Rule 48 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 48  
MPU  
Technische Vorbereitungen für die Veröffentlichung

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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
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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)
Chapter III
Publication of the European patent application

Rule 47
Technical preparations for publication

(1) The President of the European Patent Office shall determine when the technical preparations for publication of the European patent application are to be deemed to have been completed.

(2) The European patent application shall not be published if it has been finally refused or withdrawn or deemed to be withdrawn before the termination of the technical preparations for publication.
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
patents acts, which contain provisions entirely similar to Art. 52 (3), there is no provision similar to Art. 58 (1), second sentence, and nobody misses it. Moreover, if it is believed that Art. 58, (1), second sentence, could in any situation go beyond Art. 52 (3) and Art. 54, it should in fact also be taken up in the grounds for opposition and revocation.
to do with depriving the other party of his rights under Art. 59.

9. For most purposes the exact time of withdrawal is not of decisive importance, but there are at least two situations where this is the case, viz.

a) where the applicant wishes to withdraw before publication in order to avoid self-collision under the whole contents principle in respect of a later application filed or to be filed by him,

b) where the applicant wishes to obtain a new priority date valid under the Paris Convention.

10. Experience in countries where the whole contents principle is the law to-day shows that point (1) above is a very important consideration. Now, if the applicant is prevented by proceedings under Art. 59 from avoiding publication by withdrawal, he may win the case under Art. 59, but the damage done by publication is irreparable.

11. It is submitted for consideration whether the two situations mentioned above could be taken care of by the following amendments:

12. Rule 14, lines 5-6, cancel "the European patent application may not be withdrawn" and substitute "withdrawal of the European patent application shall not become effective, except in respect of Rule 49. If such withdrawal later becomes effective it shall be considered as having been made on the date when a legally committal declaration of irrevocable abandonment has been received by the European Patent Office."

13. In the penultimate line of Rule 14 after "the application" insert "with immediate effect".

14. A further point of interest in connection with Art. 58 shall be mentioned here, though not related to withdrawal. The UNICE in M/19, point 5, pages 170-1, the CIFE in M/22, point 40, pages 264-5, and the CEEP in M/30, point 5, page 2 (not included in the printed volume), propose that the second sentence of Art. 58 (1) should be divided out into a second paragraph because it deals with a question entirely different from that of the first sentence.

15. This proposal seems in itself to be reasonable, but the question is raised whether the second sentence is necessary at all in view of the whole contents principle of Art. 52 (3) and Art. 54. The fact is that the whole contents principle gives an applicant a much stronger protection against a later applicant, than does the second sentence of Art. 58. In fact, Art. 58 (1), second sentence, lays down the prior claim principle as far as third party collision is concerned, while Art. 52 (3) and Art. 54 lay down the whole contents principle for the same situations. This may give rise to confusion and it is submitted for consideration whether it would not be preferable to cancel Art. 58 (1), second sentence. It is pointed out that in the Nordic
FEDERATION INTERNATIONALE DES CONSEILS EN PROPRIETE INDUSTRIELLE

Date: August 20, 1973.

re: Munich Diplomatic Conference

MEMORANDUM D
on withdrawal of the European patent application, Rule 49, Rule 14, Art. 58.

1. The CIFE in M/22, point 18, pages 256-7, and the FEMIPI in M/23, point 25, pages 294-5, suggest that it should be confirmed by a clause preferably in the Convention that the applicant has the right to withdraw his application at any time (which right can at present only be derived indirectly from the terms of Rule 49 (2)).

2. The FICPI supports this proposal and suggests that the right place to express the right to withdraw the application would be in Art. 58, e.g. in a new paragraph (1 bis) to be inserted between paragraphs 1 and 2.

"58 (1 bis) The party having the right to apply for a European patent shall also have the right at any time to withdraw the application for that patent."

3. In paragraph 2, the back reference should then be to both paragraphs (1) and (1 bis).

4. As expressed in this manner the right to withdraw would fit in very well with the restriction of the same right expressed in Rule 14.

5. In respect of this restriction, the EG/EC/CE in M/14, point 14, pages 100-1, propose a new version of Rule 14 according to which the applicant is entitled to withdraw the European patent application up to the time when a third party proves to the European Patent Office that he has initiated proceedings concerning entitlement.

6. The FICPI opposes this proposal because it may take some time to obtain proof of the institution of legal proceedings, and in the meantime the applicant, knowing that the other party intends to proceed under Art. 59, may withdraw the application to deprive the other party of his rights under Art. 59. He may prefer withdrawing the application rather than running even the slightest risk of the other party taking over the application.

7. The FICPI therefore gives preference to the official text of Rule 14.

8. The reason given by the EG/EC/CE for the proposed amendment is that the right to withdraw the application is very important to the applicant. This is perfectly true and the applicant may in fact have perfectly legitimate reasons for withdrawal, not in any way having
re: Munich Diplomatic Conference

Attached are:

Memorandum A on representation before the European Patent Office,
Art. 133, 134, 144, 162, Rules 1o3, 107.

Memorandum B on evidence of transfer of the inventor's right,
Art. 58, 79, 90, Rules 14, 42.

Memorandum C on multiple priorities and partial priorities,
Art. 86.

Memorandum D on withdrawal of the European patent application,
Art. 58, Rules 14, 49.

Memorandum E on extension of periods, Rule 85, as related to
language problems, Art. 14 (4) and Rule 6 (2).
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/48/I
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: FICPI

Subject: Memoranda on:
- representation
- evidence of transfer of the inventor's right
- multiple priorities and partial priorities
- withdrawal of the European patent application
- extension of periods as related to language problems
21 Artikel 76, Regel 27 Absatz 1d

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

22 Artikel 80, Regel 30

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

23 Artikel 86 Absatz 3

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

24 Artikel 90, Regel 41 Absatz 2

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

25 Artikel 92, Regeln 49, 50 und 52

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

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

26 Artikel 97

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

27 Artikel 104

Es wird vorgeschlagen, dem Dritten, der vom Patentinhaber eine Aufforderung zur Unterlassung erhalten und eine Klage zur Feststellung eingereicht hat, daß keine Patentverletzung vorliegt, dieselben Rechte eingeräumt werden wie dem beitretenden Patentverletzer.
STELLUNGNAHME DES
FEMIPI
Europäischer Verband der Industrie-Patentingenieure

COMMENTS BY
FEMIPI
European Federation of Agents of Industry in Industrial Property

PRISE DE POSITION DE LA
FEMIPI
Fédération européenne des mandataires de l'industrie en propriété industrielle
einer amtlichen Abschrift der Anmeldung, für die eine Priorität beansprucht wird, betrügerische Handlungen zu dem Zeitpunkt auszuschließen, an dem der Anmelder die Angaben, die er bei der Einreichung der europäischen Patentanmeldung mit Prioritätsanspruch unterlassen hatte, nachliefer.

Regel 49 und Regel 52 Absatz 4 — Technische Vorbereitungen für die Veröffentlichung

18 „Die europäische Patentanmeldung wird nicht veröffentlicht, wenn sie . . . zurückgenommen worden ist . . . .”

