Rule 49 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 49
MPÜ
Form der Veröffentlichung der europäischen Patentanmeldungen und europäischen Recherchenberichte

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ANNEX I

REPORT

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

on the results of Main Committee I's proceedings

ANNEX II

REPORT

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

on the results of Main Committee II's proceedings

ANNEX III

REPORT

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

on the results of Main Committee III's proceedings

ANNEX IV

REPORT

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

on the results of the Credentials Committee's proceedings
with regard to full powers for signing the Convention
2252. The FICPI delegation emphasised that if the reference to a drawing was deemed to be deleted, this ought to apply only to the reference signs, but not to a more extensive description of the drawings which, even if the drawing as such were missing, could still be understandable to some extent at least. This Rule should in no event be so interpreted as to mean that something which was actually disclosed in the application should be deemed to be deleted.

2253. In conclusion, the Chairman pointed out that in publishing the application, the European Patent Office should delete nothing from the application, but merely indicate that the references to the drawings which were not available were deemed to be deleted. If the application were to contain references which were understandable on their own without the drawing, he felt that these should also continue to be the subject of the application.

Rule 46 — European search report where the invention lacks unity

2254. The Netherlands delegation proposed making it clear in the first half of paragraph 1, first sentence, that if the invention were to belong to a group of inventions within the meaning of Article 80 (82), the search report would be drawn up on those parts of the application which relate to the group of inventions first mentioned in the claims (M/52/1/II/III, point 21).

2255. The Main Committee adopted this proposal.

2256. The Netherlands delegation proposed fixing the period for payment of the search fee at no less than two months and no more than three months in the second half of paragraph 1, first sentence (M/52/1/II/III, point 21).

2257. None of the national delegations supported this proposal.

Rule 48 — Time limit for forwarding the European search report to the European Patent Office

2258. The Main Committee adopted a proposal by the Netherlands delegation, which was supported by several other delegations (M/52/1/II/III, point 22).

Rule 50 (49) — Form of the publication of European patent applications and European search reports

2259. The delegation of the Federal Republic of Germany proposed taking into account in paragraph 1 the fact that the abstract must be published (M/47/I/II/III, point 28), as was decided with regard to Article 92 (93) (see point 332).

2260. The Main Committee adopted this proposal.

Rule 51 (50) — Information about publication

2261. The Netherlands delegation proposed wording paragraph 1 to the effect that the European Patent Office would not communicate to the applicant the date on which the period for filing the request for examination expires, but would draw his attention to the fact that this period expires six months after the date on which the publication of the search report is mentioned in the European Patent Bulletin and that after expiry of this period, the application is deemed to be withdrawn (M/52/1/II/III, point 23).

2262. The French, Austrian and Swiss delegations supported this proposal.

2263. The United Kingdom delegation expressed a reservation on this solution if the date on which the period began, i.e. the date on which publication of the search report was mentioned, were not to be communicated to the applicant.

2264. The Chairman considered that according to the present wording of paragraph 1, in the German version at least, the European Patent Office had to notify the applicant of the date on which the publication of the search report was mentioned in the European Patent Bulletin. The purpose of the Netherlands proposal was merely to make this clear. The advantage of this solution would be that the European Patent Office itself would not need to calculate the end of the period.

2265. The Main Committee adopted the Netherlands proposal with the proviso that the date of the beginning of the period would have to be communicated to the applicant.

2266. At a later sitting, the Main Committee examined paragraph 2 after the Drafting Committee had amended paragraph 1 in accordance with the Netherlands proposal (point 2261), but had left paragraph 2 unchanged.

2267. The Austrian delegation emphasised that with the solution adopted by the Main Committee for paragraph 1, whereby the applicant would not be notified of the end of the period for filing the request for examination, it would be even more unsatisfactory than before to allow the applicant to run the risk of an incorrect communication. It thus proposed that paragraph 2 be so worded that an error on the part of the European Patent Office would not set the applicant at a disadvantage, unless the error were immediately obvious to him (M/145/I).

2268. The United Kingdom delegation supported the Austrian proposal with a proviso as to its wording.

2269. The Netherlands delegation asked when, in the Austrian delegation’s view, an error on the part of the European Patent Office would be immediately obvious to the applicant. It felt that this should always be the case, since the applicant could consult the European Patent Bulletin to see when the publication of the search report was mentioned.

2270. In the Austrian delegation’s view, an immediately obvious error would arise only if it were to be apparent as such from the communication by the European Patent Office. The applicant should not be expected to consult the European Patent Bulletin.

2271. The Chairman drew attention to the fact that the Austrian proposal could, in certain cases, lead to an extension of the period for filing requests for examination.

2272. The Main Committee adopted the proposal, which was also supported by the Swiss delegation, with a proviso as to the revision of its wording.

Rule 58 (57) — Preparation of the examination of the opposition

2273. The Committee examined the Netherlands delegation’s proposal (M/52, page 24) that the last sentence of paragraph 1 be deleted.

2274. The Netherlands delegation considered that this sentence introduced an unjustified restriction on the rights of the proprietor of a patent. In view of paragraph 4 of Rule 58, which provided that in the case of a notice of intervention in opposition proceedings the Opposition Division need not communicate the intervention to the proprietor of the patent, it did not seem appropriate to limit the amendments which the proprietor could make to what was necessary to meet the opposition.

