Rule 76 E

Travaux Préparatoires (EPC 1973)

Comment:
The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
Regel 76

MPU

Niederschrift über mündliche Verhandlungen und Beweisaufnahmen

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designated Contracting States. The valid interests of an assumed infringer in the retroactive revocation of the patent may thus be upheld. In this connection it may be noted that this amendment has raised the opposition proceedings another step towards the level of actual revocation proceedings.

A further procedural amendment was made to Article 104 whereby any person who has been given notice by the proprietor as a result of a claimed patent infringement may also intervene in the opposition proceedings, if he proves that he has instituted proceedings to establish that the act in question did not infringe the patent. This text takes into account the fact that national laws of Contracting States allow such actions for negative declaratory judgments.

9. Appeals procedure (Articles 105-111/Rules 65-68)

Corresponding to the amendment to Article 98 with reference to the possibility of continuing the opposition proceedings despite the lapse of the patent, the Committee decided also to allow an appeal against a decision of the Opposition Division in such cases and to amend Article 105 accordingly. It was consequently made clear in Article 106 that all parties to proceedings of the first instance are also parties to appeal proceedings, even if they do not actively participate in the proceedings, so that for example a decision concerning costs by the Boards of Appeal which differs from the decision of the lower department will be binding for all parties.

The discussions during the earlier stages of the negotiations concerning the length of the time limit for filing an appeal were — as was to be expected — resumed in the Main Committee. An exchange of opinions showed that the division of the time limit for filing an appeal, as provided for in Article 107, into a time limit for filing the appeal and a time limit for filing the grounds for appeal, was generally welcomed. In the interests of the applicants and especially of their representatives who have such a multiplicity of time limits to observe, the Main Committee divided the time limits into one of two months for the notice of appeal, which also applies to the payment of the fee for appeal, and one of four months for filing the grounds for appeal; both time limits are to commence from the time when notification is given of the contested decision. This amendment made it necessary to adjust the one-month time limit for interlocutory revision, which now begins from the receipt of the grounds for appeal (Article 108). If the potential appellant awaits until the end of each time limit — which experience leads us to expect — an appeal which is not immediately allowed will not reach the Board of Appeal earlier than five months after the contested decision has been taken! Whether this is compatible with the previously defended principle of streamlining the proceedings, remains to be seen.

In Article 109, paragraph 3, it was specified in respect of the appeals procedure that the deemed withdrawal of a European patent application in the event of failure to reply to an invitation from the Board of Appeal is not valid in proceedings against decisions of the Legal Division. In Article 111 the Committee expressly maintained in the interests of clear legal relationships that the parties to appeal proceedings should also be parties to any proceedings before the Enlarged Board of Appeal. Such a principle could easily be derived from Articles 112/115.

10. General principles governing procedure (Articles 112-126/Rules 69-92)

Some points of the general rules governing procedure were discussed in the Main Committee. In order to avoid improper delays in proceedings an assurance was given in Article 115 that repeated requests for oral proceedings could be refused by the European Patent Office under certain conditions. In Article 116 and in Rule 73 the peculiarities of the national laws of Contracting States were taken into account in respect of the taking of evidence, on the basis of letters rogatory, by authorities in the Contracting States and, in addition to the giving of evidence under oath by a party, witness or expert, provisions were made for other binding forms of evidence which enable the truth to be established. With reference to the communication of the possibility of appeal in accordance with Rule 69, paragraph 2, the principle that parties may invoke errors in the communication was abandoned; errors are however almost entirely excluded because reference must always be made in the communication to the relevant provisions of Articles 105-107, the text of which must be attached.

