Rule 68 E

Travaux Préparatoires (EPC 1973)

Comment:

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Regel 68

MPÜ

Form der Entscheidungen

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

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

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

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

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

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

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

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

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

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

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

REPORT

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

on the results of Main Committee I’s proceedings

ANNEX II

REPORT

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

on the results of Main Committee II's proceedings

ANNEX III

REPORT

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

on the results of Main Committee III’s proceedings

ANNEX IV

REPORT

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

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

2324. The Austrian delegation supported the Swiss proposal.

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

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

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

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

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

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

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

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

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

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

Rule 70 (69) — Noting of loss of rights

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

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

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

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

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

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

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

2341. The Committee agreed to this proposal.

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

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

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

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

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

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

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

Rule 82 (81) — Notification to representatives

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

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

Rule 85 (84) — Duration of time limits

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

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

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

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

2354. The Swedish delegation felt that it was unnecessary to amend its proposal, since the European Patent Office would be free to fix time limits within the margin laid down.
Committee to examine Rules 57 and 66 with a view to achieving more uniformity.

Rule 67 (66) — Examination of appeals

2300. The Committee considered the Norwegian delegation’s proposal, as given in M/71, page 6, that a provision be added to paragraph 4(c) to the effect that if the Appeal Board’s decision were not unanimous, the names of the members of the Board who did not support the majority and the reasons for their position should be disclosed in the decision.

2301. The Norwegian delegation said that such a provision would correspond to legal practice in Nordic countries.

2302. The Finnish and Swedish delegations supported the Norwegian delegation’s proposal.

2303. The Swiss delegation said that it could not accept this proposal; it was not in accordance with Swiss legal principles which required collective decisions. Once a result was achieved, everything which had led to it ceased to be of any consequence. The Swiss delegation also stated its opposition to the disclosure of the names of the dissenting members. It was concerned that if the names of those members who did not subscribe to the majority view were to be disclosed in the decision, there would be far fewer majority decisions, as certain members would be reluctant to be included with the minority.

2304. The delegations of the Federal Republic of Germany, the Netherlands and Yugoslavia supported the view of the Swiss delegation.

2305. By a majority of eight to five, with two abstentions, the Committee rejected the Norwegian delegation’s proposal.

2306. The Swiss delegation wished to put a question concerning paragraph 2 of this Rule. It wondered why the Board of Appeal should be required to approach an Examining Division for further information concerning the state of the art, and it also wondered whether, bearing in mind Main Committee II’s deliberations, the reference made here should not be to a Search Division rather than to an Examining Division.

2307. The Chairman wondered whether, in view of Main Committee II’s decisions, this provision still had any purpose.

2308. The delegation of the Federal Republic of Germany said that the purpose of this provision was to indicate clearly that an Examining Division could also be requested to provide further information concerning the state of the art. In this way, this provision was a means of accelerating the procedure in that it enabled the Board of Appeal to approach an Examining Division directly rather than have to follow the more complex procedure of requesting an additional report on the state of the art from the International Patent Institute.

2309. The Netherlands delegation thought that this paragraph should be worded in more general terms, so that no possibility was excluded: it might in fact be useful if the Board of Appeal could approach either an Examining Division or a Search Division.

2310. The Chairman did not think it necessary to expand paragraph 2, in view of the wording of Article 124, which provided that the European Patent Office could request an additional European search report at any time. Accordingly, the only point still at issue seemed to be whether to delete paragraph 2 or retain it in its present form with the consequence that Boards of Appeal would be authorised to request two different types of search report, one from the Directorate General for Searching and the other from the Examining Division.

2311. The UNEPA delegation requested clarification as to who should pay for this additional search.

2312. The Chairman said that the European Patent Office would pay for this additional report, and not the applicant.

2313. The CCI delegation expressed concern that in its present form, this provision might be worded too vaguely. It was important to avoid any possibility of an interpretation which would authorise a Board of Appeal to request an Examining Division to give its views on the state of the art as described in the search report or in an additional report, after all parties to the proceedings had indicated their positions. This would be tantamount to the Board of Appeal requesting the opinion of a subordinate body on a case under consideration by the Board of Appeal itself.

