Rule 33 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.

Rule33eTPEPC1973
### Regel 33
#### MPU

**Form und Inhalt der Zusammenfassung**

<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr. im Entwurf/Dokument</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstelle im Dokument</th>
</tr>
</thead>
<tbody>
<tr>
<td>BR/50/70</td>
<td>66 Nr. 5</td>
<td>BR/51/70</td>
<td>Rdn. 23</td>
</tr>
<tr>
<td>BR/50/70</td>
<td>66 Nr. 5</td>
<td>BR/68/70</td>
<td>Rdn. 25</td>
</tr>
<tr>
<td>VE 1971 (AO)</td>
<td>66 Nr. 5</td>
<td>BR/135/71</td>
<td>Rdn. 111</td>
</tr>
<tr>
<td>BR/200/72</td>
<td>R 33</td>
<td>BR/218/72</td>
<td>Rdn. 18-21</td>
</tr>
</tbody>
</table>

**Dokumente der MDK**

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>E 1972</td>
<td>R 33</td>
<td>M/52/I/II/III</td>
<td>S. 10</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>M/146/R 9</td>
<td>R 33</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>M/PR/G</td>
<td>S. 2074</td>
</tr>
</tbody>
</table>

( )
ANNEXE I

RAPPORT
établi par M. Paul Braendli, Lic. iur.
Directeur adjoint du Bureau fédéral de la propriété intellectuelle (Suisse)
sur les résultats des travaux du Comité principal I

ANNEXE II

RAPPORT
établi par M. R. Bowen
Assistant Comptroller, British Patent Office
sur les résultats des travaux du Comité principal II

ANNEXE III

RAPPORT
établi par M. Fressonnet
Directeur adjoint de l’Institut National de la Propriété Industrielle (France)
sur les résultats des travaux du Comité principal III

ANNEXE IV

RAPPORT
établi par M. A. Fernandez Mazarambroz
Directeur de l’Office espagnol des brevets
sur les résultats des travaux de la Commission de vérification des pouvoirs
en ce qui concerne les pleins pouvoirs permettant de signer la Convention
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>7</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Opening Meeting</td>
<td>9</td>
</tr>
<tr>
<td>(M/PR/K/1)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of the Credentials Committee (M/PR/V)</td>
<td>25</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee I (M/PR/I)</td>
<td>27</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee II (M/PR/II)</td>
<td>109</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee III (M/PR/III)</td>
<td>155</td>
</tr>
<tr>
<td>Minutes of the proceedings of the Committee of the Whole (M/PR/G)</td>
<td>163</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Final Meeting (M/PR/K/2)</td>
<td>199</td>
</tr>
<tr>
<td>List of participants</td>
<td>211</td>
</tr>
</tbody>
</table>
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 33

Form and content of the abstract

(1) The abstract shall indicate the title of the invention.

(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula, which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on its speculative application.

(3) The abstract shall preferably not contain more than one hundred and fifty words.

(4) If the European patent application contains drawings, the applicant shall indicate the figure or, exceptionally, the figures of the drawings which he suggests should accompany the abstract when the abstract is published. The European Patent Office may decide to publish one or more other figures if it considers that they better characterise the invention. Each main feature mentioned in the abstract and illustrated by a drawing shall be followed by a reference sign, placed between parentheses.

(5) The abstract shall be so drafted that it constitutes an efficient instrument for purposes of searching in the particular technical field particularly by making it possible to assess whether there is a need for consulting the European patent application itself.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 27 to 53
10. **Proposal of the Netherlands Delegation to Article 76, paragraph 1, and Article 83.**

In Article 76, paragraph 1 the sub-paragraph "(e) an abstract" should be deleted.

Article 83 should be cancelled.
Article 92, paragraph 2 should be amended.

If this proposal is accepted Rule 33 and 47 of the Implementing Regulations should be cancelled.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973

M/52/I/II/III

Original: English

CONFERENCE DOCUMENT

Drawn up by: Netherlands delegation

Subject: Proposals for amendments to the draft texts
Regel 33
Form und Inhalt der Zusammenfassung

(1) Die Zusammenfassung muß die Bezeichnung der Erfindung enthalten.

