Rule 1 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.
Ausnahmen von den Vorschriften über die Verfahrenssprache im schriftlichen Verfahren

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Implementing Regulations respectively; instead groups of related questions have been dealt with together according to the Chapters of the Convention with important corresponding amendments to the Implementing Regulations being dealt with at the same time.

II Convention and Implementing Regulations

1. Language questions (Articles 14, 68 et. al./Rules 1-7)

As in preceding stages of the negotiations, the Main Committee dealt with some important language questions.

The Main Committee discussed in detail the provision of Article 14, paragraph 7, of the Draft Convention which requires the claims to be translated from the language of the proceedings into each of the other official languages of the European Patent Office. The requirement for the publication of these translations as part of the specification of a European patent was never in dispute but there was the question of whether the translation should be prepared by the applicant without any control being exercised by the European Patent Office or whether it should be prepared by the Office itself. This controversy, which was by no means new, was resolved by the Committee with a majority in favour of the first solution, which was also completely supported by the interested circles, mainly due to the consideration that it would avoid overburdening the administrative machinery, that the applicant should be assumed to have the necessary specialist knowledge and that this procedure would avoid the translation, which has no legal effect, receiving any official character. This solution, which entailed amendments to Articles 96 and 101, was transferred to the Implementing Regulations (Rule 52, paragraph 4). In doing this the Committee’s aim was to make it easier to change the procedure if it is found that it does not fulfil the requirements of information in accordance with expectations or if it is found to lead to abuse. The period of one month which had previously been prescribed only for the payment of the fees for grant and printing was, in the interest of the applicant, fixed at three months and the same period was laid down for the submission of the translation (Rule 52, paragraph 4, and Rule 59, paragraph 5). At the same time the period laid down in Article 96, paragraph 4(a), for the publication of the mention of the grant of the patent was as a logical consequence extended from three to five months. This system of time limits should to a large extent ensure that translations of the specification required by a Contracting State into its official language (Article 63) are available to the public at the time of the entry into force of the legal effects of the European patent and that the full opposition period will thus be available to any opponent.

There was a further language problem concerning the provision of Article 68, paragraph 3, of the Draft, the German text of which covers the case where a Contracting State requires a translation of the specification and the translation of the specification confers protection narrower than that conferred by the specification in the language of the proceedings. The Main Committee agreed that the translation could be authentic under these circumstances only and decided to align the French and English texts, which did not convey this idea correctly, on the German text.

In discussing Article 86, paragraph 1, the Committee also decided to reduce the requirement imposed on applicants claiming priority which provided for a translation of the previous application where the latter was not in one of the official languages of the European Patent Office and to permit such proofs of priority to be submitted in any of the three
ANNEX I

REPORT

by Mr. Paul Braendi, 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
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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
PART I
IMPLEMENTING REGULATIONS TO PART I
OF THE CONVENTION

Chapter I
Languages of the European Patent Office

Rule 1

Derogations from the provisions concerning the
language of the proceedings in
written proceedings

(1) Opponents and third parties intervening in opposition proceedings may file documents in any of the
official languages of the European Patent Office. If the
opponent or third party intervening in the opposition
proceedings is a person referred to in Article 14,
paragraph 2, he may file the translation of a document
which has to be filed within a time limit in any of the
official languages of the European Patent Office.

(2) Documents to be used for purposes of evidence
before the European Patent Office, and particularly
publications, may be filed in any language. The European
Patent Office may, however, require that a translation
be filed, within a given time limit of not less than one
month, in one of its official languages.
AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

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

RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 8
Original: English/French/German

CONFERENCE DOCUMENT

- Drawn up by : General Drafting Committee

Subject : Implementing Regulations : Rules 1 to 26
PART I
IMPLEMENTING REGULATIONS TO PART I
OF THE CONVENTION

Chapter I
Languages of the European Patent Office

Rule 1
Derogations from the provisions concerning the language of the proceedings in written proceedings

Only concerns German text.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

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

Articles of the Convention:

