Article 65 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.
<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>Vorschlag Vors.</td>
<td>90b</td>
<td>IV/4360/61</td>
<td>S. 44</td>
</tr>
<tr>
<td>IV/4860/61</td>
<td>90b</td>
<td>IV/3076/62</td>
<td>S. 157</td>
</tr>
<tr>
<td>?VE 1962</td>
<td>103</td>
<td>2632/IV/64</td>
<td>S. 77</td>
</tr>
<tr>
<td>?(VE 1962 (Ue)) BRM/69</td>
<td>96c</td>
<td>BR/12/69</td>
<td>Rdn. 25/26</td>
</tr>
<tr>
<td>BR/11/69</td>
<td>96c</td>
<td>BR/26/70</td>
<td>Rdn. 31</td>
</tr>
<tr>
<td>VE 1970 (Ue)</td>
<td>100</td>
<td>BR/49/70</td>
<td>Rdn. 120</td>
</tr>
<tr>
<td>VE 1971 (Ue)</td>
<td>107</td>
<td>BR/135/71</td>
<td>Rdn. 143</td>
</tr>
<tr>
<td>VE 1971 (Ue)</td>
<td>107a</td>
<td>BR/144/71</td>
<td>Rdn. 122</td>
</tr>
<tr>
<td>VE 1971 (Ue)</td>
<td>107</td>
<td>BR/144/71</td>
<td>Rdn. 122</td>
</tr>
<tr>
<td>VE 1971 (Ue)</td>
<td>100</td>
<td>BR/144/71</td>
<td>Rdn. 122</td>
</tr>
<tr>
<td>VE 1971 (Ue)</td>
<td>97a</td>
<td>BR/144/71</td>
<td>Rdn. 122</td>
</tr>
<tr>
<td>BR/139/71</td>
<td>107a</td>
<td>BR/168/72</td>
<td>Rdn. 129/130</td>
</tr>
<tr>
<td>BR/139/71</td>
<td>107a</td>
<td>BR/169/72</td>
<td>Rdn. 110-112</td>
</tr>
<tr>
<td>BR/184/72</td>
<td>63</td>
<td>BR/209/72</td>
<td>Rdn. 10</td>
</tr>
</tbody>
</table>

Dokumente der MDK

<table>
<thead>
<tr>
<th>E 1972</th>
<th>63</th>
<th>M/12</th>
<th>S. 74</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>63</td>
<td>M/40</td>
<td>S. 3</td>
</tr>
<tr>
<td></td>
<td>63</td>
<td>M/74/I/R 1</td>
<td>S. 7</td>
</tr>
<tr>
<td></td>
<td>63</td>
<td>M/88/I/R 3</td>
<td>S. 3</td>
</tr>
<tr>
<td></td>
<td>63</td>
<td>M/146/R 3</td>
<td>Art. 65</td>
</tr>
<tr>
<td></td>
<td>63</td>
<td>M/PR/I</td>
<td>S. 31</td>
</tr>
<tr>
<td></td>
<td>63</td>
<td>M/PR/G</td>
<td>S. 200/201</td>
</tr>
</tbody>
</table>
official languages instead of only the language of the proceedings.

2. Patentability (Articles 50-53)

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 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.
Minutes of the proceedings of the Committee of the Whole

1. The Committee of the Whole, which was established by the Plenary of the Conference and comprised all the Government delegations (see Rule 14 of the Rules of Procedure)*, was, pursuant to paragraph 4 of Rule 14, chaired by Dr. Kurt Haerel (Federal Republic of Germany), President of the German Patent Office and Chairman of Main Committee I. Mr. François Savignon (France), Director of the French Industrial Property Office and Chairman of Main Committee II, was First Vice-Chairman; Mr. Edward Armitage (United Kingdom), Comptroller-General of the United Kingdom Patent Office and Chairman of Main Committee III was Second Vice-Chairman.

2. In accordance with Rule 14 of the Rules of Procedure, the terms of reference of the Committee of the Whole were to take decisions on proposals from the General Drafting Committee on drafts established by Main Committees I, II and III and on proposals submitted to it directly and to forward the drafts approved by it to the Plenary of the Conference for adoption.

3. The Committee of the Whole met under the direction of the Chairman from 1 to 4 October 1973.

4. At the meeting on 1 October 1973, the Committee of the Whole received the reports of Main Committees I and II. Main Committee I's report was approved without debate (see Section I below).

5. At its meeting on 2 October 1973, the Committee of the Whole discussed Main Committee II's report. The discussion and subsequent approval of the report are dealt with below in Section II.

At the same meeting, it heard and approved Main Committee III's report (see Section III below); it also discussed the results of the proceedings of the General Drafting Committee (M/146 R/1 to R/15 and M/151 R/16). These discussions are covered in Section IV below.

6. On 3 October 1973, the Committee of the Whole received and approved the report of the Credentials Committee (see Section V below). The problems of a European School and the European Patent Office building in Munich were then dealt with (see Sections VI and VII).

7. At its last meeting on the morning of 4 October 1973, the Committee of the Whole discussed the organisation and work programme of the Interim Committee. These discussions are presented in Section VIII below. It finally considered a proposal from the Yugoslav delegation for a Resolution on technical assistance (Section IX) and a Recommendation regarding the status and remuneration of certain employees (Section X).

I. Report of the discussions and decisions of Main Committee I

8. The rapporteur of this Main Committee, Mr. Paul Braendli, Vice-Director of the Federal Intellectual Property Office (Switzerland), presented the report on the work of Main Committee I to the Committee of the Whole. The text of this report is given in Annex I.

The report was unanimously adopted by the Committee of the Whole.

II. Report on the work of Main Committee II

9. Subject to a few minor amendments, the Committee of the Whole unanimously approved the report presented by the rapporteur of Main Committee II, Mr. R. Bowen (United Kingdom), Assistant Comptroller of the United Kingdom Patent Office. The text of the report as adopted by the Committee of the Whole is given in Annex II. The discussions concerning the proposals for amendments to the report are summarised in the following paragraphs.

10. As regards the section of the report concerning the Protocol on Centralisation, the Netherlands delegation, commenting on the first sentence in point 16, stated that the obligations of the European Patent Office towards the Member States of the International Patent Institute had simply been clarified rather than extended. However, the French and United Kingdom delegations maintained that the obligations in fact had been extended since the original text had only referred to tasks at present incumbent upon the Institute whereas now tasks entrusted to the IIB after the signing of the Protocol were expressly covered. While disagreeing with this view, the Netherlands delegation did not insist on an amendment.

11. The Netherlands delegation proposed, also with regard to point 16, that the last sentence should state that the EPO would also undertake searches for Member States of the IIB which had not submitted any applications for search before the entry into force of the Convention. This would make provision for those States which, up to the time in question, had submitted no applications for search to the IIB although they were entitled to do so.

The Committee of the Whole agreed to amend the part of the report concerned as follows: "... the Office will also assume this responsibility in respect of a Member State of the Institute which prior to the entry into force of the Convention, has agreed to submit national applications to the Institute for search."

12. The Committee of the Whole adopted a proposal from the Swedish delegation that the idea proposed by the Scandinavian countries at the beginning of point 22 be worded as follows: "Consideration was given to the idea, proposed by the Scandinavian countries, that such work might be entrusted to national offices, possessing the minimum documentation, whether or not they possessed the other qualifications, required of an International Searching Authority under the Patent Cooperation Treaty." It also approved an addition at the end of the third sentence in this point to the effect that national offices would have to "fully" qualify as Searching Authorities.

13. The Austrian delegation suggested that in the English version of point 22, in the middle of page 14, the words "some search work" be used as so to not to prejudice the question of the amount of such search work, which had deliberately been left open. The text would therefore read: "difficulties resulting from a renunciation under Section I.2, to entrust some search work to national offices whose language is ...".

The Committee of the Whole accepted this suggestion. The German and French texts remained unaltered.

14. With regard to the part of the report dealing with Article 166 (Article 167 of the signed version) of the Convention, the Greek delegation proposed that point 11 be amended at the top of page 7 so as to state, not that Main Committee II had accepted the view as to the effects of a reservation, but that it had considered such a possibility. The rapporteur and the Netherlands delegation stated that this view had been generally accepted in Main Committee II.

The Committee of the Whole accordingly decided not to amend the draft which had been submitted.

III. Report on the results of Main Committee III's proceedings

15. Main Committee III's rapporteur, Mr. Fressonnet, Deputy Director of the National Industrial Property Office
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)
Article 58 (60) — Right to a European patent

84. The problems connected with identification of the inventor are dealt with under Article 79 (points 227 et seq.).
85. The Main Committee referred to the Drafting Committee a drafting proposal from the delegation of the Federal Republic of Germany concerning the division of paragraph 1 into two separate paragraphs (M/11, point 22).
86. At a subsequent meeting the Main Committee discussed, on the basis of a text submitted by the Drafting Committee, whether reference had to be made in the new paragraph 3 (previously paragraph 2) not only to paragraph 1 (previously paragraph 1, first and second sentences) but to paragraph 2 (previously paragraph 1, third sentence) as well.
87. The Swiss delegation considered it appropriate to refer to paragraph 2 (new) as well.
88. In the opinion of the delegation of the Federal Republic of Germany reference definitely had to be made to paragraph 2 (new), since under paragraph 3 (new) the European Patent Office was meant to be freed from the task of verifying entitlement even where there were several applicants.
89. The Netherlands delegation, however, had doubts about the fictitious case mentioned in paragraph 3 (new), but was prepared to refer the matter to the Drafting Committee.
90. The Main Committee accordingly referred the question to the Drafting Committee for examination and for a decision.

