Rule 31 E

Travaux Préparatoires
(EPC 1973)

Comment:

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
Regel 31
MPU
Gebührenpflichtige Patentansprüche

| Entwurf, der dem  | Art. Nr. | Dokument, in dem der Art. behandelt wird | Fundstelle im Dokument |
| Alexy 1961       | 70 71 Nr. 1 | BR/51/70 | Rdn. 35 |
| Alexy 1971 (A0)  | 71 Nr. 1 | BR/169/72 | Rdn. 70/71 |

Dokumente der MDK

| E 1972 | R 31 | M/146/R 9 | R 31 |
| " | " | M/PR/6 | S. 26/78 |

ANNEXE I

RAPPORT

établi par M. Paul Braendli, Lic. iur.
Directeur adjoint du Bureau fédéral de la propriété intellectuelle (Suisse)

sur les résultats des travaux du Comité principal I

ANNEXE II

RAPPORT

établi par M. R. Bowen
Assistant Comptroller, British Patent Office

sur les résultats des travaux du Comité principal II

ANNEXE III

RAPPORT

établi par M. Fressonnet
Directeur adjoint de l'Institut National de la Propriété Industrielle (France)

sur les résultats des travaux du Comité principal III

ANNEXE IV

RAPPORT

établi par M. A. Fernandez Mazarambroz
Directeur de l'Office espagnol des brevets

sur les résultats des travaux de la Commission de vérification des pouvoirs
en ce qui concerne les pleins pouvoirs permettant de signer la Convention
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 31

Claims incurring fees

(1) Any European patent application comprising more than ten claims at the time of filing shall, in respect of each claim over and above that number, incur payment of a claims fee. The claims fee shall be payable within one month after the filing of the application.

(2) Paragraph 1 shall apply mutatis mutandis where the European patent application comprises more claims incurring fees at the date of the communication of the Examining Division made in accordance with Rule 57, paragraph 4, than at the time of filing, or where it comprises more than ten claims at that date only. The claims fee incurred at the date of that communication shall be payable within the period laid down in that provision.

(3) If the claims fee for any claim is not paid in due time, the claim concerned shall be deemed to be abandoned. No claims fee duly paid shall be refunded.
CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 27 to 53

Munich, 30 September 1973
M/146/R 9

Original: English/French/German
a) neben einem unabhängigen Patentanspruch für ein Erzeugnis ein unabhängiger Patentanspruch für ein besonders angepasstes Verfahren zu dessen Herstellung und ein unabhängiger Patentanspruch für eine Verwendung des Erzeugnisses oder

b) neben einem unabhängigen Patentanspruch für ein Verfahren ein unabhängiger Patentanspruch für eine Vorrichtung oder ein Mittel, die zur Ausführung des Verfahrens besonders entwickelt wurden, oder
c) neben einem unabhängigen Patentanspruch für ein Erzeugnis ein unabhängiger Patentanspruch für ein besonders angepasstes Verfahren zu dessen Herstellung und ein unabhängiger Patentanspruch für eine Vorrichtung oder ein Mittel, die zur Ausführung des Verfahrens besonders entwickelt wurden.

Vgl. Artikel 76 (Erfordernisse der europäischen Patentanmeldung) und 80 (Einheitlichkeit der Erfindung)

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**Regel 31**

Gebührenpflichtige Patentansprüche

(1) Enthält eine europäische Patentanmeldung bei der Einreichung mehr als zehn Patentansprüche, so ist für jeden weiteren Patentanspruch eine Anspruchgebühr zu entrichten. Die Anspruchgebühren sind bis zum Ablauf eines Monats nach Einreichung der Anmeldung zu entrichten.

(2) Absatz 1 ist entsprechend anzuwenden, wenn die europäische Patentanmeldung zum Zeitpunkt der Mitteilung der Prüfungsabteilung nach Regel 52 Absatz 4 mehr gebührenpflichtige Patentansprüche als bei ihrer Einreichung oder erst zu diesem Zeitpunkt mehr als zehn Patentansprüche enthält. Anspruchgebühren, die zum Zeitpunkt dieser Mitteilung fällig werden, sind innerhalb der in der genannten Vorschrift vorgeschriebenen Frist zu entrichten.

(3) Wird die Anspruchgebühr für einen Patentanspruch nicht rechtzeitig entrichtet, so gilt dies als Verzicht auf diesen Patentanspruch. Eine fällig gewordene Anspruchgebühr, die entrichtet worden ist, wird nicht zurückgezahlt.