Es wird angeregt, durch eine — vorzugsweise in das Übereinkommen aufzunehmende — Bestimmung zu bestätigen, daß der Anmelder das Recht hat, seine Anmeldung jederzeit zurückzunehmen.

Bei der derzeitigen Fassung der Texte läßt sich dieses Recht nur indirekt aus der Regel 49 Absatz 2 ableiten.

Regel 50 Absatz 3 und Artikel 92 — Form der Veröffentlichung der europäischen Patentanmeldungen

19 In Regel 50 Absatz 3 ist vorgesehen, daß außer den ursprünglichen Patentansprüchen auch die neuen oder geänderten Patentansprüche aufgeführt werden müssen. Diese Bestimmung wird für so wesentlich gehalten, daß es wünschenswert erscheint, sie in das Übereinkommen (Artikel 92) zu übernehmen.

Artikel 130 und 131 — Regel 99 — Gegenseitige Auskunftserteilung

20 Nach Ansicht des CIFE dürfte der Artikel 130 Absatz 3, in dem zur Zeit auf die Absätze 1 und 2 verwiesen wird, lediglich auf Absatz 1 Bezug nehmen. Es sollte nämlich nicht die Möglichkeit bestehen, zugunsten von nationalen Patentämtern von Nichtvertragsstaaten von den Bestimmungen des Artikels 128 abzuweichen.

21 Was die Vertragsstaaten anbetrifft, so steht die gegenseitige Auskunftserteilung, wie sie nach Artikel 130 Absatz 1 vorgesehen ist, auch dem Recht des Anmelders entgegen, die Wirkungen seiner Anmeldung durch deren Rücknahme zu annullieren, solange das Patent noch nicht erteilt worden ist. Eine Auskunftserteilung dieser Art dürfte sich daher niemals auf Sachverhalten erstrecken.

22 Im übrigen scheint sich Artikel 131 Absatz 1 teilweise mit Artikel 130 zu überschneiden, da die Frage der gegenseitigen Unterstützung der Behörden bereits in Artikel 130 geregelt ist.

23 Schließlich sollte nach Ansicht des CIFE ungeachtet der Gründe solcher gegenseitiger Auskunftserteilungen und Unterrichtungen in Regel 99 klargestellt

that presentation of an authorised copy of the application on which priority is based makes it possible to eliminate fraudulent pretence when the applicant later supplies the data omitted at the time of filing the European application.

Rule 49, Rule 52, paragraph 4 — Technical preparations for publication

18 “The European patent application shall not be published if it has been . . . withdrawn . . . .”

It is suggested to confirm by a clause, preferably in the Convention, the right for the applicant to withdraw his application at any time.

In the present version of the texts, this right can only be derived indirectly from the terms of Rule 49, paragraph 2.

Rule 50, paragraph 3, and Article 92 — Form of publication of European patent applications

19 Rule 50, paragraph 3, says that new or amended claims shall be included in the publication in addition to the original claims. This is considered so essential that it should be transferred to the Convention in Article 92.

Article 130, Article 131, Rule 99 — Exchange of information

20 In the opinion of CEIF, Article 130, paragraph 3, which now refers to paragraphs 1 and 2 of the same Article, should only make reference to paragraph 1. There should be no departure from Article 128 for the central industrial property offices of non-Contracting States.

21 Also, where Contracting States are concerned, the exchange of information such as referred to in Article 130, paragraph 1, goes against the right of the applicant to cancel the effects of his application by withdrawing it, as long as the patent has not been granted. Exchange of information should therefore never concern matters of substance.

22 Article 131, paragraph 1, would seem to overlap partly with Article 130, since mutual assistance between authorities is already provided for by Article 130.

23 Whatever may be the motives for such exchange of information and communication, in the opinion of CEIF it should be stipulated in Rule 99 that it is
STELLUNGNAHME DES
CIFE
Rat der Europäischen Industrieverbände

COMMENTS BY
CEIF
Council of European Industrial Federations

PRISE DE POSITION DU
CIFE
Conseil des fédérations industrielles d'Europe

(1) English translation submitted by CEIF
Artikel 73 (1)


Artikel 86 (2) und (3)

8 Es ist vorgesehen, daß der Anmelder für eine europäische Patentanmeldung mehrere Prioritäten in Anspruch nehmen kann. Jedoch scheint es notwendig zu präzisieren, dafür für einen Anspruch mehrere Prioritäten gefordert werden können.

Artikel 88 (2)

9 Der letzte Satz von Absatz 2 könnte in seiner Form verbessert werden. Anstelle des Satzteiles „so wird die Anmeldung nicht als europäische Patentanmeldung behandelt“ könnte es heißen: „so gilt die Anmeldung als nicht gestellt“.

Rücknahme einer Anmeldung

10 Es scheint, daß es im Abkommensentwurf keine Vorschrift gibt, die ausdrücklich vorsieht, daß der Anmelder seine Anmeldung zurücknehmen kann, obwohl Regel 49 eine solche Möglichkeit voraus- setzt.

Artikel 92 (2)

11 Nach der Regel 50 (3) sind außer den ursprünglichen Patentansprüchen auch die neuen oder geänderten Patentansprüche zu veröffentlichen, sofern diese vor Abschluß der technischen Vorbereitungen für die Veröffentlichung vorliegen. Es erscheint der U.N.I.C.E., daß diese Vorschrift in das Abkommen selbst eingefügt werden sollte.

Artikel 96 (2) und (3)

12 Es erscheint zweckmäßig, die Druckkostengebühr und die Erteilungsgebühr zu einer einheitlichen Gebühr zusammenzufassen.

Artikel 97

13 Es ist wünschenswert, daß die Patentschrift auch die Dokumente angibt, die die Prüfer zitiert haben.

Artikel 104

14 Es scheint logisch, die Rechte, die Artikel 104

Artikel 73, paragraph 1

7 UNICE thought that it had been agreed that where the law of a Contracting State so permits, patent applications could be filed at the branch of the European Patent Office at The Hague. The Draft does not seem to make this point clear; however it is important that this should be the case.

Artikel 86, paragraphs 2 and 3

8 These paragraphs provide that the applicant may claim several priorities in respect of one and the same European patent application. However it should be stated that several priorities may also be claimed in respect of one and the same claim.

Article 88, paragraph 2

9 The form of the last sentence of paragraph 2 could be improved. The phrase “the application shall not be dealt with as a European patent application” could be changed to read: “the application shall be deemed not to have been filed”.

Withdrawal of applications

10 It would appear that there is no provision in the Draft Convention which expressly provides that applicants may withdraw their applications, although Rule 49 presupposes such a possibility.

Article 92, paragraph 2

11 Under Rule 50, paragraph 3, not only the original claims but also the new or amended claims must be published in so far as the latter are available before the termination of the technical preparations for publication. UNICE is of the opinion that this provision should be included in the Convention itself.

