Rule 84 E

Travaux Préparatoires (EPC 1973)

Comment:

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### Regel 84

**MPÜ**

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designated Contracting States. The valid interests of an assumed infringer in the retroactive revocation of the patent may thus be upheld. In this connection it may be noted that this amendment has raised the opposition proceedings another step towards the level of actual revocation proceedings.

A further procedural amendment was made to Article 104 whereby any person who has been given notice by the proprietor as a result of a claimed patent infringement may also intervene in the opposition proceedings, if he proves that he has instituted proceedings to establish that the act in question did not infringe the patent. This text takes into account the fact that national laws of Contracting States allow such actions for negative declaratory judgments.

9. Appeals procedure (Articles 105-111/Rules 65-68)

Corresponding to the amendment to Article 98 with reference to the possibility of continuing the opposition proceedings despite the lapse of the patent, the Committee decided also to allow an appeal against a decision of the Opposition Division in such cases and to amend Article 105 accordingly. It was consequently made clear in Article 106 that all parties to proceedings of the first instance are also parties to appeal proceedings, even if they do not actively participate in the proceedings, so that for example a decision concerning costs by the Boards of Appeal which differs from the decision of the lower department will be binding for all parties.

The discussions during the earlier stages of the negotiations concerning the length of the time limit for filing an appeal were — as was to be expected — resumed in the Main Committee.

An exchange of opinions showed that the division of the time limit for filing an appeal, as provided for in Article 107, into a time limit for filing the appeal and a time limit for filing the grounds for appeal, was generally welcomed. In the interests of the applicants and especially of their representatives who have such a multiplicity of time limits to observe, the Main Committee divided the time limits into one of two months from the notice of appeal, which also applies to the payment of the fee for appeal, and one of four months for filing the grounds for appeal; both time limits are to commence from the time when notification is given of the contested decision. This amendment made it necessary to adjust the one-month time limit for interlocutory revision, which now begins from the receipt of the grounds for appeal (Article 108). If the potential appellant waits until the end of each time limit — which experience leads us to expect — an appeal which is not immediately allowed will not reach the Board of Appeal earlier than five months after the contested decision has been taken! Whether this is compatible with the previously defended principle of streamlining the proceedings, remains to be seen.

In Article 109, paragraph 3, it was specified in respect of the appeals procedure that the deemed withdrawal of a European patent application in the event of failure to reply to an invitation from the Board of Appeal is not valid in proceedings against decisions of the Legal Division. In Article 111 the Committee expressly maintained in the interests of clear legal relationships that the parties to appeal proceedings should also be parties to any proceedings before the Enlarged Board of Appeal. Such a principle could easily be derived from Articles 112/115.

10. General principles governing procedure (Articles 112-126/Rules 69-92)

Some points of the general rules governing procedure were discussed in the Main Committee. In order to avoid improper delays in proceedings an assurance was given in Article 115 that repeated requests for oral proceedings could be refused by the European Patent Office under certain conditions. In Article 116 and in Rule 73 the peculiarities of the national laws of Contracting States were taken into account in respect of the taking of evidence, on the basis of letters rogatory, by authorities in the Contracting States and, in addition to the giving of evidence under oath by a party, witness or expert, provisions were made for other binding forms of evidence which enable the truth to be established. With reference to the communication of the possibility of appeal in accordance with Rule 69, paragraph 2, the principle that parties may invoke errors in the communication was abandoned; errors are however almost entirely excluded because reference must always be made in the communication to the relevant provisions of Articles 105-107, the text of which must be attached.

The rules governing time limits and the arrangements for dealing with unobserved time limits were adopted by the Committee with the following amendments: In Article 120 the time limit concerning the request for further processing of the European patent application was adapted to the new time limit for filing appeals and was therefore quite rightly reduced from three to two months. There was a detailed discussion on the concept of "force majeure" required in accordance with Article 121 for the re-establishment of rights. This condition was generally felt to be too strict because it would justify re-establishment only in the rarest of cases. The Committee also considered conditions such as those of the "unavoidable event" or of the "legitimate excuse" which are based on national laws of Contracting States. After comparing the laws of various States, the Committee finally agreed, in accordance with the conclusions of the Working Party which it had set up, that the justification for the re-establishment of rights was an impediment which, in spite of all due care required by the circumstances having been taken, had led to the non-observance of the time limit. The Committee also endorsed the general opinion that in reality justice is done to this obligation to take all due care only if the applicant or proprietor and his assistants, especially his representatives, have complied with it.

In addition, the Committee considered that Article 121 was to be interpreted in a restrictive manner.

The Main Committee extended the maximum duration of time limits to be set by the European Patent Office under Rule 85 from four to six months for certain special circumstances. However, a proposal was not accepted which aimed to make provision for a one-month extension, on request, of any time limit for representatives who in the proceedings had to draw up documents to the European Patent Office in a language other than the official language of their State or residence. The Committee recognised unanimously that during a transitional period such translation difficulties should be deemed to be "certain special circumstances" within the meaning of paragraph 1 of Rule 85, in so far as the parties complied with their obligation to take due care in obtaining translations.

The provision in Article 124 concerning the procedure for drawing up supplementary search reports provided a large amount of material for discussion. This Article was deleted. The Committee considered it unnecessary to impose search costs on the applicant in the event of his making necessary an additional search due to an amendment to the claims. This financial problem could be settled by slightly increasing the standard amount of the main search fee. After lengthy discussions the Committee reached the majority decision that additional fees for additional searches which were drawn up outside the procedure for international search reports under Article 156, could be dispensed with, especially since such an additional cost would have an unfavourable visual effect in the Convention. At the same time the Committee stated expressly
ANNEX I
REPORT
by Mr. Paul Braendli, Lic. iur.
Vice-Director of the Federal Intellectual Property Office (Switzerland)
on the results of Main Committee I's proceedings

ANNEX II
REPORT
by Mr. R. Bowen
Assistant Comptroller, British Patent Office
on the results of Main Committee II's proceedings

ANNEX III
REPORT
by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)
on the results of Main Committee III's proceedings

ANNEX IV
REPORT
by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office
on the results of the Credentials Committee's proceedings
with regard to full powers for signing the Convention
chemical, food and pharmaceutical products. He pointed out, however, that if its proposal were rejected, the Greek delegation would remain free to submit another proposal, narrower in scope and entailing deletion of use in relation to food and pharmaceutical products only.

The Greek proposal was rejected by 9 votes against, 8 in favour and 1 abstention.

65. The Greek delegation announced a new proposal along the lines mentioned by the Chairman, although it went further than suggested by some delegations, because it did not mention food and pharmaceutical products in the second half of the sentence.

66. The French delegation stated that it would have to reject this proposal because processes of manufacture of food and pharmaceutical products must at all events be protected.

67. A subsequent meeting of the Greek delegation submitted the following compromise proposal for the second half of paragraph 2 (a) of Article 167 (M/154 G):

"...this reservation shall not affect protection conferred by the patent in so far as it involves a process of manufacture or use of chemical products or a process of manufacture of pharmaceutical or food products."