(2) Die Zusammenfassung muß eine Kurzfassung der in der Beschreibung, den Patentrechtsprüchen und Zeichnungen enthaltenen Offenbarung enthalten; die Kurzfassung soll das technische Gebiet der Erfindung angeben und so gefaßt sein, daß sie ein klares Verständnis des technischen Problems, des entscheidenden Punkts der Lösung der Erfindung und der hauptsächlichen Verwendungsmöglichkeiten ermöglicht. In der Zusammenfassung ist gegebenenfalls die chemische Formel anzuzeigen, die unter den in der europäischen Patentanmeldung enthaltenen Formeln die Erfindung am besten kennzeichnet. Sie darf keine Behauptungen über angebliche Vorzüge oder den angeblichen Wert der Erfindung oder über deren theoretische Anwendungsmöglichkeiten enthalten.

(3) Die Zusammenfassung soll aus nicht mehr als 150 Wörten bestehen.

(4) Enthält die europäische Patentanmeldung Zeichnungen, so hat der Anmelder diejenige Abbildung oder in Ausnahmefällen diejenigen Abbildungen anzuzeigen, die er zur Veröffentlichung mit der Zusammenfassung vorschlägt. Das Europäische Patentamt kann eine oder mehrere andere Abbildungen veröffentlichen, wenn es der Auffassung ist, daß diese die Erfindung besser kennzeichnen. Hinter jedem wesentlichen Merkmal, das in der Zusammenfassung erwähnt und durch die Zeichnung veranschaulicht ist, hat in Klammern ein Bezugzeichen zu stehen.

(5) Die Zusammenfassung ist so zu formulieren, daß sie eine wirksame Handhabe zur Sichtung des jeweiligen technischen Gebiets gibt und insbesondere eine Beurteilung der Frage ermöglicht, ob es notwendig ist, die europäische Patentanmeldung selbst einzusehen.

Vgl. Artikel 76 (Erfordernisse der europäischen Patentanmeldung) und 83 (Zusammenfassung)

Regel 34
Unzulässige Angaben

(1) Die europäische Patentanmeldung darf nicht enthalten:
   a) Ausdrücke oder Zeichnungen, die gegen die öffentliche Ordnung oder die guten Sitten verstoßen;
   b) herabsetzende Äußerungen über Erzeugnisse oder Verfahren Dritter oder den Wert oder die Gültigkeit von Anmeldungen oder Patenten Dritter. Reine Vergleiche mit dem Stand der Technik allein gelten nicht als herabsetzend;
   c) Angaben, die den Umständen nach offensichtlich belanglos oder unnötig sind.

Rule 33
Form and content of the abstract

(1) The abstract shall indicate the title of the invention.

(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula, which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on its speculative application.

(3) The abstract shall preferably not contain more than one hundred and fifty words.

(4) If the European patent application contains drawings, the applicant shall indicate the figure or, exceptionally, the figures of the drawings which he suggests should accompany the abstract when the abstract is published. The European Patent Office may decide to publish one or more other figures if it considers that they better characterise the invention. Each main feature mentioned in the abstract and illustrated by a drawing shall be followed by a reference sign, placed between parentheses.

(5) The abstract shall be so drafted that it constitutes an efficient instrument for purposes of searching in the particular technical field particularly by making it possible to assess whether there is a need for consulting the European patent application itself.

Cf. Articles 76 (Requirements of the European patent application) and 83 (The abstract)

Rule 34
Prohibited matter

(1) The European patent application shall not contain:
   a) expressions or drawings contrary to "ordre public" or morality;
   b) statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person. Mere comparisons with the prior art shall not be considered disparaging per se;
   c) any statement or other matter obviously irrelevant or unnecessary under the circumstances.

230
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTEILUNGSVERFAHREN

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

1972
The Swiss proposal did not obtain a majority in the Co-ordinating Committee.

19. On the other hand, a proposal by the same delegation that it should be laid down in Rule 26, paragraph 2(b), that the different categories of claims should be evident from the title if the application contains such different categories, was adopted.

20. In the same connection, the Committee decided, again on a proposal from the Swiss delegation, that the term "designation of the subject-matter of the invention" should be used in Rule 29, paragraph 1(a), instead of "title of the invention".

21. A suggestion by the same delegation that in the German text of Rules 26, 27 and 33 the expression "Bezeichnung der Erfindung" should be replaced by "Titel der Erfindung" was not adopted.

