Rule 40 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.
Regel 4o

MPU

Prüfung bestimmter Formerfordernisse

<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr. im Entwurf/Dokument</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstelle im Dokument</th>
</tr>
</thead>
<tbody>
<tr>
<td>BR/134/71</td>
<td>77 Nr. 1</td>
<td>BR/135/71</td>
<td>Rdn. 38</td>
</tr>
</tbody>
</table>

Dokumente der MDK

<table>
<thead>
<tr>
<th>E 1972</th>
<th>R 4o</th>
<th>M/19</th>
<th>S. 180</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/22</td>
<td>S. 258+260</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/47/I/II/III</td>
<td>S. 13</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/124/I/R 8</td>
<td>S. 10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/146/R 9</td>
<td>R 40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/PR/I</td>
<td>S. 97 92</td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/PR/G</td>
<td>S. 201 185</td>
</tr>
</tbody>
</table>
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
morality should not be patentable, then if applications containing statements contrary to "ordre public" or morality should not be published either. It thus requested the rewording of paragraph 2 to read as an obligation and omission of the possibility of furnishing upon request a copy of the passages objected to (M/54/I/II/III, page 7 — see also points 44 — 46 above).

2227. The Netherlands delegation supported this request. With reference to Article 51 (53)(a), it considered it logical that the Receiving Section should examine whether the publication would be contrary to "ordre public" or morality.

2228. The Austrian delegation also supported the request. However, it wondered what should happen if, in the procedure up to grant, the European Patent Office did not object to the invention as being contrary to "ordre public" or morality and thus authorised its publication, but objected to its publication later in the procedure up to grant. In this case, to revoke the patent would be too severe a penalty.

2229. The United Kingdom delegation was, at that stage, in favour of retaining the present wording unchanged, since it would be difficult to oblige the European Patent Office to carry out such an examination. Rather, the Receiving Section should be relied upon to discover any objectionable passages in the course of a rapid examination of the application and to exclude them from the publication.

2230. The delegation of the International Chamber of Commerce raised the point that the Swiss delegation's request that the European Patent Office should not have to furnish a copy of the passage objected to could apply only to statements contrary to "ordre public" or morality within the meaning of paragraph 1(a), and not to disparaging statements within the meaning of (b).

2231. The delegation of the Federal Republic of Germany felt that only such statements as were contrary to "ordre public" or morality should be excluded compulsorily from the publication, but not disparaging statements.

2232. The Swiss delegation thereupon limited its request to the effect that only such statements or other matter contrary to "ordre public" or morality would have to be excluded from the publication; and only insofar as was this case could the European Patent Office furnish no copies of the words omitted. As for disparaging statements, they should continue to be covered by the present optional provision.

2233. The United Kingdom waived its original reservation on this request. However, it pointed out that Rule 34 was based on Article 21, paragraph 6, of the PCT. Furthermore, it felt that the statements excluded from the publication in this way should also form part of the state of the art, pursuant to Article 52 (54), paragraph 3.

2234. The Chairman opposed this delegation over the last point, on the grounds that only statements actually published could be prejudicial to novelty within the meaning of the said provision.

2235. The Swiss delegation's request, thus limited, was accepted by the Main Committee.

2236. In connection with the Chairman pointed out that in the Main Committee's view, the Receiving Section had to examine whether the application was in keeping with Rule 34, paragraph 1(a), although if this were not so, it should not refuse the application, but merely omit from the application the statements to which it objected.

**Rule 35 — General provisions governing the presentation of the application documents**

2237. The Main Committee referred the proposals by the United Kingdom delegation for the wording of paragraphs 8 and 12 (M/40, points 28 and 29) to the Drafting Committee.

---

**Rule 38 — Declaration of priority and priority documents**

2238. The Main Committee referred a proposal by the Netherlands delegation for the wording of paragraph 1 (M/32, point 30 and M/52/I/II/III, point 20) to the Drafting Committee.

2239. The Main Committee adopted a proposal by the Netherlands delegation with regard to paragraph 4 (M/52/I/II/III, point 20) which was related to the amendment to Article 86 (88), paragraph 1 (see point 305), which had already been decided.

