Article 149 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. 149
MPÜ
Gemeinsame Benennung

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MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 6

Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 140 to 166
Article 149
Joint designation

(1) Unchanged from 1972 published text.

(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 18 September 1973
M/98/T/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
14. Proposal of the Netherlands Delegation to Article 149, paragraph 2.

Article 149, paragraph 2 should be amended to read:

"(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant of the international application has indicated that he wishes to obtain a European patent for one or more of the designated States of the group or has designated a Contracting State in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent."
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
43. Article 134

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 6:

"(7) .... of an institute constituted by the persons entitled to act as professional representatives on the basis of the European qualifying examination or, pursuant to Article 162, paragraph 7, without having taken that examination and any ...."

"(8 new) If a person whose name appears on the list of professional representatives, and who has established a place of business in the Federal Republic of Germany or the Netherlands pursuant to paragraph 4, repeatedly or seriously infringes ...."

44. Article 149

If the Netherlands proposal in M/32, No. 22, is adopted:

"(2) .... shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent."

45. Article 153 (only concerns German text)
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
applicant of the international application has indicated that he wishes to obtain a European patent for one or more of the designated States of the group or has designated a Contracting State in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent".

23. Article 157, par. 1:

In order to facilitate the identification of international (PCT) applications, in which States party to this Convention are designated, we propose to add to the last line of this paragraph the following words:

"and shall be mentioned in the European Patent Bulletin".

Furthermore we propose to insert in the Implementing Regulations, at an appropriate place, the following new Rule:

"The mention of the publication of an international application pursuant to Article 157, paragraph 1, shall be effected by publishing the name and address of the applicant, the number under which the publication took place and the Contracting State or States designated in the international application."

24. Rule 13, par. 2:

We wonder whether this paragraph is not superfluous, because it seems just a repetition of what has already been expressed in the preceding paragraph 1.

25. Rule 13, par. 4:

Pursuant to the second sentence of this paragraph it may happen that the reinstated time limit will end embarrassingly soon after the communication of the resumption of the proceedings. It seems only fair to the party concerned to introduce here a minimum of, say, one month. Therefore we propose to add to the last line of this paragraph the following sentence:

"However, if the time limit ends prior to the expiration of one month from said communication, it is extended till the end of that month".
this paragraph 2 in such a way that the abstract shall be published in the same way and at the same time as the search report.

18. **Article 96, par. 2:**
See our observations nr. 3 on Article 14, par. 7.

19. **Article 98, par. 4:**
According to this paragraph the previous proprietor of the patent and the person replacing him as proprietor in some contracting state following a courts' decision, shall not be deemed to be joint proprietors within the meaning of Article 117. The question arises what effect such a situation would have on the prosecution of the application. Should not Rule 16, par. 2 be rendered applicable also on this case?

20. **Article 123, par. 2:**
We are afraid that the German and French texts are not wholly identical with the English text. In our opinion an incomplete reply cannot be deemed to be a withdrawal of the European patent application.

21. **Article 135, par. 1:**
The German text should be made conform to the English and French text by placing the word "nur" before "Auf Antrag" in the third line of this paragraph and by replacing the word "nur" in the fifth line by "und".

22. **Article 149, par. 2:**
In order to make clear that not only the first sentence but also the second sentence of this paragraph deals exclusively with PCT-applications we propose to read this paragraph as follows:
"Where the European Patent Office acts as a designated Office under Article 153, par. 1, paragraph 1 shall apply if the - applicant -
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

Gemeinsame Benennung zu Zwecken des Gemeinschaftspatentabkommens

52 Es ist von Seiten der FICPI schon früher darauf hingewiesen worden, daß eine gewisse Klärung der Benennungsmaßnahmen gemäß Art. 149 wünschenswert wäre. Die FICPI zieht es jedoch vor, ihre weiteren Bemerkungen für die erwarteten endgültigen Dokumente betreffend das Gemeinschaftspatent zurückzubehalten.

Gebrauch anderer Sprachen als der Verfahrenssprache bei mündlichen Verfahren

53 Die durch Regel 2(1) vorgesehene große Beweglichkeit, die das Recht einer Partei beinhaltet, eine andere Sprache als die Verfahrenssprache zu benutzen, ohne davon eine Mitteilung zu machen, wenn sie selbst für die Übersetzung in die Verfahrenssprache sorgt, scheint tatsächlichen notwendig zu sein. Dies betrifft insbesondere Parteien aus Ländern mit nationalen Sprachen, die nicht englisch, französisch oder deutsch sind, da sie bei besonderen Gegebenheiten, wie z.B. Krankheit des üblichen Vertreters, im letzten Moment einen Stellvertreter bestellen müssen, der vielleicht die gleiche Amtssprache wie der übliche Vertreter nicht beherrscht oder der vielleicht überhaupt keine der Amtssprachen genügend beherrscht, um zu plädieren. Wenn allerdings die Partei eine Mitteilung gibt, so wäre es vorteilhaft, diese Mitteilung wenigstens einen Monat vorher nicht nur dem Patentamt, sondern auch den anderen Beteiligten zu übermitteln. Es wird daher die folgende Abänderung zu bedenken geben:

In der Regel 2(1), Zeile 5, die Worte „spätestens zwei Wochen“ zu streichen und durch die Worte „und allen anderen Beteiligten spätestens einen Monat“ zu ersetzen.

Ausstellungen, die gemäß Art. 53 anerkannt sind

54 In vielen Ländern stoßen Anmelder oft auf beachtliche Schwierigkeiten, festzustellen, welche Ausstellungen innerhalb eines Übereinkommens als internationale Ausstellungen anerkannt sind. Es wird daher vorgeschlagen, der Regel 23 einen zweiten Absatz anzufügen, der etwa wie folgt lauten könnte:


Joint Designation for the Purposes of the Community Patent Convention

52 It has been pointed out earlier by the FICPI that a certain clarification of the designation rules under Art. 149 would be desirable. However, the FICPI prefers to reserve further comment for its notes on the forthcoming final documents for the Community Patent Convention.

