Article 52 E

Travaux Préparatoires (EPC 1973)

Comment:

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
### Art. 52
#### MPD
#### Patentfähige Erfindungen

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### Dokumente der MDK

| L. 1972                                                  | 5o                             | M/10                                     | S. 42                   |
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First Preliminary Draft
Convention relating to a European Patent Law
Articles 11 to 29

Bonn, 14 March 1961
It is apparent from the comments in point II.5 of the Reimer Proposal that it is unnecessary to incorporate the concept of "technical progress" in a European patent law since it is self-evident that an invention contributes to technical knowledge and must therefore constitute technical progress. The Draft Nordic patent law also makes no express mention of the concept of technical progress.

For those reasons, the Preliminary Draft does not at this stage contain the requirement of technical progress.
Article 11 is modelled on Section 1 of the Reimer Proposal.

The concepts in Article 11 of "industrial application", "novelty" and "inventive level" are defined in Articles 13, 14 and 16.

The following questions must be studied in greater detail:

(a) Regarding the concept of "inventive level", it will be enough to examine in conjunction with Article 11 whether this concept is to be expressly mentioned in European patent law. A possible definition or description of the requirements of inventive level should be studied in connection with Articles 14 and 16.

To determine whether it is necessary to study that question, reference should be made to the report of the Co-ordinating Committee of 10 November 1960, II.6, paragraph 2.

(b) Is it necessary to include paragraph (2) of Article 11 of the Reimer Proposal in a European patent law or are its contents obvious since such a legal doctrine is common to the countries concerned?

(c) In its report of 10 November 1960 (loc. cit.), the Co-ordinating Committee also instructed the Working Party to examine whether, in the Preliminary Draft Convention concerning a European patent law, the technical progress of an invention should be regarded as a necessary condition for its patentability and whether the main criteria should be defined.

Reference should be made in this respect to the commentary in the Haertel Study (French text pp. 21 and 22; German text pp. 23 and 24). It is there observed that the express mention of the concept of "technical progress" in a European patent law would cause problems.
Part I
The European Patent

Section 2
Substantive Patent Law

Re Article 11
Patentable Inventions

1. Documents:


(b) Comparative study of substantive law applying in the countries represented on the Council of Europe Committee of Patent Experts, by Gajac (Council of Europe document EXP/Brev. (53) 18, rev. of 12 January 1955), p. 3 et seq. - hereinafter referred to as the "Gajac Study".

(c) Comments and proposals by German experts on the Council of Europe Committee of Patent Experts regarding the harmonisation of general conditions for patentability (Council of Europe document EXP/Brev. (56) 8, p. 7, point 5 and p. 8 Section 1 - hereinafter referred to as the "Reimer Proposal".

(d) Report on novelty by Mr. Ake von Zweigbergk, a Swedish expert, for the Council of Europe Committee of Patent Experts (Council of Europe document EXP/Brev. (60) 1 of 2 March 1960), p. 4 Section B - hereinafter referred to as the "von Zweigbergk Study".

(e) Draft Nordic patent law, Section 2, paragraph 1.

2. Comments

It was felt that on the lines of national patent laws, substantive European patent law should begin with a general description of what European patents can be granted for.
Comments

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

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(Articles 11 to 29)
Comments

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

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(Articles 11 to 29)
Part I
The European Patent

Section 2
Substantive Patent Law

Article 11
Patentable Inventions

European patents shall be granted for new inventions which are susceptible of industrial application and which involve an inventive step.
Proceedings of the 1st meeting of the Patents Working Party held at Brussels from 17 to 28 April 1961
Examination of the texts drawn up by the Drafting Committee

In reply to a question from Mr. De Muyser, the Chairman stated that the texts of the Articles would be transmitted to the Co-ordinating Committee with a report setting out the grounds for the Working Party's decisions, without expressly mentioning the nationality of the delegations.

He said that the titles above each Article were merely a working guide. The Co-ordinating Committee would decide whether they were to be retained in the final text of the Convention.

At the Chairman's request, Mr. van Benthem, Chairman of the Drafting Committee, introduced the discussion on the new texts submitted to the Working Party.

Section 2

The French title of Section 2 was "Droit des brevets".

Article 11

The Chairman explained that Article 11 summarised the essential requirements for an invention to be patentable. There was no mention of inventive step. When examining the wording of Article 16, they would have to decide whether that criterion should be mentioned in Article 11. Subject to that reservation, the wording of Article 11 was adopted.
After some preliminary discussion, the Working Party agreed to leave aside for the time being the problem of "ordre public" and to consider the following problems in the order given:

- Is it necessary to provide for such exceptions to patentability in the European Convention?

- What is the definition of morality? Is there a "European" definition of morality? Should national definitions be applied or is it necessary to consider what is common to them all?

- Finally, if it is agreed to use national definitions, will an invention be patentable if it is contrary to morality in only one of the Contracting States?

The Chairman adjourned the meeting at 18.00 hrs.
Mr. De Muyser said that it would be desirable for each Article in the Convention to be accompanied by an official commentary to assist courts in interpreting the Convention uniformly.

The Chairman doubted whether it would be possible to bind courts by such a commentary which could not be ratified as a law but he felt that an explanatory commentary would certainly be of value.

The Working Party then turned to the question of whether they should define the concept of invention in terms of what was excluded in accordance with the Reimer proposal (cf. EXP/Brev. (56) 8 of the Council of Europe, page 8, Section 1, paragraph 2).

The Chairman felt that in practice national case law applied the same principles in this respect and, in any case, Mr. Reimer's proposals did not provide a clear and precise definition.

The Working Party agreed not to lay down in the European Convention any exceptions to patentability as put forward in the Reimer proposal since a negative definition would be just as difficult as a positive definition. Furthermore in the past this point had not given rise to any practical problems under national law. The Working Party did, however, accept a proposal by Mr. De Muyser that the experts draw up a commentary explaining its decisions.

The Working Party unanimously agreed that no definition of the concept of technical progress be included in the European Convention.

Discussion of Article 12 of the Preliminary Draft

As regards exceptions to patentability, the Co-ordinating Committee, with the approval of the State Secretaries, gave instructions that only inventions contrary to "ordre public" and morality should be excluded. The Chairman proposed that inventions relating to new plant or animal varieties be excluded as well.
The Chairman asked whether it was necessary to have at the beginning of the European Convention a provision indicating which inventions were patentable.

Mr. van Bentham suggested a provision that patents would be granted for products or processes which were invented and new. Such a wording would avoid judges giving a patent a wide interpretation. It would emphasise that a patent does not protect the inventor's abstract idea but the practical implementation of that idea in certain forms susceptible of industrial application.

After lengthy discussions and taking account particularly of comments by Mr. Roscioni, Mr. Fressonnet, Mr. Pfanner and Mr. Sünner, the Working Party unanimously decided not to adopt that suggestion for the following reasons:

- there was a danger that it might restrict too narrowly the possibility of obtaining patent protection, for example for inventions in the field of nuclear physics;

- it was at variance with the terms generally used, because it was the invention which was patented not a particular product or process;

- finally it was not in conformity with a draft convention drawn up by the Enlarged Bureau of the Committee of Experts of the Council of Europe.

However, the Chairman observed that account should be taken of Mr. van Bentham's suggestions when discussing the rules on interpretation of the European patent.

The Working Party instructed the Drafting Committee to make it quite clear that a European patent would be granted only on condition that the invention was susceptible of industrial application.
Discussion of Article 11 of the Preliminary Draft

The Working Party agreed with its Chairman that all questions concerning inventive level be deferred until it came to discuss Article 16.
Proceedings of the 1st meeting of the Patents Working Party held at Brussels from 17 to 28 April 1961
The **Chairman** pointed out that the wording of Articles 11 to 18 had strongly influenced decisions taken by the Council of Europe on a draft convention on the harmonisation of patent law. They should therefore not alter the wording of those articles too much as otherwise they would have to inform the Council of Europe, especially since the text agreed at Strasbourg had been submitted to the Governments.

The Working Party decided to endeavour not to make any changes deviating from the text agreed in the Council of Europe.

**Article 11**

Article 11 was passed to the Drafting Committee.

**Article 12**

The **Chairman** was in favour of the second variant. The Working Party agreed. The first variant was deleted.

**Mr. Fressonnet** pointed out that the French draft concerned publication of an invention contrary to morality.

The **Chairman** raised no objection to that addition. The text of Article 12 would therefore refer to exploitation or publication.

Regarding the term "fundamental principles of ordre public", **Mr. Fressonnet**, supported by Mr. van Benthem, explained that that expression was intended
Proceedings of the 5th meeting
of the Patents Working Party
held at Brussels
from 2 to 18 April 1962
Chapter I
Patentability

Article 9 (11)
Patentable inventions

European patents shall be granted for new inventions which involve an inventive step and which are susceptible of industrial application.
VE MAY 1962
PRELIMINARY DRAFT CONVENTION
RELATING TO A
EUROPEAN PATENT LAW
Article 9(11)

Article 9 was adopted.

Article 10(12)

Mr. van Benthem pointed out that the insertion of the word "publication" in sub-paragraph (a) was in accordance with a French proposal that had been approved by the Working Party. The other amendments were purely linguistic. Sub-paragraph (b) corresponded exactly to the text of the Council of Europe Draft.

Mr. van Benthem reported that, in the Netherlands, the text of the Strasbourg Draft had been submitted to the interested circles who had asked to have inserted therein a provision such as that in the European Convention. It seemed preferable to leave the question of micro-organisms raised by sub-paragraph (b) to the courts without laying down any express rules.

The Chairman hoped that all the delegations of the Six EEC countries would support
Proceedings of the 6th meeting
of the Patents Working Party
held at Munich
from 13 to 23 June 1962
PART II—PATENT LAW

CHAPTER I—PATENTABILITY

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

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

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

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

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

This document is an unofficial English translation of the official texts in French and German. The draft Convention was prepared by a committee of representatives of the Six Countries of the European Economic Community. The assistance of the secretariat of that committee in the preparation of this translation is gratefully acknowledged.

LONDON
HER MAJESTY'S STATIONERY OFFICE
1962
Translation of a Draft Convention relating to a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
FIVE SHILLINGS NET
The Working Party then went on to discuss the proposal from the German and Netherlands delegations that the Convention include, in Article 9, a list, of examples of what would not be considered to be inventions.

Following that discussion the Chairman asked those two delegations to draft a provision incorporating their proposal. The text would be discussed first by the Drafting Committee and would then be considered by the Working Party at its next meeting.

Mr. Fressonnet further pointed out that another possibility would be to include such a list of examples in the general report at the Diplomatic Conference when comments would be drawn up on the fundamental principles of the Convention, including Article 9.

The Working Party then went on to analyse sub-paragraph 2(b) which provided that the examining section would examine whether the invention was not excluded from patentability under Article 10.

Mr. van Benthem wanted the word "obviously" to be included in that provision. In some cases it would be very difficult to decide whether a process was essentially biological.

Mr. Pfanner said that such cases would be fairly rare and could be left to the examining sections. He went on to point out that the aim of Article 76 was that during the first examination of the application the examiner should not consider the question of inventive level. That did not prevent him from examining inventions to see whether or not they involved biological processes.

The Chairman shared Mr. Pfanner's view and said that the advantage of the method chosen in sub-paragraph (b) was that it would avoid the appeals which would inevitably be filed if, as Mr. van Benthem suggested, the examiner did not examine in depth whether or not a biological process was involved.
Article 76

Paragraph 2(a) provided that the examining section should examine whether the subject-matter of an application was, by its nature, obviously not an invention.

Mr. van Benthem observed that the interested circles in the Netherlands wanted an express reference in that provision to Article 10 ruling out from patentability inventions contrary to "ordre public" and plant varieties.

UNION endorsed that view.

Mr. van Benthem rectified his statement. The interested circles in the Netherlands felt that the text of the paragraph was not sufficiently clear and that it might be thought to refer to the application of Article 10 whereas it in fact referred to Article 9.

The Chairman replied that reference to Article 9 was also undesirable. That Article did not define the concept of invention but gave a list of criteria for inventions.

After further discussion, the Chairman instructed the Drafting Committee to review the wording of sub-paragraph (a) to avoid any ambiguity and to make it clear that the aim of the provision was to rule out any applications obviously not involving inventions, e.g. applications relating to methods of calculation. Mr. van Benthem raised the question of whether a therapeutic method should be regarded as an invention.

After some discussion, the Chairman recorded that therapeutic methods were not patentable under the national laws of the six Member States and no delegation on the Working Party wanted European law to depart from that principle.
Proceedings of the 12th meeting
of the Patents Working Party
held at Brussels from 26 February to 6 March 1964

MINUTES
A second objection would be that the classic system led to excessive prices for medicaments. The possible answer was that Article 137 could also be applied to deal with excessive prices. But the public health authorities also had to be aware that if a patent system was introduced for medicaments in order to encourage scientific research, the necessary counterpart was an increase in prices, representing a fair recompense for the inventor. There was no reason why the inventor should give up his recompense in order that public health might benefit.

Mr. Fressonnet pointed out that the Campet Working Party could raise another major argument against the classic system. It could complain that the system made the pharmaceutical industry bear the burden of patents protecting the chemical industry. The Working Party might consider that burden too great for the pharmaceutical industry.