Vgl. Artikel 76 (Erfordernisse der europäischen Patentanmeldung)

---

**Rule 31**

Claims incurring fees

(1) Any European patent application comprising more than ten claims at the time of filing shall, in respect of each claim over and above that number, incur payment of a claims fee. The claims fee shall be payable within one month after the filing of the application.

(2) Paragraph 1 shall apply mutatis mutandis where the European patent application comprises more claims incurring fees at the date of the communication of the Examining Division made in accordance with Rule 52, paragraph 4, than at the time of filing, or where it comprises more than ten claims at that date only. The claims fee incurred at the date of that communication shall be payable within the period laid down in that provision.

(3) If the claims fee for any claim is not paid in due time, the claim concerned shall be deemed to be abandoned. No claims fee duly paid shall be refunded.

Vgl. Artikel 76 (Erfordernisse der europäischen Patentanmeldung)

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**Regel 32**

Form der Zeichnungen

(1) Auf Blättern, die Zeichnungen enthalten, darf die benutzte Fläche 26,2 cm mal 17 cm nicht überschreiten. Die Blätter dürfen keine Umrahmungen um die benutzbare oder benutzte Fläche aufweisen. Die Mindestabstände sind folgende:

- Oberer Rand: 2,5 cm
- Linker Seitenrand: 2,5 cm
- Rechter Seitenrand: 1,5 cm
- Unterer Rand: 1 cm

---

**Rule 32**

Form of the drawings

(1) On sheets containing drawings, the usable surface area shall not exceed 26.2 cm x 17 cm. These sheets shall not contain frames round the usable or used surface. The minimum margins shall be as follows:

- top: 2.5 cm
- left side: 2.5 cm
- right side: 1.5 cm
- bottom: 1 cm

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ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTTERTEILUNGSVERFAHREN

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

PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTeilungsverfahrens 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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

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

DOCUMENTS PRÉPARATOIRES
elaborés 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
71. With reference to paragraph 5 the same organisations expressed the wish that in the event of failure to pay the fees for the eleventh and any further claims in due time, those claims only, and not the whole application, should be deemed to be withdrawn.

**Article 71a (The claims)**

72. TAPIP, ICC, CEIF, CNIPA, COPRICE, EIRMA, FEMIP, FICPI and UNEPA wanted the expressions "in vollem Umfang" - "fully" - "entièrement" deleted, as they were too restrictive. Some of these organisations (CEIF, CNIPA, EIRMA and UNEPA) said they would be satisfied if the expressions quoted above were to be replaced by the following terms: "in ausreichendem Masse" - "fairly" - "convenablement".

CEIF observed in addition that in the interests of a uniform layout for the claims it was important to have a provision governing the way in which the claims were to be framed.

CNIPA also pointed out that the wording of Article 71a was dependent on that of Article 20, which dealt with the extent of protection conferred by the patent. It was further of the opinion that the grant of a patent with claims which failed to meet the conditions set out in Article 71a would have to constitute a ground for opposition.
COPRICE suggested, and was seconded by ETIRMA, that sub-paragraphs (a) and (b) should be combined to form a single provision allowing independent claims for a process, a use, an apparatus and a product in the same application; to this end, the word "or" at the end of (a) should be replaced by "and".

FICPI put forward very general objections to this provision of the Implementing Regulations; in its opinion an examiner could be led to confirm the unity of an invention only in cases where the claims conformed to the pattern set out in this provision, whereas there would be other cases of unity. On the other hand, FICPI asked whether unity could be denied even if the claims were in conformity with the conditions set out in Re. Article 70, No. 1.

Article 71 (Disclosure of the invention)

69. CNIPA proposed that the problem posed by the use in an invention of a micro-organism not generally available, which had not yet been solved in the Convention, should be dealt with along the lines advocated in the Banks Report (No. 552).

Re. Article 71, No. 1, IR (Number of claims)

70. CNIPA, FICPI and UNEPA recommended that it should be made clear in paragraph 1 that the fees for the eleventh and every following claim would only be levied once.
MINUTES
of the
5th Meeting of the Inter-Governmental Conference
for the Setting up of a European System
for the Grant of Patents

Part II.

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

(Luxembourg, 26 January to 1 February 1972)

BR/169 e/72 ley/KM/prk
Zu Artikel 71
Nummer 1

Zahl der Patentansprüche

(1) Enthält eine europäische Patentanmeldung bei der Einreichung oder zum Zeitpunkt der Mitteilung gemäß Artikel 97 Absatz 1 des Übereinkommens mehr als zehn Patentansprüche, so ist für jeden weiteren Patentanspruch die in der Gebührenordnung zum Übereinkommen vorgeschriebene Gebühr zu entrichten. Unter Patentansprüchen sind auch abhängige Patentansprüche zu verstehen.