**Rule 40 — Examination for certain physical requirements**

2240. The delegation of the Federal Republic of Germany, supported by the Swiss delegation, proposed deleting the reference to Rule 36, paragraph 1, on the grounds that it was incorrect (M/47/I/II/III, point 26).

2241. The Main Committee agreed to this proposal.

**Rule 41 — Rectification of deficiencies in the application documents**

2242. With reference to paragraph 2, the FICPI delegation asked whether an incorrect indication of the date or State of the first filing could be rectified.

2243. The Chairman replied that an incorrect indication (e.g. the 32nd day of a month or indication of a State in an unrecognisable form) could be rectified pursuant to Rule 89 (88). He pointed out that the Main Committee shared this view.

2244. The Main Committee referred a proposal by the Norwegian delegation for the wording of paragraph 3 (M/60/I, page 6) to the Drafting Committee.

**Rule 42 — Subsequent identification of the inventor**

2245. Following its decision on the matter of identifying the inventor, the Main Committee amended Rule 42, paragraph 1 (see point 2038) in accordance with the proposal by the Federal Republic of Germany (M/118/I).

**Rule 43 — Late-filed or missing drawings**

2246. The delegation of the Federal Republic of Germany, supported by the United Kingdom delegation, proposed amending paragraph 1 to the effect that where drawings were filed late the Receiving Section would not re-date the application to the date on which the drawings were filed if the applicant did not delete the references to the drawings, but that late-filed drawings and the references to them would be deemed to be deleted, unless the applicant himself requested that the application be re-dated (M/47/I/II/III, point 27, and M/64/I, page 3).

2247. The Main Committee adopted this proposal.

2248. The Swiss delegation suggested that if drawings and references to them were deemed to be deleted, the European Patent Office could also publish them in full, but indicate on them that the relevant parts were deemed to be deleted.

2249. This suggestion was supported by the delegation of the Federal Republic of Germany.

2250. The United Kingdom delegation made the point that in such cases the references to a drawing which were deemed to be deleted should be published, but not the drawing itself.

2251. The Chairman confirmed that he also felt that the drawing itself should not be published, but rather the reference to it, with the indication that it was deemed to be deleted.
Contents

Introduction 7

Report on the meeting of the Plenary Opening Meeting (M/PR/K/1) 9

Minutes of the proceedings of the Credentials Committee (M/PR/V) 25

Minutes of the proceedings of Main Committee I (M/PR/I) 27

Minutes of the proceedings of Main Committee II (M/PR/II) 109

Minutes of the proceedings of Main Committee III (M/PR/III) 155

Minutes of the proceedings of the Committee of the Whole (M/PR/G) 163

Report on the meeting of the Plenary Final Meeting (M/PR/K/2) 199

List of participants 211
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 40

Examination for certain physical requirements

The physical requirements which the European patent application must satisfy pursuant to Article 91, paragraph 1(b), shall be those prescribed in Rule 32, paragraphs 1 and 2, Rule 35, paragraphs 2 to 11 and 14 and Rule 36, paragraphs 2 and 4.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 9
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee
Subject: Implementing Regulations: Rules 27 to 53
Rule 40

Examination for certain physical requirements

The physical requirements which the European patent application must satisfy pursuant to Article 90, paragraph 1(b), shall be those prescribed in Rule 32, paragraphs 1 and 2, Rule 35, paragraphs 2 to 11 and 14 and Rule 36, paragraphs 2 and 4.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 22 September 1973
M/124/I/R 8
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 21 SEPTEMBER 1973

Articles of the Convention:

Article 96
Article 101
Article 157
Article 161

Rules of the Implementing Regulations:

Rule 29
Rule 32
Rule 35
Rule 38
Rule 40
Rule 41
Rule 43
Rule 46
Rule 50
Rule 52
Rule 59
In accordance with the proposals by UNICE and CRIP in P/19, No. 36 and M/22, No. 26:

"... and Rule 36, paragraphs 2 and 4."

On the basis of the proposal by PICPI in M/15, No. 63:

"(1) ... the Receiving Section shall inform the applicant that the drawings and the references to the drawings in the European patent application shall be deemed to be deleted unless the applicant requests within a period of one month that the application be re-dated to the date on which the drawings were filed."

"(1) ... The same shall apply where the European search report and the abstract are published separately."