The Chairman replied that the aim of patent law was not to protect any single industry but to reward inventors and so encourage research.
The Working Party thought that such a provision could be included in the Convention. It felt that while its practical scope was quite small, its psychological impact was considerable. Such a provision recognised the principle of freedom to exercise the medical profession.

The Chairman then suggested that they discuss the question of dependent patents under the classic system. He gave the following example. A invented a chemical product and was granted a patent for that product. B discovered a therapeutic application of that product against cancer. B would receive a patent for that application which would be a dependent patent. B would, in fact, have to request A's permission not only to manufacture the product but also to sell it. That authorisation would therefore have to be comprehensive but B also had his own rights as against persons using the medicament for professional purposes.

B's rights were largely rights of exclusion and were very extensive. They even allowed B to prohibit A from manufacturing the product as a medicament.

Mr. Fressonnet raised the complication where a third inventor, C, found a new therapeutic application against diabetes, for example. He pointed out that in France in such cases no patent was granted unless the product had been substantially changed.

The Chairman replied that under the classic system, C would have to have the permission of A in order to manufacture and sell the product. But he would have the right to prohibit A and B from manufacturing or selling the product as a medicament against diabetes.

The Chairman then suggested examining what objections the Campet Working Party might raise against the classic system. One was the risk that, under that system, production might be insufficient. The answer was that Article 144 provided for compulsory licences in such cases and referred to national laws. The latter could then take all the necessary measures.
The Chairman opened the meeting at 09.30 hrs. and said that, in principle, there appeared to be two possible solutions to the question of the patentability of pharmaceutical products.

The first "classic" solution was to apply the general provisions of the Convention on the concepts of patentability, novelty and inventive step. Under this solution, the concept of dependent patents was applied.

The second solution was a limited patentability which ruled out the idea of dependent patents for any invention relating to pharmaceutical products.

Regarding the first solution, the Chairman reminded the Working Party that the German and Netherlands delegations had been asked to draw up a note clarifying Article 9 of the Convention with a list of what would not be considered inventions. It would specify, in particular, that methods of medical treatment were excluded from patentability.

The question was whether they should provide an exception from the substantive law for pharmaceutical products.

After some discussion, the Working Party decided to provide that prescriptions prepared by a pharmacist on a doctor's instructions would not constitute infringement if the pharmacist's preparation was the same as a medicament protected by a patent.
Proceedings of the 14th meeting
of the Patents Working Party
held at Munich from 1 to 12 June 1964

MINUTES
the corresponding article of the Strasbourg draft, the wording of which seemed better.

Article 10

Mr. Froschmaier set out the views of the international associations which wanted sub-paragraph (b) to provide that the exception to patentability in that sub-paragraph should not apply to microbiological processes and the products thereof in accordance with the Strasbourg draft. He then read a note from UNICE requesting clarification at the Diplomatic Conference that the Convention allowed all conceivable objects to be patented, even those that were not eligible for national protection. He added that the United Kingdom shared the views of the international associations on microbiological processes and that Austria wanted a number of additional exceptions to patentability.

After a short discussion, the Working Party accepted the proposal on microbiological processes and referred the text in question to the Drafting Committee for harmonisation with the wording of the Strasbourg draft. UNICE's request was not approved as it was clear that the provisions in the Convention on patentability were not the same as national provisions.

Article 11

Mr. Froschmaier read the views of the international associations on paragraph 1. The International Association for the Protection of Industrial Property (AIPPI) and UNICE proposed the following wording: "An invention shall not be considered as new if it forms part of the state of the art".

The United Kingdom raised the problem of multiple priorities.

Mr. Pfanner then explained the provisions of the Scandinavian draft on novelty.

The Chairman thought that the UNICE proposal should not be adopted. The drawback was that it was expressed as a negative. It seemed to shift the burden of
Article 9

Mr. Roschmaier explained the views of the international associations regarding this Article and on Article 13 on inventive step. The Union of Industries of the European Communities (UNICE) proposed that Article 9 be worded as follows:

"European patents shall be granted for inventions that are new and susceptible of industrial application". UNICE considered that inventive step should be a requirement for patentability but thought it better not to mention the term expressly since it suggested too subjective a concept.

Mr. van Benthem supported the UNICE viewpoint which was also shared by the interested circles in the Netherlands. The other members of the Working Party preferred to retain the provision in the Preliminary Draft which showed clearly the three criteria for the grant of patents: novelty, inventive step and industrial application.

Mr. Pfanner made the point that it would be inappropriate to change this article which had influenced the formulation of the Strasbourg draft at a time when the latter draft was soon to be signed.

Mr. van Benthem agreed with the majority of the Working Party. Article 9 was retained but referred to the Drafting Committee to ensure that it accorded with
Proceedings of the 10th meeting
of the Patents Working Party
held at Brussels from
16 to 27 September 1963

MINUTES
Meeting from 19 to 29 October 1964

Minutes of the meeting on 26 October 1964

The Chairman re-opened the meeting at 15.15 hrs. and welcomed Mr. De Muyser and Mr. Fressonnet.

**Article 9, paragraph 2 (Item 2 on the Agenda; proposal from the Drafting Committee)**

Paragraph 2 of Article 9 was adopted. The Drafting Committee would amend this paragraph in line with the German text.
Regarding the question referred to in point 4(b) of the above-mentioned document, the Chairman explained that the inclusion of methods of treatment for the human body or for animals in Article 9 or as Article 9(a) or in Article 10 of the Preliminary Draft would certainly produce the same practical result. But Article 2 of the Council of Europe Convention, which corresponded exactly to Article 10 of the Preliminary Draft, comprised an exhaustive list. Therefore the insertion of methods of treatment in Article 10 would be contrary to their obligations under the Council of Europe Convention.

The Working Party endorsed that point of view and decided to insert the provision in a new paragraph 2 in Article 9.

As regards the problem referred to in point 4(c), the Working Party also decided to insert diagnostic methods in Article 9, paragraph 2.

The fact that such methods were currently patentable in Germany was largely explained by the non-availability in Germany of patents for chemical products.

The Drafting Committee was instructed to take account of the Working Party's decision when drawing up paragraph 2 of Article 9 in order to indicate the exclusion of methods for treating the human body or animals, including diagnostic methods.

The question raised in point 4(d) was a matter of wording and was referred to the Drafting Committee.

The Chairman adjourned the meeting at 18.00 hrs.
- 3 -

Item 1 on the Agenda

Report on discussions with the Campet Working Party
on 26 June 1964 on the patentability of pharmaceutical products

The Chairman referred to his written report (Doc. 8042/IV/64) distributed by the Secretariat by letter of 28 July 1964.

The Chairman noted that, apart from the Netherlands delegation, none of the delegations had been able to contact their national public health authorities since that time.

The Working Party decided that it was necessary to wait for the conclusions of the Campet Working Party which was to discuss the problem of patents in December. But it was already possible to foresee the exclusion from patentability of treatments for the human body and to draw up a provision covering magistral preparations. The question of dependent patents for medicaments and thus the problem of compulsory licences would have to be deferred.

Replying to Mr. van Bentheim, the Chairman, with the approval of the Working Party, said that the freedom for magistral preparations was a very narrow exception which would not allow pharmacists to import the product or to prepare a stock of it but only to make up individual medical prescriptions.

The Drafting Committee would take account of those comments in connection with Article 20a.

Item 2 on the Agenda

Joint proposal by the German and Netherlands delegations
on Article 9 regarding exceptions to the concept of invention (Doc. 9663/IV/64)

As regards the problem referred to under point 4(a), the Working Party decided to insert the new proposal as a second paragraph in Article 9. Article 10 referred to patentable inventions under Article 9 whereas the Netherlands-German proposal concerned things that were not inventions. Its inclusion in Article 9 would also help to assuage fears expressed by the interested circles regarding Article 76, paragraph 2(a).
Proceedings of the 15th meeting
of the Patents Working Party
held at Brussels from 19 to 26 October 1964

MINUTES
Chapter I

Patentability

Article 9
Patentable inventions

(1) European patents shall be granted for inventions which are new, which involve an inventive step and which are susceptible of industrial application.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) scientific knowledge and theories as such;
(b) mere discovery of substances occurring in nature;
(c) purely aesthetic creations;
(d) financial or accounting methods, rules for playing games or other systems, insofar as they are of a purely abstract nature;
(e) methods of therapy, including diagnostic methods.
Amendments to the Preliminary Draft Convention relating to a European Patent Law

(Articles 1 to 175)

This document replaces document 11.155/IV/64-E of 2 October 1964 (Articles 1 to 103)
However, the Working Party considered that this provision should form part of the Convention, as it was a substantial provision fixing the conditions for the grant of patents.

For the drafting of paragraph 2, it based itself on rule No. 39 of the PCT plan.

The Working Party points out that the text of paragraph 2 does not prejudice the question of whether computer programmes may be the subject of a European patent.

Article 10 - Exceptions to patentability

23. The Working Party points out that this Article corresponds to Article 2 of the 1963 Strasbourg Convention.

Article 11 - Novelty

24. Paragraphs 1 and 2 correspond to paragraphs 1 and 2 of Article 4 of the 1963 Strasbourg Convention.

25. As regards paragraph 3, the Working Party was faced with two possible solutions to the problem of knowing what effects the existence of an application for a European patent has on a later application designating the same Contracting States.

BR/7 e/69 ke1/PA/che
PART II

Patent law

Chapter I

Patentability

Article 8 a) - Special agreements

20. The Working Party noted that under the terms of the provision adopted by it, it is not possible to designate in an application some only of the Contracting States which are parties to a special agreement if that agreement establishes a unitary patent.

Article 9 - Patentable inventions

21. The Working Party incorporated the contents of Article 1 of the 1963 Strasbourg Convention into the provision of Article 9, paragraph 1.

22. As regards paragraph 2, the British and Swedish delegations wondered whether this provision could not be omitted from the Convention, so as to allow greater flexibility in the development of the rules applicable in the matter of patentable inventions. It could in this case be transferred to the Implementing Regulations.
MINUTES

of the meeting of Working Party I
(Luxembourg, 8 - 11 July 1969)

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

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

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

(1) See annexed list of participants in the meeting of the Working Party.
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 1 to 41
prepared by Working Party I
(8 to 11 July 1969)

compared synoptically with

- the 1965 version 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/6 e/69 mk
<table>
<thead>
<tr>
<th>1965 Draft</th>
<th>Working Party text</th>
<th>EFTA Draft</th>
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</thead>
<tbody>
<tr>
<td>(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.</td>
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<tr>
<td>(2) Inventions within the meaning of paragraph 1 shall in particular exclude:</td>
<td>(2) Inventions within the meaning of paragraph (1) shall in particular exclude:</td>
<td></td>
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<tr>
<td>(a) scientific deductions and theories as such;</td>
<td>(a) scientific and mathematical theories as such;</td>
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<tr>
<td>(b) the mere discovery of materials occurring in nature;</td>
<td>(b) the mere discovery of materials occurring in nature;</td>
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<tr>
<td>(c) purely aesthetic creations;</td>
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<tr>
<td>(d) methods of financing and book-keeping, the rules of games and other systems, in so far as they are of a purely intellectual nature;</td>
<td>(d) commercial, financial or book-keeping methods, the rules of playing games and other systems, in so far as they are of a purely intellectual nature;</td>
<td></td>
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<tr>
<td>(e) medical treatments, including methods of diagnosis.</td>
<td>(e) therapeutic or surgical methods for treatment of the human or animal body, and diagnostic methods.</td>
<td></td>
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**Note:**
Paragraph (1) corresponds to Article 1 of the Strasbourg Convention.
II

Articles 1 to 30

General provisions - Substantive Patent Law
(Report by the British delegation: BR/16/69)

13. The Conference noted, as regards Article 2a, that in view of the provisions of Article 68a an applicant may apply for a European patent for one Contracting State only. It therefore felt that the drafting of the English text of Article 2a should be adapted accordingly and that the note to the Article should be deleted.

14. The Conference observed as regards Article 2, that the present state of developments did not allow it to be determined whether computer programmes could be the subject of a patent.

15. A number of delegations stated that they would have preferred in Article 11 (3), a solution consisting in adopting the alternative laid down in Article 6 of the Strasbourg Convention, i.e. a solution which would simply avoid double protection for one and the same invention. It was pointed out by other delegations that this solution would not fit in with the system of deferred examination adopted for the present Convention. This was because, where examination is requested for the later application while no request for examination has yet been introduced for the earlier application, this solution does not allow a decision be taken in respect of the later application until the end of the procedure for the grant of the earlier application. For these reasons, the Conference retained the text adopted by the Working Party for Article 11 (3), subject to reconsidering the matter once the interested circles have had the opportunity to present their observations.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 30 January 1970
BR/26/70

SECRETARIAT

MINUTES
of the
2nd MEETING
held at Luxembourg on 13 to 16 January 1970

Item 1 on the agenda (BR/14/69) (1)

OPENING OF THE MEETING

1. The Conference began its work at 10.00 a.m. on
   Tuesday 13 January at the Kirchberg European Centre,
   Luxembourg, with Dr. HAERTEL, President of the German
   Patent Office, in the Chair (2).

