Comment:

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### Art. 95

**MPU**

**Verlängerung der Frist zur Stellung des Prüfungsantrags**

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Minutes of the proceedings of the Committee of the Whole

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

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

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

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

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

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

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

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

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

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

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

II. Report on the work of Main Committee II

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

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

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

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

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

13. The Austrian delegation suggested that in the English version of point 22, in the middle of page 14, the words "some search work" be used so as not to prejudge the question of the amount of such search work, which had deliberately been left open. The text would therefore read: "difficulties resulting from a renunciation under Section I.2, to entrust some search work to national offices whose language is ..."

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

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

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

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

15. Main Committee III's rapporteur, Mr. Fressonnet, Deputy Director of the National Industrial Property Office
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(Munich, 10 September to 5 October, 1973)

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They were thus in favour of not amending the present wording of paragraph 1.

344. The UNION and IAPIP delegations suggested deleting paragraph 1 in order to exclude any extension of the period for filing requests for examination, in the interests of a rapid examination procedure. The UNION suggested as an alternative the possibility of limiting the extension of the period to 18 months.

345. The French and Swedish delegations emphasised that the present version of Article 94, paragraph 1, represented a compromise for them from which no further departures should be made.

346. In conclusion, the Chairman noted in relation to paragraph 1 that COPRICE's suggestion was not supported by a second Government delegation and that the suggestion of the UNION and IAPIP was not supported by any of the Government delegations.

347. The Swedish delegation, supported by the Danish and Norwegian delegations, proposed amending paragraph 2 in such a way that third parties would quite simply be able to request examination if the period for request for examination were to be extended by the Administrative Council (M/54/1/II, point 6).

348. The United Kingdom and Netherlands delegations were opposed to this proposal. They felt that there would be no point in entitling third parties to request examination in every case where the period for requesting examination were extended — including for example only short or temporary extensions. The present solution was preferred since it was more flexible.

349. In the subsequent vote, 5 delegations were in favour of the proposed amendment, 8 delegations were against it and 4 delegations abstained.

Article 96 (97) — Refusal or grant

350. As already mentioned in connection with Article 14, paragraph 7 (see point 14), the Netherlands delegation proposed laying down in Article 96 that the applicant should submit, within a certain period, translations of the claims in the two official languages other than the language of the proceedings (M/52/1/II/III, points 2 and 13). It supported this with the following arguments.

Firstly, it had hitherto been prescribed throughout the Convention that the applicant himself should file translations, whether of the application or of the patent. There were no grounds for making exceptions in the case of the translation of the claims. Secondly, for the Contracting States which were members of the European Communities, a remarkable situation would arise, with regard to the planned Convention for the European Patent for the Common Market, since this provided for the translation of the claims in the five official languages of the Contracting States of the European Communities. It would be a strange situation if the applicant himself had to supply the translations in three of these languages, whereas the translations into two languages, other than the language of the proceedings, would be undertaken by the European Patent Office. Thirdly, for the translation to be carried out by the European Patent Office, a large number of technically qualified translators would be required for all areas of technology, which was hardly necessary, however, since the applicant who would have precise knowledge of the technical context of his invention, could best translate the claims himself. Fourthly, it had been mentioned in the discussions up to that stage that since the patent was involved, the claims should also be drawn up by the European Patent Office, or at least checked by it. Such checks could also be considered if the applicant himself were to submit the translations. However, the Netherlands delegation felt that these translations were unnecessary since, under Article 68 (70), only the patent in the language of the proceedings was authentic. The translations could attain some significance only in relation to Article 68 (70), i.e. if a Contracting State were to provide that a translation in its official language should be authentic for cases where protection conferred by the patent in that language were narrower than in the language of the proceedings. But then the strange situation would arise where, as far as the claims were concerned, the European Patent Office's version would be decisive, and, as far as the description was concerned, the applicant's version would be decisive.

351. The Swedish and Italian delegations supported the Netherlands proposal.

352. The Main Committee first examined the question of principle, and later discussed the matter of the period for submitting the translation (see point 374).

353. The delegation of the Federal Republic of Germany opposed the proposal by the Netherlands, and referred to its own proposal in M/47/1/II/III, points 5 and 29.

It felt that the solution which was planned by the Member States of the European Communities in the Second Convention could play no part in the arrangements in the First Convention.

It had hitherto never been questioned that very great significance was attributed to the claims translated into the other two official languages. It was not always true that this translation could in every case best be undertaken by the applicant himself. This might perhaps hold true in the case of large industries, but was certainly not valid in the case of individuals or of small firms. The best way of guaranteeing that claims were well translated would be for the European Patent Office to do the translation and for the applicant subsequently to be given an opportunity to examine, and, where appropriate, to improve it. This was what it had proposed in M/47/1/II/III, point 29.

354. The United Kingdom delegation said that its previous very firm convictions on this matter had been shaken by the arguments put forward by the Netherlands delegation. It nonetheless considered that certain aspects of the problem still needed clarification, such as that of the time limit for submitting translations and who was to pay for them. Before it gave its final views, it would like to hear the opinions of the interested circles.

355. The Austrian delegation said it was in principle prepared to accept the Netherlands proposal, but wished to be clear as to how an incorrect translation of patent claims would be dealt with. It thought it might be dangerous if the European Patent Office refused to accept a manifest mistranslation, on the grounds that the requirement for the application was not satisfied, and if the application were consequently deemed to be withdrawn. It did not consider it would be dangerous even if an obvious mistranslation had to be accepted by the Patent Office; but in this case it did seem somewhat contradictory that the Patent Office should be able to exert no influence over the accuracy of the translation.

356. The Netherlands delegation pointed out that only the claims in the language of the proceedings, and not those which had been translated, bore any legal weight. The only possible exception would be in the case of Article 68 (70), paragraph 3: pending rectification, an incorrect translation of the claims together with an incorrect translation of the description supplied by the applicant could determine the protection of the patent. But even so, such a consequence would be ruled out for the States of the European Community under the Second Convention.

357. The Chairman added the comment that, in his view too, incorrect translations of the claims before the European Patent
322. In reply to a question put by the Swiss delegation regarding paragraph 5, namely, what exceptions from the time limit of 16 months were provided for in the Implementing Regulations, the delegation of the Federal Republic of Germany referred to Rule 42, paragraph 2, governing divisional applications, pointing out that, without this provision, divisional applications could, in certain cases, be deemed to be withdrawn before they were filed.

323. In connection with Article 90, paragraph 5, the Austrian delegation raised the question of whether an application also had to be deemed to be withdrawn if, after the time limit of 16 months for correction of the identification of the inventor had expired, it should be ascertained — for example, on the basis of a subsequent court ruling — that in addition to the person A and B designated in the application there was a further joint inventor C.

324. The Chairman thought that such an eventuality would have to be dealt with under Rule 19, which provided for rectification of the designation of an inventor. It considered that this Rule ought to apply not only in the event of incorrect designation — for example where A and B were not the inventors at all — but also in the case of incomplete designation, as described by the Austrian delegation. He maintained that Rule 19 was valid for the whole duration of the proceedings, and therefore if the applicant learnt of the existence of another joint inventor, he would have to file a request for rectification in accordance with Rule 19. He did not consider that Article 90, paragraph 5, applied here, particularly as the European Patent Office did not investigate whether the identification of the inventor was accurate.

325. The Austrian delegation said that it was satisfied with this reply.

326. In another connection (see point 2093), the FICPI delegation queried whether identification of the inventor could also be rectified within 16 months in cases where the applicant was himself the inventor.

327. The Chairman could not see any objections to the assumption that the identification of the inventor could also be rectified within 16 months in such a case.

328. The Chairman noted that the Main Committee adopted Article 90 — subject to amendment of the wording.

**Article 92 (93) — Publication of a European patent application**

329. The delegations of the Federal Republic of Germany and the Netherlands, supported by the Swedish delegation, proposed that the publication of the abstract which, under the original Regulations (Rule 50) was left to the discretion of the President of the European Patent Office, should be made compulsory in paragraph 2, in the same way as the publication of the search report was already compulsory (M/47/III/III, point 16 and M/32, point 17).

330. The United Kingdom delegation opposed this proposal. It considered that, as publication of the abstract was a purely administrative matter, it was preferable to continue to leave it to the discretion of the President of the European Patent Office.

331. The French delegation was also in favour of keeping the original flexible solution. Above all, it should be left to subsequent practice to show whether the abstract, which was intended merely for documentation, would be best published in the form of an appendix to the published patent application or separately.

332. In the ensuing vote, 10 delegations were in favour of the proposed amendment, 4 delegations against it and there were 2 abstentions.

* For Rule 19, see points 2047 et seq.

**Article 93 (94) — Request for examination**

333. The COPRICE delegation said it in no way wished to challenge the basic principle of immediate examination laid down in Article 93, but wondered whether the flexibility given in Article 94 would really prove a sufficient solution should it transpire that the European Patent Office, particularly at the beginning of its activities, were unable to examine European patent applications in due time. In such a case, to extend the Patent Office's activities to all areas of technology only gradually — which would be feasible under Article 161 (162) — was something that should be avoided, if at all possible. It therefore asked for consideration to be given to the possibility of extending from six to twelve months the time limit laid down in paragraph 2 for the filing of requests for examination.

334. This proposal was endorsed by the Italian delegation, which referred to a similar suggestion made by the delegation of the Standing Conference of the Chambers of Commerce and Industry (M/18, point 10).

335. The proposal failed to receive the support of any of the other Government delegations.

336. The UNION delegation felt that it was difficult for the applicant to ascertain from what point in time the period within which requests for examination could be filed began to run. It would be preferable to lay down that the period for filing a request for examination ended with the publication of the search report, provided 24 months had elapsed since the date of filing or priority.

337. The Chairman pointed out that, under Rule 51 (50), paragraph 1, the European Patent Office had to inform the applicant of the publication of the search report and of the date of expiry of the period for making a request for examination.

338. The FICPI delegation countered that the possibility of the European Patent Office's making a mistake when making this notification could not be ruled out entirely. In this (albeit highly improbable) case, the European Patent Office would, pursuant to Rule 51, paragraph 2, bear no liability. It therefore wholeheartedly supported the UNION delegation's suggestion, having already submitted a similar one itself in writing (M/15, points 43 to 46).

339. The Chairman replied that information under Rule 51 (50) would subsequently be communicated by means of standard forms — possibly using a computer — so that the possibility of errors or omissions by the European Patent Office would be reduced to a minimum. Nonetheless, the procedure for the communication of information to the applicant under Rule 51 could perhaps be further improved.

340. The Chairman noted that no Government delegations were in favour of the suggestion put forward by the UNION and FICPI delegations.

**Article 94 (95) — Extension of the period within which requests for examination may be filed**

341. With reference to its comments in M/16, point 10, the COPRICE delegation suggested that provision should be made in paragraph 1 for the Administrative Council to extend the time limit for the filing of requests for examination where this was in the general interest.

342. The Italian delegation supported this suggestion, since it too considered it desirable to have greater flexibility as regards extension of the time limit.