The present last sentence should be deleted.
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
unter anderem auf die Regel 36 Absatz 1 zu verweisen. In dieser letztgenannten Regel wird wiederum auf die Regeln 27 und 29 sowie 32 bis 33 verwiesen. Einige dieser Regeln enthalten jedoch materiell-rechtlich nicht nur Formvorschriften.

Regel 44 Absatz 2 — Inhalt des europäischen Recherchenberichts

27 CIFE beantragt, die Worte „soweit erforderlich“ zu streichen. Seines Erachtens ist es nämlich für den Anmelder stets wichtig zu wissen, welche Seiten, Spalten und Zeilen der Schriftstücke Anlaß zu deren Zitierung gegeben haben.

Artikel 14 und Regel 2 Absatz 1 — Sprachen des Europäischen Patentamts

28 Hat ein an einem mündlichen Verfahren vor dem Europäischen Patentamt Beteiligter die Absicht, sich einer anderen Amtssprache des Patentamts als der Verfahrenssprache zu bedienen, so sollte nach Ansicht des CIFE der betreffende Beteiligte gehalten sein, dies dem EPA schon einen Monat und nicht erst zwei Wochen vor der Anhörung mitzuteilen. Noch zweckmäßig dürfte es wohl sein, bei jedem Beteiligten so zu verfahren, der sich einer der Amtssprachen eines der Vertragsstaaten bedienen möchte.

29 Schließlich sollte jeder Beteiligte, der sich einer anderen Sprache als der Verfahrenssprache bedient, die Kosten für die Übersetzung übernehmen müssen, aber nicht für die Übersetzung selbst Sorge tragen; dies sollte dem EPA überlassen werden, zumindest in den Fällen, in denen die verwendete Sprache eine andere Amtssprache des Patentamts ist, damit die Qualität der Übersetzung einheitlich und von möglichst hohem Niveau ist.

Artikel 18 Absatz 2 — Einspruchsabteilungen

30 Der CIFE vertritt die Auffassung, daß das Mitglied der Einspruchsabteilung, das unter Umständen am Erteilungsverfahren beteiligt war, weder mit der Bearbeitung des Einspruchs noch mit dem Vorsitz der Abteilung betraut werden dürfte.

Artikel 96 und Regel 70 — Feststellung eines Rechtsverlusts

31 Falls jemand, der von einem Rechtsverlust betroffen ist, die Auffassung vertritt, daß die Feststellung des Europäischen Patentamts nicht zutrifft, und das Patentamt sich dieser Auffassung anschließt und demnach das Verfahren fortsetzt, dürfte es wünschenswert sein, daß der Betreffende hiervon unterrichtet wird.

reference to Rule 36, paragraph 1. The latter refers to Rules 27 and 29 and Rules 32 to 35. Some of these Rules concern requirements of substance rather than of mere form.

Rule 44, paragraph 2 — Content of the European search report

27 CEIF requests deletion of the words “If necessary,” as it is considered that it will always be important for the applicant to know what are the pages, columns and lines of the documents cited that have motivated citation of these documents.

Article 14 and Rule 2, paragraph 1 — Languages of the European Patent Office

28 When a party in an oral procedure before the European Patent Office wishes to use one of the other official languages of the Office rather than the language of the proceedings, it seems desirable to CEIF that said party be required to notify the EPO one month rather than two weeks before the oral proceedings. It also seems even more desirable that the same should apply to any party wishing to use one of the official languages of the Contracting States.

29 Also, it seems preferable that a party using a language other than the language of the proceedings should bear the cost of interpretation but not assume responsibility for interpretation, which would be left to the European Patent Office, at any rate when the language used is one of the other official languages of the Office, so as to ensure translation of a uniform and if possible high quality.

Article 18, paragraph 2 — Opposition Divisions

30 CEIF thinks that the member of the Opposition Division who may have participated in proceedings for the grant of the patent should not be given the task of examination of the opposition, nor should he chair the Division.

Article 96 and Rule 70 — Noting of loss of rights

31 In a case where a person concerned considers that the finding of loss of right of the European Patent Office is inaccurate and the Office accepts his views and consequently continues the proceedings, it seems desirable that the person concerned be informed accordingly.