2314. The Chairman pointed out that it was certainly not the intention of the authors of Rule 67, paragraph 2, that an Examining Division should be called upon to express opinions on technical or legal problems. Paragraph 2 was merely intended to accelerate the procedure by making it possible to obtain information concerning, for example, certain details of the international classification.

2315. The French delegation considered that it might be advisable for paragraph 2 to refer to the possibility of requesting additional information, not only from Examining Divisions, but also from Search Divisions.

2316. The Committee recorded its agreement to the French delegation’s suggestion that the Search Division also be mentioned in paragraph 2.

2316a. At a subsequent meeting, the Main Committee deleted paragraph 2 further to the deletion of Article 124 (see point 659).

Rule 68 (67) — Reimbursement of appeal fees

2317. The Swiss delegation wondered whether this Rule should not be amended to stipulate that the reimbursement of appeal fees would be made in any case in the event of interlocutory revision, and that a substantial breach of procedure was a necessary condition only in the second eventuality covered by this Rule.

2318. No delegation supported this suggestion.

Rule 69 (68) — Form of decisions

2319. In view of the outcome of the deliberations concerning Rule 67, the Norwegian delegation withdrew its proposal as given in M/71, page 6.

2320. The Chairman said that the Committee had before it three proposals for amendments submitted by the Austrian, Netherlands and Swiss delegations (M/41, page 85; M/52, page 2; and M/54, page 26 respectively).

2321. Since the Swiss delegation’s proposal concerning paragraph 2 was the furthest from the present wording, the Chairman submitted it to the Committee for discussion.

2322. The Swiss delegation confirmed that its proposal was further from the present wording than was the Austrian delegation’s proposal, in that it referred not only to information as to legal means, but also incorrect indications concerning, for example, the form of the appeal and appeal fees. In Swiss law, an appellant could rely on being informed of time limits, the form of appeals and appeal fees given in communications; this fact was a fundamental principle of procedural law, to his benefit. Respect of the principle of good faith, which was applicable in every administrative procedure, required that if a communication included incorrect indications, the appellant should not thereby suffer any loss. The Swiss delegation said that it could support the Austrian delegation’s proposal concerning paragraph 4. On the other hand, paragraph 5 of the Austrian proposal seemed superfluous, since the Swiss delegation did not think that the Board of Appeal could alter any time limit in the appellant’s favour.
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
PART VII
IMPLEMENTING REGULATIONS TO PART VII
OF THE CONVENTION

Chapter I
Decisions and communications of the
European Patent Office

Rule 68
Form of decisions

(1) Where oral proceedings are held before the European Patent Office, the decision may be given orally. Subsequently the decision in writing shall be notified to the parties.

(2) Decisions of the European Patent Office which are open to appeal shall be reasoned and shall be accompanied by a written communication of the possibility of appeal. The communication shall also draw the attention of the parties to the provisions laid down in Articles 105 to 108, the text of which shall be attached. The parties may not invoke the omission of the communication.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1975
M/146/R 10
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 54 to 82
PART VII
IMPLEMENTING REGULATIONS TO PART VII
OF THE CONVENTION

Chapter I
Decisions and communications of the
European Patent Office

Rule 69
Form of decisions

(1) Unchanged from 1972 published text.

(2) Decisions of the European Patent Office which are open
to appeal shall be reasoned and shall be accompanied by a
written communication of the possibility of appeal. The
communication shall also draw the attention of the parties
to the provisions laid down in Articles 105 to 107,
the text of which shall be attached. The parties may not
invoke the omission of the communication.
MUNICH DIPLOMATIC CONFERENCE

FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973

M/ 142/I/R 13

Original: English/French/German

TEXTS DRAWN UP BY

THE DRAFTING COMMITTEE OF MAIN COMMITTEE I

AT THE MEETING ON 27 SEPTEMBER 1973

Articles of the Convention:

Articles

59

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Rules of the Implementing Regulations:

Rules

51

69

70

73

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97

100

103

107

Protocol on Jurisdiction and the Recognition of Decisions
in respect of the Right to the Grant of a European Patent
(Protocol on Recognition):

Articles

3

6

Recommendation on preparations for the opening of the
European Patent Office

Decision on Training Staff for the European Patent Office
PART VII
IMPLEMENTING REGULATIONS TO PART VII
OF THE CONVENTION

Chapter I
Decisions and communications of the
European Patent Office

Rule 69
Form of decisions

(1) Unchanged from 1972 published text.