2275. The Austrian delegation supported the Netherlands delegation’s proposal.

2276. The delegation of the Federal Republic of Germany said that it could support this proposal provided that the delegations of the interested parties professed interest along these lines.
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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 49

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

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

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

(3) If, before the termination of the technical preparations for publication of the European patent application, the claims have been amended pursuant to Rule 86, paragraph 2, the new or amended claims shall be included in the publication in addition to the original claims.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 27 to 53
Rule 50
Form of the publication of European patent applications and European search reports

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

(2) \{ Unchanged from 1972 published text. \\

(3) \}
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 22 September 1973
M/124/I/R 8
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 21 SEPTEMBER 1973

Articles of the Convention:

Article 96
Article 101
Article 157
Article 161

Rules of the Implementing Regulations:

Rule 29
Rule 32
Rule 35
Rule 38
Rule 40
Rule 41
Rule 43
Rule 46
Rule 50
Rule 52
Rule 59
26. Rule 40

In accordance with the proposals by UNICE and CEPI in M/19, No. 36 and M/22, No. 26:

"... and Rule 36, paragraphs 2 and 4."

27. Rule 43

On the basis of the proposal by PICI in M/15, No. 63:

"(1) ... the Receiving Section shall inform the applicant that the drawings and the references to the drawings in the European patent application shall be deemed to be deleted unless the applicant requests within a period of one month that the application be re-dated to the date on which the drawings were filed."

28. Rule 50

"(1) ... The same shall apply where the European search report and the abstract are published separately."

The present last sentence should be deleted.

W/47/7/11/11111
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: The delegation of the Federal Republic of Germany

Subject: Proposals for amendments to the draft texts
21 Artikel 76, Regel 27 Absatz 1d

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

22 Artikel 80, Regel 30

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

23 Artikel 86 Absatz 3

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

24 Artikel 90, Regel 41 Absatz 2

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

25 Artikel 92, Regeln 49, 50 und 52

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

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

26 Artikel 97

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

27 Artikel 104

Es wird vorgeschlagen, dem Dritten, der vom Patentinhaber eine Aufforderung zur Unterlassung erhalten und eine Klage zur Feststellung eingereicht hat, daß keine Patentverletzung vorliegt, dieselben Rechte eingeräumt werden wie dem beitretenden Patentverletzer.

21 Article 76; Rule 27, paragraph 1(d)

The present wording „... and state the advantageous effects, if any, of ...” would, if interpreted as requiring an exhaustive list, be much too excessive; this provision should be limited to a requirement for certain advantageous effects to be specified.

22 Article 80; Rule 30

It is suggested that the phrase “specifically designed” should be deleted since it would seem to constitute an unjustified requirement.

23 Article 86, paragraph 3

It should be stated that multiple priorities may be claimed not only in respect of one and the same application but also in respect of one and the same claim of that application.

24 Article 90; Rule 41, paragraph 2

The excessive requirement laid down under this Rule should be replaced by the possibility of indicating the priorities claimed or of correcting statements concerning the latter within a specific period from the filing of the application.

25 Article 92; Rules 49, 50 and 52

It is pointed out that there is no express provision relating to the withdrawal of an application, although the right to withdrawal is implicit in Rule 49, paragraph 2.

In addition, the provision of Rule 50, paragraph 3, is of such great importance in the view of FEMIPI, that it should be inserted in Article 92.

26 Article 97

It is recommended that the patent specification should also mention the documents cited by the examiners during the procedure.

27 Article 104

It is suggested that any third party against whom a suit is brought by the patentee and who has filed a declaratory action to confirm that there has been no infringement, should have the same rights as the intervening infringer.
STELLUNGNAHME DES

FEMIPI

Europäischer Verband der Industrie-Patentingenieure

COMMENTS BY

FEMIPI

European Federation of Agents of Industry in Industrial Property

PRISE DE POSITION DE LA

FEMIPI

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

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

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

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

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

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

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

Artikel 130 und 131 – Regel 99 – Gegenseitige Auskunftserteilung

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMENTS BY
CEIF
Council of European Industrial Federations

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

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

Artikel 86 (2) und (3)
8 Es ist vorgesehen, daß der Anmelder für eine europäische Patentanmeldung mehrere Prioritäten in Anspruch nehmen kann. Jedoch scheint es notwendig zu präzisieren, daß für einen Anspruch mehrere Prioritäten gefordert werden können.

Artikel 88 (2)
0 Der letzte Satz von Absatz 2 könnte in seiner Form verbessert werden. Anstelle des Satzteils: „so wird die Anmeldung nicht als europäische Patentanmeldung behandelt“ könnte es heißen: „so gilt die Anmeldung als nicht gestellt“.

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

Artikel 92 (2)
11 Nach der Regel 50 (3) sind außer den ursprünglichen Patentanträgen auch die neuen oder geänderten Patentanträge zu veröffentlichen, sofern diese vor Abschluß der technischen Vorbereitungen für die Veröffentlichung vorliegen. Es erscheint der U.N.I.C.E., daß diese Vorschrift in das Abkommen selbst eingefügt werden sollte.

Artikel 96 (2) und (3)
12 Es erscheint zweckmäßig, die Druckkostengebühr und die Erteilungsgebühr zu einer einheitlichen Gebühr zusammenzufassen.

Artikel 97
13 Es ist wünschenswert, daß die Patentschrift auch die Dokumente angibt, die die Prüfer zitiert haben.