Article 14
Article 50
Article 52
Article 53
Article 58
Article 59
Article 63
Article 65
Article 68
Article 87

Rules of the Implementing Regulations:

Rule 1
Rule 2
Rule 13
Rule 16
ERSTER TEIL
AUSFÜHRUNGSVORSCHRIFTEN ZUM ERSTEN TEIL DES ÜBEREINKOMMENS

Kapitel I
Sprachen des Europäischen Patentamts

Regel 1
Ausnahmen von der Verfahrenssprache im schriftlichen Verfahren

(1) Einsprechende und die einem Einspruchsverfahren beitretenden Dritten können Schriftstücke in jeder Amtssprache des Europäischen Patentamts einreichen. Ist der Einsprechende oder der einem Einspruchsverfahren beitretende Dritte eine Person im Sinn des Artikels 14 Absatz 2, so kann er die Übersetzung eines fristgebundenen Schriftstückes in jeder Amtssprache des Europäischen Patentamts einreichen.

(2) Schriftstücke, die als Beweismittel vor dem Europäischen Patentamt verwendet werden sollen, insbesondere Veröffentlichungen, können in jeder Sprache eingereicht werden. Das Europäische Patentamt kann jedoch verlangen, daß innerhalb einer von ihm zu bestimmenden Frist, die nicht kürzer als ein Monat sein darf, eine Übersetzung in eine seiner Amtssprachen eingereicht wird.

Vgl. Artikel 14 (Sprachen des Europäischen Patentamts)

PART I
IMPLEMENTING REGULATIONS TO PART I OF THE CONVENTION

Chapter I
Languages of the European Patent Office

Rule 1
Derogations from the provisions concerning the language of the proceedings in written proceedings

(1) Opponents and third parties intervening in opposition proceedings may file documents in any of the official languages of the European Patent Office. If the opponent or third party intervening in the opposition proceedings is a person referred to in Article 14, paragraph 2, he may file the translation of a document which has to be filed within a time limit in any of the official languages of the European Patent Office.

(2) Documents to be used for purposes of evidence before the European Patent Office, and particularly publications, may be filed in any language. The European Patent Office may, however, require that a translation be filed, within a given time limit of not less than one month, in one of its official languages.

Cf. Article 14 (Languages of the European Patent Office)

Regel 2
Ausnahmen von der Verfahrenssprache im mündlichen Verfahren

(1) Jeder an einem mündlichen Verfahren vor dem Europäischen Patentamt Beteiligte kann sich anstelle der Verfahrenssprache einer anderen Amtssprache des Europäischen Patentamts bedienen, sofern er dies entweder dem Europäischen Patentamt spätestens zwei Wochen vor dem angesetzten Termin mitgeteilt hat oder selbst für die Übersetzung in die Verfahrenssprache sorgt. Jeder Beteiligte kann sich auch einer Amtssprache eines der Vertragsstaaten bedienen, sofern er selbst für die Übersetzung in die Verfahrenssprache sorgt. Von den Vorschriften dieses Absatzes kann das Europäische Patentamt Ausnahmen zulassen.

(2) Die Bediensteten des Europäischen Patentamts können sich im mündlichen Verfahren anstelle der Verfahrenssprache einer anderen Amtssprache des Europäischen Patentamts bedienen.

(3) In der Beweisaufnahme können sich die zu vernehmenden Beteiligten, Zeugen oder Sachverständigen, die sich in einer der Amtssprachen des Europäischen Patentamts oder der Vertragsstaaten nicht hinzuliebend ausdrücken können, einer anderen Sprache bedienen. Ist die Beweisaufnahme auf Antrag eines Beteiligten angeordnet worden, so werden die zu vernehmenden Beteiligten, Zeugen oder Sachverständigen mit Erklärungen, die

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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
débordés 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
Only those Rules concerning which observations were made will be mentioned below. Rules not referred to were approved by the Conference without discussion.

