concluded from these that the PCT Rule mentioned above prohibits direct cumulative references but does not prohibit indirect cumulative references. This rule in fact prohibits any dependent claim referring to more than one other claim other than in the alternative. It does not, however, prohibit a dependent claim referring to one other claim which in turn refers to a third claim. In this respect, the Sub-Committee agreed to clarify this concept by adding the adverb "directly" to the second sentence of Rule 6.4 (a) of the Regulations under the PCT to give the following text: "Any dependent claim which refers directly to more than one other claim shall refer to such claims in the alternative only."

23. After a long discussion the majority of the delegations to the Sub-Committee adopted the text of the PCT Rule clarified in this way, although some of these delegations expressed their lack of enthusiasm for the principle of prohibiting cumulative references. This solution was finally adopted in the interest of international harmonisation.

24. To attain unanimous agreement, the Swiss delegation joined the majority and withdrew its proposal whose basic purport was to permit cumulative references. Nevertheless, it expressed its regret at the abandonment of a practice known in most European countries. It also asked the Sub-Committee, which agreed to the request, to make the text of Rule 6.4 (a) of the Regulations under the PCT even clearer in the first sentence which, to avoid any possible
It was noted that under the present wording of the adopted text, if an application for a European patent of addition is filed after assignment of the parent patent application to different proprietors (in accordance with Article 22 of the Draft Convention), the European Patent Office will grant the patent of addition to all the entered proprietors, whether or not they applied for the patent of addition.

Re. Article 66, No. 1 - Form and content of the request for grant of a patent

20. The Sub-Committee returned to the text previously adopted (see BR/50/70, page 8) for this provision and agreed that in the event of there being several applicants it was not necessary to lay down that unless a common representative is designated the application will be declared null and void. It considered the sanction of nullity too severe and therefore drew up a non-compulsory regulation. It also laid down another regulation so that even in the event of non-designation, the European Patent Office will be assured that there is a common representative (see point \( \text{sv} \)). See also the note.

Re. Article 66, No. 3 - Form and content of the claims

21. At its second meeting the Sub-Committee had decided to defer discussion of the problem of the references which may validly be made in the dependent claims. This problem is raised by the text of paragraph 4(a) of the provision quoted in the title, which is simply Rule 6.4a of the Regulations under the PCT, and which had been placed in square brackets. (See BR/50/70, page 13 and BR/51/70, point 21.)

BR/68 e/70 ley/EM/prk
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. FRESSONNET, 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.
the claim.

The reference to Figure ... of the description.

In particular, they shall not refer to any reference or part of the description of the invention, except where absolutely necessary, refer to or respect of the description of the invention.

Claims shall not, except where absolutely necessary, refer to or respect of the description of the invention.

Next diagram up by the Applicant.
(4) Any claim which includes all the essential features of one or more other claims ("independent claims") shall contain, if possible, the additional features stated in the dependent claims.

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

Note:
The Sub-Committee decided to postpone the discussion of the provision in sub-paragraph (5).

(6) All dependent claims referring back to several previous claims shall be grouped together, to the extent and in the most appropriate way possible. (Note: 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.)
(q) a characterizing portion - proceeded by the expression "characterized in that" or
"characterized by " stating the technical feature which, in combination with the features
characterized by or included in the claims of the prior art, are part of the invention.

An invention which are necessary for the determination of the claimed subject matter but which,
are not technical features of the invention. Wherever appropriate, claims shall contain:

(1) The definition of the matter for which protection is sought shall be in terms of the
relevant technical features. Where appropriate, the claim shall be clear and concise. They (the claim(s)) shall be fully supported by the
description.