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

- 1973 -

Munich, 24 September 1973
M/ 126/I/R 9
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 22 SEPTEMBER 1973

Articles of the Convention:

Article 14
Article 133
Article 134

Rules of the Implementing Regulations:

Rule 26
Rule 51
Rule 56
Rule 69
Rule 76
Rule 79
Rule 93
Rule 95

Draft Protocol on the Recognition of Decisions in respect of
the Right to the Grant of a European Patent:

Article 2
PROPOSALS ON RULES 67 AND 69

Article 67(3)(g) should read as follows:

(g) the reasons. If the decision is not unanimous this fact should be stated together with the names of the dissenting members and the reasons upon which the dissent is based.

Article 69 (2) should read:

2 (a) Decisions of the European Patent Office which are open to appeal shall be reasoned. If the decision is not unanimous this fact should be stated together with the names of the dissenting members and the reasons upon which the dissent is based.

(b) Decisions which are open to appeal shall be accompanied by a written communication of the possibility of appeal. The communication shall also inform the parties of the period within which and the form in which the appeal may be filed with the European Patent Office, and shall specify that the fee for appeal must be paid. The parties may invoke neither the omission of the communication nor any errors contained therein.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 12 September 1973
M/71/I
Original: English

CONFERENCE DOCUMENT

Drawn up by: Norwegian delegation

Subject: Proposals for amendments to Articles 124, 139, 153, 155 and 157 of the Convention and Rules 56, 67, 69, and 97 of the Implementing Regulations
2. UNEPA is specifically against the following proposals for amendments:

- Article 133
  - M/22 No. 43
  - M/23 No. 4, 5

- Article 135
  - M/26 No. 17
  - M/19 No. 22
  - M/22 No. 46

- Article 161
  - M/19 No. 40, 41

- Article 162
  - M/22 No. 44 - 46
  - M/23 No. 6 - 9
Rule 51 Paragraph 2

The proposal made under No. 34 of the Comment M/21 UNEPA is withdrawn in view of Article 120.

Rule 69 Paragraph 2

The proposal made under No. 35 of the Comment M/21 UNEPA is withdrawn in view of Article 120.

NOTES

1. The greater part of the above proposals is essentially in line with proposals made in Comments delivered by others. However, the above proposals do contain further desirable amendments.

The UNEPA agrees, without further proposal for amendment, with a great number of proposals contained in Comments delivered by others. These are particularly the following proposals:

- Article 67
- Article 86 Paragraph 1
- Article 105 Paragraph 1
- Article 141
- Article 157 Paragraph 2
- Article 162
- Rule 107
- Rule 108

M/18 No. 7, 8
M/32 No. 16
M/14 No. 6
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M/19 No. 23
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M/11 No. 7
M/15 No. 15
M/15 No. 21.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973
M/62/I/II
Original: German/English/French

CONFERENCE DOCUMENT

Drawn up by: Union of European Patent Agents (UNEPA)

Subject: Additional comments
Rule 69, paragraph 2

Proposal: Replace the last sentence of paragraph 2 by the following:

"An appellant shall not be put at a disadvantage as a result of any errors contained in the communication."

Reason: An appellant should be able to rely on the details given in the communication in respect of the period for appeal, the form of the appeal and the fee for appeal. This is required by the principle of good faith, a principle that also applies in administrative proceedings. However, this principle does not dispense the appellant from carrying out, at the request of the Board of Appeal, formalities which had not been carried out satisfactorily.

The principle of good faith would also normally mean that, if the communication is not made, the period for appeal does not begin to run. Yet this would lead to unacceptable consequences, especially that of proceedings being resumed long after the European patent has been granted or the application refused. The provisions on *restitutio in integrum* take sufficient account of the appellant's interest by allowing restoration of the right to the period for appeal (Article 121, end of paragraph 1) within certain time limits (Article 121, paragraph 2). We assume that the omission of the communication of the possibility of appeal may form a ground for *restitutio in integrum*.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/54/I/II/III
Original: German

CONFERENCE DOCUMENT

Drawn up by: The Swiss delegation

Subject: Proposals for amendments to the draft texts
25. **Proposal of the Netherlands Delegation to Rule 69, paragraph 2.**

Rule 69, paragraph 2, the second and third sentence shall be amended to read:

"The communication shall also **draw the attention of the parties to the prescriptions laid down in the Articles 105 - 107. The parties may not invoke the omission of the communication.**"

See also the Netherlands proposal to Rule 51.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973

M/52/I/II/III
Original: English

CONFERENCE DOCUMENT

Drawn up by: Netherlands delegation

Subject: Proposals for amendments to the draft texts
(5) If the decision does not specify a period or if it specifies a period which is shorter than that laid down in this Convention, an appeal shall be deemed to have been filed in due time if it is filed within the period laid down in this Convention.