Article 96, paragraphs 2 and 3

12 It would appear desirable to combine the fees for grant and printing in a single fee.

Article 97

13 The patent specification should also indicate the documents cited by the examiners.

Article 104

14 It would seem logical that the rights accorded under
STELLUNGNAHME DER
UNICE
Union der Industrien der Europäischen Gemeinschaft

COMMENTS BY
UNICE
Union des Industries de la Communauté européenne

PRISE DE POSITION DE
L'UNICE
Union des Industries de la Communauté européenne

(1) Deutsche Übersetzung der Stellungnahme und der Anlage 2 vorgelegt von UNICE
(2) Annex 3 to these Comments submitted by UNICE in English
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)

_____________________

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

_____________________

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

_____________________

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

_____________________

1973
Regel 48
Frist für die Übersendung des europäischen
Recherchenberichts an das Europäische Patentamt

Die in Artikel 91 Absatz 2 genannte Frist beträgt drei
Monate; die Frist beginnt an dem Tag zu laufen, an dem
das Internationale Patentinstitut vom Europäischen
Patentamt die zur Erstellung des europäischen Recherchenberichts erforderlichen Unterlagen erhalten hat.

Vgl. Artikel 91 (Europäischer Recherchenbericht)

Kapitel III
Veröffentlichung der europäischen Patentanmeldung

Regel 49
Technische Vorbereitungen für die Veröffentlichung

(1) Der Präsident des Europäischen Patentamts be-
stimmt, wann die technischen Vorbereitungen für die
Veröffentlichung der europäischen Patentanmeldung als
abgeschlossen gelten.

(2) Die europäische Patentanmeldung wird nicht ver-
öffentlicht, wenn sie vor Abschluß der technischen
Vorbereitungen für die Veröffentlichung rechtskräftig
zurückgewiesen oder zurückgenommen worden ist oder
als zurückgenommen gilt.

Vgl. Artikel 92 (Veröffentlichung der europäischen Patentanmel-
dung)

Regel 50
Form der Veröffentlichung der europäischen
Patentanmeldungen und europäischen
Recherchenberichte

(1) Der Präsident des Europäischen Patentamts be-
stimmt, in welcher Form die europäischen Patentanne-
dlungen veröffentlicht werden und welche Angaben sie
enthalten. Das gleiche gilt für die gesonderte Veröffent-
lichung des europäischen Recherchenberichts. Der Präsi-
dent des Europäischen Patentamts kann für die Ver-
öffentlichung der Zusammenfassung besondere Vor-
schriften erlassen.

(2) In der veröffentlichten europäischen Patentanmel-
dung werden die benannten Vertragsstaaten angegeben.

(3) Sind vor Abschluß der technischen Vorbereitungen
für die Veröffentlichung der europäischen Patentanmel-
dung die Patentansprüche nach Regel 87 Absatz 2 geän-
dert worden, so werden in der Veröffentlichung außer
den ursprünglichen Patentansprüchen auch die neuen
oder geänderten Patentansprüche aufgeführt.

Vgl. Artikel 92 (Veröffentlichung der europäischen Patentanmel-
dung)

Rule 48
Period for the transmission of the
European search report to the European Patent Office

The time limit referred to in Article 91, paragraph 2,
shall be three months after the date on which the
International Patent Institute has received from the
European Patent Office the documents needed to draw
up its report.

Cf. Article 91 (European search report)

Chapter III
Publication of the European patent application

Rule 49
Technical preparations for publication

(1) The President of the European Patent Office shall
determine when the technical preparations for publica-
tion of the European patent application are to be
deemed to have been completed.

(2) The European patent application shall not be
published if it has been finally refused or withdrawn or
deemed to be withdrawn before the termination of the
technical preparations for publication.

Cf. Article 92 (Publication of a European patent application)

Rule 50
Form of the publication of European patent
applications and European search reports

(1) The President of the European Patent Office shall
prescribe the form of the publication of the European
patent application and the data which are to be
included. The same shall apply for the separate publica-
tion of the European search report. The President of
the European Patent Office may lay down special conditions
for the publication of the abstract.

(2) The designated Contracting States shall be specified
in the published European patent application.

(3) If, before the termination of the technical prepara-
tions for publication of the European patent application,
the claims have been amended pursuant to Rule 87,
paragraph 2, the new or amended claims shall be
included in the publication in addition to the original
claims.

Cf. Article 92 (Publication of a European patent application)
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
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
A provision to this effect was inserted in the Implementing Regulations as Re. Article 85, No. 3.

Article 97 — Grant of the European patent

58. The Working Party made clear in paragraph 2 the legal consequences of the applicant not being in agreement with the grant of the patent in the form envisaged: it would result in the communication of the text in which it was intended to grant the patent being deemed to be withdrawn and in the continuation of the examination proceedings (cf. BR/168/72, point 123).

The Working Party agreed that the applicant should state his grounds for disapproving the intended form of the grant of the patent.

59. For the amendments to paragraphs 3 and 4, see point 21 above.

Article 105 — Decision in opposition proceedings

60. By analogy with the clarification made in Article 97, paragraph 2 (see point 58 above), it was necessary to state in this Article the legal consequences of the proprietor of the patent (or the opponent) not being in agreement with the amended form of the patent.

Some delegations considered that only the proprietor of the patent should have the right to object to the grant of the patent; that the opponent should have no such right;
The Working Party also established that a published abstract formed part of the state of the art under Article 11, paragraph 2.

56. The Working Party amended the first sentence of paragraph 5 to the effect that the period for paying the fee for the supplementary report on the state of the art would no longer be fixed immutably at one month, but could vary between 2 and 6 weeks, thus being aligned on Rule 40.3 of the Regulations under the PCT (cf. BR/168/72, point 107). The International Patent Institute would determine the exact length of the period in each individual case.

The limits of this period were laid down in the Implementing Regulations (Re. Article 79, No. 5).

Article 85 - Publication of a European patent application
Re. Article 85, No. 3 - Notification to the applicant of publication and of the expiry of the period for making the request for examination

57. The Working Party decided, as requested by a large number of international organisations, that the European Patent Office should inform the applicant of the publication of his application or of the report on the state of the art, as well as informing him of the date of expiry of the period for making a request for examination (cf. BR/168/72, point 112). It was agreed, however, that the applicant would have no right of appeal against not being so informed or against being informed erroneously.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 13 April 1972
BR/177/72

- Secretariat -

REPORT

on the 11th meeting of Working Party I
held in Luxembourg from 28 February to 3 March 1972

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

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

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

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

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

BR/177 e/72 cyd/AH/prk

.../...
Article 79 (Drawing up of the report on the state of the art)

90. In connection with paragraph 4a (abstract), see observations made on Article 66 (point 57).

91. CEIF, CNIPA, FEMIPI and UNICE proposed in connection with Article 5 that the period allowed for the payment of the fees for supplementary reports on the state of the art (at present one month), should be extended to 45 - and preferably to 60 - days, to bring it into line with the relevant rules under the PCT.