68. This proposal was adopted by the Committee of the Whole, which instructed the General Drafting Committee to include it in the existing text of the Article.

B. Implementing Regulations

Rule 28 (R/9) — Requirements of European patent applications relating to micro-organisms

69. The Committee of the Whole adopted the revised version of this Rule drawn up by the General Drafting Committee on the basis of the conclusions reached by Main Committee I.

Rule 50 (R/9) — Information about publication

70. The Committee of the Whole adopted the version of this Rule as submitted by the Drafting Committee, paragraph 2 of which was based on the proposal put forward by the Austrian delegation in Main Committee I (M/PR/I, point 2272).

Rule 65 (R/10 and M/151 R/16) — Rejection of the appeal as inadmissible

71. The Chairman of the General Drafting Committee stated that, further to a proposal by the Norwegian delegation that the procedure for remedying deficiencies in the case of appeals should be the same as that applicable in the case of opposition, Main Committee I had instructed the Drafting Committee to examine the possibility of more closely aligning Rules 65 and 56 (M/PR/I, point 2299). Bearing in mind the fact that in Article 108 Main Committee I had divided the time limit for appeal into the period within which notice of appeal must be filed (two months) and that within which a written statement setting out the grounds of appeal must be filed (four months) (M/PR/I, point 462), the General Drafting Committee proposed the following wording, which it did not however consider to be absolutely essential:

"...rejected as inadmissible, unless each deficiency has been remedied before the relevant time limit laid down in Article 108 has expired."

72. The Norwegian delegation still found this solution somewhat harsh compared with the possibilities laid down in Rule 56. It suggested that a paragraph corresponding to paragraph 2 of Rule 56 be included in Rule 65.

73. The Austrian delegation shared this view.

74. The Netherlands delegation feared that because of the shorter time limits applicable to appeals, there would not be sufficient time for arrangements along the lines of the proposed paragraph 2.

75. The Norwegian delegation considered that even in the case of appeals there would be sufficient time for remediing those minor deficiencies with which paragraph 2 was concerned.

At a subsequent meeting the Committee of the Whole first of all approved the abovementioned proposal by the General Drafting Committee for supplementing paragraph 1 of Rule 65, subject to the proviso that this provision only related to deficiencies resulting from failure to comply with the requirements of Rule 64 (b). Notwithstanding the objections of the German delegation, which considered that there should be stricter rules for appeals proceedings, it also adopted a proposal which had been submitted in the meantime by the Norwegian delegation (M/155/G) for the inclusion of a new paragraph 2 corresponding to paragraph 2 of Rule 56.

Rule 84 (R/11) — Duration of time limits

76. The Committee of the Whole approved the deletion of paragraph 2 made by the General Drafting Committee on the basis of the conclusions of Main Committee I (M/PR/I, point 2394).

Rule 93 (R/11) — Parts of the file not for inspection

77. In accordance with the discussions in Main Committee I (M/PR/I, point 2409) the General Drafting Committee specifically provided in sub-paragraph (c) that the designation of the inventor should not be disclosed where he had renounced his title as inventor.

The Committee of the Whole adopted this solution.

Rule 99 (R/11) — Procedure for letters rogatory

78. Further to a proposal by the Italian delegation (M/PR/I, point 2427) referred to by Main Committee I, the General Drafting Committee submitted an amended version of paragraph 4 of this Rule.

This version was adopted by the Committee of the Whole.

Rule 106 (R/11) — Amendment of the list of professional representatives during a transitional period

79. The Chairman of the General Drafting Committee referred to the lengthy discussions which had been held on this Rule in Main Committee I. Although, after clarifying the interpretation to be given to this Rule, Main Committee I had concluded that the text need not be amended (M/PR/I, point 2519), the Drafting Committee had decided to refer to "other" requirements in paragraph 1 (b) instead of "further" requirements, in order to make the interpretation agreed by Main Committee I quite clear.

80. The Chairman of the Committee of the Whole confirmed that the other requirements referred to in paragraph 1 (b) were requirements other than those mentioned in paragraph 1 (a).

81. The Committee of the Whole approved the amendment submitted by the General Drafting Committee.

C. Protocol on Recognition (M/146 R/12)

82. Further to a proposal made by the IAPIP delegation in Main Committee I and the Committee's decision in this
paragraph 1 of this Rule provided the necessary flexibility to allow for other difficulties which representatives might encounter during the initial period of operation of the European Patent Office.

**Rule 86 (85) — Extension of time limits**

2395. The Italian delegation wondered whether the text of this Rule in fact achieved the desired aim. In the event of its being impossible for documents to be delivered on the day on which the time limit had expired, the Rule extended the deadline to the first day thereafter on which the European Patent Office was open for receipt of documents. However, it was highly unlikely that in the event of a strike the mail would be delivered immediately on the day the strike ended. The Italian delegation therefore thought that the text should be amended.

2396. The Chairman stated that paragraph 1 did not cover the case of a strike, but the case where a time limit expired on a day on which the European Patent Office was not open for reasons other than a strike. In such a case the time limit was extended automatically to the next day. The problem raised by the Italian delegation only applied with regard to paragraph 2.

2397. The United Kingdom delegation pointed out that paragraph 2 was drafted to cover the case with which the Italian delegation was concerned. This paragraph stipulated that the President of the European Patent Office should determine the end of the period in which there was a general interruption in the delivery of mail and he would therefore be able to take into account the time necessary for normalising the situation after the interruption of work.

2398. The Italian delegation was satisfied with this interpretation.

2399. The Committee agreed to instruct the Drafting Committee to harmonise the German language version with the English and French versions.

**Rule 87 (86) — Amendment of the European patent application**

2400. The German delegation withdrew its proposal as given in M/47, page 16, since it referred to a proposal made by the Belgian delegation concerning Article 64, and this matter had been settled by an amendment to Article 122.

2401. The CEIF delegation suggested that the following sentence should be added to the end of paragraph 3: “except where such amendments will bring restrictions to the scope of the application which are borne out by the description and/or the drawings” (M/22, point 12). The intention of this provision was to permit the applicant to amend the claims and the drawings not just once but more than once.

2402. No Governmental delegation supported this suggestion by the CEIF.

**Rule 88 (87) — Different claims, description and drawings for different States**

2403. The Norwegian delegation wondered what the situation would be should the European Patent Office discover the existence of a prior national right in a given Contracting State. In such a case, would the European Patent Office be obliged to disregard this national application, and leave the problem to the national legislation concerned?

2404. The Chairman replied to this question in the affirmative. The European Patent Office would take account only of prior European rights and not of prior national rights. During the Luxembourg Conference, it had been clearly stated that the European Patent Office could inform the applicant of the existence of a prior national right in a certain State, but that it could not itself take such a prior national right into account since it was only in the event of subsequent national proceedings that such a prior national right could form the basis for any claim.