III. Draft Rules relating to Fees

The Committee agreed to insert the amount of the fee for further processing (Article 2, No. 13) in the Draft Rules relating to Fees, as this amount would probably be important for the interested circles. It was felt that this fee should be substantial but not prohibitive. Under these circumstances the Committee considered that 20 Units of Account (= 2,000 Bfrs.) would be a suitable recommendation to the Administrative Council.
II. Draft Implementing Regulations

Rule 25

16. The Swiss delegation proposed (cf. Working Document No. 6) that the period of two months for filing a divisional application in the event of lack of unity of the invention should not begin - as in the present text of paragraph 1(b) - from the time when the Examining Division invited the applicant to divide his application, but only from the time when the earlier application was actually limited. Otherwise it could happen that divisional applications had to be filed before the earlier application had been limited.

The Committee adopted this proposal. In doing so it did not comply with the suggestion made by one delegation that the period should end at the time fixed by the Examining Division for the applicant to limit the earlier application.

17. In connection with Rule 25, see also point 12 above.

Rules 26, 27, 29 and 33 [ER/212/727]

18. The Swiss delegation proposed that the provisions on the title of the invention should be contained not in Rule 26 on the request for examination, but in Rule 27 on the content of the description, since the title formed part of the description.

It was stated in reply that it was advisable to have a definition of the title in the provision which first mentioned the term "title".
1. During the 6th Meeting of the Inter-Governmental Conference the Co-ordinating Committee met several times under the Chairmanship of Dr. K. HAERTEL to prepare the Conference's discussions of the proposals submitted to it by various delegations.
Article 33 (Re. 66, No. 5)

Form and content of the abstract

(1) The abstract shall indicate the title of the invention.

(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula, which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on its speculative application.

(3) The abstract shall preferably not contain more than one hundred and fifty words.

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(5) The abstract shall be so drafted that it constitutes an efficient instrument for purposes of searching in the particular technical field particularly by making it possible to assess whether there is a need for consulting the European patent application itself.
INTRODUCTORY REMARK

As agreed by the Co-ordinating Committee, the Implementing Regulations will contain "Rules" and not "Articles". As it stands, the Draft does not yet take account of the consequences that this decision will have upon the drafting.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 25 May 1972
BR/200/72

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

(Stage reached on 20 May 1972)

BR/200 e/72
It was also pointed out that it was up to the President of the European Patent Office, as provided in Re. Article 85, No. 1, to decide which particulars were to be included in the published application, so needless repetition of the title of the invention could be avoided in this way.

In the light of these arguments the Working Party decided not to adopt the WIPO proposal. However, it considered that the French text of Re. Article 66, No. 3, paragraph 1(a) should be aligned on the English and German texts by substituting the notion of "title" for that of "designation", as contained in Re. Article 66, No. 5, paragraph 1. In this connection it was pointed out that the concept "title of the invention" should not be interpreted too formally and that the title could vary to correspond to the content of the various claims.

**Article 73 (Priority right)**

112. The Working Party replied in the affirmative to the United Kingdom delegation's question as to whether it was sufficiently clear from the texts of Article 73, paragraph 1, and Article 75, paragraph 1, that the priority right would be strictly limited to the period of twelve months following the filing of the first application and that the period referred to in Article 75 was of a procedural nature.

113. In addition the United Kingdom delegation proposed that the wording of Article 73, paragraphs 3 and 4, should be adapted to cover the case of a previous patent application
In the light of these arguments, the Working Party decided to adopt the United Kingdom proposal and to amend Re. Article 64, No. 1, accordingly.

Re. Article 66, No. 3, paragraph 1(a) (Form and contents of claims)

Re. Article 66, No. 5, paragraph 1 (Form and contents of the abstract)

In Working Document No. 3, the WIPO representatives had pointed out that since Re. Article 66, No. 1, paragraph 2(b) and No. 2, paragraph 1, required the title of the invention to be included in the request for grant and at the beginning of the description, it appeared unnecessary to repeat that requirement for each independent claim and for the abstract. The deletion of this condition would also constitute a harmonisation of the Convention with the PCT.

This view was supported by a number of delegations on the grounds both of the practical aspect and the principle that the Convention should be as closely aligned on the PCT as possible.

Other delegations however said that the provision laid down in Re. Article 66, No. 3, paragraph 1, was merely optional and that the inclusion of the title in the abstract had its uses, particularly with regard to the classification of the patent in the files etc.