- Article 85 (Publication of a European patent application)

92. IFIA proposed that the patent application should not be published until the examination had been completed and the application was in the form that it would be in when the patent was finally granted. This would prevent the public being faced with a mass of patent applications, to alterations, possibly of substance, which might later be made. In the interests of third parties, a time limit for examination and grant could however be laid down; this could be approximately 2 years from the submission of the search report and the beginning of the examination. The applicant must however have the right to exhaust this period fully.

IFIA also suggested that the specification should bear the name of the inventor.

Article 88 (Request for examination)

93. A number of problems were discussed in connection with paragraph 2:

BR/169 e/72 ght/AV/prk        .../...
MINUTES
of the
5th Meeting of the Inter-Governmental Conference for the Setting up of a European System for the Grant of Patents

Part II

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

(Luxembourg, 26 January to 1 February 1972)
Patent Office would have to examine the application and grant the patent, and on the expiry of which the patent would have to be published immediately.

109. With regard to the same organisation's suggestion that the specification should bear the name of the inventor, the attention of the Conference was directed to Re. Article 85, No. 1, of the Implementing Regulations, which authorises the President of the European Patent Office to prescribe which data are to be included in the specification.

**Article 88 - Request for examination**

110. With regard to paragraph 2, the Conference agreed that the period for making a request for examination should remain six months. The Note to Article 88 in the 1971 Second Preliminary Draft was therefore deleted.

111. The Conference also decided, in view of the shortness of this period, not to grant third parties the right to request examination.
reports on the state of the art should be brought in line with Rule 40.3 of the Regulations under the PCT. It was pointed out in this respect that it would be in the interests of the IIB, which would after all be the body determining the beginning of the period, if it could always apply the same rules, irrespective of whether the search was made under the PCT or under the European Convention. For this reason it was justifiable to provide for a flexible period of 2 to 6 weeks. The Conference did not adopt a proposal by one delegation to provide for longer periods for non-European applicants than for Europeans. Another delegation drew attention to the consideration that extending the period could lead to the drawing up of the supplementary report on the state of the art being delayed.

In conclusion, the Conference instructed Working Party I to study how the present rule could best be adapted to the relevant rule of the Regulations under the PCT, and how a new rule would affect the three-month period in which the IIB has to draw up the supplementary report on the state of the art.

Article 85 - Publication of a European patent application

108. The Conference rejected a proposal by one organisation to dispense with the publication of the application and instead to lay down a specific period in which the European
MINUTES

of the

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

Parts 1 and 3

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

BR/168 e/72 eld/XM/gc
Article 85

Publication of a European patent application

(1) European patent applications shall be published as soon as possible after the expiry of a period of eighteen months from the date of filing of the patent application or, if a priority has been claimed, as from the date or earliest date of priority. Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. The publication shall contain the description, the claims and any drawings as filed and, in an annex, the report on the state of the art, in so far as the latter is available before the termination of the technical preparations for publication. If the report on the state of the art has not been published at the same time as the application, it shall be published separately.

(2) +

(3) If, before the termination of the technical preparation for publication, the claims of the European patent application have been amended pursuant to Article 137b, paragraph 3, and the translation referred to therein supplied, the new or amended claims shall be included in the publication in addition to the original claims.

(4) +

(5) +
SECOND PRELIMINARY DRAFT OF THE CONVENTION

ESTABLISHING

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

Brussels, 6 December 1971
BR/139/71

--- Secretariat ---

DOCUMENT CORRECTING

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

and

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 26 November 1971 -

BR/139 e/71
be guaranteed, as was essential for the rest of the proceedings. It was true that this solution would prove more expensive than if the applicant were to see to the translation himself, but all applicants would meet the increased costs on an equal basis, and for this reason it would be conceivable to set the filing fee at a higher sum than the one previously envisaged.

The objection was raised that the European Patent Office which would only be working in the language of the proceedings, should not be concerned during the procedure for grant as to the accuracy of the translation. A considerable amount of extra work would be required, and this would substantially raise staffing costs. It would also delay the proceedings, as the applicant would have to be asked for his comments on the translation. In conclusion, the applicant should be expected to see to the translation himself, as the European system for grant would be more to his advantage than the present situation.

The majority of the Working Party finally came out in favour of the applicant being obliged to have the claims of a European application translated out of the language of the proceedings into the other two official languages at his own expense and without the European Patent Office being involved in the translation. It added a new third sentence to this effect in Article 34, paragraph 5. A related provision also had to be adopted to deal with the case of later amendments being made to the claims by the applicant (Article 137b, paragraph 3, third sentence). The amendment to this provision necessitated a corresponding clarification in Article 85, paragraph 3.
(b) Binding force of the translation (point 110)

(c) Obligation to have the claims of the patent translated (point 111)

(d) Period for submitting the translation (point 112)

(e) Sanction in the event of failure to observe the time limit (point 113)

(f) Translation of international applications into one of the official languages (point 114)

(g) Date as from which, in the case of international applications, entries may be made in the Register of European Patents and the files may be inspected (point 115)

(h) Amendment to Re. Article 34, No. 1 (point 116).

107. The Working Party worked on the initial assumption that according to the present wording of the Convention (Article 34, paragraphs 1, 2 and 5) it would be the responsibility of the European Patent Office and not of the applicant to have the application translated out of the language of the proceedings into the other two official languages, both for European and failing provisions to the contrary in Article 123 — for international applications. It then held a detailed discussion on whether this regulation should be retained as it stood or amended.

108. In connection with European applications, part of the Working Party was of the opinion that the European Patent Office should have the claims translated out of the language of the proceedings into the two other official languages. Only in this way would an accurate translation
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING-UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 16 December 1971
BR/144/71

SECRETARIAT

MINUTES

of the 10th meeting of Working Party I,
held in Luxembourg from 22 to 26 November 1971

1. Working Party I held its 10th meeting in Luxembourg from 22 to 26 November 1971, with Dr. HAERTEL, President of the Deutsches Patentamt, in the Chair.

Representatives from the Commission of the European Communities, the IIB and WIPO attended the meeting as observers. The Council of Europe representatives sent their apologies for being unable to attend. For the list of those present at the 10th meeting see Annex I to these minutes.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/133/71 on the understanding that item 3 would also cover the examination of a number of problems including those referred to in BR/GT I/138/71. The provisional agenda is given in Annex II to these minutes.

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

BR/144 e/71 ley/prk
Unrevised translation
Article 85

Publication of a European patent application

(1) European patent applications shall be published as soon as possible after the expiry of a period of eighteen months from the date of filing of the patent application or, if a priority has been claimed, as from the date or earliest date of priority. Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. The publication shall contain the description, the claims and any drawings as filed and, in an annex, the report on the state of the art, in so far as the latter is available before the termination of the technical preparations for publication. If the report on the state of the art has not been published at the same time as the application, it shall be published separately.

(2) +

(3) If, before the termination of the technical preparation for publication, the claims of the European patent application have been amended pursuant to Article 85 or Article 137a, paragraph 2, the new or amended claims shall be included in the publication in addition to the original claims.