The rules governing time limits and the arrangements for dealing with unobserved time limits were adopted by the Committee with the following amendments. In Article 120 the time limit concerning the request for further processing of the European patent application was adapted to the new time limit for filing appeals and was therefore quite rightly reduced from three to two months. There was a detailed discussion on the concept of "force majeure" required in accordance with Article 121 for the re-establishment of rights. This condition was generally felt to be too strict because it would justify re-establishment only in the rarest of cases. The Committee also considered conditions such as those of the "unavoidable event" or of the "legitimate excuse" which are based on national laws of Contracting States. After comparing the laws of various States, the Committee finally agreed, in accordance with the conclusions of the Working Party which it had set up, that the justification for the re-establishment of rights was an impediment which, in spite of all due care required by the circumstances having been taken, had led to the non-observance of the time limit. The Committee also endorsed the general opinion that in reality justice is done to this obligation to take all due care only if the applicant or proprietor and his assistants, especially his representatives, have complied with it.

In addition, the Committee considered that Article 121 was to be interpreted in a restrictive manner. The Main Committee extended the maximum duration of time limits to be set by the European Patent Office under Rule 85 from four to six months for certain special circumstances. However, a proposal was not accepted which aimed to make provision for a one-month extension, on request, of any time limit for representatives who in the proceedings had to draw up documents to the European Patent Office in a language other than the official language of their State or residence. The Committee recognised unanimously that during a transitional period such translation difficulties should be deemed to be "certain special circumstances" within the meaning of paragraph 1 of Rule 85, in so far as the parties complied with their obligation to take due care in obtaining translations.

The provision in Article 124 concerning the procedure for drawing up supplementary search reports provided a large amount of material for discussion. This Article was deleted. The Committee considered it unnecessary to impose search costs on the applicant in the event of his having made an additional search due to an amendment to the claims. This financial problem could be settled by slightly increasing the standard amount of the main search fee. After lengthy discussions the Committee reached the majority decision that additional fees for additional searches which were drawn up outside the procedure for international search reports under Article 156, could be dispensed with, especially since such an additional cost would have an unfavourable visual effect in the Convention. At the same time the Committee stated expressly - 186 -
ANNEX I

REPORT

by Mr. Paul Braendli, Lic. iur.
Vice-Director of the Federal Intellectual Property Office (Switzerland)

on the results of Main Committee I's proceedings

ANNEX II

REPORT

by Mr. R. Bowen
Assistant Comptroller, British Patent Office

on the results of Main Committee II's proceedings

ANNEX III

REPORT

by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)

on the results of Main Committee III's proceedings

ANNEX IV

REPORT

by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office

on the results of the Credentials Committee's proceedings

with regard to full powers for signing the Convention
2323. The Chairman invited the Committee to express its views on the Swiss proposal that the person concerned should not be able to invoke the omission of the communication but that in the event of an incorrect communication he should not suffer any detriment as a result.

2324. The Austrian delegation supported the Swiss proposal.

2325. The Netherlands delegation did not think it could be the responsibility of the European Patent Office to calculate the time limits for appellants or for any other parties. It thought it would suffice if the European Patent Office drew parties' attention to the provisions of Article 107. If such an arrangement were to be adopted, the Swiss and Austrian delegations' proposals would be superfluous, since in practical terms there could not be any incorrect indications.

2326. The Chairman thought that the Committee should first decide on this proposal by the Netherlands delegation which involved an appreciable amendment of the present text. If this proposal were adopted, there would be no further need to examine the Swiss delegation's proposal.

2327. The Belgian delegation supported the Netherlands delegation's proposal.

2328. The Yugoslav delegation was in favour of the Netherlands delegation's proposal, provided that the form bore a clear reference to Articles 105 to 107.

2329. Referring to the Committee's decision on Rule 51, the United Kingdom delegation declared its support for the Netherlands delegation's proposal.

2330. The Swiss delegation said that if the Netherlands delegation's proposal were to be understood to mean that the form would not only refer to Articles 105 to 107 but also quote the texts of those Articles, it could support it.

2331. The Netherlands delegation stated that its proposal should be understood in the sense just indicated by the Swiss delegation.

2332. The Austrian delegation asked whether adoption of the Netherlands delegation's proposal would render meaningless the last sentence of paragraph 2, which dealt with the omission of communication.

2333. The Chairman considered that this was a purely hypothetical question, since the formal communication envisaged by the Netherlands delegation would be by way of indications on a form, and any omissions would be extremely hard to imagine.

