Article 30 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.
Art. 30
MPÜ
Teilnahme von Beobachtern

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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
Article 30

Attendance of observers

(1) Deleted

(2) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with the provisions of an agreement to be concluded between the European Patent Organisation and the World Intellectual Property Organization.

(3) Any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Organisation has concluded an agreement shall be represented at the meetings of the Administrative Council, in accordance with any provisions contained in such agreement.

(4) Any other inter-governmental and international non-governmental organisations exercising an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 2

Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 27 to 54
Article 28
Attendance of observers

(1) Deleted

(2)  
  } Only concerns German text
(3)  

(4) Any other inter-governmental and international non-governmental organisations exercising an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 24 September 1973
M/130/II/R 6
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II

AT THE MEETING ON 24 SEPTEMBER 1973

Articles of the Convention:

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Protocol on Privileges and Immunities of the European Patent Organisation

Protocol on the Centralisation of the European Patent System and on its introduction
Article 28
Attendance of observers

(1) Unchanged from 1972 published text

(2) }
    Only concerns German text
(3) }

(4) Any other inter-governmental and international non-governmental organisations exercising an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

M/108/II/R 4
Original: English/French/German

Munich, 19 September 1973

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II
AT THE MEETING ON 18 SEPTEMBER 1973

Articles of the Convention:

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Protocol on Privileges and Immunities of the European Patent Organisation:

<table>
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Grounds: Reservations are felt about an Examiner having a decisive voice in opposition proceedings when he, because of his involvement in the proceedings for the grant of the European patent, cannot be without prejudice; such reservations can only be allayed by the assurance that he will not be able to exercise a special influence as Chairman of the Opposition Division.

3. Article 28, Paragraph 4

Proposal: In the first line of paragraph 4 delete the word "inter-Governmental".

Grounds: It is possible that the Administrative Counsel might be interested in occasionally inviting other organizations. This would be made possible by the proposed deletion.

4. Article 93, Paragraph 2

Proposal: In the first sentence replace the words "on which the European Patent Bulletin mentions the publication of the European search report" by the words "on which the search report according to 91(3) is notified to the Applicant, however not before 24 months after the application date has lapsed or, when priority has been claimed, 24 months after the priority date."

Grounds: It cannot be expected of an Applicant that he reads the Patent Journal. The delay must be based upon dates which the Applicant has his own knowledge of.

The expression chosen by FICPI "has been sent to the Applicant" can be interpreted as meaning that the date of despatch is the operative one. The term "notification" is clearly defined in Rules 78-83.

5. Article 94

Proposal: 1. Article 94 be deleted.

2. In the first paragraph before "extend" insert the words "upto a maximum of 18 months".
MUNICH DIPLOMATIC CONFERENCE

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

- 1973 -

Munich, 11 September 1973
M/62/I/II
Original: German/English/French

CONFERENCE DOCUMENT

Drawn up by: Union of European Patent Agents (UNEPA)

Subject: Additional comments
ARTICLE 16a - Search Divisions

The Search Divisions shall be responsible for the drawing up of the European search reports.

ARTICLE 28 - Attendance of observers

(1) Deleted
(2) to (4) Unchanged.

ARTICLE 89 - Transmission of the application documents to the International Patent Institute

Deleted

ARTICLE 91 - The drawing up of the European search report

(1) If a European patent application has been accorded a date of filing and is not deemed to be withdrawn by virtue of Article 68, paragraph 1, the Search Division shall draw up the European search report on the basis of the claims, with due regard to the description and any drawings in the form prescribed in the Implementing Regulations.

(2) Deleted

(3) Once it has been drawn up, the applicant shall be notified of the European search report and of copies of any cited documents.

ARTICLE 95 - Examination of the European patent application

(1) If the applicant for a European patent has filed the request for examination before he has been notified of the European search report, the European Patent Office shall invite him after the notification of the report to indicate, within a period to be determined, whether he desires to proceed further with the European patent application.

(2) and (3) Unchanged.

ARTICLE 124 - Supplementary European search report

(1) In all cases and at any time where the European Patent Office considers this to be necessary, a supplementary European search report shall be drawn up.

(2) and (3) Unchanged.