Item 2 on the agenda

ADOPTION OF THE PROVISIONAL AGENDA

2. The Conference adopted the provisional agenda
   submitted by the President.

(1) The agenda is given in Annex I
(2) The list of those attending the 2nd meeting is given in
    Annex II.

BR/26 e/70 kel/PA/mk
PART II

SUBSTANTIVE PATENT LAW

CHAPTER I

Patentability

Article 9

Patentable inventions

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(2) Inventions within the meaning of paragraph 1 shall in particular exclude:

(a) scientific and mathematical theories as such;

(b) the mere discovery of materials occurring in nature;

(c) purely aesthetic creations;

(d) commercial, financial or book-keeping methods, the rules of playing games and other systems, in so far as they are of a purely intellectual nature;

(e) therapeutic or surgical methods for treatment of the human or animal body, and diagnostic methods.

Note to Article 9 (1):

Paragraph 1 corresponds to Article 1 of the Strasbourg Convention.
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)
(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

BR/94 e/71 aut/KM/prk
(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 CFCGI)

(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)

BR/94 e/71 aut/KM/prk
(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 (1) 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)
(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? (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)

(1) The majority of the Working Party refused to abandon altogether the examination for obvious deficiencies.
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 proposals 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 - Patenable inventions
Possible new text for Article 9, paragraph 2, especially sub-paragraphs (a), (b) and (e) (observations by CEI 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.
Article 9 - Patentable inventions

22. The Working Party agreed that Article 9, paragraph 2, of the First Preliminary Draft, which set out exceptions to patentability, should first and foremost be adapted to the corresponding provision of the Regulations under the PCT (Rule 39.1), although the regulations in question were not, in fact, identical. To this end it amended sub-paragraphs (a), (d) and (e) of paragraph 2 and placed the words "or animal" in sub-paragraph (e) as well as the whole of sub-paragraph (f) (mere presentations of information) and sub-paragraph (g) (computer programmes) between square brackets. The brackets serve to indicate that the Working Party still intends to continue its examination of these provisions.

23. Furthermore, the Working Party agreed that the re-drafted paragraph 2 would have to be discussed later with the interested circles.

Article 11 - Novelty

24. The Working Party thought there was no need to adapt Article 11, paragraph 2, to a corresponding PCT Regulation (Rule 64.1), which only referred to written disclosures.

Article 13 - Inventive step

25. The Working Party agreed to enlarge the first sentence of Article 13 by aligning it on Article 33, paragraph 3, of the PCT by addition of the words "to a person skilled in the art". The exact time at which the inventive step...
Patent Office under the first sentence of paragraph 3 could, however, scarcely constitute a decision subject to appeal in itself.

21. It was also pointed out (cf. BR/87/71, point 40) that Article 156, paragraph 3, raised a general problem, namely the question of when the period for filing an appeal began in cases where the European patent application was deemed to be withdrawn. The Working Party agreed that this general problem should not be discussed or solved in the context of Article 156, paragraph 3.

(f) Alignment of some of the provisions of the Preliminary Draft with the results of the Washington Conference (BR/GT I/74/70)

22. The German delegation prepared a series of proposed amendments (BR/GT I/74/70) for the purpose of bringing the provisions of the First Preliminary Draft Convention into line with the Patent Co-operation Treaty signed in June 1970. It pointed out first of all that there were many points in respect of which such an alignment was desirable and several—in the case of obligatory PCT provisions—where it was essential.

The Working Party agreed on the whole with this viewpoint. In discussing these proposed amendments they arrived at the following conclusions:

BR/94 e/71 aut/KM/prk
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 "Octrooiraad", 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.

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Article 8

Accords particuliers

Tout groupe d'États contractants peut disposer par un accord particulier que les brevets européens, délivrés pour ces États, auront un caractère unitaire sur l'ensemble de leurs territoires, qu'ils seront soumis aux dispositions de cet accord particulier et que de tels brevets ne pourront être délivrés pour une partie seulement de ces États.

Article 8a

Modèles d'utilité et certificats d'utilité nationaux

Les articles 6, 61 paragraphe 2, 76, 124 à 127, 134 et 150 sont applicables aux modèles d'utilité ou aux certificats d'utilité, ainsi qu'aux demandes correspondantes, dans les États contractants dont la législation prévoit de tels titres de protection.
ZWEITER TEIL
MATERIELLES PATENTRECHT

KAPITEL I
 Patentierbarkeit

Artikel 9
Patentfähige Erfindungen

(1) Europäische Patente werden für Erfindungen erteilt, die neu sind, auf einer erfinderischen Tätigkeit beruhen und gewerblich anwendbar sind.

(2) Als Erfindung im Sinne des Absatzes 1 gelten insbesondere nicht

a) wissenschaftliche und mathematische Theorien;

b) die bloße Entdeckung in der Natur vorkommender Stoffe;

c) rein ästhetische Formschöpfungen;

d) Pläne, Regeln und Verfahren für eine geschäftliche Tätigkeit, für rein gedankliche Tätigkeiten oder für Spiele;

e) Verfahren zur chirurgischen oder therapeutischen Behandlung des menschlichen [oder tierischen] Körpers sowie Diagnosizierverfahren;

[f) die bloße Wiedergabe von Informationen;]
[g) Computer-Programme].

PART II
SUBSTANTIVE PATENT LAW

CHAPTER I
Patentability

Article 9
Patentable inventions

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(2) Inventions within the meaning of paragraph 1 shall in particular exclude:

(a) scientific and mathematical theories;

(b) the mere discovery of materials occurring in nature;

c) purely aesthetic creations;

d) schemes, rules or methods of doing business, performing purely mental acts or playing games;

(e) methods for treatment of the human [or animal] body by surgery or therapy, as well as diagnostic methods;

[f] mere presentations of information;
[g] computer programmes.

Artikel 10
Ausnahmen von Patentierbarkeit

Europäische Patente werden nicht erteilt:

a) für Erfindungen, deren Veröffentlichung oder Verwertung gegen die öffentliche Ordnung oder die guten Sitten verstoßen würde; ein solcher Verstoß kann nicht allein aus der Tatsache hergeleitet werden, daß die Verwertung der Erfindung in allen oder einem Teil der Vertragsstaaten durch Gesetz oder Verwaltungsvorschrift verboten ist;

b) für Pflanzensorten oder Tierarten sowie für im wesentlichen biologische Verfahren zur Züchtung von Pflanzen oder Tieren; diese Vorschrift ist auf mikrobiologische Verfahren und auf die mit Hilfe dieser Verfahren gewonnenen Erzeugnisse nicht anzuwenden.

Article 10
Exceptions to patentability

European patents shall not be granted in respect of:

(a) inventions the publication or exploitation of which would be contrary to "ordre public" or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;

(b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof.
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTERTeilungsverfahren

sowie

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

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

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

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

ainsi que

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

et

PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES
Article 10 — (Exceptions to patentability)

98. The Working Party considered the question raised by the Conference, whether Article 10(b) was compatible with the Paris Convention for the Protection of New Varieties of Plants. The representative of WIPO informed the Working Party that according to the Plant Variety Union there was no incompatibility between the two Conventions.

99. The United Kingdom delegation proposed that sub-paragraph (b) should be amended to read simply "plant or animal varieties" on the grounds that the meaning of "essentially biological processes" was not clear and it could see no reason why any biological processes other than for the treatment of the human body should be specifically excluded by the Convention. This proposal found no support from any other delegation.

The relationship between Article 9(2) and Article 10

100. Two delegations proposed that sub-paragraph (b) of Article 10 should be inserted in Article 9(2). As a matter of fact, as far as the applicant is concerned, the two sets of exclusions enter into the same category.

On the other hand some delegations drew a distinction between 9(2) and 10(b) in that Article 9(2) dealt with non-inventions while 10(b) dealt with inventions which were specifically excluded. It was also considered desirable to follow the wording of the Strasbourg Convention.

Finally the proposal was not accepted.
by the United Kingdom delegation was not accepted as it was felt that, although the term "computer programmes" might need some clarification, it was not desirable here to do more than lay down general principles so as not to tie the hands of the European Patent Office and of the national courts which would have to settle these questions.

Future amendment of Article 9(2)

97. The United Kingdom delegation thought that flexibility should be given to Article 9(2) so that it could be amended in the light of experience and proposed that this provision should be transferred to the Implementing Regulations. Along the same lines the Netherlands delegation proposed that, while leaving this provision in the Convention itself, the Administrative Council should be given competence to amend it under the provisions of Article 354.

Some other delegations considered that amendments to the rules on patentability were of such importance that it was undesirable to allow the provisions to be amended by the Administrative Council. The development of patent law should be left to the courts and the question of amendment should be left to revision by a Diplomatic Conference.

The latter position was finally adopted by the Working Party.

The United Kingdom delegation however reserved its position on this question.
Paragraph 2(g)

96. The United Kingdom delegation proposed that computer programmes should not be patentable and it proposed a draft giving a definition of what a computer programme was. It stated that a computer programme was basically not inventive and was merely the mathematical application of a logical series of steps in a process which was no different from a mathematical method excluded under (a). However some form of protection might be desirable for computer programmes but this, which might be considered by WIPO, called for some new form and not under existing patent laws.

The representative of WIPO stated that the PCT gave little guidance on this question, as the criterion whether a computer programme fell under the PCT system depended only on the capacity of the international searching authority to conduct a search. On the other hand it appears from a study being conducted at the moment by WIPO that some countries are firmly of the opinion that some limited protection should be given to computer programmes.

It has been observed that it was not desirable for the moment to prejudge the future developments in this matter by excluding explicitly computer programmes from patentability.

The Working Party however agreed that computer programmes should be excluded from patentability and that the square brackets should be removed. The detailed definition proposed
94. The United Kingdom delegation proposed that the words "or animals" should be deleted from (e). It explained that it was difficult to distinguish between methods of breeding in animals and methods protecting animals from disease.

The view was expressed however that it would be desirable to retain animals among the exclusions of patentability notably on the ground that many human cures started with experimentation on animals. Moreover, in view of the fact that under several national law systems animals are excluded from patentability, this proposal might meet serious opposition in the countries concerned. Therefore the Working Party agreed to retain animals in (e) and to delete the brackets.

Paragraph 2(f)

95. The United Kingdom delegation proposed an amendment to clarify the meaning of the words "mere presentation of information" under (f). There was some support for this proposal but it was considered that it would be undesirable to depart from the wording of the PCT contained in Rules 39 and 67. Although the PCT provisions only concern themselves with the requirements of search and examination, they could nevertheless be regarded as an encouragement towards national harmonization. It was also desired to avoid too precise a definition which might look narrower than the PCT wording. The Working Party agreed to maintain (f) in its present form and to remove the brackets.

85/135 e/71 prk
but it would be undesirable to lay down any precise rules as to the protection to be given where the same substance was subsequently discovered to exist naturally. It was proposed that as (b) was obvious in any case it should be deleted. It was however agreed that it should be retained in view of the fact that the word "mere" gave some discretion to the bodies which had to decide such matters and it was considered undesirable to make unnecessary changes in the draft. The proposal of the interested circles was rejected.

Paragraph 2 (e)

92. Interested circles had proposed that this exclusion should not extend to "new therapeutic applications of known substances". It was explained that this amendment was based on the conception that, whereas new drugs were well protected by patents either in their processes or in respect of the products themselves, there was no economic incentive to invest in research involving new therapeutic uses of known substances as these were not patentable. The pharmaceutical industry considered that as this might be of equal value to humanity, it would be desirable to include such applications as being patentable. The Working Party, however, considered that the reasons advanced were not sufficient to justify a provision which would be in fact contrary to common practice in the countries concerned.

93. Another proposal from interested circles was to exclude from (c) "processes and laboratory equipment used for the purpose of diagnosis". This proposal was rejected by the Working Party as it was considered that in so far as the processes involved treatment by doctors, this would not be patentable anyhow, and laboratory equipment could be dealt with under the ordinary rules of patentability.
II

OTHER QUESTIONS
(Item 3 of the Agenda)

Article 9 - (Patentable Inventions)

89. It was stated that Article 9 was the subject of study by a number of organizations among the interested circles and it was suggested that it might be preferable to postpone discussion until the views of the interested circles had been received at the next meeting of the Conference. It was agreed, however, that the Working Party should at once consider all the proposals so far received on Article 9. (Proposals of the organizations: BR/100/71; proposals of the U.K. delegation: BR/GT I/113/71).

Paragraph 2 (a)

90. It was agreed that a Swiss proposal amending "mathematical theories" to "mathematical methods" should be accepted.

Paragraph 2 (b)

91. Interested circles had proposed that (b) should be amended to exclude "materials existing in nature which are isolated and defined for the first time".

The Working Party considered the question of laying down detailed rules on the discovery of new substances. It was agreed that protection should be given to synthetically-produced substances by means of a new process,

BR/135 e/71 ms
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 17 November 1971
BR/135/71

MINUTES

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

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

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

2. Working Party I adopted the provisional agenda as contained in BR/CT 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 Octrooiread; and after his departure, that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).

