Article 55 E

Travaux Préparatoires
(EPC 1973)

Comment:

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Art. 55
MPU
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Preliminary Observations

1. This document lists all the provisions of the First Preliminary Draft of a Convention establishing a European System for the Grant of Patents which, subject to any amendments which may be made following the meeting of Working Party I scheduled to take place from 26 to 29 January 1971, will be submitted to the fourth meeting of the Inter-Governmental Conference, to be held from 20 to 30 April 1971.

2. As compared with the First Preliminary Draft published in 1970 (printed text), this document consists of the following series of provisions:

   (a) the provisions of the First Preliminary Draft which were not affected by subsequent work,

   (b) the provisions which were not included in the First Preliminary Draft, as for example the financial provisions, the institutional provisions and the general procedural provisions,

   (c) the provisions which modify a certain number of Articles of the First Preliminary Draft or have been added to it, particularly in the light of the work done by Working Party I in carrying out the tasks which it was given by the Inter-Governmental Conference following the first consultation with the interested circles (most of these new provisions are contained in BR/48/70).

3. The Articles are numbered according to the following principles:

   (a) For Articles 1 to 132:

      (i) the Articles of the published First Preliminary Draft retain the numbers they had in that document;

      (ii) the new Articles or new Chapters bear the letter a, b, etc. in addition to the number;

      (iii) the financial provisions (Articles 42 ff.) retain the numbers of the 1962 Preliminary Draft, while the new Articles also bear the letter a, b, etc. in addition to the number.

   (b) For Articles 133 ff., a system of continuous numbering has been adopted. Nevertheless, to facilitate reference to the corresponding provisions of the Draft Implementing Regulations, the numbers that appeared for the Articles in question in BR/46/70 have been retained in parentheses. The numbers of the provisions of the Implementing Regulations and the numbers of the Articles of the First Preliminary Draft will therefore have to be aligned at a later stage.

BR/70 e/70 fm.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

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

(Articles drafted by Working Parties I, II, III and IV)
Article 15
Non-prejudicial disclosures

A disclosure of the invention within the meaning of Article 14 shall not be taken into consideration if it occurred within six months preceding the filing of the European patent application and if it was in consequence of

(a) the display of the subject-matter of the invention either by the applicant or his legal predecessor at an official international exhibition organised by the competent authority of a Contracting State or officially recognised as such by a joint institution of the Contracting States, or

(b) an evident abuse of knowledge of the invention to the detriment of the applicant or his legal predecessor.
Bonn, 14 March 1961

First Preliminary Draft
Convention relating to a European Patent Law
Articles 11 to 29
Some points for discussion are:

(a) Does Article 11 of the Paris Convention for the Protection of Industrial Property oblige European patent law to include a derogation for the disclosure of inventions at certain exhibitions?

(b) If so, is the wording proposed in the Preliminary Draft approved?

(c) Is there approval for inclusion in European patent law of a derogation for the wrongful disclosure of inventions by third parties?

(d) If so, is the proposed wording approved?

(e) Von Zweigbergk considers in his study, on page 14 of the French text (p. 19 of the unofficial German translation) under point (5), whether necessary tests are to be regarded as disclosure prejudicial to novelty. Subject to certain conditions, von Zweigbergk says that the answer should be no.

It will be necessary to examine:

(aa) whether such tests should also be regarded as non-prejudicial for the purpose of European patent law, and

(bb) if so, whether express provision needs to be made for that derogation in Article 15.
Re Article 15

Non-prejudicial disclosures

1. Documents:
   (a) Haertel Study, Annex, pp. 2, 3 et seq.
   (b) Gajac Study, French text, p. 12; German text, pp. 12/13
   (c) Reimer Proposal, Section 3, paragraph 3
   (d) Von Zweigbergk Study, p. 13(2) and (3), p. 14 (6)
   (e) Draft Nordic patent law, Section 2, paragraph 3

2. Comments

Article 5 contains two exceptions from the principle of absolute novelty.

The first exception for disclosure of inventions at certain exhibitions would seem to be required because of Article 11 of the Paris Convention for the Protection of Industrial Property. As regards the practical implementation of the exception, it will be necessary to provide elsewhere in the European patent law that the competent national authorities must publish details of international exhibitions organised by them and that an as yet unspecified institution common to the Contracting States must publish details of international exhibitions recognised by it and formally communicate such publication to the European Patent Office.

The second derogation is for the case of wrongful disclosure of an invention by a third party. The Preliminary Draft took over the derogation from the Draft Nordic patent law. Von Zweigbergk also proposed that the derogation be included in a convention on harmonisation of the laws of Council of Europe States.
Comments

on the first Preliminary Draft Convention
relating to a European patent law
of 14 March 1961

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(Articles 11 to 29)
In order to leave no lacunae in the text submitted, the Working Party decided to specify that patent applications published on the same day as the prior application was filed also formed part of the state of the art.

To eliminate the risk of duplicated patents for a single invention if two applications were filed by two different applicants on the same day, the Working Party endorsed a proposal by Mr. Pfanner that paragraph 3 be supplemented by a provision that in such cases the time of filing would be decisive.

The new text of Article 14 was adopted taking account of the amendments made during the discussions.

**Article 15**

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Drafting of the whole of this Article was deferred.

**Article 16**

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Article 16 was adopted by the Working Party. It wanted Article 11, which listed the essential conditions for patentability, to mention inventive step. The words "and involving inventive step" would be inserted at the end of Article 11.

To make Article 16 readily understood, the text as submitted, including the reference to Article 14, was adopted.

Article 16 was adopted by the Working Party.

As proposed by Mr. Fressonnet, the Working Party decided to re-examine the order of the Articles when it had finished drawing up the whole of the Draft Convention. It was already clear that the numbering of Articles 11 and 12 would not change, that Article 14 would become Article 13, that Article 15 (discussion of which had been deferred) would become Article 14 and the former Article 13 would become Article 16.
Mr. Fressonnet was less concerned with numbers than with certainty. For the inventor it was of prime importance to know for certain what exhibitions were protected.

The Chairman thought they would have to look for a compromise solution. In the meantime, the current text of Article 15(a) would be retained in brackets.

He hoped that the discussions to be held on the matter the following week between the experts of the Council of Europe would clear up the problem. He further asked the French delegation to draw up by 15 June a list of exhibitions protected not only by the 1928 Paris Convention on international exhibitions itself but also by the first paragraph of the Annexed Protocol with particular reference to fairs.

Finally, the Chairman considered that a compromise could be reached on the basis of his proposal confined to the small number of official exhibitions and officially recognised exhibitions, e.g. by making such recognition a matter for a joint body.

Examination of Part I of the Preliminary Draft Convention (Articles 11 to 29) was thus concluded. The Chairman noted that only Articles 15 and 29 were being held over with all the others adopted.
Resumption of the discussion on Article 15 (a) of the Preliminary Draft

The Chairman recalled that discussion on disclosure at an international exhibition had been postponed at the meeting on 19 April to enable the delegations to consider the text of the 1928 Paris Convention on international exhibitions.

Before opening the discussion, he reminded the Working Party that in accordance with the Co-ordinating Committee's decisions, it had decided to include voluntarily the non-prejudicial disclosure provided for in Article 11 of the Paris Convention for the Protection of Industrial Property, which referred to international exhibitions without defining them.

The Chairman's proposal covered inventions exhibited at officially organised international exhibitions and private international exhibitions accorded official recognition.

Mr. De Reuse suggested that they should merely refer to the definition of international exhibitions given in Article 1 of the 1928 Paris Convention on international exhibitions. That definition was confined to a small number of exhibitions, to which foreign countries were invited through diplomatic channels and which were not of a periodic nature. The restriction was necessary because, with a text as vague as that of Article 11 of the Paris Convention for the Protection of Industrial Property, there was a real danger that exhibitors might find their priority rights refused in some countries.

Mr. De Muysen shared Mr. De Reuse's fears and expressed reservations regarding Article 15(a).

Mr. Pfanner on the other hand thought that it would be contrary to the spirit of Article 11 of the Paris Convention for the Protection of Industrial Property to refer to Article 1 of the 1928 Paris Convention on international exhibitions because the latter Article 1 was too restrictive. He was in favour of more uniform and wider protection for disclosure at international exhibitions.
The Working Party adjourned this question until its next meeting to allow time for contacts with interested circles and also to take account of the outcome of the next meeting of the Committee of Experts of the Council of Europe.

Discussion of Article 16 of the Preliminary Draft

The Chairman reminded the Working Party of its mandate from the Co-ordinating Committee in this respect. The Working Party was to examine whether the concept of "inventive step" should be incorporated in the European Convention, and if so, whether it should be defined.

