Rule 81 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.
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\[86/187\]
designated Contracting States. The valid interests of an assumed infringer in the retroactive revocation of the patent may thus be upheld. In this connection it may be noted that this amendment has raised the opposition proceedings another step towards the level of actual revocation proceedings.

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

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

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

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

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

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

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

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

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

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

REPORT

by Mr. Paul Braendli, Lic. iur.
Vice-Director of the Federal Intellectual Property Office (Switzerland)

on the results of Main Committee I's proceedings

ANNEX II

REPORT

by Mr. R. Bowen
Assistant Comptroller, British Patent Office

on the results of Main Committee II's proceedings

ANNEX III

REPORT

by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)

on the results of Main Committee III's proceedings

ANNEX IV

REPORT

by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office

on the results of the Credentials Committee's proceedings

with regard to full powers for signing the Convention
2323. The Chairman invited the Committee to express its views on the Swiss proposal that the person concerned should not be able to invoke the omission of the communication but that in the event of an incorrect communication he should not suffer any detriment as a result.

2324. The Austrian delegation supported the Swiss proposal. 2325. The Netherlands delegation did not think it could be the responsibility of the European Patent Office to calculate the time limits for appellants or for any other parties. It thought it would suffice if the European Patent Office drew parties’ attention to the provisions of Article 107. If such an arrangement were to be adopted, the Swiss and Austrian delegations’ proposals would be superfluous, since in practical terms there could not be any incorrect indications.

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

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

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

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

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

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

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

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

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

Rule 70 (69) — Noting of loss of rights

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

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

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

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

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

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

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

2341. The Committee agreed to this proposal.

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

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

2343. The delegation of the Federal Republic of Germany felt it advisable to stipulate in paragraph 1 that the minutes should also contain details of the place and date of the proceedings and the names of those taking part.

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

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

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

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

Rule 82 (81) — Notification to representatives

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

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

Rule 85 (84) — Duration of time limits

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

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

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

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

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

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 24

Notification to representatives

(1) If a representative has been appointed notifications shall be addressed to him.

(2) If several such representatives have been appointed for a single interested party, notification to any one of them shall be sufficient.

(3) If several interested parties have a common representative notification of a single document to the common representative shall be sufficient.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 10
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 54 to 82
Regel 80
Zustellung durch unmittelbare Übergabe


Vgl. Artikel 118 (Zustellung)

Rule 80
Notification by delivery by hand

Notification may be effected on the premises of the European Patent Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Vgl. Artikel 118 (Zustellung)

Regel 81
Öffentliche Zustellung

(1) Kann der Aufenthaltsort des Empfängers nicht festgestellt werden, so wird durch öffentliche Bekanntmachung zugestellt.

(2) Der Präsident des Europäischen Patentamts bestimmt, in welcher Weise die öffentliche Bekanntmachung erfolgt und wann die Frist von einem Monat zu laufen beginnt, nach deren Ablauf das Schriftstück als zugestellt gilt.

Vgl. Artikel 118 (Zustellung)

Rule 81
Public notification

(1) If the address of the addressee cannot be established, notification shall be effected by public notice.

(2) The President of the European Patent Office shall determine how the public notice is to be given and the beginning of the period of one month on the expiry of which the document shall be deemed to have been notified.

Vgl. Artikel 118 (Zustellung)

Regel 82
Zustellung an Vertreter

(1) Ist ein Vertreter bestellt worden, so werden die Zustellungen an den Vertreter gerichtet.

(2) Sind mehrere Vertreter für einen Beteiligten bestellt, so genügt die Zustellung an einen von ihnen.

(3) Haben mehrere Beteiligte einen gemeinsamen Vertreter, so genügt die Zustellung nur eines Schriftstücks an den gemeinsamen Vertreter.

Vgl. Artikel 118 (Zustellung)

Rule 82
Notification to representatives

(1) If a representative has been appointed notifications shall be addressed to him.

(2) If several such representatives have been appointed for a single interested party, notification to any one of them shall be sufficient.

(3) If several interested parties have a common representative notification of a single document to the common representative shall be sufficient.
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
Re. Article 148, No. 9, IR (Notification to professional representatives)

144. FICPI had suggested in its written observations (BR/150/72, points 63 to 65) that a representative who had not lodged an authorisation by the end of the period specified in Re. Article 155, No. 2, IR should still be deemed to have been authorised unless proof was brought to the contrary.