Rule 1

72. The Conference decided to extend the benefits of Rule 1, paragraph 1, to persons intervening in the opposition proceedings in accordance with Article 104 of the Convention. Correspondingly, the square brackets in paragraph 1 were deleted.

Rule 25

73. The Conference had before it a proposal from the Swiss delegation (Working Document No. 6). This proposal had previously been examined by the Co-ordinating Committee (cf. BR/218/72, point 16).

74. In this connection, the Conference decided, upon a proposal from the Co-ordinating Committee, to allow the period of two months for the filing of a divisional application in the event of lack of unity of the invention (paragraph 1(b)) to commence only from the date of limitation of the original application, and not from the invitation to the applicant to divide the application.

75. Re Rule 25 see also points 42 and 43 above.
M I N U T E S

of the

6th meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
PART I

IMPLEMENTING REGULATIONS TO PART I OF THE CONVENTION

CHAPTER I

Languages of the European Patent Office

Article 1 (Re. 34, No. 4, paras. 1 and 3)

Derogations from the provisions concerning the language of the proceedings in written proceedings

(1) Opponents and third parties intervening in opposition proceedings may file documents in any of the official languages of the European Patent Office. If the opponent or third party intervening in the opposition proceedings is a person referred to in Article 14, paragraph 2, of the Convention, he may file the translation of a document which has to be filed within a time limit in any of the official languages of the European Patent Office.

(2) Documents to be used for purposes of evidence before the European Patent Office, and particularly publications, may be filed in any language. The European Patent Office may, however, require that a translation be filed, within a given time limit of not less than one month, in one of its official languages.
INTRODUCTORY REMARK

As agreed by the Co-ordinating Committee, the Implementing Regulations will contain "Rules" and not "Articles". As it stands, the Draft does not yet take account of the consequences that this decision will have upon the drafting.
DRAFT IMPLEMENTING REGULATIONS
TO THE CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
(b) Problems arising following the work of the Drafting Committee

Rule 1, paragraph 2

26. The Committee recorded its agreement to the Drafting Committee's suggestion that, in derogation from Rule 85, a minimum time limit of one month should be laid down for the filing of the translation of documents to be used for purposes of evidence.

Rule 13

27. After having incorporated into Rule 13 the provisions of Re. Article 16, Nos. 1 and 3 of the First Preliminary Draft of the Implementing Regulations, the Drafting Committee had discussed the advisability of maintaining the content of the provision allowing for the suspension of opposition proceedings.

The Committee was of the opinion that, taking into account Article 98, paragraph 4 of the Convention, this provision should be maintained, since any difficulties created by too long a suspension could be obviated by paragraph 5 of this Rule.

Re. Article 16, No. 4 of the First Preliminary Draft of the Implementing Regulations

28. The Committee agreed with the Drafting Committee's proposal that this provision should be deleted. Indeed, it considered that following the grant of the European patent, the option to surrender the patent should be
MINUTES

of the

second meeting of the Co-ordinating Committee

held in Brussels from 15 to 19 May 1972

1. The second meeting of the Co-ordinating Committee was held in Brussels from 15 to 19 May 1972 with Dr HAEFTEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, of the IIB and of WIPO took part as observers. The representatives of the Council of Europe sent their apologies for being unable to attend. The list of those taking part in the meeting is given in Annex I to this report.

2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:

BR/209 e/72 iso/TM/prk
ARTICLE 1 (Re. 34, No. 4, paragraphs 1 and 3)

Derogations from the provisions concerning the language of the proceedings in written proceedings

(1) Notices of opposition to a European patent, or notices of intervention, any subsequent observations from or appeal by the opponent or intervenor and any translation thereof under Article 14, paragraph 4, of the Convention may be filed in any of the official languages of the European Patent Office. (a)

(2) Documents to be used for purposes of evidence before the European Patent Office, and particularly publications, may be filed in any language. The European Patent Office may, however, require that a translation be filed, within a given time limit of not less than one month, in one of its official languages. In the event of the translation not being filed in due time, the document shall not be taken into consideration.