The Chairman pointed out that there had already been two attempts to define it, one in Article 16, the other in Article 14 (second variant, paragraph 1) of the Preliminary Draft.

The difference between the two definitions lay in the words "substantially" ("essentiellement", "merklich") on the one hand and "was obvious" ("allait de soi", "nahe lag") on the other. That difference was not between a subjective concept and an objective concept but between a quantitative criterion and a qualitative criterion.

The aim of the proposed criterion in Article 16 was to protect an invention by a patent on condition that it involved inventive step (qualitative characteristic). The aim of the wording of Article 14, second variant, paragraph 1, (Nordic draft) on the other hand was to grant a patent for an invention on condition that it was at a certain remove from the state of the art (quantitative characteristic). It was quite conceivable, for example, that a new invention, involving only a slight change in the state of the art, could nevertheless constitute a genuine inventive step although not being at a sufficient remove from the state of the art to satisfy the Nordic criterion. The patentability position would therefore differ under the two systems.
The Chairman turned to Article 15(b). He explained that that provision was concerned not with disclosure authorised by the inventor but only with cases where the disclosure was against his wishes. The provision was designed to give proper compensation for an inventor whose ideas had been stolen or who had been the victim of industrial espionage or abuse of a position of trust, as an ordinary civil-law action for damages could not give him full satisfaction. It was nonetheless true that that provision ran contrary to the principle of absolute novelty and that it was somewhat wanting as regards legal certainty. But he thought that the rule would be applied only rarely and that any possible abuse could be limited by a restrictive wording.

Mr. Fressonnet did not want to adopt a final stance but pointed to the fact that the question was currently being studied by the Committee of Experts of the Council of Europe. He asked for those discussions to be taken into account before the question was decided.

The Chairman thought that the restricted solution proposed by him (Article 15(b)) would be acceptable since the strongly contrasting solutions adopted in Germany on the one hand and countries such as the Netherlands, on the other, had both been favourably received by the interested circles.

Mr. Roscioni said that he was against giving any period of grace for disclosure authorised by the inventor. On the other hand he was in favour of sub-paragraph (a) and the principle of grant in accordance with sub-paragraph (b). He wanted the concept "evident abuse" defined more closely. He suggested use of the words "evident abuse confirmed by the judgment of a criminal court".

Finally Mr. van Benthem declared that despite the Netherlands delegation's intention to vote against such a proposal within the Council of Europe, it was prepared to go along with the majority of the Working Party in the interests of harmonising European law.
The Working Party unanimously approved the principle of the Reimer draft. It thought that it was the only practical solution for the European procedure. But it left open the possibility of returning to the question of inventive level when examining Article 16 of the Preliminary Draft. The Working Party also wished to tackle the thorny problem of priority rights again at its next meeting.

The Working Party then turned to the question of what account should be taken of prior national applications. It decided unanimously that they should be taken into consideration when examining a European patent application. This would not give rise to any difficulties since under the European system examination could be deferred for up to five years. Such a time-lag would even allow prior-examination countries to publish the prior application before the European Office began its examination.

The first variant of Article 14, paragraph 3, was transmitted to the Drafting Committee.

Discussion of Article 15 of the Preliminary Draft

Discussion of sub-paragraph (a) of Article 15 was deferred until the Working Party had available the text of the 1928 Paris Convention on International Exhibitions, which had been referred to by Mr. De Reuse. But the opening discussions revealed no unanimity as to the obligation to take account of Article 11 of the Paris Convention for the Protection of Industrial Property. However, since the Co-ordinating Committee had clearly expressed its intentions regarding that Convention, it seemed appropriate to accept those provisions voluntarily.

The meeting was adjourned at 12.30 hrs. and resumed at 15.00 hrs.
Proceedings of the 1st meeting of the Patents Working Party held at Brussels from 17 to 28 April 1961
Article 15
Non-prejudicial disclosures

A disclosure of the invention within the meaning of Article 14 shall not be taken into consideration if it occurred within six months preceding the European patent application and if it was in consequence of

(a) the display of the subject-matter of the invention either by the applicant or his legal predecessor at an official international exhibition organised by the competent authorities of a Contracting State or officially recognised as such by a joint institution of the Contracting States, or

(b) an evident abuse of knowledge of the invention to the detriment of the applicant or his legal predecessor.
Proceedings of the 1st meeting of the Patents Working Party held at Brussels from 17 to 28 April 1961
The Chairman reopened the meeting at 09.45 hrs. He stated that the minutes as from 13 April 1962 would be deemed to have been approved if no requests for corrections were received by the Secretariat before 28 April 1962. The time limit for the last minutes, which were to be sent to delegates after the meeting, would be extended accordingly.

Article 15 (continued)

The Chairman pointed out that sub-paragraph (b) was in conformity with the corresponding provisions of the Strasbourg draft.

Mr. van Benthem wondered whether they should not extend protection for exhibition at an international exhibition so as to grant a priority right.

After some discussion, the Working Party decided that the Drafting Committee should re-examine the text of Article 15 in the light of the corresponding article of the Strasbourg draft.

It would also draw up a footnote that some of the delegations would approve the text of Article 15 only if a similar rule was accepted within the Council of Europe.

The text could be revised after the September meeting of the Council of Europe in Strasbourg.

Article 15 was referred to the Drafting Committee.

Article 16

Mr. Fressonnet proposed that they adopt the wording of the Strasbourg draft (Article 4).

The Chairman noted that that text did not modify the principles of Article 16 but merely gave the Officer wider powers of interpretation.
It therefore seemed appropriate to give only very limited protection. Since the French proposal entailed some difficulties regarding the European Office's procedure, they should adopt the provision figuring in the Council of Europe text. The Working Party therefore decided to delete the brackets from around Article 15 and to include in sub-paragraph (a) the text of the corresponding provision in the Council of Europe draft.

The meeting adjourned at 18.00 hrs.
Mr. van Benthem pointed out that that proposed wording amounted to a change of substance. The condition proposed by Mr. Fressonnet was to be found in the Netherlands law and in practice it was a very strict criterion. Very often the descriptions given in patent applications were not sufficient to carry out the inventions. If the French wording were adopted, such prior applications and patents could not be regarded as forming part of the state of the art. Furthermore, there were also purely theoretical publications which could not technically be carried out directly. They were, however, still part of the state of the art.

Mr. Fressonnet said that it was not the intention of the French delegation to change the substance of Article 14(2). He therefore agreed with the majority of the Working Party.

Article 14 was adopted without any change beyond those agreed on earlier.

Article 15

All the delegations except the German delegation thought that temporary protection for exhibitions should be confined to recognised exhibitions. The Belgian delegation maintained its reservation that they should hold to the provisions of the special Convention of 1928.

The Working Party thought that the European Convention should include a provision on temporary protection for certain exhibitions in order to comply with the obligations under Article 11 of the Paris Convention for the Protection of Industrial Property. But clearly only joint measures by all the countries of the Paris Union could afford proper protection. Any protection afforded by the European Convention might well deceive inventors by giving them a false sense of security which would be non-existent if they went on to file applications in non-Contracting States.
Proceedings of the 5th meeting of the Patents Working Party held at Brussels from 2 to 18 April 1962
Article 12 (15)
Non-prejudicial disclosures

A disclosure of the invention within the meaning of Article 11 shall not be taken into consideration if it occurred within six months preceding the application for a European patent and if it was in consequence of:

(a) an evident abuse in relation to the applicant or his legal predecessor, or

(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and revised on 10 May 1948.

Note:
A number of delegations state that they can only approve this text if a similar provision is incorporated in a Convention concluded under the aegis of the Council of Europe.
VE MAY 1962
PRELIMINARY DRAFT CONVENTION
RELATING TO A
EUROPEAN PATENT LAW
next meeting of the Council of Europe Committee of Experts, Mr. van Benthem wanted
to know the views of the other delegations on a possible proposal for incorporating
a stricter rule in the Council of Europe Draft. He pointed out that the Strasbourg
Draft left the States free to give their nationals wider protection. In other
words, should the minimum protection rule be transformed into that of maximum
protection?

Mr. De Muyser and Mr. Degavre were prepared to accept such a proposal in order
to guarantee inventors greater legal certainty.

Mr. Pfanner thought that, having regard to its discussions with interested circles,
the German delegation would not be able to accept such a proposal in Strasbourg.

The Chairman said that, as set out in the Council of Europe Draft, the proposal
gave rise to some legal uncertainty. But that uncertainty existed only for
inventors from countries that gave wider protection than the minimum protection
under the Draft.

Article 12 was adopted.

Article 13(16).

Discussion was postponed until the French delegation arrived in order to decide
whether the word "particularly" should be retained even though the Strasbourg
Draft was worded differently.