Re. Article 148, No. 12, IR (Irregularities in the notification)

145. In its written observations, (BR/150/72, points 66 to 68) FICPI had also suggested that in the event of a document not being duly notified, it should be deemed not to have been notified at all. It also requested a better wording for the provision.

CNIPA proposed that the party receiving the notification be given the opportunity to bring proof to the contrary.

Article 149 (Inspection of files)

146. IFIA requested that the English version of paragraph 2 be clarified and that paragraph 6 be deleted.

147. In its written observations (BR/150/72, point 35), FICPI had suggested that the scope of paragraph 4 be widened by deleting the word "directly" and extending the sentence.

148. With reference to paragraph 5, FICPI had suggested making inspection of files free of charge.

149. UNEFA requested that the number of any priority application should also be included in the particulars listed in paragraph 6.
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)
Zu Artikel 148  
Nummer 9

Zustellung an Vertreter

(1) Ist ein Vertreter nach Artikel 153 des Übereinkommens bestellt und die Vollmacht zu den Akten eingereicht, so werden die Zustellungen an den Vertreter gerichtet.

(2) Sind mehrere Vertreter für einen Beteiligten bestellt, so genügt die Zustellung an einen von ihnen.

Zu Artikel 148  
Nummer 10

Bestellung eines gemeinsamen Vertreters


(2) Erfolgt im Laufe des Verfahrens ein Rechtsübergang auf mehrere Personen und haben diese Personen keinen gemeinsamen Vertreter bezeichnet, so ist Absatz 1 entsprechend anzuwenden. Ist eine entsprechende Anwendung nicht möglich, so fordert das Europäische Patentamt die genannten Personen auf, innerhalb einer Frist von zwei Monaten einen gemeinsamen Vertreter zu bestellen. Wird dieser Aufforderung nicht entsprochen, so bestimmt das Europäische Patentamt den gemeinsamen Vertreter.

Zu Artikel 148  
Nummer 11

Zustellung an den gemeinsamen Vertreter

Haben mehrere Beteiligte einen gemeinsamen Vertreter im Sinne des Artikels ... (Nummer 1 zu Artikel 66) Absatz 3 Buchstabe a oder des Artikels ... (Nummer 10 zu Artikel 148), so genügt die Zustellung eines Schriftstücks an den gemeinsamen Vertreter für alle Beteiligten.

Zu Artikel 148  
Nummer 12

Heilung von Zustellungsmängeln

Kann das Europäische Patentamt die formgerechte Zustellung eines Schriftstücks nicht nachweisen oder ist das Schriftstück unter Verletzung von Zustellungs- vorschriften zugegangen, so gilt das Schriftstück als an dem Tag zugestellt, den das Europäische Patentamt als Tag des Zugangs nachweist.

Re. Article 148  
No. 9

Notification to professional representatives

(1) If a representative has been appointed according to Article 153 of the Convention and the authorisation has been placed on the file, notifications shall be addressed to him.

(2) If several such representatives have been appointed for a single interested party, notification to any one of them shall be sufficient.

Re. Article 148  
No. 10

Appointment of a common representative

(1) If there is more than one applicant and the request for the grant of a European patent does not name a common representative, the applicant first named in the request shall be considered to be the common representative. However, if that applicant is obliged to appoint a representative under Article 154, paragraph 2, of the Convention, that representative shall be considered to be the common representative. The same shall apply where a request for examination, opposition or appeal is filed by several persons.

(2) If, during the course of proceedings, assignment is made to more than one person, and such persons have not appointed a common representative, paragraph 1 shall apply. If such application is not possible, the European Patent Office shall require such persons to appoint a common representative within a period of two months. If this request is not complied with, the European Patent Office shall appoint the common representative.

Re. Article 148  
No. 11

Notification to the common representative

If several interested parties have a common representative within the meaning of Article ... (Re. Article 66, No. 1), paragraph 3 (a), or of Article ... (Re. Article 148, No. 10), notification of a single document to the common representative shall be sufficient for all the interested parties.

Re. Article 148  
No. 12

Irregularities in the notification

Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt.
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES
PATENTERTEILUNGSVERFAHREN

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

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
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
AMENDMENTS TO THE MINUTES

of the meeting held from 23 to 27 November 1970

ANNEX III
to BR/84/71

Point 10: delete the last seven lines from "The fiction of the European patent" ...

