Article 27 E

Travaux Préparatoires
(EPC 1973)

Comment:
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Dokumente der MDK

| E 1972                                                   | 25                            | M/40                                     | S. 2                   |
|                                                        | 25                            | M/108/II/R 4                             | S. 4                   |
|                                                        | 25                            | M/145/R²                                 | Art. 27                |
|                                                        | 25                            | M/PR/II                                  | S. 123                 |
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 27

Chairmanship

(1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman in the event of his being prevented from attending to his duties.

(2) The duration of the term of office of the Chairman and the Deputy Chairman shall be three years. The term of office shall be renewable.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 2
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 27 to 54
Article 25
Chairmanship

(1) Unchanged from 1972 published text

(2) The duration of the term of office of the Chairman and the Deputy Chairman shall be three years. The term of office shall be renewable.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 19 September 1973

M/108/II/R 4
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II
AT THE MEETING ON 18 SEPTEMBER 1973

Articles of the Convention:

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Protocol on Privileges and Immunities of the European Patent Organisation:

<table>
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<th>Article</th>
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<td>22</td>
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</table>
5. **Article 9**  
In paragraph (4)(b) "court" should be amended to "courts".

6. **Article 10**  
In paragraph (2)(b) "performed before" should be amended to read "carried out at".

7. **Article 12**  
Paragraph 1 should be amended as follows to be fully consistent with Article 214 of the Rome Treaty:

"(1) The employees of the European Patent Office shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy".

8. **Article 21**  
Paragraph 4 is ambiguous and should be amended to read:

"(4) The Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal shall be adopted in accordance with the provisions of the Implementing Regulations. They shall be subject to the approval of the Administrative Council".

9. **Article 25**  
In the second sentence of paragraph 2 "It" should be amended to read "The term of office".

10. **Article 31**  
In paragraph 1(a), "a single" should be amended to read "one".

11. **Article 35**  
Paragraphs (b) and (c) should be amended to read "...made by the Contracting States,...".

12. **Article 38**  
In the first sentence, paragraph 7, "...at a rate the same..." should be amended to read "...at a rate which shall be the same...".

13. **Article 61**  
Since there is nothing similar to a state of war, "similar emergency conditions" should be amended to read "other serious emergency situation".

.../...
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

(2) The members of the Administrative Council may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

Artikel 25
Vorsitz

(1) Der Verwaltungsrat wählt aus den Vertretern der Vertragsstaaten und deren Stellvertretern einen Präsidenten und einen Vizepräsidenten. Der Vizepräsident tritt im Fall der Verhinderung des Präsidenten von Amts wegen an dessen Stelle.

(1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman in the event of his being prevented from attending to his duties.

(2) Die Amtszeit des Präsidenten und des Vizepräsidenten beträgt drei Jahre. Wiederwahl ist zulässig.

(2) The duration of the term of office of the Chairman and the Deputy Chairman shall be three years. It shall be renewable.

Artikel 26
Präsidium

(1) Beträgt die Zahl der Vertragsstaaten mindestens acht, so kann der Verwaltungsrat ein aus fünf seiner Mitglieder bestehendes Präsidium bilden.

(1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members.

(2) Der Präsident und der Vizepräsident des Verwaltungsrats sind von Amts wegen Mitglieder des Präsidiums; die drei übrigen Mitglieder werden vom Verwaltungsrat gewählt.

(2) The Chairman and the Deputy Chairman of the Administrative Council shall be members of the Board ex officio; the other three members shall be elected by the Administrative Council.


(3) The term of office of the members elected by the Administrative Council shall be three years. This term of office shall not be renewable.

(4) Das Präsidium nimmt die Aufgaben wahr, die ihm der Verwaltungsrat nach Maßgabe der Geschäftsordnung zuweist.

(4) The Board shall perform the duties given to it by the Administrative Council in accordance with the Rules of Procedure.

Artikel 27
Tagungen

(1) Der Verwaltungsrat wird von seinem Präsidenten einberufen.

(1) Meetings of the Administrative Council shall be convened by its Chairman.

(2) Der Präsident des Europäischen Patentamts nimmt an den Beratungen teil.

(2) The President of the European Patent Office shall take part in the deliberations of the Administrative Council.

(3) Der Verwaltungsrat hält jährlich eine ordentliche Tagung ab; außerdem tritt er auf Veranlassung seines Präsidenten oder auf Antrag eines Drittels der Vertragsstaaten zusammen.

(3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.

(4) Der Verwaltungsrat berät aufgrund einer Tagesordnung nach Maßgabe seiner Geschäftsordnung.

(4) The deliberations of the Administrative Council shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.

(5) Jede Frage, die auf Antrag eines Vertragsstaats nach Maßgabe der Geschäftsordnung auf die Tagesordnung gesetzt werden soll, wird in die vorläufige Tagesordnung aufgenommen.