(6) The parties may invoke neither the omission of the communication of the possibility of appeal nor any errors contained therein.

15. Protocol on the Recognition of Decisions

Articles 1, 2 and 3

The recognition of decisions in respect of the right to the grant of a European patent should not be limited to the time before grant. Rule 13 suggests recognition of such decisions in opposition proceedings too. In this respect, attention is also drawn to the comments made under point 4 above. Nor does there seem to be any real reason for limiting recognition of decisions to the European phase. The proposed extended recognition of decisions would require amendments to Articles 1, 2 and 3.

"Article 1

(1) The courts of Contracting States shall, in accordance with Articles 2 to 5, have jurisdiction to decide claims, against the applicant for or proprietor of a patent, to the right to the grant ..."

"Article 2

Subject to Articles 3 and 4, if an applicant for or proprietor of a European patent has his residence ..."

"Article 3

Subject to Article 4, if the subject-matter of a European patent application or a European patent is the invention ..."
by way of a public announcement in a central publication of
the European Patent Office.

This would also be a logical extension of the proposed
wider legal co-operation between the authorities of the
Contracting States (see point 12).

"Article 131

................

(4) In proceedings in respect of a claim to the right to
the grant of a European patent or in respect of the
revocation of a European patent, the courts or other
authorities of the Contracting States may request the
European Patent Office to notify the claim or the request
for revocation in accordance with the provisions applicable
to the European Patent Office".

14. Rule 69

The provision governing the effect of an erroneous communi-
cation by the European Patent Office of the possibility of appeal
is unjustifiably severe. It is therefore proposed that this be
replaced by provisions which achieve a balance between the
interests involved.

"Rule 69

(1) ....

(2) Decisions of the European Patent Office which are open
to appeal shall be reasoned and shall be accompanied by a
written communication of the possibility of appeal.

(3) The communication of the possibility of appeal shall
inform the parties of the period within which and the form
in which the appeal may be filed with the European Patent
Office, and shall specify that the fee for appeal must be
paid.

(4) If the communication specifies a period which is longer
than that laid down in this Convention, an appeal filed
within the period so specified shall be deemed to have been
filed in due time.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 22 August 1973
M/41
Original: German

PREPARATORY DOCUMENT

Drawn up by: Austrian Government

Subject: Proposals for amendments to the Drafts of the Convention, the Implementing Regulations, the Protocol on the Recognition of Decisions, the Protocol on Privileges and Immunities and the Protocol on Centralisation
the same time (in paragraph 2) any responsibility for errors made in that information. The applicant could easily be led astray by an error in the indication of that date.

We suggest to amend the last two lines of this paragraph 1 in such a way that the European Patent Office shall draw applicant's attention to the contents of Article 93, par. 2 and 3. When this is done in a general way errors cannot be made.

36. Rule 58, par. 1:

In our opinion the last sentence of this paragraph is an unnecessary restriction on the proprietor of the patent. Moreover this stipulation would oblige the Opposition Division to check whether an amendment proposed by the proprietor goes farther than is necessary to meet the opposition. With other words, if the proprietor proposes a restriction the Opposition Division would have to judge whether a less far going restriction would not already meet the opposition.

We propose to cancel the last sentence of this paragraph 1. Unnecessary to say that Article 122, par. 5, remains applicable.

37. Rule 69, par. 2:

Refering to our observations concerning rule 51, par. 1, we propose to delete the second sentence of this paragraph.