2334. The Committee agreed to the Netherlands delegation's proposal.

Rule 70 (69) — Noting of loss of rights

2335. The Committee examined the Netherlands delegation's proposal as given in M/52, page 26.

2336. The Netherlands delegation found the present text inadequate and proposed to add a stipulation at the end of paragraph 2 that where the European Patent Office shared the view of an appellant it should inform that appellant accordingly in writing.

2337. The Chairman noted that the Netherlands delegation's proposal was supported by a number of delegations and that it was shared by at least four of the delegations of the interested circles.

2338. The Committee recorded its agreement to this proposal by the Netherlands delegation.

2339. The Austrian delegation withdrew its proposal for an amendment given in M/89.

Rule 73 (72) — Taking of evidence by the European Patent Office

2340. The delegation of the Federal Republic of Germany explained the reasons for its proposed amendment to paragraph 4 as given in M/47, page 15, point 30. The present text seemed incomplete and the delegation proposed adding a provision stipulating that relevant questions might be put to the testifying parties, witnesses and experts. The effect of the amendment was firstly to increase the number of persons who could be heard by including the parties, and secondly to stipulate that questions could only be put to persons giving evidence.

2341. The Committee agreed to this proposal.

Rule 77 (76) — Minutes of oral proceedings and taking of evidence

2342. The Committee examined the proposed amendment submitted by the delegation of the Federal Republic of Germany in M/47, page 15, point 31.

2343. The delegation of the Federal Republic of Germany felt it advisable to stipulate in paragraph 1 that the minutes should also contain details of the place and date of the proceedings and the names of those taking part.

2344. The Netherlands and French delegations, while they had no objection to this proposal, wondered whether the problem might not be settled administratively.

2345. The Chairman asked the delegation of the Federal Republic of Germany whether it could agree to an entry in the Conference minutes recording the Committee's agreement on the substance of the proposal, without the text as such being included in the Convention.

2346. The delegation of the Federal Republic of Germany agreed to this solution.

2347. The Chairman noted that the Committee agreed on the substance of the proposal made by the delegation of the Federal Republic of Germany but that it thought that it should be left to the President of the European Patent Office to take the appropriate administrative measures.

Rule 82 (81) — Notification to representatives

2348. The FICPI delegation asked whether the Committee shared its interpretation of this Rule, whereby notification directly to the applicant and not to the representative (assuming a representative had been appointed) could be a procedural error and should not therefore be taken into consideration for the start of any time limits.

2349. The Committee shared the FICPI delegation's interpretation.

Rule 85 (84) — Duration of time limits

2350. The Committee examined the Swedish delegation's proposal given in M/53, page 2, point 10.

2351. The Swedish delegation stated that the four month time limit laid down in this Rule as the maximum seemed much too short, particularly if allowance were to be made for translation for those countries whose official language was not one of the three official languages of the European Patent Office. The delegation therefore proposed that the upper limit should be six months.

2352. The Finnish, Netherlands, Norwegian and Italian delegations supported this proposal.

2353. The United Kingdom delegation had doubts about accepting the Swedish delegation's proposal with regard to proceedings after publication of the application. Extension of the time limit to six months should only be possible for the examination proceedings.

2354. The Swedish delegation felt that it was unnecessary to amend its proposal, since the European Patent Office would be free to fix time limits within the margin laid down.
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 76
Minutes of oral proceedings
and of taking of evidence

(1) Minutes of oral proceedings and of the taking of evidence shall be drawn up containing the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties, the testimony of the parties, witnesses or experts and the result of any inspection.

(2) The minutes of the testimony of a witness, expert or party shall be read out or submitted to him so that he may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. If his approval is not given, his objections shall be noted.

(3) The minutes shall be signed by the employee who drew them up and by the employee who conducted the oral proceedings or taking of evidence.