343. The delegations of the Federal Republic of Germany and of the Netherlands explained that despite their favouring a system of deferred examination, they no longer considered that there was any point in resuming the discussion of this problem.

* See also points 2261 et seq.
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(Munich, 10 September to 5 October, 1973)

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Article 295

Extension of the period within which requests for examination may be filed

(1) The Administrative Council may extend the period within which requests for examination may be filed if it is established that European patent applications cannot be examined in due time.

(2) If the Administrative Council extends the period, it may decide that third parties will be entitled to make requests for examination. In such cases, it shall determine the appropriate rules in the Implementing Regulations.

(3) Any decision of the Administrative Council to extend the period shall apply only in respect of applications filed after the publication of such decision in the Official Journal of the European Patent Office.

(4) If the Administrative Council extends the period, it must lay down measures with a view to restoring the original period as soon as possible.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/3 4
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 84 to 111
Grounds: The principle defined in Article 93(2) excludes the system of "delayed examination". Care has, however, to be taken not to create a "back-door" through which the said system can enter.

The Comment of CPCCI M/18 12 cannot be endorsed; neither the Administrative Counsel nor the Applicant should be permitted to introduce "delayed examination".

6. Article 133 Paragraphs 2 and 3

Proposal: That the Suggestion M/21 UNEPA under 13 be altered to the following proposal: "Natural persons not having a place of residence within the territory of one of the Contracting States, and legal persons not having a registered place of business within the territory of one of the Contracting States ......

That the Suggestion M/21 UNEPA under 14 be altered to the following proposal: "Natural persons having a residence within the territory of one of the Contracting States, and legal persons having a registered place of business within the territory of one of the Contracting States, can in ......

Grounds: The term "place of residence" is clearer than that in the Suggestion M/21. It corresponds with the text of the Draft.

7. Article 134

The Proposal of Comment M/11 of the Federal Republic of Germany, that No. 6 of Article 134, supplemented by the following paragraph 8: "If a person whose name appears on the list of professional representatives repeatedly or seriously infringes the laws of the Federal Republic of Germany or of the Netherlands, the competent authorities of these States shall be authorised, after consulting the President of the European Patent Office, to deprive such person of the right to establish a place of business pursuant to paragraph 4", is supported.
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
be issued not by the Examining Divisions but by the Boards of Appeal.

Article 31

4. According to paragraph 1 (a) the AC may decide that an Examining Division shall consist of a single examiner. This means that patent applications can be refused by a single examiner if the AC takes such a decision. This system does not seem to give sufficient legal security to the applicants. A decision to refuse a patent application should in any case be taken by a collegial body or at least by two examiners. We therefore propose to add the following sentence to paragraph 1 (a): "Such an amendment shall include a provision still requiring a collegial body for refusing a patent application."

Article 67

5. The declaration to Article 67 should be amended to make it clear that the patentee should not be able to profit from obscurities in the patent claims. The reasons for this amendment are given in the document M 13. The following should therefore be added to the end of the declaration.

"avoiding that the patentee should be able to profit from obscurities in the patent claims."

Article 94

6. To safeguard the interests of third parties the Swedish delegation proposes the following wording of paragraph 2.

"If the AC extends the period third parties shall be entitled to make request for examination. The AC shall determine the appropriate rules in the Implementing Regulations."

Article 128

7. To safeguard the interest of third parties the files of European patent applications must be open to inspection as soon as possible after the 18 months period. Pursuant to Article 128, however, inspection cannot take place until the patent application is published according to Article 92. Thus if the publication is delayed due to technical difficulties the possibility of inspection is correspondingly delayed. During previous discussions it has been said that third parties anyway do not know anything about the patent applications until they are published according to Article 92. However, paragraph 5 of Article 128 provides for information to third parties at an early date concerning the existence of the patent applications. Therefore the wording of paragraphs 1 and 4 should be amended in the following way.

(1) The files relating to European patent applications shall not be made available for inspection, without the consent of the applicant, until 18 months after the filing date or, if priority is claimed, after the date of priority.

(4) The European patent application and the files relating to such an application and the resulting European patent may subsequent to the period of 18 months after filing or, if priority is claimed,
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/53/I/II
Original: English

CONFERENCE DOCUMENT

Drawn up by: Swedish delegation
Subject : Proposals for amendments to the draft texts
12. Some members of CEEP however consider that if the provisions at present laid down in Article 94 are retained, the maximum length for the provisionally extended period should be laid down as should a time limit after which the period may not be extended.

13. Article 97

It would be very desirable for the specification of the European patent to contain not only the description, the claims and any drawings, but also a list of the documents cited in the course of the procedure.

14. Article 104, paragraph 1

Concerns the French text only.

15. Article 128

The paragraphs of this Article would be clearer if the terminology relating to concepts at different levels and with opposite meanings were more precise. Thus, whereas paragraph 1 lays down a restriction on making files relating to European patent applications which have not yet been published available for inspection, and paragraphs 2 and 3 provide for exceptions to this restriction (these exceptions providing for cases where files may be made available for inspection), paragraph 4, on the other hand, lays down the general principle of files relating to published applications or to patents being made available for inspection and this principle is subject to exceptions (providing for cases where files may not be made available for inspection as in the case of the restriction in paragraph 1). In particular the "exceptions" provided for in paragraph 4 could better be described as "restrictions", as is the case in Article 130, paragraph 3, Article 131, paragraph 1, and Rule 99, paragraph 3.

16. In addition the exceptions (or restrictions) in paragraph 4 on the inspection of files relating to a published application or to a patent would seem to be confined in the Implementing Regulations
account. In this connection it is dangerous to compare, as the last line of Article 65, paragraph 2, does, the infringement of a national patent with the infringement of a patent application which has not yet been examined. Finally, it should be pointed out that a contractual settlement would enable cases of continued use of the invention by the other person concerned to be dealt with.

7. Article 65, paragraph 3
Concerns the French text only.

8. Article 67, paragraph 2
In the opinion of some members of CEEP, the text seems to relate only to the possibility of an amendment of the extent of the claims; it can, however, happen that the nature of the definition of the invention is completely changed (e.g. the definition may originally relate to a product and later to a process).

9. Article 68, paragraph 4
For similar reasons to those stated in the comments on Article 65, paragraph 2, the last two lines should be replaced by the phrase "pursuant to a settlement reasonable in the circumstances".

10. Article 88, paragraph 2
The second part of the last sentence would appear to be ambiguous: does this provision mean that the application will be deemed not to have been filed (or forwarded)? If this is the case it could be stated that the application may be converted into a national patent by the State in question.

11. Article 94
CEEP is of the opinion that it should not be possible to extend the period within which requests for examination may be filed beyond the six months laid down in the Draft Convention.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 23 May 1973

M/30

Original: French

PREPARATORY DOCUMENT

Drawn up by: Centre Européen de l'Entreprise Publique (CFEP)

Subject: Comments relating to the Draft Convention establishing a European System for the Grant of Patents
im Rahmen des Artikels 94 nicht als eine im Ermessen des Verwaltungsrats liegende Gunst, sondern als ein Recht zuerkannt werden, das ihnen aufgrund der vom Verwaltungsrat beschlossenen Verlängerung der Fristen automatisch zusteht.

Artikel 98 – Einspruch


Artikel 104 – Beitritt des Patentverletzers zum Einspruchverfahren


Artikel 124 – Ergänzender europäischer Recherchenbericht


Artikel 166 – Vorbehalte

16 Die STÄNDIGE KONFERENZ bedauert, daß den Staaten die Möglichkeit belassen bleibt, während eines Zeitraums von 10 Jahren sowohl hinsichtlich der Patentierbarkeit der Nahrungs- und Arzneimittel und der Agrar- oder Gartenbauerzeugnisse als auch in bezug auf die Laufzeit des europäischen Patents Vorbehalte geltend zu machen.

Falls durch eine solche Möglichkeit die Ratifizierung des Übereinkommens erleichtert werden kann, so würde sie sich damit einverstanden erklären, daß diese Vorbehalte für eine Höchstdauer von fünf Jahren eingelegt werden können.

theät unter Artikel 94, not as a favour left to the discretion of the Administrative Council, but as a right which is automatically granted where the Council decides to extend the period in question.

Article 98 – Opposition

13 The STANDING CONFERENCE is in favour of there being opposition proceedings particularly since they constitute the only proceedings which may be brought before a European body involving a dispute as to the validity and extent of a European patent. These proceedings are likely to encourage the development of common jurisprudence on these two major problems which have basically been left to the interpretation of national courts.

Article 104 – Intervention of the infringer in the opposition proceedings

14 The STANDING CONFERENCE supports the possibility accorded to the assumed infringer against whom proceedings for infringement have been instituted to intervene in opposition proceedings. It considers that, in order to take account of the concern expressed with regard to Article 67, the possibility of extending this provision should be examined so that an assumed infringer against whom proceedings for infringement have been instituted may request the opinion of the European Patent Office as to the validity and scope of the patent in question by means of direct action.

Article 124 – Supplementary European search report

15 The STANDING CONFERENCE supports the possibility accorded to the European Patent Office to obtain at any time a supplementary search report on the state of the art from the International Patent Institute, particularly in the case provided for under Article 156 of the Convention. The European Patent Office, which is responsible for the grant of the patent, must be the sole judge of the desirability of obtaining a supplementary report having regard to the information at its disposal for taking its decision on the application.

Article 166 – Reservations

16 The STANDING CONFERENCE deplores the option granted to the Contracting States to make reservations, which will be valid for a period of ten years, both as concerns the patentability of food and pharmaceutical products and agricultural or horticultural processes and as concerns the period of validity of European patents.

If it is felt that such an option would encourage States to ratify the Convention, it could accept these reservations being limited to a maximum period of five years.
GEN KONFERENZ durch ein Verfahren ergänzt werden, das die effektive Harmonisierung der Auslegung der europäischen Patente durch die nationalen Gerichte sicherstellt. Die STÄNDIGE KONFERNZ ist sich bewußt, daß auf einem Gebiet, auf dem die souveränen Rechte der Staaten auf dem Spiel stehen, eine Lösung schwierig ist und sich wahrscheinlich im Übereinkommen in der Phase der Ausarbeitung, in der sich der Entwurf befindet, nicht erreichen läßt. Ihres Erachtens sollte jedoch jetzt schon nach einer allgemeinen Lösung gesucht werden, indem - wie im Entwurf von 1962 - die Konsultation des Europäischen Patentamts vorgenommen oder sogar ein gemeinsames Gericht in Aussicht genommen wird, das als regulierender Gerichtshof tätig wird.

Artikel 93 — Prüfungsantrag

10 Die STÄNDIGE KONFERNZ stellt mit Befriedigung fest, daß nach dem Entwurf für die Einreichung des Prüfungsantrages eine kurze Frist vorgesehen ist. Sie meint jedoch, daß eine Frist von zwölf Monaten realistischer wäre und somit den Rechten der Betreffenden besser Rechnung tragen würde als eine Frist, die sechs Monate nach Veröffentlichung des Hinweises im Europäischen Patentblatt, daß der Bericht über den Stand der Technik veröffentlicht worden ist, abläuft. Diese Fristverlängerung, so geringfügig sie ist, rechtfertigt es, Dritten das Recht einzuräumen, die Prüfung zu beantragen. Es ist wünschenswert, eine Möglichkeit beizubehalten, die in vielleicht wenigen, jedoch wichtigen Fällen zum Zuge kommt, zumal die Bestimmungen hierfür bereits formuliert sind und im Vorentwurf enthalten waren.