**Rule 89 (88) — Correction of errors in documents filed with the European Patent Office**

2405. The Irish delegation owned that this provision corresponded to Rule 91, paragraph 1(b) of the PCT, but wondered whether it was really necessary to stipulate that “anyone” would immediately realise that nothing else would have been intended than what was offered as the correction. In view of the complexity of some chemical formulae, a general rule of this nature seemed extremely harsh.

2406. The Swiss delegation thought that in practical terms this provision was hardly likely to apply. Patent applications were in fact prepared with a man skilled in the art in mind and should be comprehensible to a man skilled in the art. For that reason the Swiss delegation thought that the word “anyone” should be deleted and replaced by a reference to the knowledge of a man skilled in the art.

2407. The Committee agreed to refer this point to the Drafting Committee for more satisfactory wording.

**Rule 94 (93) — Parts of the file not for inspection**

2408. The UNICE delegation wondered whether the name of the inventor should be included in the communicable documents where he had expressed the wish not to be mentioned by name.

2409. The delegation of the Federal Republic of Germany recalled that this problem had already been discussed, and the conclusions reached had been that the mention of the inventor by name could be omitted from the parts of the file for inspection if the inventor expressed such a wish. The President of the European Patent Office should therefore have the power to exclude reference to the inventor by name from the parts of the file for inspection.

2410. The UNICE delegation declared itself satisfied by this reply.

**Rule 95 (94) — Procedures for the inspection of files**

2411. The Finnish delegation observed that Rule 99 provided that no administrative fee was payable where files were communicated to third parties by Courts or Public Prosecutors’ Offices of the Contracting States. It wondered whether it would not be advisable to apply the same principle in Rule 95 by deleting the last sentence of paragraph 1.

2412. The Swedish and Norwegian delegations supported this proposal.

2413. The delegation of the Federal Republic of Germany believed that to do away with the administrative fee would cause a significant increase in the number of requests to inspect files. In view of the unavoidable administrative costs involved in the organisation of this service it seemed only reasonable to charge an administrative fee for it.

2414. The French delegation also opposed this proposal, on the grounds that it did not seem fair that applicants as a body should bear financial costs incurred for the benefit of an individual.

2415. The Committee rejected the Finnish delegation’s proposal by eight votes to five, with one abstention.
2372. The Swiss delegation thought that the case raised by the delegation of the Federal Republic of Germany was a special one, which could not be dealt with under paragraph 1. It wondered whether it might not suffice to state in the minutes that the case in question fell, or could fall, within the scope of paragraph 1. The Swiss delegation had reservations about the automatic system suggested by the delegation of the Federal Republic of Germany. Under the arrangement for extending time limits laid down in Rule 85, proceedings could be prolonged considerably and experience had shown that the longer the time limit allowed the less they were respected.

2373. The Netherlands delegation, referring to what the United Kingdom delegation had said, asked the delegation of the Federal Republic of Germany if it shared the United Kingdom delegation's views.

2374. The delegation of the Federal Republic of Germany pointed out first of all that not all representatives would have two places of business. However, it was prepared to amend its proposal by stipulating that the provision should only apply if the representative had his sole place of business in a Contracting State with an official language which was not the language of the proceedings.

2375. The FICPI delegation was in favour of introducing this limitation into the proposal made by the delegation of the Federal Republic of Germany.

2376. The United Kingdom delegation was unable to support the proposal made by the delegation of the Federal Republic of Germany even in the amended form suggested by the Netherlands delegation.

2377. The French delegation stated that it would abstain in the vote. It considered that although this proposal was intended to settle certain problems, it raised others. It wondered in particular what the situation would be if a representative, having requested an extension to which, in good faith, he considered himself entitled, did not fulfil the necessary conditions and could not therefore be granted it.

2378. The Committee agreed to the proposal made by the delegation of the Federal Republic of Germany as amended by the Netherlands delegation by a majority of eight votes to three, with four abstentions.

2379. The Committee then examined whether this arrangement should apply only for a transitional period.

2380. The Austrian delegation proposed that it should not just be limited to a transitional period.

2381. The delegation of the Federal Republic of Germany supported the proposal.

2382. The French delegation stated that it was unable to agree to the proposal.

2383. The Committee voted in favour of application during a transitional period by a majority of seven votes to five, with two abstentions.

2384. At a subsequent meeting, the United Kingdom delegation stated that the amendment proposed by the delegation of the Federal Republic of Germany and approved by the Committee was likely to cause considerable difficulties from a political point of view; besides this aspect, the provision also contained technical anomalies which had presumably not been intended by the authors of the proposal. The implications of the proposal had obviously not been properly considered. This was particularly the case in relation to the amendments which had in the meantime been made to paragraph 1 of Rule 85 and which had considerably extended the time limits by giving the European Patent Office discretionary powers to deal with difficulties which might arise in special cases. The United Kingdom delegation announced that it would be submitting a written proposal and would request that the debate on this point be reopened.

2385. When the results of the proceedings of the Drafting Committee were being examined (M/142/1/R 13, page 9), the Chairman informed the Committee that two amendments to this Rule had been proposed. The United Kingdom delegation had submitted a proposal to delete paragraph 2 (M/137/I), and the CNIPA delegation had proposed a new wording for the same paragraph (M/139/I). The Chairman stated that since the Committee had already discussed this Rule there would have to be a two-thirds majority in favour in order to re-open the discussion. He noted that none of the delegations opposed a re-opening of the discussion and therefore invited the United Kingdom delegation to explain its proposal.

2386. The United Kingdom delegation stated that it was well aware that representatives might face difficulties, particularly linguistic ones, in their dealings with the European Patent Office. It was therefore in favour of flexible application of the provisions concerning time limits. However, it felt that the provisions of paragraph 1 of this Rule were sufficient for this purpose, especially with the amendments made by the Committee, and it could not agree to the second paragraph, which it considered both superfluous and a source of discrimination. For these and other reasons, set out more fully in M/137/I, the United Kingdom delegation requested the deletion of paragraph 2.

2387. The Irish, Netherlands and Belgian delegations shared the United Kingdom delegation's opinion.

2388. The French delegation, supported by the Italian delegation, wondered whether, as a compromise, it might be possible to delete paragraph 2 and stipulate in paragraph 1 that the "special cases" referred to in the last sentence in particular included instances where the linguistic difficulties arose which the German proposal had been intended to cover. The French and Netherlands delegations also wished to have the opinions of the nongovernmental organisations concerned.

2389. The delegation of the Federal Republic of Germany did not share the United Kingdom delegation's view. Firstly, this proposal was only intended to apply in very precise and limited cases and only during a transitional period. With regard to the claim that the provision was discriminatory, it pointed out that the very purpose of its proposal was to counteract certain inherent distortions in the situation, namely differences as regards the language position.

2390. The Austrian delegation stated that it had understood the purport of the proposal made by the delegation of the Federal Republic of Germany as being that paragraph 2 merely specified one of the "special cases" referred to in the last sentence of paragraph 1. It was therefore prepared to accept a compromise solution such as that outlined by the French delegation.