BR/135 e/71 prk
(Unrevised translation)
PART II
SUBSTANTIVE PATENT LAW

CHAPTER I
Patentability

Article 9
Patentable inventions

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(c) purely aesthetic creations;
(d) schemes, rules or methods of doing business, performing purely mental acts or playing games;
(e) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods;
(f) mere presentations of information;
(g) computer programmes.

Notes to Article 9:
(1) Article 9 (1):
This paragraph corresponds to the Strasbourg Convention, Article 1.

(2) Article 9 (2):
The wording of this paragraph is based in part on Rule 39.1 of the Regulations under the PCT.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 15th February 1971
BR/88/71

Deutsches Patentamt
Eing. 9. Mrz. 1971

E P R

8. 1. 71

Stage reached on 29 January 1971

BR/88 e/71
PART II
SUBSTANTIVE PATENT LAW
CHAPTER I
Patentability

Article 9 (Patentable inventions)

Article 10 (Exceptions to patentability)

16. The Conference instructed Working Party I to re-examine paragraph 2 of Article 9 and in particular the words in brackets, hearing in mind the opinions expressed by the interested circles. Working Party I would also study the relation between this paragraph, which lists what is not to be regarded as an invention, and Article 10, which defines exceptions to patentability.

In particular it was asked whether Article 10, sub-paragraph (b), was compatible with the provision on the protection of plant varieties in the Strasbourg Convention. According to some delegations, the present drafting of Article 10 would attribute the character of an invention to plant or animal varieties, even though they were unpatentable; another delegation was of the opinion that such a conclusion could not be drawn from the text of Article 10.
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 9

Patentable inventions

(1) +

(2) Inventions within the meaning of paragraph 1 shall in particular exclude:

(a) scientific theories and mathematical methods;

(b) +

(c) +

(d) + (amendment to the French text only)

(e) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods;

(f) mere presentations of information;

(g) computer programmes.

Notes to Article 9:

1. +

2. - deleted -

BR/139 e/71 prk
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 6 December 1971
BR/139/71

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 -

BR/139 e/71
it would be more appropriate to leave it to the development of practice at the European Patent Office and in the national courts to determine the principles to be applied in this field.

CNIPA in particular urged that if computer programs were nevertheless to be excluded, it should at least be understood that items which were traditionally patentable should not be excluded merely because they contained computer programs.

Article 11 (Novelty)

19. A majority of the organisations (CEPI, COPRICE, CFCI, RICMA, PICPI, PIPA, UNIPA and UNICE) favoured the "prior claim approach" being introduced into the Convention. It was pointed out in particular that this approach would eliminate the problem of "self-collision"; it had been applied with satisfactory results for a number of years in several States and only recently had been adopted by French law; it could also operate within a system of liberal interpretation of the claims, as could be seen from experience in Germany. The possibility of a delay in determining the protection conferred was not a substantial drawback in a system under which there was practically no deferred examination. To reduce this possibility, EIRMA suggested that any prior claims should be assumed to be valid, without prejudice to any legal action challenging such an assumption after the grant of the patent.

These organisations also drew attention to the disadvantages of the "whole contents approach", the most serious of these being the possibility of self-collision,
of known substances should not be excluded from patentability, and that a provision interpreting sub-paragraph (e) to this effect should perhaps be included in the Implementing Regulations. UNICE and GEIP listed examples illustrating the importance, for the development of medicine and for public health in general, of the rules adopted encouraging research into new therapeutic applications of known substances. Without such incentive, the pharmaceutical industry might well concentrate its research efforts on entirely new products or compounds, which it would be very costly to perfect.

Two organisations (CNIPA and UNEPA) expressed reservations on a straightforward exclusion of diagnostic methods from patentability. Developments in technology had been seen with regard to diagnostic methods which were not of a specifically medical nature (for example, use of equipment to determine the blood group of a patient).

Two other organisations (UNICE and GEIP) urged that it should be provided that methods for treatment of the human body by therapy should be excluded from patentability only in the case of physical treatment.

18. With regard to sub-paragraph (g) of Article 9, paragraph 2, all the organisations which spoke requested that it be deleted. It was pointed out that the area of computer programs was one that was developing rapidly. The relevant courts of certain countries seemed to be moving in the direction of considering computer programs patentable under certain conditions. It would therefore be premature to provide for their straightforward exclusion from patentability;
16. CEIF proposed that sub-paragraphs (a) and (b) of Article 9, paragraph 2, should be combined to provide for the exclusion of theories, discoveries and scientific methods.

In addition, certain organisations, (CEIF, COPRICE, CPCCI and UNICE) asked that there should be a provision in the Implementing Regulations interpreting sub-paragraph (b) (for CEIF, such a provision would interpret the new sub-paragraph (a) combining the present sub-paragraphs (a) and (b)) as meaning that forms and states as yet unknown of materials occurring in nature should not be excluded from patentability. Concern was expressed with regard to the patentability of new antibiotics, as the discovery of these could in certain cases be interpreted as a mere discovery of materials occurring in nature.

UNEPA also pointed out that the wording of Article 10, sub-paragraph (b), ("this provision does not apply to microbiological processes or the products thereof") could facilitate such an interpretation of Article 9, paragraph 2(b).

17. With regard to sub-paragraph (g) of Article 9, paragraph 2, a number of organisations (IAPIP, ICC, CEIF, COPRICE, CNIPA and UNICE) were in favour of deleting the words "or animal" on the grounds of the difficulty of distinguishing between strictly veterinary methods of treatment and other methods, concerning stock-rearing or sterilisation of certain species of insects, for example, which would be clearly of a more industrial nature.

A number of organisations (IAPIP, CEIF, CPCCI, UNICE and EIRMA) also proposed that new therapeutical applications
and which, if excluded from patentability, would be excluded for reasons of expediency rather than logic (under (d), (e) and (g)). If their content were retained as it stood, these sub-paragraphs would be better placed in Article 10.

13. CNIPA stated that it was concerned about the fact that the list set out in Article 9, paragraph 2, consisted merely of examples. Too wide an interpretation of this provision by European Patent Office examiners might make the Convention less liberal than certain national laws.

14. Several organisations (CEIF, CNIP, CPCCI, FICPI, IFIA and, in the event of the proposal stated under point 11 above not being adopted, COPRICE and UNICE) asked that the content of Article 9, paragraph 2, be transferred to the Implementing Regulations. This would allow the matter to be treated with greater flexibility, and the Administrative Council would thus be able to amend by a three-quarters majority the list of non-patentable subject-matter if this became desirable in the light of future developments. It was pointed out in addition that under the PCT, Rules 39 and 67 were also to be found in the Regulations.

15. In connection with sub-paragraphs (a), (d), (f) and (g) of Article 9, paragraph 2, some organisations (CEIF, EIRMA and UNICE) suggested that their contents should be placed in a generally worded provision. This solution would in particular make it possible to settle the problems raised by the reference to computer programs in (g) (cf. also point 19 below in this connection).
provide for simultaneous protection, and to do so without prejudice to whatever solutions might be considered necessary for the Community patent.

IAPIP stated, in connection with the implementation of Article 6, that if a national judge were to revoke a national patent for reasons other than those set out in Article 133, it should not be possible to revoke the parallel European patent for the same reasons.

**Article 9** (Patentable inventions)

and **Article 10** (Exceptions to patentability)

11. Some organisations (COPRICE, UNEPA and UNICE) requested that Article 9, paragraph 2, be deleted. In their opinion, jurisprudence should be allowed all the flexibility and freedom necessary for interpreting the definition given in paragraph 1 of patentable inventions. The fact that paragraph 2 is based on Rules 39 and 67 of the Regulations under the PCT did not justify retention of this provision, as the aim of the PCT provision was not to define what should be excluded from patentability but only to lay down the cases in which the searching or preliminary examination of an international application would not be compulsory.

12. CEIF commented upon the relationship between Article 9, paragraph 2, and Article 10. Article 9, paragraph 2, listed, in addition to intrinsically unpatentable subject-matter (under (a), (b), (c) and (f)), subject-matter which might be considered as inventions in certain circumstances, as demonstrated in the national laws of certain countries,
M I N U T E S

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)
particularly since Article 13 gave the applicant the freedom to include in his application non-inventive variants or developments of anything disclosed in an unpublished application for a European patent. Furthermore, the priority provisions and the facilities offered by Article 137a would allow the applicant satisfactory devices.

12. The Swiss delegation was in favour of providing for a derogation to take sufficient account of reality, where the majority of inventions form part of a continuous line of development by the same inventor. It therefore proposed that the following should be added to paragraph 4:

"and in so far as both patent applications originate from different applicants".

Attention was drawn to the word "originate", which, in the opinion of that delegation, would limit fairly the category benefiting from the exception.

13. Finally, in the document it submitted to the Working Party, the French delegation had set out its ideas on the possibility of using European patents of addition to solve difficulties arising from self-collision. According to that delegation, any solution to the problem of self-collision would have to satisfy the following three conditions:

1. Allow the applicant to base the claims of the second application on a text repeating in part the description of the earlier application.
(d) Finally, the Working Party considered the problem raised by the Netherlands delegation at a previous Working Party meeting, as to whether surgical treatment not intended for therapeutic purposes, but on the contrary for destructive purposes (e.g. the sterilisation of insects) should be explicitly excluded from this provision. The Working Party was of the opinion that treatment of this kind was not in fact intended to be included in this provision, but did not consider it necessary to draft a text stating this explicitly.

Article 11 (Novelty)

10. The Working Party had to examine whether provision should be made within the framework of this Article, for a derogation in the event of the two applications in question being made by the same person ("self-collision"). In this connection, positions were submitted in writing by the Swiss (BR/GT I/146/72), United Kingdom (BR/GT I/150/72) and French (BR/GT I/155/72) delegations, and also by the Chairman (BR/GT I/145/72).

11. The United Kingdom delegation and the Chairman thought that the legal complications of determining exactly where to draw the line and the possibility of infringement which would arise from such a derogation were not sufficiently offset by possible advantages for the applicant. They recalled that the absence of a derogation of this kind would not cause any practical difficulties in Swedish legislation, similar on this point to the Preliminary Draft Convention. Moreover, the United Kingdom delegation pointed out that self-collision presented no real difficulty.

BR/177 e/72 nam/JF/prk
This second alternative was considered the more satisfactory.

The Working Party adopted, by a majority, the text proposed by the French delegation, as being the one which best reflected all the conclusions it had reached. At the same time the Working Party felt it could not go along with the French delegation on the question of including this provision in Article 10, given that the Conference had clearly expressed its desire to keep to the Strasbourg Convention as closely as possible on this point.

The United Kingdom delegation expressed reservations on the very principle of the patentability of new uses of known substances, on the possibility of "Zweckgebundene Stoffansprüche", and finally on the desirability of drawing a distinction between the first use and subsequent uses.

(b) As to the inclusion of the term "animal" in sub-paragraph (e), the Working Party found no reason to alter the opinion it had submitted to the Conference, and accordingly decided to delete the square brackets.

(c) Thirdly, the Working Party decided to fall in with the French delegation's proposal to define the concept "diagnostic methods" by the addition of the words "applied to the human or animal body". Naturally, the Working Party also agreed that this specification in no way implied that psychological procedures or autopsies were not referred to, and that inventions relating to diagnostic apparatus would in principle be patentable.
First of all the Working Party considered whether a new therapeutic use of a known substance should be included in the category of patentable inventions. As its basis it took the documents submitted by the Danish delegation (BR/GT I/147/72), and the French delegation (BR/GT I/152/72), of which the latter had recommended that this provision be included in Article 10 instead of Article 9.

As to the problem of whether patentability should be allowed in principle, a majority was in favour of the Convention not specifying explicitly that such a thing was excluded. However, some delegations were perplexed as to the procedures for implementing the protection conferred by such patents. It was recalled in fact that, at least in practice, it was not open to the proprietor of such a patent to institute legal proceedings against a person infringing the patent, namely a doctor or possibly a pharmacist.

In this respect, two alternatives emerged from the discussion. On the one hand, the use of the substance for the purposes indicated could form the subject of the patent protection, on the understanding that the proprietor would institute proceedings only against an intermediary infringer (competing producer) and not against the real infringer, who would be the doctor. On the other hand, the patent protection might conceivably cover a substance intended for a specific indicated purpose ("Zweckgebundener Stoffanspruch").
8. With regard to the possible inclusion of computer programs in sub-paragraph (d), opinions were submitted in writing by the United Kingdom delegation (BR/GT I/150/72), the Swiss delegation (BR/GT I/146/72), and the Chairman (BR/GT I/145/72). The last two were in favour of this and the United Kingdom delegation was against it, on the grounds that computer programs would thus be able to obtain patent protection by indirect means and that, broadly speaking, the free development of precedents - which is of paramount importance in this still very uncertain field - would be hindered. Most of the Working Party on the other hand was in favour of this inclusion, which would, as a matter of fact, make for the exclusion of computer programs as such, while allowing precedents to be used to assess the patentability of any related inventions. This majority opinion held, on the contrary, that a special sub-paragraph dealing with computer programs could lead to the conclusion that any program, including true inventions related to such a program, should be excluded from patentability.

The Working Party had thus to consider a new wording for sub-paragraph (d) and it preferred to deviate as little as possible from the present text, which did not seem to have caused any problems since its inclusion in the Draft Convention. It simply added the phrase - "the use of computers".