ARTICLE 156 - International search report

(1) Unchanged.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973

M/59/I/II
Original: French

CONFERENCE DOCUMENT

Drawn up by: French delegation

Subject: Incorporation of the IIB into the European Patent Office as the Directorate-General for Searching
Proposals for amendments to the Convention and the Implementing Regulations
Übereinkommen über die internationale Patentklassifikation an die Stelle der zur Zeit geltenden Europäischen Übereinkunft über die internationale Patentklassifikation treten wird. Es könnte daher nützlich sein, in die Regel 8 der Ausführungsordnung auch einen Hinweis auf das Straßburger Übereinkommen aufzunehmen, so daß dieses unmittelbar nach seinem Inkrafttreten direkt anwendbar wird.

III.


III.

WIPO welcomes and attaches particular importance to the provision of the Draft Convention providing for its representation as observer in the Administrative Council of the future European Patent Organisation (Article 28(2)). This opens the possibility of contributing WIPO’s advice on all questions of interrelationship between the European Patent Convention and the international instruments administered by WIPO, and in particular with respect to all questions concerning the simultaneous application of the European patent system and the PCT. Thus, fruitful co-operation between the future European Patent Organisation and WIPO will be greatly facilitated.
STELLUNGNAHME DER
WIPO
Weltorganisation für geistiges Eigentum

COMMENTS BY
WIPO
World Intellectual Property Organization

PRISE DE POSITION DE
L'OMPI
Organisation Mondiale de la Propriété Intellectuelle
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTerteilungsverfahrens 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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

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

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

1973
Artikel 28
Teilnahme von Beobachtern


(2) Die Weltorganisation für geistiges Eigentum ist auf den Tagungen des Verwaltungsrats nach Maßgabe eines Abkommens vertreten, das die Europäische Patentorganisation mit der Weltorganisation für geistiges Eigentum über die gegenseitige Zusammenarbeit schließt.

(3) Andere zwischenstaatliche Organisationen, die mit der Durchführung internationaler patentrechtlicher Verfahren beauftragt sind und mit denen die Organisation ein Abkommen geschlossen hat, sind, wenn dieses Abkommen entsprechende Vorschriften enthält, nach Maßgabe dieser Vorschriften ebenfalls auf den Tagungen des Verwaltungsrats vertreten.

(4) Alle anderen zwischenstaatlichen Organisationen, die eine die Organisation betreffende Tätigkeit ausüben, können vom Verwaltungsrat eingeladen werden, sich auf seinen Tagungen bei der Erörterung von Fragen, die von gemeinsamem Interesse sind, vertreten zu lassen.

Artikel 29
Sprachen des Verwaltungsrats

(1) Der Verwaltungsrat bedient sich der deutschen, englischen und französischen Sprache.

(2) Die dem Verwaltungsrat unterbreiteten Dokumente und die Protokolle über seine Beratungen werden in den drei in Absatz 1 genannten Sprachen erstellt.

Artikel 30
Personal, Arbeitsräume und Mittel

Das Europäische Patentamt stellt dem Verwaltungsrat sowie den vom Verwaltungsrat eingesetzten Ausschüssen das Personal, die Arbeitsräume und die materiellen Mittel zur Verfügung, die sie zur Durchführung ihrer Aufgaben benötigen.

Artikel 31
Befugnisse des Verwaltungsrats in bestimmten Fällen

(1) Der Verwaltungsrat ist befugt, folgende Vorschriften zu ändern:

Article 28
Attendance of observers

(1) The International Patent Institute shall be represented at the meetings of the Administrative Council, in accordance with the provisions contained in the Agreement concluded with the Organisation laying down the procedure for the collaboration of the International Patent Institute with the European Patent Office.

(2) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with the provisions of an agreement to be concluded between the European Patent Organisation and the World Intellectual Property Organization.

(3) Any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Organisation has concluded an agreement shall be represented at the meetings of the Administrative Council, in accordance with any provisions contained in such agreement.

(4) Any other inter-governmental organisation exercising an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.

Article 29
Languages of the Administrative Council

(1) The languages in use in the deliberations of the Administrative Council shall be English, French and German.

(2) Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up in the three languages mentioned in paragraph 1.

Article 30
Staff, premises and equipment

The European Patent Office shall place at the disposal of the Administrative Council and any body established by it such staff, premises and equipment as may be necessary for the performance of their duties.