Artikel 161 — Stufenweise Ausdehnung des Tätigkeitsbereiches des Europäischen Patentamts


In Artikel 161 Absatz 2 sollten daher nach den Worten „weiter beschränken“ folgende Worte eingefügt werden:
„jedoch dürfen keine Maßnahmen getroffen werden, durch die die Erstellung des europäischen Recherchenberichts aufgeschoben wird“.

Regel 28 — Erfordernisse europäischer Patentanmeldungen betreffend Mikroorganismen

25 Nach der Regel 28 ist vorgesehen, daß ein Muster des Mikroorganismus spätestens am Tag der Einreichung der entsprechenden europäischen Patentanmeldung hinterlegt und der Öffentlichkeit spätestens am Tag der ersten Veröffentlichung der Anmeldung unwiderruflich zugänglich gemacht werden muß.


Um das offensichtliche Interesse des Anmelders mit dem Recht der Dritten auf Unterrichtung in einer Weise miteinander in Einklang zu bringen, die der Verfahrensweise der wichtigsten Industrielandländer im wesentlichen entspricht, schlägt der CIFE vor, die Regel 28 entsprechend dem unter Nummer 56 wiedergegebenen Text zu fassen.

Regel 40 — Prüfung bestimmter Formerfordernisse

26 Nach Ansicht des CIFE ist es falsch, in dieser Regel always on a confidential basis for the recipient when files as referred to in Article 128, paragraph 1, are concerned (unpublished applications). This could be done by adding to Rule 99, paragraph 2, after "Such communications shall be effected in accordance with the conditions laid down in Article 128," the words "in particular, files or copies of files of applications as yet unpublished may only be communicated to third parties with the agreement of the applicant".

Article 161 — Progressive expansion of the field of activity of the European Patent Office

24 The expression "further restrict the processing of a European patent application" in paragraph 2 is ambiguous. In the opinion of CEIF, there should under no conditions be any restriction to the novelty search, even and especially if there is as yet no examination for the application concerned.

In Article 161, paragraph 2, the following should accordingly be inserted after "... provided for in paragraph 1,":
"barring adjournment of the European search report;".

Rule 28 — Requirements of applications relating to micro-organisms

25 Rule 28 states that a sample of the micro-organism is to be deposited not later than the date of filing of the application, to be available to the public irrevocably not later than the date of publication.

Such a system would be a new departure in respect of all existing systems, such as in the United States, Japan, Germany and the Netherlands. This would lead to serious difficulties which CEIF considers important enough to detail under points 47 to 55 below.

In order to reconcile evident interests of the applicant and the right of others to obtain information, essentially along the lines adopted by the main industrial nations, CEIF proposes to develop Rule 28 as set out under point 56 below.

Rule 40 — Examination for certain physical requirements

In the opinion of CEIF this Rule wrongly makes
STELLUNGNAHME DES
CIFE
Rat der Europäischen Industrieverbände

COMMENTS BY
CEIF
Council of European Industrial Federations

PRISE DE POSITION DU
CIFE
Conseil des fédérations industrielles d'Europe

(1) English translation submitted by CEIF
abgeändert werden sollte. Die gewünschten Änderungen sind in der Anlage 3 erläutert.

Regel 30 (a)

35 Es wird vorgeschlagen, die Worte „besonders angepaßtes“ zu streichen.

Regel 40

36 Es ist wünschenswert, die Regel 40 so zu verbessern, daß sie keine Bezugsnahme auf die gesamte Regel 36 (1) enthält. Die Regel 36 (1) nimmt ihrerseits nämlich Bezug auf Vorschriften, die den Bereich der reinen Formvorschriften überschreiten.

Regel 41

37 Es besteht Anlaß, eine größere Freiheit für die Korrektur der Prioritätsangaben einzuräumen, d.h. der Anmelder sollte eine Frist von zwei Monaten haben, um solche Korrekturen vornehmen zu können.

Regel 70 (2)

38 Es ist unumgänglich, daß das Europäische Patentamt dem Betroffenen mitteilt, ob es seinem Antrag stattgegeben hat, damit er die Weiterbehandlungsgebühr entrichten kann.