Artikel 104
14 Es scheint logisch, die Rechte, die Artikel 104
STELLUNGNAHME DER
UNICE
Union der Industrien der Europäischen Gemeinschaft

COMMENTS BY
UNICE
Union des Industries de la Communauté européenne

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

(1) Deutsche Übersetzung der Stellungnahme und der Anlage 2 vorgelegt von UNICE
(2) Annex 3 to these Comments submitted by UNICE in English
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

________________________

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

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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
Regel 48

Frist für die Übersendung des europäischen Recherchenberichts an das Europäische Patentamt

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

Vgl. Artikel 91 (Europäischer Recherchenbericht)

Kapitel III
Veröffentlichung der europäischen Patentanmeldung

Regel 49

Technische Vorbereitungen für die Veröffentlichung

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

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

Vgl. Artikel 92 (Veröffentlichung der europäischen Patentanmel dung)

Regel 50

Form der Veröffentlichung der europäischen Patentanmeldungen und europäischen Recherchenberichte

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

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

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

Vgl. Artikel 92 (Veröffentlichung der europäischen Patentanmel dung)

Rule 48

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

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

Cf. Article 91 (European search report)

Chapter III
Publication of the European patent application

Rule 49

Technical preparations for publication

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

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

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

Rule 50

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

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

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

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

Cf. Article 92 (Publication of a European patent application)
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

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

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

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

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

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

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

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

1972
A provision to this effect was inserted in the Implementing Regulations as Re. Article 82, No. 3.

Article 97 - Grant of the European patent

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

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

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

Article 105 - Decision in opposition proceedings

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

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

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

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

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

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

- Secretariat -

REPORT

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

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

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

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

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

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

BR/177 e/72 oyd/AH/prk ..../...
Article 79 (Drawing up of the report on the state of the art)

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

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

Article 85 (Publication of a European patent application)

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

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

Article 88 (Request for examination)

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

BR/169 e/72 ght/AV/prk

.../...
MINUTES

of the

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

Part II

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

(Luxembourg, 26 January to 1 February 1972)

BR/169 e/72 ley/KM/prk
Patent Office would have to examine the application and grant the patent, and on the expiry of which the patent would have to be published immediately.

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

**Article 88 - Request for examination**

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

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

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

Article 85 - Publication of a European patent application

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

of the

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

Parts 1 and 3

(Luxembourg, 24–25 January and 2–4 February 1972)
Article 85

Publication of a European patent application

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

(2) +

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

(4) +

(5) +
SECOND PRELIMINARY DRAFT OF THE CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
DOCUMENT CORRECTING

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

and

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 26 November 1971 -
be guaranteed, as was essential for the rest of the proceedings. It was true that this solution would prove more expensive than if the applicant were to see to the translation himself, but all applicants would meet the increased costs on an equal basis, and for this reason it would be conceivable to set the filing fee at a higher sum than the one previously envisaged.

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

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

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

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

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

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

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

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

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

108. In connection with European applications, part of the Working Party was of the opinion that the European Patent Office should have the claims translated out of the language of the proceedings into the two other official languages. Only in this way would an accurate translation
MINUTES

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

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

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

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

3. The Working Party I Drafting Committee met first under the chairmanship of Mr. van BENTHEM, President of the Octrooiraad, and, following his departure, under that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).
Article 85

Publication of a European patent application

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

(2) +

(3) If, before the termination of the technical preparation for publication, the claims of the European patent application have been amended pursuant to Article 83 or Article 137a, paragraph 2, the new or amended claims shall be included in the publication in addition to the original claims.

(4) +

(5) +
SECOND PRELIMINARY DRAFT OF THE CONVENTION

ESTABLISHING

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 22 October 1971 -
Article 82 (Amendment of the documents)
Article 83 (Amendment of the claims)
Article 95a (Amendment of the application)

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

118. In connection with Article 83, the Working Party also decided to defer until its next meeting its examination of the note submitted by the Netherlands delegation (BR/GT I/124/71) on the publication of pending European patent applications and its repercussions for third parties.

Article 85 (Publication of a European patent application)

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

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

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

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

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

Article 85 - Publication of the European Patent application, and

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

62. In order to preclude misunderstandings, it was made clear in Article 85 Paragraph 1, that the publication of the application is to contain the description, the claims and any drawings in the form in which they were originally filed. The only amendment to paragraph 3 concerned the wording.

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

--- Secretariat ---

Brussels, 17 November 1971
BR/135/71

MINUTES

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

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

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

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

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

BR/135 e/71 prk
(Unrevised translation)
Zu Artikel 79
Nummer 2
Frist für die Erstellung des Berichts über den Stand der Technik
Der Bericht über den Stand der Technik und der endgültige Inhalt der Zusammenfassung werden dem Europäischen Patentamt spätestens drei Monate nach dem Tag übermittelt, an dem das Internationale Patentinstitut in Den Haag vom Europäischen Patentamt die zur Erstellung des Berichts erforderlichen Unterlagen erhalten hat.

Re. Article 79
No. 2
Time limit for the report on the state of the art
The report on the state of the art and the definitive contents of the abstract shall be transmitted to the European Patent Office not later than three months after the International Patent Institute at The Hague has received from the European Patent Office the documents needed to draw up its report.

Zu Artikel 79
Nummer 3
Beschränkung des Berichts über den Stand der Technik auf einen Teil der europäischen Patentanmeldung
Kommt der Anmelder der in Artikel 79 Absatz 5 des Übereinkommens vorgesehenen Aufforderung nicht nach, so erstellt das Internationale Patentinstitut in Den Haag den Bericht über den Stand der Technik über denjenigen Teil der europäischen Patentanmeldung, der sich auf die in den Patentansprüchen zuerst erwähnte Erfindung oder Gruppe von Erfindungen bezieht, die eine einzige allgemeine erfinderische Idee verwirklichen.