9. The Working Party's discussions on sub-paragraph (e) dealt with four distinct problems.
Article 9 (Patentable inventions)

4. The Working Party held a discussion on the various points concerning Article 9, paragraph 2, which were referred to it by the Conference.

5. With regard to the question of whether scientific discoveries should be included in sub-paragraph (a), the Working Party had received three proposals, respectively from the Swiss delegation (BR/GT I/146/72), the United Kingdom delegation (BR/GT I/150/72) and the Chairman (BR/GT I/145/72), all in principle in favour, but varying as to the wording. During the discussion one delegation recalled that the concept of "discovery" had sometimes acquired a very specific meaning under certain national patent legislation and suggested that it might be a good idea to define the concept in this context by adding "not susceptible of industrial application". However, other delegations expressed doubts as to the relevance of the proposed addition. The Working Party observed that no qualification would supply complete clarity and so it thought it preferable to keep to the original wording proposed by the Swiss delegation (scientific discoveries as such).

6. The Working Party considered that the subject of sub-paragraph (b) was covered by the new wording of sub-paragraph (a), and therefore decided to delete sub-paragraph (b).

7. The Working Party then decided that sub-paragraphs (a), (d) and (f) each referred to a distinct category of subjects and that they should not be regrouped.

BR/177 e/72 oyd/AH/prk
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 13 April 1972
BR/177/72

SECRETARIAT

REPORT

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

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

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

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

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

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

BR/177 e/72 oyd/AH/prk

.../...
Finally, the Conference instructed Working Party I to examine the possibility of reproducing the contents of sub-paragraph (g) in a more general wording of sub-paragraph (d).

The Netherlands delegation reserved the right to submit a proposal at the next Meeting of the Conference, aimed at providing the Administrative Council with a specific power enabling it to delete computer programmes from the list of non-patentable items.

Article 10 (Exceptions to patentability)

37. One delegation, while taking note of the opinion expressed by Working Party I (1), drew attention to difficulties which, in its view, could arise from the exclusion of plant varieties in sub-paragraph (b) of this Article. Article 10 could, in fact, be interpreted as listing instances of inventions excluded from patentability, whereas items not constituting inventions within the meaning of the Paris Union Convention would be provided for in Article 9. This would be contrary to the majority opinion expressed at the conclusion of the Paris Convention concerning new plant varieties, according to which plant varieties were not inventions.

(1) Cf. minutes of the 9th meeting of Working Party I, BR/135/71, point 98.
34. Finally, with regard to sub-paragraph (e), the Conference instructed Working Party I to examine the suggestion made by certain organisations concerning diagnostic methods (cf. ER/169/72, point 17).

35. Subject to point 26 above, the Conference, by a very large majority, adopted the proposal of Working Party I that the square brackets be removed from sub-paragraph (f).

36. With regard to sub-paragraph (g), the Conference agreed, subject to the following, to remove the square brackets appearing in the 1971 published text.

The Conference took note of the concern expressed by the interested circles with regard to this provision. Furthermore, it was stressed that a matter as important as computer programmes should not be left in a state of prolonged uncertainty pending legal developments which, in any case, could differ from country to country.

Certain delegations were in favour of simply deleting sub-paragraph (g). Others proposed that Working Party I be instructed to ascertain whether it was possible to cover the case of computer programmes by wording sub-paragraph (d) more generally, thereby leaving the European Patent Office and judges a wider scope for assessment. Finally, other delegations proposed that sub-paragraph (g) be retained in the text, while making provision in Article 35a for the Administrative Council to be empowered to delete this provision, given a three-quarters majority.
Other delegations maintained that the deletion of the words "or animal" requested by a large number of organisations (BR/169/72, point 17) did not necessarily mean that veterinary treatment would automatically become patentable, but introduced an element of flexibility by enabling jurisprudence to make a distinction between these cases and cases which were more typically industrial (for example: methods of stock rearing or insect sterilisation).

In conclusion, the Conference instructed Working Party I to continue examination of this question, while reserving the right to give a decision on the words between square brackets at its next meeting.

33. Still dealing with subparagraph (e), the Conference then considered the proposal by the interested circles (cf. BR/169/72, point 17) to allow the patentability of a new therapeutic application of already-known substances and the proposal by some organisations (cf. BR/169/72, point 17) to exclude specifically only "physical" methods of treatment by therapy.

Some delegations proposed that the last suggestion at least should be adopted in the Convention, leaving it open to jurisprudence to decide on treatment by therapy other than physical and on the new therapeutic applications of known substances.

Before adopting a position, the Conference asked Working Party I to re-examine these proposals also.
Some delegations were against the introduction of this addition requested by the Yugoslav delegation in subparagraph (a). In their opinion, it went without saying that "scientific discovery" pure and simple was not patentable. Furthermore, the present wording of subparagraphs (a) and (b) covered a large part if not all of that category and exact definition should be left to jurisprudence. Finally, an amendment such as that requested by the Yugoslav delegation would upset the harmony of this provision with the PCT.

Before adopting a final position on this point, the Conference instructed Working Party I to examine the Yugoslav delegation's proposal.

31. The Conference also instructed Working Party I to examine whether it was possible, in accordance with the suggestions of several organisations (cf. BR/169/72, point 15) to combine the contents of subparagraphs (a), (d), (f) and (g) in a single general provision.

32. The Conference then examined whether, as had been proposed by Working Party I in BR/139/71, the words "or animal", which appear between square brackets in subparagraph (e) in the 1971 published text, should be retained.

Some delegations were in favour of retaining these words on humanitarian grounds and for reasons of public health.
29. With regard to the wording of the subparagraphs of paragraph 2, the Conference acted on the proposals contained in BR/139/71 only in so far as is indicated below for each subparagraph, the final decisions having to be taken at its next meeting in the light of proposals which Working Party I will submit in respect of the various specific instructions it has received.

30. With regard to subparagraph (a), the Yugoslav delegation requested that "scientific discoveries" should be specifically referred to together with scientific theories and mathematical methods. The concept of "scientific discovery" had been established as an autonomous legal category by the Stockholm Convention on intellectual property and a tendency could be seen, although not yet crowned with success, to regulate it at the level of international treaty law (the League of Nations initially, and now UNESCO): there were also specific regulations at the level of national legislation in certain socialist States in Eastern Europe. The concept of "scientific discovery" could also cover subparagraph (b), but not exhaustively, in so far as it could consist of the discovery of materials occurring in nature. The wording of subparagraph (b) might thus be re-examined.

The Yugoslav delegation also stated that it was only concerned with "scientific discoveries" pure and simple, namely the theoretical description of a newly discovered natural law, to the exclusion of any possible industrial application of that discovery, as such application could perfectly well come under the category of "inventions".
28. As regards the proposal by the interested circles (cf. BR/169/72, point 14) to transfer the content of paragraph 2 to the Implementing Regulations to ensure greater flexibility in the system, some delegations thought that this idea was worth considering.

One delegation proposed another solution aimed at achieving the same flexibility, namely that of giving the Administrative Council, by an addition to Article 35a, the authority to amend paragraph 2 of Article 9 with a view to limiting the number of items excluded from patentability.

On the other hand, other delegations thought it was inappropriate to insert a fundamental subject such as that of patentability in the Implementing Regulations which were subordinate to the Convention. The desired flexibility ought rather to be obtained by wording paragraph 2 in a sufficiently general way so as to leave room for interpretation by jurisprudence.

In conclusion, the Conference rejected the proposal to transfer the content of paragraph 2 to the Implementing Regulations and the proposal to grant the Administrative Council the authority to amend that provision. Subject to final drafting, paragraph 2 will thus remain in the Convention, and it may only be amended by means of a revision of the Convention.

The United Kingdom and Netherlands delegations expressed reservations on this decision.

BR/168 e/72 oyd/KH/gc
Article 6 (Simultaneous protection)

24. The Conference decided to retain the right for the Contracting States to provide for simultaneous protection, a large majority of the interested circles being in favour of this, taking account also of the solution to this problem outlined in the Second Convention.

Furthermore, the Conference considered that the request by the CEIP (cf. BR/169/72, point 10) that this Article should apply only to patents having the same priority date, was worth consideration by the Drafting Committee.

Article 9 (Patentable inventions)

25. The Conference examined a proposal from some organisations (cf. BR/169/72, point 11) that paragraph 2 be entirely deleted. The Conference did not adopt this proposal since it considered it necessary, from the entry into force of the system, to create the greatest possible legal certainty in this field.

26. The Conference did not adopt the idea of making an exhaustive list of items excluded from patentability in paragraph 2, so as to retain the flexibility necessary to the system.

27. The Conference was unable to accept the suggestion of the CEIP that all or part of paragraph 2 of Article 9 should be combined with Article 10, for reasons of legal systematisation and in view of the existence of two similar provisions in the Strasbourg Convention of 27 November 1963 on the Unification of Certain Points of Substantive Law on Patents for Invention.
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)
PART II

SUBSTANTIVE PATENT LAW

CHAPTER I

Patentability

Article 50 (9)

Patentable inventions

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) scientific theories, discoveries and mathematical methods as such;

(b) purely aesthetic creations;

(c) schemes, rules and methods for performing purely mental acts, playing games or doing business, and programs for computers;

(d) methods for treatment of the human (or animal) body by surgery or therapy and diagnostic methods practised on the human (or animal) body; this provision shall not apply to inventions having as their subject-matter substances or compounds, whether or not known, which are used for the first time for the purposes of practising such methods;

(e) mere presentations of information.

Note to Article 50, paragraph 2 (d)

Working Party I proposes that the square brackets be deleted.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
During the discussion it was pointed out that the proposed wording was too restrictive as it only mentioned "a substance", whereas the text of Article 50, paragraph 2(d), also referred to "compounds". Moreover, in a system which allowed the patentability of new substances, it was indispensable that this provision should refer specifically to known substances. It was also observed that the term "medicament" was too restrictive and that reference should be made to use for the purposes of methods referred to in Article 50, paragraph 2(d). While the justification for inserting a new provision of this nature in Article 52 on novelty was not disputed, it was also asked that a provision along the same lines be inserted in Article 50 on patentability, in order to avoid any possible doubt.

Under these circumstances, the Committee considered it preferable to suspend the examination of this point at this stage, to enable the delegations to seek a solution which would take account of all the points raised and which could be submitted to the Conference.

Article 52, paragraph 3

6. Subsequent upon the Co-ordinating Committee's examination at its meeting held from 15 to 19 May 1972 of FICPI's observations, (cf. BR/209/72, page 32), the United Kingdom delegation had submitted a proposal (cf. BR/210/72) intended to fill a gap which it considered had been left open in the system of Article 52, paragraph 3, Article 68, paragraph 2, and Article 92. The United Kingdom delegation proposed that the scope of Article 52, paragraph 3, be
Article 50, paragraph 2(a)

4. The Swiss delegation proposed that this sub-paragraph be amended to the effect that the words "as such" should refer only to scientific theories and discoveries, excluding mathematical methods (cf. Working Document No. 6). Any mathematical method as such (pure mathematics) and its application in solving a technical problem (applied mathematics) should, in the view of this delegation, be considered to be intellectual activities and therefore excluded from patentability.

At the end of an exchange of views, the Committee agreed to adopt the Swiss proposal after amending it to make the limitation "as such" applicable to discoveries only, as it had emerged that the argument used in respect of mathematical methods also applied to scientific theories.

Article 50, paragraph 2(d) and Article 52

5. The Committee had before it a proposal by the United Kingdom, Danish and Netherlands delegations (cf. Working Document No. 23) to delete the clause in Article 50, paragraph 2(d), beginning "this provision shall not apply" and to add to Article 52 a new paragraph 5 reading: "Neither the provisions of this Article, nor those of Article 50, shall be interpreted as excluding the patentability of an invention consisting of a substance per se as a medicament provided that the state of the art does not include any such use of that substance."

BR/218 e/72 lor/PA/prk
MINUTES

of the

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

1. During the 6th Meeting of the Inter-Governmental Conference the Co-ordinating Committee met several times under the Chairmanship of Dr. K. HAERTEL to prepare the Conference's discussions of the proposals submitted to it by various delegations.
The Conference took a decision along these lines, but the United Kingdom delegation did not rule out the possibility of submitting to the Diplomatic Conference a proposal concerning the requirement of industrial application. The French delegation for its part reserved its position with regard to paragraph 3 of Article 50, since it would have preferred the text in Working Document No. 28. The Yugoslav delegation reserved its position entirely with regard to paragraph 5 of Article 52.

**Article 52**

33. The Austrian delegation expressed a reservation concerning the Conference's decision not to lay down specific rules for the case of "self-collision" and not to allow for patents of addition.

34. The Conference had before it a proposal from the United Kingdom delegation concerning [paragraph 3] of this Article (cf. BR/210/72). This proposal had previously been examined by the Co-ordinating Committee (cf. BR/218/72, point 6).

35. The Conference recorded its agreement on the conclusions of the Co-ordinating Committee, to the effect that the wording of this paragraph should not be altered.