Article 14(13)

Mr. van Benthem explained that Article 14 followed the principle of the Strasbourg
Draft but was more explicit. That was in fact why the Netherlands delegation was
proposing that the Strasbourg Draft adopt the wording of the European Convention.
the Netherlands proposal in Strasbourg for the incorporation of the European Convention provision in the Council of Europe Draft. He also thought that the question of micro-organisms should be left to the courts since there was a risk of any express rule distorting the sense of the provision by introducing an a contrario argument.

Replying to Mr. Briganti, Mr. van Benthein stated that inventions with national defence implications were now covered by Article 67 (62).

Article 10 was approved.

Article 11(14)

The discussion was deferred until the following week pending a proposal to be made by the German delegation.

Article 12(15)

Mr. van Benthein explained that the Drafting Committee had wondered whether complete protection should not be afforded against unauthorised disclosure. The Netherlands delegation could now accept the current text in view of the fact that priority based on exhibitions would require a check that the subject-matter of the subsequent application was identical with the matter exhibited which would entail considerable problems.

Mr. Sünner and Mr. van Benthein wondered about the significance of the note at the end of Article 12.

The Chairman informed them that it merely meant that the Working Party would have to discuss a new solution for the European Convention if the Council of Europe Draft came to nothing. But he thought that the prospects for the Strasbourg Draft could be viewed with some optimism.

With a view to co-ordinating the six delegations from the EEC countries for the
Proceedings of the 6th meeting
of the Patents Working Party
held at Munich
from 13 to 23 June 1962
PART II—PATENT LAW

CHAPTER I—PATENTABILITY

Article 9. Patentable inventions
European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

Article 10. Exceptions to patentability
European patents shall not be granted in respect of:
(a) inventions the publication or exploitation of which would be contrary to 'ordre public' or morality (the mere prohibition of the exploitation of the invention not making it so contrary);
(b) plant or animal varieties or essentially biological processes for the production of plants or animals.

Article 11. Novelty
(1) An invention shall be considered to be new if it does not form part of the state of the art.
(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing the application for a European patent.
(3) Additionally, the contents of European patent specifications published on or after the date referred to in paragraph 2, shall be considered as comprised in the state of the art, provided that such patents have an earlier priority date. If several applications for European patents have been filed on the same day, the order in which they were filed shall determine how this paragraph is to be applied.

Article 12. Non-prejudicial disclosures
A disclosure of the invention within the meaning of Article 11 shall not be taken into consideration if it occurred within six months preceding the application for a European patent and if it was in consequence of:
(a) an evident abuse in relation to the applicant or his predecessor in title;
(b) the fact that the applicant or his predecessor in title has displayed the invention at official, or officially recognised, exhibitions falling within the terms of the Convention relating to international exhibitions signed at Paris on 22nd November, 1928, and revised on 10th May, 1948.

Note:
This article reproduces exactly one of the provisions in the draft Convention for the unification of patent laws drawn up under the aegis of the Council of Europe.
Translation of a Draft Convention relating to a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
FIVE SHILLINGS NET
Article 12

Having heard the comments of Mr. Lemontey, the Working Party decided that in the French text the word "opposables" should be substituted for "préjudiciales" in the heading to Article 12.
Proceedings of the 7th meeting of the Patents Working Party held at Brussels from 11 to 22 February 1963
Mr. Fressonnet proposed that the purely practical reasons in support of the draft text should be put forward at the meeting to be held with UNICE and possibly other international organisations.

In conclusion, the Chairman noted that the Working Party did not want to take a final decision. He recorded the views of the Working Party that the UNICE proposal was impractical and that of Mr. van Bentheim unsuitable. There remained the compromise proposal and the current text.

Mr. Pfanner was asked to draw up a draft text incorporating his proposal. The Working Party would look at the question of the meeting with UNICE on Friday.

Article 12

Mr. Froschmaier read the opinions of the international associations. UNICE and UNION opposed Article 12. The Scandinavian draft on the other hand was substantially the same. After some discussion, the Working Party concluded that the text should be retained in the Preliminary Draft since a corresponding obligation was contained in the Strasbourg Draft.

At the instigation of Mr. Pfanner, the text was transmitted to the Drafting Committee which was to take account of the corresponding provision in the Strasbourg Draft.

Article 13

Mr. Froschmaier read the opinions of the international associations.
Proceedings of the 10th meeting of the Patents Working Party held at Brussels from 16 to 27 September 1963
Article 12
Non-prejudicial disclosures

A disclosure of the invention within the meaning of Article 11 shall not be taken into consideration if it occurred during the six months preceding the filing of the European patent application and if it was due to, or in consequence of:

(a) an evident abuse in relation to the applicant or his legal predecessor;

(b) the fact that the applicant or his legal predecessor has displayed the invention at official, or officially recognised, international exhibitions falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and amended on 10 May 1948.
Amendments to the Preliminary Draft Convention
relating to a European Patent Law

(Articles 1 to 175)

This document replaces document 11.155/IV/64-E
of 2 October 1964 (Articles 1 to 103)

2335/IV/65-E
Certain delegations observed, however, that the system proposed by the Netherlands delegation would give rise to difficulties connected with the fact that several prior rights having different contents could be made the subject of opposition proceedings in different countries.

The Netherlands delegation was invited to consider the procedural provisions which could be adopted later in the event of a solution less restrictive than that laid down in paragraph 4 being decided upon.

Article 12 - Non-prejudicial disclosures

27. Article 12 corresponds to Article 4, paragraph 4 of the 1963 Strasbourg Convention.

Article 13 - Inventive step

28. The matter referred to in Article 13 is the subject of Article 5 of the Strasbourg Convention, which leaves to the Signatory States the option of totally or partially excluding the earlier application in deciding whether there has been an inventive step.

The Working Party was unable to reach a joint position on the second sentence of Article 13, for which it has provisionally accepted two variants.

Article 14 - Industrial application

29. Article 14 corresponds to Article 3 of the 1963 Strasbourg Convention.
MINUTES
of the meeting of Working Party I
(Luxembourg, 8 - 11 July 1969)

I

1. The first working meeting of Working Party I, set up by the Conference, was held at Luxembourg from Tuesday 8 to Friday 11 July 1969.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Brussels on 21 May 1969, the Chair was taken by Dr. HAERTEL, President of the German Patent Office.

In addition to the Commission of the European Communities, the following inter-governmental organisations, which had been invited to take part in the work of the Working Party, were represented: BIRPI, the General Secretariat of the Council of Europe and the International Patent Institute (1).

(1) See annexed list of participants in the meeting of the Working Party.
Article 12
Non-prejudicial disclosures

A disclosure of the invention within the meaning of Article 11 shall not be taken into consideration if it occurred within six months preceding the filing of the application for a European patent and if it was due to, or in consequence of:

(a) an evident abuse in relation to the applicant or his predecessor in title, or;

(b) the fact that the applicant or his predecessor in title has displayed the invention at official, or officially recognised, exhibitions falling within the terms of the Convention relating to international exhibitions signed at Paris on 22 November 1928 and revised on 10 May 1948.

Note to Article 12:

Article 12 corresponds to Article 4, paragraph 4, of the Strasbourg Convention.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

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

(Articles drafted by Working Parties I, II, III and IV)
Re. Article 1, No. 1 - Patent classification in use by the European Patent Office

10. The Office is to use the Strasbourg international classification. The Sub-Committee decided to draft this provision in a suitably flexible manner, in order that the Office might be able to make use of other classifications should this be necessary. One delegation recalled that the terminology of the international classification would have to be reviewed in the light of the conclusions of the joint "Council of Europe - BIRPI" Working Party.

Re. Article 5 - Persons entitled to apply for a European Patent

11. The Sub-Committee considered it premature to lay down implementing regulations for Article 5 of the First Preliminary Draft, since Working Party I will probably have to discuss this Article again with regard to the PCT text signed in Washington on 19 June 1970.

Re. Article 12, No. 1 - Disclosure of the invention at an international exhibition

12. In adopting this provision, the Sub-Committee took care to make it more favourable for the applicant. The latter will be allowed a period of 4 months from the filing date in which to prove, by means of an official certificate, that he has exhibited the invention. Further, such a certificate would be accompanied by an accurate identification of the invention.

BR/43 e/70 ond/RT/cm
MINUTES

of the meeting of Working Party I sub-Committee on
"Implementing Regulations"
(Luxembourg, 24-26 June 1970)

1. The first working meeting of the sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention (cf. BR/GT I/41/70, page 26, point 50) was held at Luxembourg on 24 to 26 June 1970. In accordance with the decision taken by the sub-Committee at its inaugural meeting held at Luxembourg on 2 April 1970, the Chair was taken by Mr. FRESSONNET, Deputy Director, French Industrial Property Institute (cf. BR/GT I/40/70). In addition to the national delegations represented in Working Party I, the meeting was attended by the IIB (The Hague) (1).