2391. The CEIF, EIRMA and COPRICE delegations shared the United Kingdom delegation's view.

2392. The FICPI, UNEPA and CNIPA delegations stated that although they preferred to retain paragraph 2, they would also be prepared to accept a compromise solution such as that suggested by the French delegation.

2393. The United Kingdom delegation stated that in view of the Committee's discussions it could agree that its proposal to delete paragraph 2 should be accompanied by an entry in the Conference minutes of a statement to the effect that during an initial period the last sentence of paragraph 1 of Rule 85 should be interpreted as applying to cases where it had not been possible to comply with time limits due to linguistic problems, provided that the necessary precautions had been taken.

2394. The Committee agreed to the United Kingdom delegation's proposals by a majority of ten votes to five, with three abstentions. It was agreed that there should also be an entry in the minutes to the effect that the second sentence of
2355. The Chairman wondered whether, in order to take account of the opinions expressed, the Committee might not agree to the Swedish delegation's proposal while also stating in the minutes that it considered that in proceedings prior to publication the upper time limit should only be used in exceptional cases.

2356. The EIRMA delegation was in favour of a fairly short time limit and felt that four months with the possibility of an extension should be sufficient.

2357. The Swiss delegation strongly endorsed the EIRMA delegation's suggestion. If the Implementing Regulations contained a Rule stipulating an upper limit of six months, there was a danger that this six month time limit would become the general rule. The Swiss delegation thought that a maximum of four months would be reasonable in most instances and that a six month time limit could be applied, if necessary, in exceptional cases.

2358. The French delegation thought that the Swedish delegation's proposal was already covered by Rule 85 in its present wording, since the last sentence of that Rule stipulated that in certain special cases the period might be extended upon request presented before the expiry of such period. The French delegation would be prepared to agree to an amendment to this sentence so that in cases which so warranted this time limit could be fixed at six months. Generally speaking, it felt that the upper limit should be four months, and should only be six months in exceptional cases.

2359. This solution seemed to be best in line with the provision of Article 75 concerning the time limit in which national authorities had to forward the European Patent application.

2360. The Chair pointed out that the difference between the Swedish delegation's proposal, the EIRMA delegation's proposal, and the present text seemed to be that under the present text the four month time limit could only be extended at the request of the applicant, while under the Swedish delegation's proposal the European Patent Office would be authorised from the outset to fix a time limit of six months if special circumstances made this necessary.

2361. The United Kingdom delegation asked whether under the Swedish delegation's proposal the last sentence of the present text would be retained. The United Kingdom delegation was in favour of its retention.

2362. The Chairman stated that he had understood the Swedish delegation's proposal as retaining the last sentence.

2363. The Swedish delegation confirmed this.

2364. The Committee agreed to the Swedish delegation's proposal, amended to the effect that whilst the upper limit would in general be four months, the European Patent Office could, in special circumstances, extend it to six months.

2365. The Committee then examined the proposal submitted by the delegation of the Federal Republic of Germany, in M/47, page 16, point 32, for inserting a new paragraph 2.

2366. The delegation of the Federal Republic of Germany stated that the aim of its proposal was to take account of a problem of particular concern to future representatives before the European Patent Office. There was a special difficulty because of the language arrangements and their implications with regard to the time limits before the European Patent Office. The Convention and the Implementing Regulations laid down several time limits within which the representative had to receive information from his client and forward it to the European Patent Office. There were considerable translation problems. Very probably, representatives would not immediately have the necessary staff to cope with work in the three official languages. For this reason the delegation of the Federal Republic of Germany proposed that if difficulties were to arise in forwarding documents to the European Patent Office because of the use of the various official languages, the time limit should be automatically extended by one month upon request. This would cover cases in which a representative had his place of business in a Contracting State in which the official language was not the language of the proceedings which he had chosen for the patent application or for opposition. As an example, the delegation of the Federal Republic of Germany quoted the case of a French representative with his place of business in Paris representing a Japanese applicant who had chosen English as the language of the proceedings for his European Patent application. The French representative would have to submit documents to the European Patent Office in English. Difficulties might arise because of this, and the aim of the proposal was to provide that where the representative anticipated difficulties in forwarding documents to the European Patent Office he could ask the Office to grant him an extension of the time limits and that such extension be granted automatically for one month.

2367. The delegation of the Federal Republic of Germany stated that in such a case the representative would not be able to benefit from the provisions of Article 14, paragraphs 2 and 4, since his client would have neither his residence nor principal place of business within a Contracting State.

2368. The FICPI delegation stated that the proposal of the delegation of the Federal Republic of Germany dealt with a real problem facing representatives. The delegation therefore requested the Committee to give serious consideration to whether it was really necessary to limit the provision suggested by the delegation of the Federal Republic of Germany to a transitional period, or whether it would not be preferable to make it a permanent rule.

2369. The Chairman noted that the proposal of the delegation of the Federal Republic of Germany was supported by one delegation.

2370. The United Kingdom delegation, while appreciating the reasons for the proposal made by the delegation of the Federal Republic of Germany, was unable to support it. The most appropriate method of dealing with these difficulties was that which the Committee had followed in increasing the time limit laid down in Rule 85. It was difficult to agree with the position of the delegation of the Federal Republic of Germany bearing in mind the fact that two-thirds of all applications filed would probably be dealt with by English-speaking representatives. Practically all these representatives would have their place of business in London or Munich, and there seemed to be no justification for granting a general extension of the time limits to an English representative with his place of business in London carrying out the proceedings in English. The proposal made by the delegation of the Federal Republic of Germany was likely to cause difficulties, particularly with regard to representatives with two places of business. The best solution would therefore appear to be to proceed on the basis of the provision at the end of Rule 85.

2371. The French delegation asked whether, in order for an extension of a time limit to be granted, the representative would have to make a formal application or simply a request. It considered that, in order not to complicate matters, a simple request would be preferable, which would mean that extension would be automatic.
2323. The Chairman invited the Committee to express its views on the Swiss proposal that the person concerned should not be able to invoke the omission of the communication but that in the event of an incorrect communication he should not suffer any detriment as a result.

2324. The Austrian delegation supported the Swiss proposal.

2325. The Netherlands delegation did not think it could be the responsibility of the European Patent Office to calculate the time limits for appellants or for any other parties. It thought it would suffice if the European Patent Office drew parties' attention to the provisions of Article 107. If such an arrangement were to be adopted, the Swiss and Austrian delegations' proposals would be superfluous, since in practical terms there could not be any incorrect indications.

2326. The Chairman thought that the Committee should first decide on this proposal by the Netherlands delegation which involved an appreciable amendment of the present text. If this proposal were adopted, there would be no further need to examine the Swiss delegation's proposal.

2327. The Belgian delegation supported the Netherlands delegation's proposal.

2328. The Yugoslav delegation was in favour of the Netherlands delegation's proposal, provided that the form bore a clear reference to Articles 105 to 107.