BR/135 e/71 ley/prk

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

Brussels, 17 November 1971
BR/135/71

- Secretariat -

MINUTES

of the 9th meeting of Working Party I
held from 12 to 22 October 1971, in Luxembourg

1. Working Party I held its 9th meeting in Luxembourg from 12 to 22 October 1971, with Dr. Haertel, President of the German Patent Office, in the Chair.

Representatives from the IIB and WIPO took part in the meeting as observers. The representatives of the Commission of the European Communities and the Council of Europe sent their apologies for being unable to attend. See Annex I to these minutes for the list of those present at the 9th meeting.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/120/71 and attached to this document as Annex II.

3. The Drafting Committee of Working Party I met first under the chairmanship of Mr. van BENTHEM, President of the Octrooiraad, and after his departure, that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).

BR/135 e/71 prk
(Unrevised translation)
h) Une même feuille de dessins peut contenir plusieurs figures. Lorsque des figures portées sur deux ou plusieurs feuilles sont destinées à former une figure d'ensemble, elles doivent être présentées de sorte que l'on puisse composer la figure d'ensemble sans cacher aucune partie des figures partielles. Les différentes figures doivent être disposées de préférence verticalement, chacune étant clairement séparée des autres mais sans place perdue. Les différentes figures doivent être numérotées consécutivement en chiffres arabes, indépendamment de la numérotation des feuilles.

i) Des signes de référence non mentionnés dans la description et les revendications ne doivent pas apparaître dans les dessins, et réciproquement. Les signes de référence des mêmes éléments doivent être identiques dans toute la demande.

j) Les dessins ne doivent pas contenir de textes, à l'exception, lorsque cela est absolument nécessaire, de mots isolés tels que « eau », « vapeur », « ouvert », « fermé », « coupe suivant AB » et tous les schémas de circuits électriques, les diagrammes d'installation schématiques et les diagrammes schématisant les étapes d'un processus, de quelques mots clés indispensables à leur intelligence. Ces mots doivent être placés de telle manière que leur traduction éventuelle puisse leur être substituée sans que soit cachée aucune ligne des dessins.

(3) Les schémas d'étapes de processus et les diagrammes sont considérés comme des dessins.

Ad Article 66
Numéro 5

Forme et contenu de l'abrégé

(1) L'abrégé doit mentionner le titre de l'invention.

(2) L'abrégé doit comprendre un résumé concis de ce qui est exposé dans la description, les revendications et tous dessins; le résumé doit indiquer le domaine technique auquel appartient l'invention et doit être rédigé de manière à permettre une claire compréhension du problème technique, de l'essence de la solution de ce problème par le moyen de l'invention et de l'usage principal ou des usages principaux de l'invention. L'abrégé comporte, le cas échéant, la formule chimique qui, parmi celles qui figurent dans la demande de brevet, caractérise le mieux l'invention. Il ne doit pas contenir de déclarations relatives aux mérites ou à la valeur allégués de l'invention ou à ses applications supposées.

(3) L'abrégé ne peut, en principe, comporter plus de cent cinquante mots.

(4) Si la demande de brevet européen comporte des dessins, le demandeur doit indiquer la figure ou, exceptionnellement, les figures des dessins qu'il propose de faire publier avec l'abrégé. L'Office européen des brevets peut décider de publier une ou plusieurs autres figures s'il estime qu'elles caractérisent mieux l'invention. Chacune des caractéristiques principales mentionnées dans l'abrégé et illustrées par le dessin doit être suivie d'un signe de référence entre parenthèses.

Bemerkung zu Nummer 5 zu Artikel 66:
In Absatz 4 wird davon ausgegangen, daß die Zusammenfassung und die europäische Patentmeldung getrennt veröffentlicht werden können.

Note to Re. Article 66, No. 5:
Paragraph 4 is based on the assumption that the abstract may be published separately from the publication of the European patent application.

Remarque concernant le numéro 5 ad article 66:
Le paragraphe 4 part de l'idée que l'abrégé peut faire l'objet d'une publication distincte de la publication de la demande de brevet européen.
der Auffassung ist, daß diese die Erfindung besser kennzeichnen. Hinter jedem wesentlichen Merkmal, das in der Zusammenfassung erwähnt und durch die Zeichnung veranschaulicht ist, hat in Klammern ein Bezugszeichen zu stehen.