(1) Annex I gives the provisional agenda for the meeting and Annex II contains the list of those taking part in the meeting.

BR/43 e/70 kel/RT/bm
(2) Den Stand der Technik bildet alles, was vor dem Anmeldetag der europäischen Patentanmeldung der Öffentlichkeit durch schriftliche oder mündliche Beschreibung, durch Benutzung oder in sonstiger Weise zugänglich gemacht worden ist.

(3) Als Stand der Technik gilt auch der ursprüngliche Inhalt europäischer Patentanmeldungen, deren Anmeldetag vor dem in Absatz 2 genannten Tag liegt und die erst an oder nach diesem Tag nach Artikel 92 veröffentlicht worden sind.

(4) Absatz 3 ist nur anzuwenden, wenn ein für die spätere europäische Patentanmeldung benannter Vertragsstaat auch für die veröffentlichte frühere Anmeldung benannt worden ist.

(5) Die Absätze 1 bis 4 stehen der Patentierbarkeit der in Artikel 50 Absatz 3 genannten Stoffe oder Stoffgemische nicht entgegen, selbst wenn die betrreffenden Stoffe oder Stoffgemische zum Stand der Technik gehören, sofern der Stand der Technik eine Offenbarung dieser Stoffe oder Stoffgemische für irgendein in Artikel 50 Absatz 2 Buchstabe d genanntes Verfahren nicht einschließt.

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**Artikel 53**

**Unschädliche Offenbarungen**

(1) Für die Anwendung des Artikels 52 bleibt eine Offenbarung der Erfindung außer Betracht, wenn sie innerhalb von sechs Monaten vor dem Anmeldetag der europäischen Patentanmeldung erfolgt ist und unmittelbar oder mittelbar zurückgeht:

a) auf einen offensichtlichen Mißbrauch zum Nachteil des Anmelders oder seines Rechtsvorgängers oder


(2) Absatz 1 ist im Fall des Buchstabs b nur anzuwenden, wenn der Anmelder bei Einreichung der europäischen Patentanmeldung angibt, daß die Erfindung zur Schau gestellt worden ist, und eine entsprechende Bescheinigung einreicht, für die die Form und die Frist zur Einreichung in der Ausführungsordnung vorgeschrieben sind.

Vgl. Regel 23 (Ausstellungsbescheinigung)

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**Artikel 54**

**Erfinderische Tätigkeit**

Eine Erfindung gilt als auf einer erforderlichen Tätigkeit beruhend, wenn sie sich für den Fachmann nicht in naheliegender Weise aus dem Stand der Technik ergibt.

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**Article 53**

**Non-prejudicial disclosures**

(1) For the application of Article 52 a disclosure of the invention shall not be taken into consideration if it occurred within six months preceding the date of filing of the European patent application and if it was due to, or in consequence of:

(a) an evident abuse in relation to the applicant or his legal predecessor, or

(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and amended on 10 May 1948 and 16 November 1966.

(2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the period and under the conditions laid down in the Implementing Regulations.

Cf. Rule 23 (Certificate of exhibition)

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**Artikel 54**

**Inventive step**

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTerteilungsVERFAHREN

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE 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
7 Wir zweifeln, ob eine Erfindung eines Stoffes oder Stoffgemisches zur medizinischen Anwendung als — wie in Artikel 55 definiert — gewerblich anwendbar betrachtet werden kann, wenn der Stoff als solcher bekannt ist. Unseres Erachtens sollte daher Artikel 50 Absatz 3 geändert werden und folgenden Wortlaut erhalten:

„Das Erfordernis, daß eine Erfindung gewerblich anwendbar sein muß, sowie Absatz 2 Buchstabe d stehen der Patentierbarkeit . . . nicht entgegen.“

Artikel 53

8 Artikel 53 Absatz 1 Buchstabe a entspricht dem Wortlaut des Artikels 4 Absatz 4 des Straßburger Übereinkommens. Er schließt vom Stand der Technik nach Artikel 52 Absätze 2 und 3 alles aus, was infolge eines offensichtlichen Missbrauchs innerhalb von sechs Monaten vor Einreichung der europäischen Patentanmeldung veröffentlicht worden ist. Er schließt daher von Artikel 52 Absatz 3 europäische Patentanmeldungen mit einem früheren Prioritätstermin aus, falls sie innerhalb der betreffenden Frist veröffentlicht worden sind; dagegen werden europäische Patentanmeldungen mit einem früheren Prioritätstermin, die nach Ablauf der betreffenden Frist veröffentlicht worden sind, nicht ausgeschlossen. Unseres Erachtens sollten diese beiden Fälle der früheren Anmeldung gleich behandelt und beide ausgeschlossen werden. Wir schlagen daher vor, daß die Worte „innerhalb von“ in der dritten Zeile des Artikels 53 (Absatz 1) durch die Worte „nicht früher als“ ersetzt werden.

Unseres Erachtens ist dies mit dem Straßburger Übereinkommen vereinbar und entspricht auch dessen Geist.

Artikel 144

9 Wir schlagen vor, diesen Artikel durch folgenden Satz zu ergänzen: „Diese Bestimmung gilt auch für die gemäß Artikel 133 Absatz 3 handelnden Angestellten.“

AUSFÜHRUNGSORDNUNG

Regel 102

10 Absatz 8 scheint auf den ersten Blick einen Verstoß gegen die Bestimmung einer Vollmacht gutzuheißen, die der Anmelder seinen Bevollmächtigten erteilt hat. Unseres Erachtens ist dies nicht beabsichtigt; wir meinen vielmehr, daß man dem Europäischen Patentamt anheimstellen will, nur mit einem Bevollmächtigten zu verhandeln.

Wir schlagen deshalb vor, Absatz 8 wie folgt neu zu fassen:

7 We doubt whether an invention of a substance or composition for use in medical treatment can be regarded as susceptible of industrial application as defined in Article 55 where the substance is known per se. We consider therefore that Article 50, paragraph 3, should be amended to read:

“The requirement that an invention shall be susceptible of industrial application and the provision of paragraph 2(d) do not exclude the patentability . . . in that provision.”

Article 53

8 Article 53, paragraph 1(a), follows the wording of Article 4, paragraph 4, of the Strasbourg Convention. It excludes from the prior art of Article 52, paragraphs 2 and 3, anything published in consequence of an evident abuse within the six months preceding the filing of the European patent application. It therefore excludes from Article 52, paragraph 3, European patent applications of earlier priority date provided they were published within that period; it does not exclude European patent applications of earlier priority date which are published after the expiry of that period. In our opinion these two types of earlier application should be treated identically and both should be excluded. We therefore propose that the word “within” in Article 53, line 3, be replaced by the words “not more than”.

In our view this is consistent with, and in accord with the spirit of, the Strasbourg Convention.

Article 144

9 We suggest the addition of the following sentence: “This provision shall apply also to representatives referred to in Article 133, paragraph 3.”

IMPLEMENTING REGULATIONS

Rule 102

10 Paragraph 8 appears on the face of it to sanction a breach of an authorisation given by the applicant to his representatives. We do not believe this is intended: on the contrary we think the intention is to give freedom to the European Patent Office to deal e.g. with only one of the representatives.

We suggest therefore that paragraph 8 be redrafted as follows:
STELLUNGNAHME
DER REGIERUNG DES VEREINIGTEN KÖNIGREICHS

COMMENTS
BY THE UNITED KINGDOM GOVERNMENT

PRISE DE POSITION
DU GOUVERNEMENT DU ROYAUME-UNI
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)

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

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

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

____________________

1973
Verbandsübereinkunft bildete bislang ein Hindernis dafür, im nationalen Recht nur einiger weniger Staaten eine hiervon abweichende Regelung vorzusehen. Da nunmehr jedoch nicht weniger als 21 Staaten an der Schaffung der Europäischen Patentorganisation zusammenarbeiten, ist die Situation anders, und es bietet sich die Möglichkeit für eine Revision. Für Erfinder wäre es natürlich von großer Bedeutung, ihre Erfindungen zunächst einmal auf Ausstellungen zur Schau zu stellen, weil sie hierdurch die Möglichkeit erhielten, mit den an Erfindungen interessierten Kreisen in Verbindung zu treten und so aus ihren Erfindungen größeren Nutzen zu ziehen. Wir schlagen deshalb vor, dem Artikel 53 Absatz 1 einen Buchstaben c folgenden Inhalts hinzuzufügen:

„Als mit Buchstabe b in Einklang stehend gelten Fälle, in denen die Erfindung auf einer internationalen Ausstellung offenbart worden ist, die von der Regierung des Landes, in dem der Ausstellungsort gelegen ist, zu einer Ausstellung erklärt worden ist, auf die Artikel 53 anzuwenden ist.“


5 Finland wishes a particular attention to be fixed on the inventor's position within the European patent system. According to Article 58, paragraph 2, of the Draft Convention the applicant is presumed to be entitled to exercise the right of the inventor or his successor according to Article 58, paragraph 1. Hence he is not required to show proof of his right. This is sharply contrary to the principles of the Finnish (and Nordic) legislation in this respect. According to the latter the applicant is obliged to name the inventor in the application as well as show proof of legal transfer of the right. Inventors' organisations in Finland have strongly underlined that the same rules should apply in the European patent system. We suggest, therefore, following addition to Article 58, paragraph 2: "provided that the applicant when the invention is obtained from the inventor has submitted a deed of assignment executed by the inventor". In conformity therewith it should be considered in Article 90 that checking the existence of a deed of assignment shall be part of the formal examination of applications, and that non-performance of filing such a possibly missing deed of assignment will be regarded withdrawal of the application.