Article 59 (61) — European patent applications by persons not entitled to apply

91. The problems connected with the mention of the inventor are dealt with under Article 79 (points 227 et seq.).
92. The Main Committee referred to the Drafting Committee a proposal from the Netherlands delegation concerning an amendment to the title of Article 59 (M/32, point 10) and a drafting proposal from the Member States of the European Communities concerning paragraph 1 (M/14, point 3). It also referred to it an oral drafting proposal from the Swiss delegation concerning the French text of the title, the introduction to paragraph 1 and paragraph 1 (b).
93. The Swiss delegation, seconded by the Austrian delegation, requested that in Article 59 (61), paragraph 2, reference should also be made to the first paragraph of Article 74 (76) (M/54/II/II, page 12). It primarily wanted to ensure that there could be no room for doubt that the person entitled to a European patent could designate only those States which had also been designated in the initial application by the person not entitled to apply.
94. Secondly, it wanted to ensure that the new divisional application could be filed only in respect of subject-matter contained in the earlier application. Finally, the divisional application should also be filed directly with the European Patent Office and not be made through a national office.
95. After the United Kingdom and Netherlands delegations had pointed out with regard to the main problem that it was already laid down in Article 59, paragraph 1, that no Contracting States could be designated other than those originally designated, the Swiss delegation withdrew its request. It reserved the right to return to its other requests when Article 74 (76), paragraph 2, was discussed (see points 200 et seq.).

Article 61 (63) — Term of the European patent

95. The Main Committee referred to the Drafting Committee a drafting proposal from the United Kingdom delegation concerning paragraph 2 (M/40, point 13).

Article 62 (64) — Rights conferred by a European patent

96. The delegation of the Federal Republic of Germany withdrew a proposed addition to Article 62 (M/11, point 23).
97. The Main Committee adopted this Article in the version resulting from the discussion of Article 67 (69), paragraphs 3 and 4 (see below, points 121 et seq., 138 et seq.).

Article 63 (65) — Translation of the European patent specification

98. The Main Committee referred to the Drafting Committee two drafting proposals from the United Kingdom delegation concerning paragraphs 1 and 3 (M/40, points 14 and 15).

Article 65 (67) — Rights conferred by a European patent application after publication

99. At the Irish delegation's request paragraph 3(b) was referred to the Drafting Committee for examination whether the words "the person" should be substituted for "any person" in the English text.

Article 67 (69) — Extent of protection

100. The Swedish delegation, seconded by the Finnish delegation, requested that the node to Article 67 (69) be drafted in such a way that the patentee should on no account be able to profit from any ambiguity in the patent claims (M/53/I/II, point 5; see also M/13, point 7). The present version of the proposed declaration was not quite satisfactory in this respect. It also wished to point out that great importance had been attached to the wording in this respect when drawing up a Scandinavian patent law.
101. The Netherlands delegation opposed the request. In its opinion this addition would not improve the text. It wished, however, to point out above all that the declaration had been very carefully drafted after lengthy discussions.
102. In the considered opinion of the delegation of the Federal Republic of Germany the present text of the statement was very well-balanced. If the Swedish request were granted, a lack of balance, which nobody sought, might be created. It could therefore not support the proposed addition.
103. The United Kingdom delegation considered that the Swedish proposal might well be suitable for most cases of obscure claims but not for all. It was therefore not advisable to become committed to an interpretation of obscure claims in the way proposed. Furthermore, the delegation referred to the lengthy discussions there had been on this very declaration. It was therefore better to retain the present text.
104. The Swiss delegation said that it would be sorry if the present, very well-balanced text were amended.
105. The FICPI delegation stated that it was understandable that the Swedish delegation wanted, with its proposed addition, to afford the greatest possible certainty for competitors of the proprietor of the patent. However, the applicant could simply not be expected to foresee, in drawing up his claims, all the possibilities of infringement. If he did not foresee them, it would be to his disadvantage under the Swedish proposal. Considered in this way, the proposal was even likely to detract to a large extent from the European patent's appeal.
106. The delegation of the International Chamber of Commerce concurred in the statements of the Government delegations. In addition, it considered that the additional
Minutes of the Proceedings of Main Committee I

1. Main Committee I (see Rule 12 of the Rules of Procedure*) set up by the Plenary of the Conference to deal with matters concerning patent law was chaired by Dr. Kurt Haertel, President of the German Patent Office (Federal Republic of Germany). Mr. Göran Borggård, Director-General of the Royal Swedish Patent Office (Sweden), was the first Vice-Chairman; Mr. Erkki Tuuli, Director-General of the Patent and Record Office (Finland), and Dr. Thomas Lorenz, Chairman of the Patent Office (Austria), were the other Vice-Chairmen. The Rapporteur was Lic. jur. Paul Braendli, Vice-Director of the Federal Intellectual Property Office (Switzerland) (see M/PR/K/1, pages 19, 20 and 25; M/46/K, page 1 and M/55/K, page 2).

2. The duties of Main Committee I were based on Rule 12 of the Rules of Procedure (M/34) and on a recommendation adopted by the Steering Committee of the Conference (M/56/I/II/III).

On this basis the Main Committee was responsible for Articles 14, 50 — 147, 144, 148 — 157, 161, 162 and 174 of the Draft Convention (M/1), Rules 1 — 7 and 13 — 107 of the Draft Implementing Regulations (M/2), the Draft Protocol on Recognition (M/3), the Recommendation on preparations for the opening of the European Patent Office (M/8) and the Recommendation on training staff for the European Patent Office (M/37).

3. Main Committee I met from 11 to 14 September, 17 to 21 September, 24 to 26 September and on 28 and 29 September 1973.

4. At its first meeting the Main Committee, on a proposal from its Chairman, set up a Drafting Committee. Modelled on the Drafting Committee of the Luxembourg Inter-Governmental Conference, this consisted of the delegations of the Federal Republic of Germany, France and the United Kingdom. The Chairman was Mr. J. B. van Bentheim, President of the Octrooiraad and Head of the Netherlands delegation.

5. The Main Committee did not deal with the tasks assigned to it in exactly the same order as the Articles, Rules and other provisions but in the order which seemed most appropriate in the given circumstances. Thus it happened that one and the same provision was discussed on different occasions, for example if the problem in question was first passed to a Working Party and subsequently referred back to the Main Committee.

However, in this report each provision is dealt with only once. The reader should thus be able to obtain, in one place, all the information he wants on the discussion of a particular problem. Within the following Sections the provisions are dealt with in numerical order:

<table>
<thead>
<tr>
<th>Points</th>
<th>8-10</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. General</td>
<td>11 et seq.</td>
</tr>
<tr>
<td>B. Convention</td>
<td>2001 et seq.</td>
</tr>
<tr>
<td>C. Implementing Regulations</td>
<td>3001 et seq.</td>
</tr>
<tr>
<td>D. Protocol on Recognition</td>
<td>4001 et seq.</td>
</tr>
<tr>
<td>E. Recommendation on preparations for the opening of the European Patent Office</td>
<td>5001 et seq.</td>
</tr>
<tr>
<td>F. Recommendation on training staff for the European Patent Office</td>
<td></td>
</tr>
</tbody>
</table>
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
Article 65

Translation of the European patent specification

(1) Any Contracting State may prescribe that if the text, in which the European Patent Office intends to grant a European patent or maintain a European patent as amended for that State, is not drawn up in one of its official languages, the applicant for or proprietor of the patent shall supply to its central industrial property office a translation of this text in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall be three months after the start of the time limit referred to in Article 97, paragraph 2(b), or Article 102, paragraph 3(b), unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant for or proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 3
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 55 to 83
Article 63

Translation of the European patent specification

(1) Unchanged from 1972 published text.

(2)

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Münch, 17 September 1973
M/88/I/R 3
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 15 SEPTEMBER 1973

Articles of the Convention:

Articles 52 53 63 86 87 95 104 105 107 108 111 113 115
116 120 121 122 123 124 125 128 130 131 132 135

Rules of the Implementing Regulations:

Rules 56 65 73 96
Article 63
Translation of the European patent specification.

(1) Unchanged from 1972 published text.

(2) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 13 September 1973

M/ 74/1/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 64
Article 68
Article 87

Rules of the Implementing Regulations:

Rule 1
Rule 2
Rule 13
Rule 16
14. Article 63  The comma in line 2, paragraph 1, should be deleted.

15. Paragraph 3 should read "...deemed to be void ab initio in that State".

16. Article 68  In line 3, paragraph 2, "determine" should be amended to read: "constitute the basis for determining".

17. Article 72  The word "Contracting" in the penultimate line should be deleted.

18. Article 111  In paragraph 1(a), "ex officio" should be amended to read "of its own motion".

19. Article 113  The title should be amended to read "Examination by the European Patent Office of its own motion" and in paragraph 1, "ex officio" should be amended to read "of its own motion".

20. Article 121  In line 2, paragraph 5, "specified" should be amended to read "referred to" since the time limit of Article 74(3) is in fact not specified in that Article but in the Implementing Regulations.

21. Article 131  In paragraph 1, the word "for" in line 1 should be deleted and the first sentence should read, "...Contracting States shall on request give assistance....opening files for inspection".

22. Article 132  "prior right" should be amended to read "prior art".

23. Article 146  Paragraph 1, last sentence, should be amended to read:

"Article 37, paragraphs 3 and 4, and Article 39 shall apply mutatis mutandis".

24. Article 156  In sub-paragraphs (3)(a) and (b) "is to" should be amended to read "shall".

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

- 1973 -

Brussels, 13 August 1973
M/ 40
Original: English

PREPARATORY DOCUMENT

Drawn up by: The United Kingdom Government

Subject: Proposed amendments concerning the Draft Convention, the Draft Implementing Regulations, the Draft Protocol on Recognition and the Draft Protocol on Privileges and Immunities


3 In bezug auf Artikel 23 meinen wir, daß für Gutachten, die das Europäische Patentamt nach diesem Artikel erstellen hat, keine Gebühren erhoben werden sollten. In Finnland bestehen keine Ausnahmen von der Regel, daß derartige Gutachten gebührenfrei sind, denn es wird davon ausgegangen, daß die Parteien eines Rechtsstreits nicht verpflichtet werden können, die Kosten eines Gutachtens zu tragen, das von einem Gericht von Amts wegen angefordert wird. Auch sollten die Kosten in einem solchen Fall nicht unmittelbar dem Staat angelastet werden.