2329. Referring to the Committee's decision on Rule 51, the United Kingdom delegation declared its support for the Netherlands delegation's proposal.

2330. The Swiss delegation said that if the Netherlands delegation's proposal were to be understood to mean that the form would not only bear a reference to Articles 105 to 107 but also quote the texts of those Articles, it could support it.

2331. The Netherlands delegation stated that its proposal should be understood in the sense just indicated by the Swiss delegation.

2332. The Austrian delegation asked whether adoption of the Netherlands delegation's proposal would render meaningless the last sentence of paragraph 2, which dealt with the omission of communication.

2333. The Chairman considered that this was a purely hypothetical question, since the formal communication envisaged by the Netherlands delegation would be by way of indications on a form, and any omissions would be extremely hard to imagine.

2334. The Committee agreed to the Netherlands delegation's proposal.

**Rule 70 (69) — Noting of loss of rights**

2335. The Committee examined the Netherlands delegation's proposal as given in M/52, page 26.

2336. The Netherlands delegation found the present text inadequate and proposed to add a stipulation at the end of paragraph 2 that where the European Patent Office shared the view of an appellant it should inform that appellant accordingly in writing.

2337. The Chairman noted that the Netherlands delegation's proposal was supported by a number of delegations and that it was shared by at least four of the delegations of the interested circles.

2338. The Committee recorded its agreement to this proposal by the Netherlands delegation.

2339. The Austrian delegation withdrew its proposal for an amendment given in M/89.

**Rule 73 (72) — Taking of evidence by the European Patent Office**

2340. The delegation of the Federal Republic of Germany explained the reasons for its proposed amendment to paragraph 4 as given in M/47, page 15, point 30. The present text seemed incomplete and the delegation proposed adding a provision stipulating that relevant questions might be put to the testifying parties, witnesses and experts. The effect of the amendment was firstly to increase the number of persons who could be heard by including the parties, and secondly to stipulate that questions could only be put to persons giving evidence.

2341. The Committee agreed to this proposal.

**Rule 77 (76) — Minutes of oral proceedings and taking of evidence**

2342. The Committee examined the proposed amendment submitted by the delegation of the Federal Republic of Germany in M/47, page 15, point 31.

2343. The delegation of the Federal Republic of Germany felt it advisable to stipulate in paragraph 7 that the minutes should also contain details of the place and date of the proceedings and the names of those taking part.

2344. The Netherlands and French delegations, while they had no objection to this proposal, wondered whether the problem might not be settled administratively.

2345. The Chairman asked the delegation of the Federal Republic of Germany whether it could agree to an entry in the Conference minutes recording the Committee's agreement on the substance of the proposal, without the text as such being included in the Convention.

2346. The delegation of the Federal Republic of Germany agreed to this solution.

2347. The Chairman noted that the Committee agreed on the substance of the proposal made by the delegation of the Federal Republic of Germany but that it thought that it should be left to the President of the European Patent Office to take the appropriate administrative measures.

**Rule 82 (81) — Notification to representatives**

2348. The FICPI delegation asked whether the Committee shared its interpretation of this Rule, whereby notification directly to the applicant and not to the representative (assuming a representative had been appointed) could be a procedural error and should not therefore be taken into consideration for the start of any time limits.

2349. The Committee shared the FICPI delegation's interpretation.

**Rule 85 (84) — Duration of time limits**

2350. The Committee examined the Swedish delegation's proposal given in M/53, page 2, point 10.

2351. The Swedish delegation stated that the four month time limit laid down in this Rule as the maximum seemed much too short, particularly if allowance were to be made for translation for those countries whose official language was not one of the three official languages of the European Patent Office. The delegation therefore proposed that the upper limit should be six months.

2352. The Finnish, Netherlands, Norwegian and Italian delegations supported this proposal.

2353. The United Kingdom delegation had doubts about accepting the Swedish delegation's proposal with regard to proceedings after publication of the application. Extension of the time limit to six months should only be possible for the examination proceedings.

2354. The Swedish delegation felt that it was unnecessary to amend its proposal, since the European Patent Office would be free to fix time limits within the margin laid down.
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 84

Duration of time limits

Where the Convention or these Implementing Regulations specify a period to be determined by the European Patent Office, such period shall be at least less than two months nor more than four months; in certain special circumstances it may be up to six months. In certain special cases, the period may be extended upon request, presented before the expiry of such period.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 11
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 83 to 106
Rule 85

Duration of time limits

(1) Where the Convention or these Implementing Regulations specify a period to be determined by the European Patent Office, such period shall not be less than two months nor more than four months nor, in certain special circumstances, more than six months. In certain special cases, the period may be extended upon request, presented before the expiry of such period.

* (2) During a transitional period, the end of which shall be determined by the Administrative Council, a period referred to in paragraph 1 shall be deemed, upon a request received by the European Patent Office before the expiry of such period, to be extended by one month, if the professional representative of the applicant does not have a place of business or employment in a Contracting State having as an official language the language of the proceedings.

* The text proposed has not been examined by the Drafting Committee.
MUNICH DIPLOMATIC CONFERENCE  
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS  

- 1973 -  

Munich, 27 September 1973  
M/ 142/I/R 13  
Original: English/French/German  

TEXTS DRAWN UP BY  
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I  
AT THE MEETING ON 27 SEPTEMBER 1973  

Articles of the Convention:  

Articles 59  
162  

Rules of the Implementing Regulations:  

Rules 51  
69  
70  
73  
85  
89  
91  
97  
100  
103  
107  


Articles 3  
6  

Recommendation on preparations for the opening of the European Patent Office  

Decision on Training Staff for the European Patent Office
Rule 85(2)

In order to give effect without discrimination to the intention of Rule 85(2) (in the text based upon document M/47/I/II/II, page 16, point 32) CNIPA suggests the following amended wording:

"During a transitional period, the end of which shall be determined by the Administrative Council, a period referred to in paragraph 1 shall be deemed, upon a request received by the European Patent Office before the expiry of such period, to be extended by one month."
MUNICH DIPLOMATİC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS.

- 1973 -

Munich, 27 September 1973
M/139/I
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: CNIPA

Subject: Rule 85, paragraph 2, of the Implementing Regulations
Further, Rule 85(2) will result in some anomalies which were presumably never intended. Two obvious examples are:

(a) The extra month will not be available to British patent agents operating in English, French agents operating in French, or German and Austrian agents operating in German, if they retain an office in their home country. There will, by contrast, not be a corresponding restriction on Irish agents operating in English, Belgian agents operating in French or Swiss agents operating in French or German, because each of these States has an official language (Gaelic, Flemish, Italian) other than the language of the proceedings.

(b) It will be available to a Continental European firm filing in English through a local patent agent, but not if it operates through its employees under Article 133(3).