Artikel 94 — Verlängerung der Frist zur Stellung des Prüfungsantrags


12 Sollte diese Bestimmung beibehalten und auf der anderen Seite ungeachtet des Antrags der STÄNDIGEN KONFERNZ in Artikel 93 nicht die Möglichkeit für Dritte vorgesehen werden, den Prüfungsantrag zu stellen, so müßte ihnen diese Möglichkeit given in the Convention, there should be a mechanism for harmonising the interpretation of European patents by national courts. The STANDING CONFERENCE is fully aware that in a matter involving the sovereign rights of States it would be difficult to find a solution and that the latter cannot be achieved in the Convention at the present stage of drafting. It would however point out that a general solution must be sought as of now either by providing, as in the case of the 1962 Draft, for consultation with the European Patent Office or by arranging for the intervention of a common regulating court.

Article 93 — Request for examination

10 The STANDING CONFERENCE is pleased to note that the Draft has adopted a short period for the filing of requests for examination. It however feels that a period of twelve months would be more realistic and would take greater account of the rights of the parties concerned than a period expiring six months after the European Patent Bulletin mentions the publication of the search report on the state of the art. Such an extension of the period, whilst only being a moderate one, would justify third parties being entitled to file requests for examination. An option of this nature which may only apply to cases which, although limited in number, are important, should be adopted particularly since the provisions governing such intervention have already been drawn up and were contained in the Preliminary Draft.

Article 94 — Extension of the period within which requests for examination may be filed

11 The STANDING CONFERENCE considers that the possibility accorded to the Administrative Council under Article 161 to restrict the grant of European patents to certain areas of technology to begin with is sufficient to allow for the gradual build-up of the activities of the European Patent Office. In so far as it will be defining these areas itself, it is for the Administrative Council to adapt the resources of the Office to the needs of industry. It would therefore not appear desirable to extend periods on the grounds of the inadequacy of the Office. This applies to any extension “in the general interest” in view of the vagueness of this concept and the fact that the Administrative Council will be the sole judge of whether an extension should be made.

12 If this provision is nevertheless retained and if, in addition, in spite of the wishes of the STANDING CONFERENCE, Article 93 does not provide for the possibility for third parties to file requests for examination, this possibility should be accorded
STELLUNGNAHME DER
StKIHK
Ständige Konferenz der Industrie- und Handelskammern
der Europäischen Wirtschaftsgemeinschaft

COMMENTS BY
CPCCI
Standing Conference of the Chambers of Commerce and Industry
of the European Economic Community

PRISE DE POSITION DE LA
CPCCI
Conférence Permanente des Chambres de Commerce et d'Industrie
de la Communauté Économique Européenne
werden, wenn die Worte „teneur”, „terms” und „Inhalt” gestrichen würden oder zumindest – in der französischen Fassung – das Wort „teneur“ durch das Wort „contenu“ ersetzt würde.

Bei Annahme des von COPRICE vorgezogenen Vorschlags erhielt Artikel 67 Absatz 1 Satz 1 folgende Fassung: Der Schutzbereich des europäischen Patents und der europäischen Patentanmeldung wird durch die Patentansprüche bestimmt.”

10 Artikel 93 – Prüfungsantrag – und 94 – Verlängerung der Frist zur Stellung des Prüfungsantrags

Hinsichtlich dieses wichtigen Artikels sollten nach Ansicht von COPRICE zwei Zeiträume unterschieden werden:

1. Während der Übergangszeit muß der Verwaltungsrat über eine große Ermessensfreiheit verfügen, um die Frist für die Stellung des Prüfungsantrags zu verlängern und auf diese Weise zu vermeiden, daß die europäischen Patentanmeldungen nicht fristgerecht oder nicht zufriedenstellend bearbeitet werden können. Zu diesem Zweck könnte in Artikel 94 Absatz 1 den Gründen, die den Verwaltungsrat zur Verlängerung der Frist ermächtigen, der Begriff des allgemeinen Interesses hinzugefügt werden.

2. Für die Zeit nach der Übergangszeit könnte eine rasche Prüfung – die wohl vorzustellen ist – eingeführt werden; COPRICE unterschätzt jedoch nicht gewisse Vorteile einer aufgeschobenen Prüfung.

Auf alle Fälle hält es COPRICE überauswürdig für wünschenswert, daß die Prüfung der Patentierbarkeit, wenn sie erst einmal aufgenommen worden ist, rasch vonstatten geht.

Schließlich sei darauf hingewiesen, daß das Europäische Patentamt den Artikel 161 Absatz 1 betreffend die stufenweise Ausdehnung des Tätigkeitsbereichs des Europäischen Patentamts zur Anwendung bringen kann.

11 Artikel 98 – Einspruch


12 Artikel 107 – Frist und Form

Es wird vorgeschlagen, die in diesem Artikel vorgesehene Frist in folgende zwei Zeitabschnitte aufzuteilen:
- zwei Monate für das Beschwerdeverfahren,
- zwei zusätzliche Monate für die Begründung und die Entrichtung der Gebühren.

10 Article 93 – Request for examination – and Article 94 – Extension of the period within which requests for examination may be filed

COPRICE considers that a distinction should be made between two periods in this important Article:

1. During the transitional period the Administrative Council must have broad discretionary powers to extend the period within which requests for examination may be filed. This is in order to avoid a situation where European patent applications cannot be examined in due time or in a satisfactory manner. To this end in Article 94, paragraph 1, the concept of public interest could be added to the grounds on the basis of which the Administrative Council may extend the period.

2. During the definitive period a system of rapid examination could be established, and this would appear preferable; however, COPRICE does not underestimate the fact that there may be certain advantages in deferred examination.

In any event it is the unanimous wish of COPRICE that, once an examination as to patentability has been started, it should be carried out quickly.

Finally, it is pointed out that the European Patent Office will be able to avail itself of the provisions of Article 161, paragraph 1, relating to the progressive expansion of its field of activity.

11 Article 98 – Opposition

The period of nine months laid down in this Article would seem to be excessive. In order to shorten as much as possible the procedure which, as pointed out at the beginning of this note, is very long and complicated, COPRICE proposes that the period in question should be reduced from nine to six months.

12 Article 107 – Time limit and form of appeal

It is proposed that the period laid down in this Article should be sub-divided into two parts:
- two months for instituting appeal proceedings
- two additional months for the submission of the grounds on which the appeal is based and for the payment of the fees.
STELLUNGNAHME DES
COPRICE
Comité pour la Protection de la propriété industrielle dans la Communauté économique européenne

COMMENTS BY
COPRICE
Comité pour la Protection de la propriété industrielle dans la Communauté économique européenne

PRISE DE POSITION DU
COPRICE
Comité pour la Protection de la propriété industrielle dans la Communauté économique européenne
(2) Der Prüfungsantrag kann vom Anmelder bis zum Ablauf von sechs Monaten nach dem Tag gestellt werden, an dem im Europäischen Patentblatt auf die Veröffentlichung des europäischen Recherchenberichts hingewiesen worden ist. Der Antrag gilt erst als gestellt, wenn die Prüfungsgebühr entrichtet worden ist. Der Antrag kann nicht zurückgenommen werden.

(3) Wird bis zum Ablauf der in Absatz 2 genannten Frist ein Prüfungsantrag nicht gestellt, so gilt die europäische Patentanmeldung als zurückgenommen.

Vgl. Regeln 13 (Aussetzung des Verfahrens), 14 (Beschränkung der Zurücknahme der europäischen Patentanmeldung) und 70 (Feststellung eines Rechtsverlusts)

Artikel 94
Verlängerung der Frist zur Stellung des Prüfungsantrags

(1) Der Verwaltungsrat kann die Frist zur Stellung des Prüfungsantrags verlängern, wenn feststeht, daß die europäischen Patentanmeldungen nicht in angemessener Zeit geprüft werden können.

(2) Verlängert der Verwaltungsrat die Frist, so kann er beschließen, daß auch ein Dritter die Prüfung beantragen kann. In diesem Fall legt der Verwaltungsrat in der Ausführungsvorschriften die Vorschriften zur Durchführung dieses Beschlusses fest.

(3) Ein Beschluß des Verwaltungsrats, die Frist zu verlängern, ist nur auf die europäischen Patentanmeldungen anzuwenden, die nach der Veröffentlichung dieses Beschlusses im Amtsblatt des Europäischen Patentamts eingereicht worden sind.

(4) Verlängert der Verwaltungsrat die Frist, so hat er Maßnahmen zu treffen, um die ursprüngliche Frist so schnell wie möglich wiederherzustellen.

Artikel 94
Extension of the period within which requests for examination may be filed

(1) The Administrative Council may extend the period within which requests for examination may be filed if it is established that European patent applications cannot be examined in due time.

(2) If the Administrative Council extends the period, it may decide that third parties will be entitled to make requests for examination. In such cases, it shall determine the appropriate rules in the Implementing Regulations.

(3) Any decision of the Administrative Council to extend the period shall apply only in respect of applications filed after the publication of such decision in the Official Journal of the European Patent Office.

(4) If the Administrative Council extends the period, it must lay down measures with a view to restoring the original period as soon as possible.

Artikel 95
Prüfung der europäischen Patentanmeldung

(1) Hat der Anmelder den Prüfungsantrag gestellt, bevor ihm der europäische Recherchenbericht zugegangen ist, so fordert ihn das Europäische Patentamt nach Aussendung des Berichts auf, innerhalb einer zu bestimmenden Frist zu erklären, ob er die europäische Patentanmeldung aufrechterhält.

(2) Ergibt die Prüfung, daß die europäische Patentanmeldung oder die Erfindung, die sie zum Gegenstand hat, den Erfordernissen dieses Übereinkommens nicht genügen, so fordert die Prüfungsabteilung den Anmelder nach Maßgabe der Ausführungsordnung so oft wie erforderlich auf, innerhalb einer von ihr zu bestimmenden Frist eine Stellungnahme einzureichen.

Artikel 95
Examination of the European patent application

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

(2) If the examination of a European patent application reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, in accordance with the Implementing Regulations and as often as necessary, to file his observations within a period to be fixed by the Examining Division.
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
113. In addition, the Conference adopted the other provisions of Article 88a and decided to delete Article 160.

119. With regard to Article 157, the Conference found that it could not make provision in the Convention for the applicability of this Article to be subjected to a time limit. However it expressed the desire that the progressive expansion of the field of activity of the European Patent Office should be concluded within five years. It was noted that a declaration to this effect should also be planned for the Diplomatic Conference.