Note:
Draft drawn up by the sub-committee

Form and content of claims
Number 3
Former Article 69
Re: Article 66
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
21. For paragraph 4 (a), on the other hand, the sub-Committee was unable to adopt a proposal by the Swiss delegation concerning the references to be contained by dependent claims to the main claims of which they state the features. The sub-Committee preferred the text proposed by the Chairman, which is derived from Rule 6.4 (a) of the PCT. This proposal seemed more appropriate, as it was more stringent and effectively barred any excesses on the part of applicants. After the representative of the IIB had spoken on this point, the sub-Committee felt it even more necessary to limit the number of combinations. The search to be carried out by the IIB should be exhaustive, and an excessive number of claims would present a real danger in this respect. The rule proposed by the Chairman provided that a claim might refer to one or more other claims, but only in the form of an alternative in the case of a reference to more than one other claim. In addition, it excluded any multiple dependent claim being based on another multiple dependent claim. The Swiss proposal did not seem as limitative. However, the sub-Committee decided to postpone examination of this delicate point, and to place the provision in question between brackets. Pending the general report being made, Mr. SINGER was to submit a study of the problem setting out the various possible combinations and stating which of these should be admissible. The Swiss delegation, for its part; undertook to draw up a new proposal.

Re. Article 66, No. 4 - Form of the drawings

22. The text of the PCT Rule was retained in its entirety on this point.

BR/51 e/70 lcr/RT/prk
claims would be the same for all the designated States. Under these circumstances, the European applicant should be given the greatest possible freedom, to allow him liberty to take full account of the divergent interpretations which national courts might place upon his claims. In this respect, the United Kingdom delegation drew attention to the practice followed by its own courts, which consider only the text of the claims, without reference to the description, a fact which might cause prejudice to foreign applicants if they were restricted by too stringent rules governing the drafting of their claims. However, the line taken by this delegation was not followed by the others, who preferred to adopt in this case precise rules as contained in the PCT. These rules, in accordance with Article 20 of the First Preliminary Draft, should make the task of the applicant easier. In addition, they had the advantage of imposing a certain amount of uniformity on the claims. The result would be that applicants would enjoy the maximum degree of protection in not just one, but all the Contracting States which they designated.

20. The sub-Committee adopted a proposal by the Swiss delegation in respect of paragraph 3, dealing with the admissibility of claims concerning particular embodiments of an invention, and decided to avoid duplication, not to provide for an implementing regulation to Article 70 concerning dependent claims. Further in paragraph 5, if stipulated that the number of claims must be reasonable in consideration of the nature of the invention. On the same principle, the implementing regulation under Article 71, No. 1, provides for a fee to be paid where there is too great a number of claims.
17. The greater part of the sub-Committee felt that paragraph 1 (c) should state that the invention should be disclosed in such terms that the technical problem and its solution could be understood. In the exceptional cases of an invention being made not related to any specific technical problem, the provision contained in paragraph 2 would allow derogation from the rule. The same would apply for the statement of the advantageous effects, if any, of the invention. As a result, the initiative for the description lies with the applicant, but the examiner may ask him to clarify it, as is common practice in the offices which have an examination procedure, it being understood that, in the event of any disagreement, the applicant has the right to appeal.

Re. Article 66, No. 3 - Form and contents of claims

18. The sub-Committee decided to provide in paragraph 1 that the claims must be clear and concise and that they must be fully supported by the description. This provision seemed so important - particularly from the point of view of infringement actions - that the sub-Committee felt inserting this provision in the Convention itself should be considered.

19. Paragraph 2 specifies the contents of the claims in detail. It is based closely on the text of the PCT. The United Kingdom delegation opposed this rule, which it found too strict. It felt that the applicant should be left greater freedom in drawing up his claims. It pointed out in this respect that the situation covered by the terms of this Convention was not the same as that covered by the PCT. A PCT application did not exclude the possibility of the claims being amended in each designated State. In a European application, on the other hand, the
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. FRESSONNET, 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 (IIP) (1).

(1) See the list of participants in Annex I.
(7) Sind der europäischen Patentanmeldung Zeichnungen beigefügt, so sollen die in den Patentanmeldezeichen genannten technischen Merkmale mit Bezugssymbolen, die auf diese Merkmale hinweisen, versehen werden, wenn diese Verständigung des Patentanwälters erleichtert. Bezugszeichen sollen in Klammern gesetzt werden.

(8) Kein Patentanspruch darf einen Gegenstand enthalten, der nicht in der Beschreibung aufgeführt ist.