Regel 99 (3)


ANLAGE 1

40 Vorschlag für eine Neufassung des Artikels 162

„Zugelassene Vertreter während einer Übergangszeit

(1) Während einer Übergangszeit, deren Ende der Verwaltungsrat bestimmt, kann in Abweichung von Artikel 134 Absatz 2 in die Liste der zugelassenen Vertreter jede natürliche Person eingetragen werden, die die folgenden Voraussetzungen erfüllt:

a) Die Person muß ihren Geschäftssitz oder Arbeitsplatz im Gebiet eines Vertragsstaats haben;

amended. The amendments desired are set forth in Annex 3.

Rule 30(a)

35 It is proposed that the words “specially adapted” be deleted.

Rule 40

36 The wording of Rule 40 should be improved so that it does not refer to the whole of Rule 36, paragraph 1, since the latter refers to provisions which go beyond simple physical requirements.

Rule 41

37 Greater freedom should be granted as concerns the correction of statements as to priority, i.e. applicants should be allowed two months in which to remedy deficiencies.

Rule 70, paragraph 2

38 The European Patent Office must inform the person concerned of whether it has complied with his request so that he may pay the fee for further processing.

Rule 99, paragraph 3

39 UNICE considers that the Convention should include a provision laying down that all the departments concerned must observe the principle of confidentiality.

ANNEX 1

40 Proposal for a new text for Article 162

„Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must have his place of business or employ-
STELLUNGNAHME DER
UNICE
Union der Industrien der Europäischen Gemeinschaft

COMMENTS BY
UNICE
Union des Industries de la Communauté européenne

PRISE DE POSITION DE
L’UNICE
Union des Industries de la Communauté européenne

(1) Deutsche Übersetzung der Stellungnahme und der Anlage 2 vorgelegt von UNICE
(2) Annex 3 to these Comments submitted by UNICE in English
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
VIERTER TEIL
AUSFÜHRUNGSVORSCHRIFTEN ZUM VIERTEN TEIL DES ÜBEREINKOMMENS

Kapitel I
Prüfung durch die Eingangsstelle

Regel 39
Mitteilung aufgrund der Eingangsprüfung

Genügt die europäische Patentanmeldung nicht den Erfordernissen des Artikels 78, so teilt die Eingangsstelle die festgestellten Mängel dem Anmelder mit und weist ihn darauf hin, daß die Anmeldung nicht als europäische Patentanmeldung behandelt wird, wenn er die festgestellten Mängel nicht innerhalb eines Monats beseitigt. Beseitigt der Anmelder rechtzeitig die festgestellten Mängel, so teilt ihm die Eingangsstelle den Anmeldetag mit.

Vgl. Artikel 88 (Eingangsprüfung)

Regel 40
Prüfung bestimmter Formerfordernisse

Die Formerfordernisse, denen eine europäische Patentanmeldung nach Artikel 90 Absatz 1 Buchstabe b genügen muß, sind die in Regel 32 Absätze 1 und 2, Regel 35 Absätze 2 bis 11 und 14 sowie in Regel 36 Absätze 1, 2 und 4 vorgeschriebenen Formerfordernisse.

Vgl. Artikel 90 (Formprüfung)

PART IV
IMPLEMENTING REGULATIONS TO PART IV OF THE CONVENTION

Chapter I
Examination by the Receiving Section

Rule 39
Communication following the examination on filing

If the European patent application fails to meet the requirements laid down in Article 78, the Receiving Section shall communicate the disclosed deficiencies to the applicant and inform him that the application will not be dealt with as a European patent application unless he remedies the disclosed deficiencies within one month. If he does so, he shall be informed of the date of filing.

Cf. Article 88 (Examination on filing)

Rule 40
Examination for certain physical requirements

The physical requirements which the European patent application must satisfy pursuant to Article 90, paragraph 1(b), shall be those prescribed in Rule 32, paragraphs 1 and 2, Rule 35, paragraphs 2 to 11 and 14, and Rule 36, paragraphs 1, 2 and 4.