Use of Languages other than the Language of the Proceedings in Oral Proceedings

53 The very great flexibility provided for in Rule 2(1) seems in fact to be necessary, including the right of a party to use a language other than the language of the proceedings without giving notice provided that he makes provisions for interpretation into the language of the proceedings. This particularly applies to parties domiciled in countries having national languages other than English, French or German, seeing that in special situations such as illness of the normal representative they may have, in the very last moment, to appoint a substitute who may not master the same official language as the normal representative, or may even not master any of the official languages at all sufficiently for pleading. However, in the situation where a party does give notice, it would be preferable that such notice should be given at least one month in advance and should be communicated not only to the Patent Office but also to any other parties to the case. The following amendment is therefore suggested for consideration:

In Rule 2(1), lines 5–6 cancel “at least two weeks” and substitute “and to any other party to the case at least one month”.

Exhibitions recognised under Art. 53

54 In many countries applicants frequently encounter considerable difficulties in establishing which exhibitions are recognised within the terms of the Convention on International Exhibitions. It is therefore suggested, in Rule 23, to add a second paragraph reading as follows:

“(2) The President of the European Patent Office shall keep a list of exhibitions recognised under
STELLUNGNAHME DER

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

COMMENTS BY

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

PRISE DE POSITION DE LA

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

(1) Deutsche Übersetzung vorgelegt von FICPI
(2) La traduction française a été fournie par la FICPI
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
(1) Die Gruppe von Vertragsstaaten kann vorschreiben, daß ihre Benennung nur gemeinsam erfolgen kann und daß die Benennung eines oder mehrerer der Vertragsstaaten der Gruppe als Benennung aller dieser Vertragsstaaten gilt.


(1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.
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
délabrés 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
33. Furthermore, on the same subject, the Working Party agreed that for a divisional application the applicant could designate all the States designated in the initial application or just some of them; what he could not do was to designate other States. The Working Party made the appropriate addition to Article 137a, paragraph 3.

34. The United Kingdom delegation wanted to know whether it would be fairest to reimburse designation fees already paid in the case provided for in Article 124 where an application for a European patent was converted into an application for a national patent. It proposed that the third sentence of Article 67, paragraph 3, be deleted to this end.

The United Kingdom delegation reserved the right to raise this point at the next meeting of the Conference.

Article 68 (Date of filing)

35. The Working Party aligned the drafting of the French text on the German and English texts.

Article 69a (Naming of the inventor)

36. The United Kingdom delegation drew the Working Party’s attention to the problems arising from the rules laid down with regard to naming of the inventor in the light of Article 67, paragraph 4. If, for example, naming of the inventor was required in one of the EEC Member States, the result of absence of naming would be, under the terms of Article 69a, Article 77, paragraph 2(g), and Article 78, paragraph 6, that the naming was deemed to be withdrawn.
In this connection, the German delegation drew the Working Party's attention to the mechanics of the system currently in force, which corresponded to that under the PCT. Contrary to what had been thought previously, the applicant now had to designate the States in which he required the invention to be protected at the moment of filing the application; he no longer had twelve months. However, he did have a period of twelve months to pay the designation fee to allow him to judge whether he would retain his designation for a particular country.

Hence this delegation, supported by other delegations, was not able to accept the United Kingdom delegation's suggestion, although appreciating the advantage it had of simplifying the procedure.

Finally, the United Kingdom delegation withdrew its suggestion and the Working Party adopted the similar proposals made by the Netherlands delegation and the Chairman.

32. The problem next arose in this context as to whether designation fees should be paid for a divisional application (Article 137a). The Working Party thought that they should be paid since it considered that a divisional application should be treated like a normal application.

With regard to the period during which that fee ought to be paid the Working Party favoured one month from the date of filing the divisional application (Article 137a, paragraph 4).

BE/177 e/72 aut/KM/gc .../...
Article 67 (Designation of Contracting States)
Article 137a (European divisional applications)

31. The Working Party studied the question as to how consideration might be given to the remarks put forward by the interested circles concerning payment of the designation fee (cf. BR/168/72, point 85) when a priority was claimed.

The Chairman and the Netherlands delegation submitted similar suggestions, i.e. that the regulation provided for in paragraph 2 of Article 67 be retained and a stipulation be added that should the period laid down for payment of the filing and search fees expire after the end of the period specified in Article 67, paragraph 2, the first period would apply (cf. BR/GT I/149/72 and BR/GT I/145/72 respectively). Thus, if a priority were claimed, the applicant had a period of one month after the filing date, whereas under the present text, if the priority date was eleven months or more before the filing date the applicant had to pay the designation fee within a period of from 31 to 0 days as the case might be.

The United Kingdom delegation, however, thought that it would be preferable to align the provisions concerning payment of the designation fee on those laid down for the payment of the filing and search fees by making provision, in both cases, for a period of one month after the filing date. This delegation did not think it necessary to grant a period of twelve months for payment of the designation fee in the case of no priority being claimed.

BR/177 e/72 aut/KM/gc
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 13 April 1972
BR/177/72

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 cyd/AH/prk .../...
Article 67 (Designation of Contracting States)

62. CNIPA proposed that the period laid down in paragraph 2 for the payment of the designation fee be extended from 12 to 13 months so that the applicant would still have a whole month in which to make the payment in the event of the priority period having expired completely.

In the case of divisional applications which in accordance with Article 137a, paragraph 3, had the date of filing and possibly also the priority date of the earlier application, it would in many cases be impossible to observe the period allowed for payment; a special rule to cover such cases was therefore desirable.

63. In connection with paragraph 3, LFIA proposed that the possibility of the designation fees being refunded be provided for.