(2) Die Gebühren für Patentansprüche, die bei der Einreichung der Anmeldung fällig werden, sind innerhalb der in Artikel 66 Absatz 3 des Übereinkommens vorgesehenen Frist zu entrichten.

(3) Die Gebühren für Patentansprüche, die zum Zeitpunkt der Mitteilung gemäß Artikel 97 Absatz 1 des Übereinkommens fällig werden, sind innerhalb der in der genannten Vorschrift vorgesehenen Frist zu entrichten.

(4) Fällig gewordene Gebühren, die entrichtet worden sind, werden nicht zurückgezahlt.

(5) Werden die Gebühren nicht rechtzeitig entrichtet, so gilt die europäische Patentanmeldung als zurückgenommen.

Zu Artikel 79
Nummer 1

Bericht über den Stand der Technik

(1) Im Bericht über den Stand der Technik werden die dem Internationalen Patentinstitut in Den Haag zum Zeitpunkt des Berichts zur Verfügung stehenden Unterlagen genannt, die zur Beurteilung der Neuheit der der europäischen Patentanmeldung zugrunde liegenden Erfindung und der erfinderischen Tätigkeit, auf der die Erfindung beruht, in Betracht gezogen werden können.

(2) Die Entgegenhaltungen werden im Zusammenhang mit den Patentansprüchen aufgeführt, auf die sie sich beziehen. Soweit erforderlich werden die maßgeblichen Teile jeder Entgegenhaltung näher gekennzeichnet (beispielsweise durch Angabe der Seite, der Spalte und der Zeilen oder der Abbildungen).

(3) Die vor dem Anmeldetag der europäischen Patentanmeldung, aber nach dem beanspruchten Prioritätsntag veröffentlichten Entgegenhaltungen werden im Bericht besonders erwähnt.

(4) Schriftstücke, die sich auf eine vor dem Anmeldetag der europäischen Patentanmeldung der Öffentlichkeit zugänglich gemachte mündliche Beschreibung, Benutzung oder sonstige Offenbarung beziehen, werden in dem Bericht über den Stand der Technik unter Angabe des Tags einer etwaigen Veröffentlichung des Schriftstücks und einer nachschriftlichen Offenbarung genannt.

(5) Der Bericht über den Stand der Technik wird in der Sprache der europäischen Patentanmeldung oder, im Falle des Artikels 34 Absatz 2 des Übereinkommens, in der Sprache der Übersetzung abgefaßt.

Re. Article 71
No. 1

Number of claims

(1) Any European patent application comprising more than ten claims, either at the date of filing, or at the date of the communication made in accordance with Article 97, paragraph 1, of the Convention shall, in respect of each claim over and above that number, incur payment of the fee prescribed by the Rules relating to Fees adopted pursuant to the Convention. For the purposes of this paragraph dependent claims are included.

(2) The fees incurred by claims at the date of filing of the application shall be payable within the period provided for in Article 66, paragraph 3, of the Convention.

(3) The fees incurred by claims at the date of the communication under Article 97, paragraph 1, of the Convention shall be payable within the period provided for in that Article.

(4) Fees duly paid shall not be refunded.

(5) If the fees are not paid in good time, the application for a European patent shall be deemed to be withdrawn.

Re. Article 79
No. 1

Report on the state of the art

(1) The report on the state of the art shall mention those documents, available to the International Patent Institute at The Hague at the time of making the report, which may be taken into consideration in deciding whether the invention to which the European patent application relates is new and involves an inventive step.

(2) Each citation shall be referred to the claims to which it relates. If necessary, the relevant parts of the documents cited shall be identified (for example, by indicating the page, column and lines or the diagrams).

(3) Any cited document, which was published before the date of filing of the European patent application but after the date of priority claimed, shall be identified as such in the report on the state of the art.

(4) Any document, which refers to an oral disclosure, a use or any other means of disclosure which took place prior to the date of filing of the European patent application, shall be mentioned in the report on the state of the art, together with an indication of the date of publication, if any, of the document and the date of the non-written disclosure.

(5) The report on the state of the art shall be drawn up in the language of the European patent application or, where Article 34, paragraph 2, of the Convention is applied, in the language of the translation.
FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS
TO THE CONVENTION ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
SECOND PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

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

and
FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

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

ainsi que
PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS

et
PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

— 1971 —
And there are other conditions which have this effect: the requirement that the number of claims must be reasonable, and that they must be precise and concise. The Swedish delegation expressed the same reservation as that referred to in Point 33.