Cf. Article 90 (Examination as to formal requirements)

Regel 41
Beseitigung von Mängeln in den Anmeldungsunterlagen

(1) Werden aufgrund der in Artikel 90 Absatz 1 Buchstaben a bis d und g vorgeschriebenen Prüfung Mängel der europäischen Patentanmeldung festgestellt, so teilt die Eingangsstelle dies dem Anmelder mit und fordert ihn auf, die Mängel innerhalb einer von ihr zu bestimmenden Frist zu beseitigen. Die Beschreibung, die Patentansprüche und die Zeichnungen können nur insoweit geändert werden, als es erforderlich ist, um die festgestellten Mängel gemäß den Bemerkungen der Eingangsstelle zu beseitigen.

(2) Absatz 1 ist nicht anzuwenden, wenn der Anmelder, der eine Priorität beansprucht, bei Einreichung der europäischen Patentanmeldung den Tag oder Staat der früheren Anmeldung nicht angegeben hat.

Rule 41
Rectification of deficiencies in the application documents

(1) If the examination provided for in Article 90, paragraph 1(a) to (d) and (g), reveals deficiencies in the European patent application, the Receiving Section shall inform the applicant accordingly and invite him to remedy the deficiencies within such period as it shall specify. The description, claims and drawings may be amended only to an extent sufficient to remedy the disclosed deficiencies in accordance with the observations of the Receiving Section.

(2) Paragraph 1 shall not apply where the applicant, while claiming priority, has omitted to indicate on filing the European patent application the date or State of first filing.
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
38. With regard to paragraph 2(e), quite apart from the question of an examination for obvious deficiencies, the Working Party adopted the point of view that there should be a special provision containing all the requirements to be met. It therefore inserted a new provision in the Implementing Regulations (Re. Article 77, No. 1).

39. At the proposal of the United Kingdom delegation, the Working Party also inserted a new sub-paragraph (e bis) in paragraph 2 to the effect that the request for the grant of the patent, which has to meet certain requirements under Re. Article 66, No. 1, IR, should also be examined with regard to these requirements, in so far as this has not already been done in the examination on filing (with regard to Re. Article 66, No. 1, paragraph 2(a), (c) and (h)).

With regard to the requirement that the applicant should state, where a priority is claimed, the date and state of filing of the earlier application (Re. Article 66, No. 1, paragraph 2(g)), the Working Party agreed that the consequence of not stating this was already covered by Article 75, paragraph 1, of the Convention; the insertion of sub-paragraph (e bis) in Article 77, paragraph 2, would make it clear that this requirement would be examined by the Receiving Section.

40. In this connection the Swiss and French delegations drew attention to the following problem. During the examination for certain deficiencies it might prove necessary to decide on technically difficult questions. The example was given of the Receiving Section having to
MINUTES

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

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

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

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

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

BR/135 e/71 prk
(Unrevised translation)
Re. Article 77
No. 1

Examination for certain physical requirements.

The physical requirements which the European patent application must satisfy pursuant to Article 77, paragraph 2(e), of the Convention, shall be those prescribed in articles...
(Re. Article 66, No. 4, paragraphs 1 and 2
Re. Article 66, No. 7, paragraphs 2 to 11
and 14, Re. Article 66, No. 8 and 9).
FIRST PRELIMINARY DRAFT

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 22 October 1971 -
5. Filing and requirements of the European patent application (Articles 73-84 and Rules 24-37)

During its discussion of Article 73, the Main Committee was faced with the question of which office of the European Patent Office the European patent application should be filed at. In the interests of the applicant, it gave him the choice of Munich or The Hague and amended Article 73, paragraph 1(a) and Article 74, paragraph 1, accordingly.

In connection with the requirements of the application under Article 76, the Main Committee examined the need to file the abstract. It considered that if this were not done, there would be a loss of information, and therefore, maintained this requirement. It also decided to prescribe the compulsory publication of the abstract with the search report under Article 92.