Article 68 (Date of filing)

64. FICPI raised the question of whether the "whole day principle", which Article 68 clearly aimed at introducing, was in fact clearly expressed in other provisions of the Convention; in Article 11, paragraph 3, for example, there was a reference to "earlier applications". FICPI suggested that his possible lack of precision should be removed by introducing a new paragraph 2 into Article 68, to the effect that European patent applications with the same date of filing were to be considered to have been filed at the same time.

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

Part II

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

(Luxembourg, 26 January to 1 February 1972)
Article 67 - Designation of Contracting States

85. The Conference agreed that the proposals of one organisation regarding _paragraph_2_, that a period of 13 months instead of 12 months from the date of priority be fixed for the payment of the designation fee, should be examined by Working Party I.

86. The Conference rejected the proposal of one organisation in connection with _paragraph_3_, that provision be made for the possibility of a repayment of the designation fees (cf. BR/169/72, point 63), since even the PCT does not provide for a repayment of the designation fees paid to the International Office where a date of filing has been recognised.

Article 68 - Date of filing

87. The Drafting Committee was instructed to examine whether it would not be better to adapt the conditional construction used in the French version of Article 68 (..."si elle comporte" ..... "si elle contient" ...) to the other two versions.

Article 69 - Failure to pay the filing fee or to provide a translation

88. The Conference rejected the request by IFIA for an addition to be made to Article 69 (cf. BR/169/72, point 54), in conjunction with the request concerning Article 66, which was also rejected, that the naming of the inventor should be a requirement of the application (see point 83 above).
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)
(4) Sofern eine Gruppe von Vertragsstaaten von der Ermächtigung in Artikel 8 Gebrauch gemacht hat, kann sie vorschreiben, daß ihre Benennung nur gemeinsam erfolgen kann und daß die Benennung eines Teils der Vertragsstaaten der Gruppe als Benennung aller dieser Vertragsstaaten gilt.

Artikel 68
Anmeldetag
Der Anmeldetag einer europäischen Patentanmeldung ist der Tag, an dem folgende Erfordernisse erfüllt sind:
(a) die Anmeldung muß einen Hinweis enthalten, daß sie eine europäische Patentanmeldung darstellt, und mindestens einen Vertragsstaat gemäß Artikel 67 Absatz 1 benennen;
(b) die Anmeldung muß Angaben enthalten, die es erlauben, die Identität des Anmelders festzustellen;
(c) die Anmeldung muß in einer der in Artikel 34 Absätze 1 und 2 vorgesehenen Sprachen eine Beschreibung und Patentansprüche enthalten, selbst wenn diese nicht den anderen Vorschriften dieses Übereinkommens entsprechen.

Artikel 69
Nichtentrichtung der Anmeldegebühr und fehlende Übersetzung
Die europäische Patentanmeldung gilt als zurückgenommen,
(a) wenn die in Artikel 66 Absatz 3 vorgesehene Gebühr nicht innerhalb der vorgeschriebenen Frist entrichtet wird oder
(b) wenn im Fall des Artikels 34 Absatz 2 die Übersetzung der Patentanmeldung nicht innerhalb der dort genannten Frist vorgelegt worden ist.

Artikel 69a
Erfindernennung
In der europäischen Patentanmeldung ist der Erfinder zu benennen, wenn das nationale Recht zumindest eines der benannten Vertragsstaaten vorschreibt, daß für eine nationale Anmeldung der Erfinder im Zeitpunkt der nationalen Anmeldung oder zu einem späteren Zeitpunkt zu benennen ist.

Artikel 70
Einheitlichkeit der Erfindung
Die europäische Patentanmeldung darf nur eine einzige Erfindung enthalten oder eine Gruppe von Erfindungen, die untereinander in der Weise verbunden sind, daß sie eine einzige allgemeine erfinderische Idee verwirklichen.

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 8, this group may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

Article 68
Date of filing
The date of filing of a European patent application shall be the date on which it satisfies the following conditions:
(a) an indication is given that the application is for a European patent, and at least one Contracting State is designated in accordance with Article 67, paragraph 1;
(b) information has been given identifying the applicant;
(c) there are, in one of the languages referred to in Article 34, paragraphs 1 and 2, a description and claims, even though they do not comply with the other requirements of this Convention.

Article 69
Failure to pay the filing fee or to provide a translation
An application for a European patent shall be deemed to be withdrawn:
(a) if the fee provided for in Article 66, paragraph 3, has not been paid within the prescribed time limit, or
(b) if the translation of the application, in the case provided for in Article 34, paragraph 2, has not been produced within the time limit referred to in that Article.

Article 69a
Naming of the inventor
The application for a European patent shall identify the inventor where the national law of at least one of the designated Contracting States requires such identification to be supplied at the time of filing a national application or at any time thereafter.

Article 70
Unity of invention
The application for a European patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.
Article 66
Erfordernisse der Anmeldung

(1) Die europäische Patentanmeldung muß enthalten:
   a) einen Antrag auf Erteilung des europäischen Patents;
   b) eine Beschreibung der Erfindung;
   c) einen oder mehrere Patentansprüche, die den Gegenstand angeben, für den Schutz begehrt wird;
   d) gegebenenfalls die Zeichnungen, auf die sich die Beschreibung oder die Patentansprüche beziehen;
   e) eine Zusammenfassung.
(2) — gestrichen — (siehe Artikel 68 Buchstabe c).

(3) Für die europäische Patentanmeldung ist die Anmeldegebühr zu entrichten, die in der Gebührenordnung zu diesem Übereinkommen vorgeschrieben ist. Die Gebühr ist spätestens bis zum Ablauf eines Monats nach dem Anmeldetag zu entrichten.

(4) Die Zusammenfassung dient ausschließlich der technischen Information und kann nicht für andere Zwecke, insbesondere nicht für die Bestimmung des begehrtener Schutzes, herangezogen werden.