(a) The drafting of this paragraph is to be reviewed.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 24 April 1972
BR/185/72

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

(Text drawn up by the
Conference Drafting Committee
10 to 20 April 1972)
34. The British delegation did not share the view of the majority. It considered that the two exceptions provided for were too prejudicial to applicants, who would be compelled to translate at their own cost such documents as were not produced in the languages of the proceedings. In all fairness, fees should be borne by the third parties, since theirs would be the responsibility for opposition proceedings.

Re, Article 34, No. 5 - Derogations from the provisions concerning the language of the proceedings in oral proceedings

35. This provision makes several exceptions to the principle of the predominance of the language of the proceedings in oral proceedings, and were adopted by the Sub-Committee after detailed examination.

Paragraph 1 enables any party to use one of the working languages other than that of the proceedings, on condition that he notifies the EPO or makes provision for interpreting. Any party may, moreover, use one of the ten other languages of the Contracting States, provided that he makes arrangements for interpreting. Finally, the EPO may allow exceptions to these provisions. In this context, the Netherlands delegation considered that the agreement of the applicant would also be necessary in the case of derogations. It declared that it reserved the right to submit this question to Working Party I. The Sub-Committee did not share the point of view of the Netherlands delegation, since it considered that this stipulation might lead to abuses. Elsewhere, the British delegation stated that it was not in favour of the EPO paying for interpreting fees where the parties did not express themselves in the language of the proceedings.

BR/43 e/70 ett/RT/bm
Re., Article 34, No. 4 - Derogations from the provisions concerning the language of the proceedings in written proceedings

33. The text sets out the exceptions, in written proceedings, to the predominance of the language of the proceedings. The majority of the Sub-Committee allowed two exceptions. The purpose of these was to place the three working languages of the EPO on an equal footing.

First of all, third parties who make opposition may submit unsworn written statements or translations thereof in a language other than that of the proceedings (paragraph 1). These translations must be produced within a period of 1 month (paragraph 2).

Next, other documents used as evidence may be submitted in any language, but the EPO may require that a translation into one of the three working languages be submitted to it in due time (paragraph 3).

During the discussions, it was made clear that the term "unsworn written statements" covered letters, communications or memoranda drawn up, under the sole responsibility of the opposing party, for the purpose of contesting the grant of a patent. "Documents other than unsworn written statements", on the other hand, was taken to cover any appended document not drawn up under the responsibility of the opposing party, but which might be used as evidence - e.g. publications or official documents.

Finally, the Sub-Committee thought it superfluous to make provision for an exception in respect of observations addressed by third parties not taking part in the proceedings (Article 92). Such observations could be submitted to the EPO in any language.
MINUTES
of the meeting of Working Party I sub-Committee on
"Implementing Regulations"
(Luxembourg, 24-26 June 1970)

I

1. The first working meeting of the sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention (cf. BR/GT I/41/70, page 26, point 50) was held at Luxembourg on 24 to 26 June 1970. In accordance with the decision taken by the sub-Committee at its inaugural meeting held at Luxembourg on 2 April 1970, the Chair was taken by Mr. FRESSIONNET, Deputy Director, French Industrial Property Institute (cf. BR/GT I/40/70). In addition to the national delegations represented in Working Party I, the meeting was attended by the IIB (The Hague) (1).

(1) Annex I gives the provisional agenda for the meeting and Annex II contains the list of those taking part in the meeting.

BR/43 e/70 kel/RT/bm
Ad article 34

Numéro 3

Dérogations à la langue de la procédure dans la procédure écrite

(1) Toute partie à la procédure devant l'Office européen des brevets, à l'exclusion du titulaire de la demande ou du brevet européen, peut produire des documents ou, en cas d'application de l'article 34, paragraphe 3, deuxième phrase de la Convention, leur traduction dans une langue visée à l'article 34, paragraphe 1 de la Convention, autre que celle de la procédure.