(5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.
MÜNCHNER DIPLOMatische KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPäISCHEN PATENTerteilungsVERFAHRENS 1973

(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973

(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS

(1973)

(Munich, 10 septembre - 6 octobre 1973)

VORBEREITENDE DOKUMENTE
ausgearbeitet von der
Regierungskonferenz über die Einführung eines europäischen Patenterteilungsverfahrens
herausgegeben von der
Regierung der Bundesrepublik Deutschland

PREPARATORY DOCUMENTS
drawn up by the
Inter-Governmental Conference for the setting up of a European System for the Grant of Patents
and published by the
Government of the Federal Republic of Germany

DOCUMENTS PRÉPARATOIRES
élaborés par la
Conférence intergouvernementale pour l'institution d'un système européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d'Allemagne

1972
The Conference was of the opinion that the application of this subjective criterion would not be left to the appreciation of the Boards of Appeal, but could be settled by the rules of procedure of those Boards, to be adopted in accordance with Rule 11. Consequently, it did not adopt the Austrian delegation's proposals.

Article 25

20. The Luxembourg delegation wondered why paragraph 1 allowed the Chairman or Deputy Chairman to be appointed from among the alternate Representatives of the Administrative Council.

It was pointed out that this provision had been made because Contracting States could appoint persons as full members on the basis of general considerations. In this case, it should not be ruled out that the Administrative Council could elect the Chairman or the Deputy Chairmen from among the persons particularly qualified in the field of patents, even if these persons were alternate members.

Article 28

21. The Conference had before it a proposal from the WIPO representative, set out in Working Document No. 14. This document had previously been examined by the Co-ordinating Committee (cf. BR/218/72, point 3).

22. The Conference recorded its agreement on the conclusions of the Co-ordinating Committee, that the substance of the WIPO representative's proposal should be adopted.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

MINUTES
of the

6th meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
Article 25 (35g)

The Chairmanship

(1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman in the event of his being prevented from attending to his duties.

(2) The duration of the term of office of the Chairman and the Deputy Chairman shall be three years. It shall be renewable.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
Article 35 d (Representation of inter-governmental organisations)

109. The German delegation reserved the right to defer its decision as to whether or not the Commission of the European Communities should have a seat on the Administrative Council without the right to vote in it.

Article 35 e (Attendance of the President of the European Patent Office)

110. The Conference was of the opinion that it need not be expressly laid down that the President of the European Patent Office will not take part in the deliberations of the Administrative Council in abnormal circumstances (see point ... under Article 36). It therefore decided not to amend this Article.

Article 35 f (The President and Vice-President)

111. In connection with paragraph 2, the Conference noted that in the event of the President or Vice-President relinquishing his office prematurely, his successor would be appointed not only for the remainder of the term of office but for a new three-year term of office.

112. As proposed by the German delegation, the Conference provided in a new paragraph that the first terms of office of the President and Vice-President should not expire at the same time, in order to guarantee continuity within the Administrative Council. (Article 35f; paragraph 3, BR/113/71, Page 11).
MINUTES

of the

4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 20 to 28 April 1971)
CHAPTER Ic
Proceedings of the Administrative Council

Article 35f
The President and Vice-President

(1) The Administrative Council shall elect from among its members a President and a Vice-President.

The Vice-President shall ex officio replace the President in the event of his being prevented from attending to his duties.

(2) The duration of the term of office of the President and the Vice-President shall be three years; it shall be renewable.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
The representative of the Commission of the European Communities asked that his Institution be fully associated in the work of the Council where the latter engaged in the preparatory duties referred to in Article b. In this respect, he stressed the link between certain provisions of the Convention – those relating, for example, to the rules of patentability – and economic policy within the Common Market.

The Working Party was of the opinion that it was not in a position to take a final decision on this request. The question could, where appropriate, be raised at Conference level.

Article e - Attendance of the President of the European Patent Office

The Working Party believed that it was not essential to lay down specifically that, "in exceptional cases", the President of the Office would not take part in the deliberations of the Council. The wording adopted by the Working Party for this Article therefore does not mention any such restriction. The Working Party accordingly points out that, if this wording is retained, the wording of Article 36 (2 i) of the Draft Convention will have to be re-examined and the word "normally" deleted.

CHAPTER III
Proceedings of the Administrative Council

Article f - The President and Vice-President

In the opinion of the Working Party, the wording of paragraph 2 does not mean that the expiry of the term of office of the Vice-President is linked to that of term of office of the President.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 20 March 1970
BR/34/70

- Secretariat -

MINUTES
of the meeting of Working Party II
(Luxembourg, 4–6 March 1970)

I

1. The first working meeting of Working Party II, set up
by the Conference at the latter's meeting of 13–16 January 1970,
was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working
Party at its inaugural meeting held at Luxembourg on
16 January 1970, the Chair was taken by Mr. LABRY, Counsellor
at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and
the International Patent Institute (IIB) took part in the
meeting as observers. The representative of the General
Secretary of the Council of Europe, who had also been
invited to take part in the meeting, apologized for being
unable to attend (1).

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(1) See list of participants in the meeting of the Working
Party given in Annex II. As regards Annex I, see point 38
on page 16.

BR/34 e/70 kel/RT/mrk .../...
CHAPTER III

PROCEEDINGS OF THE ADMINISTRATIVE COUNCIL

Article f

The President and Vice-President

(1) The Administrative Council shall elect from among its members a President and a Vice-President.