Article 97 (Grant of the European patent)

120. This provision was examined taking particular account of the comments of CEIP. The suggestion to extend the period provided for in paragraph 1 by one month was not adopted, since the Conference was of the opinion that at this stage the most important factor was not to delay the proceedings.

121. With regard to the minimum period provided for in paragraph 4, the usefulness of which had been questioned, it was stressed that this provision was intended to put nationals of the different Contracting States on an equal footing, particularly as regards the opposition proceedings. In fact, this minimum period corresponds to the maximum period provided for in Article 107a for the submission of translations which may be required for the patent to be valid in certain Contracting States.

122. The suggestion that the patent should come into force automatically when the fees due are paid was not adopted as it was pointed out that such a system would give rise to the problem of informing third parties.

BR/168 e/72 nan/KM/prk ..../...
Article 88a (Amendment to the period within which a request for examination should be made)

Article 157 (Progressive expansion of the field of activity of the European Patent Office)

and Article 160 (Period within which a request for examination may be made during a transitional period)

116. With regard to Article 88a, paragraph 1(a), it was pointed out that if Article 160 were to be deleted, the former provision, the scope of which is in any case limited, in view of paragraph 5, would constitute the sole means of coping with a flood of applications to the European Patent Office. If paragraph 1(a) of Article 88a were to be deleted also, a decision to extend the period of time laid down in Article 88, paragraph 2, could only in fact be taken in the framework of a revision of the Convention.

Two delegations considered that even if the European Patent Office were inundated with applications, an extension of the period in question - albeit on a temporary basis - was not justified.

In conclusion, the Conference decided to adopt paragraph 1(a).

117. Paragraph 1(b) of Article 88a was not however adopted. In fact, while some delegations were in favour of such a provision, - even if the supplementary period were limited to a maximum of six months - the majority of the delegations considered that the reference to the general interest constituted a criterion which was too vague and that, in any case, such a decision did not depend on the Administrative Council but on a Conference for a revision of the Convention.
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)
provision if it were definitely established that it would only apply as an exception and for determined areas of technology posing special difficulties within the European Patent Office.

The ICC also opposed paragraph 1(b), claiming that such a decision should be the responsibility not of the Administrative Council but of a Conference. This position was supported by the organisations mentioned in the preceding paragraph, and also by UNICE. FICPI proposed laying down that the period for making the request for examination could not, under paragraph 1(b) be extended beyond twelve months. CNIPA put forward the same proposal as a subsidiary proposal for adoption in the event of that paragraph having to be retained.

102. In conjunction with Article 88a, the organisations dealt with Article 157. Some organisations (CEIF, ICC, and IFPI) considered that this provision constituted a useful means of avoiding possible teething troubles at the European Patent Office. However, CEIF proposed setting a maximum period beyond which this Article could no longer be applied. EIRMA on the other hand was not in favour of Article 157 as it stood, claiming that the rules laid down therein would constitute discrimination between applications relating to the various areas of technology and that in addition these rules would be of very limited practical use to the European Patent Office.

CEIF was not opposed to the principle of the progressive extension of the field of activity of the European Patent Office but proposed that a maximum period for such extension be laid down.
Article 88a (Amendment of the period within which a request for examination may be made)

and Article 157 (Progressive expansion of the field of activity of the European Patent Office)

101. COPRICE stated that it was satisfied with Article 88a, which introduced the necessary flexibility and which, moreover, taking into account the voting rules laid down for the Administrative Council, should not arouse any anxieties with regard to a possible re-introduction of a lengthy long-term deferred examination. In addition, if the Administrative Council were to decide, under Article 88a, paragraph 2, that third parties should be entitled to make requests for examination, the fee for the request should be paid by the third party, without excluding the possibility of the fee being shared afterwards.

Two organisations (CNIPA and FICPI) proposed that if Article 88a were retained, it should at least be provided that the extension of the period laid down in Article 88a could not exceed six months.

Most of the other organisations requested the deletion of Article 88a, since it was implicit in that provision that a system of deferred examination, to which they were in principle opposed, could be reintroduced.

The deletion of paragraph 1(a) was requested by the ICC, EIRMA, IAPIP, CNIPA, IFIA, UNEPA and also CEIF, which nevertheless stated that its Italian section was of the contrary opinion. It was noted that the matter depended essentially on the size of the funds which would be placed at the disposal of the European Patent Office to enable its full operation, rather than on technical problems. CEIF indicated that it might agree to this
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)
Article 88a

Amendment of the period within which a request for examination may be made

(1) The Administrative Council may extend the period laid down in Article 88, paragraph 2, within which a request for examination may be made:

(a) if it is established that European patent applications cannot be examined in due time, or

(b) if an extension is in the general interest.

(2) If the Administrative Council takes the decision referred to in paragraph 1, it may decide that third parties will be entitled to make a request for examination. In such cases, it shall determine the appropriate rules in the Implementing Regulations.

(3) The decisions referred to in the preceding paragraphs shall be published in the Official Journal of the European Patent Office.

(4) Any decision of the Administrative Council pursuant to paragraph 1 shall apply only in respect of European patent applications filed after the publication of such decision.

(5) If the Administrative Council takes a decision referred to in paragraph 1(a) it must lay down measures with a view to restoring the period referred to in Article 88, paragraph 2, as soon as possible.
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 -
Article 160 (National utility models and utility certificates)

90. For reasons of systematic order, the Conference decided to transfer the text of this Article without amendment to the general provisions, and to renumber it Article 8a.

Article 161 (The European patent application as a prior national right)

91. For reasons of systematic order, the Conference decided to transfer the text of this Article without amendment to Article 76 of the Convention as paragraph 1(a).
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)
PART X
FINAL PROVISIONS

Article 160
National utility models and utility certificates

Article 6, Article 61, paragraph 2, Article 76, Articles 124 to 128, Article 134, Article 149 and Article 161 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
88. Several delegations wondered if one solution might be to amend Article 159 in order to give the Administrative Council the power, if circumstances demanded it, to lengthen the period laid down in Article 88, paragraph 2, by a relatively short period of time (the maximum length to be specified in any event by the Convention). A provision like this, which would not amount to an automatic application of the system of deferred examination from the beginning of the functioning of the Patent Office, would certainly be more flexible than the present one and would give the Administrative Council another instrument, in addition to Article 156, with which to deal with any difficulties which might arise. It would, however, be necessary to go further into the problem of the possibility of applying simultaneously Article 156 and Article 159 thus amended.

89. In conclusion, the Conference considered that Article 159 should be re-examined in depth, particularly from the point of view of practical problems which would arise during the initial period of operation of the European Patent Office. Working Party I was instructed to undertake this examination. A note to this effect was added to Article 159.
ary if the forecast of the number of applications submitted in the first few years proved too generous. Even if this were not the case, the provision contained in Article 156 on the progressive expansion of the field of activity of the European Patent Office would provide the Administrative Council with the practical possibility of acting to reduce to manageable proportions any excessive work-load on the European Patent Office.

87. A few delegations considered, however, that Article 159 in its present form was necessary for practical reasons. In the first place, there would certainly be difficulties with the application of Article 156, as shown by the observations already submitted by the interested circles, and in any case, its application would involve greater disadvantages for the applicants than the application of Article 159, since it would provisionally leave whole areas of technology outside the fields of application of the Convention. In addition, the need for the staff of the European Patent Office to obtain working experience would not allow the Office to operate fully at the outset. Finally, the experience of certain national patent offices proved that fears that serious difficulties could arise when changing from the system of deferred examination to that of Article 88 were certainly exaggerated. In any case, the Administrative Council could guard against such difficulties by progressively reducing the period.
Other delegations, while accepting the idea of a limited period of validity for a reservation, asked that this period of validity be calculated as from the entry into force of the Convention for the Contracting State which had made a reservation within the meaning of Article 158. This would be in line with what was laid down in Article 12 of the Strasbourg Convention.

Opposing these requests, the majority of the delegations observed that for reasons of legal security, a fixed and uniform date on which these reservations should cease to have effect should be laid down for all States, so that the applicant for a European patent would not be obliged to allow indefinitely for different legal situations in the different Contracting States.

In conclusion, the Conference decided on a period of ten years, calculated as from the entry into force of the Convention within the meaning of Article 166, paragraph 1.

Article 159 (Period within which a request for examination may be made during a transitional period)

86. The great majority of delegations was in favour of deleting this Article. They considered that it would be illogical to provide that as soon as the European Patent Office began to function, the system of examination with a period of about two years, as laid down in Article 88, be replaced by a system of deferred examination. Such a provision would be dangerous, since it might create difficulties when the time came to change from this system to the system laid down in Article 88. In addition, it might be unnecess-
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 159
Period within which a request for examination may be made during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, the period laid down in Article 88, paragraph 2, within which a request for examination may be made, shall be ... years after the date on which the European Patent Bulletin notifies the publication of the report on the state of the art, pursuant to Article 85, paragraph 5. This latter period may be reduced by a decision of the Administrative Council.

(2) The decisions referred to in the preceding paragraph shall be published in the Official Journal of the European Patent Office.

(3) Any decision of the Administrative Council pursuant to paragraph 1 shall apply only in respect of European patent applications filed after the publication of such decision.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Stage reached on 29 January 1971
113. In addition, the Conference adopted the other provisions of Article 88a and decided to delete Article 160.

119. With regard to Article 157, the Conference found that it could not make provision in the Convention for the applicability of this Article to be subjected to a time limit. However it expressed the desire that the progressive expansion of the field of activity of the European Patent Office should be concluded within five years. It was noted that a declaration to this effect should also be planned for the Diplomatic Conference.

Article 97 (Grant of the European patent)

120. This provision was examined taking particular account of the comments of CEIP. The suggestion to extend the period provided for in paragraph 1 by one month was not adopted, since the Conference was of the opinion that at this stage the most important factor was not to delay the proceedings.

121. With regard to the minimum period provided for in paragraph 4, the usefulness of which had been questioned, it was stressed that this provision was intended to put nationals of the different Contracting States on an equal footing, particularly as regards the opposition proceedings. In fact, this minimum period corresponds to the maximum period provided for in Article 107a for the submission of translations which may be required for the patent to be valid in certain Contracting States.

122. The suggestion that the patent should come into force automatically when the fees due are paid was not adopted as it was pointed out that such a system would give rise to the problem of informing third parties.
Article 88a (Amendment to the period within which a request for examination should be made)

Article 157 (Progressive expansion of the field of activity of the European Patent Office)

and Article 160 (Period within which a request for examination may be made during a transitional period)

116. With regard to Article 88a, paragraph 1(a), it was pointed out that if Article 160 were to be deleted, the former provision, the scope of which is in any case limited, in view of paragraph 5, would constitute the sole means of coping with a flood of applications to the European Patent Office. If paragraph 1(a) of Article 88a were to be deleted also, a decision to extend the period of time laid down in Article 88, paragraph 2, could only in fact be taken in the framework of a revision of the Convention.

Two delegations considered that even if the European Patent Office were inundated with applications, an extension of the period in question - albeit on a temporary basis - was not justified.

In conclusion, the Conference decided to adopt paragraph 1(a).