1 Finnland notes with satisfaction that the present text of the proposed European system for the grant of patents is very carefully worked out in every detail. It represents legislative work of a very high level. Quite generally speaking, Finland wishes to point out that the planned system for the grant of patents implies a significant improvement of applicants' possibilities to obtain patent protection in an easier way than up to now, simultaneously reducing the work of national patent offices. We also hope the European patent co-operation profitably may be combined with the patent co-operation system represented by the Patent Cooperation Treaty.

2 Finland further wishes to emphasise that it appreciates the prevailing harmony between the European Patent Convention and the Finnish patent legislation, which, in turn, is practically completely uniform with corresponding legislation of the three other Nordic countries. However, Finland wishes to suggest revision of a few points in which it believes different provisions would be important. The points of view and propositions are the following:

3 As regards Article 23 we hold that such opinions should be free of charge, which the European Patent Office is obliged to give in accordance with same Article. In Finland there are no exceptions to the principle that official opinions of this kind are free of charge in consideration of that parties of a litigation cannot be bound to cover the costs of an opinion requested ex officio by a court of law. Nor should the costs in such a case directly be charged to the state.

4 According to Article 53, paragraph 1(b), disclosure of an invention by displaying it at an official, or officially recognised, international exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on 22 November 1928 and amended on 10 May 1948 and 16 November 1966, shall not be taken into consideration for the application of Article 52. This same rule applies at present in Finland also. Nevertheless Finland holds that the right of the inventor necessitates quite a large widening of the circle of exhibitions which are regarded to be of such a kind that display of an invention is not for a stipulated period of time a novelty bar for a patent application regarding said invention. The narrow stipulation included in the present Draft Convention, up to now ruling the procedure in question has been regarded as a serious disadvantage by the inventors. Article 11 of the Paris Convention has up to the present formed a hindrance for a regularisation at variance therewith
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
Artikel 64
Wirkung der europäischen Patentanmeldung
als nationale Hinterlegung

Eine europäische Patentanmeldung, deren Anmeldetag feststeht, hat in den benannten Vertragsstaaten die Wirkung einer vorschriftsmäßigen nationalen Hinterlegung, gegebenenfalls mit der für die europäische Patentanmeldung beanspruchten Priorität.

Artikel 65
Rechte aus der europäischen Patentanmeldung
nach Veröffentlichung


(3) Jeder Vertragsstaat kann für den Fall, daß eine seiner Amtssprachen nicht die Verfahrenssprache ist, vorsehen, daß der einstweilige Schutz nach den Absätzen 1 und 2 erst von dem Tag an eintritt, an dem eine Übersetzung der Patentanprüche nach Wahl des Anmelders in einer der Amtssprachen dieses Staats oder, soweit der betreffende Staat die Verwendung einer bestimmten Amtssprache vorgeschrieben hat, in dieser Amtssprache
   a) der Öffentlichkeit unter den nach nationalem Recht vorgesehenen Voraussetzungen zugänglich gemacht worden ist oder
   b) demjenigen übermittelt worden ist, der die Erfindung in diesem Vertragsstaat benutzt.

---

Cf. Rules 52 (Examination procedure) and 59 (Examination of opposition)

Article 64
Equivalence of European filing
with national filing

A European patent application which has been accorded a date of filing shall, in the designated Contracting States, be equivalent to a regular national filing, where appropriate with the priority claimed for the European patent application.

Article 65
Rights conferred by a European patent application
after publication

(1) A European patent application shall, from the date of its publication under Article 92, provisionally confer upon the applicant such protection as is conferred by Article 62, in the Contracting States designated in the application as published.

(2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 62. However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, every State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has, used the invention in the said State in circumstances where that person would be liable under national law for infringement of a national patent.

(3) Any Contracting State which does not have as an official language the language of the proceedings, may prescribe that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as a translation of the claims in one of its official languages at the option of the applicant or, where that State has prescribed the use of one specific official language, in that language:
   (a) has been made available to the public in the manner prescribed by national law, or
   (b) has been communicated to any person using the invention in the said State.
Kapitel III
Wirkungen des europäischen Patents und der europäischen Patentanmeldung

Artikel 61
Laufzeit des europäischen Patents

(1) Die Laufzeit des europäischen Patents beträgt zwanzig Jahre, gerechnet vom Anmeldetag an.

(2) Absatz 1 läßt das Recht eines Vertragsstaats unberührt, die Laufzeit eines europäischen Patents im Kriegsfall oder in einer vergleichbaren Krisenlage dieses Staats zu den gleichen Bedingungen zu verlängern, die für die Laufzeit der nationalen Patente dieses Staats gelten.

Artikel 62
Rechte aus dem europäischen Patent


Artikel 63
Übersetzung der Patentschrift


(2) Jeder Vertragsstaat, der eine Vorschrift nach Absatz 1 erlassen hat, kann vorschreiben, daß der Anmelder oder Patentinhaber innerhalb einer von diesem Staat bestimmten Frist die Kosten für eine Veröffentlichung der Übersetzung ganz oder teilweise zu entrichten hat.

Chapter III
Effects of the European patent and the European patent application

Article 61
Term of the European patent

(1) The term of the European patent shall be 20 years as from the date of filing of the application.

(2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent under the same conditions as those applying to its national patents, in order to take into account a state of war or similar emergency conditions affecting that State.

Article 62
Rights conferred by a European patent

A European patent shall confer on its proprietor from the date of publication of the mention of its grant, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State. Any infringement of a European patent shall be dealt with under the laws of that State.

Article 63
Translation of the European patent specification

(1) Any Contracting State may prescribe that if the text, in which the European Patent Office intends to grant a European patent or maintain a European patent as amended for that State, is not drawn up in one of its official languages, the applicant for or proprietor of the patent shall supply to its central industrial property office a translation of this text in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall be three months after the start of the time limit referred to in Article 96, paragraph 2(b), or Article 101, paragraph 3(b), unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant for or proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EURÖPÄISCHES PATENTERTeilungsVERFAHREN

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE 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 systèmes européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d'Allemagne

BIBLIOTHEK
DES DEUTSCHEN
PATENTAMTES
11. DEZ. 1972

1972
Article 138

8. The Committee recorded its preference for a text which clarified the three separate situations combined in the text proposed by the Drafting Committee, on the basis of the three provisions of the Second Preliminary Draft (Articles 6, 76, paragraph 1a, and 134). These provisions concern simultaneous protection, the prior right effect of a national application or patent, and the prior right effect of a European application or patent.

(b) Problems arising following the work of the Drafting Committee

Article 59, paragraph 1

9. The Committee recorded its agreement that the period within which a person may present to the European Patent Office a decision adjudging that he is entitled to the grant of a European patent, be fixed at three months.

Article 63, paragraph 1

10. The Committee adopted a suggestion from the Drafting Committee that a Contracting State may prescribe a longer period than the minimum period of three months laid down in paragraph 1, for the translation of the European patent specification.

Article 100

11. The Committee did not adopt the suggestion by the Drafting Committee that a paragraph 3 should be added providing, in respect of the proprietor of a European patent, for a sanction similar to that provided for in Article 95,
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 6 June 1972
BR/209/72

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 HAERTEL, 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 i.c./MM/prk

.../...
Article 63 (107a, paragraphs 1, 3 and 4)

Translation of the European patent specification

(1) Any Contracting State may prescribe that if the text, in which the European Patent Office intends to grant a European patent or maintain a European patent as amended for that State, is not drawn up in one of its official languages, the applicant for or proprietor of the patent shall supply to its central industrial property office a translation of this text in one of its official languages. The period for supplying the translation shall be three months after the start of the time limit referred to in Article 96, paragraph 2(b), or Article 101, paragraph 3(b), unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant for or proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void in that State ab initio.

B/gc
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
8 to 24 March and 10 to 20 April 1972)

BR/184 e/72
112. **FICPI** and **EIRMA** drew attention to the difficulty raised by the reference made in Article 107a, paragraph 4 to the notification provided for in Article 97, paragraph 1. In fact, it was possible for the applicant to express his disapproval of the grant of the patent on the basis of the envisaged text, an eventuality to which paragraph 2 of Article 97 referred expressly. A literal interpretation of these provisions could then lead to the applicant having to supply, under Article 107a, the translation of a patent, although he had stated his disapproval of the text.

*Article 108* (Decisions subject to appeal)

113. Having established that Article 108, paragraph 2, excluded appeals against interim decisions, **UNEPA** expressed regret at this exclusion since it considered that such a possibility enabled a saving of time in a significant number of cases.

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

114. **IAPIP** argued firstly in favour of an additional time limit for payment of the appeal fee, and secondly for an extension, upon request of the person making the appeal, of the time limit for submitting an additional written statement. On this point, it was supported by **UNEPA** and **FICPI**.

In reply to a question from the Conference, **CNIPA**, **FICPI** and **UNEPA** stated that they could support a ruling laying down one month for the lodging of an appeal and three months for submission of an additional written statement. **EIRMA** on the other hand was in favour of a three month overall period.
CNIPA stated that it could agree to a provision such as Article 106a, provided however that the right to intervene were subject to a time limit running from the moment when the infringement proceedings were instituted and, that the intervention would only be admitted during first proceedings and not during appeal proceedings.

Article 107a (Translation of the patent specification)

110. This provision met with criticism from IFIA. It observed that a large number of translations could result from this provision, thus leading to considerable expense. IFIA considered that this burden should not fall on the applicant. It suggested three alternative solutions:

(i) the Contracting States could accept the patent as published in one of the three official languages of the European Patent Office, and not require a translation;

(ii) the Contracting States requiring a translation should bear the resulting costs;

(iii) a fund consisting of contributions from the Contracting States could be set up within the European Patent Office for the purpose of meeting translation costs.

111. Furthermore, UNICE observed that it should be made clear that the language in which the patent was granted was to be authentic in any State even if that State required a translation into one of its official languages under Article 107a.