The Vice-President shall ex officio replace the President in the event of his being prevented from attending to his duties.

(2) The duration of the term of office of the President and the Vice-President shall be three years; it shall be renewable.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

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

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)

BR/33 e/70 mrk
composition of the Examining Divisions to a single technical examiner.

140. The Committee voted to reject the German delegation’s proposal.

141. The Committee examined the Finnish delegation’s proposal (M/12, point 3) reiterated in M/68/I that the phrase “against payment of on appropriate fee” be deleted.

142. The Norwegian and Swedish delegations supported this proposal.

143. The German, United Kingdom and Netherlands delegation’s raised objections to the provision of technical opinions free of charge and stated that the costs should be borne by the applicants.

144. The Committee voted to reject the Finnish proposal.

145. The Committee concluded by agreeing to maintain Article 23 as it stood in the basic draft and referred it for final editing to the Drafting Committee.

**Article 25 (27) — Chairmanship**

146. The Committee referred the United Kingdom delegation’s proposal on paragraph 2, contained in M/40, point 9, to the Drafting Committee.

**Article 26 (28) — Board**

**Paragraph 3**

147. In M/10, point 5, the United Kingdom delegation proposed that the sentence “This term of office shall not be renewable” be deleted. It felt that such a provision might result in the exclusion of a Board member of proven professional worth.

148. The Netherlands delegation, supported by the Danish delegation, felt, in contrast to the view expressed by the United Kingdom representative, that the deletion of the last sentence in paragraph 3 might have repercussions which certainly would not reflect the wishes of the United Kingdom delegation.

149. The United Kingdom delegation withdrew its proposal and the Committee agreed to refer Article 26 as it stood to the Drafting Committee.

**Article 28 (30) — Attendance of observers**

(a) **Paragraph 1**

150. In view of the Committee’s decision on the integration of the EPC into the EPO, paragraph 1 was deleted.

(b) **Paragraph 2 (1)**

151. The WIPO representative welcomed the Committee’s adoption of this paragraph which provided for attendance by WIPO at meetings of the Administrative Council of the European Patent Organisation. He was convinced that co-operation between the two institutions would be most productive.

(c) **Paragraph 4 (3)**

152. The UNEPA delegation (M/62/I/II) proposed that the term “inter-governmental” be deleted.

153. The United Kingdom and Netherlands delegations objected to this proposal on the grounds that it would allow for participation by national organisations.

154. The ICC representative proposed that it be explicitly stipulated that inter-governmental and international nongovernmental organisations exercising an activity of interest to the Organisation could be invited.

155. The United Kingdom and Netherlands delegations espoused this proposal which was accepted by the Committee.

**Article 31 (33) — Competence of the Administrative Council in certain cases**

(a) **Paragraph 1 (a), (3)**

156. The Swedish delegation presented a proposal (M/53/I/II) whereby the introduction of Examining Divisions comprising a single examiner would be subject to a guarantee that the application could only be refused by a collegiate body.

157. The Austrian, Danish, Italian, Norwegian and Yugoslav delegations supported the Swedish proposal in the light of experience acquired using a similar system at national level and of the flexibility which such an arrangement would lend to the functioning of the Office.

158. The German delegation and the ICC representative opposed the Swedish proposal on the grounds that a decision in favour of the granting of a patent might affect the public interest just as much as a refusal. Moreover, bearing in mind that approximately 10,000 out of 40,000 applications per year were expected to be refused, acceptance of the Swedish delegation’s proposal would not result in such staff savings as might be desired by the Administrative Council.

159. The United Kingdom delegation likewise opposed this proposal mainly for practical reasons.

160. The French delegation wondered if an intermediate solution might not be found by providing that the Chairman could entrust the examination of an application to a one-member or collegiate body depending on the nature of the case.

161. This proposal was supported by the Belgian delegation.

162. In conclusion, the Committee voted on the Swedish proposal which failed to obtain a majority.

163. The Committee then examined the Swiss delegation’s proposal in M/54/I/II/III aimed at ensuring that the Administrative Council’s decision to set up Examining Divisions comprising a single technical examiner could be rescinded if such action were warranted in the light of experience.

164. The Committee instructed the Drafting Committee to determine whether such elucidation — in its view implicit in the text — were necessary.

165. The Drafting Committee was also asked to find a wording which would cover the concern of certain delegations that it should be possible for the Administrative Council’s decision to be limited to certain categories of application, e.g. clearly defined areas of technology.

(b) **Paragraph 3 (4)**

166. The Chairman opened the discussion on the Austrian delegation’s proposal in M/78/I/II whereby the agreements which the President could be authorised to conclude on behalf of the Organisation would include agreements with documentation centres.

167. The Spanish, French, Italian and Swedish delegations declared their support for the Austrian proposal.

168. While supporting the Austrian proposal in principle, the German delegation was not convinced of the need for such an amendment. It was of the opinion that agreements with documentation centres such as INPADOC in Vienna would come under private law.

169. The United Kingdom delegation wondered whether the proposed wording excluded documentation services not set up