Re. Article 79
No. 3
Restriction of the report on the state of the art to a part of the application for a European patent
If the applicant does not respond to the invitation provided for in Article 79, paragraph 5, of the Convention, the International Patent Institute at The Hague shall draw up the report on the state of the art on that part of the application for a European patent relating to the invention or plurality of inventions forming a single general inventive concept and occurring first in the claims.

Zu Artikel 85
Nummer 1
Veröffentlichung der europäischen Patentanmeldungen und Patentschriften
Der Präsident des Europäischen Patentamts bestimmt, in welcher Form die europäischen Patentanmeldungen und die Patentschriften veröffentlicht werden und welche Angaben sie enthalten. Das gleiche gilt für die Veröffentlichung der Übersetzungen gemäß Artikel 123 Absätze 2 und 3 des Übereinkommens.

Re. Article 85
No. 1
Publication of European patent applications and European patent specifications
The President of the European Patent Office shall prescribe the form of the publication of the European patent application and of the specification of a European patent and the data which are to be included. The same shall apply for the publication of the translations pursuant to Article 123, paragraphs 2 and 3, of the Convention.

Zu Artikel 85
Nummer 2
Abschluß der technischen Vorbereitungen für die Veröffentlichung
Der Präsident des Europäischen Patentamts bestimmt für die in Artikel 85 Absätze 1, 3 und 4 des Übereinkommens vorgesehenen Fälle, innerhalb welcher Frist vor dem Tag der Veröffentlichung die technischen Vorbereitungen für die Veröffentlichung als abgeschlossen gelten.

Re. Article 85
No. 2
Termination of the technical preparations for publication
The President of the European Patent Office shall lay down, in the cases provided for in Article 85, paragraphs 1, 3 and 4, of the Convention, the date on which the technical preparations for publication are to be deemed to have been completed.
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
Veröffentlichung der europäischen Patentanmeldung
(2) In der Veröffentlichung werden die gemäß Artikel 67 benannten Vertragsstaaten aufgeführt.
(3) Falls vor Abschluß der technischen Vorbereitungen für die Veröffentlichung die europäische Patentanmeldung gemäß Artikel 81 geteilt worden ist oder die Patentansprüche gemäß Artikel 83 geändert worden sind, so werden in der Veröffentlichung außer den neuen oder geänderten Patentansprüchen auch die ursprünglichen Patentansprüche aufgeführt.
(4) Die Veröffentlichung unterbleibt, wenn die europäische Patentanmeldung vor Abschluß der technischen Vorbereitungen für die Veröffentlichung rechtskräftig zurückgewiesen oder zurückgenommen worden ist oder als zurückgenommen gilt.
(5) Ein Hinweis auf die Veröffentlichung der europäischen Patentanmeldung und gegebenenfalls auf die gesonderte spätere Veröffentlichung des Berichts über den Stand der Technik wird in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.

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

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

Publication of a European patent application
(1) European patent applications shall be published as soon as possible after the expiry of a period of 18 months from the date of filing of the patent application or, if a priority has been claimed, as from the date or earliest date of priority. Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. The publication shall contain the description, the claims and any drawings and, in an annex, the report on the state of the art, in so far as the latter is available before the termination of the technical preparations for publication. If the report on the state of the art has not been published at the same time as the application, it shall be published separately.
(2) The Contracting States designated in accordance with Article 67 shall be specified in the publication.
(3) If, before the termination of the technical preparations for publication, the European patent application has been divided pursuant to Article 81, or the claims amended pursuant to Article 83, the original claims shall be included in the publication in addition to the new or amended claims.
(4) Publication shall not take place if the European patent application has been finally refused or withdrawn or deemed to be withdrawn before the termination of the technical preparations for publication.
(5) Notification of the publication of the European patent application and, where appropriate, of the separate later publication of the report on the state of the art, shall be entered in the Register of European Patents and published in the European Patent Bulletin.

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

Observations concerning the patentability of the invention in respect of which an application has been filed
(1) Following the publication of the European patent application, any person may present observations concerning the patentability of the invention in respect of which an application has been filed. Such observations must be made in writing and must include a statement of the grounds on which they are based.
SECOND PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

SECOND AVANT-PROJET DE CONVENTION INSTITUANT UN SYSTÈME
EUROPÉEN DE DÉLIVRANCE DE BREVETS
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTTERTEILUNGSVERFAHREN

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ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTTERTEILUNGSVERFAHREN

und

ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

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

with

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

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

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

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

et

PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

— 1971 —
the examiner would not yet have decided on the unity or lack of unity of the application. At this stage, it would simply have been noted that a report on the state of the art is not sufficient but that an additional report will be necessary, if the search is to cover all the claims contained in the application. In addition, it was pointed out that the relative functions of the International Patent Institute and the European Patent Office in respect of the implementation of paragraphs 5 and 6 of Article 79 of the Convention should be defined in the working agreement which is to be drawn up between these two bodies.

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

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

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

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

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

(Luxembourg, 12 - 14 January 1971)

I

1. The fifth meeting of the "Implementing Regulations"
Sub-Committee was held in Luxembourg from 12 to 14 January
1971, with Mr 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 repre-
sentatives of WIPO/OMPI and the International Patent
Institute.(1)

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

(1) See the list of participants in Annex I.
attached to Article 85.