(5) Die Zusammenfassung ist so zu formulieren, daß sie eine wirksame Handhabe zur Sichtung des jeweiligen technischen Gebiets gibt und insbesondere eine Beurteilung der Frage ermöglicht, ob es notwendig ist, die Patentanmeldung selbst einzusehen.

Zu Artikel 66
Nummer 6
Unzulässige Angaben

Die europäische Patentanmeldung darf nicht enthalten:
a) Ausdrücke oder Zeichnungen, die gegen die öffentliche Ordnung oder die guten Sitten verstoßen;
b) abfällige Äußerungen über Erzeugnisse oder Verfahren Dritter oder den Wert oder die Gültigkeit von Anmeldungen oder Patenten Dritter. Reine Vergleiche mit dem Stand der Technik allein gelten nicht als abfällig;
c) Angaben, die den Umständen nach offensichtlich belanglos oder unnötig sind.

Zu Artikel 66
Nummer 7
Allgemeine Betimmungen über die Form der Anmeldungsunterlagen

(1) Die in Artikel 34 Absatz 2 Satz 2 des Übereinkommens genannten Übersetzungen gelten als Unterlagen der europäischen Patentanmeldung.

(2) Die Unterlagen der europäischen Patentanmeldung sind in drei Stücken einzureichen. Dies gilt nicht für den Antrag auf Erteilung eines europäischen Patents und für die gemäß Artikel 34 Absatz 2 Satz 1 des Übereinkommens eingereichten Unterlagen.


(4) Die Unterlagen der europäischen Patentanmeldung sind auf biegsamem, festem, weißem, glattem, mattem und widerstandsfähigem Papier im Format A 4 (29,7 cm mal 21 cm) einzureichen. Vorbehaltlich Artikel . . . (Nummer 4 zu Artikel 66) Absatz 2 Buchstabe h ist jedes Blatt in der Weise zu verwenden, daß die kurzen Seiten oben und unten erscheinen (Hochformat).

drawing shall be followed by a reference sign, placed between parentheses.

(5) The abstract shall be so drafted that it constitutes an efficient instrument for purposes of searching in the particular technical field particularly by making it possible to assess whether there is a need for consulting the patent application itself.

Re. Article 66
No. 6
Prohibited matter

The European patent application shall not contain:

(a) expression or drawings contrary to "ordre public" or morality;

(b) statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person. Mere comparisons with the prior art shall not be considered disparaging per se;

(c) any statement or other matter obviously irrelevant or unnecessary under the circumstances.

Re. Article 66
No. 7
General provisions governing the presentation of the application documents

(1) Translations mentioned in Article 34, paragraph 2, second sentence, of the Convention shall be considered to be included in the term "documents making up the European patent application".

(2) The documents making up the European patent application shall be filed in three copies. This shall not apply to the request for the grant of a European patent nor to those documents filed under the first sentence of Article 34, paragraph 2, of the Convention.

(3) The documents making up the European patent application shall be so presented as to admit of direct reproduction by photography, electrostatic processes, photo offset and microfilming, in an unlimited number of copies. All sheets shall be free from cracks, creases, and folds. Only one side of the sheet shall be used.

(4) The documents making up the European patent application shall be on A4 paper (29.7 cm × 21 cm), which shall be pliable, strong, white, smooth, matt and durable. Subject to the provisions of Article . . . (Re. Article 66, No. 4), paragraph 2(h), each sheet shall be used with its short sides at the top and bottom (upright position).

i) Bezugszeichen dürfen in den Zeichnungen nur insoweit verwendet werden, als sie in der Beschreibung und in den Patentansprüchen aufgeführt sind; das gleiche gilt für den umgekehrten Fall. Gleiche mit Bezugszeichen gekennzeichnete Merkmale müssen in der ganzen Anmeldung die gleichen Zeichen erhalten.


(3) Flußdiagramme und Diagramme gelten als Zeichnungen.

Zu Artikel 66
Nummer 5

Form und Inhalt der Zusammenfassung

(1) Die Zusammenfassung muß die Bezeichnung der Erfindung enthalten.