It is believed that Rule 85(2) is intended to give special assistance to patent agents dealing with last-minute instructions, particularly from applicants who are unfamiliar with the language of the proceedings. Rule 85(1), as amended by Main Committee I, appears to make ample provision to that end. The European Patent Office can now set a time limit as long as 6 months and it has the power to extend even that long period in special cases.

In the light of these considerations, which were not all fully explored during the debate on Rule 85, it is most strongly urged that the new paragraph (2) should be deleted.
In Main Committee I this Rule was amended by the addition of a second sub-paragraph. As proposed in document M/47, point 32, this read as follows:

"(2 new) During a transitional period, the end of which shall be determined by the Administrative Council, a period referred to in paragraph 1 shall be deemed, upon a request received by the European Patent Office before the expiry of such period, to be extended by one month, if the professional representative of the applicant has his place of business or employment in a Contracting State having as an official language a language other than the language of the proceedings."

Main Committee I adopted this proposal subject to an oral amendment the effect of which was that for "place of business" should be substituted "only place of business" or "principal place of business".

The precise wording of the sub-paragraph awaits drafting. However, the effect seems reasonably clear.

The new Rule 85(2) as so amended is regarded as highly discriminatory against professional representatives in the United Kingdom. European patent applications from non-member countries will commonly be written in English. Additionally, European firms may choose to file in English. In both cases, the Rule will, in effect, give an applicant an extra month on all time limits set by the European Patent Office provided that he does not employ a patent agent with an office in the United Kingdom.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 25 September 1973
M/137/I
Original: English

CONFERENCE DOCUMENT
Main Committee I

Drawn up by: United Kingdom delegation

Subject: Rule 85
I. Article of the Convention

1. Article 14, Paragraph 4 and Rule 85

Persons from Contracting States whose official languages are the same as an official language of the European Patent Office also have justifiable interest in seeing an extension of the fixed time limit being granted so that when a document is filed in the official language of their own state the translation into a different official language of the European Patent Office can subsequently be filed, with the effect that the latter version will then become the operative one. As an example, if a patent application from an English speaking country was made under Article 77 exclusively or principally for protection in German-speaking Contracting States.

Then paragraph 4 of Article 14 could be worded as follows: "Documents which have to be filed within a time limit can also be filed in a different one of the European Patent Office languages or in the official language of the Contracting State in question. However, a translation into the language of the proceedings must be filed within the time limit prescribed by the Implementing Regulations; in the cases provided for in the Implementing Regulations a translation in a different one of the official languages of the European Patent Office can also be filed."

At least the following sentence should be added to Rule 85 "A request to extend the time limit should always be granted when the language of the proceedings is not the same as the official language of the person or of his representative".

The granting of such extension precludes the application of Article 14(4).

2. Article 18, Paragraph 2

Proposal: After the first sentence shall be inserted the following sentence: "An Examiner who has taken part in the proceedings for the grant of an European patent cannot act as Chairman".
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: Union of European Patent Agents (UNEPA)
Subject: Additional comments
after the date of priority be inspected on request, subject to the exceptions provided for in the Implementing Regulations.

The corresponding amendments should be made in paragraphs 2, 3 and 5.

Article 134

8. There seem to be no strong reasons for requiring that professional representatives must be nationals of the Contracting States. Thus paragraphs 2 (a) and 5 should be deleted.

Article 138

9. The present wording of paragraph 2 seems to allow that during revocations proceedings and if national law so provides, claims in a patent can be substituted for new claims based on the content of the description and the drawings. Such new claims have not been examined by the EPO nor is it within the competence of national courts to examine such claims. This is not a satisfactory solution. Furthermore this way of limiting a patent leads to unsecurity for third parties regarding the scope of patents.

The last sentence of paragraph 2 should therefore be substituted by the following.
"Such a limitation shall as regards the patent claims be restricted to the deletion of one or more claims."

Rule 85

10. The period of four months seems to be rather short. It is too short in respect of applicants in distant countries or those with none of the working languages at the EPO as an official language. For instance the communications between the EPO and such applicants involves translations in two directions.

We therefore propose the upper limit in rule 85 to be amended to six months.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: Swedish delegation
Subject: Proposals for amendments to the draft texts
The difficulties of representatives in this situation are in no way different from those of the persons mentioned in Art. 14 (2) and it would not be fair if they did not have the same possibility of obtaining extensions under Rule 85.
MEMORANDUM E

on extension of periods, Rule 85, as related to language problems, Art. 14 (4) and Rule 6 (2).

1. It is proposed to add the following at the end of Rule 85:

"An extension shall always be granted where the language of the proceedings is not the natural language of a party acting for itself or a representative acting on behalf of a party. The granting of an extension on this ground excludes the applicability of Art. 14 (4)."

2. Under Art. 14 (4) residents and nationals of a Contracting State having a language other than English, French or German as an official language, may file documents which have to be filed within a time limit in an official language of the Contracting State concerned, to be followed by a translation in the language of the proceedings within one month (Rule 6 (2)).

3. It would be a great simplification both to such persons and to the European Patent Office if they could obtain an extension under Rule 85 instead.

However, the proposed addition to Rule 85 is formulated more broadly so as also to cover parties and representatives whose language is one of the official languages of the Convention, but not the language of the proceedings. This is so because the problems of such parties and representatives in the matter of keeping terms are exactly the same as those of persons mentioned in Art. 14 (4).

4. It is to be expected that representatives in many Contracting States will find it necessary to equip their offices for handling European patent work in more than one official language, which means at least one official language that is not their natural language, so that e.g. a French or German patent agent will be in a position to handle cases for U.S. or Japanese clients in English as the language of the proceedings. Representatives frequently have a rather limited staff, and in the circumstances considered that will have to comprise one or more members particularly versed in the foreign language for which the patent agent's office is equipped. If last minute instructions for replying to an official letter are received, a critical situation may therefore arise owing to illness or absence of one or more persons necessary for proper handling of the matter in the foreign language concerned.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/ 48/I
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: FICPI

Subject: Memoranda on:
- representation
- evidence of transfer of the inventor's right
- multiple priorities and partial priorities
- withdrawal of the European patent application
- extension of periods as related to language problems
32. Rule 85

"(2 new) During a transitional period, the end of which shall be determined by the Administrative Council, a period referred to in paragraph 1 shall be deemed, upon a request received by the European Patent Office before the expiry of such period, to be extended by one month, if the professional representative of the applicant has his place of business or employment in a Contracting State having as an official language a language other than the language of the proceedings."

33. Rule 87

"(4 new) Such consent shall be given where, in the case of Article 14, paragraph 2, the amendment is intended to make the translation of the European patent application conform to the text of the application as filed."