The Article replaces Article 85, Number 3, in BR/09/70, Page 33, and also covers Article 98 and 107 of the First Preliminary Draft Convention. The Article is only provisional.

Note:

which they are to include.

The President of the European Patent Office shall prescribe the form of the publication of the European Patent Application and of the specification of a European Patent and the data.

Text drawn up by the sub-committee.

Publication of European patent

No. 1

 Former Article 86a

(Former Article 86a)

He. Article 85
of the Inter-Parliamentary Draft Convention

Re. Articles 85, 86, 97, 99, 101, 106, 111, 112, 113, 114, 115, 117, 130

Preliminary Draft Implementing Regulations

(20 to 27 October 1970)

of Working Party I

Outcome of the work of the "Implementing Regulations" sub-committee

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Secretary

(for the grant of Patents)

9 November 1970

Brussels

FOR THE SETTING UP OF AN EUROPEAN SYSTEM

INTER-GOVERNMENTAL CONFERENCE
66. Article 74: Effect of priority right

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

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

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

68. Article 85: Publication of a European patent application

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

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

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

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

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

of the meeting of Working Party I

held at Luxembourg from 30 November to 2 December 1970

and of the meeting held on 3 December 1970 by that Working Party, acting in its capacity as Co-ordinating Committee

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

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

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

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

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.
(2) For the list of participants, see Annex II.
Re. Article 85 - Details to be included in the publication of a European patent application

39. The sub-Committee decided, in this connection, that the implementing measure should be limited to giving the President of the EPO the power to prescribe the particulars which, in addition to those already provided for in the First Preliminary Draft, should be included in the patent application.
MINUTES
of the 2nd meeting of Working Party I sub-Committee on
"Implementing Regulations"
(Luxembourg, 15-18 September 1970)

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

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

(1) See the list of participants in Annex I.
Text drawn up by the Working Party

Publication of a European patent application

Article 59 (former Article 56c)
In the European Patent Bulletin,

(5) Notification of the publication shall be entered in the Register of European Patents and published

deposition, or withdrawn or deemed to be withdrawn before the notification of the technical preparations for
publication shall not take place if the European patent application has been finally refused.

(4) If before such notification, the European patent application has been withdrawn pursuant to Article 61,

(3) The contracting States designated in accordance with Article 67 shall be apprised in the

(2) The contracting States designated in accordance with Article 67 shall be apprised in the

as the latter is available at the time of publication,

description of the invention and any drawings and, in an annex, the report on the stage of the art. In so far
be published before the expiry of the period referred to above. The publication shall contain the
the date of earliest date of priority. Nevertheless, at the request of the applicant, the application may
of 15 months from the filing of the patent application or, if a priority has been claimed, as from
European patent applications shall be published as soon as possible after the expiry of a period

1970 Draft

Notification of European Patent Application

Article 85 (former Article 84a)
Pre-Legislative Draft Convention

8 to 11 September 1970

Draft prepared by Working Party I

For a European System for the Grant of Patents

- Secretary -

PPR 48/70/70 44/PR pp

Prussees, 25 September 1970

INTER-GOVERNMENTAL CONFERENCE

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

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

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

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

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

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

116. The Working Party was anxious to keep a wording in line with the Conference's instructions, while leaving it to the Conference to specify the length of the period longer than that laid down in BR/49 e/70 cyd/PA/ft .../...
109. As a result of the Conference's instructions concerning the deferred examination procedure - and particularly the period for filing the request - (cf. Article 88), the Working Party drafted a new paragraph 4a which refers to the Implementing Regulations the fixing of a three month period during which the IIB has to transmit the report and the definitive contents of the abstract to the European Patent Office. In doing this, it was guided by the provisions of Rule 42.1 of the PCT Regulations.

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

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

In making this recommendation, the Working Party assumes that applications relating to the effect of the priority right of foreign applications in certain States will be recognised, and that no declaration under the terms of Article 64.4 of the PCT will be made.

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

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

112. Moreover, the Working Party deemed it preferable to deal with the publication of the original claims in the language in which the application was filed, in Article 34 paragraph 5, which was amended to this effect.

BR/49 e/70 oyd/PA/ft
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 26 October 1970
BR/49/70

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

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

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

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

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

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

BR/49 e/70 eld/PA/bcc
(2) Si le demandeur use de la faculté prévue au paragraphe 1, les revendications nouvelles ou modifiées sont déterminantes, au lieu des revendications initiales, pour la protection demandée, dans la mesure où leur objet ne s'étend pas au-delà de ce qui était décrit dans la demande.

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

**Article 83 (ancien article 82)**

Modification des documents

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

**Article 84 (ancien article 83)**

Audition devant la section d'examen

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

**Article 85 (ancien article 86a)**

Publication de la demande de brevet européen

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

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

(3) Si la demande de brevet européen est divisée avant la publication, conformément aux dispositions de l'article 81, ou si les revendications ont été modifiées conformément aux dispositions de l'article 82, les revendications initiales sont également reproduites dans la publication, en plus des revendications nouvelles ou modifiées.

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

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

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

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

Artikel 86 (früher Artikel 86b)
Bekanntmachung der Erledigung einer Patentanmeldung

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

Artikel 87 (früher Artikel 87a)
Einwendungen gegen die Patentierbarkeit der angemeldeten Erfindung


(2) Die in Absatz 1 vorgesehenen Einwendungen werden dem Anmelder mitgeteilt.