**Article 68, paragraph 2**

36. The Conference had before it a proposal from the Belgian delegation (cf. Working Document No. 18). This proposal had previously been examined by the Co-ordinating Committee (cf. BR/218/72, point 8).
the state of the art did not include their disclosure for any method referred to in Article 50, paragraph 2(d). It was explicitly stipulated that these rules were not intended to prejudge the patentability of medical equipment.

31. Certain delegations pointed out that they interpreted the new paragraph 5 of Article 52 as not excluding the patentability of known substances or compositions, even if they were not used for the first time in an absolute sense for the purposes referred to in Article 50, paragraph 2(d).

Other delegations, on the other hand, stated that they could only accept this compromise proposal on condition that the paragraph in question should be applicable only to the use for the first time in an absolute sense of any method referred to in Article 50, paragraph 2(d).

In conclusion, the Conference noted that extending the scope of paragraph 5 beyond instances of use for the first time in an absolute sense comprised a modification of the compromise proposal contained in Working Document No. 28. It decided to adopt the text which had been submitted to it in this connection.

32. It was moreover pointed out that the text of the new paragraph 3 of Article 50 should refer only to paragraph 2(d) and not to paragraphs 1 and 2 of that Article, as proposed in Working Document No. 28. Indeed, it did not appear justified to exonerate for the purposes of patentability use for the first time of a substance or composition whether or not known, from the conditions referred to in paragraph 1.
Conference preferred to leave it to the jurisprudence of the European Patent Office to take a decision in each instance, since it should not be ruled out that in certain instances the industrial nature of the treatment, particularly when applied to animals, justified the grant of a patent.

29. The Conference also had before it a joint proposal from the United Kingdom, Danish and Netherlands delegations (Working Document No. 23). This proposal had been previously examined by the Co-ordinating Committee.

30. Since it had not been possible to reach agreement within the Co-ordinating Committee on the above-mentioned proposal (cf. BR/218/72, point 5), the Conference had before it a compromise proposal from the German, United Kingdom, Danish, French and Netherlands delegations (Working Document No. 28).

Firstly, with regard to Article 50, this proposal provided for the deletion in paragraph 2(d) of that part of the sentence following "human or animal body" in the third line, and the insertion of a new paragraph 3. Secondly, it incorporated a new paragraph 5 in Article 52. The two new paragraphs proposed stipulated that the provisions of Article 50, paragraphs 1 and 2, and paragraphs 1 to 4 of Article 52 did not exclude the patentability of substances and compositions intended for use in one of the methods referred to in Article 50, paragraph 2(d), even if the substances or compositions were already known, insofar as
27. With regard to the inclusion in paragraph 2(d) of the words "or animal" appearing between square brackets, the Netherlands delegation, with the support of the Austrian delegation, wondered whether there was not a risk of too broad an interpretation, leading to the exclusion from patentability of certain treatments applied to animals, in the broadest sense, for purposes other than therapeutic or diagnostic (for example methods for the sterilisation of insects or stock-raising methods). Indeed, in the opinion of that delegation, there was no reason for laying down rules different from those laid down in respect of methods for treatment of plant species, which could be patented.

The Conference noted that the text under (d) could not lead to the results feared by the Netherlands delegation, since the intention behind this text was merely to exclude from patentability all therapeutic treatments practised on animals, the aim of this provision being to exclude from patentability treatments falling within the meaning of treatment intended to cure or alleviate the suffering of animals.

28. The Swiss delegation suggested that methods for prophylactic treatments should also be mentioned explicitly under (d). It was noted in this context that in many cases prophylactic treatments could be treated similarly to surgical or therapeutic treatments. However, the
Article 34

23. The Netherlands delegation submitted a drafting proposal with regard to paragraph 2 (cf. Working Document No. 11) with a view to specifying that the words "the percentage" in paragraph 2(a) refer to the numerator and not to the entire fraction.

The Conference was of the opinion that such a stipulation was not indispensable.

24. The Conference adopted the text of paragraph 2(d) which still appeared between square brackets.

In accordance with a request from the Greek delegation, the number of votes which each Contracting State will have by virtue of Article 34, paragraph 2, is given in Annex III to these minutes.

Article 50, paragraph 2(a)

25. The Conference had before it a proposal from the Swiss delegation (cf. Working Document No. 6). This document had previously been examined by the Co-ordinating Committee (cf. BR/219/72, point 4).

26. The Conference recorded its agreement on the conclusions of the Co-ordinating Committee, to the effect that the restriction implicit in the words "as such" should apply to discoveries alone and not to scientific theories or mathematical methods.
MINUTES

of the

6th meeting of the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents (Luxembourg, 19 to 30 June 1972)
ZWEITER TEIL
MATERIELLES PATENTRECHT
Kapitel I
Patentierbarkeit

Artikel 50
Patentfähige Erfindungen

(1) Europäische Patente werden für Erfindungen erteilt, die neu sind, auf einer erfinderischen Tätigkeit beruhen und gewerblich anwendbar sind.

(2) Als Erfindungen im Sinn des Absatzes 1 werden insbesondere nicht angesehen:
   a) Entdeckungen als solche sowie wissenschaftliche Theorien und mathematische Methoden;
   b) rein ästhetische Formschöpfungen;
   c) Pläne, Regeln und Verfahren für rein gedankliche Tätigkeiten, für Spiele oder für geschäftliche Tätigkeiten sowie Programme für Datenverarbeitungsanlagen;
   d) Verfahren zur chirurgischen oder therapeutischen Behandlung des menschlichen oder tierischen Körpers und Diagnostizierverfahren, die am menschlichen oder tierischen Körper vorgenommen werden;
   e) die bloße Wiedergabe von Informationen.

(3) Absatz 2 Buchstabe d steht der Patentierbarkeit eines Stoffes oder Stoffgemisches zur Anwendung in einem in der genannten Vorschrift bezeichneten Verfahren nicht entgegen.

Artikel 51
Ausnahmen von der Patentierbarkeit

Europäische Patente werden nicht erteilt für:

a) Erfindungen, deren Veröffentlichung oder Verwertung gegen die öffentliche Ordnung oder die guten Sitten verstoßen würde; ein solcher Verstoß kann nicht allein aus der Tatsache hergeleitet werden, daß die Verwertung der Erfindung in allen oder einem Teil der Vertragsstaaten durch Gesetz oder Verwaltungsvorschrift verboten ist;

b) Pflanzensorten oder Tierarten sowie für im wesentlichen biologische Verfahren zur Züchtung von Pflanzen oder Tieren; diese Vorschrift ist auf mikrobiologische Verfahren und auf die mit Hilfe dieser Verfahren gewonnenen Erzeugnisse nicht anzuwenden.

PART II
SUBSTANTIVE PATENT LAW
Chapter I
Patentability

Article 50
Patentable inventions

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:
   a) discoveries as such, scientific theories and mathematical methods;
   b) purely aesthetic creations;
   c) schemes, rules and methods for performing purely mental acts, playing games or doing business, and programs for computers;
   d) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body;
   e) mere presentations of information.

(3) The provision of paragraph 2(d) does not exclude the patentability of a substance or composition for use in a method referred to in that provision.

Article 51
Exceptions to patentability

European patents shall not be granted in respect of:
   a) inventions the publication or exploitation of which would be contrary to "ordre public" or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;
   b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof.

Artikel 52
Neuheit

(1) Eine Erfindung gilt als neu, wenn sie nicht zum Stand der Technik gehört.

Article 52
Novelty

(1) An invention shall be considered to be new if it does not form part of the state of the art.
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTERTeilungsverfahren

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

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

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

Artikel 53

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

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

Artikel 144

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

AUSFÜHRUNGSORDNUNG

Regel 102

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

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

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

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

Article 53

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

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

Article 144

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

IMPLEMENTING REGULATIONS

Rule 102

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

We suggest therefore that paragraph 8 be redrafted as follows:
1 Ihrer Majestät Regierung stimmt den Entwürfen des Übereinkommens, der Protokolle sowie der sonstigen Texte generell zu und möchte vorerst vorbehaltlich des Rechts, weitere als wünschenswert erscheinende Änderungen anzuregen, folgende Vorschläge unterbreiten.

ALLGEMEINES

2 Wir würden es für zweckmäßiger halten, daß die unter Nummer 49 des Berichtes über die Konferenz vom Juni 1972 enthaltenen Feststellungen auch in den Bericht über die Diplomatische Konferenz aufgenommen werden.

ÜBEREINKOMMEN

Artikel 21

3 Obgleich wir es begrüßen, daß die Mitglieder der Beschwerdekammern und der Großen Beschwerdekammer Personen mit großer Verantwortung sein werden, geht es unseres Erachtens zu weit vorzuschreiben, daß sie unter keinen Umständen während ihrer fünfjährigen Amtszeit ihres Amtes enthoben werden können.

Unseres Erachtens sollten daher am Schluß des Absatzes 1 die Worte „es sei denn, daß der Verwaltungsrat aufgrund des Artikels 11 Absatz 4 einen entsprechenden Beschluß faßt“ angefügt und in Artikel 33 Absatz 2 die Worte „Artikel 11 Absatz 4“ eingefügt werden.

Artikel 23

4 Wir sind der Ansicht, daß nationale Gerichte auf technische Gutachten des Europäischen Patentamts großen Wert legen könnten. Wir nehmen an, daß der Präsident, falls eine Partei in einem Gerichtsverfahren um Gelegenheit zu einem Kreuzverhör („to cross-examine“) nachsucht, zu diesem Zweck ein Mitglied der Prüfungsabteilung abordnen würde, das für die Entstättung des Gutachtens zuständig war.

Artikel 26

5 Wir treten dafür ein, daß der zweite Satz des Absatzes 3 gestrichen wird. Dieser Satz könnte zum zwangläufigen Ausschluß eines bewährten Mitglieds führen.

Artikel 50

6 Wir möchten, daß der Begriff „therapeutische Behandlung“ („treatment by therapy“) so verstanden wird, daß er die Behandlung von Krankheiten betrifft und sich bei Tieren nicht auf Behandlungen bezicht, die beispielsweise darauf abzielen, die Menge oder die Qualität des Enderzeugnisses zu steigern.

1 Her Majesty’s Government generally approves the drafts of the Convention, Protocols and Regulations and, while reserving the right to suggest such further amendments as appear desirable, wishes for the time being to present the following proposals.

GENERAL

2 We would prefer the understandings recorded under paragraph 49 of the minutes of the Conference in June 1972 to be mentioned also in the records of the Diplomatic Conference.

CONVENTION

Article 21

3 Although we appreciate that the members of the Boards of Appeal and the Enlarged Board of Appeal will be responsible people, we think it is going too far to provide that in no circumstances may they be removed from office during their five-year term.

We think therefore that the words "except by decision of the Administrative Council under Article 11, paragraph 4," should be added at the end of paragraph 1 and that "Article 11, paragraph 4" should be inserted in Article 33, paragraph 2.

Article 23

4 It seems to us that national courts could attach great weight to technical opinions issued by the European Patent Office. We assume that if a party to the court proceedings requests the opportunity to cross-examine, the President would make available for this purpose a member of the Examining Division responsible for the issue of the opinion.

Article 26

5 We favour deletion of the second sentence of paragraph 3. This sentence could result in the automatic exclusion of a member of proven worth.

Article 50

6 We should like it to be understood that “therapy” is concerned with the treatment of illness or disease and does not extend, in the case of animals, to treatments effected with a view e.g. to increasing the quantity or quality of the ultimate product.
STELLUNGNAHME
DER REGIERUNG DES VEREINIGTEN KÖNIGREICHS

COMMENTS
BY THE UNITED KINGDOM GOVERNMENT

PRISE DE POSITION
DU GOUVERNEMENT DU ROYAUME-UNI
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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

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

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

__________________________

1973
practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to substances or compositions intended for use in any of the above-mentioned methods.

Article 58

22 For the sake of greater clarity it is proposed that the third sentence of paragraph 1 should form a separate paragraph.

Article 62

23 In order to make the relationship between Article 62 and Article 67 clear, it is proposed that Article 62 should be amended as follows:

"Subject to Article 67, a European patent shall confer on its proprietor..."

Article 74

24 In the German text the word "gegebenenfalls" should be deleted in the last line of paragraph 2.

Article 92

25 Rule 50, paragraph 1, 2nd sentence, of the Implementing Regulations assumes that the abstract will be published. Since Article 92 lays down the details for the publication of a European patent application, the abstract should be included in paragraph 2.

Article 99

26 In the German text, sub-paragraph (b), the word "danach" should be deleted so that the text corresponds with Article 81.

Article 104

27 In order to avoid possible misunderstandings it is proposed that the words "notice ... of intervention" be deleted and a wording used which makes it clear that the intervention must be filed within the three-month period.

Article 105

28 In the German text of paragraph 2 the word "sofortige" should be replaced by "gesonderte"
Artikel 31

19 In Absatz 2 Buchstabe b sollten die Worte „sowie die Art der zusätzlichen Vergütung und die Verfahrensrichtlinien für deren Gewährung” gestrichen werden, da der durch diese Worte gekennzeichnete Tatbestand bereits in den Worten „ihre Besoldung” geregelt ist.