Article 66
Requirements of the application

(1) An application for a European patent shall contain:
   a) a request for the grant of a European patent;
   b) a description of the invention;
   c) one or more claims;
   d) any drawings referred to in the description or the claims;
   e) an abstract.
(2) — deleted — [Cf. Article 68, sub-paragraph (c)].

(3) An application for a European patent shall be subject to the payment of the filing fee prescribed by the Rules relating to Fees adopted pursuant to this Convention. This fee must be paid within one month after the filing date.

(4) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, in particular not for the purpose of interpreting the scope of the protection sought.

Article 67
Benennung von Vertragsstaaten

(1) Im Antrag auf Erteilung des europäischen Patents sind der Vertragsstaat oder die Vertragsstaaten, in denen für die Erfindung Schutz begehrt wird, zu benennen.

(2) Für die Benennung eines Vertragsstaats ist die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebene Gebühr zu zahlen. Erfolgt die Zahlung nicht bis zum Ablauf einer Frist von zwölf Monaten nach dem Anmeldetag oder, wenn eine Priorität in Anspruch genommen worden ist, nach dem Prioritätstag oder, wenn mehrere Prioritäten in Anspruch genommen worden sind, nach dem Tag der frühesten Priorität, so gilt die Benennung als zurückgenommen.


Article 67
Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed by the Rules relating to Fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the date of filing or, if a priority has been claimed, as from the date or the earliest date of priority, the designation shall be deemed to be withdrawn.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.
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

— 1971 —
36. The Working Party finally discussed the question of which department of the European Patent Office in its capacity of designated Office is to be responsible for the decision under Article 25, paragraph 2(a) of the PCT; this provision states that a designated Office is to decide whether a refusal, declaration or finding was justified under the provisions of the PCT.

In view of the fact that such a decision may give rise to difficult questions regarding the interpretation of the PCT, the Working Party considered it advisable to make it the responsibility of the Examining Divisions and not the Examining Sections of the European Patent Office; the Boards of Appeal could then be called upon as a second authority if their decisions were challenged. A new paragraph was added to this effect.

Article 121a (new) - The European Patent Office as an International Preliminary Examining Authority

37. The Working Party transferred the former Article 118, paragraph 2, to this new Article, and drafted it to cover two different cases:

(a) the European Patent Office is to act as an International Preliminary Examining Authority for applicants who are residents or nationals of a Contracting State bound by Chapter II of the PCT, subject to the conclusion of an agreement between the Administrative Council and the International Bureau of the WIPO/OMPI (Paragraph 1; the content corresponds to the deleted Article 118, paragraph 2);

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33. In connection with the provision referred to under point 32, the Working Party adopted a special provision in the new second sentence of paragraph 2, to cover the eventuality of a group of Contracting States having made use of the authorisation under Article 8 of the Convention and the international application designating one of the States in the group, whose law provides that the designation of that State always has the effect of an application for a European patent: in this case the group of States may prescribe that designation of this State is to be taken as designation of all the Contracting States of the Group.

34. The German delegation proposed that at the time of filing a PCT-application the designation fee under Article 67, paragraph 2, should not be levied for the first designated State, but only for the second and any subsequent designated States, so that the international applicant would not have to pay a further fee for the first designation in addition to the designation fee payable under the PCT. The Working Party rejected this solution as being too complicated and decided in favour of levying a designation fee for each designated State, provided both fees were relatively low. Paragraph 4 of Article 121 was accordingly deleted.

35. The Working Party was also unable to agree to a further proposal by the German delegation to reduce the filing fee (Article 66, paragraph 3) for a PCT-application, on the grounds that the European Patent Office would benefit from a certain saving in the volume of work as a result of the examination under the PCT procedure.

BR/94 e/71 aut/KM/prk
Article 120 - Filing and transmittal of the international application

29. The Working Party agreed to stipulate in a new paragraph 3 that the transmittal fee referred to in Rule 14.1 of the Regulations under the PCT should be payable for PCT-applications. This fee would be payable on filing the application; the amount will be prescribed in the Rules relating to Fees.

Article 121 - The European Patent Office as a designated or elected Office

30. The Working Party confined this Article to defining the function of the European Patent Office as a designated Office. The European Patent Office as an elected Office is dealt with in the new Article 121b.

31. In paragraph 1 the Working Party decided to undertake, apart from a textual correction, an alignment on Article 4, paragraph 1(ii) of the PCT, according to which the applicant now had to notify on the international application itself that he required a European patent for the Contracting States designated, instead of being given a period of 12 months as from the date of priority.

32. Furthermore, the Working Party laid down in paragraph 1 the legal consequence in the event of a Contracting State specifying pursuant to the last provision contained in Article 4, paragraph 1(ii), of the PCT, that its being designated had the effect of an application for a European patent: the European Patent Office would also be a designated Office in this instance.
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. HAERTEL, 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.
Article 120 (former Article 113d)
Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 64, paragraph 2, shall nevertheless apply mutatis mutandis.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent national central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Co-operation Treaty.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

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)
had to be obvious to a person skilled in the art, did not, however, need to be defined any more precisely, since it was self-evident from the references to Article 11, paragraph 2 in Articles 13 and 74 that it was the filing date on the date of priority as the case may be.

Article 14 - Industrial application

26. After the German delegation had withdrawn its proposed amendment (BR/GT I/74/70, page 6), the Working Party decided against undertaking an alignment in Article 33, paragraph 4 of the PCT.

Article 118 - Functions of the European Patent Office in the context of the Patent Co-operation Treaty

27. The Working Party agreed to delete this Article, since its provisions were repeated individually in the following Articles: paragraph 1 was unnecessary because of the already existing Articles 119 and 121; in place of paragraph 2, a new Article 121a would be adopted, and in place of paragraphs 3, a new Article 121b.