KAPITEL II
Ertellungsverfahren

Artikel 88
Antrag auf Prüfung

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

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


Article 86 (former Article 86b)
Publication of the lapse of a European patent application

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

Article 87 (former Article 87a)
Observations concerning the patentability of the invention in respect of which an application has been filed

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

(2) The observations referred to in paragraph 1 shall be communicated to the applicant.

CHAPTER II
Procedure for grant

Article 88
Request for examination

(1) The European Patent Office shall examine, on request, whether a European patent application and the invention which forms the subject thereof meet the requirements of this Convention.
Artikel 83 (früher Artikel 82)
Änderungen der Unterlagen

Bis zur Stellung des Antrags auf Prüfung ist außer in den Fällen der Artikel 78 Absatz 2, 81 und 82 eine Änderung der Beschreibung, der Patentansprüche oder der Zeichnungen einer europäischen Patentanmeldung nur zulässig, soweit es sich um die Berichtigung von Schreibfehlern, sprachlichen Fehlern oder offensichtlichen Unrichtigkeiten handelt.

Artikel 84 (früher Artikel 83)
Anhörung vor der Prüfungsstelle

Die Prüfungsstelle hört den Anmelder von Amts wegen oder auf Antrag, wenn sie dies für sachdienlich erachtet. Sie hat dem Antrag stattzugeben, wenn sie beabsichtigt, die Anmeldung ganz oder teilweise zurückzuweisen.

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


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

(3) Ist die europäische Patentanmeldung vor der Veröffentlichung gemäß Artikel 81 geteilt oder sind die Patentansprüche gemäß Artikel 82 geändert worden, so werden in der Veröffentlichung außer den neuen oder geänderten Patentansprüchen auch die ursprünglichen Patentansprüche aufgeführt.

Article 83 (former Article 82)
Amendment of documents

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

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

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

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

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

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

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

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

Article 84 - Grant of the provisional European patent

Article 85 - Publication of a provisional European patent

Article 86 - Official certificate for a provisional European patent

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

Article 86a - Publication of a European patent application

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

64. On the subject of the publication of the claims in the various cases referred to in paragraph 1(b) of this Article (see note on this Article in doc. BR/9/69), the Working Party agreed that this problem will have to be reconsidered after consultations with the interested circles.

BR/10 e/69 kel/PA/mk
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 12 November 1969
BR/10/69

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- Secretariat -

MINUTES

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

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I

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

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

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

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

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

BR/10 e/69 rel/PA/mk

.../...
Article 86a

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

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

(2) La mise à l'inspection publique prévue au paragraphe 1 fait l'objet d'une mention au registre européen des brevets et d'une publication au Bulletin européen des brevets.
Bruxelles, le 22 Janvier 1965
2.335/IV/65-F

Confidentiel

 Modifications de l'avant-projet de Convention relatif à un droit européen des brevets (article 1 à 175)

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

2.335/IV/65-F
Article 97 - Grant of the European patent

9. The Sub-Committee did not adopt a proposed Article governing summons of the applicant by the Examining Division. It considered that a general provision should be included in the Convention combining all the provisions relating to hearings and oral proceedings.

A note has been attached to the Article in question in the Implementing Regulations, to draw the attention of Working Party I to this problem.

Article 98 - Publication of a European patent

10. The Sub-Committee agreed first of all that the Implementing Regulations need not list the particulars to be entered on the specification, but should entrust the task to the President of the European Patent Office as had been done for particulars to be given in the publication of the application (Re. Article 85, No. 1).

The Sub-Committee then decided to combine the two provisions in one single Article. This text has been numbered Re. Article 85, No. 1, for the sake of convenience and is accompanied by a note.

Re. Article 99, No. 1 - Certification of copies of the European patent certificate

11. No comments.

BR/60 e/70 cyd/EL/prk
Re. Article 85, No. 1 - Publication of European patent applications and of the specification of a European patent

6. See under 10.

Re. Article 88, No. 1 - Form of the request for examination

6bis. The Sub-Committee agreed not to insist in paragraph 2(a) that the request should indicate the nationality of the applicant or the State in which he has his residence or registered place of business. See the note to this provision. The Sub-Committee also deleted the reference to the right of a third party making a request to state his objections, such a right being already implicitly recognised in Article 87 of the First Preliminary Draft.

Re. Article 88, No. 2 - Refusal of a request for examination

7. In the event of failure duly to correct the deficiencies noted, the European Patent Office will refuse the request for examination. In this case, the examination fee, although high, will not be refunded, in spite of the fact that examination will not take place. The Sub-Committee considered it ought not to encourage persons making a request to be negligent.

The Sub-Committee also felt that if the European Patent Office failed to note the deficiency and began the examination, this would imply that the deficiency no longer existed. Such an implication would, however, only be valid for deficiencies of form. The following provision governs the question of the irregularity of the request itself.

BR/60 e/70 oyd/KM/prk
MINUTES

of the 3rd meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 20-23 October 1970)

I.

The third 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 20 to Friday 23 October 1970,
with Mr. FRESSONET, Deputy Director, French Industrial
Property Institute, in the Chair.