(4) The parties shall be provided with a copy of the minutes.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1975
M/146/R10
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee
Subject: Implementing Regulations: Rules 54 to 82
(5) deleted, see para. 4, 2nd sentence

(6) unchanged"

30. **Rule 73**

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 10:

"(4) ... relevant questions to the parties heard, witnesses and experts."

?1. **Rule 77**

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 12:

"(1) ... shall be drawn up. They shall contain:

(a) the place and date of the oral proceedings or the taking of evidence;

(b) the names of those taking part;

(c) the essentials of the oral proceedings or of the taking of evidence;

(d) the relevant statements made by the parties and the testimony of the parties, witnesses or experts; and

(e) the result of any inspection."

::/47/1/II/III
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/47/I/II/III
Original: German

CONFERENCE DOCUMENT

Drawn up by: The delegation of the Federal Republic of Germany
Subject: Proposals for amendments to the draft texts
Regel 73

10 Absatz 4 erscheint unvollständig. Wird ein Beteiligter selbst vernommen, so muß ein anderer Beteiligter die Möglichkeit haben, sachdienliche Fragen an den vernommenen Beteiligten zu richten. Absatz 4 sollte daher insoweit ergänzt werden.

11 Im Zusammenhang mit Absatz 4 darf darauf hingewiesen werden, daß eine ausdrückliche Vorschrift darüber fehlt, in welcher Weise die vernommene Person gegen sachfremde oder in ungehobener Form gestellte Fragen geschützt werden kann. Die Bundesregierung geht davon aus, daß ein solcher Schutz für die erste Instanz durch interne Weisungen des Präsidenten nach Artikel 10 und für die zweite Instanz durch Bestimmungen der Verfahrensordnung (vgl. Regel 11) gewährleistet wird.

Regel 77

12 Absatz 1 sollte dahin ergänzt werden, daß neben der Niederschrift auch das Tonbandprotokoll zugelassen wird. Außerdem sollte der in Absatz 1 genannte Katalog der in Niederschrift aufzunehmenden Angaben um Angaben über Ort und Tag der Verhandlung sowie über die mitwirkenden Personen ergänzt werden.

III. BESTIMMUNGEN DES ANERKENNUNGSPROTOKOLLS

Artikel 3


IV. EMPFEHLUNG betreffend den Status und die Vergütung der in Artikel 159 Absatz 2 des Übereinkommens genannten Bediensteten

14 Nach Ziffer 2 dieser Empfehlung sollen die an die nach Artikel 159 Absatz 2 des Übereinkommens angestellten Personen zu entrichtenden Bezüge nach der Dienstalterstufe 6 der Besoldungsgruppe A/1 gezahlt werden. Da die Mitglieder der Beschwerde-

Rule 73

10 Paragraph 4 appears to be incomplete. Where a party to the proceedings is himself heard, the other party must be able to put relevant questions to him. Paragraph 4 should therefore be supplemented to this effect.

11 As regards paragraph 4, it should be noted that there is no express provision as to how a person being heard may be protected against irrelevant questions or questions put in an improper way. The German Government assumes that in the case of the departments of the first instance such protection is provided by the internal instructions given by the President pursuant to Article 10 and in the case of departments of the second instance by the provisions of the Rules of Procedure (see Rule 11).

Rule 77

12 Paragraph 1 should be supplemented so as to include tape-recordings of the proceedings in addition to the minutes. Details of the place and date of the proceedings and the persons involved should be added to the items to be contained in the minutes as listed in paragraph 1.

III. PROVISIONS OF THE PROTOCOL ON RECOGNITION

Article 3

13 In order to align with Article 58, paragraph 1, 2nd sentence, of the Convention, to which Article 3 of the Protocol on the Recognition of Decisions refers, the words in the German text “der Anspruch auf Erteilung eines europäischen Patents” should be replaced by “das Recht auf das europäische Patent” (English text unchanged).