Article 119 - The European Patent Office as a receiving Office

28. Apart from a textual correction in paragraph 1, the Working Party, on the basis of Article 9, paragraph 2, of the PCT, limited the possibility of the European Patent Office acting as a receiving Office pursuant to paragraph 3 to instances in which the applicant is a resident or national of a State party to the Paris Convention.

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MINUTES

of the 7th meeting of Working Party I
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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.

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(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 118 (former Article 113b)
Functions of the European Patent Office in the context of the Patent Co-operation Treaty

(1) Subject to the provisions set out below, the European Patent Office shall act as a receiving Office and as a designated Office within the meaning of Chapter I of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention.

(2) Subject to the provisions set out below, the European Patent Office shall act as an International Preliminary Examining Authority within the meaning of Chapter II of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention, and all other conditions laid down by the Co-operation Treaty and by this Convention for the performance of the functions of an International Preliminary Examining Authority have been met.

(3) Subject to the provisions set out below, the European Patent Office shall act as an elected Office within the meaning of Chapter II of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Brussels, 21 December 1970
BR/70/70

- Secretariat -

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)

BR/70 e/70 gc
(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/EM/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 CPCCI)

(u) Article 122 - International search report

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

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

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

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

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

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

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

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

(r) **Article 88 - Request for examination**

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

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

Should the period within which the grounds for appeal could be set out in greater detail (Article 111, third sentence) be extended? Should it, if necessary, be fixed by the Board of Appeal? (FICPI, IFIA, UNEPA)
(m) **Articles 66 to 68**
Questions on organisation of the procedure: see under (o) on Articles 77 and 78.

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

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

Article 78 - Notification and refusal of the application

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

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

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

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

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

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

(b) **Article 11, paragraphs 2 and 3 - Novelty**
Should the expression "contents of earlier applications for European patents" in Article 11, paragraph 3 be aligned more closely on the Strasbourg Convention of 27.11.1963, by being replaced by "contents of applications for European patents, which have earlier filing dates ..."? (FICPI)

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

The Swedish delegation was asked in this connection to establish by the next meeting whether real difficulties had arisen in the Scandinavian countries in this context.
MINUTES
of the 7th meeting of Working Party I
held at Luxembourg from 26 to 29 January 1971

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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. HAERTEL, 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.

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(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.
Article 67 (former Article 68a)
Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed in the Rules relating to fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the filing of the application for a European patent or, if a priority has been claimed, as from the date or the earliest date of priority, the designation shall be deemed to be withdrawn.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 8, this group may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 21 December 1970
BR/70/70

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

(Articles drafted by Working Parties I, II, III and IV)
Certain delegations considered this proposal impractical in view of Article 64(3), since the European Patent Office would then incur responsibility for checking the applicant's position as regards compliance with such provisions.

The French delegation was invited to submit a note to the Working Party explaining the difficulties it saw in Article 64 in its present form.

62. Article 65: Forwarding of applications for European patents

The Working Party did not take a position on the periods shown in brackets in Article 65. It will re-examine the matter when revising those parts of the Preliminary Draft which have to be harmonised with the PCT.

63. Article 66: Requirements of the application

The note was deleted in view of the new text of Articles 66(1)(e) and 79 concerning the abstract.

64. Article 67: Designation of Contracting States

The note to paragraph 2 was deleted, since this matter comes under a provision of the Rules relating to Fees.

65. Article 69: Failure to pay the filing fee or to provide a translation

The note was deleted in view of the provisions of the Implementing Regulations.

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MINUTES
of the meeting of Working Party I
held at Luxembourg from 30 November to 2 December 1970
and of the meeting held on 3 December 1970 by that Working
Party, acting in its capacity as Co-ordinating Committee

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

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

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

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

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.
(2) For the list of participants, see Annex II.

(4) Sofern eine Gruppe von Vertragsstaaten von der Ermächtigung in Artikel 8 Gebrauch gemacht hat, kann sie vorschreiben, daß ihre Benennung nur gemeinsam erfolgen kann und daß die Benennung eines Teils der Vertragsstaaten der Gruppe als Benennung aller dieser Vertragsstaaten gilt.

Artikel 68 (früher Artikel 68b)

Zeitpunkt der Anmeldung

(1) Die europäische Patentanmeldung gilt als zu dem Zeitpunkt eingereicht, zu dem folgende Erfordernisse erfüllt sind:

a) die Anmeldung muß einen Hinweis enthalten, daß sie eine europäische Patentanmeldung darstellt, und mindestens einen Vertragsstaat gemäß Artikel 67 Absatz 1 benennen;

b) die Anmeldung muß Angaben enthalten, die es erlauben, die Identität des Anmelders festzustellen;

c) die Anmeldung muß eine Beschreibung und Ansprüche enthalten, selbst wenn diese nicht den Vorschriften dieses Übereinkommens entsprechen.

Artikel 68 (former Article 68b)

Date of the application

An application for a European patent shall be deemed to be filed on the date on which the following conditions are satisfied:

(a) an indication is given that the application is for a European patent, and at least one Contracting State is designated in accordance with Article 67, paragraph 1,

(b) information has been given identifying the applicant,

(c) the application contains a description and claims, even though they do not comply with the requirements of this Convention.

Artikel 69 (früher Artikel 68c)

Nichtentrichtung der Anmeldegebühr und fehlende Übersetzung

Die Patentanmeldung gilt als zurückgenommen,

a) wenn die in Artikel 66 Absatz 3 vorgesehene Gebühr nicht innerhalb der vorgeschriebenen Frist entrichtet wird oder

b) wenn im Fall des Artikels 34 Absatz 2 die Übersetzung der Patentanmeldung nicht innerhalb der dort genannten Frist vorgelegt worden ist.

Artikel 69 (former Article 68c)

Failure to pay the filing fee or to provide a translation

An application for a European patent shall be deemed to be withdrawn:

(a) if the fee provided for in Article 66, paragraph 3, has not been paid within the prescribed time limit, or

(b) if the translation of the application, in the case provided for in Article 34, paragraph 2, has not been produced within the time limit referred to in that Article.