117. Paragraph 1(b) of Article 88a was not however adopted. In fact, while some delegations were in favour of such a provision, - even if the supplementary period were limited to a maximum of six months - the majority of the delegations considered that the reference to the general interest constituted a criterion which was too vague and that, in any case, such a decision did not depend on the Administrative Council but on a Conference for a revision of the Convention.
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)
(c) One delegation suggested that it might be preferable, after an initial period, for the European Patent Office itself to be responsible for training its officials, as in the case of national offices. That would imply, however, that the training role of the CEIPI at Strasbourg would be only temporary and this might give rise to financial problems.

All the delegations expressed great interest in the ideas put forward by the Chairman, who agreed to draw up a document along these lines to be submitted to the Working Party before 1 January 1972. The French delegation also agreed to submit a document by the same date on the present activities of the CEIPI at Strasbourg and on the developments which could be envisaged by the French authorities, particularly in view of the international role which the Centre might be called upon to play. On the basis of these documents, steps should be taken to enable the Inter-Governmental Conference of June 1972 to take a decision on the general lines of this plan.

Article 33 (Location and branches for information and liaison)

In connection with the discussion on Article 88a and on the problem of the "running-in" of the European Patent Office, the Working Party examined a proposal by the United Kingdom delegation (BR/GT I/113/71) to amend Article 33, paragraph 2, by removing the restriction that branch offices

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probably be tempted to prefer the latter if it had entered into force by the time the European system came into operation, and the amount of interest in the complete procedure compared with that in the first stage only would be so great that any extrapolation of figures from the one to the other would be extremely hazardous. The reply to these objections was that although any estimates based on the first stage would not be very accurate, this seemed nevertheless the best procedure to adopt as it would be objectively impossible to implement immediately all the stages of the procedure for granting European patents. Even supposing that the PCT had already come into force at the time when the European Convention became operational, it was possible, if not probable, that the PCT would still not have been ratified by all the Contracting States to the European Convention, and this would make it in the interests of a sufficient number of inventors to use the European procedure.

(b) It was asked whether, under the plan outlined by the Chairman, candidates for training should preferably be officials from the national patent offices, and what guarantees those trained at the CEIPI would have of being appointed to the European Patent Office. The reply was that the decisions of those empowered to appoint officials of the European Patent Office could not be anticipated (Administrative Council and President of the European Patent Office), but that it would be reasonable to expect that those who had received the training in question would be given a certain amount of preference.
All practical preparations should not of course be postponed until this time. On the contrary, examiners would have to be trained before the European Patent Office began to operate in order to provide a reserve on which the European Patent Office could draw if necessary. This training would have to cover languages and the patent law of the Convention and also, for those from countries which do not have an examination procedure, the problems relating to that procedure. The Chairman suggested that whereas the last item could be the responsibility of those national offices which had experience in this field, training in languages and European patent law might well be entrusted to the International Industrial Property Centre (CEIPI) at Strasbourg. The IIB could also take part in the training programme, which should be financed by the countries of origin of those being trained.

The discussion which followed the Chairman's remarks mainly concerned the following points:

(a) Certain delegations expressed doubts on the relevance of estimates based on the initial period of partial activity of the European Patent Office. The first stage of the processing of the European patent application would correspond to the PCT procedure, with the result that an appreciable number of inventors would
Several delegations pointed out that even if present estimates were relatively theoretical, a survey carried out several years before the European Patent Office begins to operate would not give more accurate or reliable figures as the interested circles would not be able to give precise information on their plans for the relatively distant future.

The United Kingdom delegation's proposal was therefore not adopted.

During this discussion the Chairman put forward a number of ideas on the ways in which the European Patent Office might begin to operate. In his view, the European Patent Office should, under Article 157, restrict its activities for the first year to the first stage of the procedure (up to the request for examination) and the applications concerned could be further processed as national applications. Limited activity of this nature would not require a large number of European Patent Office examiners and would also make it possible to make estimates of requirements area by area. As a result, the President of the European Patent Office would be able to take on a sufficient number of officials for implementing the subsequent stages of the processing of European patent applications.
The Working Party nevertheless decided, by a majority decision, not to adopt this proposal, bearing in mind the psychological advantages of an early submission of a request for examination. The Working Party did not therefore amend Article 88 to this effect. It did however hope that the attention of the interested circles would be drawn to this problem in such a way that the Conference would be able to come to a decision after hearing concrete proposals from the non-governmental international organisations. During the examination of the United Kingdom delegation's proposal, the question had been raised of whether the European Patent Office would be legally entitled, in the case of a flood of requests, to examine applications in the order in which the requests for examination arrived. It was observed in this respect that such a procedure would probably be contrary to Article 2 of the Paris Union Convention.

Practical preparations for the entry into force of the Convention

125. In the context of its discussion of Article 88a, which replaces Article 160, the Working Party considered a proposal from the United Kingdom delegation (BR/GT I/113/71). In this document the United Kingdom delegation had pointed out that it would be useful during 1972 to carry out a survey with a view to getting some clearer idea as to the likely use of the system and particularly its growth rate. It mentioned the possibility of the survey including the interested circles and extending to the United States.
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).

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(Unrevised translation)
**Artikel 159**

**Vorbehalte**

(1) Jeder Vertragsstaat kann sich bei der Unterzeichnung oder bei der Hinterlegung seiner Ratifikations- oder Beitrittsurkunde für eine Übergangszeit von zehn Jahren nach Inkrafttreten dieses Übereinkommens das Recht vorbehalten zu bestimmen,

a) daß in Abweichung von Artikel 133 europäische Patente für Nahrungs- und Arzneimittel als solche sowie für landwirtschaftliche oder gartenbauliche Verfahren, auf die nicht bereits Artikel 10 Buchstabe b anwendbar ist, übereinstimmend mit den für nationale Patente geltenden Vorschriften unwirksam sind oder für nichtig erklärt werden können;

b) daß in Abweichung von Artikel 20a europäische Patente übereinstimmend mit den für nationale Patente geltenden Vorschriften eine kürzere Laufzeit als zwanzig Jahre haben.


(3) Alle Vorbehalte werden mit Ablauf der Übergangszeit nach Absatz 1 unwirksam.

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**Artikel 159**

**Reservations**

(1) Each Contracting State may, at the time of signature or when depositing its instrument of ratification or accession, reserve, for a period of ten years from the entry into force of this Convention, the right to provide:

(a) that, by derogation from Article 133, European patents in respect of food and pharmaceutical products, as such, and agricultural or horticultural processes other than those to which Article 10, sub-paragraph (b), applies, shall, in accordance with the provisions applicable to national patents, be ineffective or revocable;

(b) that, by derogation from Article 20a, European patents shall have a term shorter than twenty years, in accordance with the provisions applicable to national patents.

(2) Any Contracting State that makes a reservation under this Article shall withdraw this reservation as soon as circumstances permit. Such withdrawal shall be made by notification addressed to . . . and shall take effect one month from the date of receipt of such notification.

(3) Any reservation shall cease to have effect on expiry of the period laid down in paragraph 1.

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**Artikel 160**

**Frist zur Stellung des Prüfungsantrags während einer Übergangszeit**


(2) Die Beschlüsse nach Absatz 1 werden im Amtsblatt des Europäischen Patentamts veröffentlicht.

(3) Die Beschlüsse des Verwaltungsrats nach Absatz 1 sind nur auf die europäischen Patentanmeldungen anwendbar, die nach der Veröffentlichung des jeweiligen Beschlusses eingereicht werden.

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**Artikel 160**

**Period within which a request for examination may be made during a transitional period**

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, the period laid down in Article 88, paragraph 2, within which a request for examination may be made, shall be . . . years after the date on which the European Patent Bulletin notifies the publication of the report on the state of the art, pursuant to Article 85, paragraph 5. This latter period may be reduced by a decision of the Administrative Council.

(2) The decisions referred to in the preceding paragraph shall be published in the Official Journal of the European Patent Office.

(3) Any decision of the Administrative Council pursuant to paragraph 1 shall apply only in respect of European patent applications filed after the publication of such decision.
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

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ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

und
ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

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

with
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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 —
extension of the six-month period could, in certain cases, justify recognition of the right of third parties to make a request for examination, the Working Party agreed to lay down in a second paragraph in Article 88a that the Administrative Council could, if it extended the period, decide that third parties would be entitled to make requests for examination. The same provision lays down that in such cases the Administrative Council will determine the appropriate rules in the Implementing Regulations.

123. The elimination of the right of third parties to request examination involved the amendment of paragraph 2 and the deletion of paragraphs 4 and 6 of Article 88, and the amendment or deletion of a number of other provisions of the Convention and Implementing Regulations (Article 91, paragraph 2, Article 92, paragraph 1, Article 97, paragraphs 1 and 3, Re. Article 88, No. 1, paragraph 2 and Re. Article 88, Nos. 2 and 3).

The United Kingdom delegation proposed that applicants should not be authorised to make a request for examination until after receipt of the report on the state of the art. In support of this proposal, the United Kingdom delegation said that the possibility of making a request before this time, which was allowed by the present wording of Article 88, would be taken up by only a very limited number of those concerned. It would, as a general rule, be reasonable to await the report on the state of the art before making such a request, which must, moreover, be accompanied by a fairly high fee. In addition, the exclusion of the possibility of making the request before receipt of the report on the state of the art would increase the number of applications which would be abandoned during the proceedings, along with all the administrative advantages for the European Patent Office that this would entail.
It was pointed out in this connection that a period of six months might possibly, in view of the provisions of Articles 22 and 39 of the PCT which lay down a minimum period of 25 months from the date of filing, involve a difference in treatment between European applicants being treated differently from those taking the PCT route. In reply to this argument it was however suggested that under the second stage of the PCT the difference in treatment would be negligible in practice.

The Working Party considered that this question also closely concerned the interested circles, so it decided to discontinue the debate for the time being and to await their views on the matter, which would be given at the January 1972 Meeting of the Conference.

122. In accordance with its mandate from the Conference (BR/125/71, points 60 and 61), the Working Party then examined the question of whether the right of third parties to file a request for examination should be retained.

Some delegations pointed out that in view of the current provision of the new Article 88a that the Administrative Council may modify the duration of the six-month period prescribed in Article 88, paragraph 2, it might be advisable to retain this right for third parties.

The majority of the Working Party nevertheless considered that it would be preferable to eliminate the right of third parties to request examination as provided in Article 88 for the various reasons that had already been put forward at the Fourth Meeting of the Inter-Governmental Conference. As, however, even a limited

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providing in the Convention for a maximum duration such as might possibly be interpreted as an amendment to the examining system currently prescribed in the Convention. As no majority came out in favour of any of the options proposed, ranging from 1 to 5 years, the Working Party decided not to lay down a maximum period.

Regarding the procedure by which the decision in the matter would have to be taken, the Working Party considered that in conformity with the Convention system, a three-quarters majority should be required, as for other important decisions, but that the weighting of the votes should not be laid down.