(4) +

(5) +
SECOND PRELIMINARY DRAFT OF THE CONVENTION

ESTABLISHING

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 22 October 1971 -

BR/134 e/71
as having been completed. A footnote to the text draws the attention of Working Party I to the fact that it might be opportune to amend the text of Article 85, paragraph 3, so that the publication cannot include amendments unless they were communicated before the completion of the technical preparations.

Re. Article 97, No. 1 — Grant of a European patent to joint applicants

26. No comments.

Re. Article 101, No. 1 — Form of the notice of opposition

27. The Sub-Committee decided to add to the text of sub-paragraph (c) that the notice of opposition shall indicate besides the grounds for opposition, the facts, evidence and arguments presented in support of these grounds. This addition is intended to implement a decision taken by Working Party I at its meeting in December, 1970. It must be pointed out that the documents which have to be produced to support those facts, evidence and arguments may be communicated later, within a period of time which is specified in the Implementing Regulations, Re. Article 101, No. 2.

Finally, the Sub-Committee considered that it would be superfluous to provide for a special entry in the Bulletin to mention the absence of opposition.

Re. Article 101, No. 5 — Communications to the other opponents

28. When adopting this article, the Sub-Committee wondered whether it would be opportune to combine in a single provision the various cases of notification mentioned
the examiner would not yet have decided on the unity or lack of unity of the application. At this stage, it would simply have been noted that a report on the state of the art is not sufficient but that an additional report will be necessary, if the search is to cover all the claims contained in the application. In addition, it was pointed out that the relative functions of the International Patent Institute and the European Patent Office in respect of the implementation of paragraphs 5 and 6 of Article 79 of the Convention should be defined in the working agreement which is to be drawn up between these two bodies.

Re. Article 85, No. 1 - Publication of European patent applications and of the specification of a European patent

24. The Sub-Committee added a sentence to the text which had previously been adopted for this provision (cf. BR/59/70, page 1). This gives wider responsibility to the President so that he can also prescribe the form of the publication of the translations provided for in Article 123, paragraphs 2 and 3, of the Convention. These paragraphs deal with the conditions and the effects of the publication of an international application. When the provision was examined, it was stated that the European Patent Office publications mentioned therein must contain a specific date. It is in fact with effect from this date that the protection rights will commence.

Re. Article 85, No. 2 - Termination of the technical preparations for publication

25. The Sub-Committee adopted a provision which prescribes that, for the cases referred to in Article 85, paragraph 4, the President shall determine the date on which the technical preparations for publication shall be considered
Minutes

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

(Luxembourg, 12 - 14 January 1971)

I

1. The fifth meeting of the "Implementing Regulations" Sub-Committee was held in Luxembourg from 12 to 14 January 1971, with Mr. PRESSONNET, Deputy Director, French Industrial Property Institute, in the Chair.

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

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

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

BR/84 e/71 man/KM/prk
For publication, any of the deficiencies before the publication of the technical preparation will be amended. If before such publication, an article, paragraph, or the like to be considered, the amendment to amend the article in the publication and can be considered, the amendment to amend the article in the publication, which could cause a great deal of difficulty, will be made after the amendment of the publication. The date of publication will be expedited under the terms of Article 85, Paragraph 2, to the attention of the Working Party. I, as drawn to the fact that it is an applicant for example, amend.

Note:

The President of the European Patent Office shall lay down, in the case provided for in Article 85, Paragraph 4 of the Convention, the date at which the technical preparation for publication of the application must be completed.

Text drawn up by the Sub-Committee.
PRELIMINARY DRAFT IMPLEMENTING REGULATIONS

(12 to 14 January 1971)

of Working Party I

Outcome of the work of the "Implementation Regulation" sub-committee

SECRETARIAT

BR/87/71

Brussels, 20th January 1971

DR/87/87
Article 82 (Amendment of the documents)
Article 83 (Amendment of the claims)
Article 95a (Amendment of the application)

117. The Working Party agreed to examine at its next meeting the possibility of combining these three provisions to form a single general provision (cf. point 58 above).

118. In connection with Article 83, the Working Party also decided to defer until its next meeting its examination of the note submitted by the Netherlands delegation (BR/GT I/124/74) on the publication of pending European patent applications and its repercussions for third parties.

Article 85 (Publication of a European patent application)

119. For this Article see the remark contained in point 62 of these minutes.

Article 88a (Former Article 160) (Amendment of the period within which a request for examination may be made)

120. In accordance with the mandate given to it by the Conference, Working Party I examined the problems raised by Article 160. The United Kingdom delegation made a proposal (BR/GT I/113/71) that this Article should be amended so that the Administrative Council may, if necessary, increase the Article 88, paragraph 2, period up to a maximum of two years and, where appropriate, reduce any such extended period.
63. The Working Party agreed that in any case the abstract would be published as a part of the application. The President of the European Patent Office may, moreover, lay down special provisions governing the publication of the abstract. Re. Article 85. No. 1. IR was amended accordingly.
Re. Article 145, No. 4a, which was newly inserted into the Implementing Regulations for this purpose, provides that such mistakes in any document submitted to the European Patent Office may be corrected on request. Its wording is closely aligned on Rule 91.1 a and b of the Rules under the PCT. Special exceptions, for example the subsequent designation of a State, were not included in the new provision.

60. The Working Party also considered that it would not be feasible to combine the new Re. Article 145, No. 4a, IR, with the already existing Re. Article 142, No. 4, IR, which covers the rectification of errors in decisions, publications and the Register of European Patents, to form a single provision.

61. In Article 82, paragraph 2, the reference to Article 79, paragraph 5, had to be deleted, as the content of the latter had been substantially altered (see point 50(b) above).

Article 85 - Publication of the European Patent application, and

Re. Article 85, No. 1, IR - Publication of European patent applications and European patent specifications

62. In order to preclude misunderstandings, it was made clear in Article 85, paragraph 1, that the publication of the application is to contain the description, the claims and any drawings in the form in which they were originally filed. The only amendment to paragraph 2 concerned the wording.
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)
Artikel 85
Veröffentlichung der europäischen Patentanmeldung


(2) In der Veröffentlichung werden die gemäß Artikel 67 benannten Vertragsstaaten aufgeführt.

(3) Falls vor Abschluß der technischen Vorbereitungen für die Veröffentlichung die europäische Patentanmeldung gemäß Artikel 81 geteilt worden ist oder die Patentansprüche gemäß Artikel 83 geändert worden sind, so werden in der Veröffentlichung außer den neuen oder geänderten Patentansprüchen auch die ursprünglichen Patentansprüche aufgeführt.

(4) Die Veröffentlichung unterbleibt, wenn die europäische Patentanmeldung vor Abschluß der technischen Vorbereitungen für die Veröffentlichung rechtskräftig zurückgewiesen oder zurückgenommen worden ist oder als zurückgenommen gilt.