Artikel 70 (früher Artikel 69)

Einheitlichkeit der Erfindung

Die europäische Patentanmeldung darf nur eine einzige Erfindung enthalten oder eine Gruppe von Erfindungen, die untereinander in der Weise verbunden sind, daß sie eine einzige allgemeine erfinderische Idee verwirklichen.

Artikel 70 (former Article 69)

Unity of invention

The application for a European patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.
(3) Die in Absatz 2 Satz 2 vorgesehene Frist beträgt:
   a) für eine europäische Patentanmeldung, für die eine Priorität nicht in Anspruch genommen worden ist, vier Monate, gerechnet vom Zeitpunkt der Anmeldung, und
   b) für eine europäische Patentanmeldung, für die eine Priorität in Anspruch genommen worden ist, vierzehn Monate, gerechnet vom Prioritätszeitpunkt.

(4) Eine europäische Patentanmeldung, deren Gegenstand unter Geheimschutz gestellt worden ist, wird nicht an das Europäische Patentamt weitergeleitet.


Artikel 66 (früher Artikel 68)
Erfordernisse der Anmeldung

(1) Die europäische Patentanmeldung muß enthalten:
   a) einen Antrag auf Erteilung des europäischen Patents;
   b) eine Beschreibung der Erfindung;
   c) einen oder mehrere Patentansprüche, die definieren, wofür Schutz begehrt wird;
   d) gegebenenfalls die Zeichnungen, auf die sich die Beschreibung oder die Patentansprüche beziehen.

(2) Die Anmeldung muß in einer der in Artikel 34 Absätze 1 und 2 vorgesehenen Sprachen abgefaßt sein.

(3) Für die europäische Patentanmeldung ist die Anmeldegebühr zu entrichten, die in der Gebührenordnung zu diesem Übereinkommen vorgeschrieben ist. Die Gebühr ist spätestens bis zum Ablauf eines Monats nach dem Zeitpunkt der Anmeldung zu entrichten.

Artikel 67 (früher Artikel 68a)
Benennung von Vertragsstaaten

(1) Im Antrag auf Erteilung des europäischen Patents sind der Vertragsstaat oder die Vertragsstaaten, in denen für die Erfindung Schutz begehrt wird, zu benennen.

(2) Für die Benennung eines Vertragsstaats ist die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebene Gebühr zu zahlen. Erfolgt die Zahlung nicht bis zum Ablauf einer Frist von 12 Monaten nach der Einreichung der europäischen Patentanmeldung oder, wenn eine Priorität in Anspruch genommen worden ist, nach dem Prioritätszeitpunkt oder, wenn mehrere Prioritäten in Anspruch genommen worden sind, nach dem Zeitpunkt der frühesten Priorität, gilt die Benennung als zurückgenommen.

(3) The period referred to in the second sentence of paragraph 2 shall be:
   a) four months as from the date of filing, for an application for a European patent for which priority has not been claimed, and
   b) fourteen months as from the date of priority, for an application for a European patent for which priority has been claimed.

(4) An application for a European patent, the subject of which has been made secret, shall not be forwarded to the European Patent Office.

(5) Applications for European patents which do not reach the European Patent Office before the end of the fourteenth month as from the filing of the application or, if a priority has been claimed, as from the date of priority, shall be deemed to be withdrawn. The application fee paid under Article 66 shall be refunded.

Artikel 66 (former Article 68)
Requirements of the application

(1) An application for a European patent shall contain:
   a) a request for the grant of a European patent;
   b) a description of the invention;
   c) one or more claims defining the protection applied for;
   d) any drawings referred to in the description or the claims.

(2) The application shall be written in one of the languages referred to in Article 34, paragraphs 1 and 2.

(3) An application for a European patent shall be subject to the payment of the filing fee prescribed in the Rules relating to fees adopted pursuant to this Convention. This fee must be paid within one month after the filing date.

Artikel 67 (former Article 68a)
Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed in the Rules relating to fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the filing of the application for a European patent or, if a priority has been claimed, as from the date or the earliest date of priority, the designation shall be deemed to be withdrawn.
FIRST PRELIMINARY DRAFT OF A CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

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

- 1970 -
which accepted Chapter II would also accept that their patent offices should act as an International Preliminary Examining Authority.

38. The Conference had a broad discussion on whether Article 113f proposed by Working Party I was necessary and, if so, on the wording to be adopted.

(a) As regards the first question, the Conference recognized the need for the Article since it provides an essential link between the Convention and the PCT. Some delegations pointed out that it might be useful, before adopting any final wording in the Preliminary Draft Convention, to discover the views third countries might take as regards the international search. Other delegations, however, felt that the European States might be in a better position if Article 113f clearly stated their intention to place all international searches on an equal footing, in order to avoid giving third countries the impression that the search carried out by the IIB would have a privileged status among the Contracting States to the Convention.
X

Articles 113a to 113g

International application pursuant to the Patent Co-operation Treaty (PCT)

(Report by the German delegation: BR/24/69)

37. On the subject of Article 113b, the French delegation observed that, pursuant to paragraph 2, the European Patent Office would act as an International Preliminary Examining Authority. In view of the intentions expressed by a number of patent offices from States which were to take part in the European system for the grant of patents, these offices would also be International Preliminary Examining Authorities under the PCT. Such a situation was no doubt perfectly compatible with the PCT draft, but it would nonetheless mean that several routes would be open for applicants to obtain an international preliminary examination. This might present certain disadvantages. The French delegation thought it would be desirable to achieve a certain concentration of the search capacity of the various States taking part in the European Patent Office.