With regard to the position of these provisions in the Convention, the Working Party was of the opinion that, as they no longer formed a transitional measure but, on the contrary, constituted one of the powers of the Administrative Council concerning the time limit laid down in Article 88, a new Article 88a should be inserted to this effect, since the former Article 160 had been deleted. The provision governing the majority required for such a decision was laid down in Article 35a, paragraph 1(b).

**Article 88 (Request for examination)**

121. After discussing Article 88a, the Working Party dealt with the question, which is mentioned in the first note to Article 88, of whether the period referred to in paragraph 2 should be increased from six to twelve months.

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Following a discussion in the course of which the delegations noted their proposals on this specific point and on the more general problem of deferred examination, a compromise solution emerged, whereby there would be no transitional period and the time limit prescribed in Article 88, paragraph 2, would apply immediately. But the Administrative Council would have the permanent option of extending the six-month period provided in Article 88. This option would nevertheless be subject to one of the following conditions: either it would have to be established that the European patent applications could not be examined in due time, or an extension would have to be in the general interest. The Working Party agreed that such a decision taken in the first hypothesis would in any case have to be preceded by any measures required to meet the needs of the situation and that the extension of the period could only be applied for a limited time and would have to be accompanied by measures taken with a view to restoring the period provided under Article 88, paragraph 2, as soon as possible. The second hypothesis would materialise in the event of an overwhelming opinion in favour of an irrevocable extension of the six-month period. It was understood that in both hypotheses, the Council would have to discuss the case with the interested circles before taking a decision of this nature. It considered however that it would not be expedient to include an explicit provision to that effect in the Convention.

The Working Party also discussed the usefulness of providing for a maximum extension of the period within which the request for examination may be made, and which the Administrative Council would in no event be able to exceed. Some delegations expressed hesitancy about
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.

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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).

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(Unrevised translation)
(2) Die in Absatz 1 vorgesehenen Einwendungen werden dem Anmelder mitgeteilt, der dazu Stellung nehmen kann.

KAPITEL II
Erteilungsverfahren

Artikel 88
Prüfungsantrag

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

(2) Der Antrag kann vom Anmelder oder von jedem Dritten bis zum Ablauf von sechs Monaten nach dem Tag gestellt werden, an dem im Europäischen Patentblatt gemäß Artikel 85 Absatz 5 auf die Veröffentlichung des Berichts über den Stand der Technik hingewiesen worden ist. Der Antrag gilt erst als gestellt, wenn die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebene Prüfungsgebühr entrichtet worden ist.

(3) Stellt der Anmelder den Antrag nach Erhalt des Berichts über den Stand der Technik, so kann er mit dem Antrag zu diesem Bericht und zu den ihm mitgeteilten Einwendungen Stellung nehmen und gegebenenfalls die Beschreibung, die Patentansprüche und die Zeichnungen ändern.

(4) Wird der Antrag für die Anmeldung eines europäischen Zusatzpatents gestellt, so fordert die Prüfungsstelle den Anmelder auf, bis zum Ablauf von zwei Monaten nach Zustellung der Aufforderung für die Anmeldung des Hauptpatents einen Antrag nach Absatz 1 zu stellen. Wird der Antrag nicht gestellt, so gilt die Anmeldung des europäischen Zusatzpatents als Anmeldung eines selbständigen europäischen Patents.

(5) Der Antrag kann nicht zurückgenommen werden.

(6) Ist ein Prüfungsantrag gemäß Absatz 2 eingereicht worden, so gelten spätere Prüfungsanträge als nicht eingegangen. Entrichtete Gebühren werden zurückgezahlt.

(7) Wird bis zum Ablauf der in Absatz 2 genannten Frist ein Prüfungsantrag nicht gestellt, so gilt die europäische Patentanmeldung als zurückgenommen.

Artikel 89
— gestrichen — (siehe Artikel 160).

Artikel 90
Übergang des Verfahrens auf die Prüfungsabteilung

Sobald ein Antrag auf Prüfung der europäischen Patentanmeldung gestellt ist, geht das Verfahren auf die Prüfungsabteilung über, jedoch nicht vor Eingang des Berichts über den Stand der Technik.

CHAPTER II
Procedure for grant

Article 88
Request for examination

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

(2) Such a request may be made by the applicant or by any other person up to the end of six months after the date on which the European Patent Bulletin notifies the publication of the report on the state of the art pursuant to Article 85, paragraph 5. The request shall not be considered to be made until after the examination fee prescribed by the Rules relating to Fees adopted pursuant to the Convention has been paid.

(3) If the applicant makes the request after receiving the report on the state of the art, he may comment on this report and on any observations communicated to him and shall where necessary amend the description, claims and drawings.

(4) If the request is made in respect of an application for a European patent of addition, the Examining Section shall invite the applicant to make a request in accordance with paragraph 1 in respect of the application for the parent patent before the end of two months after such invitation has been made. If no such request is made, the application for a European patent of addition shall be deemed to be an application for an independent European patent.

(5) The request may not be withdrawn.

(6) When a request for examination has been made in conformity with paragraph 2, any subsequent requests for examination shall be regarded as void. Any fees paid shall be refunded.

(7) If no request for examination has been made by the end of the period referred to in paragraph 2, the European patent application shall be deemed to be withdrawn.

Article 89
— deleted — (Cf. Article 160).

Article 90
Transfer of proceedings to the Examining Division

As soon as a request for examination of a European patent application has been made, the proceedings shall be transferred to an Examining Division, but not before the receipt of the report on the state of the art.
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SECOND PRELIMINARY DRAFT OF A CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS  
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et  
PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

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(w) Articles 152 to 154 - Professional representation, compulsory representation and authorisation

The question of representation should be discussed later (see point 78 above).

(x) Article 159 - Period within which a request for examination may be made during a transitional period

Should the Administrative Council's option be maintained of shortening the period for making the request for examination, the length of which still has to be specified for a transitional period? (Article 159, paragraph 1, second sentence) (CPCCI, FICPI)

81. Item 6 on the agenda: Discussion of procedure for the 4th Meeting of the Intergovernmental Conference from 20 to 30 April 1971

The Working Party discussed the question of how the results of their work and of the work of the Sub-Committees should profitably be dealt with at the next Meeting of the Conference. In this connection it considered that the delegations to the Intergovernmental Conference should be requested to submit in writing any requests for amendments to the texts.

Item 7 on the agenda: Other business

82. The Working Party agreed as follows for its future programme of work:

The reports of the delegations of Working Party I and of the General Rapporteur on amendments to the published First Preliminary Draft of 1970, which were to be submitted to the Conference, should reach the Secretariat by

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(t) Article 116 - Decision or opinion of the Enlarged Board of Appeal on certain points of law

The Working Party considered that the question of which text of paragraph 1(b) was preferable, should be discussed with the government legal experts. (See observations by the ICC and CPOCI)

(u) Article 122 - International search report

Should the international search report completely replace the report on the state of the art to be drawn up by the IIB? Should the European Patent Office or the IIB decide on the need for a supplementary report on the state of the art? Should the IIB prepare in every case a report on the state of the art and only consider any international report that might be available? (ICC, CNIPA, CEIF, EIRMA, FICPI, UNEPA, UNICE)

Should fees be levied for any necessary additional report drawn up by the IIB? Could a proportion of the fees be refunded to the applicant if necessary? (CNIPA, FICPI)

(v) Article 137 - Supplementary report on the state of the art

Should a fee be levied for a supplementary report on the state of the art or should it be incorporated into the fee for the main report on the state of the art or even into the filing fee? (FICPI)
(p) Article 79 - Obtaining of the report on the state of the art

(i) With regard to the question on combining the filing fee with the search fee, see under point (l) on Article 66.

(ii) With regard to the question, whether the report on the state of the art should be replaced by the international search report for PCT-applications, see under point (u) on Article 122.

(q) Article 80 - Transmission of the report on the state of the art

Should the report on the state of the art be transmitted by the IIB to the European Patent Office and to the applicant simultaneously? (CNIPA, IFIA)

(r) Article 88 - Request for examination

The Working Party considered that the question of whether a request for examination might in future be lodged by a third party, notwithstanding the new text of Article 88, paragraph 2, or whether this possibility should hold good for a transitional period, was one which should be discussed further with the interested circles. (See observations by the FICPI)

(s) Article 111 - Time-limit and form of appeal

Should the period within which the grounds for appeal could be set out in greater detail (Article 111, third sentence) be extended? Should it, if necessary, be fixed by the Board of Appeal? (FICPI, IFIA, UNEPA)

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(m) **Articles 66 to 68**
Questions on organisation of the procedure: see under (o) on Articles 77 and 78.

(n) **Article 74 - Effect of priority right**
Should there be a reference in Article 74 to Article 21, paragraph 1? See under (g) on Article 21.

(o) **Article 77 - Examination of the European patent application for formal and obvious deficiencies**

**Article 78 - Notification and refusal of the application**

(i) Who should be responsible for carrying out the formal examination provided for in Article 77, paragraph 1: the EPO, the national receiving Office (in the case of Article 64, paragraph 1(b)), or the IIB? Which parts of the formal examination should be undertaken by which authorities if the work is divided up among them? (ICC, CNIPA, CEIF, EIRMA, UNICE)

(ii) Should the EPO carry out alone the examination for obvious deficiencies provided for in Article 77, paragraph 2, or should the IIB undertake a share of this examination, e.g. examination of unity of invention?(1) (ICC, CNIPA, CEIF, EIRMA, FICPI, UNICE)

(iii) Should not the EPO only enter the proceedings when the IIB has drawn up the search report? (ICC, CNIPA, CEIF, EIRMA, UNICE)

(iv) Would it be advisable to organise co-ordination of the EPO departments responsible for the novelty search with the IIB departments, which were preparing the search reports? (UNICE)

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(1) The majority of the Working Party refused to abandon altogether the examination for obvious deficiencies.

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of the opinion that it would suffice to insert in Article 74 a reference to Article 21, paragraph 1. (CNIPA, EIRMA, FICPI, UNICE)

(h) Article 22 - Unitary character of the European patent application
Is it perfectly clear from this provision that a European patent application can be filed jointly by several applicants and that rights limited to certain countries can be assigned to different assignees in proceedings before the European Patent Office? (CEIF)

Apart from this question, the equivalence of the texts in the three languages should be examined. (CEIF)

(i) Article 23 - Assignment of a European patent application
Should the Convention specify that an entry in the European Patent Register had the same effect at national level as an entry in the national register? (CEIF)

(k) Article 28 - Contractual licensing of a European patent application
Should protection be granted to the licensee recorded in the European Patent Register against the proprietor of the application? (CEIF)

(l) Article 66 - Requirements of the application
Should the filing fee be combined with the fee for obtaining the report on the state of the art (Article 79)? (ICC, CNIPA, EIRMA, FICPI)

BR/94 e/71 aut/KM/prk .../...
(d) Article 15 - Right to the grant of a European patent
If several people had made an invention independently of each other and had filed applications at different times, should the first application be deemed non-existent if it has been withdrawn or refused before publication? A provision of this nature would (according to EIRMA) make it possible for the person filing the second application to receive a patent notwithstanding Article 11, paragraph 3.

This would not be achieved (according to EIRMA) by deleting the third sentence of Article 15, paragraph 1.