Point 19: delete the text

Point 20: second-last line, for "see point 50" read "see point 51"

Point 36, 2nd sentence: delete the words "and were known to the International Patent Institute at the date of drawing up the report on the state of the art"

Point 37, 3rd sentence: delete the words "in making Article 122, paragraph 2, of the First Preliminary Draft Convention null and void", and substitute "in making Article 122 of the Convention practically meaningless"

Point 39, last line: for "see also point 43" read "see also point 53"

Point 50: Insert the text under point 52 after deleting the words "No comments"

Point 55, second-last line: for "original application" read "original claims".

BR/84 e/71 (Annex III) nan/KM/prk
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 1st April 1971
BE/84/71

MINUTES

of the 5th meeting of the "Implementing Regulations" Sub-Committee
of Working Party I

(Luxembourg, 12 - 14 January 1971)

I

1. The fifth meeting of the "Implementing Regulations"
Sub-Committee was held in Luxembourg from 12 to 14 January
1971, with Mr FRESSONNET, Deputy Director, French Industrial
Property Institute, in the Chair.

In addition to the national delegations represented
in the Sub-Committee, the meeting was attended by repre-
sentatives of WIPO/OMPI and the International Patent
Institute.(1)

2. The Drafting Committee met each day, under the Chair-
manship of Mr NEERVOORT, Secretary of the Octrooiraad,
following the Sub-Committee's meetings.

(1) See the list of participants in Annex I.

BR/84 e/71 nan/KM/prk
Re. Article 161, No. 6 - Notification by delivery by hand

47. No comments.

Re. Article 161, No. 7 - Notification by ordinary letter

48. No comments.

Re. Article 161, No. 8 - Public notification

49. The purpose of this provision is to establish a specific date from which time limits for appeals are to run, in cases in which the European Patent Office is not in a position to deliver a notification to the person in question because his address is unknown to it (for example, after a removal).

Re. Article 161, No. 9 - Notification to professional representatives

50. When adopting this provision, the United Kingdom delegation expressed a reservation on paragraph 3 of the proposal concerning notifications to be made to several representatives. This reservation is bound up with the whole problem of professional representation (Article 171 of the Preliminary Draft Convention) which will have to be reviewed after due consultation with the interested circles (see BR/49/70, points 41 to 43).

Re. Article 161, No. 10 - Appointment of a common representative

51. The Sub-Committee agreed to base this provision on Rule 4.8(b) of the Regulations under the PCT, which lays down that in the event of no common representative having
MINUTES

of the 4th meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 23-27 November 1970)

I.

1. The fourth meeting of the Sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention was held at Luxembourg, from Monday 23 to Friday 27 November 1970, with Mr. PRESSONNET, Deputy Director, French Industrial Property Institute, in the Chair.

In addition to the national delegations represented in the Sub-Committee, the meeting was attended by WIPO and the International Patent Institute (1).

(1) See the list of participants in Annex I.
Ad article 161
Numéro 9

Signification aux représentants professionnels

(1) Si un représentant professionnel a été désigné et que le pouvoir a été versé au dossier, les significations sont adressées au représentant.

(2) Si un représentant professionnel a été désigné pour plusieurs parties intéressées, la signification d'un seul document à ce représentant suffit pour toutes les parties intéressées.

(3) Si plusieurs représentants professionnels ont été désignés pour une seule partie intéressée, il suffit que la signification soit faite à l'un d'entre eux.
Groupe de travail "BREVETS"

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

VE AO 1964

Avant-projet

de règlement d'application de la convention
relative à un droit européen des brevets
Article 161 - N° 10

Cette disposition est adoptée. Le Comité de rédaction contrôlera la concordance avec le numéro 1, paragraphe 2, lettre e) à l'article 68.

Article 161 - N° 11

La disposition est adoptée.

Article 161 - N° 12

Ripondant à M. van Exter, le Président explique que ce numéro est nécessaire comme condition de la régularité d'une signification. Contrairement à la règle du numéro 9, paragraphe 2 qui vise le représentant professionnel, la signification au domicile élu, réglée par le numéro 12, n'est effectuée que lorsque plusieurs copies certifiées sont envoyées.

Article 161 - N° 13

Le groupe décide que la règle contenue dans ce numéro doit être appliquée de façon générale. La disposition est transmise au Comité de rédaction.

La séance est levée à 13 heures 15.

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nécessaire comme le deuxième exemple cité par le Président.

Le groupe marque son accord et transmet cette disposition au Comité de rédaction.

**Article 161 - N° 7**

Le Comité de rédaction est chargé de préciser dans le deuxième paragraphe que la publication au bulletin ne con- tiendra qu'un avis portant sur la signification publique ef-
fectuée.

Au sujet du paragraphe 3, le groupe préfère prévoir un délai unique d'un mois pour tous les cas.