### Artikel 66 PCT

**Die Patentansprüche sollen...**

in vollsten Umfang von der Beschreibung gestützt sein.
<table>
<thead>
<tr>
<th>Vorachter</th>
<th>Pötz-Verfahrensleitung</th>
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<tr>
<td>zu Artikel 66 NR. 3 (Bart 3)</td>
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</tr>
</tbody>
</table>
Absatz 3 kommt im Hinblick auf Nr. 2 zu Artikel 79.

Bemerkung:

(4) der Anderer Patentantrag, der Anderer mehrfach am

(3) Zu jedem Patentantrag, der die Wettacht-

(2) 6.4

(1) Zum ersten Mal und nach der ersten decision, insofern die erste decision der Anderer -

(1) Zu jedem Patentantrag, der die Wettacht-

(2) Zu jedem Patentantrag, der die Wettacht-

(3) Zu jedem Patentantrag, der die Wettacht-

(4) der Anderer Patentantrag, der Anderer mehrfach am
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<tbody>
<tr>
<td>Form und Inhalten der Patentanmeldung</td>
<td>(Fünfter Artikel 66)</td>
</tr>
<tr>
<td>(Zu Artikel 66)</td>
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</tbody>
</table>

Artikel 66, 64a, 64b, 67

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**Scientific Background:**

The document contains a series of paragraphs in German, discussing scientific or technical content. The text is somewhat dense and appears to be related to a project or study, possibly involving research or development in a specific field.

**Partial Text:**

- "Die patentfähige muß..." (The patentable must...)
- "Kenntnisse..." (Knowledge...)
- "Für die..." (For the...)
- "Oder..." (Or...)
- "Der..." (The...)
- "Der..." (The...)
- "Die..." (The...)
- "Im..." (In...)
- "Die..." (The...)
- "Wird..." (Will...)
- "Marken..." (Mark...)
- "Die..." (The...)
- "Das..." (The...)
- "Das..." (The...)
- "Die..." (The...)
- "Die..." (The...)
- "Die..." (The...)
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**Table:**

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<td>(Fünfter Artikel 66)</td>
</tr>
<tr>
<td>(Zu Artikel 66)</td>
<td></td>
</tr>
</tbody>
</table>
Von dem Vorsitzenden der Untergruppe "Ausführungsordnung" der Arbeitsgruppe I vorgelegte

Arbeitsunterlage

für den Entwurf einer Ausführungsordnung
zum Übereinkommen über ein europäisches Patenterteilungsverfahren

(Vorschläge zu den Artikeln 64 bis 130 des
Übereinkommens)

in synoptischer Darstellung mit

- dem Vorentwurf einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht, ausge-
arbeitet von der EWG-Arbeitsgruppe "Patente" (unveröffentlichtes Arbeitsdokument 4419/IV/63

- der Verfahrensregelung zum Vertrag über die Internationale Zusammenarbeit auf dem Gebiet des
Patentwesens (PCT)
Ausführungsordnung 6.9.1963

Zu Artikel 68

Nummer 4

Form und Inhalt der Patentansprüche

(1) Die Patentansprüche geben die Merkmale der zu schützenden Erfindung wieder. Zu jedem Patentanspruch, der die wesentlichen Merkmale der Erfindung wiedergibt, können ein oder mehrere Patentansprüche aufgestellt werden, die sich auf die Besonderheiten der Ausführung dieser Erfindung beziehen, sofern diese nicht offensichtlich selbstverständlich sind.

(2) Sind in einer Anmeldung mehrere Patentansprüche aufgeführt, so sind sie fortlaufend mit arabischen Ziffern zu bezeichnen.

(3) Die Patentansprüche dürfen keine allgemeinen Hinweise auf die Beschreibung oder die Zeichnungen, z.B. "wie beschrieben" oder "wie gezeichnet", enthalten. Jedoch dürfen sie, soweit erforderlich, Hinweise auf die Zeichnungen oder auf die Formeln enthalten.

(4) Die Vorschriften der Artikel ... (Nummer 2 zu Artikel 68) und ... (Nummer 3 zu Artikel 68) finden auf die Form und den Inhalt der Patentansprüche entsprechende Anwendung.