34. Rule 103

"(2) After the end of the transitional period provided for in Article 162, paragraph 1, the professional representative shall be deleted automatically from the list provided for in Article 134, paragraph 1:

(a) in the event of the death of the professional representative or of his inability to conduct his business;

(b) in the event of the professional representative no longer being a national of one of the Contracting States and not having being granted exemption by the President of the European Patent Office in accordance with Article 134, paragraph 5;"
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

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

Subject: Proposals for amendments to the draft texts

"/47/I/II/III"
Regel 85
Dauer der Fristen

Ist im Übereinkommen oder in dieser Ausführungsordnung eine Frist vorgesehen, die vom Europäischen Patentamt zu bestimmen ist, so darf diese Frist auf nicht weniger als zwei Monate und auf nicht mehr als vier Monate festgesetzt werden. In besonders gelagerten Fällen kann die Frist vor Ablauf auf Antrag verlängert werden.

Vgl. Artikel 119 (Fristen)

Regel 86
Verlängerung von Fristen

(1) Läuft eine Frist an einem Tag ab, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken nicht geöffnet ist oder an dem gewöhnliche Postsendungen aus anderen als den in Absatz 2 genannten Gründen am Sitz des Europäischen Patentamts nicht zugestellt werden, so erstreckt sich die Frist auf den nächstfolgenden Tag, an dem das Europäische Patentamt zur Entgegennahme von Schriftstücken geöffnet ist und an dem gewöhnliche Postsendungen zugestellt werden.

(2) Läuft eine Frist an einem Tag ab, an dem die Postzustellung in einem Vertragsstaat oder zwischen einem Vertragsstaat und dem Europäischen Patentamt allgemein unterbrochen oder im Anschluß an eine solche Unterbrechung gestört ist, so erstreckt sich die Frist für Beteiligte, die in diesem Staats ihren Wohnsitz oder Sitz haben oder einen Vertreter mit Geschäftssitz in diesem Staats bestellt haben, auf den ersten Tag nach Beendigung der Unterbrechung oder Störung. Ist der betreffende Staat der Sitzstaat des Europäischen Patentamts, so gilt diese Vorschrift für alle Beteiligten. Die Dauer der Unterbrechung oder Störung der Postzustellung wird in einer Mitteilung des Präsidenten des Europäischen Patentamts bekanntgegeben.

(3) Die Absätze 1 und 2 sind auf Fristen, die im Übereinkommen vorgesehen sind, in Fällen entsprechend anzuwenden, in denen Handlungen bei der zuständigen Behörde im Sinn des Artikels 73 Absatz 1 Buchstabe b vorzunehmen sind.

Vgl. Artikel 119 (Fristen)

Regel 87
Änderung der europäischen Patentanmeldung

(1) Vor Erhalt des europäischen Recherchenberichts darf der Anmelder die Beschreibung, die Patentansprüche oder die Zeichnungen der europäischen Patentanmeldung nicht ändern, soweit nichts anderes vorgeschrieben ist.

Vgl. Artikel 119 (Fristen)

Rule 85
Duration of time limits

Where the Convention or these Implementing Regulations specify a period to be determined by the European Patent Office, such period shall not be less than two months nor more than four months. In certain special cases, the period may be extended upon request, presented before the expiry of such period.

Cf. Article 119 (Time limits)

Rule 86
Extension of time limits

(1) If a time limit expires on a day on which the European Patent Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered in the locality in which the European Patent Office is located, the time limit shall extend until the first day thereafter on which the European Patent Office is open for receipt of documents and on which ordinary mail is delivered.

(2) If a time limit expires on a day on which there is a general interruption or subsequent dislocation in the delivery of mail in a Contracting State or between a Contracting State and the European Patent Office, the time limit shall extend to the first day following the end of the period of interruption or dislocation for parties resident in the State concerned or who have appointed representatives with a place of business in that State. In the case where the State concerned is the State in which the European Patent Office is located, this provision shall apply to all parties. The duration of the above-mentioned period shall be as stated by the President of the European Patent Office.

(3) Paragraphs 1 and 2 shall apply mutatis mutandis to the time limits provided for in the Convention in the case of transactions to be carried out with the competent authority within the meaning of Article 73, paragraph 1(b).

Cf. Article 119 (Time limits)

Chapter V
Amendments and corrections

Rule 87
Amendment of the European patent application

(1) Before receiving the European search report the applicant may not amend the description, claims or drawings of a European patent application except where otherwise provided.
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

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

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

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

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

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

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

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

1972
The ICC was in favour of the date of dispatch, and IAPIP considered that the decisive factor should be the date on the postmark. CNIPA, EIRMA (with the majority of their representatives), FEMIPI, IFIA and UNEPA, on the other hand, wanted the date of receipt of the document by the applicant to determine the beginning of the period.

140. In this connection UNEPA raised the question of which was to be the determining date in the converse situation of the applicant having to send a document to the European Patent Office. It was pointed out that in such cases the date of receipt of the document at the European Patent Office would have to be the decisive date.

Re. Article 141, No. 3, IR (Duration of time limits)

141. IAPIP felt that it was not right that time limits could only be extended "in certain special cases"; it should always be possible to extend them "on reasoned request".

Article 142 (Restitutio in integrum)

142. IFIA wanted the possibility of restitutio in integrum extended to cover cases of negligence as well as those of force majeure.

Re. Article 145, No. 5, IR (Notification of possibility of appeal)

143. IAPIP was opposed to the provision of paragraph 2, according to which the parties may not invoke the omission of or any errors contained in the notification of possibility of appeal.

BR/169 e/72 ley/SL/prk .../...
MINUTES
of the
5th Meeting of the Inter-Governmental Conference
for the Setting up of a European System
for the Grant of Patents

Part II

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

(Luxembourg, 26 January to 1 February 1972)
Indeed it would be unreasonable to deduce from the fact that these provisions had been linked for reasons of convenience to Article 141 of the Convention that they only covered the time limits referred to in that Article, i.e. those time limits set by the European Patent Office. This was also made clear in the introductory note to the First Preliminary Draft of the Implementing Regulations which reserved the question of the allocation of Articles between the Convention and the Implementing Regulations.

It was evident from this finding that the text of Re. Article 141, No. 2, also applied to the time limits relating to priority.

(b) In order to clarify all the rules relating to time limits, the Working Party decided to change Article 141 of the Convention into a general provision, while specifying that the Implementing Regulations laid down:

(i) the method of calculation and the conditions under which time limits fixed by the Convention or determined by the European Patent Office could be extended,

(ii) the minimum and maximum duration of the time limits determined by the European Patent Office.

The calculation of time limits therefore continued to be governed by Re. Article 141, No. 1 (unamended); the extension of time limits by Re. Article 141, No. 2 (which had undergone a slight drafting amendment); the minimum and maximum duration of time limits to be set by the European Patent Office, which was governed by Article 141 of the Second Preliminary Draft Convention, had been dealt with in a new Re. Article 141, No. 3, without any alteration in its substance.
21. The Working Party furthermore decided to harmonise the drafting of paragraph 1 in the three languages, in order to cover the time limits set by the European Patent Office as well as those time limits laid down directly by the Convention or by its Implementing Regulations.