(5) Ein Hinweis auf die Veröffentlichung der europäischen Patentanmeldung und gegebenenfalls auf die gesonderte spätere Veröffentlichung des Berichts über den Stand der Technik wird in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.

Artikel 86
Bekanntmachung der Erledigung einer Patentanmeldung

Wird eine gemäß Artikel 85 veröffentlichte europäische Patentanmeldung zurückgewiesen oder zurückgenommen oder gilt sie als zurückgenommen, so wird ein Hinweis darauf in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.

Artikel 87
Einwendungen gegen die Patentierbarkeit der angemeldeten Erfindung

(1) Nach der Veröffentlichung der europäischen Patentanmeldung kann jeder Dritte Einwendungen gegen die Patentierbarkeit der angemeldeten Erfindung erheben. Die Einwendungen sind schriftlich einzureichen und zu begründen.

Artikel 85
Publication of a European patent application

(1) European patent applications shall be published as soon as possible after the expiry of a period of 18 months from the date of filing of the patent application or, if a priority has been claimed, as from the date or earliest date of priority. Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. The publication shall contain the description, the claims and any drawings and, in an annex, the report on the state of the art, in so far as the latter is available before the termination of the technical preparations for publication. If the report on the state of the art has not been published at the same time as the application, it shall be published separately.

(2) The Contracting States designated in accordance with Article 67 shall be specified in the publication.

(3) If, before the termination of the technical preparations for publication, the European patent application has been divided pursuant to Article 81, or the claims amended pursuant to Article 83, the original claims shall be included in the publication in addition to the new or amended claims.

(4) Publication shall not take place if the European patent application has been finally refused or withdrawn or deemed to be withdrawn before the termination of the technical preparations for publication.

(5) Notification of the publication of the European patent application and, where appropriate, of the separate later publication of the report on the state of the art, shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Artikel 86
Publication of the lapse of a European patent application

If a European patent application published in accordance with Article 85 is refused or withdrawn or deemed to be withdrawn, notification thereof shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Artikel 87
Observations concerning the patentability of the invention in respect of which an application has been filed

(1) Following the publication of the European patent application, any person may present observations concerning the patentability of the invention in respect of which an application has been filed. Such observations must be made in writing and must include a statement of the grounds on which they are based.
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

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

SECOND AVANT-PROJET DE CONVENTION INSTITUANT UN SYSTÈME
EUROPEEN 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 —
Re. Article 85 - Details to be included in the publication of a European patent application

39. The sub-Committee decided, in this connection, that the implementing measure should be limited to giving the President of the EPO the power to prescribe the particulars which, in addition to those already provided for in the First Preliminary Draft, should be included in the patent application.
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 (IIB) (1).

(1) See the list of participants in Annex I.
66. Article 74: Effect of priority right

Working Party I reiterates its recommendation to the Conference to delete the note to this Article.

67. Article 79: Obtaining of report on the state of the art

The note was deleted in view of the provisions of the Rules relating to Fees.

68. Article 85: Publication of a European patent application

The note was deleted in view of the new text of Article 34 (5).

69. Articles 88 and 89: Request for examination - Modification of the procedure by the Administrative Council

The notes to these Articles were deleted in view of the new provisions adopted by the Working Party, following the mandates of the Conference, in respect of deferred examination procedure and the transitional provision (Articles 79 (4a), 88 (2) and 159 (former Article 188b)).

70. Article 95: Notification of the result of the examination

The Working Party added two new paragraphs, (1a) and (1b), to Article 95, so as to specify the position of the applicant in respect of any invitation from the Examining Division to submit his observations. In particular, the Working Party found it necessary to introduce enough flexibility into the procedure to allow for the submission of further observations by the applicant.
MINUTES

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

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

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

Representatives of the Commission of the European
Communities, WIPO-BIRPI and the International Patent
Institute took part in the meeting (2). The representative
of the General Secretariat of the Council of Europe sent
his apologies for being unable to attend.

2. The Drafting Committee, under the chairmanship of
the President of the Netherlands Octrooiraad (Patent Office),
Mr. J. B. van BENTHEM, held its meetings directly after the
deliberations of the Working Party.

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.
(2) For the list of participants, see Annex II.
Publication of a European patent application

Article 65 (former Article 68)
In the European Patent Bulletin.

(9) Notification of the publication shall be entered in the Register of European patents and published

publication.

(4) Publication shall not take place if the European patent application has been finally refused.

publication.

or withdrawn or deemed to be withdrawn before the formalization of the technical preparation for

publication in accordance with Article 67 shall be suspended on the date of receipt of the amendments or

the new or amended claims.

publication in accordance with Article 67.

If before such publication, the European patent application has been directed pursuant to Article 84,

publication.

The contracting States are entitled in accordance with Article 69.

publication, the date of the priority of the application may be extended from 18 months from the filing of the patent application of filing of the priority of the application.

European patent applications shall be published as soon as possible after the expiry of a period of 18 months.

1970 Direct.

Publication of a European Patent Application

Article 65 (former Article 84a)
to those under (a) and (b) are set out in numerical order.

Reasons of convenience, the Articles contained in this Document which bear Reference

This Document sets out the Results of the Work of Working Party I. For

meeting

The second part of the work could not be completed at the above-mentioned

organisations on 21 and 22 April 1970. For the same reason of lack of time,

on 27 April 1970 after hearing the views of the non-Governmental Interorganisa
tion, in accordance with the decisions taken by the Inter-Governmental Conference,

(b) at their re-examinations a number of Articles of the First Preliminary Draft Convention,

continue to lack of time.

of the propositions, pointouting the Study of certain Articles to a later meeting.

European System for the Grant of Patents, published in 1970, as regards most

of the First, it completed the First Preliminary Draft Convention establishing a

to the Chairman.

of the Working Party I, completed a

Introdutctory Remarks
Attitudes prepared by Working Party I

Preliminary Draft Convention

FOR A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

SECRETARIAT

BR/48/70

Brussels, 23 September 1970

BR/48/70

FOR THE GRANT OF PATENTS

INTER-GOVERNMENTAL CONFERENCE
113. As regards the publication of the report on the state of the art laid down in paragraph 1, the question arises of the form which this publication should take, independently of whether it is published at the same time as the application, or subsequently. If it were afterwards decided that a simple reference in the Bulletin, stating that the report is available to the public, seemed sufficient, it would be necessary to adjust the wording of the provision accordingly.

Article 88 : Request for examination (BR/40/70, pages 7 and 8, No. 20)

114. The wording of paragraph 2 takes the date of notification of the publication of the application pursuant to Article 85 paragraph 5 as the beginning of the period for the introduction of the request for examination.

The Working Party was anxious to let the period run in such a way that third parties should have the same opportunities of seeing the report as the applicant.

115. Nevertheless, the Working Party noted that, taking into account the short period in which the request for examination may be introduced, it may be asked whether there is still any justification for making provision for third parties to introduce a request.

Article 188 b (new) : Period within which a request for examination may be made during a transitional period (BR/40/70, page 8, No. 20, second paragraph, sub paragraphs 6 and 7).