BR/169 e/72 cyd/AV/prk
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 15 March 1972
BR/169/72

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)

BR/169 e/72 ley/KM/prk
**Article 107a (Translation of the patent specification)**

129. Among the suggestions on this Article put forward by the non-governmental organisations, those concerning dispensing with any translation at all or the bearing of translation costs by the European Patent Office were not adopted by the Conference.

130. The Conference then examined the question of which text of the patent – that in which the patent was granted or that of the translation required under Article 107a – should be authentic in the States which avail themselves of the right provided for in that Article. It was suggested that the matter was one which could be dealt with under national law. This conception was contested by other delegations who considered that the Convention upheld the principle that the original of the patent granted took precedence over its translation. Even if the patent application was originally drafted in a language other than those used by the European Patent Office, a translation into that language would not have any special status. Thus the provision of Article 34, paragraph 3, in which "the text of the application in the language of the proceedings shall be the authentic text" would be generally applicable (cf. point 60 of this document). Since some delegations expressed the fear that, with the texts as they stood at present, national legal authorities would not necessarily follow this interpretation and might allow the translation into the language of the country at least equal status with the original text, the Conference considered that it would probably be preferable to adapt the texts (which should also include, according to one delegation, Article 19, paragraph 4) in order to make plain the applicability of the above-mentioned principle. To this end, the Article was referred to Working Party I, which would also have to consider it in conjunction with Article 97, in order to clarify the exact moment when the period provided for in Article 107a, paragraph 1, should begin.
MINUTES

of the

5th Meeting of the Inter-Governmental Conference
for the Setting up of a European System
for the Grant of Patents

Parts 1 and 3

(Luxembourg, 24–25 January and 2–4 February 1972)
(1) Any Contracting State may prescribe that if the text, in which the Examining Division intends to grant a European patent for that State or in which the Opposition Division intends to maintain a patent as amended, is not drawn up in one of its official languages, the applicant for or the proprietor of the patent shall, within a period of three months following the notification referred to in Article 97, paragraph 1, or Article 105, paragraph 3, as the case may be, supply to its central industrial property office a translation of this text into one of its official languages.

(2) The notification referred to in Article 97, paragraph 1, or Article 105, paragraph 3, shall indicate those Contracting States which have adopted provisions pursuant to paragraph 1.

(3) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant or the proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(4) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 3, the European patent shall be deemed to be void in that State ab initio.
DOCUMENT CORRECTING

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

and

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 26 November 1971 -

BR/139 e/71
provided for only the European Patent Office (Article 32, paragraph 1), and the legal position of the Administrative Council was unclear.

Most of the delegations did not consider that they were in a position to adopt a standpoint on the Netherlands proposal. It was also felt that this was not a problem for the delegations to Working Party I alone to consider, but should be discussed by the Conference itself.

The Working Party advised the Netherlands delegation to submit a supplementary note to the Conference in preparation for its next Meeting, setting out its proposal in greater detail.

C. COMBINATION OF ARTICLES 97a AND 100

Article 107a (new) - Translation of the patent specification

At the October meeting, the question had been raised in the Drafting Committee whether the references in Article 107, paragraph 4, Article 100 and Article 97a should be dispensed with and be replaced by a new provision.

At the proposal of the United Kingdom delegation the Working Party agreed to delete those provisions and combine them in a single new Article with the title "Translation of the patent specification".

In addition a reservation in favour of Article 107a was inserted in Article 18, which deals with the rights conferred by a European patent. As Article 107a can concern a patent specification either before or after opposition proceedings, a new Chapter III a was introduced in Part V.
MINUTES

of the 10th meeting of Working Party I,
held in Luxembourg from 22 to 26 November 1971

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

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

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

3. The Working Party I Drafting Committee met first under the chairmanship of Mr. van BENTHEM, President of the Octrooiraad, and, following his departure, under that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).
Article 107 (Publication of a new specification)

143. The Working Party discussed whether or not it would be necessary to refer to Article 97a as well as Article 100 in paragraph 4. After the Drafting Committee had studied the question, it was finally agreed that paragraph 4 should remain unchanged, as the reference to Article 97a was implicit in the statement that Article 100 was to be applicable.

Article 108 (Decisions subject to appeal)

144. The Working Party considered that the concept of the "final decision" as contained in paragraph 2 also covered the case of a decision from the Opposition Division that a patent could be maintained on condition that the patentee made certain amendments to it.

Article 111 (Time limit and form of appeal)

145. As instructed by the Conference, the Working Party examined the question of the fixing of the time limit by the Board of Appeal for the production of an additional written statement. Although some delegations were not prepared to envisage an extension of the maximum period prescribed in the final sentence of Article 111, the Working Party decided to postpone its decision on the matter until the interested circles had made known their wishes in a concrete form at the next hearing.
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 Octrooi雷达ad, and after his departure, that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).
Artikel 97
Erteilung des europäischen Patents

(1) Ist die Prüfungsabteilung der Auffassung, daß die europäische Patentanmeldung und die Erfindung, die sie zum Gegenstand hat, den Erfordernissen dieses Übereinkommens genügen, so teilt sie dem Anmelder und gegebenenfalls dem Dritten, der den Prüfungsantrag gestellt hat, mit, in welcher Fassung sie das europäische Patent zu erteilen beabsichtigt. Der Anmelder wird dabei aufgefordert, innerhalb einer Frist von einem Monat die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebenen Gebühren für die Erteilung und für die Druckkosten zu entrichten.

(2) Werden die Gebühren für die Erteilung und für die Druckkosten nicht rechtzeitig entrichtet, so gilt die europäische Patentanmeldung als zurückgenommen.

(3) Sind die Gebühren für die Erteilung und die Druckkosten sowie die nach den Artikeln 129 und 130 bereits fälligen Gebühren bezahlt, so erteilt die Prüfungsabteilung das europäische Patent für die gemäß Artikel 67 benannten Vertragsstaaten. Die Entscheidung wird dem Anmelder und gegebenenfalls dem Dritten, der den Prüfungsantrag gestellt hat, mitgeteilt.

(4) Ein Hinweis auf die Erteilung des europäischen Patents wird frühestens drei Monate nach der in Absatz 1 vorgesehenen Mitteilung in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.

Artikel 97a
Übersetzung des europäischen Patents


(2) Gleichzeitig mit der in Artikel 97 Absatz 1 vorgesehenen Mitteilung nennt die Prüfungsabteilung dem Anmelder diejenigen Vertragsstaaten, die eine Vorschrift gemäß Absatz 1 erlassen haben.

Artikel 98
Veröffentlichung des europäischen Patents

(1) Das Europäische Patentamt gibt gleichzeitig mit der Bekanntmachung des Hinweises auf die Erteilung des europäischen Patents eine Patentschrift für das europäische Patent heraus, die die Beschreibung, die Patentansprüche und gegebenenfalls die Zeichnungen enthält.

(2) In der Patentschrift werden die Vertragsstaaten bezeichnet, für die das europäische Patent erteilt ist.

(3) In der Patentschrift wird der Tag angegeben, bis zu dem ein Einspruch gemäß Artikel 101 eingelegt werden kann.

Grant of the European patent

(1) If the Examining Division is of the opinion that the application and the invention to which it relates meet the requirements of this Convention, it shall inform the applicant and, where applicable, the third party who made the request for examination, of the text in which it intends to grant the European patent. The applicant shall at the same time be requested to pay, within a period of one month, the fees prescribed for grant and printing by the Rules relating to Fees adopted pursuant to this Convention.

(2) If the fees for grant and printing are not paid in due time, the European patent application shall be deemed to be withdrawn.

(3) When the fees for grant and printing and the fees already due under Article 129 and Article 130 have been paid, the Examining Division shall grant the European patent for the Contracting States designated in accordance with Article 67. The decision shall be communicated to the applicant and where applicable to the third party who made the request for examination.

(4) Notification of the grant of a European patent shall be entered in the Register of European Patents and published in the European Patent Bulletin not earlier than three months after the notification referred to in paragraph 1.

Translation of the European patent

(1) Any Contracting State may prescribe that, if the text in which the Examining Division intends to grant a European patent for that State is not drawn up in one of its official languages, the applicant shall, within a period of three months following the notification referred to in Article 97, paragraph 1, supply to its central industrial property office a translation of this wording into one of its official languages.

(2) Simultaneously with the notification referred to in Article 97, paragraph 1, the Examining Division shall indicate to the applicant those Contracting States which have adopted provisions pursuant to paragraph 1.

Publication of a European patent

(1) At the same time as it publishes the notification of the grant of the European patent, the European Patent Office shall publish a specification of the European patent containing the description, the claims and any drawings.

(2) The Contracting States for which the European patent has been granted shall be designated in the specification.

(3) The specification shall contain an indication of the time limit for opposing the grant of the patent under Article 101.
Artikel 99

Urkunde über das europäische Patent

(1) Sobald die Patentschrift herausgegeben worden ist, stellt das Europäische Patentamt dem Patentinhaber die Urkunde über das europäische Patent aus, der als Anlage die Patentschrift beigefügt ist.

(2) In der Patenturkunde wird bescheinigt, daß das europäische Patent für die in der Patentschrift beschriebene Erfindung der in der Urkunde benannten Person für die in der Patentschrift bezeichneten Vertragsstaaten erteilt worden ist.

Artikel 100

Kosten für die Veröffentlichung der Übersetzung — Sanktion

(1) Jeder Vertragsstaat, der eine Vorschrift gemäß Artikel 97a Absatz 1 erlassen hat, kann vorschreiben, daß der Patentinhaber innerhalb einer von diesem Staat bestimmten Frist die Kosten für eine Veröffentlichung der Übersetzung des europäischen Patents ganz oder teilweise zu entrichten hat.

(2) Jeder Vertragsstaat kann vorschreiben, daß im Fall der Nichtbeachtung einer auf Grund von Artikel 97a Absatz 1 oder auf Grund des vorstehenden Absatzes erlassenen Vorschrift die Wirkungen des europäischen Patents in dem Vertragsstaat als von Anfang an nicht eingetreten gelten.