38. Rule 70, par. 2:

According to the last sentence of this paragraph a decision shall only be given if it is a negative one. It may be that in case the European Patent Office agrees with the petitioner it is not necessary to take a formal decision, however for the petitioner it would be very useful to be informed as soon as possible about the positive result of his request.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 1 June 1973
M/32
Original: English

PREPARATORY DOCUMENT

Drawn up by: Netherlands Government

Subject: Observations and proposed amendments concerning the Draft Convention and the Draft Implementing Regulations
Gebühr durch das Europäische Patentamt weiterbearbeitet wird oder nicht, gemäß Artikel 52 Absatz 3 zum Stand der Technik gehört. Nach Ansicht Norwegens ist diese Konsequenz nicht wünschenswert und sollte durch eine Änderung des Artikels 157 Absatz 1 ausgeschlossen werden.

16 Hinsichtlich des Entwurfs einer Ausführungsordnung beschränkt sich die norwegische Regierung auf folgende Bemerkungen:


Aus den vorhergehenden Absätzen der Regel 2 ergibt sich, daß Erklärungen in einer anderen Sprache als der Amtsprozessprache in mehreren Fällen in eine andere Amtsprozesssprache als die Verfahrenssprache übersetzt werden können. Nach norwegischer Auffassung sollte die Erklärung in diesen Fällen in der Sprache der Übersetzung aufgenommen werden. Andernfalls muß die Erklärung zweimal übersetzt werden, bevor sie in die Niederschrift aufgenommen werden kann, und noch zweimal, wenn der die Erklärung Abgebende die Niederschrift genehmigt (Regel 77 Absatz 2). Das könnte leicht zu Mißverständnissen führen.

18 In Verbindung mit der Regel 23 über die Ausstellungsbescheinigung wird vorgeschlagen, daß der Anmelder auch den Nachweis erbringen muß, daß die betreffende Ausstellung tatsächlich unter das Übereinkommen über internationale Ausstellungen fällt.

19 Nach der Regel 67 Absatz 3 Buchstabe g und der Regel 69 Absatz 2 sind die Entscheidungen des Europäischen Patentamts zu begründen. Entscheidungen können jedoch mehrheitlich getroffen werden, und in solchen Fällen müßte dies besonders erwähnt werden. Mitglieder, die eine andere Auffassung vertreten, sollten darüber hinaus Gelegenheit erhalten, ihre Gründe darzulegen.

fee. In the Norwegian opinion, this consequence is unfortunate and should be precluded by an amendment to Art. 157(1).

16 As regards the Draft Implementing Regulations the Norwegian Government will limit itself to the following remarks:

17 According to Rule 2(6) statements made in one of the official languages of the European Patent Office during oral proceedings shall be entered in the minutes in the language employed. However, statements made in any other language shall always be entered in the language of the proceedings.

It follows from the preceding paragraphs of Rule 2 that statements made in other languages than the official ones may in several instances be translated into another official language than the language of the proceedings. In the Norwegian view, the statement should in these cases be entered in the language of the translation. Otherwise the statement has to be translated twice before it can be entered in the minutes, and twice again when the person who submitted the statement is going to approve the minutes (Rule 77(2)). This might easily give cause to misunderstandings.

18 In connection with Rule 23 on certificate of exhibition it is proposed that the applicant also should be obliged to furnish a proof, stating that the exhibition concerned actually falls within the terms of the Convention on International Exhibitions.

19 According to Rules 67(3)(g) and 69(2) decisions of the European Patent Office shall contain reasons. Decisions may, however, be taken by a majority and in such cases this fact ought to be mentioned separately. The dissenting members should moreover have the opportunity of stating their reasons.
STELLUNGNAHME
DER NORWEGISCHEN REGIERUNG

COMMENTS
BY THE NORWEGIAN GOVERNMENT

PRISE DE POSITION
DU GOUVERNEMENT NORVÉGIEN
Regel 48
33 Vorschlag:
Die Regel sollte gestrichen werden, wenn dem Abschnitt I des Protokolls über die Zentralisierung des europäischen Patentsystems und seine Einführung zugestimmt wird.

Begründung:
Die Regel ist dann überflüssig.

Regel 51, Absatz (2)
34 Vorschlag:
Die Worte „und aus in ihr enthaltenen Fehlern“ sollten gestrichen werden.

Regel 69, Absatz (2)
35 Vorschlag:
Die Worte „oder aus in ihr enthaltenen Fehlern“ sollten gestrichen werden.