In addition to the national delegations represent-
ted 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 85
Numéro 1

Mentions du fascicule imprimé du brevet européen provisoire

(1) Sans préjudice des dispositions de la Convention et des autres articles du présent Règlement, le fascicule imprimé du brevet européen provisoire doit porter :

a) le numéro du brevet ;

b) la date de publication de la délivrance du brevet ;

c) les nom et prénoms ou dénomination et forme juridique du titulaire ainsi que son pays de son domicile ou siège ;

d) la date du dépôt de la demande de brevet ;

e) le symbole du classement attribué au brevet ;

f) le cas échéant, le nom de l'inventeur désigné ;

g) si une priorité a été revendiquée, la date, le numéro et le pays du premier dépôt ;

h) pour les brevets d'addition, le numéro du brevet principal ;

i) pour les brevets divisionnaires, la date et le numéro de la demande initiale ;

j) dans le cas prévu à l'article 16, paragraphe (3) de la Convention, la date et numéro de la demande antérieure ;

k) dans le cas prévu à l'article 24, paragraphe 5 de la Convention, le numéro de la demande auquel la demande ou le brevet européen provisoire était initialement rattaché.

(2) Le Président de l'Office européen des brevets peut prescrire qu' d'autres mentions soient portées sur le fascicule imprimé du brevet européen provisoire.
Groupe de travail
"BREVETS"

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

VE AO 1964

Avant-projet
de règlement d'application de la convention
relative à un droit européen des brevets
tion contiendra une telle mesure mais que celle-ci sera purement exemplative. Le Président de l'Office des brevets aura le droit de décider quelles mentions complémentaires devront figurer sur le fascicule.

Le Comité de rédaction se chargera de rédiger un texte en ce sens.

Ad. 85 numéro 1

Cet article déclare que doit être mentionnée sur le fascicule imprimé la date visée à l'article 16, paragraphe 3, relative à l'information donnée à l'Office européen par une personne lésée du fait d'une usurpation. Cette disposition est adoptée par le groupe et transmise au Comité de rédaction.

Ad. 85 numéro 2

Cette disposition se rapporte aux particularités de la publication en cas de division de la demande et de modification des revendications.

Au sujet du paragraphe premier, le groupe ne voit pas l'utilité de la première phrase. Celle-ci a pour but de faciliter la lecture du fascicule et faire apparaître dès l'abord les revendications modifiées.

Après un échange de vues, le groupe décide de biffer cette première phrase. Ce détail de la présentation du fascicule lui semble relever de la compétence du Président de l'Office plutôt que du Règlement d'exécution.

La deuxième phrase se rapporte aux revendications initiales. Elle résulte de la nouvelle rédaction de l'article 85. Elle est maintenue et transmise au Comité de rédaction.

Le paragraphe 2 vise la publication en cas de demande divisionnaire. Ce paragraphe est accepté par le groupe et transmis au Comité de rédaction.
Résultats de la neuvième session du groupe de travail "Brevets" qui s'est tenue à Munich du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 85
Numéro 1

Mention de la date de la demande antérieure

Si un brevet européen provisoire est délivré à la suite
d'une demande de brevet nouvellement déposée conformément à l'article
16 paragraphe 3 de la convention, la date visée à l'article 16, par.3,
de la convention est également mentionnée dans le fascicule imprimé
cconcernant ce brevet.
Règlement d'exécution
de l'article 85 de la convention

Publication du brevet européen provisoire

Remarque préliminaire :

En égard aux propositions ultérieures relatives au règlement
d'exécution, les modifications suivantes de la convention paraissent
nécessaires :

Nouveau texte de l'article 85, paragraphe 1 :

"(1) En même temps qu'il publie la délivrance du brevet européen
provisoire, l'office européen des brevets publie un fascicule imprimé
contenant la description de l'invention, les revendications et, le
cas échéant, les dessins et, en annexe, l'avis de nouveauté relatif à
l'invention".
Bonn, le 10 avril 1963.

Projet

de

règlement d'exécution

de la

convention relative à un droit européen des brevets

Propositions pour l'exécution des

articles 76 à 87

de la convention
Artikel 86a

Offenlegung vor der Bekanntmachung der Erteilung
des vorläufigen europäischen Patents


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

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

Vertraulich

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

Dieses Arbeitsdokument ersetzt das Arbeitsdokument 11.155/IV/64-D vom 2. Oktober 1964 (Artikel 1 bis 103).
Article 97 – Grant of the European patent

9. The Sub-Committee did not adopt a proposed Article governing summons of the applicant by the Examining Division. It considered that a general provision should be included in the Convention combining all the provisions relating to hearings and oral proceedings.

A note has been attached to the Article in question in the Implementing Regulations, to draw the attention of Working Party I to this problem.

Article 98 – Publication of a European patent

10. The Sub-Committee agreed first of all that the Implementing Regulations need not list the particulars to be entered on the specification, but should entrust the task to the President of the European Patent Office as had been done for particulars to be given in the publication of the application (Re. Article 85, No. 1).

The Sub-Committee then decided to combine the two provisions in one single Article. This text has been numbered Re. Article 85, No. 1, for the sake of convenience and is accompanied by a note.

Re. Article 99, No. 1 – Certification of copies of the European patent certificate

11. No comments.

BR/60 e/70 oyd/EH/prk
Re. Article 85, No. 1 - Publication of European patent applications and of the specification of a European patent

6. See under 10.

Re. Article 88, No. 1 - Form of the request for examination

6bis. The Sub-Committee agreed not to insist in paragraph 2(a) that the request should indicate the nationality of the applicant or the State in which he has his residence or registered place of business. See the note to this provision. The Sub-Committee also deleted the reference to the right of a third party making a request to state his objections, such a right being already implicitly recognised in Article 87 of the First Preliminary Draft.