(5) Kein Patentanspruch darf einen Gegenstand enthalten, der nicht in der Beschreibung aufgeführt ist.

Bemerkung:

Die Vorschriften des Absatzes 4 sind nur dann erforderlich, wenn der Artikel 70 des Abkommens dahin geändert wird, dass die Patentansprüche nicht als Teil der Beschreibung angesehen werden.
Vorentwurf

einer Ausführungsordnung zum Abkommen über

ein europäisches Patentrecht

The English version is not available.
Herr De Muyser und Herr Fressonnet machen die Arbeitsgruppe auf die Möglichkeit aufmerksam, daß ein Erfinder in den Ansprüchen einen Bestandteil aufführt, der in der Beschreibung nicht enthalten ist.

Herr van Bonthou benennt hierzu, daß das Patentant von Erfinder jederzeit verlangen könne, die Beschreibung entsprechend zu ändern.

Herr Fressonnet ist der Ansicht, daß dann der zweite Satz von Absatz 3 nicht nützlich sei. Er habe jedoch keine schwerwiegenden Bedenken gegen seine Beibehaltung.

Der Vorsitzende überweist diesen Absatz dem Redaktionsausschuß, der diese Frage entscheiden solle.

Zu Absatz 4 erklärt Herr Pfanner, daß der erste Satz nicht berücksichtigt werden dürfe, da er einen materiellen Irrtum enthalte.

Es folgt dann ein Meinungsaustausch über den zweiten Satz dieses Absatzes, besonders im Hinblick auf den Inhalt der Unteransprüche.


Dagegen weist der Vorsitzende auf den wesentlichen Sinn der Patentansprüche hin, der darin bestehe, anzuzeigen, für welches Element der Erfinder den Schutz begehre. Unter Billigung der Arbeitsgruppe überweist er diesen Absatz dem Redaktionsausschuß mit der Empfehlung, sich auf eine allgemeine Formulierung zu beschränken. Eine zu sehr ins einzelne gehende Definition würde zu zahlreichen Schwierigkeiten führen.

Die Arbeitsgruppe diskutiert sodann den ersten Absatz des von Vorsitzenden vorgeschlagenen Textes. Dieser erklärt insbesondere, daß die Patentansprüche keine allgemeinen Hinweise auf die Beschreibungen oder Zeichnungen enthalten dürfen.

Nach einem Einwand von Herrn van Benthem wird dieser Absatz an den Redaktionsausschuß weitergeleitet. Dieser wird sich beraten, eine etwas dehnbarere Formulierung für die Worte "keine allgemeinen Hinweise" zu finden, damit ein Erfinder beispielsweise chemische Formeln auf einem besonderen Blatt aufführen kann.

Die Arbeitsgruppe prüft anschließend Absatz 2, der bestimmt, daß die Vorschriften der Nummer 2 zu Artikel 68 auf die Form der Patentansprüche entsprechende Anwendung finden.

Herr Frossonnet fragt, ob dieser Absatz überhaupt notwendig sei. Diese Vorschriften seien nämlich automatisch auch auf die Patentansprüche anwendbar, da man ja beschlossen habe, daß diese einen Teil der Beschreibung bilden.

Herr Pfanner teilt die Ansicht von Herrn Frossonnet völlig, weist aber darauf hin, daß die vorliegende Fassung eventuell, nur auf die Patentansprüche Bezug nehmende Verweisungen erleichtern solle.

Der Vorsitzende beschließt mit Zustimmung der Gruppe, den Text des Absatzes 2 in eckige Klammern zu setzen. Eine Fußnote soll klarstellen, daß eine solche Fassung beibehalten werden solle, wenn sich die Arbeitsgruppe bei der endgültigen Überprüfung des Abkommens für eine Trennung der Begriffe der Beschreibung und des Patentanspruchs entscheidet.