Artikel 41

20 In Absatz 2 sollte der deutsche Text enger an die anderen Fassungen angeglichen werden.

Artikel 50


„Artikel 50
Patentfähige Erfindungen

(1) Europäische Patente werden für Erfindungen erteilt, die neu sind, auf einer erforderlichen Tätigkeit beruhen und gewerblich anwendbar sind.

(2) Als Erfindungen im Sinn des Absatzes 1 werden insbesondere nicht angesehen:
   a) Entdeckungen sowie wissenschaftliche Theorien und Methoden;
   b) Ästhetische Formschöpfungen;
   c) Pläne, Regeln und Verfahren für gedankliche Tätigkeiten, für Spiele oder für geschäftliche Tätigkeiten sowie Programme für Datenverarbeitungsanlagen;
   d) die Wiedergabe von Informationen.

(3) Absatz 2 steht der Patentierbarkeit nur insoweit entgegen, als sich die europäische Patentanmeldung auf die in den Buchstaben a–d aufgeführten Gegenstände oder Tätigkeiten als solche bezieht.

(4) Als gewerblich anwendbare Erfindungen im Sinne des Absatzes 1 werden nicht angesehen Verfah-

Artikel 31

19 In paragraph 2(b) the words "and also the nature, and rules for the grant, of any supplementary benefits" should be deleted since this reference is already covered by the words "the salary scales".

Artikel 41

20 The German text of paragraph 2 should be more closely aligned on the versions in the two other languages.

Artikel 50

21 Pursuant to paragraph 2(a), discoveries — as such — are not regarded as inventions within the meaning of paragraph 1. A similar limitation is also contained in (e) (mere presentations of information). This could lead to the erroneous conclusion that a broad interpretation should be given to items not limited in this way in paragraph 2. The limitation should therefore be set forth in a general manner in a separate paragraph. In addition it might be considered illogical to include (d) in the list given in paragraph 2 since it deals with inventions proper, according to the normal use of the term, which are traditionally excluded from patent protection only because they are not susceptible of industrial application. The items covered in paragraph 2(d) should therefore be the subject of a separate provision in a separate paragraph. It is therefore proposed that Article 50 be re-worded as follows:

"Article 50
Patentable inventions

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:
   a) discoveries and scientific theories and methods;
   b) aesthetic creations;
   c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
   d) presentations of information.

(3) The provision of paragraph 2 shall exclude patentability only to the extent to which a European patent application relates to the subject-matter or activities as such referred to in paragraph 2(a) to (d).

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods
STELLUNGNAHME

DER REGIERUNG DER BUNDESREPUBLIK DEUTSCHLAND

COMMENTS

BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

PRISE DE POSITION

DU GOUVERNEMENT DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTeilungsVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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

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

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

1973
6 Artikel 50 Abs. 2, 50 Abs. 3 und 52 Abs. 5

Die in Artikel 50 Abs. 2 enthaltene Aufzählung ist recht zufriedenstellend und berücksichtigt die Vorschläge der interessierten Kreise. Artikel 50 Abs. 3 stellt eine nützliche Ergänzung des vorangegangenen Absatzes dar.

7 Artikel 52 Abs. 5 könnte noch klarer gefasst werden, damit deutlich wird, daß selbst eine spätere neue Anwendung eines Stoffes oder Stoffgemisches patentierbar ist.

8 Artikel 52 Abs. 3 und 54


Die Minderheit hebt hervor, daß die Anwendung des „prior claim approach“-Prinzips folgende Konsequenzen hat: Gehört zum Stand der Technik, der einer zweiten europäischen Patentanmeldung entgegengesetzt wird, eine im Zeitpunkt der zweiten Anmeldung noch nicht veröffentlichte erste europäische Patentanmeldung, so kann dieser Stand der Technik mit Gewißheit erst bei der Erteilung des ersten europäischen Patents bestimmt werden, weil der Inhalt der Patentansprüche erst zu diesem Zeitpunkt definiert werden kann. Dies hat für den Anmelder des zweiten Patents und für Dritte eine Ungewißheit zur Folge, die mehrere Jahre lang andauern kann.

Durch die Anwendung der „whole content approach“-Regel entfällt dieser Teil, weil der Inhalt der ersten europäischen Patentanmeldung von der Einreichung dieser Anmeldung an feststeht.

9 Artikel 67 Abs. 1

Der Inhalt dieses Artikels könnte klarer gefasst

9 Article 67, paragraph 1

This Article could be clarified by deleting the words
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
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTerteilungsverfahrens 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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STELLUNGNAHMEN
zu den vorbereitenden Dokumenten
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PRISES DE POSITION
sur les documents préparatoires
publiées par le
Gouvernement de la République fédérale d'Allemagne

______________________________

1973
1 DIE STÄNDIGE KONFERENZ DER INDUSTRIE- 
UND HANDELSKAMMERN DER EURO-
PÄISCHEN WIRTSCHAFTSGEMEINSCHAFT 
erkennt die Qualität der Arbeit an, die die Regierungskonferenz im Anschluß an die Aussprache über die 
Vorentwürfe geleistet hat, und stellt mit Genug-
tuung fest, daß mehrere der Lösungen, die sie seiner-
zeit befürwortet hatte, angenommen worden sind.

Die STÄNDIGE KONFERENZ möchte sich darauf 
beschränken, einige wesentliche sachliche Bemer-
kungen vorzubringen. Sie nimmt zum Wortlaut des 
Übereinkommensentwurfs wie folgt Stellung:

Artikel 50 — Patentreife Erfindungen

Die STÄNDIGE KONFERENZ legt zu Absatz 2 
Buchstaben a, c und d ausdrücklich Vorbehalte ein.

2 Zu Buchstabe a) Hinsichtlich der Entdeckungen als 
solche sollte im Übereinkommen präzisiert werden, 
daß diese Ausnahme nicht für die unbekannten 
Formen oder Beschaffenheiten von in der Natur 
vorkommenden Stoffen gilt.

3 Zu Buchstabe c) Da sich die Frage, ob Programme 
für Datenverarbeitungsanlagen patentreif sind, der-
zeit im Fluß befindet, ist es äußerst gefährlich, für 
sie im Übereinkommen selbst eine negative Lösung 
vorzusehen. Die STÄNDIGE KONFERENZ be-
antragt deshalb, die die Programme für Datenverar-
beitungsanlagen betreffende Bestimmung zu strei-
chen oder sie zumindest in die Ausführungsordnung 
zü mindest in die Ausführungsordnung 
zübernehmen.

4 Zu Buchstabe d) Diese Bestimmung dürfte nicht in 
der Weise ausgelegt werden können, als schließe sie 
ganz allgemein die neue therapeutische Anwendung 
bekannter Erzeugnisse ein. Die STÄNDIGE KON-
FERNZ würde sich als Zwischenlösung mit einer 
ähnlichen Lösung einverstanden erklären, wie sie in 
Artikel 10 des französischen Gesetzes vom 2. Januar 
1968 vorgesehen ist, wonach die erste therapeuti-
sche Anwendung bereits bekannter Erzeugnisse, 
Stoffe oder Stoffgemische patentreif ist.

Artikel 52 Absatz 3 — Neuheitsgefährlichkeit euro-
päischer Patentanmeldungen, die am Einreichungs-
tag nicht veröffentlicht sind

5 Nach Ansicht der STÄNDIGEN KONFERENZ muß 
der Stand der Technik strikt durch das definiert 
bleiben, was vor dem Anmeldetag der europäischen 
Patentanmeldung der Öffentlichkeit zugänglich 
gemacht worden ist. Die in Artikel 52 Absatz 3 
aufgestellte Fiktion kann zu Verwirrungen führen, 
insbesondere soweit sie die Anwendung des Arti-
kels 54 beeinflussen könnte. Das Problem, das durch 
Artikel 52 Absatz 3 gelöst werden soll, liegt nicht in 
der Beurteilung der Neuheit, sondern in einem 
Konflikt zwischen zwei Anmeldungen; das Problem 
muß also unter diesem Gesichtspunkt geregelt wer-

1 THE STANDING CONFERENCE OF THE 
CHAMBERS OF COMMERCE AND INDUSTRY 
OF THE EUROPEAN ECONOMIC COMMUNITY 
wishes to express its recognition of the quality of the 
work carried out by the Inter-Governmental 
Conference further to the discussions in which the 
preliminary drafts were examined and is pleased to 
note that several of the solutions which it proposed 
at that time have been adopted.

The STANDING CONFERENCE has decided to 
confine itself to important basic observations. It 
would make the following comments on the Draft 
Convention:

Article 50 — Patentable inventions

THE STANDING CONFERENCE has strong reserva-
tions on paragraph 2(a), (c) and (d).

2 Re. (a) With respect to discoveries as such, it 
should be laid down in the Convention that this 
exclusion does not apply to unknown forms or 
states of substances existing in nature.

3 Re. (c) In view of the fact that the question of the 
patentability of computer programs is unsettled, it 
is extremely dangerous for a negative solution to be 
applied to it in the Convention itself. The STAND-
ING CONFERENCE therefore requests that the 
provision concerning computer programs be deleted 
or at least that it be transferred to the Implementing 
Regulations.

4 Re. (d) This provision should not be capable of 
being interpreted as generally comprising a new 
therapeutic application of known products. As a 
compromise, the STANDING CONFERENCE could 
accept a solution similar to that laid down in 
Article 10 of the French law of 2 January 1968 
which provides that the first therapeutic application 
of an already known product, substance or composi-
tion may be patented.

Article 52, paragraph 3 — Possibility of invoking 
European patent applications not published at the 
date of filing

5 In the view of the STANDING CONFERENCE, the 
state of the art must remain strictly defined by what 
have been made available to the public before the 
date of filing of the European patent application. 
The situation created by Article 52, paragraph 3, 
could be a source of confusion, in particular since 
there is a danger that it will influence the applica-
tion of Article 54. The problem which Article 52, 
paragraph 3, sets out to cover does not relate to the 
assessment of novelty but to a conflict between two 
applications; it is as such that it should be dealt 
with.
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
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTeilungsVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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

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

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

1973
dies zweckmäßig erscheint, durch ein rechtskundiges Mitglied ersetzt.

b) Das rechtskundige Mitglied erhält nur beratende Stimme.

Beide Verfahrensweisen hätten eine zusätzliche günstige Wirkung auf die nach Artikel 19 Absatz 4 erforderliche Größe der Beschwerdekammern.

Artikel 19 Absätze 3 und 4

8 Das unter den Buchstaben a dieser Absätze vorgesehene Erfordernis, wonach jede Beschwerdekammer von einem Berichterstatter unterstützt werden soll, dürfte in vielen Fällen nur zusätzliche Kosten verursachen und eine administrative Belastung darstellen. Es wird vorgeschlagen, das Erfordernis in eine fakultative Bestimmung umzumuten.

Sollte unser vorstehender Vorschlag angenommen werden, so müßten die Buchstaben a und b in einigen Punkten neu gefaßt werden, was zu einer Vereinfachung des Verfahrens führen würde.

Artikel 23

9 Dieses Übereinkommen betrifft die Erteilung von Patenten und nicht ihre Auslegung durch nationale Gerichte. Es wird deshalb beantragt, diese Bestimmung zu streichen, vor allem weil nicht klar ist, was mit dem Wort „technisch“ gemeint ist. Solche „technischen“ Gutachten könnten als Rechtsgutachten beispielsweise über Verletzungen angesehen werden.

Artikel 50 Absatz 2

10 Es wird nochmals der Wunsch geäußert, daß die unter den Buchstaben c, d und e vorgesehenen Ausnahmen in die Ausführungsordnung übernommen werden, damit die Entwicklung der Rechtsprechung im Patentwesen auf weltweiter Ebene nicht durch die Schwierigkeiten behindert wird, die sich durch eine Änderung dieser Ausnahmen ergeben.

Artikel 50 Absatz 3

11 Es wird um die Bestätigung gebeten, daß es sich hierbei nicht um eine restriktive Bestimmung handelt, d.h. daß neue Stoffe oder Stoffgemische per se patentierbar bleiben.

Artikel 54

12 Da in Artikel 154 vorgesehen ist, daß das Europäische Patentamt als eine mit der internationalen
STELLUNGNAHME DES

CNIPA
Committee of National Institutes of Patent Agents

COMMENTS BY
CNIPA
Committee of National Institutes of Patent Agents

PRISE DE POSITION DU
CNIPA
Committee of National Institutes of Patent Agents
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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

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

PRISES DE POSITION
sur les documents préparatoires
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1973
7. Article 38, par. 4:

Certain international applications (PCT-applications) in respect of which a Contracting State is designated, will not be communicated (under article 20 of the PCT-Treaty) to that State because of a withdrawal of its designation or will not reach that State when the applicant does not furnish a copy of the international application under Article 22 PCT. In our opinion those international applications cannot be taken into account for the purpose of paragraph 3 of Article 38. Therefore we propose to read paragraph 4 of Article 38 as follows:

"For the purpose of paragraph 3 international applications received by any State as designated State shall be regarded as applications filed in that State."

8. Article 50, par. 3:

In order to avoid the possibility that this paragraph is interpreted to exclude a contrario the patentability of any product other than a substance or composition for use in therapeutical treatment (like a medical instrument), we propose to draft Article 50, par. 3, as follows:

"The provision of paragraph 2(d) does not exclude the patentability of any product, in particular any substance or composition, for use in a method referred to in that provision".