6 Finland takes this opportunity to express that it very much appreciates that the stipulations in Articles 63, 65 and 68 regarding the possibility of an individual state to prescribe the use of an official language have been worded in complete harmony with the wishes stated by the Finnish delegation at the Government Conference in June 1972.
1 Le Gouvernement finlandais constate avec satisfaction que le texte actuel des projets proposant l'institution d'un système européen de délivrance de brevets a été très soigneusement élaboré dans ses moindres détails et constitue une œuvre législative de très haute qualité. D'une manière générale, le Gouvernement finlandais souhaite souligner que le système de délivrance de brevets proposé constitue un progrès important qui permettra aux demandeurs d'obtenir la protection conférée par le brevet plus aisément que cela n'a été le cas jusqu'à présent, tout en réduisant le travail des offices nationaux de brevets. Le Gouvernement finlandais espère également que cette coopération européenne en matière de brevets pourra se combiner heureusement avec le système de coopération en matière de brevets instauré par le PCT.

2 Le Gouvernement finlandais souhaite souligner également qu'il constate avec plaisir l'harmonie qui règne entre la convention instituant un système européen de délivrance de brevets et la législation finlandaise en matière de brevets qui, quant à elle, est pratiquement complètement uniformisée avec les législations correspondantes en vigueur dans les trois autres États nordiques. Toutefois, le Gouvernement finlandais désire suggérer que l'on modifie quelques points pour lesquels il croit qu'il serait important d'adopter des dispositions différentes. Voici quels sont ces points et les solutions qu'il préconise à leur sujet:

3 En ce qui concerne l'article 23, le Gouvernement finlandais estime que les avis que l'Office européen des brevets est tenu de fournir en vertu de cet article devraient l'être gratuitement. En Finlande, il n'existe aucune exception au principe de la gratuité des avis officiels de cet ordre, car l'on estime que les parties à un litige ne peuvent être tenues d'assumer les frais d'un avis demandé d'office par un tribunal. En pareil cas d'ailleurs, les frais ne sauraient en être non plus imputés directement à l'État.

4 Selon l'article 53, paragraphe 1, lettre b), n'est pas prise en considération pour l'application de l'article 52 la divulgation d'une invention du fait de son exposition dans une exposition internationale officielle, ou officiellement reconnue, au sens de la Convention concernant les expositions internationales signée à Paris le 22 novembre 1928 et modifiée le 10 mai 1948 et le 16 novembre 1966. Cette règle est actuellement en vigueur en Finlande également. Le Gouvernement finlandais estime néanmoins que pour sauvegarder les droits de l'inventeur, il est nécessaire d'accroître considérablement le nombre des expositions pour lesquelles on considère que le fait qu'une invention y ait été exposée ne permet pas, pendant une période donnée, d' invoquer l'absence de nouveauté contre une demande de brevet concernant cette invention. Les dispositions restrictives contenues dans l'actuel projet de convention, qui régissent jusqu'à présent la procédure en question, ont été considérées par les

Finland notes with satisfaction that the present text of the proposed European system for the grant of patents is very carefully worked out in every detail. It represents legislative work of a very high level. Quite generally speaking, Finland wishes to point out that the planned system for the grant of patents implies a significant improvement of applicants' possibilities to obtain patent protection in an easier way than up to now, simultaneously reducing the work of national patent offices. We also hope the European patent co-operation profitably may be combined with the patent co-operation system represented by the Patent Cooperation Treaty.


Finland further wishes to emphasise that it appreciates the prevailing harmony between the European Patent Convention and the Finnish patent legislation, which, in turn, is practically completely uniform with corresponding legislation of the three other Nordic countries. However, Finland wishes to suggest revision of a few points in which it believes different provisions would be important. The points of view and propositions are the following:

In bezug auf Artikel 23 meinen wir, daß für Gutachten, die das Europäische Patentamt nach diesem Artikel zu erstellen hat, keine Gebühren erhoben werden sollten. In Finnland bestehen keine Ausnahmen von der Regel, daß derartige Gutachten gebührenfrei sind, denn es wird davon ausgegangen, daß die Parteien eines Rechtsstreits nicht verpflichtet werden können, die Kosten eines Gutachtens zu tragen, das von einem Gericht von Amts wegen angefordert wird. Auch sollten die Kosten in einem solchen Fall nicht unmittelbar dem Staat angelastet werden.

As regards Article 23 we hold that such opinions should be free of charge, which the European Patent Office is obliged to give in accordance with same Article. In Finland there are no exceptions to the principle that official opinions of this kind are free of charge in consideration of that parties of a litigation cannot be bound to cover the costs of an opinion requested ex officio by a court of law. Nor should the costs in such a case directly be charged to the state.


According to Article 53, paragraph 1(b), disclosure of an invention by displaying it at an official, or officially recognised, international exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on 22 November 1928 and amended on 10 May 1948 and 16 November 1966, shall not be taken into consideration for the application of Article 52. This same rule applies at present in Finland also. Nevertheless Finland holds that the right of the inventor necessitates quite a large widening of the circle of exhibitions which are regarded to be of such a kind that display of an invention is not for a stipulated period of time a novelty bar for a patent application regarding said invention. The narrow stipulation included in the present Draft Convention, up to now ruling the procedure in question has been regarded as a serious disadvantage by the inventors. Article 11 of the Paris Convention has up to the present formed a hindrance for a regularisation at variance therewith.
STELLUNGNAHME
DER FINNISCHEN REGIERUNG

COMMENTS
BY THE FINNISH GOVERNMENT

PRISE DE POSITION
DU GOUVERNEMENT FINLANDAIS
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
Article 53, paragraph 2, and/or Rule 23(bis) (new)

Proposal: Article 53, paragraph 2 should be supplemented by a second sentence and/or a new Rule 23(bis) should be drawn up, as follows:

"The President of the European Patent Office shall keep a list of the exhibitions recognised under Article 53, paragraph 1(b) and shall publish it periodically in the Official Journal of the European Patent Office"

Reason: If it is mentioned in a European patent application that the invention has been displayed at an exhibition, the European Patent Office has to examine whether such an exhibition fulfils the requirements of Article 53, paragraph 1(b). The examination could be facilitated by the proposed list which would be kept up to date. The keeping of this list should cause no difficulties because an exhibition recognised within the meaning of the abovementioned provision would have to be registered in advance with the International Exhibition Office set up as a result of the Convention on international exhibitions (cf. Article 8 of this Convention).

The periodical publication of this list would remove any uncertainty on the part of the applicant as regards the subsequent recognition of an exhibition.

The proposed supplement is considered as an implementing provision which could also be included as a Rule in the Implementing Regulations (e.g. as Rule 23(bis), in which case the title of Chapter IV would be supplemented).
Article 52, paragraph 3, Article 53, paragraph 1 and Article 74, paragraph 2

Proposal: The first part of paragraph 2 of Article 74 should be replaced by the following text:

"(2) The whole technical content of a European divisional application or of a European patent granted on the basis thereof shall not extend beyond the content of the earlier application as filed; in so far ..."

Reason: Since the Inter-Governmental Conference has decided in favour of the "whole content approach" (Article 52, paragraph 3), all the consequences must be taken into consideration:

(a) In Article 53, paragraph 1 there is no justification to limit the preclusive period to 6 months before the date of filing because otherwise it would only apply with reference to Article 53 paragraph 2 and not to paragraph 3. (In support of the United Kingdom proposal in M/10, No. 8).