Absatz 3 bestimmt, daß Nummer 3 zu Artikel 68 auf den Inhalt der Patentansprüche Anwendung findet, und daß diese mit der Beschreibung und den Zeichnungen übereinstimmen müssen. Herr Frossonnet bemerkt hierzu das Gleiche wie zur Bezugnahme auf Artikel 68.
Herr Roscioni ist der Meinung, daß eine Behandlung der Beschreibung in der Ausführungsordnung selbst eher vorzuziehen sei als in einem Erlaß. Man müsste aber seiner Ansicht nach zu dieser Frage eine sehr weite Fassung vorsehen.

Auf einen erneuten Einwand von Herrn Fressonnet erklärt sich die Mehrheit der Gruppe damit einverstanden, den Redaktionsausschuß die Ausarbeitung eines neuen Absatzes 2 anzuvertrauen, der von der oben angeführten Kompromiseinlösung unter Verwahrung des von Vorsitzenden vorgeschlagenen Textes ausgeht.

1.) In der ersten Zeile werden die Worte "soweit wie möglich" hinzugefügt.
2.) Der Grundsatz der Buchstaben c) wird beibehalten, jedoch in der Formulierung verbessert.
3.) Buchstabe d) solle das Ergebnis und die Mittel zur Herbeiführung dieses Ergebnisses zum Gegenstand haben.

Der Vorsitzende beauftragt unter Zustimmung der Gruppe den Redaktionsausschuß mit der Abfassung eines Textes, der dieser Lösung Rechnung trägt. Falls der Redaktionsausschuß nicht zu einem derartigen Text käme, solle der vom Vorsitzenden vorgeschlagene Text leicht erweitert beibehalten werden, jedoch solle dann eine Fußnote ausdrücken, daß die Hälfte der Delegationen (die französische, belgische und luxemburgische Delegation) sich für die Streichung des genannten Textes ausgesprochen hätten. Diese Haltung der Delegationen habe sich nämlich in Verlaufe der Beratung feststellen lassen.

Die Diskussion über Nummer 3 Absatz 3 wird bis zur Überprüfung eines späteren Artikels zurückgestellt.

Artikel 68 - Nr. 4

Diese Nummer behandelt Form und Inhalt der Patentansprüche.

Ergebnisse der neunten Sitzung
in München stattfand

Sitzungsbericht
Bemerkung:
Wie bei der vorstehenden Nummer 3 bleibt auch bei der Nummer 4 zu prüfen, welche Erfordernisse der Nummer 4 im Rahmen der Prüfung der europäischen Patentanmeldung gemäß Artikel 76 Absatz 2 des Abkommens und welche Erfordernisse im Rahmen der Prüfung des vorläufigen europäischen Patents gemäß Artikel 94 Absatz 2 des Abkommens vom Europäischen Patentamt zu prüfen sind. Eine dahingehende Bestimmung wird in einem späteren Abschnitt der Ausführungsordnung einzufügen sein.
Zu Artikel 68
Nummer 4

Form und Inhalt der Patentansprüche

(1) Die Patentansprüche dürfen, abgesehen von Hinweiszeichen auf die Zeichnungen, keine allgemeinen Hinweise auf die Beschreibung und die Zeichnungen enthalten (z.B. "wie beschrieben" oder "wie gezeichnet"). Sind in einer Anmeldung mehrere Patentansprüche aufgeführt, so sind sie fortlaufend mit arabischen Ziffern zu bezeichnen.

(2) Im übrigen finden auf die Form der Patentansprüche die Vorschriften des Artikels ... (Nummer 2 zu Artikel 68) entsprechende Anwendung.

(3) Auf den Inhalt der Patentansprüche findet die Vorschrift des Artikels ... (Nummer 3 zu Artikel 68) Absatz 1 entsprechende Anwendung. Die Patentansprüche müssen mit der Beschreibung und mit den Zeichnungen im Einklang stehen.

(4) Werden mehrere Patentansprüche aufgestellt, so sind sie fortlaufend zu numerieren. Ein Patentanspruch darf gegenüber vorhergehenden Patentansprüchen keine eindeutigen Selbstverständlichkeiten enthalten.
Arbeitsentwurf

tzu einer

Ausführungsvorschrift

zum

Abkommen über ein europäisches Patentrecht

Vorbemerkung

The English version is not available.
Article 82.4

The claims

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.