(2) Si la traduction visée à l'article 34, paragraphe 3, deuxième phrase de la Convention et au paragraphe 1 du présent article n'est pas produite en temps utile, le document n'est pas pris en considération.

(3) Les documents utilisés comme moyen de preuve devant l'Office européen des brevets, notamment les publications, peuvent être présentés en toute langue. Toutefois, l'Office européen des brevets peut exiger que, dans un délai à déterminer, une traduction soit produite dans une des langues visées à l'article 34, paragraphe 1 de la Convention accompagnée, le cas échéant, d'une certification officielle d'identité au texte original. Si la traduction ou la certification officielle n'est pas présentée en temps utile, le document n'est pas pris en considération.

(4) Les observations prévues à l'article 92 de la Convention, présentées dans une autre langue que celles visées à l'article 34, paragraphe 1 de la Convention, peuvent être prises en considération par l'Office européen des brevets.
Groupe de travail
" BREVETS "

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

VE AO 1964

Avant-projet
de règlement d'application de la convention
de un droit européen des brevets

4419/IV/63-F
Zu Artikel 34

Nummer 3

Ausnahmen von der Verfahrenssprache im schriftlichen Verfahren

(1) Die Beteiligten im Verfahren vor dem Europäischen Patentamt mit Ausnahme des Anmelders oder Inhabers des europäischen Patentes können Schriftstücke oder im Falle der Anwendung des Artikels 34 Absatz 3 Satz 2 des Abkommens ihre Übersetzung außer in der Verfahrenssprache auch in einer der anderen in Artikel 34 Absatz 1 des Abkommens genannten Sprachen einreichen.

(2) Wird die in Artikel 34 Absatz 3 Satz 2 des Abkommens sowie in Absatz 1 dieses Artikels vorgesehene Übersetzung nicht rechtzeitig vorgelegt, so wird das Schriftstück nicht berücksichtigt.

(3) Urkunden, die als Beweismittel vor dem Europäischen Patentamt verwendet werden, insbesondere Veröffentlichungen, können in jeder Sprache vorgelegt werden. Das Europäische Patentamt kann jedoch verlangen, daß innerhalb einer von ihm zu bestimmenden Frist eine Übersetzung in eine der in Artikel 34 Absatz 1 des Abkommens genannten Sprachen und gegebenenfalls eine amtliche Beglaubigung der Übereinstimmung mit dem Urtext vorgelegt werden. Wird die Übersetzung oder die amtliche Beglaubigung nicht rechtzeitig vorgelegt, so wird die Urkunde nicht berücksichtigt.

(4) Einwendungen gemäß Artikel 92 des Abkommens, die in einer anderen als den in Artikel 34 Absatz 1 des Abkommens genannten Sprachen abgefaßt sind, können vom Europäischen Patentamt berücksichtigt werden.
Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht
official languages instead of only the language of the proceedings.

2. Patentability (Articles 50-55)

The provisions of substantive law on patentability were not amended as to substance. The exceptions listed in Article 50, paragraph 2, were confirmed by the Main Committee as basic principles of the Convention. Certain drafting improvements however now make it completely clear that the various types of subject-matter, acts and activities listed are only excluded as such from patentability and that therapeutic and diagnostic methods are not patentable on the grounds that they lack industrial application.

The exception to patentability laid down in Article 51 in respect of inventions the publication of which would be contrary to "ordre public" or morality was reinforced by a duty to examine on the part of the European Patent Office (see Rule 34).

An improved wording of Article 52, paragraph 5, now ensures the patentability of known chemicals for such uses in therapeutic and diagnostic methods as do not form part of the state of the art. In this connection the Main Committee was also of the opinion that only a first use, irrespective of whether it is with regard to humans or animals, fulfills the requirements of this provision.