Article 31
Competence of the Administrative Council in certain cases

(1) The Administrative Council shall be competent to amend the following provisions of this Convention:
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) this problem was closely related to the language system to be applied under the Convention on the Community patent. The translation of the claims provided for under Article 14, paragraph 7, could make it easier to solve the problem of what this system should be, to the extent that the Member States might be persuaded not to require a translation of the granted patent into their languages;

(b) translation of the claims would also be of importance from the point of view of documentation;

(c) this problem concerned the right of the public to be informed and it might therefore be preferable that any decision of this nature be taken by a revision conference rather than by the Administrative Council.

**Article 28**

3. The Committee adopted a proposed amendment submitted by the representative of WIPO (cf. Working Document No. 14); this was to delete the reference to WIPO in paragraph 2 of this Article and insert a new paragraph 1bis to the effect that WIPO should be represented at the meetings of the Administrative Council in accordance with the provisions of an agreement to be concluded between the European Patent Organisation and WIPO. This formula is appropriate in the light of the close ties of co-operation which will develop between the two organisations and is without prejudice to the details of the way in which WIPO is to be represented at the meetings of the Administrative Council; this is one of the items to be determined in the agreement.
MINUTES

of the

3rd meeting of the Co-ordinating Committee
(Luxembourg, 23, 24 and 27 June 1972)

1. During the 6th Meeting of the Inter-Governmental Conference the Co-ordinating Committee met several times under the Chairmanship of Dr. K. HAERTEL to prepare the Conference's discussions of the proposals submitted to it by various delegations.
The Conference was of the opinion that the application of this subjective criterion would not be left to the appreciation of the Boards of Appeal, but could be settled by the rules of procedure of those Boards, to be adopted in accordance with Rule 11. Consequently, it did not adopt the Austrian delegation's proposals.

Article 25

20. The Luxembourg delegation wondered why paragraph 1 allowed the Chairman or Deputy-Chairman to be appointed from among the alternate Representatives of the Administrative Council.

It was pointed out that this provision had been made because Contracting States could appoint persons as full members on the basis of general considerations. In this case, it should not be ruled out that the Administrative Council could elect the Chairman or the Deputy Chairman from among the persons particularly qualified in the field of patents, even if these persons were alternate members.

Article 28

21. The Conference had before it a proposal from the WIPO representative, set out in Working Document No. 14. This document had previously been examined by the Co-ordinating Committee (cf. BR/218/72, point 3).

22. The Conference recorded its agreement on the conclusions of the Co-ordinating Committee, that the substance of the WIPO representative's proposal should be adopted.

BR/219 e/72 ico/PA/gc
MINUTES

of the

6th meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
Article 28 (35e)
Attendance of observers

(1) The International Patent Institute shall be represented at the meetings of the Administrative Council, in accordance with the provisions contained in the Agreement concluded with the Organisation laying down the procedure for the collaboration of the International Patent Institute with the European Patent Office.

(2) The World Intellectual Property Organisation or any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Organisation has concluded an agreement shall be represented at the meetings of the Administrative Council, in accordance with any provisions contained in such agreement.

(3) Any other inter-governmental organisation exercising an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
Article 4

15. One delegation wondered whether the text of Article 4 was adequate, since once a European patent had been granted, the European Patent Office also had jurisdiction if opposition proceedings were brought.

Article 10, paragraph 2

16. The Committee simplified the text of sub-paragraph (d) by mentioning only the management report of the President of the Office, since the other responsibilities of the President towards the Administrative Council in budgetary matters were already dealt with in Article 47, paragraph 3.

Article 28, paragraph 2

17. The representative of WIPO reserved the right to submit, at the next meeting of the Conference, a proposed amendment stipulating that an agreement should be concluded between the European Patent Office and WIPO in order to ensure that WIPO be represented at meetings of the Administrative Council.

Article 31

18. One delegation proposed that the present paragraph 3 should be made into a separate article. The Committee finally agreed to amend the title of Article 31 in order to cover also the powers laid down in paragraph 3.
MINUTES
of the
second meeting of the Co-ordinating Committee
held in Brussels from 15 to 19 May 1972

1. The second meeting of the Co-ordinating Committee was held in Brussels from 15 to 19 May 1972 with Dr HAERTEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, of the IIB and of WIPO took part as observers. The representatives of the Council of Europe sent their apologies for being unable to attend. The list of those taking part in the meeting is given in Annex I to this report.