9. Article 52, par. 5:

We are of the opinion that Article 52, par. 5, without changing its meaning, can be clarified and lined up with the provision of Article 50, par. 3, as follows:

"The provisions of par. 1-4 shall not exclude the patentability of any substance or composition, disclosed as such in the state of the art, for use in a method referred to in Article 50, par. 2(d), provided that its use for no such method has been disclosed in the state of the art."

10. Article 59:

The title seems to connect this Article 59 with Article 56, whereas in fact Article 59 is related to the matter dealt with - in Article 58.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 1 June 1973
M/32
Original: English

PREPARATORY DOCUMENT

Drawn up by: Netherlands Government

Subject: Observations and proposed amendments concerning the Draft Convention and the Draft Implementing Regulations
6. Proposal of the Netherlands Delegation to Article 50, paragraph 3

Article 50, paragraph 3 should be amended to read:

"The provision of paragraph 2 (d) does not exclude the patentability of any product, in particular any substance or composition, which can be used for a method referred to in that provision."

See also the Netherlands proposal to Article 52, paragraph 5.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973

M/52/I/II/III
Original: English

CONFERENCE DOCUMENT

Drawn up by: Netherlands delegation

Subject: Proposals for amendments to the draft texts
The French delegation submits herewith a number of purely drafting amendments to be made to the French text of the Draft Convention and the Draft Implementing Regulations (V/1 and V/2):

**ARTICLE 50.**

Paragraph 3: Only concerns French text.

**ARTICLE 67.**

Note: Only concerns French text

**ARTICLE 81.**

Only concerns French text

**ARTICLE 86.**

Paragraph 1: Only concerns French text

**ARTICLE 113.**

Paragraph 2: Only concerns French text

**ARTICLE 167.**

Paragraph 3: "... il a effectué une déclaration en vertu du paragraphe 1. Cette nouvelle déclaration prend effet ..."

("... it has made a declaration pursuant to paragraph 1. Such new declaration shall take effect ...")

(It would seem necessary to make this amendment in the three languages. To refer to "a notification pursuant to paragraph 1" is incorrect, since the declaration referred to in paragraph 1 may be made either in the instrument of ratification or accession or in a subsequent notification. Hence reference should be to the declaration in general and not merely to that contained in the notification. To avoid any ambiguity, it should be made clear that the declaration at the beginning of the second sentence of paragraph 3 is the "new" declaration made under that paragraph).

**RULE 14.**

Only concerns French text.
MUNICH DIPLOMATIC CONFERENCE

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

1973

Munich, 11 September 1973

M/58/1/II

Original: French

CONFERENCE DOCUMENT

Drawn up by: French delegation

Subject: Proposals for amendments to the Draft Convention and the Draft Implementing Regulations
(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.
Proposal by the IAPIP

Article 50

The German delegation has proposed an amendment to the wording of Article 50.

This new wording should be adopted, subject to the following reservation:

- paragraph 3, at least in the French version, does not appear to be sufficiently clear.

The idea behind paragraph 3 is that the inventions excluded from patentability pursuant to paragraph 2 are those which relate exclusively to the intellectual works referred to in paragraph 2(a), (b), (c) and (d).

The wording proposed by the German delegation could be further improved as follows:

1. Delete paragraph 3

2. Word paragraph 2 as follows:

(2) Items which relate exclusively to the following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) discoveries and scientific theories and methods;

(b) aesthetic creations;
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973
M/66/I
Original: French

CONFERENCE DOCUMENT

Drawn up by: IAPIP
Subject: Article 50
PART II
SUBSTANTIVE PATENT LAW

Chapter I
Patentability

Article 50
Patentable inventions

(1) Unchanged from 1972 published text.

(2) Unchanged from 1972 published text.

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.

(3) The provision of paragraph 2 shall exclude patentability only to the extent to which a European patent application or European patent relate to the subject-matter or activities as such referred to in that provision.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

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

Articles of the Convention:
Article 14
Article 50
Article 52
Article 53
Article 58
Article 59
Article 63
Article 65
Article 58
Article 87

Rules of the Implementing Regulations:
Rule 1
Rule 2
Rule 13
Rule 16
PART II
SUBSTANTIVE PATENT LAW

Chapter I
Patentability

Article 50
Patentable inventions

(1) {} Unchanged from 1972 published text.

(2) {}

(a) discoveries, scientific theories and mathematical methods;
(b) aesthetic creations;
(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
(d) presentations of information.

(3) The provision of paragraph 2 shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 18 September 1973
M/98/I/R 4
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 17 SEPTEMBER 1973

Articles of the Convention:

Articles 50
130
137
138
139
141
144
149
153
157
PART II
SUBSTANTIVE PATENT LAW

Chapter I
Patentability

Article 50
Patentable inventions

(1) Unchanged from 1972 published text

(2) (a) discoveries, scientific theories and mathematical methods;
(b) aesthetic creations;
(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
(d) presentations of information.

(3) The provision of paragraph 2 shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 21 September 1973
M/121/I/R 7
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 20 SEPTEMBER 1973

Articles of the Convention:

Article 14
Article 50
Article 124

Rules of the Implementing Regulations:

Rule 23
Rule 24
Rule 25
Rule 26
Rule 27
PART II
SUBSTANTIVE PATENT LAW

Chapter I
Patentability

Article 50*
Patentable inventions

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.

(3) The provisions of paragraph 2 shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R2
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 27 to 54
The present text of paragraph 3 was sufficiently clear and did not need to be amended.

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

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

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

Article 51 (53) — Exceptions to patentability

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

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

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

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

Article 52 (54) — Novelty

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

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

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

51. The Main Committee affirmed that this was clear, in agreement with the United Kingdom delegation, which drew attention to Rule 68 (287), according to which differing claims could be presented for different Contracting States.

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

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

54. The Netherlands delegation proposed that the wording of paragraph 5(M/32, point 9) should be improved. It said that without any account it did wish, with its proposal, to break away from the principle that only the first application in respect of the use of a known substance or composition in a method for treatment of a human or animal body by surgery or therapy is patentable, and not the second and subsequent applications.

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

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

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

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

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

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

Article 53 (55) — Non-prejudicial disclosures

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

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

63. In order to illustrate the problem raised by the United Kingdom delegation, the Chairman gave the following two examples: a European patent application is fraudulently filed on 1 January 1980 and published on 1 July 1981. On 1 October 1981 an application relating to the same subject-matter is filed...
Article 50 (52) — Patentable inventions


17. The FICPI delegation feared that in paragraph 2(c) the term "programs for computers" might be broadly interpreted in the future. There was a danger that the structures or algorithms on which such programs were based would also not be considered an invention. This could give rise to problems for large sections of industry operating in the field of data processing in particular or of communications technology in general. And, in any case the Conference should be on its guard against excluding from being patentable certain technologies which had not even been thought of today.

18. As regards this comment the Chairman recalled that the Luxembourg Inter-Governmental Conference had already tried in vain to define the term "programs for computers". The European Patent Office would simply have to be relied upon subsequently to interpret this expression unequivocally.

19. The Italian delegation considered that the English expression "computer" denoted a much more complex system than the German term "Datenverarbeitungsanlage" and the French expression "ordinateur". It was therefore perhaps appropriate to choose the phrase "data handling systems" in the English version.

20. The United Kingdom delegation stated in this connection that in its view the expression "computer" should be retained in English, even though linguistically it could mean more than a simple piece of computing equipment. The definition of such terms could safely be left to the practical work of the European Patent Office.

21. The Austrian delegation proposed examining the German text with a view to ascertaining whether the expression "Datenverarbeitungsanlage" was not too broad a term compared with the English expression "computer" and the French term "ordinateur". Otherwise there was perhaps a danger that this provision would be interpreted too broadly on the basis of the German text.

22. The Main Committee finally agreed to retain the English term "computer" as the appropriate expression. It also requested the Drafting Committee to examine whether a more restrictive term could perhaps be found instead of the German expression "Datenverarbeitungsanlage".

23. With reference to paragraph 2, sub-paragraph (d) (now paragraph 4, first sentence), the Main Committee endorsed the United Kingdom delegation's interpretation of the text (see M/10, point 6) whereby "treatment of the animal body by therapy" means the treatment of illness or disease and not, for example, treatment effected with a view to increasing the quality or quantity of the production of an animal product.

24. The delegation of the Federal Republic of Germany proposed (M/11, point 21) making the content of paragraph 2(d) into a new first sentence of paragraph 4, since in the case of methods for treatment by surgery or therapy actual inventions were involved for which only the industrial application was lacking, whereas the subject-matter or activities referred to in sub-paragraphs (a), (b) and (c) would not in practice be considered as inventions.

25. The IAPIP delegation, supported by the Belgian, French and Netherlands delegations, proposed simplifying the German delegation's proposals still further by deleting paragraph 3 and including the substance thereof at the beginning of paragraph 2. It promised to put forward a written proposal about this.

26. The Main Committee decided to forward the German proposal, along with the IAPIP drafting proposal which would be submitted later (subsequent M/66/1), to the Drafting Committee.

27. The CNIPA delegation, supported by the United Kingdom and Irish delegations, was in favour of transferring sub-paragraphs (c),(d) and (e) to the Implementing Regulations in order to be able to take more account of scientific and technological developments (see M/20, point 10).

The United Kingdom delegation pointed out that the questions about patentability which were dealt with here were also primarily politically-legal matters which were the responsibility of the Administrative Council in its capacity as the political body of the Patent Organisation.

28. The Netherlands delegation considered that, without wishing to take up a position on the problem itself, the same result could be achieved by supplementing Article 31(13), whereby the Administrative Council was competent to amend certain provisions of the Convention.

29. The delegation of the Federal Republic of Germany thought it was inadmissible, as a matter of principle, for the question of the patentability of such subject-matter or activities to be left to the Administrative Council to settle.

30. The Yugoslav delegation, too, believed there was little likelihood of such an arrangement being accepted for the additional reason of legal certainty.

31. The Swedish and Portuguese delegations also shared the German delegation's views.

32. Furthermore, the French delegation pointed out that Article 50 (52) was a fundamental Article of the Convention. The provisions governing patentability laid down in this Article should not be left to the Administrative Council; the latter ought not to be able, irrespective of the legal and technical means employed, to amend the individual provisions on its own responsibility.

33. The Swiss delegation was also against transferring the three provisions mentioned to the Implementing Regulations. It emphasised that if the CNIPA proposal were adopted, the Administrative Council would also be afforded the possibility, which nobody wanted, of adding new conditions relating to patentability to the Convention and of amending the grounds for revocation connected with Article 50.

34. Consequently, the United Kingdom delegation renounced the idea of transferring sub-paragraphs (c), (d) and (e) to the Implementing Regulations.

35. The delegation of the Federal Republic of Germany proposed (M/11, point 21) transferring paragraph 3, which at the moment related solely to substances and compositions for use in a method for treatment by surgery or therapy, to the proposed new paragraph 4 as the second sentence. The proposal was referred to the Drafting Committee.

36. The Netherlands delegation proposed (M/32, point 8) making it clear in paragraph 3 that a medical instrument for use in a method for treatment by surgery or therapy was patentable.

37. The delegation of the Federal Republic of Germany said that, although it considered the existing text sufficiently clear on this point, it did not wish to oppose the proposal.

38. The Main Committee adopted the proposal which was supported by the United Kingdom and the French delegations.

39. The Main Committee also discussed the proposal by the Netherlands delegation (M/52/11/111, point 6) that the words "any substance which can be used for a method" be substituted for "a substance for use in a method".

40. The United Kingdom delegation was not in favour of this wording. It said that the purpose of paragraph 3 was to make it clear that a claim for a product for use in a method for treatment by surgery or therapy should be patentable, even if the method itself in which such a product was used was not
Minutes of the Proceedings of Main Committee I

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

2. The duties of Main Committee I were based on Rule 12 of the Rules of Procedure (M/34) and on a recommendation adopted by the Steering Committee of the Conference (M/56/11/II/III).

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

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

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

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

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

points

A. General
B. Convention
C. Implementing Regulations
D. Protocol on Recognition
E. Recommendation on preparations for the opening of the European Patent Office
F. Recommendation on training staff for the European Patent Office

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

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

A. General

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

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

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

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

The Main Committee agreed with this interpretation.

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

Article 14 — Languages of the European Patent Office

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

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

13. The Main Committee forwarded to the Drafting Committee a drafting proposal from the Luxembourg delegation concerning paragraph 4 (M/9, point 8).

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

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

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

The Turkish delegation said it was satisfied with this explanation and withdrew its proposal.

* The Rules of Procedure (M/34) had been previously adopted unanimously by the Plenary (see M/PR/K/1, point 10).
MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Minutes of the proceedings of the Committee of the Whole

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

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

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

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

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

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).

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

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

8. The rapporteur of this Main Committee, Mr. Paul 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 1.2, 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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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 other than 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.

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

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Part I
The European Patent

Section 2
Substantive Patent Law

Article 11
Patentable inventions

European patents shall be granted for inventions which are susceptible of industrial application and which are new and the realisation of which was not obvious.