KAPITEL III

Einspruchsverfahren

Artikel 101

Einspruch


(1a) Der Einspruch erfaßt das europäische Patent für alle Vertragsstaaten, in denen es Wirkung hat. Sind in diesen Staaten verschiedene Personen Inhaber des europäischen Patents, so gelten diese für das Einspruchsverfahren als gemeinsame Inhaber.

(2) Diejenigen Dritten, die Einspruch gemäß Absatz 1 eingelegt haben, sind neben dem Patentinhaber am Einspruchsverfahren beteiligt.

CHAPTER III

Opposition procedure

Article 101

Opposition

(1) Within a period of nine months from the date of the publication pursuant to Article 97, paragraph 4, any person may give notice to the European Patent Office of opposition to the European patent granted. Notice of opposition shall be given in a reasoned statement. It shall not be deemed to have been given until the fee prescribed by the Rules relating to Fees adopted pursuant to this Convention has been paid. No fee shall be payable for opposition if the notice of opposition is given by the third party who made the request for examination.

(1a) The opposition shall apply to the European patent in all the Contracting States in which it has effect. If the European patent belongs to different proprietors in different States, such proprietors shall be considered as joint proprietors for the purposes of opposition proceedings.

(2) Third parties who have given notice of opposition as provided for in paragraph 1 shall take part in the opposition proceedings with the proprietor of the patent.
Artikel 107
Veröffentlichung einer neuen Patentschrift

(1) Ist das europäische Patent gemäß Artikel 105 Absatz 3 geändert worden, so gibt das Europäische Patentamt gleichzeitig mit der Bekanntmachung der Entscheidung über den Einspruch eine neue Patentschrift für das europäische Patent heraus, die die Beschreibung, die Patentansprüche und gegebenenfalls die Zeichnungen in der geänderten Form enthält.

(2) Artikel 98 Absatz 2 ist anzuwenden.

(3) In der neuen Patentschrift wird darauf hingewiesen, daß gegen das Patent kein Einspruch mehr eingelegt werden kann.

(4) Artikel 100 ist entsprechend anzuwenden.

KAPITEL IV
Beschwerde
Artikel 108
Beschwerdefähige Entscheidungen

(1) Gegen Entscheidungen der Prüfungsstellen, der Prüfungsabteilungen und der Einspruchsabteilungen findet die Beschwerde statt.

(2) Eine Entscheidung, die ein Verfahren gegenüber einem Beteiligten nicht abschließt, ist nur zusammen mit der Endentscheidung anfechtbar.

(3) Die Verteilung der Kosten des Verfahrens kann nicht einziger Gegenstand einer Beschwerde sein.

(4) Eine Entscheidung über die Festsetzung des Betrags der Kosten des Verfahrens ist mit der Beschwerde nur anfechtbar, wenn der Betrag eine in der Ausführungsordnung bestimmte Höhe übersteigt.

Artikel 109
Wirkung der Beschwerde

Die Beschwerde hat aufschiebende Wirkung.

Artikel 110
Beschwerdeberechtigte und Verfahrensbeteiligte

Die Beschwerde steht denjenigen zu, die an dem Verfahren teilgenommen haben, das zu der Entscheidung geführt hat, soweit sie durch die Entscheidung beschwert sind. Die übrigen an diesem Verfahren Beteiligten mit Ausnahme derjenigen, die auf ihre Beteiligung an diesem Verfahren verzichtet haben, sind am Beschwerdeverfahren beteiligt.

Artikel 107
Publication of a new specification

(1) If a European patent is amended under Article 105, paragraph 3, the European Patent Office shall, at the same time as it publishes the decision on the opposition, publish a new specification of the European patent containing the description, the claims and any drawings, in the amended form.

(2) Article 98, paragraph 2, shall apply.

(3) It shall be indicated in the new specification that the patent may no longer be opposed.

(4) Article 100 shall apply mutatis mutandis.

CHAPTER IV
Appeals
Article 108
Decisions subject to appeal

(1) An appeal shall lie from decisions of the Examining Sections, Examining Divisions and Opposition Divisions.

(2) A decision which does not terminate proceedings as regards one of the parties can only be the subject of an appeal together with the final decision.

(3) The allocation of costs of proceedings cannot be the sole subject of an appeal.

(4) A decision fixing the amount of costs of proceedings cannot be the subject of an appeal unless the amount is in excess of that laid down in the Implementing Regulations.

Artikel 109
Effect of appeals

An appeal shall have suspensive effect.

Artikel 110
Persons entitled to appeal and to take part in appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. The other participants in the proceedings shall be parties to the appeal proceedings as of right, with the exception of those who have abandoned that right.
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

sowie
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

und
ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

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

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

ainsi que
PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS

et
PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

APRIL
— 1971 —
and in providing for a reduction in accordance with the possibilities open to the Office. It is this solution which seems to satisfy the desire of the interested circles to be able to file applications in all areas of technology from the time the Office opens.

Article 100 (former Article 96c) : Translation of specifications (BR/40/70, page 8, No. 21, second paragraph).

120. With the idea of providing for a reduction of the period for the translation of the specification, referred to in Article 100 of the First Preliminary Draft, the Working Party came to the conclusion that it was simpler to recognise that, between the time when the Examining Division is considering the grant of a patent in its final form and the grant itself, there would in fact be a time which could be put to good use for the translation of the text which would constitute the specification.

For this reason the Working Party deemed it preferable to amend the system laid down in Articles 97 and 100 of the First Preliminary Draft, and to provide for the following system:

(i) the fixing of a three-month period starting from the notification referred to in Article 97, paragraph 1, for entering the grant of the patent in the Register of European Patents. This new provision is incorporated in Article 97, paragraph 4;

(ii) special arrangements introduced in Article 97a (new) for the translation of the text referred to in Article 97, if this text is not in an official language of a Contracting State, in which case this State has the right to prescribe the translation within a period of three months from the notification laid down in Article 97, paragraph 1;

(iii) from this point, Article 100 lays down the possible consequences in a Contracting State which has adopted provisions pursuant to Article 97a (new).
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 26 October 1970
BR/49/70

MINUTES
of the meeting of Working Party I
Luxembourg, 7 - 11 September 1970

---

Agenda item 1 (1): Opening of the meeting and adoption of the provisional agenda

1. The fifth working meeting of Working Party I was held at Luxembourg from Monday 7 to Friday 11 September 1970, with Dr. HAERTEL, President of the German Patent Office, in the Chair.

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

2. The Drafting Committee, under the Chairmanship of the President of the Netherlands "Octrooiraad", Mr. J.B. van BENTHEM, held its meetings directly after the meetings of the Working Party.

---

(1) See Annex I for provisional agenda (BR/GT 1/51/70).
(2) See Annex II for list of those attending the meeting of the Working Party.

BR/49 e/70 eld/PA/bcc

.../...
Artikel 97

Erlangung des europäischen Patents

(1) Ist die Prüfungsabteilung der Auffassung, daß die europäische Patentanmeldung und die Erfindung, die sie zum Gegenstand hat, den Erfordernissen dieses Übereinkommens genügen, so teilt sie dem Anmelder und gegebenenfalls dem Dritten, der den Prüfungsantrag gestellt hat, mit, in welcher Fassung sie das europäische Patent zu erteilen beabsichtigt. Der Anmelder wird dabei aufgefordert, innerhalb einer Frist von einem Monat die in der Gebührenordnung zu diesem Übereinkommen vorgeschriebenen Gebühren für die Erteilung und für die Druckkosten zu entrichten.

(2) Werden die Gebühren für die Erteilung und für die Druckkosten nicht rechtzeitig entrichtet, so gilt die europäische Patentanmeldung als zurückgenommen.

(3) Sind die Gebühren für die Erteilung und die Druckkosten sowie die nach den Artikeln 129 und 130 bereits fälligen Gebühren bezahlt, so erteilt die Prüfungsabteilung das europäische Patent für die gemäß Artikel 67 benannten Vertragsstaaten. Die Entscheidung wird dem Anmelder und gegebenenfalls dem Dritten, der den Prüfungsantrag gestellt hat, mitgeteilt.

(4) Ein Hinweis auf die Erteilung des europäischen Patents wird frühestens drei Monate nach der in Absatz 1 vorgesehenen Mitteilung in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.

Artikel 97a

Übersetzung des europäischen Patents


(2) Gleichzeitig mit der in Artikel 97 Absatz 1 vorgesehenen Mitteilung nennt die Prüfungsabteilung dem Anmelder diejenigen Vertragsstaaten, die eine Vorschrift gemäß Absatz 1 erlassen haben.

Artikel 98

Veröffentlichung des europäischen Patents

(1) Das Europäische Patentamt gibt gleichzeitig mit der Bekanntmachung des Hinweises auf die Erteilung des europäischen Patents eine Patentschrift für das europäische Patent heraus, die die Beschreibung, die Patentansprüche und gegebenenfalls die Zeichnungen enthält.

(2) In der Patentschrift werden die Vertragsstaaten bezeichnet, für die das europäische Patent erteilt ist.

(3) In der Patentschrift wird der Tag angegeben, bis zu dem ein Einspruch gemäß Artikel 101 eingelegt werden kann.

Artikel 97

Grant of the European patent

(1) If the Examining Division is of the opinion that the application and the invention to which it relates meet the requirements of this Convention, it shall inform the applicant and, where applicable, the third party who made the request for examination, of the text in which it intends to grant the European patent. The applicant shall at the same time be requested to pay, within a period of one month, the fees prescribed for grant and printing by the Rules relating to Fees adopted pursuant to this Convention.

(2) If the fees for grant and printing are not paid in due time, the European patent application shall be deemed to be withdrawn.

(3) When the fees for grant and printing and the fees already due under Article 129 and Article 130 have been paid, the Examining Division shall grant the European patent for the Contracting States designated in accordance with Article 67. The decision shall be communicated to the applicant and where applicable to the third party who made the request for examination.