22. The United Kingdom delegation proposed that the time limits relating to priority (Articles 73, paragraph 1 and 75 paragraph 1) should be excluded from the list given in paragraph 5, in order that the re-establishment of rights should be possible in this case also. Indeed it could happen that events of force majeure, independent of the will of the applicant, such as strikes, delays in the dispatch of mail, etc., might lead to the loss of priority rights as a result of the expiry of the time limit.

The Working Party was, by a majority, of the opinion that it was not expedient to pursue such a suggestion, since the problem could be better solved under Re. Article 141, No. 2 which deals explicitly with the extension of time limits in such cases.

23. The Working Party's discussions on this question, carried out on the basis of a working document from the United Kingdom delegation (working document No. 4 of 23 November 1971), led the Working Party to reorganise the content of Article 141 and of Re. Article 141, Nos. 1 and 2, on the one hand, and to set out clearly the relationship between Article 142 and Re. Article 141, No. 2, on the other.

(a) Firstly, the Working Party specified that Re. Article 141, No. 2 (extension of time limits) applied to all the time limits laid down in the Convention and in its Implementing Regulations, as well as to the time limits set by the European Patent Office.
MINUTES
of the 10th meeting of Working Party I,
held in Luxembourg from 22 to 26 November 1971

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

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

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

3. The Working Party I Drafting Committee met first under the chairmanship of Mr. van BENTHEM, President of the Octrooiraad, and, following his departure, under that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).
Re. Article 141

No. 3

Duration of time limits

Where the Convention specifies a period to be determined by the European Patent Office, such period shall not be less than two months, nor more than four months. In certain special cases, the period may be extended upon request, presented before the expiry of such period.
FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS
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 -
that Article 156, paragraph 3, was to be interpreted as an 
authorisation for the Administrative Council to provide for the 
levy of a search fee for each and every international patent 
application, irrespective of whether additional searches within 
the meaning of this provision should be carried out in the 
individual cases.

11. Information to the public of official authorities, 
legal and administrative co-operation (Articles 
127-132, Rules 93-100)

Only a few amendments were made to these provisions. The 
inspection of files under Article 128 was supplemented so as to 
provide more precise information for the general public; thus, 
before the publication of the European patent application, not 
only the date of filing may be made known to third parties, but 
also the date, State and file number of any application of which 
the priority is claimed. The provisions of Articles 130/132 were 
drafted more generally so that the European Patent Office 
could make agreements concerning exchanges of information 
and exchanges of publications not only with States which were 
not a party to the Convention and with international patent 
granting authorities, such as WIPO, but also with any other 
organisations, especially documentation centres such as 
INPADOC. It was also specified at the same time that the 
substantive content of applications which had not yet been 
published could not be the subject of such exchanges of 
information. In addition, the Administrative Council was 
authorised in Article 130, paragraph 3, to make provisions in 
respect of exchanges of information with the last-named 
organisations which derogated from the restrictions on the 
inspection of files, in so far as the confidential treatment of the 
information was guaranteed.

While dealing with the provisions of Article 131, the Main 
Committee discussed a proposal which, in the light of the 
procedure laid down in the Protocol on Recognition, aimed to 
supplement the prescribed legal co-operation between the 
European Patent Office and the Contracting States by an 
obligation for the Contracting States to provide legal 
assistance amongst themselves. This interesting idea was 
rejected generally because the proposed extension was 
considered to be an intrusion into international legal aid 
between Contracting States and also an obligation which far 
exceeded the purpose of the Convention. A further idea to 
allow the European Patent Office to intervene as an 
international notification authority in certain proceedings 
concerning European patents, also found little approval.

12. Representation (Articles 133-134, 162/Rules 
101-103, 107)

The provisions of the Convention and the Implementing 
Regulations concerning representation before the European 
Patent Office were already discussed with the organisations 
concerned during the earlier stages of the negotiations and 
were, as far as possible adapted to their proposals and wishes. 
Fortunately this situation meant that the principles established 
by the Inter-Governmental Conference were no longer 
questioned as to their substance. In particular, the principle that 
during a transitional period the representatives' status would 
basically be controlled by the national law of Contracting 
States and afterwards by European law, remained uncontested. 
The general principles concerning representation in Article 133 
were also unchanged. The Main Committee generally 
considered that these principles should also be valid for the 
transitional period. The Committee also specified that legal 
persons could be represented not only by their employees — as 
laid down in paragraph 3 of Article 133 — but also by their 
departments. Such representation by their departments is 
regarded as a matter of course, is understood from paragraph 1 
of Article 133 and does not need to be expressly laid down.

However, material for discussion was provided by the 
following points: the uninterrupted change from the transition-
al period to the permanent arrangements, in particular with 
reference to the continued effects of national requirements, the 
reasons for the deletion of professional representatives from 
the list, questions concerning place of business and other 
individual problems. The following is a report on the main 
questions:

(a) Conditions of admission

The Main Committee again discussed the question raised in 
the earlier negotiations concerning possession of the 
nationality of a Contracting State as a condition of entry on the 
list of professional representatives. The majority concluded 
that this condition should be laid down in Article 162 not only in 
respect of the permanent solution, but also in respect of the 
transitional period, in order to avoid the improper acquisition 
of representation rights after the publication of the 
Convention. The status quo was taken into account in so far 
that failure to have the nationality of a Contracting State would 
not prevent entry on the list, if the representative had a place of 
business or employment and the right of representation in a 
Contracting State on 5 October 1973, i.e. at the time of the 
signing of the Convention.

(b) Restrictions on authorisation to represent

The question arose as to whether restrictions on 
representation arising from national law should also be valid in 
respect of proceedings before the European Patent Office 
during the transitional period. The Committee unanimously 
considered that such restrictions based on specific rules of 
national law, in particular on the legislation of the Federal 
Republic of Germany, are not justified in respect of European 
proceedings. The corresponding provisions of Article 162, 
paragraphs 2 and 6, were therefore deleted.

(c) Questions concerning place of business

Article 134 provided that the representatives entered on the 
list were entitled to establish a place of business in the Federal 
Republic of Germany and the Netherlands for the purpose of 
practising their profession before the European Patent Office. 
In view of proceedings before national authorities carrying out 
duties on behalf of the European Patent Office, as provided for 
in the Protocol on Centralisation, the Main Committee 
supplemented Article 134 accordingly. Professional represen-
tatives should consequently also be able to establish a place of 
business in the Contracting States concerned. There was also 
discussion of a provision which would have expressly granted 
the right to practise a profession to a professional 
representative, his associates, employees and colleagues and 
the right of establishment to these persons including their 
families. It was said in reply to the advocates of such a 
provision, who considered it to be a necessary adjunct to the 
right of residence, that this would be to bring a "foreign body" 
into the Convention and might possibly conflict with existing 
agreements in the field of public law. The Committee 
thereupon rejected the proposed supplement, but noted on the 
other hand that the stipulated right to a place of business in 
accordance with Article 134, paragraphs 3 and 4, would be 
meaningful only if its recognition were dealt with sensibly. A