116. The Working Party was anxious to keep a wording in line with the Conference's instructions, while leaving it to the Conference to specify the length of the period longer than that laid down in BR/49 e/70 oyd/PA/£t
109. As a result of the Conference's instructions concerning the deferred examination procedure - and particularly the period for filing the request - (cf. Article 88), the Working Party drafted a new paragraph 4a which refers to the Implementing Regulations the fixing of a three month period during which the IIIB has to transmit the report and the definitive contents of the abstract to the European Patent Office. In doing this, it was guided by the provisions of Rule 42.1 of the PCT Regulations.

Article 74 (former Article 73) : Effect of Priority Right
(BR/40/70, page 5, No. 16)

110. The Working Party recommends to the Conference the deletion of the note concerning this Article, which appears in the First Preliminary Draft, in view of the discussions which took place within Working Party IV of the Central Committee of the Washington Conference on the PCT.

In making this recommendation, the Working Party assumes that applications relating to the effect of the priority right of foreign applications in certain States will be recognised, and that no declaration under the terms of Article 54.4 of the PCT will be made.

Article 85 (former Article 86a) : Publication of a European patent application
(BR/40/70, page 6, No. 17)

111. Paragraphs 1 and 5 of the First Preliminary Draft were amended, in view of the new provisions of Article 88 (cf. observations relating to this Article).

112. Moreover, the Working Party deemed it preferable to deal with the publication of the original claims in the language in which the application was filed, in Article 34 paragraph 5, which was amended to this effect.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 26 October 1970
BR/49/70

MINUTES
of the meeting of Working Party I
Luxembourg, 7 - 11 September 1970

Agenda item 1 (1): Opening of the meeting and adoption of the provisional agenda

1. The fifth working meeting of Working Party I was held at Luxembourg from Monday 7 to Friday 11 September 1970, with Dr. HAERTEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, WIPO-BIRPI and the International Patent Institute took part in the meeting (2). The representative of the General Secretariat of the Council of Europe sent his apologies for being unable to attend.

2. The Drafting Committee, under the Chairmanship of the President of the Netherlands "Octrooiraad", Mr. J.B. van BENTHEM, held its meetings directly after the meetings of the Working Party.

(1) See Annex I for provisional agenda (BR/GT 1/51/70).
(2) See Annex II for list of those attending the meeting of the Working Party.

BR/49 e/70 eld/PA/bcc

.../...
(2) Si le demandeur use de la faculté prévue au para-
graphe 1, les revendications nouvelles ou modifiées sont
déterminantes, au lieu des revendications initiales,
pour la protection demandée, dans la mesure où leur
objet ne s'étend pas au-delà de ce qui était décrit dans
la demande.

(3) Si les revendications nouvelles ou modifiées ne
sont manifestement plus couvertes par l'avis documen-
taire sur l'état de la technique, l'Office européen des
brevets peut demander à l'Institut International des
Brevets de La Haye un avis documentaire additionnel.
Il invite le demandeur à acquitter, dans le délai d'un mois,
la taxe prévue par le règlement relatif aux taxes pris en
exécution de la présente Convention. Si la taxe n'est
pas versée en temps voulu, la demande est réputée
retirée.

Article 83 (ancien article 82)
Modification des documents

Jusqu'à l'introduction de la requête en examen et sans
préjudice des dispositions des articles 78, paragraphe 2,
81 et 82, la description, les revendications et les dessins
d'une demande de brevet européen ne peuvent être modifiés
que pour la rectification d'erreurs matérielles,
derrurs d'expression ou de fautes évidentes.

Article 84 (ancien article 83)
Audition devant la section d'examen

La section d'examen entend le demandeur d'office ou
sur requête, lorsqu'elle le juge utile. Elle doit faire droit
tà cette requête lorsqu'elle envisage de rejeter tout ou
partie de la demande.

Article 85 (ancien article 86a)
Publication de la demande de brevet européen

(1) Toute demande de brevet européen est publiée
sans délai 18 mois après le dépôt de la demande ou, si
une priorité a été revendiquée, après la date de cette
priorité, ou si plusieurs priorités sont revendiquées,
à compter de la date de la plus ancienne de celles-ci. Toute-
fois, elle peut être publiée avant le terme de ce délai
sur requête du demandeur. Cette publication comporte
la description, les revendications et, le cas échéant, les
dessins ainsi que, en annexe, l'avis documentaire sur
l'état de la technique pour autant qu'il soit disponible
au moment de la publication.

(2) Les États contractants désignés conformément aux
dispositions de l'article 67 sont énumérés dans la publi-
cation.

(3) Si la demande de brevet européen est divisée avant
la publication, conformément aux dispositions de l'arti-
gle 81, ou si les revendications ont été modifiées confor-
mément aux dispositions de l'article 82, les revendica-
tions initiales sont également reproduites dans la publi-
cation, en plus des revendications nouvelles ou modi-
fiées.

Bemerkung zu Artikel 85:
Es ist vorgeschlagen worden:
- entweder nur die neuen bzw. geänderten Patentansprüche
  - oder die neuen bzw. geänderten Patentansprüche in den drei Spra-
  chen des Übereinkommens und die ursprünglichen Patentansprüche le-
dlich in einer der drei Sprachen zu veröffentlichen.

Note to Article 85
It is proposed:
- either to publish only the new or amended claims,
- or to publish the new or amended claims in the three languages of
  the Convention and the original claims in only one of these languages.

Remarque concernant l'article 85:
Il a été proposé :
- soit de ne publier que les revendications nouvelles ou modifiées,
- soit de publier les revendications nouvelles ou modifiées dans les
  trois langues de la Convention et les revendications initiales dans l'une
de ces langues.
(4) Die Veröffentlichung unterbleibt, wenn die europäische Patentanmeldung vor Abschluß der technischen Vorbereitungen für die Veröffentlichung rechtskräftig zurückgewiesen oder zurückgenommen worden ist oder als zurückgenommen gilt.

(5) Ein Hinweis auf die Veröffentlichung wird in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.

Artikel 86 (früher Artikel 86b)
Bekanntmachung der Erledigung einer Patentanmeldung
Wird eine gemäß Artikel 85 veröffentlichte europäische Patentanmeldung zurückgewiesen oder zurückgenommen oder gilt sie als zurückgenommen, so wird ein Hinweis darauf in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.

Artikel 87 (früher Artikel 87a)
Einwendungen gegen die Patentierbarkeit der angemeldeten Erfindung
(2) Die in Absatz 1 vorgesehenen Einwendungen werden dem Anmelder mitgeteilt.

KAPITEL II
Ermittlungsverfahren
Artikel 88
Antrag auf Prüfung
(1) Das Europäische Patentamt prüft auf Antrag, ob die europäische Patentanmeldung und die Erfindung, die sie zum Gegenstand hat, den Erfordernissen dieses Übereinkommens genügen.