Closely connected with the substantive requirement of disclosing the invention under Article 81 was the problem of making special provisions for European patent applications covering micro-organisms. It was not contested that the relevant provision, Rule 28, should lay down that micro-organisms which are not available to the public should be deposited with a recognised culture collection no later than at the time of filing the application, that the micro-organism should be adequately described in the application, and that the culture collection should be identified either in the application itself or within a short time thereafter. It was also agreed that the disclosure of the micro-organism should be subject to certain measures to protect the applicant. Views differed, however, on the latest time at which the micro-organism should be made available to the public. Contrary to the draft of Rule 28, which provided for this to be not later than the date of publication of the application, it was proposed that the applicant should not be obliged to make the micro-organism available to the public until the time of the grant of the patent, at which point the provisional protection would be lost. The main arguments put forward in defence of this standpoint were that the approach contained in the draft laid an unfair burden on such applicants in comparison to inventors in other fields of technology by requiring the subject-matter of the invention to be deposited, and that the applicant was forced to reveal knowledge, thus making it easier for his invention to be copied at a time when it was not yet definite whether or not the application would lead to the grant of a patent.

Those who advocated the approach set out in the draft argued that the public could be considered to be sufficiently informed about the subject-matter of the invention only if the micro-organism were made available to the public at the time of the publication of the application; furthermore, it was only by such a disclosure that the micro-organism could be comprised in the state of the art under Article 52, paragraph 3, with the result that this was the only means whereby duplication of patents could be avoided and legal uncertainty in relation to national patent applications could be removed.

After detailed consideration of the various arguments for and against the two approaches, the Main Committee decided by a majority to retain the solution proposed in the draft and to lay down that the micro-organism should be made available to the public at the latest at the date of publication of the European patent application. At the same time, it added provisions to Rule 28 which gave the applicant far-reaching guarantees against misuse of the disclosed micro-organism during the existence of the provisional protection conferred by the application and the definitive protection of the European patent. These guarantees consisted in requiring that any third party who had access to a sample of the culture would have to make certain undertakings vis-à-vis the culture collection or the applicant for or proprietor of the patent in respect of the ways in which he used the culture. On the other hand, the Main Committee decided, in the same way as in respect of Article 67, not to adopt a procedural rule which would have obliged a third party who used a micro-organism disclosed by the applicant to prove that the culture concerned was not that described in the application, even though the reversal of the burden of proof would have reinforced the legal position of the applicant even further. It was also made clear in Rule 28 that the built-in safety clauses in favour of the applicant did not prejudice any national provisions concerning compulsory licences or uses in the interest of the State. The details governing the deposit, storage and availability of cultures were left to agreements to be concluded between the President of the European Patent Office and the recognised culture collections.


Apart from the amendment to Article 85, paragraph 5, already dealt with above in the chapter on "language questions", the provisions of Articles 85-87 concerning priority led to few amendments. It may be mentioned that the extension of the priority right to States which are not members of the Paris Convention, in accordance with an amendment decided upon by the Committee in the interests of the Contracting States, will apply only if international reciprocity is granted not only in relation to European but also in relation to national applications by Contracting States.

7. Procedure up to grant (Articles 88-97/Rules 39-55)

In so far as individual provisions of Articles 88-97 and the corresponding Rules 39-55 concerning the procedure up to grant have already been discussed in connection with language questions, identification of the inventor and the abstract, reference should be made to the appropriate Chapters 1, 3 and 5.

During the discussion of Articles 93/94 the Committee confirmed the specified period within which requests for examination may be filed and also the possibilities for extending the time limits, both of which are the result of well thought out compromises. The Committee refused in particular to lay down in Article 94 an absolute right for third parties to request examination in the event of the Administrative Council extending a time limit. The need for such a right for third parties depends largely on the length of time by which the period is extended.

8. Opposition procedure (Articles 98-106/Rules 56-64)

The provisions concerning opposition procedure gave rise to very little discussion. A proposal to delete the opposition fee in Article 98, paragraph 1, on the ground that the opponent was to be considered as a person helping to establish the legal facts of the matter, was rejected by the majority. If the fee were to be dispensed with, dilatory opposition would be encouraged. Furthermore, the interests of the opponent are his main incentive and lastly, pursuant to Article 114, any person who wishes to help to establish the legal facts of the matter may present, free of charge, observations concerning the patentability of an invention in respect of which an application has been filed. By a vast majority the Committee also refused to shorten to six months the nine-month opposition period laid down in Article 98, paragraph 1, which had been adopted as a compromise solution at an earlier stage in the negotiations.

In Article 98 and in Rule 61 the Committee added new provisions which also make possible the filing of notice of opposition and consequently the continuation of opposition proceedings when the proprietor has completely surrendered the European patent or when it has lapsed for all the