2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:
Article 28 (35e)
Attendance of observers

(1) The International Patent Institute shall be represented at the meetings of the Administrative Council, in accordance with the provisions contained in the Agreement laying down the procedure for its collaboration with the European Patent Office.

(2) The World Intellectual Property Organisation or any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Administrative Council has concluded an agreement shall be represented at the meetings of the Administrative Council, in accordance with any provisions contained in such agreement.

(3) Any other inter-governmental organisation exercising an activity of interest to the European Patent Office may be invited by the Administrative Council to arrange to be represented during any discussion of matters of mutual interest.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS
- Secretariat -

Brussels, 24 April 1972
BR/184/72

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
8 to 24 March and 10 to 20 April 1972)

BR/184 e/72
Article 35 d (Representation of inter-governmental organisations)

109. The German delegation reserved the right to defer its decision as to whether or not the Commission of the European Communities should have a seat on the Administrative Council without the right to vote in it.

Article 35 e (Attendance of the President of the European Patent Office)

110. The Conference was of the opinion that it need not be expressly laid down that the President of the European Patent Office will not take part in the deliberations of the Administrative Council in abnormal circumstances (see point ... under Article 36). It therefore decided not to amend this Article.

Article 35 f (The President and Vice-President)

111. In connection with paragraph 2, the Conference noted that in the event of the President or Vice-President relinquishing his office prematurely, his successor would be appointed not only for the remainder of the term of office but for a new three-year term of office.

112. As proposed by the German delegation, the Conference provided in a new paragraph that the first terms of office of the President and Vice-President should not expire at the same time, in order to guarantee continuity within the Administrative Council. (Article 35f; paragraph 3, BR/113/71, Page 11).

.../...

BR/125 e/71 ley/KM/sap
MINUTES

of the
4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 20 to 28 April 1971)
Article 35d

Representation of inter-governmental organisations

(1) The International Patent Institute at The Hague shall be represented at the meetings of the Administrative Council, in accordance with the provisions of the agreement laying down the procedure for its collaboration with the European Patent Office.

(2) Any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Administrative Council has concluded an agreement shall be represented at the meetings of the Council, in accordance with the provisions to that effect contained in such agreement.

(3) Any other inter-governmental organisations exercising an activity of interest to the European Patent Office may be invited by the Administrative Council, at its discretion, to arrange to be represented by observers during the discussion of matters of mutual interest.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
Article 35e (Attendance of observers)

106. The WIPO representatives made a proposal in connection with this provision (Working Document No. 3 of 14 October 1971) to the effect that special reference to the representation of their organisation on the Administrative Council should be made in Article 35e. They pointed out among other things that the implementation of Articles 117 to 123 of the Convention would necessitate effective co-operation between the European Patent Office and WIPO.

The Working Party agreed that the special position of WIPO should be emphasised by making special reference to it in Article 35e, paragraph 2. This solution satisfied the wishes of WIPO while stressing, in the first paragraph which is devoted to the IIB, the latter's unique position in relation to the operation of the Convention.

During this discussion it was noted that there was some ambiguity in the texts, so the Working Party also decided to amend the wording so that it should be quite clear that the agreements to be concluded by the European Patent Office with other international organisations need not necessarily involve representation of these organisations at meetings of the Administrative Council. In addition, the Working Party agreed that observers would only need to attend meetings of the Administrative Council when subjects that directly interested the organisations that they represented were to be discussed.
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 17 November 1971
BR/135/71

- Secretariat -

MINUTES

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

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

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

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

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

BR/135 e/71 prk
(Unrevised translation)
(2) Andere zwischenstaatliche Organisationen, die mit der Durchführung internationaler patentrechtlicher Verfahren beauftragt sind und mit denen der Verwaltungsrat ein Abkommen geschlossen hat, sind entsprechend den einschlägigen Bestimmungen des Abkommens ebenfalls auf den Tagungen des Rats vertreten.

(3) Alle anderen zwischenstaatlichen Organisationen, die eine das Europäische Patentamt betreffende Tätigkeit ausüben, können vom Verwaltungsrat eingeladen werden, sich bei der Erörterung von Fragen, die von gemeinsamem Interesse sind, vertreten zu lassen.