(4) Notification of the grant of a European patent shall be entered in the Register of European Patents and published in the European Patent Bulletin not earlier than three months after the notification referred to in paragraph 1.

Artikel 97a

Translation of the European patent

(1) Any Contracting State may prescribe that, if the text in which the Examining Division intends to grant a European patent for that State is not drawn up in one of its official languages, the applicant shall, within a period of three months following the notification referred to in Article 97, paragraph 1, supply to its central industrial property office a translation of this wording into one of its official languages.

(2) Simultaneously with the notification referred to in Article 97, paragraph 1, the Examining Division shall indicate to the applicant those Contracting States which have adopted provisions pursuant to paragraph 1.

Artikel 98

Publication of a European patent

(1) At the same time as it publishes the notification of the grant of the European patent, the European Patent Office shall publish a specification of the European patent containing the description, the claims and any drawings.

(2) The Contracting States for which the European patent has been granted shall be designated in the specification.

(3) The specification shall contain an indication of the time limit for opposing the grant of the patent under Article 101.
Artikel 100 (früher Artikel 96c)
Übersetzung der Patentschrift

(1) Ist die Patentschrift des europäischen Patents nicht in einer der Amtssprachen eines Vertragsstaats, abgefaßt, für den das europäische Patent erteilt worden ist, so kann dieser Vertragsstaat vorschreiben, daß der Inhaber des europäischen Patents innerhalb einer Frist von mindestens drei Monaten nach dem Tag der Bekanntmachung der Patenterteilung im Europäischen Patentblatt bei der nationalen Zentralbehörde für den gewerblichen Rechtsschutz

a) eine Übersetzung der Patentschrift in eine seiner Amtssprachen einzureichen oder

b) eine Gebühr für die Herstellung einer amtlichen Übersetzung der Patentschrift in eine seiner Amtssprachen zu entrichten hat.

(2) Jeder Vertragsstaat, der eine Vorschrift gemäß Absatz 1 erlassen hat, kann außerdem vorschreiben, daß der Patentinhaber innerhalb der in Absatz 1 genannten Frist die Kosten für eine Veröffentlichung der Übersetzung ganz oder teilweise zu entrichten hat.

(3) Jeder Vertragsstaat kann vorschreiben, daß im Falle der Nichtbeachtung einer aufgrund der Absätze 1 oder 2 erlassenen Vorschrift die Wirkungen des europäischen Patents in dem Vertragsstaat als von Anfang an nicht eingetreten gelten.

KAPITEL III
Einbruchsverfahren

Artikel 101 (früher Artikel 96d)

Einspruch


(2) Diejenigen Dritten, die Einspruch gemäß Absatz 1 eingereicht haben, sind neben dem Patentinhaber am Einspruchsverfahren beteiligt.


Artikel 100 (former Article 96c)
Translation of specifications

(1) If the specification of a European patent has not been drawn up in one of the official languages of a Contracting State for which the European patent has been granted, that State may prescribe that the proprietor of the European patent must send to the national central industrial property office, within a period of not less than three months after the date of publication of the grant of the patent in the European Patent Bulletin:

(a) a translation of the specification into an official language of that State, or

(b) a fee for the preparation of an official translation of the specification into an official language of that State.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may further prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within the period referred to in paragraph 1.

(3) Any Contracting State may prescribe that, in the event of failure to observe a provision adopted in accordance with paragraph 1 or 2, the European patent shall be deemed to have been void in that State ab initio.

CHAPTER III
Opposition procedure

Appendix 1 (former Appendix 96d)

Opposition

(1) Within a period of twelve months from the date of the publication pursuant to Article 97, paragraph 4, any person may give notice to the European Patent Office of opposition to the European patent granted. Notice of opposition shall be given in a reasoned statement in writing. It shall not be deemed to have been given until the fee prescribed in the Rules relating to fees adopted pursuant to this Convention has been paid. No fee shall be payable for opposition if the notice of opposition is given by the third party who made the request for examination.

(2) Third parties who have given notice of opposition as provided for in paragraph 1 shall take part in the opposition proceedings with the proprietor of the patent.

(3) The Examining Division shall notify the proprietor of the patent of any opposition lodged and shall invite him to present his observations within a period to be fixed by the Division. The observations of the proprietor of the patent shall be communicated to the other parties concerned.
to decide whether to pursue the application or to abandon it, is still to be investigated. If the fundamental decision in favour of "deferred examination", taken in the Memorandum of 13 May 1969, is to be maintained, the time limit chosen must not be shorter than this minimum period.

100. In the note to paragraph 2, it is put forward for discussion whether, if the time limit for making the request were relatively long, third parties should be enabled to introduce a request for examination on payment of a part only of the examination fee. In such a case the applicant would have to pay the remainder of the fee. This amendment to the system of deferred examination was proposed in order to make a longer time limit more readily acceptable to the public.

101. Article 88 (2) to (7) lays down further particulars relating to the introduction of a request for examination. The fact that, contrary to the 1962/1965 Drafts, a request for examination may already be introduced on filing the application, is of particular importance. To the extent that use is made of this possibility, "deferred examination" becomes "immediate examination". This time limit for the introduction of a request for examination is now to be calculated as from the filing of the application.

102. Article 89 contains further amendments to the system of deferred examination, by which this may be changed to immediate examination for all or for certain areas of technology. The longer the time limit laid down in Article 88 (2), the more important this provision becomes.

103. Article 89 (1) in its present form provides for any desired reduction or prolongation of the time limit for making a request.

104. The authority given to the Administrative Council under Article 89 (2) will allow immediate examination to be made in those areas of technology where it is in the public interest, i.e. particularly where it is in the interests of economic or research policy.

105. Article 89 (3) is based on the consideration that it was, in particular, the excessive work load of the patent offices which led a number of countries to introduce the system of deferred examination. The Administrative Council is therefore to be given the possibility of replacing deferred examination by immediate examination whenever the work load of the European Patent Office permits of this in any area of technology. In so far as the conditions are met, immediate examination can be introduced in all areas of technology.

106. Article 89 (4) lays down the procedure for the case where immediate examination has been introduced for certain areas of technology. Further details are to be laid down in the Implementing Regulations.

107. Article 90, which deals with the transfer of proceedings from the Examining Sections to the Examining Divisions, is connected with Articles 54 (1) and 55 (1), where the responsibilities of these bodies are defined. The object of Article 90 is to ensure that examination of a European patent application for formal or obvious deficiencies pursuant to Article 77 et seq. is still undertaken by the Examining Sections where a request for examination has for example been made on the filing of the application.

108. The object of Article 92 is to ensure that, even where the request for examination has been made before the report on the state of the art has been obtained, the applicant may have a suitable period within which to reconsider his application in the light of that report and to draw the appropriate conclusions, i.e. to decide whether to limit or to withdraw the application. In addition, Article 92 is intended to ensure that, after examining the report on the state of the art, the applicant indicates to the European Patent Office, whether he wishes to maintain his application. As a rule, this will occur through the applicant continuing to pay the annual renewal fees for the application after having obtained the report on the state of the art or introducing a request for examination. In the event, however, of his only having received the report on the state of the art after the introduction of the request for examination, and of his having been invited to present his observations pursuant to Article 92 (1), he should, particularly if he considers such observations to be unnecessary, at least indicate to the European Patent Office his interest in maintaining the application. Article 92 (2) consequently lays down that if the applicant does not indicate within the period fixed in paragraph 1 that he wishes to maintain his application, the latter shall be deemed to be withdrawn.

109. Article 93 concerns the commencement of examination and the particulars of the examination procedure. The last sentence of paragraph 1 clearly lays down that persons other than the applicant, such as anyone who has sent in his observations pursuant to Article 87, or the person who has introduced the request for examination, shall not take part in the proceedings. As regards the obtaining of an additional report on the state of the art, it is clear from paragraph 2 that the Examining Division may obtain such a report whenever it considers this necessary. The additional fee is only payable by the applicant if it was necessary to obtain an additional report because of amendments to the claims.

110. Article 94 deals with the division of the application after the request for examination has been made. The period preceding the introduction of the request for examination is covered by Article 81. This partitioning follows from the 1962/1965 drafts, where Article 80 concerned the division of the application and Article 98 the division of the provisional European patent. The possibility of combining the two sets of provisions relating to division can be examined later. Both Articles, in accordance with Article 4 G (2) of the Paris Union Convention, assume that the applicant may also divide the application on his own initiative, and determine at which stages in the procedure this is possible. Under Article 94 (1), sub-paragraph (a), division may be made at the request of the applicant after the introduction of the request for examination and before the beginning of examination. In order to prevent abuse, division of the
REPORTS

on the

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

— 1970 —
of view, the required translations could be begun before the date of grant. It was further pointed out that this question was linked with the system of belated opposition adopted by Working Party I, which had been worked out specifically to solve the problem of the translation of the patent specification into the languages other than that in which it had been published. The Conference accordingly agreed that the question raised by the time limit provided for in Article 96c could be reviewed once the principle of belated opposition had been examined.

VIII

Articles 96c to 104

Opposition procedure

(Report by the British delegation: BR/22/69)

32. The Conference had a far-ranging discussion on the principle of belated opposition, upon which the proposals submitted to it by Working Party I were based.

The delegations clearly in favour of a system of belated opposition pointed to the following factors: in the first place, this system gives a period long enough for the problem of translating the specifications into the languages other than that of publication to be solved. Further, since opposition would be raised after the grant of the patent, the rights attached to the patent would basically similar in the various States, whereas this is not the case for the rights attached to a published application, which may differ considerably.
It was agreed to defer any decision on this matter. The Conference wished to examine not only the opinions of the interested circles, but also the technical questions arising from the financial and staffing implications of the decision in question.

31. The Danish delegation asked, in connection with Article 96c, whether it would not be preferable to lay down that translations of the application into the official languages of the countries for which the patent is granted should be made, not within a period of three months after the grant of the patent, as provided in Article 96c for the patent specification, but by the date of publication of the application, i.e. eighteen months after the filing of the application, when provisional protection begins.