(e) Article 19 - Rights conferred by a European patent application after publication
Should there be a provision, corresponding to Article 29 PCT, that a published European patent application should be accorded at least the same provisional protection as national applications? (CNIPA)

(f) Article 20 - Extent of the protection conferred by a European patent
There should be an examination of the equivalence of the texts in the three languages concerning the words "Inhalt der Ansprüche", "terms of the claims" and "teneur des revendications" - also with reference to Article 8 of the Strasbourg Convention of 27.11.1963; if necessary, a legal definition might be introduced. (ICC, CNIPA, EIRMA, UNICE).

(g) Article 21 - European patents of addition
Should the beginning of the period for filing an application for a European patent of addition be based on the date of priority of the application for a national patent of addition? Several organisations were
Apart from the textual amendments referred to under point 79, the Working Party decided to undertake no immediate amendment to the Preliminary Draft on the basis of the observations made by the international organisations, but to adopt the procedure set out under point 77 (recommendation to the Inter-Governmental Conference). The points on which the Working Party recommends acceptance or rejection of the proposal made by the international organisations can be found in the above-mentioned document BR/100/71. The only problems set out below are those for which the Working Party is to recommend further examination.

(a) **Article 9 - Patentable inventions**

Possible new text for Article 9, paragraph 2, especially sub-paragraphs (a), (b) and (e) (observations by CEIF and UNICE);

(b) **Article 11, paragraphs 2 and 3 - Novelty**

Should the expression "contents of earlier applications for European patents" in Article 11, paragraph 3 be aligned more closely on the Strasbourg Convention of 27.11.1963, by being replaced by "contents of applications for European patents, which have earlier filing dates..."? (FICPI)

(c) **Article 11, paragraph 3 - Novelty**

Should an earlier European application form an obstacle to the grant of a European patent under Article 11, paragraph 3 even where the inventor is the same person in both cases? (So-called Self-collision (FICPI))

The Swedish delegation was asked in this connection to establish by the next meeting whether real difficulties had arisen in the Scandinavian countries in this context.
MINUTES

of the 7th meeting of Working Party I
held at Luxembourg from 26 to 29 January 1971

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

1. The Working Party held its seventh meeting at Luxembourg from Tuesday 26 to Thursday 28 January 1971 with Dr. HAERTHEL, President of the German Patent Office, in the Chair.

The meeting was attended by representatives of the Commission of the European Communities, WIPO/OMPI and the International Patent Institute (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 "Octrooiread", Mr J.V. VAN BENTHEM, held its meetings directly after the deliberations of the Working Party, and also on the morning of 29 January 1971.

(1) For the provisional agenda (BR/GT I/101/71), see Annex I.
(2) For the list of those attending the meeting of the Working Party, see Annex II.

BR/94 e/71 son/KM/prk
Article 159 (former Article 188b)
Period within which a request for examination may be made during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, the period laid down in Article 88, paragraph 2, within which a request for examination may be made, shall be ... years after the date on which the European Patent Bulletin notifies the publication of the report on the state of the art, pursuant to Article 85, paragraph 5. This latter period may be reduced by a decision of the Administrative Council.

(2) The decisions referred to in the preceding paragraph shall be published in the Official Journal of the European Patent Office.

(3) Any decision of the Administrative Council pursuant to paragraph 1 shall apply only in respect of European patent applications filed after the publication of such decision.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 21 December 1970
BR/70/70

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

(Articles drafted by Working Parties I, II, III and IV)
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 28 February 1971
BR/87/71

- Secretariat -

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.

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Article 160 (former Article 206): National utility models and utility certificates

41 The Working Party concluded that, in order to allow for the conversion of European patent applications to applications for national certificates or utility models, it was necessary to mention in the present article, inter alia, Article 76, so as to give European applications a "filing date".

(b) Questions requiring further consideration (1)

42. Preamble

Certain amendments of a purely technical nature were made to the note to the Preamble.

43. Article 2: European patent

The notes to Article 2(2) were deleted in view of the new provisions drawn up for Articles 2, 133, 134, 158 (former Article 188a) in respect of the maximum approach and for Articles 20a and 158 (former Article 188a) as regards the term of the patent.

(1) The main purpose of the observations which follow is to set out concisely the amendments made to certain articles as they stood in the First Preliminary Draft Convention (printed text), and the deletion of certain notes contained therein, taking into account Working Party I's approach to certain unresolved problems. Most of the observations which follow refer to questions which Working Party I had left open at previous meetings.

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CHAPTER II
ADMISSION OF PUBLIC, NOTIFICATIONS AND INSPECTION OF FILES

Article 160
Admission of public

1965 Draft

(1) Hearings before the Examining Sections, the Examining Divisions and the Patent Administration Divisions shall not be public.

(2) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal, after publication of a provisional European patent and as regards the Revocation Boards, in so far as these Boards do not decide otherwise in cases where admission of the public would have serious disadvantages.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 23 September 1970
BR/48/70

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

Articles prepared by Working Party I

(7 to 11 September 1970)
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

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.
(2) Der Antrag kann vom Anmelder oder von jedem Dritten bis zum Ablauf von zwei, fünf, sieben Jahren nach der Einreichung der europäischen Patentanmeldung gestellt werden. Der Antrag gilt erst als gestellt, wenn die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebene Prüfungsgebühr entrichtet worden ist.

(3) Wird der Antrag vom Anmelder gestellt, so soll dieser mit dem Antrag zu dem Bericht über den Stand der Technik und zu den ihm mitgeteilten Einwendungen Stellung nehmen und gegebenenfalls die Beschreibung, die Patentansprüche und die Zeichnungen ändern.

(4) Wird der Antrag für die Anmeldung eines europäischen Zusatzpatents gestellt, so fordert die Prüfungsstelle den Anmelder auf, bis zum Ablauf von zwei Monaten nach Zustellung der Aufforderung für die Anmeldung des Hauptpatents einen Antrag nach Absatz 1 zu stellen. Wird der Antrag nicht gestellt, so gilt die Anmeldung des europäischen Zusatzpatents als Anmeldung eines selbständigen europäischen Patents.

(5) Der Antrag kann nicht zurückgenommen werden.

(6) Ist ein Antrag auf Prüfung gemäß Absatz 2 eingereicht worden, so gelten später Anträge auf Prüfung als eingegangen. Entrichtete Gebühren werden zurückgezahlt.

(7) Wird bis zum Ablauf der in Absatz 2 genannten Frist ein Antrag auf Prüfung nicht gestellt, so gilt die europäische Patentanmeldung als zurückgenommen.

_article_89_(früher_Artikel_88a)_

 Änderung des Verfahrens durch den Verwaltungsrat

(1) Der Verwaltungsrat kann die in Artikel 88 Absatz 2 vorgesehene Frist für die Einreichung eines Antrags auf Prüfung verkürzen oder verlängern.

(2) Der Verwaltungsrat kann anordnen, daß für bestimmte Gebiete der Technik auf Aufforderung des Europäischen Patentamts ein Prüfungsantrag vom Anmelder zu stellen ist, sofern ein öffentliches Interesse an einer solchen Regelung besteht.

(3) Der Verwaltungsrat kann anordnen, daß für bestimmte Gebiete der Technik auf Aufforderung des Europäischen Patentamts ein Prüfungsantrag vom Anmelder zu stellen ist, wenn die Geschäftsleitung des Europäischen Patentamts eine sofortige Durchführung der Prüfung für diese Gebiete zuläßt.

(4) Ist eine Anordnung nach den Absätzen 2 oder 3 ergangen, so fordert das Europäische Patentamt den Anmelder auf, innerhalb einer Frist von sechs Monaten einen Prüfungsantrag zu stellen und die Prüfungsgebühr zu zahlen. Wird die Gebühr nicht rechtzeitig entrichtet, so gilt die europäische Patentanmeldung als zurückgenommen.

_article_89_(former_Article_88a)_

Modification of the procedure by the Administrative Council

(1) The Administrative Council may reduce or prolong the period laid down in Article 88, paragraph 2, for making a request for examination.

(2) In certain areas of technology, the Administrative Council may direct that applicants are to make a request for examination on the invitation of the European Patent Office, where such ruling is in the public interest.

(3) In certain areas of technology, the Administrative Council may direct that applicants are to make a request for examination on the invitation of the European Patent Office, when the work load of the European Patent Office permits of immediate examination in this area.

(4) Where a direction pursuant to paragraph 2 or 3 is in force, the European Patent Office shall invite the applicant to make a request for examination, and to pay the examination fee, within a period of six months. If the fee is not paid in due time, the European Patent application shall be deemed to be withdrawn.
FIRST PRELIMINARY DRAFT OF A CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

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and in providing for a reduction in accordance with the possibilities open to the Office. It is this solution which seems to satisfy the desire of the interested circles to be able to file applications in all areas of technology from the time the Office opens.

Article 100 (former Article 96c) : Translation of specifications and Articles 97 and 97a (new) (BR/40/70, page 5, No. 21, second paragraph).

120. With the idea of providing for a reduction of the period for the translation of the specification, referred to in Article 100 of the First Preliminary Draft, the Working Party came to the conclusion that it was simpler to recognise that, between the time when the Examining Division is considering the grant of a patent in its final form and the grant itself, there would in fact be a time which could be put to good use for the translation of the text which would constitute the specification.

For this reason, the Working Party deemed it preferable to amend the system laid down in Articles 97 and 100 of the First Preliminary Draft, and to provide for the following system:

(i) the fixing of a three-month period starting from the notification referred to in Article 97, paragraph 1, for entering the grant of the patent in the Register of European Patents. This new provision is incorporated in Article 97, paragraph 4;

(ii) special arrangements introduced in Article 97a (new) for the translation of the text referred to in Article 97, if this text is not in an official language of a Contracting State, in which case this State has the right to prescribe the translation within a period of three months from the notification laid down in Article 97, paragraph 1;

(iii) from this point, Article 100 lays down the possible consequences in a Contracting State which has adopted provisions pursuant to Article 97a (new).
Article 88 for the making of the request for examination, it being understood that, during the transitional period, the period fixed could be shortened by the Administrative Council, which would also be entitled to fix the length of the transitional period.

117. In proposing not to fix the length of the transitional period within the Convention itself, the Working Party is of the opinion that it will be possible to assess this limit better when the European Office is actually in operation, taking into account the number of applications which it has received.

118. A proposal was made to give the Administrative Council the possibility of extending the period of Article 88 during a specific time, should it be necessary, when it is possible, following the opening of the Office, to form a sufficiently accurate idea of the desired length of time which it would be necessary to allow for the request for examination, taking into account the applications filed. This proposal, supported by the Swedish Delegation, was not upheld by the Working Party because it did not seem to comply with the Conference's instructions.

119. The German and Netherlands delegations reiterated their reservations in respect of the system adopted for Article 88 in conjunction with the new Article 188b, which in their opinion is not a true system of deferred examination.