IV. RECOMMENDATION regarding the status and remuneration of the employees referred to in Article 159, paragraph 2, of the Convention

14 Under paragraph 2 of this Recommendation, persons appointed under Article 159, paragraph 2, of the Convention shall receive the remuneration of an employee of Grade A1, step 6. Since the members of the Boards of Appeal and the Enlarged
STELLUNGNAHME

DER REGIERUNG DER BUNDESREPUBLIK DEUTSCHLAND

COMMMENTS

BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

PRISE DE POSITION

DU GOUVERNEMENT DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTeilungsVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

STEIIUNGNAHMEN
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
publiés par le
Gouvernement de la République fédérale d'Allemagne

1973
(2) Der Antrag muß enthalten:
   a) den Namen, die Anschrift und den Staat des Wohn-
      sitzes oder Sitzes des Antragstellers nach Maßgabe der
      Regel 26 Absatz 2 Buchstabe c;
   b) eine ausreichende Bezeichnung der europäischen
      Patentanmeldung oder des europäischen Patents;
   c) die Bezeichnung der Tatsachen, über die Beweis
      erhoben werden soll;
   d) die Bezeichnung der Beweismittel;
   e) die Darlegung und die Glaubhaftmachung des
      Grunds, der die Besorgnis rechtfertigt, daß die Beweis-
      aufnahme zu einem späteren Zeitpunkt erschwert oder
      unmöglich sein wird.

(3) Der Antrag gilt erst als gestellt, wenn die Beweis-
      sicherunggebühr entrichtet worden ist.

(4) Für die Entscheidung über den Antrag und für eine
   daraufhin erfolgende Beweisaufnahme ist die Stelle des
   Europäischen Patentamts zuständig, die die Ent-
   scheidung zu treffen hätte, für die die zu beweisenden
   Tatsachen von Bedeutung sein können. Die Vorschriften
   des Übereinkommens über die Beweisaufnahme in den
   Verfahren vor dem Europäischen Patentamt sind ent-
   sprechend anzuwenden.

Vgl. Artikel 116 (Beweisaufnahme)

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Cf. Article 116 (Taking of evidence)

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Regel 77
Niederschrift über mündliche Verhandlungen
und Beweisaufnahmen

(1) Über eine mündliche Verhandlung oder Beweis-
    aufnahme wird eine Niederschrift aufgenommen, die den
    wesentlichen Gang der mündlichen Verhandlung oder
    Beweisaufnahme, die rechtmäßigen Erklärungen der
    Beteiligten und die Aussagen der Beteiligten, Zeugen
    oder Sachverständigen sowie das Ergebnis eines Augen-
    scheinse enthält.

(2) Die Niederschrift über die Aussage eines Zeugen,
    Sachverständigen oder Beteiligten wird diesem vorg
    gelesen oder zur Durchsicht vorgelegt. In der Nieder
    schrift wird vermerkt, daß dies geschehen und die Niederschif
    von der Person genehmigt ist, die ausgesagt
    hat. Wird die Niederschrift nicht genehmigt, so werden
    die Einwendungen vermerkt.

(3) Die Niederschrift wird von dem Bediensteten, der
    die Niederschrift aufnimmt, und von dem Bediensteten,
    der die mündliche Verhandlung oder Beweisaufnahme
    leitet, unterzeichnet.

(4) Die Beteiligten erhalten eine Abschrift der Nieder
    schrift.

Vgl. Artikel 115 (Mündliche Verhandlung) und 116 (Beweis-
    aufnahme)

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Rule 77
Minutes of oral proceedings
and of taking of evidence

(1) Minutes of oral proceedings and of the taking of
    evidence shall be drawn up containing the essentials of
    the oral proceedings or of the taking of evidence, the
    relevant statements made by the parties, the testimony
    of the parties, witnesses or experts and the result of any
    inspection.

(2) The minutes of the testimony of a witness, expert
    or party shall be read out or submitted to him so that he
    may examine them. It shall be noted in the minutes that
    this formality has been carried out and that the person
    who gave the testimony approved the minutes. If his
    approval is not given, his objections shall be noted.

(3) The minutes shall be signed by the employee who
    drew them up and by the employee who conducted the
    oral proceedings or taking of evidence.

(4) The parties shall be provided with a copy of the
    minutes.