(2) Die Zusammenfassung muß eine Kurzfassung der in der Beschreibung, den Patentansprüchen und Zeichnungen enthaltenen Offenbarung enthalten; die Kurzfassung soll das technische Gebiet der Erfindung angeben und so gefaßt sein, daß sie ein klares Verständnis des technischen Problems, des entscheidenden Punktes der Lösung der Erfindung und der hauptsächlichen Verwendungsmöglichkeiten ermöglicht. In der Zusammenfassung ist gegebenenfalls die chemische Formel anzugeben, die unter den in der Patentanmeldung enthaltenen Formeln die Erfindung am besten kennzeichnet. Sie darf keine Behauptungen über angebliche Vorzüge oder den angeblichen Wert der Erfindung oder über deren theoretische Anwendungsmöglichkeiten enthalten.

(3) Die Zusammenfassung soll in der Regel aus nicht mehr als 150 Worten bestehen.

(4) Enthält die europäische Patentanmeldung Zeichnungen, so hat der Anmelder diejenige Abbildung oder in Ausnahmefällen diejenigen Abbildungen anzugeben, die er zur Veröffentlichung mit der Zusammenfassung vorschlägt. Das Europäische Patentamt kann eine oder mehrere andere Abbildungen veröffentlichen, wenn es

(h) The same sheet of drawings may contain several figures. Where figures drawn on two or more sheets are intended to form one whole figure, the figures on the several sheets shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures. The different figures shall be arranged without wasting space, preferably in an upright position, clearly separated from one another. The different figures shall be numbered consecutively in arabic numerals, independently of the numbering of the sheets.

(i) Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. The same features, when denoted by reference signs, shall, throughout the application, be denoted by the same signs.

(j) The drawings shall not contain text matter, except, when absolutely indispensable, a single word or words such as "water", "steam", "open", "closed", "section on AB", and, in the case of electric circuits and block schematic or flow sheet diagrams, a few short catch words indispensable for understanding. Any such words shall be placed in such a way that, if required, they can be replaced by their translations without interfering with any lines of the drawings.

(3) Flow sheets and diagrams are considered drawings.

Re. Article 66
No. 5

Form and contents of the abstract

(1) The abstract shall indicate the title of the invention.

(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula, which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on its speculative application.

(3) The abstract shall not, in principle, contain more than one hundred and fifty words.

(4) If the European patent application contains drawings, the applicant shall indicate the figure or, exceptionally, the figures of the drawings which he suggests should accompany the abstract when the abstract is published. The European Patent Office may decide to publish one or more other figures if it considers that they better characterise the invention. Each main feature mentioned in the abstract and illustrated by a
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
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren

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ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren

und

ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

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

with

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

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

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

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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 —
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
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.
Re. Article 66, No. 5 - Form and content of the abstract

23. The Chairman stated that he would draw up a proposal for an implementing measure on this matter for the next meeting.

Re. Article 66, No. 6 - Prohibited matter

24. The text of the PCT regulations was again followed here. The sub-Committee also discussed the prohibition of any references to a trade mark, unless references concerning its registration were supplied at the same time. It did not consider it desirable to include such a prohibition in the Implementing Regulations. In the view of the sub-Committee, it already appeared to be implicit in the provisions regarding the precision and clarity of the terms of the application.

Re. Article 66, No. 7 - General provisions governing the presentation of the application documents

25. The text of the PCT regulations was also adopted on this point. An amendment was made, however, with a view to obtaining greater flexibility in regard to units of measurement (paragraph 12). Following a proposal by the Swiss delegation, it was decided that in the case of physical values other than those already mentioned, it would be appropriate to use the units recognised in international practice. The sub-Committee also added a provision whereby translations would considered to be included in the application documents (paragraph 1). The translations in question would be translations into an EPO working language, of application documents drawn up in one of the official languages of the EPO which was not one of the three working languages. This provision implies that all the conditions laid down in the remaining paragraphs
MINUTES
of the 2nd meeting of Working Party I sub-Committee on
"Implementing Regulations"
(Luxembourg, 15-18 September 1970)

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 (IIIB) (1).

(1) See the list of participants in Annex I.
Preliminary Draft Implementing Regulations

Re. Articles 62, 63, 64, 66, 69, 70, 71, 79 and 85

(15 to 16 September 1970)

Outcome of the work of the "Implementation Regulations" Sub-committee

Secretariat

BR/50/70

12 October 1970
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 not 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 of the subject-matter of the invention only if the micro-organism were made available to the public at the time of the publication of the application; furthermore, it was only by such a disclosure that the micro-organism could be comprised in the state of the art under Article 52, paragraph 3, with the result that this was the only means whereby duplication of patents could be avoided and legal uncertainty in relation to national patent applications could be removed.

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


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