**Artikel 35f**

Teilnahme des Präsidenten des Europäischen Patentamts

Der Präsident des Europäischen Patentamts nimmt an den Beratungen des Verwaltungsrats teil.

**KAPITEL 1c**

Tätigkeit des Verwaltungsrats

**Artikel 35g**

Vorsitz

(1) Der Verwaltungsrat wählt aus den Vertretern der Vertragsstaaten und deren Stellvertretern einen Präsidenten und einen Vizepräsidenten. Der Vizepräsident tritt im Fall der Verhinderung des Präsidenten von Amts wegen an dessen Stelle.

(2) Die Amtszeit des Präsidenten und des Vizepräsidenten beträgt drei Jahre. Wiederwahl ist zulässig.

(3) Abweichend von Absatz 2 Satz 1 beträgt die Amtszeit des ersten nach Inkrafttreten des Übereinkommens ernannten Präsidenten vier Jahre.

**Artikel 35h**

Präsidium des Verwaltungsrats

(1) Beträgt die Zahl der Vertragsstaaten mindestens acht, so kann der Verwaltungsrat ein aus fünf seiner Mitglieder bestehendes Präsidium bilden.

(2) Der Präsident und der Vizepräsident des Rates sind von Amts wegen Mitglieder des Präsidiums; die drei übrigen Mitglieder werden vom Rat gewählt.

(3) Die Amtszeit der vom Rat gewählten Präsidiumsmitglieder beträgt drei Jahre. Die Wiederwahl dieser Mitglieder ist nicht zulässig.

(4) Abweichend von Absatz 3 Satz 1 beträgt die Amtszeit eines gewählten Mitglieds des ersten nach Inkrafttreten des Übereinkommens gebildeten Präsidiums fünf Jahre und die Amtszeit eines weiteren gewählten Mitglieds dieses Präsidiums vier Jahre.

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(2) Any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Administrative Council has concluded an agreement shall be represented at the meetings of the Council, in accordance with the provisions to that effect contained in such agreement.

(3) Any other inter-governmental organisation exercising an activity of interest to the European Patent Office may be invited by the Administrative Council to arrange to be represented during any discussion of matters of mutual interest.

**Article 35f**

Attendance of the President of the European Patent Office

The President of the European Patent Office shall take part in the deliberations of the Administrative Council.

**CHAPTER 1c**

Proceedings of the Administrative Council

**Article 35g**

The President and Vice-President

(1) The Administrative Council shall elect a President and a Vice-President from among the Representatives and alternate Representatives of the Contracting States. The Vice-President shall *ex officio* replace the President in the event of his being prevented from attending to his duties.

(2) The duration of the term of office of the President and the Vice-President shall be three years. It shall be renewable.

(3) Notwithstanding the provisions of paragraph 2, first sentence, the duration of the term of office of the first President appointed after the entry into force of the Convention shall be four years.

**Article 35h**

Board of the Administrative Council

(1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members.

(2) The President and the Vice-President of the Council shall be members of the Board *ex officio*; the other three members shall be elected by the Council.

(3) The term of office of the members elected by the Council shall be three years. This term of office shall not be renewable.

(4) Notwithstanding the provisions of paragraph 3, first sentence, the term of office of two of the elected members of the first Board set up after the entry into force of this Convention shall be five and four years respectively.
(2) Der Verwaltungsrat faßt die in Artikel 43 Absätze 1, 4 und 5, Artikel 44 Absatz 2, Artikel 45, Artikel 46 Absatz 2, Artikel 52 Absatz 2 und Artikel 158 Absatz 3 Satz 2 vorgesehenen Beschlüsse und legt die von den Vertragsstaaten nach Artikel 158 Absatz 2 zu leistenden Vorschläge fest.

(3) Der Verwaltungsrat ernennt die in Artikel 37 genannten hohen Beamten und bestimmt den Vizepräsidenten, der den Präsidenten im Falle seiner Abwesenheit vertreibt; fernher kann er auf Vorschlag des Präsidenten des Europäischen Patentamts unter Einhaltung der Bestimmungen des Statuts, die auf sie anzuwenden sind, gegenüber den in Artikel 37 Absatz 3 genannten Beamten Disziplinarmaßnahmen ergreifen.