(b) In accordance with Article 74, paragraph 2, European divisional applications are to receive the date of filing of the earlier application; they are therefore added "retrospectively" to the state of the art within the meaning of Article 52, paragraph 3. In relation to other applicants it would be unjust to allow technical matter, such as new methods of carrying out the invention, examples, diagrams etc. which were not contained in the earlier application, to become part of the state of the art. Divisional applications should therefore be backdated, only when their whole technical content is taken substantively from the earlier application. However, the "whole content approach" does not disallow deviations in drafting only from the earlier application and even allows changes to a particular passage of the description in the earlier application to a claim in the divisional application.

/54/I/II/III kin/KM/mb .../...
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/54/I/II/III
Original: German

CONFERENCE DOCUMENT

Drawn up by: The Swiss delegation

Subject: Proposals for amendments to the draft texts
Article 53, paragraph 1(c) states that:

"co-ordinated with item (b) shall be regarded such a case where the disclosure has taken place at an international exhibition in one of the Contracting States, which the government of that State has, in accordance with provisions laid down by the Administrative Council, declared to be of a kind to which the provisions of this Article are applicable."

\[\text{M/55/I/mb}\]
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973
M/65/I
Original: English

CONFERENCE DOCUMENT

Drawn up by: The delegations of Finland and Norway

Subject: Proposal for amendment to Article 53, paragraph 1(c)
         (cf. Comments)
Article 53
Non-prejudicial disclosures

(1) For the application of Article 52 a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:

(a) Unchanged from 1972 published text
(b) 

(2) Only concerns German text.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 13 September 1973
M/ 74/I/R 1
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 12 SEPTEMBER 1973

Articles of the Convention:

Article 14
Article 50
Article 52
Article 53
Article 58
Article 59
Article 63
Article 65
Article 68
Article 87

Rules of the Implementing Regulations:

Rule 1
Rule 2
Rule 13
Rule 16
(2) Only concerns German text.

(6) The fact that the applicant or his legal predecessor in title displayed the invention at an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on 22 November 1965 and amended on 10 May 1948, 16 November 1966 and 30 November 1972.

(a) Unchanged from 1972 published text.

(b) For the application of Article 52(1) disclosures of the invention shall not be taken into consideration if they occurred no earlier than six months preceding the filing of the patent application and if it was due to, or in consequence of:

Non-prejudicial disclosures

Article 53
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 14 September 1973
M/80/I/R 2
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 13 SEPTEMBER 1973

Articles of the Convention:

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Rules of the Implementing Regulations:

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Article 53

Non-prejudicial disclosures

(1) For the application of Article 52 a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:

(a) Unchanged from 1972 published text.

(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and amended on 10 May 1948, 16 November 1966 and 30 November 1972.

(2) Only concerns German text.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 17 September 1973
M/88/I/R 3
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 15 SEPTEMBER 1973

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Rules of the Implementing Regulations:

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Article 58

Non-prejudicial disclosures

(1) For the application of Article 54 a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:

(a) an evident abuse in relation to the applicant or his legal predecessor, or

(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and amended on 10 May 1948, 16 November 1966 and 30 November 1972.

(2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the period and under the conditions laid down in the Implementing Regulations.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 3
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 55 to 83
I. The Committee of the Whole decided unanimously to forward to the Plenary the texts of the European Patent Convention, the Implementing Regulations and the four Protocols annexed to the Convention, as they appear in M/146/R 1 to 14, subject to the following amendments (the references have been amended and typing errors and the punctuation have been corrected in the printed text, but not in the present document):

Convention:

Article 1 (new title)

European law for the grant of patents

Text unchanged

Article 54

(4) ... in so far as a Contracting State ...

Article 55

... 22 November 1928 and last revised on 30 November 1972.

Article 66

Only concerns German text

Article 76

(1) ...; in so far as this provision is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and ...

Article 88

Only concerns German text
MUNICH DIPLOMATIC CONFERENCE

FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 4 October 1973
M/160/K

Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Amendments to the texts of document M/146/R 1 to 15
by the rightful inventor. The first application which was published within 6 months preceding the date of filing of the second application, does not, under the existing text of Article 53, paragraph 1(a), in conjunction with Article 52, form part of the state of the art. In the second, slightly different, example: the first, fraudulent application is filed on 1 January 1981 and published on 1 July 1982. On 1 October 1981 an application relating to the same subject-matter is filed by the rightful inventor. Thus, the wrongly filed application would not, as in the first example, have been published within six months preceding the date of filing of the application by the person rightfully entitled to do so, but afterwards. It would consequently not come under Article 53, paragraph 1(a), and its content would therefore form part of the state of the art. The Chairman continued by saying that the United Kingdom delegation did not seem to consider this result fair. In the cases covered by the second example it did not want the fraudulently filed application to form part of the state of the art.

64. The United Kingdom delegation confirmed that this was the aim of its proposal.

65. The Main Committee adopted the proposal which was seconded by the Netherlands delegation.

66. In this connection, the FICIP delegation raised the question of whether there was a provision in the Convention governing the fate of the earlier, fraudulently filed patent application.

67. The Netherlands delegation referred to Article 59 (61), paragraph 1(c), under the terms of which a person who has been declared the rightful proprietor of a European patent application by judgment of a national court, can request that the European patent application be refused.

68. The FICIP delegation deduced from the above that the person entitled to a European patent must, in any case, institute legal proceedings against the applicant who is not entitled to apply. If he did not do this, no action could be taken against the proprietor of the first application.

69. The Chairman was of the same opinion and considered that if the person entitled to apply did not institute legal proceedings, two patents would have to be granted for the same application.

70. The Finnish and Norwegian delegations suggested adding a new sub-paragraph (c) in paragraph 1 to the effect that it would be sufficient for the invention to have been displayed at an international exhibition which, although it did not come under the 1928 Paris Convention, had been declared by the Government of the country organising the exhibition to be an exhibition to which the provisions of Article 53 (55), paragraph 1(b), were applicable (M/65/1; see also M/12, point 4). Both delegations pointed out that on the basis of the experience of the Scandinavian countries exhibitions which came under the 1928 Paris Convention were rare, so that no account was taken of inventors' interest in their inventions being disclosed in a way which was not prejudicial to novelty. It therefore seemed appropriate to cover a wider range of exhibitions.

71. The French delegation was against this proposal for two reasons. Firstly, Article 53 (55) was an exception to Article 52 (54) which defined the novelty of an invention, and, since it was an exception, should not be extended. Secondly, such an extension would not be in the interests of inventors. Inventors should rather be advised to patent their inventions wherever possible before disclosing them in any way. For example, the law had also been amended in France some years ago so that only the display of inventions at world exhibitions, which admittedly were not very numerous, was non-prejudicial to novelty. This provision was binding as a result of the 1883 Paris Convention.

72. The United Kingdom delegation too did not wish to accept the proposal. It considered that there should be no departure from the definition of novelty and its exceptions found in the 1963 Strasbourg Convention. It was even doubtful whether this exception, which was based on the 1883 Paris Convention, was still appropriate in modern times.

73. The delegation of the Federal Republic of Germany said that, although it sympathised with the Scandinavian proposal, it could not depart from the 1963 Strasbourg Convention which had already been signed, so long as it did not wish to accept different principles for national law and for European law.

74. The Netherlands delegation agreed with the German point of view. It went further and described the proposed extension as being dangerous to the extent that inventors might be encouraged to display their inventions at exhibitions which later would perhaps not be recognised by some countries.

75. The Belgian delegation stated that it, too, would have to reject the proposal for the reasons already mentioned by previous speakers. In addition, the experience gained at the world exhibition of 1958 had shown that virtually none of the inventors had taken advantage of the legal possibilities offered to them.

76. In view of these comments the Finnish and Norwegian delegations withdrew their proposal.

Article 54 (56) — Inventive step

77. The Swiss delegation pointed out that in conformity with the 1963 Convention on the Unification of Certain Points of Substantive Law on Patents for Invention the element of technical progress was not being made a requirement for the grant of a patent. Nor did the delegation want to question this principle. However, if the applicant, of his own accord, furnished proof that technical progress had been made, the delegation wished to see it ensured that this factor was considered in deciding whether there had been an inventive step. To this end, it proposed including a new paragraph 2 (M/31, points 1 and 2).

78. In the opinion of the Netherlands delegation technical progress should be considered in deciding whether an inventive step had been made; however, this was only one of many factors. The delegation therefore said that it was not in favour of the proposed addition.

79. The delegation of the International Chamber of Commerce feared that technical progress might, if specific mention were made of it, assume too much importance in the provision concerning the inventive step: this it did not consider to be right.