Le numéro 7 est transmis au Comité de rédaction.

**Article 161 - N° 8**

Le groupe décide de supprimer les paragraphes 1 et 2. Ceci aurait pour conséquence que le problème est entière-
ment laissé aux législations nationales.

Par contre, le troisième paragraphe paraît nécessaire. Le Comité de rédaction est chargé de modifier le titre du numéro 7.

**Article 161 - N° 9**

La précision apportée par le premier paragraphe paraît souhaitable, parce que les droits nationaux sont divergents sur ce point. Le numéro est transmis au Comité de rédaction.
Résultats de la neuvième session
du groupe de travail "Brevets"
qui s'est tenue à Munich
du ler au 12 juillet 1963.

COMPTES RENDUS
Ad article 161
Numéro 10

Élection de domicile

(1) Lorsqu'une demande, une requête ou un recours sont introduits par plusieurs personnes qui n'ont pas de représentant, il doit être fait élection de domicile. Il en va de même lorsqu'une demande, un brevet ou des droits afférents à une requête ou un recours se trouvent transférés à plusieurs personnes.

(2) Il peut être fait élection de domicile auprès de toute personne physique ou morale ou de toute personne assimilée à une personne morale en vertu de la législation nationale qui a son siège, son domicile professionnel ou son domicile privé sur le territoire de l'un des États contractants.

(3) Lorsqu'il n'a pas été fait élection de domicile dans les cas mentionnés au paragraphe 1, l'Office européen des brevets invite les parties intéressées à le faire dans un délai fixé par lui. S'il n'est pas fait élection de domicile dans le délai fixé, il suffit que la signification soit faite à l'une des parties intéressées.

Cf. numéro 1 paragraphe 2, lettre e) ad article 68.
Cf. article 5 du règlement d'exécution helvétique n° II.
Ad article 161

Numéro 9

Signification aux représentants professionnels

(1) Lorsqu'un représentant a été désigné et que le pouvoir a été versé au dossier, les significations sont adressées au représentant.

(2) Lorsqu'un représentant a été désigné pour plusieurs parties intéressées, la signification d'un document à ce représentant suffit pour toutes les parties intéressées.

(3) Lorsque plusieurs représentants ont été désignés pour une seule partie intéressée, il suffit que la signification soit faite à l'un d'entre eux.
Ad article 161
Numéro 8

Signification aux représentants légaux

(1) Si la signification doit être faite à une personne physique qui ne possède pas la capacité d'exercice, elle est faite à son représentant légal.

(2) Si la signification doit être faite à une personne morale ou à une société assimilée à une personne morale en vertu de la législation nationale, elle est faite au représentant de cette personne ou de cette société.

(3) Lorsqu'il existe plusieurs représentants légaux, il suffit que la signification soit faite à l'un d'entre eux.
Kurt Haortel

Bonn, le 9 mai 1963

Projet concernant le règlement d'exécution de la convention relative à un droit européen des brevets

Propositions relativos à l'application des articles 160 à 163 de la Convention
Zu Artikel 161
Nummer 9

Zustellung an berufsmäßige Vertreter

(1) Ist ein berufsmäßiger Vertreter bestellt und die Vollmacht zu den Akten eingereicht, so werden die Zustellungen an den Vertreter gerichtet.

(2) Ist ein berufsmäßiger Vertreter für mehrere Beteiligte bestellt, so genügt die Zustellung eines Schriftstücks an den Vertreter für alle Beteiligten.

(3) Sind mehrere berufsmäßige Vertreter für einen Beteiligten bestellt, so genügt die Zustellung an einen von ihnen.
Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht
Artikel 161 Nr. 10

Diese Vorschrift wird angenommen. Der Redaktionsausschuß soll nachprüfen, ob sie mit Nr. 1 Absatz 2 Buchstabe e) zu Artikel 68 in Einklang steht.

Artikel 161 Nr. 11

Diese Vorschrift wird angenommen.

Artikel 161 Nr. 12

In Beantwortung einer Frage von Herrn van Exter führt der Vorsitzende aus, daß diese Nummer als Voraussetzung für die ordnungsgemäße Zustellung notwendig sei. Im Gegensatz zur Regelung in Nr. 9 Absatz 2, die sich nur auf den berufsmäßigen Vertreter beziehe, sei die in Nr. 12 geregelter Zustellung an den Zustellungsbevollmächtigten erst dann bewirkt, wenn mehrere beglaubigte Abschriften zugestellt sind.