**Artikel 35c**

*Weitere Beschlüsse*

(1) Der Verwaltungsrat beschließt, welche Staaten eingeladen werden sollen, dem Übereinkommen nach Artikel 164 Absatz 2 beizutreten.

(2) Der Verwaltungsrat ermächtigt den Präsidenten des Europäischen Patentamts, Verhandlungen über den Abschluß von Abkommen mit Staaten oder internationalen Organisationen zu führen und diese Abkommen mit Genehmigung des Verwaltungsrats zu schließen.

(3) Der Verwaltungsrat faßt die in Artikel 73 Absatz 5, Artikel 119 Absatz 3, Artikel 121a Absatz 2 und Artikel 121b vorgesehenen Beschlüsse.

(4) Der Verwaltungsrat bereitet die in Artikel 162 Absatz 2 bezeichneten Revisionskonferenzen vor und beruft sie ein.

(5) Der Verwaltungsrat beschließt über die Errichtung der in Artikel 33 Absatz 2 vorgesehenen Dienststellen.

**KAPITEL 1b**

*Zusammensetzung des Verwaltungsrats*

**Artikel 35d**

*Mitglieder des Verwaltungsrats*

(1) Der Verwaltungsrat besteht aus den Vertretern der Vertragsstaaten und deren Stellvertretern. Jeder Vertragsstaat ist berechtigt, einen Vertreter und einen Stellvertreter für den Verwaltungsrat zu bestellen.


**Artikel 35e**

*Teilnahme von Beobachtern*

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
20. The representative of the Commission of the European Communities asked that his Institution be fully associated in the work of the Council where the latter engaged in the preparatory duties referred to in Article b. In this respect, he stressed the link between certain provisions of the Convention - those relating, for example, to the rules of patentability - and economic policy within the Common Market.

The Working Party was of the opinion that it was not in a position to take a final decision on this request. The question could, where appropriate, be raised at Conference level.

Article e - Attendance of the President of the European Patent Office

21. The Working Party believed that it was not essential to lay down specifically that, "in exceptional cases", the President of the Office would not take part in the deliberations of the Council. The wording adopted by the Working Party for this Article therefore does not mention any such restriction. The Working Party accordingly points out that, if this wording is retained, the wording of Article 36 (2 i) of the Draft Convention will have to be re-examined and the word "normally" deleted.

CHAPTER III

Proceedings of the Administrative Council

Article f - The President and Vice-President

22. In the opinion of the Working Party, the wording of paragraph 2 does not mean that the expiry of the term of office of the Vice-President is linked to that of term of office of the President.
CHAPTER II

Constitution of the Administrative Council

Article c - Representation of Contracting States

18. No comment.

Article d - Representation of inter-governmental organisations

19. Paragraphs 1 and 2 govern the representation of the inter-governmental organisations whose participation in the work of the Council is required for the implementation of the Convention, in view of the role assigned to them in the various stages in the procedure for the grant of the European patent. Paragraph 3, on the other hand, refers to any other inter-governmental organisation whose collaboration may seem expedient, in which case the Council may invite such a body to arrange to be represented by observers.

As regards the organisations referred to in paragraphs 1 and 2, it was proposed to refer to their representatives as observers, to make it clear that they would not enjoy the same status as the representatives of the Contracting States. This proposal was not adopted however. Under Article (k), only the Contracting States have the right to vote in the Council. The Working Party wished to make it clear that the organisations referred to in paragraphs 1 and 2 should have a different role, in view of the Convention itself, from those referred to in paragraph 3.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 20 March 1970
BR/34/70

- Secretariat -

MINUTES

of the meeting of Working Party II
(Luxembourg, 4-6 March 1970)

I

1. The first working meeting of Working Party II, set up
by the Conference at the latter's meeting of 13-16 January 1970,
was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working
Party at its inaugural meeting held at Luxembourg on
16 January 1970, the Chair was taken by Mr. LABRY, Counsellor
at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and
the International Patent Institute (IIB) took part in the
meeting as observers. The representative of the General
Secretariat of the Council of Europe, who had also been
invited to take part in the meeting, apologized for being
unable to attend (1).