80. The UNION delegation saw the danger in the Swiss proposal that technical progress would have to be disclosed in the application, if it was to be considered in deciding whether there had been an inventive step.

81. The United Kingdom delegation was not in favour of the Swiss proposal for reasons similar to those of the Netherlands delegation.

82. The IFIA delegation proposed making the concept of inventive step as objective as possible in the European procedure.

In this connection the Chairman noted that it had not proved possible to find a better definition than that given in Article 54 of the theoretically objective concept of inventive step, in respect of which, however, subjective elements also played a part in practice.

83. Finally, the Chairman noted that the Swiss proposal was supported by none of the Government delegations and was therefore rejected.
patentable. The present text of paragraph 3 was sufficiently clear and did not need to be amended.

41. The Netherlands delegation withdrew its proposal at a subsequent meeting.

42. On a proposal from the delegation of the Federal Republic of Germany (M/11, point 21), the Main Committee agreed to specify in paragraph 3 that the patentability of the subject matter and activities listed in paragraph 2 was excluded only to the extent to which an application or patent related to the subject-matter or activities as such.

43. Finally, the Main Committee referred to the Drafting Committee a drafting proposal from the French delegation concerning paragraph 3 (M/58I/II).

**Article 51 (53) — Exceptions to patentability**

44. The Swiss delegation pointed out that under sub-paragraph (a) patents could not be granted for inventions, the publication or exploitation of which were contrary to "ordre public" or morality. In most instances this provision would not fulfil its purpose because at the examination on filing and the examination as to formal requirements, no check was made on whether the publication of the invention was contrary to "ordre public" or morality and, consequently, the application would normally be published in full. If, however, such an application had already been published, there would no longer be any point in refusing the patent or even revoking a patent which had already been granted. It therefore requested (M/54I/II/III, page 7) either the deletion of the words "publication or" in Article 51 (53), sub-paragraph (a) or alternatively changing Rule 34, paragraph 2, into a mandatory provision.

45. The Chairman drew attention to the fact that if the main proposal were accepted, the European Patent Office would be obliged to grant patents the publication of which was contrary to morality and that once patents had been granted it would no longer be possible to revoke them on account of such an infringement.

46. The Swiss delegation withdrew its main proposal. However, it maintained its subsidiary request concerning Rule 34, paragraph 2 (see below points 2226 et seq.).

47. In connection with Article 51 (53) the Turkish delegation said that it proposed to raise the question of the patentability of methods used to obtain medicines, foodstuffs and fertilisers and the question of the patentability of chemical substances when Main Committee II discussed the final provisions.

**Article 52 (54) — Novelty**

48. The IAPIP delegation requested that paragraph 3 be drafted in such a way that a previous application which was published later did not form part of the state of the art if filed by the same applicant as filed the later application.

49. The Chairman noted that none of the Government delegations wished at this point to raise the problem of "self-collision".

50. The Belgian delegation asked whether it was clear from paragraph 4 that paragraph 3 was only to be applied if the Contracting State designated in the later application was also designated in the earlier published application and that paragraph 3 did not apply to a Contracting State which had not been designated in the earlier application.

51. The Main Committee affirmed that this was clear, in agreement with the United Kingdom delegation, which drew attention to Rule 88 (87), according to which differing claims could be presented for different Contracting States.

52. In order to make this situation quite clear, the Main Committee decided at a subsequent meeting, at the request of the Netherlands delegation, to reword the first words of paragraph 4 as follows: "Paragraph 3 shall be applied only in so far as ... ."

53. At the request of the Netherlands delegation, the Main Committee stated that, further to paragraph 4, the words "a Contracting State designated in respect of the later application, was also designated in respect of the earlier application as published" were to be understood as follows: if the designation of a State which appeared in the earlier application as published is later withdrawn, that State may no longer be designated in respect of the later application.

54. The Netherlands delegation proposed that the wording of paragraph 5 (M/32, point 9) should be improved. It said that on no account did it wish, with its proposal, to break away from the principle that only the first application in respect of the use of a known substance or composition in a method for treatment of a human or animal body by surgery or therapy is patentable, and not the second and subsequent applications.

55. The Main Committee referred the proposal to the Drafting Committee.

56. The Yugoslav delegation also considered that the present text of paragraph 5 was insufficiently clear and asked the meaning of the words "even when the substance or composition in question is disclosed in the state of the art".

57. The Chairman replied to the Yugoslav delegation and said that, in his opinion, the aim in paragraph 5 was to make clear that a known substance (or a known composition) which, since it formed part of the state of the art, was no longer patentable, nevertheless could be patented for the first use in a method for treatment of the human or animal body by surgery or therapy; however, a further patent could not be granted if a second possible use were found for the same substance, irrespective of whether the human or animal body was to be treated with it.

58. The Chairman noted that his views were shared by the Government delegations.

59. The UNICE delegation said that although it also shared these views, it had understood until now that a known substance which was patentable for its first use in a method for treatment of the human body, had also to be patentable for a first use, which was found subsequently, in a method for treatment of the animal body, and vice versa.

60. The Chairman noted that the Main Committee did not wish to endorse this interpretation.

**Article 53 (55) — Non-prejudicial disclosures**

61. At the Netherlands delegation's request the Chairman noted that the Main Committee was agreed that in the introductory part of paragraph 1 the "date of filing" should be understood as the actual date on which the patent application was filed. The Drafting Committee subsequently amended paragraph 1 accordingly.

62. The United Kingdom delegation pointed out that the existing text of paragraph 1, which was taken from Article 4, paragraph 4, of the 1963 Strasbourg Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, contained a loophole; it proposed substituting the words "not more than six months preceding the date of filing" for the phrase "within six months preceding the date of filing" (M/10, point 8).

63. In order to illustrate the problem raised by the United Kingdom delegation, the Chairman gave the following two examples: a European patent application is fraudulently filed on 1 January 1980 and published on 1 July 1981. On 1 October 1981 an application relating to the same subject-matter is filed
Minutes of the Proceedings of Main Committee I

1. Main Committee I (see Rule 12 of the Rules of Procedure*) set up by the Plenary of the Conference to deal with matters concerning patent law was chaired by Dr. Kurt Haertel, President of the German Patent Office (Federal Republic of Germany), Mr. Göran Borggärd, Director-General of the Royal Swedish Patent Office (Sweden), was the first Vice-Chairman; Mr. Erkki Tuul, Director-General of the Patent and Record Office (Finland), and Dr. Thomas Lorenz, Chairman of the Patent Office (Austria), were the other Vice-Chairmen. The Rapporteur was Lic. jur. Paul Braendli, Vice-Director of the Federal Intellectual Property Office (Switzerland) (see M/PR/K1, points 19, 20 and 25; M/46/K, page 1 and M/55/K, page 2).

2. The duties of Main Committee I were based on Rule 12 of the Rules of Procedure (M/34) and on a recommendation adopted by the Steering Committee of the Conference (M/56/I/II/I).

On this basis the Main Committee was responsible for Articles 14, 50 – 142, 144, 148 – 157, 161, 162 and 174 of the Draft Convention (M/1). Rules 1 – 7 and 13 – 107 of the Draft Implementing Regulations (M/2), the Draft Protocol on Recognition (M/3), the Recommendation on preparations for the opening of the European Patent Office (M/8) and the Recommendation on training staff for the European Patent Office (M/37).

3. Main Committee I met from 11 to 14 September, 17 to 21 September, 24 to 26 September and on 28 and 29 September 1973.

4. At its first meeting the Main Committee, on a proposal from its Chairman, set up a Drafting Committee. Modelled on the Drafting Committee of the Luxembourg Inter-Governmental Conference, this consisted of the delegations of the Federal Republic of Germany, France and the United Kingdom. The Chairman was Mr. J. B. van Benthem, President of the Octrooiraad and Head of the Netherlands delegation.

5. The Main Committee did not deal with the tasks assigned to it in exactly the same order as the Articles, Rules and other provisions but in the order which seemed most appropriate in the given circumstances. Thus it happened that one and the same provision was discussed on different occasions, for example if the problem in question was first passed to a Working Party and subsequently referred back to the Main Committee.

However, in this report each provision is dealt with only once. The reader should thus be able to obtain, in one place, all the information he wants on the discussion of a particular problem. Within the following Sections the provisions are dealt with in numerical order:

 points
A. General 8 – 10
B. Convention 11 et seq.
C. Implementing Regulations 2001 et seq.
D. Protocol on Recognition 3001 et seq.
E. Recommendation on preparations for the opening of the European Patent Office 4001 et seq.
F. Recommendation on training staff for the European Patent Office 5001 et seq.