Cf. Articles 115 (Oral proceedings) and 116 (Taking of evidence)
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren

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

PROJET DE RÈGLEMENT D’EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTERTeilungsVERFAHRENS 1973

(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS, 1973

(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS (1973)

(Munich, 10 septembre - 6 octobre 1973)

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

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

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

1972
59. The German delegation submitted a proposal that it should be specified that the minutes referred to in the first paragraph must, in cases of inspection of premises, mention not only the fact that the inspection was made but also the results thereof.

The Working Party agreed to amend the text along these lines.

60. To make the process simpler, the German delegation proposed the deletion of the requirement that notices and communications be signed by the responsible official.

The Working Party considered that the procedure envisaged in this proposal would make it too difficult for the addressee of documents from the European Patent Office to make any necessary evaluation of the authenticity of the documents, and therefore did not adopt the proposal.

61. The French delegation's proposal to delete the note to this Article was adopted, as the Working Party felt that all sums owed other than those referred to expressly should be governed by national law. This also satisfied an observation of the same nature made by the United Kingdom delegation in connection with this Article.
MINUTES

of the meeting of Working Party I,
held in Luxembourg from 14 to 17 September 1971

Opening of the meeting and adoption of the agenda

1. The Working Party held its 8th meeting in Luxembourg from Tuesday 14 to Friday 17 September 1971, with Dr HAERTEL, President of the German Patent Office, in the Chair.

This meeting, which was devoted primarily to the examination of certain legal problems connected with the provisions being drawn up, was also attended by legal experts from the countries of the delegations to Working Party I.

Representatives from the Commission of the European Communities, WIPO and the IIB were also present at the meeting (1). The representative of the General Secretariat of the Council of Europe sent his apologies for being unable to attend.

The Working Party adopted the provisional agenda (2).

(1) See Annex I for list of those attending.
(2) See Annex II for the provisional agenda (BR/GT I/109/71) and the list of the provisions of the Second Preliminary Draft Convention and the First Preliminary Draft Implementing Regulations to be examined at the meeting (BR/GT I/111/71).

BR/132 e/71 ley/II/ad
(2) Si la requête en *restitutio in integrum* est prise en considération, une mention correspondante est inscrite au registre européen des brevets et publiée au Bulletin européen des brevets, dans la mesure où une mention a été publiée, conformément à l'article 86 de la Convention.

*Ad Article 143*

Numéro 1

**Sommation publique**

Le Président de l'Office européen des brevets détermine les modalités de la sommation publique.

*Ad Article 145*

Numéro 1

**Citations**

(1) Toutes les parties sont convoquées à une procédure orale ou à une instruction. La citation comporte un délai minimum d'un mois, à moins que les parties ne conviennent d'un délai plus bref.

(2) La citation mentionne les conséquences qui, en vertu de la Convention ou du présent règlement, peuvent résulter du défaut de comparution.

*Ad Article 145*

Numéro 2

**Procès-verbal des procédures orales et des instructions**

(1) Les procédures orales et les instructions donnent lieu à l'établissement d'un procès-verbal contenant l'essentiel de la procédure orale ou de l'instruction, les déclarations juridiquement importantes des parties et les dépositions des témoins, des experts ou des parties.

(2) Le procès-verbal de la déposition d'un témoin, d'un expert ou d'une partie lui est lu ou lui est soumis pour qu'il en prenne connaissance. Mention est portée dans le procès-verbal que cette formalité a été remplie et que le procès-verbal a été approuvé par l'auteur de la déposition. Lorsque le procès-verbal n'est pas approuvé, les objections formulées sont mentionnées.

(3) Le procès-verbal est signé par le fonctionnaire de l'Office européen des brevets qui a établi le procès-verbal ainsi que par le fonctionnaire dudit Office qui a dirigé la procédure orale ou l'instruction.

(4) Une copie du procès-verbal est remise aux parties.

**Bemerkung zu Nummer 2 zu Artikel 145:**

Siehe Artikel 53 und Artikel 47 § 6 VOGEG.