Artikel 161 Nr. 13

Die Arbeitsgruppe beschließt, daß die in dieser Nummer enthaltene Regelung allgemeine Anwendung finden soll. Die Vorschrift wird an den Redaktionsausschuß überwiesen.

Die Sitzung wird um 18.15 Uhr aufgehoben.
Die Gruppe erklärt sich einverstanden und überweist diese Vorschrift an den Redaktionsausschuß.

**Artikel 161 Nr. 7**

Der Redaktionsausschuß soll im zweiten Absatz klarstellen, daß die öffentliche Bekanntmachung im Amtsblatt nur einen Hinweis auf die erfolgte öffentliche Zustellung enthalten solle.

Zu Absatz 3 bevorzugt die Gruppe eine für alle Fälle einheitliche Frist von einem Monat.

Nummer 7 wird an den Redaktionsausschuß weitergeleitet.

**Artikel 161 Nr. 8**

Die Arbeitsgruppe beschließt Absatz 1 und 2 zu streichen. Das hätte zur Folge, daß dieses Problem völlig der nationalen Gesetzgebung überlassen bleibt.

Dagegen erscheine der 3. Absatz notwendig. Der Redaktionsausschuß wird beauftragt, die Überschrift der Nummer 7 zu ändern.

**Artikel 161 Nr. 9**

Die in Absatz 1 erfolgte Klarstellung erscheint wünschenswert, weil die nationalen Rechte diesbezüglich unterschiedlich sind. Die Nummer wird dem Redaktionsausschuß überwiesen.

.../...
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 161
Nummer 10

Bestellung eines Zustellungsbevollmächtigten

(1) Wird eine Anmeldung, ein Antrag oder eine Beschwerde von mehreren Personen einge-
reicht, die keinen Vertreter haben, so muß ein Artikel 68 Zustellungsbevollmächtigter bestellt werden.
Das gleiche gilt, wenn eine Anmeldung, ein Patent oder Rechte aus einem Antrag oder einer Beschwerde auf mehrere Personen übergehen.

(2) Zustellungsbevollmächtigter kann jede natürliche oder juristische Person oder jede einer juristischen Person gemäß dem nationalen Recht gleichgestellte Person sein, die ihren Sitz, Geschäftssitz oder Wohnsitz im Gebiet eines der Vertragsstaaten hat.

(3) Ist in den Fällen des Absatzes 1 ein Zustellungsbevollmächtigter nicht bestellt, so fordert das Europäische Patentamt die Beteiligten auf, dies innerhalb einer von ihm zu bestimmenden Frist nachzuholen. Wird innerhalb der Frist ein Zustellungsbevollmächtigter nicht bestellt, so genügt die Zusage an einen der Beteiligten.

vgl. Nummer 1 Absatz 2 Buchstabe e)

vgl. Artikel 5 schweizerische Vollziehungsverordnung II
Zu Artikel 161
Nummer 9
Zustellung an berufsmäßige Vertreter

(1) Ist ein Vertreter bestellt und die Vollmacht zu den Akten eingereicht, so werden die Zustellungen an den Vertreter gerichtet.

(2) Ist ein Vertreter für mehrere Beteiligte bestellt, so genügt die Zustellung eines Schriftstücks an ihn für alle Beteiligte.

(3) Sind mehrere Vertreter für einen Beteiligten bestellt, so genügt die Zustellung an einen von ihnen.
Zu Artikel 161
Nummer 8

Zustellung an gesetzliche Vertreter

(1) Ist an eine nicht handlungsfähige natürliche Person zuzustellen, so wird an ihren gesetzlichen Vertreter zugestellt.

(2) Ist an eine juristische Person oder eine Gesellschaft zuzustellen, die einer juristischen Person gemäß dem nationalen Recht gleichgestellt ist, so wird an ihren Vertreter zugestellt.

(3) Sind mehrere gesetzliche Vertreter vorhanden, so genügt die Zustellung an einen von ihnen.
Arbeitsentwurf

zu einer

Ausführungsordnung

zum

Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 160 bis 163

des Abkommens
that Article 156, paragraph 3, was to be interpreted as an
authorisation for the Administrative Council to provide for the
levy of a search fee for each and every international patent
application, irrespective of whether additional searches within
the meaning of this provision should be carried out in the
individual cases.

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

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

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

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

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

laid down in paragraph 3 of Article 133 — but also by their
departments. Such representation by their departments is
regarded as a matter of course, is understood from paragraph 1
of Article 133 and does not need to be expressly laid down.

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

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