Re. Article 88, No. 2 - Refusal of a request for examination

7. In the event of failure duly to correct the deficiencies noted, the European Patent Office will refuse the request for examination. In this case, the examination fee, although high, will not be refunded, in spite of the fact that examination will not take place. The Sub-Committee considered it ought not to encourage persons making a request to be negligent.

The Sub-Committee also felt that if the European Patent Office failed to note the deficiency and began the examination, this would imply that the deficiency no longer existed. Such an implication would, however, only be valid for deficiencies of form. The following provision governs the question of the irregularity of the request itself.

BR/60 e/70 oyd/KM/prk

.../...
MINUTES
of the 3rd meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 20-23 October 1970)

I

1. The third 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 20 to Friday 23 October 1970,
with Mr. PRESSONET, Deputy Director, French Industrial
Property Institute, in the Chair.

In addition to the national delegations represen-
ted 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.
Ausführungsordnung 6.9.1963

Zu Artikel 85
Nummer 1

Angaben auf der Patentschrift des vorläufigen europäischen Patents

(1) Unbeschaedet der Vorschriften des Abkommens und der übrigen Vorschriften dieser Ausfuhrungsordnung enthaelt die Patentschrift des vorläufigen europäischen Patents folgende Angaben:

a) die Nummer des Patents;

b) den Zeitpunkt der Bekanntmachung der Erteilung des Patents;

c) den Namen, die Vornamen oder die Bezeichnung und die Rechtsform des Inhabers sowie den Staat seines Wohnsitzes oder Sitzes;

d) den Zeitpunkt der Einreichung der Patentanmeldung;

e) die Symbole der Klassifikation des Patents;

f) gegebenenfalls den Namen des als Erfinder Genannten;

g) falls eine Prioritaet in Anspruch genommen wird, den Zeitpunkt, die Nummer und den Staat der ersten Hinterlegung;

h) bei Zusatzpatenten die Nummer des Hauptpatents;

i) bei Teilpatentanmeldungen den Zeitpunkt und die Nummer der ursprünglichen Patentanmeldung;

j) im Falle des Artikels 16 Absatz 3 des Abkommens den Zeitpunkt und die Nummer der ursprünglichen Patentanmeldung;
Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht
die aber nur einen beispielhaften Charakter haben würde. Der Präsident des Patentamtes solle das Recht haben zu entscheiden, welche zusätzlichen Eintragungen in der Patentschrift erscheinen sollen.

Der Redaktionsausschuss soll die Abfassung eines Textes in diesem Sinne übernehmen.

Artikel 85 Nr. 1


Artikel 85 Nr. 2

Diese Vorschrift regelt die Besonderheiten der Bekanntmachung bei Teilung der Anmeldung und Änderung der Patentansprüche.

Beim ersten Absatz sieht die Arbeitsgruppe keinen Nutzen im ersten Satz. Dieser soll das Lesen der Patentschrift erleichtern und deshalb die geänderten Ansprüche gleich am Anfang erscheinen lassen.


Der zweite Satz bezieht sich auf die ursprünglichen Ansprüche. Er folgt aus der Neufassung von Artikel 85. Er wird beibehalten und an den Redaktionsausschuss überwiesen.

Absatz 2 regelt die Veröffentlichung im Falle der Teilanmeldung. Dieser Absatz wird von der Gruppe angenommen und an den Redaktionsausschuss weitergeleitet.

.../...
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 85
Nummer 1

Vermerk des Zeitpunkts der früheren Anmeldung

Auskäufungsordnung

zu Artikel 85 des Abkommens

Veröffentlichung des vorläufigen europäischen Patents

Vorbemerkung:
Mit Rücksicht auf die nachfolgenden Vorschläge zur Ausführungsordnung dürften folgende Änderungen des Abkommens erforderlich werden:

Artikel 85 Absatz 1 erhält folgende Fassung:

"(1) Das Europäische Patentamt gibt gleichzeitig mit der Bekanntmachung der Erteilung des vorläufigen europäischen Patents eine gedruckte Patentschrift heraus, welche die Beschreibung der Erfindung, die Ansprüche und gegebenenfalls die Zeichnungen sowie als Anlage den Bericht über die Neuheit der Erfindung enthält."
Arbeitsentwurf
zu einer
Ausführungsordnung
zum
Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 76 bis 87

des Abkommens
5. Filing and requirements of the European patent application (Articles 73-84 and Rules 24-37)

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

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

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

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

After detailed consideration of the various arguments for and against the two approaches, the Main Committee decided by a majority to retain the solution proposed in the draft and to lay down that the micro-organism should be made available to the public at the latest at the date of publication of the European patent application. At the same time, it added provisions to Rule 28 which gave the applicant far-reaching guarantees against misuse of the disclosed micro-organism during the existence of the provisional protection conferred by the application and the definitive protection of the European patent. These guarantees consisted in requiring that any third party who had access to a sample of the culture would have to make certain undertakings vis-à-vis the culture collection or the applicant 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 fee in Article 98, paragraph 1, on the ground that the opponent was to be considered as a person helping to establish the legal facts of the matter, was rejected by the majority. If the fee were to be dispensed with, dilatory opposition would be encouraged. Furthermore, the interests of the opponent are his main incentive and lastly, pursuant to Article 114, any person who wishes to help to establish the legal facts of the matter may present, free of charge, observations concerning the patentability of an invention in respect of which an application has been filed. By a vast majority the Committee also refused to shorten to six months the nine-month opposition period laid down in Article 98, paragraph 1, which had been adopted as a compromise solution at an earlier stage in the negotiations.

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