(1) See list of participants in the meeting of the Working
Party given in Annex II. As regards Annex I, see point 38
on page 16.
accede, and without the procedure laid down in paragraph 2 for requests for accession by other States being applicable to them.

18. The Working Party felt that accession should also be automatic where a State had already been party to the Convention but had ceased to be a party to it as a result of the application of Article a(4).

**Article e - Entry into force**

19. The Working Party decided that the deposit of instruments of ratification as well as of instruments of accession should be taken into account with regard to the calculation of the number of applications required for the entry into force of the Convention.

The number of 180,000 given in paragraph 1 was adopted by the Working Party in the light of the number of patent applications filed on the territory of the Six Member States of the European Economic Community.

**Article f - Territorial field of application**

20. No comments.

**Article g - Settlement of disputes**

21. The Swiss delegation raised the question as to whether it might be appropriate to provide that all disputes referred to in Article f should be subject to the jurisdiction of the International Court of Justice, pointing out that this solution was in line with the efforts of the States of Western Europe to have the compulsory jurisdiction of this Court accepted in the greatest possible number of disputes between States. The Swiss delegation added that any likely technical aspect of the disputes in question would not form an
15. The Working Party finally agreed that a solution totally reconciling the three requirements set out under (i), (ii) and (iii) was hardly possible. It felt that, under these circumstances, the least objectionable course would perhaps be to accept a solution which would involve practical difficulties for the European Patent Office, but which would safeguard both the rights acquired by applicants and the interests of States which had not ratified the revised text. It therefore decided in favour of the first solution (1). However, the Working Party did not feel that it could by itself assess the seriousness of the practical difficulties entailed by this solution as regards the working of the European Patent Office, such an assessment lying more within the scope of Working Party I. For this reason, it was decided to adopt this solution, on the understanding that it would be submitted to Working Party I, which was to be asked whether it was compatible with the smooth operation of the European Patent Office.

Article c - Signature - Ratification

16. In this provision, the intention of the Working Party was to limit signature of the Convention to the States taking part in the Inter-Governmental Conference (17 countries) or which had been offered the option of taking part in it (Malta and Monaco).

For subsequent accession by other European States, see Article d(2) below.

Article d - Accession

17. The Working Party pointed out that the accession of States able to be parties to the Convention from the time the latter was open for signature should be effected automatically as soon as such State expressed the wish to
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 8 October 1970

BR/53/70

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- Secretariat -

MINUTES
of the Meeting of Working Party II
(Luxembourg, 1-4 September 1970 – 2nd meeting)

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I

1. The second meeting of Working Party II was held at Luxembourg, from Tuesday 1 to Friday 4 September 1970, under the Chairmanship of Mr. R. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities and the International Patent Institute attended the meeting as observers. (1).

2. The Working Party would draw attention to the provisional nature of the wording of the texts it adopted.

Bearing in mind the timetable laid down for the meetings of the other Working Parties, the outcome of which might lead the Working Party to revise some of the provisions which it had previously adopted, in particular those relating to the Administrative Council,

\(.../...\)

(1) The list of those attending the meeting is given in the Annex.

BR/53 e/70 scn/PB/prk
Article d

Representation of inter-governmental organisations

(1) The International Patent Institute shall be represented at the meetings of the Administrative Council, in accordance with the provisions of the agreement laying down the procedures for its collaboration with the European Patent Office.

(2) Any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Administrative Council has concluded an agreement shall be represented at the meetings of the Council, in accordance with the provisions to that effect contained in such agreement.

(3) Any other inter-governmental organisations exercising an activity of interest to the European Patent Office may be invited by the Administrative Council, at its discretion, to arrange to be represented by observers during the discussion of matters of mutual interest.
FIRST PRELIMINARY DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)
composition of the Examining Divisions to a single technical examiner.

140. The Committee voted to reject the German delegation’s proposal.

141. The Committee examined the Finnish delegation’s proposal (M/12, point 3) reiterated in M/68/II that the phrase “against payment of an appropriate fee” be deleted.

142. The Norwegian and Swedish delegations supported this proposal.

143. The German, United Kingdom and Netherlands delegation’s raised objections to the provision of technical opinions free of charge and stated that the costs should be borne by the applicants.