It was observed that this question covered not only the rules laid down in Article 96c, but also the system provided for in Article 20bis.

(a) As regards the latter, the Conference considered that the provisional protection, as granted after translation of the claims, should be maintained so as to avoid making the European patent somewhat unattractive, as would happen if requirements were introduced which went beyond those laid down at present, in view of the fairly considerable expense involved in making translations even before the applicant knew the result of the examination proceedings.

(b) As regards the question raised by Article 96c, it was observed that the time limit of three months could be reduced if necessary, if, from the technical point
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 30 January 1970
BR/26/70

- Secretariat -

MINUTES
of the
2nd MEETING

held at Luxembourg on 13 to 16 January 1970

Item 1 on the agenda (BR/14/69) (1)

OPENING OF THE MEETING

1. The Conference began its work at 10.00 a.m. on Tuesday 13 January at the Kirchberg European Centre, Luxembourg, with Dr. HAERTEL, President of the German Patent Office, in the Chair (2).

Item 2 on the agenda

ADOPTION OF THE PROVISIONAL AGENDA

2. The Conference adopted the provisional agenda submitted by the President.

(1) The agenda is given in Annex I
(2) The list of those attending the 2nd meeting is given in Annex II.

BR/26 e/70 kel/PA/mk

.../...
Article 96b - Certificate for a European patent

24. Since, under the new arrangements, the European patent is to be granted on the conclusion of the examination, but prior to the opposition procedure, it was necessary to amend the previously existing Article 104 and to insert it here. Apart from this, this provision did not give rise to any observations.

Article 96c - Translation of specifications

25. The Working Party agreed that paragraph 1 allows every Contracting State the possibility of prescribing in its legislation either the procedure under (a) or the procedure under (b), or of providing that the proprietor of the European patent has the choice between the two possibilities.

26. In the opinion of the Working Party, paragraph 3 does not compel the Contracting States to prescribe that the patent shall be deemed to have been void ab initio in the event of failure to observe a provision adopted in accordance with paragraphs 1 or 2; it is also open to it to provide for a less drastic sanction.
MINUTES
of the meeting of Working Party I
(Luxembourg, 24 to 28 November 1969)

I.

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

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

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

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

(1) See Annex for list of those attending the meeting of the Working Party.
(2) It was originally agreed at the October meeting that the German delegation should produce a report for Articles 88 to 104.
Article 96c
Translation of specifications

Working Party text

(1) If the specification of a European patent has not been drawn up in one of the official languages of a Contracting State for which the European patent has been granted, that State may prescribe that the proprietor of the European patent must send to the national central industrial property office, within a period of not less than three months after the date of publication of the grant of the patent in the European Patent Bulletin:

(a) a translation of the specification into an official language of that State, or

(b) a fee for the preparation of an official translation of the specification into an official language of that State.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may further prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within the period referred to in paragraph 1.

(3) Any Contracting State may prescribe that, in the event of failure to observe a provision adopted in accordance with paragraph 1 or 2, the European patent shall be deemed to have been void in that State ab initio.

BR/11 e/69 mk
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

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

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

compared synoptically with

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

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

BR/11 e/69 mk
nécessaire de préciser que dans ce cas la procédure devrait tout de même être continuée.

Le groupe estime qu'il faudrait, en effet, régler ce problème en ajoutant par exemple après "si le brevet européen provisoire s'éteint" les mots : "à l'exception de l'expiration du délai de protection". Cette question est transmise au Comité de rédaction.

**Article 100**

Le groupe décide de reporter la discussion sur la question de l'effet rétroactif de la nullité à l'article 128.

Il constate ensuite que le texte actuel tient déjà compte des propositions faites par l'UNION et les experts du Royaume-Uni. Toutefois, le Comité de rédaction pourrait examiner s'il semble nécessaire de préciser le texte.

**Article 101**

Cet article est accepté.

**Article 102**

La suggestion de l'UNION est rejetée.

**Article 103**

Au sujet de la proposition du Royaume-Uni, le groupe pense que le texte en tient déjà suffisamment compte. Bien que l'avis de nouveauté ne sera pas imprimé dans le fascicule, il est prévu que ce fascicule mentionnera toutes les antériorités qui étaient considérées (voir numéro 1 à l'article 103 du règlement d'exécution).

**Article 104**

Pas de remarque.

Le groupe termine ainsi, pour cette session, l'examen des articles.

Le groupe convient à ce que les demandes de modification des comptes rendus provisoires de la douzième session devront parvenir au Secrétariat avant le 31 mars.

Pour la réunion du mois de juin à Munich, le Secrétariat rassemblera en un document les toutes les modifications des articles intervenues jusqu'à ce jour afin d'accélérer la discussion du règlement d'exécution qui pourrait être communiquez de la quatorzième réunion.
Résultats de la douzième session du groupe de travail "Brevets" qui s'est tenue à Bruxelles du 26 février au 6 mars 1964

COMPTES RENDUS
forderlich, wonach in diesem Fall das Verfahren gleichwohl fortgesetzt werden müsse.


Artikel 100

Die Gruppe beschließt, die Erörterung der Frage der Rückwirkung der Nichtigkeit bis zur Besprechung von Artikel 128 zu verschieben.

Weiter stellt sie fest, daß der derzeitige Text bereits den Vorschlägen der Union und der Sachverständigen des Vereinigten Königreichs Rechnung trägt. Der Redaktionsausschuß könne jedoch prüfen, ob nähere Erläuterungen im Text erforderlich sind.

Artikel 101

Dieser Artikel wird angenommen.

Artikel 102

Der Vorschlag der Union wird zurückgewiesen.

Artikel 103

Die Gruppe ist der Ansicht, daß der Artikel dem Vorschlag des Vereinigten Königreichs bereits genügend Rechnung trägt. Denn auch der Neuheitsbericht in der Patentschrift nicht gedruckt wird, ist doch vorgesehen, daß die Patentschrift alle früheren Rechte, die berücksichtigt worden sind, erwähnt (vgl. Nummer 1 zu Artikel 103, 1 der Ausführungsordnung).

Artikel 104

Keine Bemerkungen.


Für die Sitzung in München im Monat Juni wird das Sekretariat in einem Dokument alle bis dahin vorgenommenen Änderungen der Artikel zusammenstellen, um die Erörterung der Ausführungsordnung zu erleichtern, mit der auf der 14. Sitzung begonnen worden könnte.

2632/IV/64-D

/.

2632/IV/64-D
Ergebnisse der 12. Sitzung
der Arbeitsgruppe "Patente"
in Brüssel

SITZUNGSBERICHT
(2) Interested third parties for the purposes of paragraph 1 shall be those who have made a request for examination as provided for in Article 88 or who have lodged a notice of intervention as provided for in Article 91.

(3) On the expiry of the period provided for in paragraph 1, the Examining Division shall communicate the observations referred to in that paragraph to the proprietor of the patent and invite him to comment thereon within a period to be fixed by the Division.

Article 97. Renewed notification concerning the examination

(1) If, after having examined the observations and comments provided for in Article 96, the Examining Division considers that the provisional European patent cannot be confirmed as a final European patent to the extent envisaged in the notification referred to in Article 96, paragraph 1, subsequent procedure will take its course in accordance with Article 95.

(2) In the case referred to in paragraph 1, the third party intervention procedure provided for in Article 96 shall apply if the Examining Division considers it expedient.

Article 98. Division of a provisional European patent

(1) The Examining Division shall decide to divide a provisional European patent:

(a) at the request of the proprietor, if the Examining Division considers the request to be justified;

(b) if the provisional European patent comprises more than one invention.

(2) In the cases provided for under paragraph 1, the Examining Division shall notify the proprietor of the extent to which it proposes to divide the provisional European patent. This notification shall be made in accordance with the provisions of Article 95.

(3) It shall be the duty of the proprietor to submit to the Examining Division the specifications and any drawings, pertaining to divisional European patents.

(4) Each of the additional provisional patents issued by the Division shall be liable to the payment of the divisional fee prescribed by the Rules relating to fees adopted pursuant to this Convention. This fee shall be additional to those provided for in Article 101.

Article 99. Termination of proceedings on lapse of a provisional European patent

If a provisional European patent lapses during examination proceedings, the Examining Division shall terminate the proceedings and inform the proprietor and third parties interested under the terms of Article 96, paragraph 2. If a provisional European patent lapses prior to the date specified for the beginning of the examination under Article 94, paragraph 1, one half of the examination fee and of fees paid on notice of intervention shall be repaid to the applicants.
Article 92. Observations concerning the validity of a provisional European patent

(1) Following the publication of the grant of a provisional European patent, anyone may present his observations concerning the validity of that patent. Such observations must be made in writing and must include a statement of the grounds on which they are based.

(2) The observations referred to in paragraph 1 shall be communicated to the proprietor.

Article 93. Reply on behalf of the proprietor of a provisional patent

Following the expiry of the period mentioned in Article 91, paragraph 1, the Examining Division shall invite the proprietor of the provisional European patent to comment, within a period of three months, on the novelty report and any observations communicated to him and, if necessary, to amend his specification.

Article 94. Examination of a provisional European patent

(1) The Examining Division shall commence the examination of the provisional European patent on receipt of the proprietor's reply or, in the absence of such a reply, not later than on the expiry of the period prescribed in Article 93.

(2) The Examining Division shall ascertain whether the provisional European patent and the invention which forms the subject thereof and the published specification meet all the requirements of this Convention.

Article 95. Notification of the result of the examination

(1) If the examination of a provisional European patent reveals that the patent, the invention which forms the subject thereof or the published specification fail to meet the requirements of this Convention entirely or partly, the Examining Division shall notify the proprietor of the patent accordingly and invite him to present his observations or rectify the irregularities discovered within a period to be fixed by the Division, by submitting, if necessary, an amended specification.

(2) The notification of the results of the examination must be a reasoned statement indicating all the reasons against the confirmation of the provisional European patent as a final European patent.