The Conference observed that no answer could be given to this question at the present stage, since it was not yet known which States would accept Chapter I and which would accept both Chapter I and Chapter II of the PCT draft and, furthermore, it was not known whether those States
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
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- 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

.../...
Article 113b
Functions of the European Patent Office in the context of the Patent Co-operation Treaty

Working Party text

(1) Subject to the provisions set out below, the European Patent Office shall act as a receiving Office and as a designated Office within the meaning of Chapter I of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention.

(2) Subject to the provisions set out below, the European Patent Office shall act as an International Preliminary Examining Authority within the meaning of Chapter II of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention, and all other conditions laid down by the Co-operation Treaty and by this Convention for the performance of the functions of an International Preliminary Examining Authority have been met.

(3) Subject to the provisions set out below, the European Patent Office shall act as an elected Office within the meaning of Chapter II of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

SECRETARIAT

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

Articles 88 to 152
prepared by Working Party I
(24 to 28 November 1969)

compared synoptically with

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

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

BR/11 e/69 mk
designated and the applicant has not expressly asked for national patents. However, the Working Party did not think it advisable to follow this suggestion. Consequently it chose for paragraph 1 a wording according to which the European Patent Office is not automatically regarded as the designated Office when the applicant fails to make the appropriate statement within the prescribed period.

67. During the discussion of paragraph 2 it was asked whether it was consistent with the PCT in its present form that the designation of one EEC State should be taken as the designation of all the EEC States. The Working Party determined that a provision of this type was necessary for the purposes of the special agreement prepared by the EEC States (the "second Convention"), and that such a provision did not in fact conflict with the PCT if the applicant was allowed the possibility of changing the European application into a national application for the EEC States which he had designated.

68. In paragraph 3 the Working Party has dealt with the case in which Chapter II of the PCT has already entered into force for some of the designated States, while for other designated States only Chapter I of the PCT is in force. Since the European application forms a whole and can therefore only be treated by a unitary procedure, it had to be laid down that in this case the European Patent Office must act as the designated Office for all the designated States.
with Article 113e, paragraph 1:

- At what time must the applicant state whether he wants a European patent or national patents? (see point 65).

- Which provisions are to apply in the event of the applicant failing to state this? (see point 66).

65. As regards the time limit for stating that the application is for a European patent, the Working Party considered that it was desirable to prescribe the latest possible time. The time of publication of the international application seemed to be obviously too late, since it had to be clear from the international publication whether the European Patent Office has been chosen as the designated Office. It was not possible to adopt the suggestion that the time of transmittal of the international search report should be chosen since this time is not clearly defined. The Working Party finally came to the conclusion that a period of twelve months from the priority date is the safest, and agreed unanimously upon this time limit.

66. As to how the application is to be dealt with when the applicant does not make the required statement within the specified period, it was suggested that the European Patent Office should always be regarded as the designated Office when Contracting States to the European Convention are
too. In this way advance provision would also be made for the eventuality of the national patent offices of certain Contracting States being wound up in the course of time. The European Patent Office could then take over the function of receiving Office in place of the national office. For these reasons, the Working Party in no way restricted the possibility of the European Patent Office being chosen as a receiving Office.

63. The Working Party finally discussed whether, on filing an international application for which the European Patent Office could be the receiving Office, the applicant must file the application directly with the European Patent Office, or whether he can forward it to the European Office via a national office. The Working Party decided in favour of providing only for direct filing with the European Patent Office (2nd variant of paragraph 1), in order to enable the short time limit for the transmittal of the documents to the International Bureau to be met. It was in any case agreed that it must be open to every Contracting State to prescribe that international applications intended for filing with the European Patent Office must be introduced via its own national office. It is for this reason that the last sentence of paragraph 1 refers to Article 66, paragraph 2. In this case too, the European Patent Office would be responsible for examining whether the formalities of the PCT have been met.

Article 113e - The European Patent Office as a designated or elected Office

64. The following questions were discussed in connection
MINUTES

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

I.

1. The third working meeting of Working Party I was held at Luxembourg from Monday 24 to Friday 28 November 1969, with Dr. HAERTEL, President of the German Patent Office, in the Chair.

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

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

- a member of the German delegation for Articles 88 to 96 c (Examination procedure) (2),

(1) See Annex for list of those attending the meeting of the Working Party.

(2) It was originally agreed at the October meeting that the German delegation should produce a report for Articles 88 to 104.
Article 113e

The European Patent Office as a designated or elected Office

(1) The European Patent Office shall act as a designated Office within the meaning of Article 2(ii) of the Co-operation Treaty for those Contracting States to this Convention which are designated in the international application if the applicant informs the receiving Office or, where appropriate, the International Bureau provided for in that Treaty, within twelve months of the priority date, that he wishes to obtain a European patent for these States.

(2) In so far as any group of Contracting States has made use of the authorisation under Article 8a, such group may prescribe that it may only be designated as a whole and that the designation of some only of the States in the group shall be taken as the designation of all of these States, if the applicant has indicated that he wishes to obtain a European patent for the designated State or States of the group.

(3) The European Patent Office shall act as an elected Office within the meaning of Article 2(iii) of the Co-operation Treaty if the applicant has elected any of the designated States referred to in paragraph 1 or 2 for which Chapter II of that Treaty has entered into force.

(4) The fee provided for in Article 68a, paragraph 2, shall not be payable for international applications.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

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- Secretariat -

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

Articles 88 to 152

prepared by Working Party I
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compared synoptically with

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

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BR/11 e/69 mk
is available to act as an elected Office. The requirements to be met for the European Patent Office to act as an elected Office in an individual case are set out in Article 113e, paragraph 3.

**Article 113c – The European Patent Office as a receiving Office**

60. No comment.

**Article 113d – Filing and transmittal of the international application**

61. The Working Party agreed unanimously that, for an international application, the applicant has the choice of using either the European Patent Office or a national office as the receiving Office within the meaning of the PCT. The Working Party has expressed this in the opening words of paragraph 1. In the Working Party's opinion this does not pre-judge the question for which countries protection can be requested via an international application having the European Patent Office as receiving Office.