Begründung zu Regel 51(2) und 69(2):
Es kann dem Empfänger einer solchen Mitteilung des Europäischen Patentamtes nicht zugemutet werden, daß er den vom Europäischen Patentamt begangenen Irrtum erkennt, beispielsweise erkennt, daß eine in der Mitteilung angegebene Frist oder Höhe einer Gebühr im Widerspruch zu einer voran- gigen Bestimmung steht.

Die Folge der vorgeschlagenen Änderung beschränkt sich darauf, daß das Europäische Patentamt, insbesondere innerhalb der irtümlich angegebenen Frist, begangene Handlungen als fristgerecht anerkennt bzw. zur Zahlung eines ergänzenden Teiles der Gebühr eine Frist stellt.

Regel 70, Absatz (2), Satz 2
36 Vorschlag:
Der Text sollte lauten „Eine solche Entscheidung ist innerhalb von 2 Monaten nach Eingang des Antrages beim Europäischen Patentamt zu treffen“.

Begründung:
Bei der Bedeutung der Entscheidung hat der Betroffene Anspruch auf eine Mitteilung des Europäischen Patentamtes.

Rule 48
33 Proposal:
The Rule should be deleted if Section I of the Protocol on the Centralisation of the European Patent System and on its Introduction is accepted.

Grounds:
The Rule is then superfluous.

Rule 51, paragraph 2
34 Proposal:
In line 1, after the word “may” insert “not” and delete the word “neither”; in lines 2 and 3 delete the words: “nor any errors contained therein”.

Rule 69, paragraph 2
35 Proposal:
In line 8, after the word “may” insert “not” and delete the word “neither”; in line 9 delete the words: “nor any error contained therein”.

Grounds Re. Rules 51(2) and 69(2)
It cannot be expected that the recipient of such a notice from the European Patent Office will recognise the error committed by the European Patent Office; for example, recognise that a term or tariff quoted in the report is contrary to a prior decision. The result of the proposed amendment is restricted to the European Patent Office accepting transactions begun within the term given in error as being within the prescribed term and setting a term for payment of a supplementary part of the fee.

Rule 70, paragraph 2, 2nd sentence
36 Proposal:
The text should read “Such decision shall be given within two months from the date of application for the decision at the European Patent Office.”

Grounds:
Due to the importance of a decision, the person concerned has a claim to a report from the European Patent Office.
STELLUNGNAHME DER
UNEPA
Union Europäischer Patentanwälte

COMMENTS BY
UNEPA
Union of European Patent Agents

PRISE DE POSITION DE
L'UNEPA
Union des Conseils en brevets européens

(1) English translation submitted by UNEPA
(2) La traduction française a été fournie par l'UNEPA
Artikel 86 Absatz 3
18 Die Verwendung des Ausdrucks „Merkmale“ im deutschen Text ist unverständlich. Wenn die beanspruchte europäische Erfindung eine Kombination von A und B ist, dürfte es unangebracht sein, eine Priorität einzuräumen, wenn durch die frühere Anmeldung lediglich A oder B und nicht die Kombination offenbart wurde.

Article 86 (3)
18 The use of “Merkmale” in the German text is not understood. If the European invention claimed is the combination of A and B, it seems inappropriate to give priority if the early application disclosed only A or B, and not the combination.

Artikel 87
19 Es wäre zu erwägen, ob es zweckmäßig ist, diesen Artikel auf Artikel 53 Absatz 1, Artikel 74 Absatz 2 und die Regel 28 anzuwenden.

Article 87
19 Consideration should be given to the desirability of applying this Article to Articles 53 (1), 74 (2) and Rule 28.

Artikel 92 – Regel 51 Absatz 2
20 Anmelder haben viele Bedingungen zu erfüllen, und es ist daher offensichtlich unhilfig, daß sie auf der anderen Seite durch Fehler des Europäischen Patentamts in Mitleidenschaft gezogen werden sollten. Es wird daher darum gebeten, diesen Absatz in der Regel 51 zu streichen.

Article 92 – Rule 51 (2)
20 There are many terms to be met by applicants and it is manifestly unfair that they should be adversely affected by error of the European Patent Office. Cancellation of this paragraph from Rule 51 is requested.