Article 96. Third party intervention

(1) If the Examining Division is of the opinion that the provisional European patent together with the invention which forms the subject thereof and the published specification, taking into consideration any amendments made by the proprietor of the patent, meet the requirements of this Convention, it will inform the proprietor of the patent and any third parties interested in the proceedings, that it intends to confirm the provisional European patent as a whole or in part. Interested third parties may present their reasoned observations in writing within a period to be fixed by the Examining Division.
Translation of a Draft Convention relating to a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
FIVE SHILLINGS NET
L'article 85 est transmis au Comité de rédaction.

**Article 86**

Le Comité de rédaction est chargé d'examiner si les tiers peuvent également intervenir en ce qui concerne la condition d'activité inventivo.

**Article 88**

Le paragraphe 3 doit être supprimé en raison de la disposition de l'article 97, paragraphe 4. L'article 88 est adopté.

**Article 88 a**

La délégation française maintient sa remarque qui devrait être soumise au Comité de coordination.

L'article 89 est adopté.

**Article 90**

Le paragraphe 2 est supprimé.

**Article 90 a**

Le paragraphe 4 est supprimé.

**Article 90 a bis**

Les deux variantes du paragraphe 2 sont maintenues jusqu'à la décision du groupe lors de la prochaine session.

Le Comité de rédaction est invité à marquer sa préférence.

Les articles 90 a, 90 a ter jusqu'à 90 f sont adoptés.

**Article 90 g**

La phrase entre crochets du paragraphe 4 est rayée en vue de la disposition de l'article 164, paragraphe 5.

Les articles 91 à 98 sont adoptés.
Résultats de la cinquième session
du groupe de travail " Brevets "
qui s'est tenue à Bruxelles
du 2 au 18 avril 1962
Die niederländische Delegation soll dem Redaktionsausschuß einen Vorschlag unterbreiten über die eventuell in Abs. 1 aufzunehmende Verpflichtung, den Zwischenantrag zu begründen. Falls im Redaktionsausschuß keine Einstimmigkeit zu erreichen sei, soll er in der nächsten Sitzung der Arbeitsgruppe die Frage erneut vorlegen.

Artikel 85 wird dem Redaktionsausschuß überwiesen.

**Artikel 86**

Der Redaktionsausschuß wird beauftragt, zu prüfen, ob Dritte auch bezüglich der Voraussetzung einer neuen Erfindung das Widerspruchsrecht bekommen sollen.

**Artikel 88**

Wegen der Bestimmung des Art. 97 Abs. 4 muß Abs. 3 gestrichen werden.
Artikel 88 wird angenommen.

**Artikel 88 a**

Die französische Delegation besteht darauf, daß ihre Bemerkung dem Koordinationsausschuß vorgelegt wird.
Artikel 89 wird angenommen.

**Artikel 90**

Absatz 2 wird gestrichen.

**Artikel 90 a**

Absatz 4 wird gestrichen.

**Artikel 90 a bis**

Die beiden Alternativen des Absatzes 2 werden bis zur Entscheidung der Arbeitsgruppe in der nächsten Sitzung beibehalten.

Der Redaktionsausschuß soll sich darüber äußern, welche Alternative er vorziehe.

Die Artikel 90 a, 90 a ter - 90 f werden angenommen.
Ergebnisse der fünften Sitzung
der Arbeitsgruppe "Patente"
vom 2. bis 18. April 1962
in Brüssel
(4) The effect of the publication referred to in paragraph 3 is to convert the provisional European patent into a final European patent.

Article 102. Hearing before the Examining Division
Whenever the Examining Division deems it necessary, it shall, on its own initiative or on request, hear the proprietor or any other party to the proceedings.

Article 103. Publication of a final European patent
At the same time as it publishes the confirmation of the provisional European patent as a final European patent, the European Patent Office shall publish a printed specification of the final European patent containing the description of the invention, together with the drawings.

Article 104. Certificate of a final European patent
(1) As soon as the printed patent specification has been published, the European Patent Office shall issue to the proprietor a certificate for the final European patent to which shall be annexed the printed specification.

(2) The certificate shall state that the provisional European patent has been confirmed as a final European patent in the name of the person mentioned in the certificate in respect of the invention described in the printed patent specification.

CHAPTER III—APPEALS

Article 105. Decisions subject to appeal
(1) An appeal shall lie from decisions of the Examining Sections, the Examining Divisions and the Patent Administration Divisions.

(2) A decision which does not terminate proceedings as regards one of the parties cannot, of itself, be the subject of an appeal.

(3) A decision in respect of the allocation of costs of proceedings cannot, of itself, be the subject of an appeal. No appeal shall lie against a decision dealing solely with such allocation.

(4) A decision fixing the amount of costs of proceedings cannot be the subject of an appeal unless the amount is in excess of ..............

Note:
The appeal procedure should be laid down either in the Convention or in the Implementing Regulations.

Article 106. Effect of appeals
An appeal shall have suspensive effect.

Article 107. Persons entitled to appeal and to take part in appeal proceedings
Any party to proceedings who was adversely effected by a decision may appeal. The other participants in the proceedings shall be parties to the appeal proceedings, as of right.
Translation of a Draft Convention relating to a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
FIVE SHILLINGS NET
Discussion de l'article 90 b) de l'avant-projet.

M. De Muyser suggère d'indiquer dans l'expédition du brevet définitif l'état de la technique.

Le groupe approuve cette suggestion étant donné que l'expédition peut contenir des antériorités qui ne figurent pas dans l'avis de nouveauté. Il estime cependant qu'une telle disposition devrait figurer dans le règlement d'exécution.

L'article 90 b) est approuvé et transmis au Comité de rédaction.

Discussion de l'article 90 c) de l'avant-projet.

Au sujet de l'alinéa 3 de cet article, M. De Muyser estime que cette disposition devrait figurer dans le règlement d'exécution.

M. Roscioni, au contraire, estime que cette règle est inutile puisqu'elle n'a pas de sanctions. Il faudrait plutôt prévoir que le brevet européen provisoire serait rayé sur le registre européen une fois le brevet définitif délivré.

Le groupe discutera cette question lors de l'examen des dispositions concernant le registre de l'Office européen et transmet l'article au Comité de rédaction.

Discussion de l'article 90 d) de l'avant-projet.

Le groupe souligne l'effet juridique de la confirmation. Par une fiction, le brevet définitif produit ses effets à partir du moment de la publication du brevet provisoire.

L'article est approuvé et transmis au Comité de rédaction.
Résultats de la deuxième session du groupe de travail "Brevets" qui s'est tenue à Bruxelles du 3 au 14 juillet 1961
Brüssel, den 10. Juli 1961

Artikel 90 b

Veröffentlichung des endgültigen europäischen Patents

Erörterungen zu Artikel 90 b) des Vorentwurfs

Herr De Kuyser regt an, in der Ausfertigung des endgültigen Patentes den Stand der Technik anzugeben.

Die Gruppe billigt diese Anregung, da in der Ausfertigung ältere Rechte angegeben sein können, die im Neuheitsbericht nicht erwähnt sind. Sie hält es jedoch für zweckmässig, eine derartige Bestimmung für die Durchführungsverordnung vorzubehalten.

Artikel 90 b) wird gebilligt und an den Redaktionsausschuss überwiesen.

Erörterungen zu Artikel 90 c) des Vorentwurfs

Herr De Kuyser ist der Ansicht, dass Absatz 3 dieses Artikels in der Durchführungsverordnung stehen müsste.

Herr Roscioni hält diese Bestimmung für überflüssig, weil sie keine Rechtsfolgen auslöse. Dagegen müsse die Löschung des verlängerten europäischen Patents im europäischen Register bei Erteilung des endgültigen Patentes vorgeschrieben werden.

Die Gruppe wird diese Frage im Zusammenhang mit den Bestimmungen über das Register des europäischen Amtes erörtern; sie überweist den Artikel an den Redaktionsausschuss.

Erörterungen zu Artikel 90 d) des Vorentwurfs

Die Gruppe weist auf die rechtliche Wirkung der Bestätigung hin. Auf Grund einer Fiktion tritt die rechtliche Wirkung des endgültigen Patents bereits mit der Veröffentlichung des verlängerten Patents ein.

Der Artikel wird genehmigt und an den Redaktionsausschuss überwiesen.
Ergebnisse der zweiten Sitzung
der Arbeitsgruppe "Patente"
vom 3. bis 14. Juli 1961
in Brüssel
Article 90 b

Expédition du brevet européen définitif

En même temps qu'il publie la confirmation du brevet européen, l'Office européen des brevets publie une expédition imprimée contenant la description de l'invention ainsi que les dessins.
Kurt Haertel

Bonn, le 29 mai 1961.

CONFIDENTIEL.

Premier avant-projet de Convention
relatif à un droit européen
des brevets

(Articles 41 à 60)

Articles 50 à 53
Artikel 90 b

Patentschrift des endgültigen europäischen Patents

Das Europäische Patentamt gibt gleichzeitig mit der Bekanntmachung der Bestätigung für jedes endgültige europäische Patent eine gedruckte Patentschrift heraus, welche die Beschreibung der Erfindung und die Zeichnungen enthält.
Kurt Haertel

Bonn, den 29. Mai 1961

VERTRAULICH!

Erster Arbeitsentwurf
eines Abkommens
über ein europäisches Patentrecht

Artikel 61 bis 90 f

- 100
Zu Artikel 90 b

Patentschrift des endgültigen europäischen Patents

1. Materialien: -----

2. Bemerkungen:

Ähnlich wie in Artikel 77 für das vorläufige europäische Patent sieht der Arbeitsentwurf auch für das endgültige europäische Patent die Ausgabe einer gedruckten Patentschrift vor (Artikel 77 Abs. 1).
Bemerkungen
zu dem ersten Arbeitsentwurf
cines Abkommens über ein
europäisches Patentrecht
vom 29. Mai 1961

(Artikel 61 bis 90 f)
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 know-how, 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.

6. Questions of priority (Articles 85-87/Rule 38)

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 98-104/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