CHAPTER II
Procedure for grant
Article 88
Request for examination
(1) The European Patent Office shall examine, on request, whether a European patent application and the invention which forms the subject thereof meet the requirements of this Convention.
(2) Macht der Anmelder von der in Absatz 1 vorgesehene Möglichkeit Gebrauch, so sind anstelle der ursprünglichen Patentansprüche insoweit die neuen oder geänderten Patentansprüche für das Schutzbegehren maßgebend, als der Gegenstand der letzteren nicht über das hinausgeht, was in der Anmeldung beschrieben worden ist.

(3) Sind die neuen oder geänderten Patentansprüche durch den Bericht über den Stand der Technik offensichtlich nicht mehr gedeckt, so kann das Europäische Patentamt beim Internationalen Patentinstitut in Den Haag einen zusätzlichen Bericht einholen. In diesem Fall fordert das Europäische Patentamt den Anmelder auf, innerhalb einer Frist von einem Monat die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebene zusätzliche Gebühr zu entrichten. Wird die Gebühr nicht rechtzeitig entrichtet, so gilt die Anmeldung als zurückgenommen.

Artikel 83 (früher Artikel 82)
Änderungen der Unterlagen

Artikel 84 (früher Artikel 83)
Anhörung vor der Prüfungsstelle

Artikel 85 (früher Artikel 86a)
Veröffentlichung der europäischen Patentanmeldung

(2) If the applicant avails himself of the right referred to in paragraph 1, the new or amended claims instead of the original claims shall determine the protection sought in so far as their subject matter does not extend beyond what was described in the application.

(3) If the new or amended claims are obviously no longer covered by the report on the state of the art, the European Patent Office may request an additional report from the International Patent Institute at The Hague. In such an event the European Patent Office shall request the applicant to pay within one month the fee prescribed by the rules relating to fees adopted pursuant to this Convention. If within the period fixed, the additional fee has not been paid, the application shall be deemed to be withdrawn.

Article 83 (former Article 82)
Amendment of documents

Up to the the receipt of the request for examination, and without prejudice to Article 78, paragraph 2, and Articles 81 and 82, the description, claims or drawings of an application for a European patent may not be amended except for the purpose of correcting linguistic or clerical errors or obvious mistakes.

Article 84 (former Article 83)
Hearings before the Examining Section

The Examining Section shall give a hearing to the applicant either on its own initiative or at his request, where it considers this to be expedient. It must give a hearing to the applicant on his request if it proposes to give a decision refusing the application wholly or in part.

Article 85 (former Article 86a)
Publication of a European patent application

(1) European patent applications shall be published as soon as possible after the expiry of a period of 18 months from the filing of the patent application or, if a priority has been claimed, as from the date or earliest date of priority. Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. The publication shall contain the description, the claims and any drawings and, in an annex, the report on the state of the art, in so far as the latter is available at the time of publication.

(2) The Contracting States designated in accordance with Article 67 shall be specified in the publication.

(3) If before such publication, the European patent application has been divided pursuant to Article 81, or the claims amended pursuant to Article 82, the original patent claims shall be included in the publication in addition to the new or amended claims.
FIRST PRELIMINARY DRAFT OF A CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
Article 83 - Hearings before the Examining Section

61. The Working Party thought it advisable to provide that the applicant must be given a hearing, on his request, where the Examining Section does not intend to accept the application.

Article 84 - Grant of the provisional European patent

Article 85 - Publication of a provisional European patent

Article 86 - Official certificate for a provisional European patent

62. No comments were made on the deletion of these three Articles.

Article 86a - Publication of a European patent application

63. Bearing in mind Article 21, paragraph 2(a), of the PCT plan, the Working Party was of the opinion that paragraph 1 should not exclude publication of the application before the expiry of the period of 18 months, if requested by the applicant.

64. On the subject of the publication of the claims in the various cases referred to in paragraph 1(b) of this Article (see note on this Article in doc. BR/9/69), the Working Party agreed that this problem will have to be reconsidered after consultations with the interested circles.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 12 November 1969
BR/10/69

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Secretariat

MINUTES

of the meeting of Working Party I
(Luxembourg, 14 - 17 October 1969)

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1. The second working meeting of Working Party I was held at Luxembourg from Tuesday 14 to Friday 17 October 1969, with Dr. HAERTHEL, President of the German Patent Office, in the Chair.

The Commission of the European Communities, BIRPI, the General Secretariat of the Council of Europe and the International Patent Institute took part in the meeting (1).

2. The Working Party agreed to appoint the following as rapporteurs:

- a member of the Swiss delegation for Articles 54 to 65 (organisation of the departments - register, publications, classification - relations with national authorities);

(1) See Annex I for list of participants in the meeting of the Working Party.

BR/10 e/69 rel/PA/mk...

.../...
Article 86a

Mise à l'inspection publique avant la publication de la délivrance du brevet européen provisoire

(1) Toute demande de brevet ou tout brevet européen provisoire est rendu accessible au public au terme d'un délai de 18 mois après le dépôt de la demande ou, si une priorité a été revendiquée, après la date de cette priorité. Si, au terme de ce délai, la publication de la délivrance du brevet européen provisoire n'est pas intervenue, la mise à l'inspection publique s'effectue sous la forme d'une communication du dossier dans les conditions prévues par l'article 162, paragraphes 2 et 3.

(2) La mise à l'inspection publique prévue au paragraphe 1 fait l'objet d'une mention au registre européen des brevets et d'une publication au Bulletin européen des brevets.
GROUPES DE TRAVAIL
"Brevets"

Bruxelles, le 22 Janvier 1965
2.335/IV/65-F

Confidentiel

 Modifications de l'avant-projet de Convention
relatif à un droit européen des brevets

(article 1 à 175)

Ce document remplace le document 11.155/IV/64-F du
2 octobre 1964 (articles 1 à 103)

2.335/IV/65-F
Artikel 86a
Offenlegung vor der Bekanntmachung der Erteilung des vorläufigen europäischen Patents


(2) Ein Hinweis auf die in Absatz 1 vorgesehene Offenlegung wird in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.
Arbeitsgruppe "Patente"

Brüssel, den 22. Januar 1965
2335/IV/65-D

Vertraulich

Änderungen des Vorentwurfs eines Abkommens über ein europäisches Patentrecht
(Artikel 1 bis 175)

Dieses Arbeitsdokument ersetzt das Arbeitsdokument 11.155/IV/64-D vom 2. Oktober 1964 (Artikel 1 bis 103).
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 about the subject-matter of the invention only if the micro-organism were made available to the public at the time of the publication of the application; furthermore, it was only by such a disclosure that the micro-organism could be comprised in the state of the art under Article 52, paragraph 3, with the result that this was the only means whereby duplication of patents could be avoided and legal uncertainty in relation to national patent applications could be removed.

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

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

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

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

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

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

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

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

In Article 98 and in Rule 61 the Committee added new provisions which also make possible the filing of notice of opposition and consequently the continuation of opposition proceedings when the proprietor has completely surrendered the European patent or when it has lapsed for all the