The Netherlands Delegation nevertheless accepted that, within the terms of Article 88 in its amended form, the only possibility of avoiding overloading of the Office lay in fixing, for an initial stage, a longer period for the request for examinations, as provided for in the new Article 188b,

BR/49 e/70 oyd/PA/ft
113. As regards the publication of the report on the state of the art laid down in paragraph 1, the question arises of the form which this publication should take, independently of whether it is published at the same time as the application, or subsequently. If it were afterwards decided that a simple reference in the Bulletin, stating that the report is available to the public, seemed sufficient, it would be necessary to adjust the wording of the provision accordingly.

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

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

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

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

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

116. The Working Party was anxious to keep a wording in line with the Conference's instructions, while leaving it to the Conference to specify the length of the period longer than that laid down in BR/49 e/70 oyd/PA/ 2t ... /
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. HAERTHEL, 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.

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.../...
(2) Der Antrag kann vom Anmelder oder von jedem Dritten bis zum Ablauf von zwei, fünf, sieben Jahren nach der Einreichung der europäischen Patentanmeldung gestellt werden. Der Antrag gilt erst als gestellt, wenn die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebene Prüfungsgebühr entrichtet worden ist.

(3) Wird der Antrag vom Anmelder gestellt, so soll dieser mit dem Antrag zu dem Bericht über den Stand der Technik und zu den ihm mitgeteilten Einwendungen Stellung nehmen und gegebenenfalls die Beschreibung, die Patentansprüche und die Zeichnungen ändern.

(4) Wird der Antrag für die Anmeldung eines europäischen Zusatzpatents gestellt, so fordert die Prüfungsstelle den Anmelder auf, bis zum Ablauf von zwei Monaten nach Zustellung der Aufforderung für die Anmeldung des Hauptpatents einen Antrag nach Absatz 1 zu stellen. Wird der Antrag nicht gestellt, so gilt die Anmeldung des europäischen Zusatzpatents als Anmeldung eines selbständigen europäischen Patents.

(5) Der Antrag kann nicht zurückgenommen werden.

(6) Ist ein Antrag auf Prüfung gemäß Absatz 2 eingebracht worden, so gelten spätere Anträge auf Prüfung als eingegangen. Entrichtete Gebühren werden zurückgezahlt.

(7) Wird bis zum Ablauf der in Absatz 2 genannten Frist ein Antrag auf Prüfung nicht gestellt, so gilt die europäische Patentanmeldung als zurückgenommen.

Artikel 89 (früher Artikel 88a)
Änderung des Verfahrens durch den Verwaltungsrat
(1) Der Verwaltungs rat kann die in Artikel 88 Absatz 2 vorgesehene Frist für die Einreichung eines Antrags auf Prüfung verkürzen oder verlängern.

(2) Der Verwaltungs rat kann anordnen, daß für bestimmte Gebiete der Technik auf Aufforderung des Europäischen Patentamts ein Prüfungsantrag vom Anmelder zu stellen ist, sofern ein öffentliches Interesse an einer solchen Regelung besteht.

(3) Der Verwaltungs rat kann anordnen, daß für bestimmte Gebiete der Technik auf Aufforderung des Europäischen Patentamts ein Prüfungsantrag vom Anmelder zu stellen ist, wenn die Geschäftslage des Europäischen Patentamts eine sofortige Durchführung der Prüfung für diese Gebiete zuläßt.

(4) Ist eine Anordnung nach den Absätzen 2 oder 3 ergangen, so fordert das Europäische Patentamt den Anmelder auf, innerhalb einer Frist von sechs Monaten einen Prüfungsantrag zu stellen und die Prüfungsgebühr zu zahlen. Wird die Gebühr nicht rechtzeitig entrichtet, so gilt die europäische Patentanmeldung als zurückgenommen.

Article 89 (former Article 88a)
Modification of the procedure by the Administrative Council
(1) The Administrative Council may reduce or prolong the period laid down in Article 88, paragraph 2, for making a request for examination.

(2) In certain areas of technology, the Administrative Council may direct that applicants are to make a request for examination on the invitation of the European Patent Office, where such ruling is in the public interest.

(3) In certain areas of technology, the Administrative Council may direct that applicants are to make a request for examination on the invitation of the European Patent Office, when the work load of the European Patent Office permits of immediate examination in this area.

(4) Where a direction pursuant to paragraph 2 or 3 is in force, the European Patent Office shall invite the applicant to make a request for examination, and to pay the examination fee, within a period of six months. If the fee is not paid in due time, the European Patent application shall be deemed to be withdrawn.
(4) Die Veröffentlichung unterbleibt, wenn die europäische Patentanmeldung vor Abschluß der technischen Vorbereitungen für die Veröffentlichung rechtsschäftig 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
Erteilungsverfahren

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.

Artikel 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.

Artikel 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.
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The Working Party also considered whether it was necessary to define the concept of "public interest", but decided that it would be preferable to leave the interpretation of this concept to the Administrative Council.

12. The question of the weighting of votes in the Administrative Council when taking the decisions provided for in Article 88a will have to be examined later in the context of the provisions relating to the Administrative Council.

**Article 94a - Division of a European Patent Application (1)**

13. The Working Party inserted this provision, which was Article 98 in the earlier drafts, between Articles 94 and 95, since it was of the opinion that all the provisions relating to examination procedure should appear before those relating to the grant of the patent, now governed by Article 96.

14. The Working Party thought that applicants should be allowed to divide their applications on their own initiative, without requiring the approval of the Examining Division, as long as examination has not yet begun, whereas in previous drafts applicants could only divide their applications, after they had made a request for examination, if the Examining Division considered such division justified.

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(1) Articles 89 to 94 and Article 95, which the Working Party drafted at its October meeting, were not reconsidered at the November meeting. The document containing the results of the November meeting (BR/11/69) only reproduces these articles for reasons of convenience.

BR/12 e/69 mk .../...
in the case of a third party who has been warned by the applicant. On the other hand, it would not be enough for the third party to be simply the applicant's competitor.

However, the Working Party decided to postpone further discussion of this point until a decision is taken on the time limit for making a request for examination, since such a provision would only appear to be justified if this time limit were relatively long.

**Article 88a - Modification of the procedure by the Administrative Council**

10. In the Working Party's opinion the retention of paragraph 1 depends on the time limit chosen in Article 88, paragraph 2. It was also pointed out that the Administrative Council must be able to reduce a time limit previously extended by it. The possibility of reducing the time limit could then also be useful in the case of the time limit laid down in Article 88, paragraph 2, being relatively short to begin with.

11. The Working Party agreed that paragraph 2 covers both applications already filed when the Administrative Council takes such a decision, and applications filed thereafter. In both cases, the European Patent Office must, pursuant to paragraph 3, invite the applicant to submit a request for examination.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

MINUTES
of the meeting of Working Party I
(Luxembourg, 24 to 28 November 1969)

I.

1. The third working meeting of Working Party I was held at Luxembourg from Monday 24 to Friday 28 November 1969, with Dr. HAERTEL, 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 German delegation for Articles 88 to 96 c (Examination procedure) (2),

(1) See Annex for list of those attending the meeting of the Working Party.
(2) It was originally agreed at the October meeting that the German delegation should produce a report for Articles 88 to 104.

BR/12 e/69 kel/PA/mk .../...
Article 88a (new)
Modification of the procedure by the Administrative Council

Working Party text

(1) The Administrative Council may reduce or prolong the period laid down in Article 88, paragraph 2, for making a request for examination.

(2) In certain areas of technology, the Administrative Council may direct that applicants are to make a request for examination on the invitation of the European Patent Office, where such ruling is in the public interest.

(3) In certain areas of technology, the Administrative Council may direct that applicants are to make a request for examination on the invitation of the European Patent Office, when the work load of the European Patent Office permits of immediate examination in this area.

(4) Where a direction pursuant to paragraphs 2 or 3 is in force, the European Patent Office shall invite the applicant to make a request for examination, and to pay the examination fee within a period of six months. If the fee is not paid in due time, the European Patent application shall be deemed to be withdrawn.

Note:
The Working Party considers that this paragraph should be re-examined after the period laid down in Article 88, paragraph 2, has been fixed.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

-- Secretariat --

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

Articles 88 to 152

prepared by Working Party I
(24 to 28 November 1969)

compared synoptically with

- the 1962 and 1965 versions of the Draft Convention as established by the EEC "Patents" Working Party and

- the Draft of an open European Patent Convention drawn up by the Member States of the European Free Trade Association

BR/11  e/69  mk
Article 133: Prior national filing

76. The Working Party decided against adopting this provision of the 1962 Draft.

Chapter II: Joint filing for the grant of national patents
Articles 182 to 193

77. The Working Party decided against adopting the corresponding provisions of the 1962 Draft, which were later abolished, in view of the possibility of a European application being corrected into a national application.

Chapter III: Simultaneous protection given by European and national patents

78. Articles 194 to 205

In accordance with what had been agreed by the Conference concerning Article 5 of the First Preliminary Draft, no ruling is envisaged on simultaneous protection, which continues to fall under the national legislations.

PART XII
Final Provisions
Article 206: Application to national utility models

79. The Chairman stated that he would further examine this provision and, if appropriate, submit a new proposal to the Working Party.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 26 October 1970

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 Insti-
   tute 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
PART XII—FINAL PROVISIONS

Article 206. Application to national utility models

The provisions of this Convention which relate to applications for patents filed or to national patents granted in the Contracting States, shall equally apply to applications for utility models or to utility models deposited or registered in those States.

Article 207. Adaptation of national law to the European Patent Law

(1) A European patent published on or after the priority date of an application for a national patent, but having an earlier priority date, shall be deemed in each of the Contracting States, in regard to such application or to the national patent granted in respect thereof, to be the equivalent of a national patent based on an earlier filing.

(2) If the law of a Contracting State provides for the grant of compulsory licences on earlier patents in favour of subsequent dependent patents, those provisions shall also apply in favour of European patents.

Article 208. Disputes between Contracting States

(1) Any dispute between two or more Contracting States which concerns an obligation of Contracting States arising from this Convention shall, at the request of one of the States concerned, be submitted to the Administrative Council which shall endeavour to bring about agreement between the said States.

(2) If agreement is not reached within six months from the day of the dispute being referred to the Administrative Council, each of the Contracting States may appeal to an International Court.

(3) If the International Court finds that a Contracting State has failed to fulfil one of the obligations incumbent upon it by virtue of this Convention, that State shall take such steps as are necessary to carry out the judgment of the International Court.

Article 209. Territorial application of the Convention

This Convention shall apply to those territories of the Contracting States which the latter designate on signing the Convention or on depositing their instruments of ratification or accession. A declaration made to that end may be amended at any time by notification to the Government [with which the instruments of ratification are deposited]. Such notification shall take effect thirty days after its receipt by the aforementioned Government.

Article 210. Revision

(1) This Convention may be revised, particularly with a view to the introduction therein of improvements of a nature designed to perfect the European Patent Law. Revision conferences shall be convened on the initiative of a majority of Contracting States.

(2) The preparation of revision conferences shall be the responsibility of the Administrative Council.
Translation of a Draft Convention relating to a European Patent Law
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 I(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 86 lay 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 no 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