62. The Working Party discussed whether the European Patent Office can also be a receiving Office when the applicant does not want a European Patent, but only desires protection in States which are not Contracting States to the European Convention, and gave an affirmative answer. The Working Party did not wish to exclude this possibility, but desired instead to leave the applicant the choice between the national patent office and the European Patent Office in this case.

BR/12 e/69 ern/PA/che
CHAPTER III\textsuperscript{bis}

INTERNATIONAL APPLICATION PURSUANT TO THE PATENT CO-OPERATION TREATY

57. The Working Party noted, as regards Chapter III\textsuperscript{bis} as a whole, that it could only lay down the principles for the relations between the Convention and the PCT. Further details could not be worked out until later, when the text of the PCT has been finally adopted. This would be particularly true if the PCT were to allow the Contracting States the possibility of adopting additional rules in certain cases. It would then have to be examined whether these additional rules should be included in the Convention itself, or in the Implementing Regulations.

Article 113a - Application of the Patent Co-operation Treaty

58. No comment.

Article 113b - Functions of the European Patent Office in the context of the Patent Co-operation Treaty

59. The Working Party agreed that paragraph 3 simply sets out the conditions under which the European Patent Office
MINUTES
of the meeting of Working Party I
(Luxembourg, 24 to 28 November 1969)

I.

1. The third working meeting of Working Party I was held at Luxembourg from Monday 24 to Friday 28 November 1969, with Dr. HÆRTEL, President of the German Patent Office, in the Chair.

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

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

- a member of the German delegation for Articles 88 to 96 c (Examination procedure) (2),

(1) See Annex for list of those attending the meeting of the Working Party.

(2) It was originally agreed at the October meeting that the German delegation should produce a report for Articles 88 to 104.

BR/12 e/69 kel/PA/mk
Article 113b

Functions of the European Patent Office in the context of the Patent Co-operation Treaty

Working Party text

(1) Subject to the provisions set out below, the European Patent Office shall act as a receiving Office and as a designated Office within the meaning of Chapter I of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention.

(2) Subject to the provisions set out below, the European Patent Office shall act as an International Preliminary Examining Authority within the meaning of Chapter II of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention, and all other conditions laid down by the Co-operation Treaty and by this Convention for the performance of the functions of an International Preliminary Examining Authority have been met.

(3) Subject to the provisions set out below, the European Patent Office shall act as an elected Office within the meaning of Chapter II of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

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

Articles 88 to 152

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

compared synoptically with

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

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

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34. As regards the consequences of failure to pay designation fees, the Working Party adopted a system similar to that laid down in Article 68 (see point 31 above).

35. The Working Party examined the question of whether the European patent could be requested for one Contracting State only (see also Article 2a, doc. BR/6/69). It concluded that it was advisable, subject to the provisions of paragraph 4, to allow the designation of a single State, since it would be easy for an applicant to get round any prohibition of the designation of a single Contracting State. What is more, the same principle has been adopted in the PCT plan.

**Article 68b - Date of the application**

36. This provision incorporates the gist of Article 68, paragraph 3, of the 1965 Draft. In addition, in order to incorporate a similar provision of the PCT plan, it specifies that the application must contain information identifying the applicant.

**Article 68c (new) - Failure to pay the filing fee or to provide a translation**

37. Cf. 31 above.

**Article 69 - Unity of invention**

38. The wording of this provision is analogous to that of the corresponding rule of the PCT plan.

**Article 70 - Disclosure of the invention**

39. The Working Party agreed that the Implementing Regulations could lay down certain details concerning the formulation of applications and, in particular, of the description and the claims similar to those laid down in the text which have been drafted for revising the Strasbourg Convention on the unification of certain points of Substantive Law relating to Patents for Invention.

**Article 71 - Requirements of the Implementing Regulations**

40. No comment.

BR/10 e/69 kel/PA/mk
patent with the same office up to the last day of the 12 month priority period, claiming the priority of the first application in support of the later application. If, in such a case, the applicant were to add new elements as compared with the first application, the competent authorities would then only have two months in which to examine whether the new application necessitates the invention being made secret. One delegation reserved its position as regards the period provided for in paragraph 2a (b) for this reason.

30. It was agreed that the provisions of this Article which are shown in square brackets will have to be re-examined by the Working Party in the light of the discussions to be held on further new Articles which will deal with the links between the PCT plan and this Convention.

Article 68 - Requirements of the application

31. The Working Party thought it to be advisable to lay down a time limit for the payment of filing fees in paragraph 2. The consequences of failure to pay are dealt with in the new Article 68c.

32. The Working Party reserved examination of whether the applicant should be required to submit an abstract of the application, as provided for in the PCT plan. It felt that this matter could be re-examined in the light of comments from the interested circles.

Article 68a (new) - Designation of Contracting States

33. This new provision follows the broad outline of the corresponding provisions of the PCT plan. The Working Party was of the opinion that applicants should not have to follow two different designation systems.

BR/10 e/69 che
MINUTES

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

I

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

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

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

- a member of the Swiss delegation for Articles 24 to 65 (organisation of the departments - register, publications, classification - relations with national authorities);

(1) See Annex I for list of participants in the meeting of the Working Party.
Article 68a (new)

Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed in the Rules relating to fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the filing of the application for a European patent or, if a priority has been claimed, as from the date or the earliest date of priority, the designation shall be deemed to be withdrawn.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 68a, this group may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

Note:

The question of what is to be done in the event of payment of only part of the fee provided for in paragraph 2 has been left to the Rules relating to fees. A provision on the lines of Rule 15.5 of the PCT-draft will be adopted.
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 54 to 96
prepared by Working Party I
(14 October to 17 October 1969)

compared synoptically with

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

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

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Article 149

Joint designation

(1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.

(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.