**Note to Re. Article 145, No. 2:**

Cf. Article 53 and Article 47, paragraph 6, of the RPCJEC.

**Remarque concernant le numéro 2 ad article 145 :**

Cf. articles 53 et 47, paragraphe 6, du R.P.C.J.C.E.
(2) Wird dem Antrag auf Wiedereinsatzung stattgegeben, so wird ein Hinweis darauf in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht, sofern ein Hinweis gemäß Artikel 86 des Übereinkommens erfolgt ist.

Zu Artikel 143
Nummer 1
Aufgibt
Der Präsident des Europäischen Patentamts bestimmt, in welcher Weise das Aufgabt veröffentlicht wird.

Re. Article 143
No. 1
Public notice
The President of the European Patent Office shall determine how the public notice is to be given.

Zu Artikel 145
Nummer 1
Ladung
(1) Zur mündlichen Verhandlung oder Beweisaufnahme werden die Beteiligten geladen. Die Ladungsfrist beträgt mindestens einen Monat, sofern die Beteiligten nicht mit einer kürzeren Frist einverstanden sind.
(2) In der Ladung wird auf die Folgen hingewiesen, die sich nach dem Übereinkommen oder der Ausführungsordnung aus dem Ausbleiben ergeben können.

Re. Article 145
No. 1
Summons
(1) The parties shall be summoned to oral proceedings or a preliminary investigation. A minimum of one month’s notice shall be given unless they agree to a shorter period.
(2) The summons shall state the consequences to which non-appearance may give rise, pursuant to the Convention or to these Implementing Regulations.

Zu Artikel 145
Nummer 2
Niederschrift über mündliche Verhandlungen und Beweisaufnahmen
(1) Über eine mündliche Verhandlung oder Beweisaufnahme wird eine Niederschrift aufgenommen, die den wesentlichen Gang der mündlichen Verhandlung oder Beweisaufnahme, die rechtsrechblichen Erklärungen der Beteiligten und die Aussagen der Zeugen, Sachverständigen oder Beteiligten enthalten soll.
(2) Die Niederschrift über die Aussage eines Zeugen, Sachverständigen oder Beteiligten wird diesem vorgelesen oder zur Durchsicht vorgelegt. In der Niederschrift wird vermerkt, daß dies geschehen und die Niederschrift von der Person genehmigt ist, die ausgesagt hat. Wird die Niederschrift nicht genehmigt, so werden die Einwendungen vermerkt.
(4) Die Beteiligten erhalten eine Abschrift der Niederschrift.

Re. Article 145
No. 2
Minutes of oral proceedings and preliminary investigations
(1) Minutes of oral proceedings and preliminary investigations shall be drawn up. These shall contain the essentials of the oral proceedings or preliminary investigation, the judicially important statements made by the parties and the testimony of the witnesses, experts or parties.
(2) The minutes of the testimony of a witness, expert or party shall be read out or submitted to him so that he may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. If his approval is not given, his objections shall be noted.
(3) The minutes shall be signed by the official of the European Patent Office who drew them up and by the official of the European Patent Office who conducted the oral proceedings or preliminary investigation.
(4) The parties shall be provided with a copy of the minutes.
FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS TO THE CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
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 —
Ad. Article 159 - N° 2

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

Ad. Article 159 - N° 3

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

Ad. Article 159 - N° 4

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

Ad. Article 159 - N° 5

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

Ad. Article 159 - N° 6

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

IV/63-F
Résultats de la neuvième session du groupe de travail "Brevets" qui s'est tenue à Munich du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 159

Numéro 2

Procès-verbal des auditions, des procédures orales et des instructions

(1) Les auditions, les procédures orales et les instructions donnent lieu à l'établissement d'un procès-verbal contenant l'essentiel de l'audition, de la procédure orale ou de l'instruction, les déclarations juridiquement importantes des parties et des dépositions des témoins, des experts ou des parties.