144. The Committee voted to reject the Finnish proposal.

145. The Committee concluded by agreeing to maintain Article 23 as it stood in the basic draft and referred it for final editing to the Drafting Committee.

**Article 25 (27) — Chairmanship**

146. The Committee referred the United Kingdom delegation’s proposal on paragraph 2, contained in M/40, point 9, to the Drafting Committee.

**Article 26 (28) — Board**

**Paragraph 3**

147. In M/10, point 5, the United Kingdom delegation proposed that the sentence “This term of office shall not be renewable” be deleted. It felt that such a provision might result in the exclusion of a Board member of proven professional worth.

148. The Netherlands delegation, supported by the Danish delegation, felt, in contrast to the view expressed by the United Kingdom representative, that the deletion of the last sentence in paragraph 3 might have repercussions which certainly would not reflect the wishes of the United Kingdom delegation.

149. The United Kingdom delegation withdrew its proposal and the Committee agreed to refer Article 26 as it stood to the Drafting Committee.

**Article 28 (30) — Attendance of observers**

(a) Paragraph 1

150. In view of the Committee’s decision on the integration of the IIIB into the EPO, paragraph 1 was deleted.

(b) Paragraph 2 (1)

151. The WIPO representative welcomed the Committee’s adoption of this paragraph which provided for attendance by WIPO at meetings of the Administrative Council of the European Patent Organisation. He was convinced that co-operation between the two institutions would be most productive.

(c) Paragraph 4 (3)

152. The UNEPA delegation (M/62/I/II) proposed that the term “inter-governmental” be deleted.

153. The United Kingdom and Netherlands delegations objected to this proposal on the grounds that it would allow for participation by national organisations.

154. The ICC representative proposed that it be explicitly stipulated that inter-governmental and international nongovern-mental organisations exercising an activity of interest to the Organisation could be invited.

155. The United Kingdom and Netherlands delegations espoused this proposal which was accepted by the Committee.

**Article 31 (33) — Competence of the Administrative Council in certain cases**

(a) Paragraph 1 (a), (3)

156. The Swedish delegation presented a proposal (M/53/I/III) whereby the introduction of Examining Divisions comprising a single examiner would be subject to a guarantee that the application could only be refused by a collegiate body.

157. The Austrian, Danish, Italian, Norwegian and Yugoslav delegations supported the Swedish proposal in the light of experience acquired using a similar system at national level and of the flexibility which such an arrangement would lend to the functioning of the Office.

158. The German delegation and the ICC representative opposed the Swedish proposal on the grounds that a decision in favour of the granting of a patent might affect the public interest just as much as a refusal. Moreover, bearing in mind that approximately 10,000 out of 40,000 applications per year were expected to be refused, acceptance of the Swedish delegation’s proposal would not result in such staff savings as might be desired by the Administrative Council.

159. The United Kingdom delegation likewise opposed this proposal mainly for practical reasons.

160. The French delegation wondered if an intermediate solution might not be found by providing that the Chairman could entrust the examination of an application to a one-member or collegiate body depending on the nature of the case.

161. This proposal was supported by the Belgian delegation.

162. In conclusion, the Committee voted on the Swedish proposal which failed to obtain a majority.

163. The Committee then examined the Swiss delegation’s proposal in M/54/I/II/III aimed at ensuring that the Administrative Council’s decision to set up Examining Divisions comprising a single technical examiner could be rescinded if such action were warranted in the light of experience.

164. The Committee instructed the Drafting Committee to determine whether such elucidation — in its view implicit in the text — were necessary.

165. The Drafting Committee was also asked to find a wording which would cover the concern of certain delegations that it should be possible for the Administrative Council’s decision to be limited to certain categories of application, e.g. clearly defined areas of technology.

(b) Paragraph 3 (4)

166. The Chairman opened the discussion on the Austrian delegation’s proposal in M/78/I/III whereby the agreements which the President could be authorised to conclude on behalf of the Organisation would include agreements with documentation centres.

167. The Spanish, French, Italian and Swedish delegations declared their support for the Austrian proposal.

168. While supporting the Austrian proposal in principle, the German delegation was not convinced of the need for such an amendment. It was of the opinion that agreements with documentation centres such as INPADOC in Vienna would come under private law.

169. The United Kingdom delegation wondered whether the proposed wording excluded documentation services not set up