6. If a provision was dealt with again in the Main Committee after being discussed in a Working Party or in the Drafting Committee, special mention is made of this below. On the other hand, if no mention is made, it is to be assumed that the Main Committee adopted the proposal of the Working Party or of the Drafting Committee. Purely drafting amendments which are not based on written proposals are not mentioned as a general rule.

7. In this report the numbering of the Articles, Rules, paragraphs, etc. follows the text of the draft proposals (M/1 to M/8). Where it seems appropriate, the numbering in the signed text is given in brackets after the number of the provision concerned.

A. General

8. At the beginning of the first meeting the Chairman noted that the Steering Committee had approved two requests at its meeting on 10 September 1973, namely that Mr. Sheehan of the US Patent Office and Mr. van Empel, a former member of the Secretariat, might be admitted as listeners to the meetings of the Main Committees. However, under Rule 48 of the Rules of Procedure Main Committee I's consent was also necessary, before participation in its proceedings was allowed.

Main Committee I agreed that both the gentlemen mentioned could take part in its proceedings as listeners pursuant to Rule 48, paragraph 1.

9. The Chairman pointed out that under Rule 32 of the Rules of Procedure only requests made in writing by the Government delegations could be discussed and voted upon. In principle, written requests had to be submitted by 5 p.m. on the day prior to the discussion.

10. The Chairman also stated that, pursuant to the Rules of Procedure, only Government delegations could make proposals, whereas representatives of any observer delegations could make oral statements under Rule 50 of the Rules of Procedure. If observer delegations made proposals, the latter had to be taken over by a Government delegation and seconded by a second Government delegation. If this was not the case, the proposal was deemed to be rejected.

The Main Committee agreed with this interpretation.

B. Draft Convention establishing a European system for the Grant of Patents (M/1)

Article 14 — Languages of the European Patent Office

11. The Main Committee forwarded to the Drafting Committee a drafting proposal from the Netherlands delegation concerning paragraph 2 (M/32, point 2).

12. While discussing Article 122, paragraph 2 (see point 594), the Main Committee decided on a further amendment to paragraph 2.

13. The Main Committee forwarded to the Drafting Committee a drafting proposal from the Luxembourg delegation concerning paragraph 4 (M/3, point 8).

14. The Main Committee decided that a proposal from the Netherlands delegation concerning paragraph 17 (M/52/I/II/III, point 2), to the effect that an applicant must submit a translation of the claims in the other two official languages of the European Patent Office, would be discussed in connection with Article 96 (see under point 350). The Committee also adopted paragraph 7.

15. The Turkish delegation proposed amending paragraph 7 so that claims would have to be translated into all the official languages of the designated Contracting States.

It was pointed out to the delegation that the question of the translation of the European patent specification is dealt with in Article 63 (65), so that, for example, Turkey could request that the specification be translated into Turkish, if the European patent was to be effective in Turkey.

The Turkish delegation said it was satisfied with this explanation and withdrew its proposal.
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
official languages instead of only the language of the proceedings.

2. Patentability (Articles 50-55)

The provisions of substantive law on patentability were not amended as to substance. The exceptions listed in Article 50, paragraph 2, were confirmed by the Main Committee as basic principles of the Convention. Certain drafting improvements however now make it completely clear that the various types of subject-matter, acts and activities listed are only excluded as such from patentability and that therapeutic and diagnostic methods are not patentable on the grounds that they lack industrial application.

The exception to patentability laid down in Article 51 in respect of inventions the publication of which would be contrary to "ordre public" or morality was reinforced by a duty to examine on the part of the European Patent Office (see Rule 34).

An improved wording of Article 52, paragraph 5, now ensures the patentability of known chemicals for such uses in therapeutic and diagnostic methods as do not form part of the state of the art. In this connexion the Main Committee was also of the opinion that only a first use, irrespective of whether it is with regard to humans or animals, fulfils the requirements of this provision.

With respect to non-prejudicial disclosure the Main Committee amended Article 53 to provide that an abusive disclosure in relation to the person entitled shall not be prejudicial if it occurred no earlier than six months before the filing of the application. This amendment means that, taking into account the concept of novelty contained in Article 52, paragraphs 3 and 4, cases of abusive disclosure after the date of filing of the application by the person entitled are dealt with in the same way as a disclosure within six months preceding the date of filing of the European patent application. The Main Committee decided not to extend the definition of the international exhibitions referred to in Article 53 not only because such an amendment would diverge from the Strasbourg Convention but also because exhibition priorities as such are a dangerous instrument for the applicant.

In discussing Article 54 a proposal for supplementing this provision to the effect that any technological advance proven by the applicant should be taken into account in deciding whether there has been an inventive step was rejected, mainly because it was feared that too much weight might be given to this factor.

3. Position of the inventor (Articles 58, 59, 60, 79, 90 and Rules 17, 19, 26, 42)

The Main Committee gave detailed consideration to a proposal to give the inventor a better and stronger legal position in the system set up by the Convention than that afforded by the drafts. The main proposal sought to compel the applicant to designate the inventor at the time of filing the application and at the same time to prove his entitlement to the invention by producing a certificate of transfer drawn up by the inventor or some other conclusive document.

It was not contested that the rights of the inventor should be adequately protected in the Convention. The Main Committee therefore decided unanimously that in respect of all European patent applications, irrespective of which States were designated in them, the filing of a statement identifying the inventor should be a compulsory requirement, with the result that if it were not complied with, the application would be deemed to be withdrawn. However, the Main Committee rejected the proposal to require the production of proof that the applicant was the inventor's successor in title for three main reasons: there would be difficulties in obtaining such a document in individual cases; it could not be produced where the transfer took place in the due course of law; and finally it would put the European Patent Office in the extremely difficult situation of having to apply the national law of the Contracting States in examining such documents. Similarly, an alternative proposal, to require proof of being the inventor's successor in title only where the national law of at least one of the designated Contracting States required such proof in respect of national patent applications, could not be adopted as this would have caused the same difficulties. In order that the rights of the inventor should nevertheless be protected, the Main Committee finally adopted a compromise solution whereby, if the applicant were not the inventor or not the sole inventor, he would be obliged to file a statement, which would be an integral part of the designation of the inventor indicating the legal basis of his acquisition of the invention. In addition, this designation of the inventor by the applicant would be notified to the inventor, thus allowing him where necessary to invoke his rights in due time. Corresponding amendments were made to Articles 79 and 90 and to Rules 17, 19, 26 and 42.

4. Effects of the European patent and the European patent application (Articles 61-68)

The main subject of discussion in this respect was Article 67 which defines the protection conferred by the European patent and the European patent application.

The Main Committee adopted by a majority a provision which also occurs in the Draft of the Second Convention for the Community patent, whereby the protection conferred on a process is extended to the products directly obtained by that process. This provision, which was inserted in Article 62 and which is already known in the laws of several Contracting States, takes account of the fact that in certain branches of industry, such as the plastics industry, it is not always possible to define a material without reference to its means of production. At the same time, a similar majority of the Main Committee rejected a proposal that this extended protection be reinforced in the case of an invention relating to the manufacture of a new product by assuming, to the benefit of the proprietor of the patent, that any product of the same nature would be considered to be obtained by the protected process. This proposal to reverse the burden of proof was countered by the argument that it would constitute too great an inroad into the national law of the Contracting States.

Main Committee I also considered, in respect of Article 67, paragraph 2, that the concept of extending the protection conferred by the European patent application included the case of a shift in the protection as a result of an amendment to the claims. With regard to the interpretative statement proposed by the Inter-Governmental Conference in respect of Article 67, it considered that this should be officially adopted unamended by the Diplomatic Conference and should be annexed to the Convention in the form of a declaration.

As regards the right to continue to use the invention, which a third party who has been operating in good faith may invoke under Article 68, paragraph 4(b), where the proprietor of the patent has corrected the translation of the specification, the Main Committee decided by a majority to depart from the draft by providing that this right could be exercised without payment, by analogy with the comparable situation dealt with in Article 121, paragraph 6.
Minutes of the proceedings of the Committee of the Whole

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

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

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

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

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

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

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

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

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

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

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

II. Report on the work of Main Committee II

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

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

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

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

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

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

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

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

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

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

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

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Article 12
Non-prejudicial disclosures

A disclosure of the invention within the meaning of Article 11 shall not be taken into consideration if it occurred within six months preceding the filing of the application for a European patent and if it was due to, or in consequence of:

(a) an evident abuse in relation to the applicant or his predecessor in title, or;

(b) the fact that the applicant or his predecessor in title has displayed the invention at official, or officially recognised, exhibitions falling within the terms of the Convention relating to international exhibitions signed at Paris on 22 November 1928 and revised on 10 May 1948.

Note to Article 12:
Article 12 corresponds to Article 4, paragraph 4, of the Strasbourg Convention.