(2) Le procès-verbal de la déposition d'un témoin, d'un expert ou d'une partie lui est lu ou lui est soumis pour qu'il en prenne connaissance. Il est noté dans le procès-verbal que cela a été fait et qu'il a été approuvé. Lorsque le procès-verbal n'est pas approuvé, les objections formulées sont notées.

(3) Le procès-verbal est signé par le fonctionnaire de l'Office européen des brevets qui établit le procès-verbal ainsi que par le fonctionnaire dudit Office qui préside à l'audition, à la procédure orale ou à l'instruction.

(4) Une copie du procès-verbal est remise aux parties.

Remarque :

RPCJCE signifie : règlement de procédure de la Cour de justice des Communautés européennes.
Projet

concernant le

règlement d'application

de la

Convention relative à un droit européen des brevets

Proposition concernant l'application des

articles 153 à 159

de la Convention
Artikel 159 Nr. 2


Artikel 159 Nr. 3

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

Artikel 159 Nr. 4

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

Artikel 159 Nr. 5

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

Artikel 159 Nr. 6

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

Sitzungsbericht
Zu Artikel 159
Nummer 3

Form der Entscheidungen des Europäischen Patentamts

(1) Die Entscheidungen der Prüfungsstellen, Prüfungsabteilungen, Patentverwaltungsabteilungen, Beschwerdekammern und Nichtigkeitskammern, die ein Verfahren gegenüber einem Beteiligten abschließen, werden schriftlich abgefaßt.

(2) Die in Absatz 1 genannten Entscheidungen werden mit Gründen versehen, sofern es sich nicht um Entscheidungen der Prüfungsstellen handelt, durch die ein vorläufiges europäisches Patent erteilt wird, oder um Entscheidungen der Prüfungsabteilungen, durch die ein vorläufiges europäisches Patent, ohne daß Dritte am Verfahren beteiligt sind, bestätigt wird.

(3) Der Präsident des Europäischen Patentamts kann bestimmen, daß auch sonstige Entscheidungen schriftlich abzufassen und zu begründen sind.

Bemerkung:
Falls eine derartige Bestimmung in die Ausführungsordnung aufgenommen wird, können im Abkommen diejenigen Stellen gestrichen werden, die in Einzelfällen eine schriftliche Entscheidung bzw. eine mit Gründen versehene Entscheidung vorschreiben, also etwa in Artikel 100 Abs. 3, 112 Abs. 5, 134 Abs. 5 und 149 Abs. 5.
Kurt Haertel  
Bonn, den 8. Mai 1963

Arbeitsentwurf
zu einer
Ausführungsordnung
zum
Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 153 bis 159

des Abkommens
that Article 156, paragraph 3, was to be interpreted as an
authorisation for the Administrative Council to provide for the
levy of a search fee for each and every international patent
application, irrespective of whether additional searches within
the meaning of this provision should be carried out in the
individual cases.

11. Information to the public of official authorities,
legal and administrative co-operation (Articles
127-132, Rules 93-100)

Only a few amendments were made to these provisions. The
inspection of files under Article 128 was supplemented so as to
provide more precise information for the general public; thus,
before the publication of the European patent application, not
only the date of filing may be made known to third parties, but
also the date, State and file number of any application of which
the priority is claimed. The provisions of Articles 130/132 were
drafted more generally so that the European Patent Office
could make agreements concerning exchanges of information
and exchanges of publications not only with States which were
not a party to the Convention and with international patent
granting authorities, such as WIPO, but also with any other
organisations, especially documentation centres such as
INPADOC. It was also specified at the same time that the
substantive content of applications which had not yet been
published could not be the subject of such exchanges of
information. In addition, the Administrative Council was
authorised in Article 130, paragraph 3, to make provisions in
respect of exchanges of information with the last-named
organisations which derogated from the restrictions on the
inspection of files, in so far as the confidential treatment of the
information was guaranteed.

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

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

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

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Annex I

laid down in paragraph 3 of Article 133 — but also by their
departments. Such representation by their departments is
regarded as a matter of course, is understood from paragraph 1
of Article 133 and does not need to be expressly laid down.

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

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