With respect to non-prejudicial disclosure the Main Committee amended Article 53 to provide that an abusive disclosure in relation to the person entitled shall not be prejudicial if it occurred no earlier than six months before the filing of the application. This amendment means that, taking into account the concept of novelty contained in Article 52, paragraphs 3 and 4, cases of abusive disclosure after the date of filing of the application by the person entitled are dealt with in the same way as a disclosure within six months preceding the date of filing of the European patent application. The Main Committee decided not to extend the definition of the international exhibitions referred to in Article 53 not only because such an amendment would diverge from the Strasbourg Convention but also because exhibition priorities as such are a dangerous instrument for the applicant.

In discussing Article 54 a proposal for supplementing this provision to the effect that any technological advance proven by the applicant should be taken into account in deciding whether there has been an inventive step was rejected, mainly because it was feared that too much weight might be given to this factor.

3. Position of the inventor (Articles 58, 59, 60, 79, 90 and Rules 17, 19, 26, 42)

The Main Committee gave detailed consideration to a proposal to give the inventor a better and stronger legal position in the system set up by the Convention than that afforded by the drafts. The main proposal sought to compel the applicant to designate the inventor at the time of filing the application and at the same time to prove his entitlement to the invention by producing a certificate of transfer drawn up by the inventor or some other conclusive document.

It was not contested that the rights of the inventor should be adequately protected in the Convention. The Main Committee therefore decided unanimously that in respect of all European patent applications, irrespective of which States were designated in them, the filing of a statement identifying the inventor should be a compulsory requirement, with the result that if it were not complied with, the application would be deemed to be withdrawn. However, the Main Committee rejected the proposal to require the production of proof that the applicant was the inventor's successor in title for three main reasons; there would be difficulties in obtaining such a document in individual cases; it could not be produced where the transfer took place in the due course of law; and finally it would put the European Patent Office in the extremely difficult situation of having to apply the national law of the Contracting States in examining such documents. Similarly, an alternative proposal, to require proof of being the inventor's successor in title only where the national law of at least one of the designated Contracting States required such proof in respect of national patent applications, could not be adopted as this would have caused the same difficulties. In order that the rights of the inventor should nevertheless be protected, the Main Committee finally adopted a compromise solution whereby, if the applicant were not the inventor or not the sole inventor, he would be obliged to file a statement, which would be an integral part of the designation of the inventor indicating the legal basis of his acquisition of the invention. In addition, this designation of the inventor by the applicant would be notified to the inventor, thus allowing him where necessary to invoke his rights in due time. Corresponding amendments were made to Articles 79 and 90 and to Rules 17, 19, 26 and 42.

4. Effects of the European patent and the European patent application (Articles 61-68)

The main subject of discussion in this respect was Article 67 which defines the protection conferred by the European patent and the European patent application.

The Main Committee adopted by a majority a provision which also occurs in the Draft of the Second Convention for the Community patent, whereby the protection conferred on a process is extended to the products directly obtained by that process. This provision, which was inserted in Article 62 and which is already known in the laws of several Contracting States, takes account of the fact that in certain branches of industry, such as the plastics industry, it is not always possible to define a material without reference to its means of production. At the same time, a similar majority of the Main Committee rejected a proposal that this extended protection be reinforced in the case of an invention relating to the manufacture of a new product by assuming, to the benefit of the proprietor of the patent, that any product of the same nature would be considered to be obtained by the protected process. This proposal to reverse the burden of proof was countered by the argument that it would constitute too great an inroad into the national law of the Contracting States.

Main Committee I also considered, in respect of Article 67, paragraph 2, that the concept of extending the protection conferred by the European patent application included the case of a shift in the protection as a result of an amendment to the claims. With regard to the interpretative statement proposed by the Inter-Governmental Conference in respect of Article 67, it considered that this should be officially adopted unamended by the Diplomatic Conference and should be annexed to the Convention in the form of a declaration.

As regards the right to continue to use the invention, which a third party who has been operating in good faith may invoke under Article 68, paragraph 4(b), where the proprietor of the patent has corrected the translation of the specification, the Main Committee decided by a majority to depart from the draft by providing that this right could be exercised without payment, by analogy with the comparable situation dealt with in Article 121, paragraph 6.