Re. Article 71 No. 1 - Number of claims

35. The sub-Committee adopted the Chairman's proposal which provides for the payment of a fee in respect of claims over the number of ten in any one application. It also considered that, for the purposes of the payment of the fee, it would be necessary to take into account not only the number of claims at the time of filing, but also the number at the time of notification of grant. Fees paid will not be refunded, and if they are paid in good time, the application will be deemed to have been withdrawn. This last provision was adopted subject to the outcome of the examination of the question mentioned in Point 31 and subject also to whether a sanction of this nature would be appropriate. It was suggested that it might be better to lay down that supplementary claims be deemed not to have been submitted. In this connection, one delegation expressed the wish that the whole problem of sanctions for irregularities committed during proceedings be reviewed in due course, with care being taken to ensure that such sanctions were in proportion to the seriousness of the irregularities that had taken place.

Proof of right to claim priority

36. The sub-Committee decided not to adopt any implementing regulations in respect of Article 75 of the First Preliminary Draft. It was not, in its view, desirable to allow the EPO to require of an applicant proof of his entitlement to avail himself of priority in cases in which
MINUTES

of the 2nd meeting of Working Party I sub-Committee on
"Implementing Regulations"
(Luxembourg, 15-18 September 1970)

1. The second working meeting of the sub-Committee
instructed by Working Party I to draw up draft Implementing
Regulations to the Convention was held at Luxembourg from
Tuesday 15 to Friday 18 September 1970, with
Mr. FRESSONNET, Deputy Director, French Industrial Property
Institute, in the Chair.

In addition to the national delegations represented in
the sub-Committee, the meeting was attended by BIRPI and
the International Patents Institute (IIB)(1).

(1) See the list of participants in Annex I.
Ad article 70

Numéro 1

Nombre des revendications

Toute demande de brevet européen comportant plus de dix revendications donne lieu, pour chaque revendication au-delà de ce nombre, au versement de la taxe prévue par le règlement relatif aux taxes pris en exécution de la Convention.
VE AO 1964

Avant-projet

de règlement d'application de la convention relative à un droit européen des brevets
Zu Artikel 70

Nummer 1

Zahl der Patentansprüche

Enthält eine europäische Patentanmeldung mehr als zehn Patentansprüche, so ist für jeden weiteren Patentanspruch die in der Gebührenordnung zum Abkommen vorgesehene Gebühr zu entrichten.
ARBEITSGRUPPE
"Patente"

Brüssel, den 20. Januar 1964

VERTRAULICH

VE 40 1964

Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht
5. Filing and requirements of the European patent application (Articles 73-84 and Rules 24-37)

During its discussion of Article 73, the Main Committee was faced with the question of which office of the European Patent Office the European patent application should be filed at. In the interest of the applicant, it gave him the choice of Munich or The Hague and amended Article 73, paragraph 1(a) and Article 74, paragraph 1, accordingly.

In connection with the requirements of the application under Article 76, the Main Committee examined the need to file the abstract. It considered that if this were not done, there would be a loss of information and therefore maintained this requirement. It also decided to prescribe the compulsory publication of the abstract with the search report under Article 92.

Closely connected with the substantive requirement of disclosing the invention under Article 81 was the problem of making special provisions for European patent applications covering micro-organisms. It was not contested that the relevant provisions, Rule 28, should lay down that micro-organisms which are not available to the public should be deposited with a recognised culture collection no later than at the time of filing the application, that the micro-organism should be adequately described in the application, and that the culture collection should be identified either in the application itself or within a short time thereafter. It was also agreed that the disclosure of the micro-organism should be subject to certain measures to protect the applicant. Views differed, however, on the latest time at which the micro-organism should be made available to the public. Contrary to the draft of Rule 28, which provided for this to be not later than the date of publication of the application, it was proposed that the applicant should not be obliged to make the micro-organism available to the public until the time of the grant of the patent, at which point the provisional protection would be lost. The main arguments put forward in defence of this standpoint were that the approach contained in the draft laid an unfair burden on such applicants in comparison to inventors in other fields of technology by requiring the subject-matter of the invention to be deposited, and that the applicant was forced to reveal know-how, thus making it easier for his invention to be copied at a time when it was not yet definite whether or not the application would lead to the grant of a patent.

Those who advocated the approach set out in the draft argued that the public could be considered to be sufficiently informed about the subject-matter of the invention only if the micro-organism were made available to the public at the time of the publication of the application; furthermore, it was only by such a disclosure that the micro-organism could be comprised in the state of the art under Article 52, paragraph 3, with the result that this was the only means whereby duplication of patents could be avoided and legal uncertainty in relation to national patent applications could be removed.

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

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

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

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

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

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

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

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

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