Artikel 107
21 Da es schwierig ist, alle Gründe für eine Beschwerde zum gleichen Zeitpunkt anzugeben, an dem der Beschluß, sie zu erheben, gefaßt wird, wird darum gebeten, daß zu dem Grundsatz des früheren Artikels 111 (2. Vorentwurf) zurückgekehrt wird, d.h., daß gesonderte Fristen für die Beschwerdeerhebung und für die Einreichung eines Schriftsatzes mit der Begründung vorgesehen werden. Es wird empfohlen, beide Fristen zum gleichen Zeitpunkt beginnen zu lassen. Die Frist für die Beschwerdeerhebung könnte dann verkürzt und die Frist für die Einreichung des Schriftsatzes mit der Begründung verlängert werden.

Article 107
21 In view of the difficulty of developing full grounds for appeal at the same time as a decision to appeal is made, it is requested that there be a return to the principle of the previous Article 111 (Second Preliminary Draft) namely that the terms for filing appeal and for filing grounds be separate. It is recommended that both start from the same date. The filing term for the appeal can then be shortened and that for the grounds be lengthened.

Artikel 115 – Regel 69 Absatz 2
22 Es dürfte gegenüber dem Anmelder ungerecht sein, daß er aus einem Irrtum des Europäischen Patentamts, durch den er unter Umständen in eine Lage gebracht worden ist, in der keine Abhilfe mehr möglich ist, keine Ansprüche auf Bereinigung der Situation herleiten kann. Es wird daher darum gebeten, den letzten Satz zu streichen.

Article 115 – Rule 69 (2)
22 It seems unfair to an applicant that an error of the European Patent Office, which may have misled him into an irrecoverable position, cannot be invoked to correct the situation. Cancellation of the last sentence is requested.

Artikel 118 – Regel 70 Absatz 2
23 Mit dieser Regel, die den Rechtsverlust nach Maßgabe vieler weiterer Artikel betrifft, wird vorgesehen, daß Entscheidungen gegenüber dem Anmelder

Article 118 – Rule 70 (2)
23 In this Rule, which is concerned with loss of rights under many other Articles, it is provided that only unfavourable decisions are to be given to the
STELLUNGNAHME DES

CNIPA
Committee of National Institutes of Patent Agents

COMMENTS BY

CNIPA
Committee of National Institutes of Patent Agents

PRISE DE POSITION DU

CNIPA
Committee of National Institutes of Patent Agents
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFÉRENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

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STELLUNGNAHMEN
zu den vorbereitenden Dokumenten
herausgegeben von der
Regierung der Bundesrepublik Deutschland

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COMMENTS
on the preparatory documents
published by the
Government of the Federal Republic of Germany

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PRISES DE POSITION
sur les documents préparatoires
publiées par le
Gouvernement de la République fédérale d'Allemagne

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1973
SIEBENTER TEIL
AUSFÜHRUNGSVORSCHRIFTEN ZUM SIEBENTEN TEIL DES ÜBEREINKOMMENS

Kapitel I
Entscheidungen, Bescheide und Mitteilungen des Europäischen Patentamts

Regel 69
Form der Entscheidungen

(1) Findet eine mündliche Verhandlung vor dem Europäischen Patentamt statt, so können die Entscheidungen verkündet werden. Später sind die Entscheidungen schriftlich abzufassen und den Beteiligten zuzustellen.

(2) Die Entscheidungen des Europäischen Patentamts, die mit der Beschwerde angefochten werden können, sind zu begründen und mit einer schriftlichen Belehrung darüber zu versehen, daß gegen die Entscheidung die Beschwerde statthaft ist. In der Belehrung sind die Beteiligten auch darauf hinzuweisen, innerhalb welcher Frist und in welcher Form die Beschwerde beim Europäischen Patentamt einzureichen ist, und daß die Beschwerdegebühr zu entrichten ist. Die Beteiligten können aus der Unterlassung der Rechtsmittelbelehrung oder aus in ihr enthaltenen Fehlern keinerlei Ansprüche herleiten.

Vgl. Artikel 90 (Formalaufprüfung), 96 (Zurückweisung oder Erteilung), 101 (Widerruf oder Aufrechterhaltung), 103 (Kosten), 110 (Entscheidung über die Beschwerde), 111 (Entscheidung oder Stellungnahme der Großen Beschwerdekammer) und 115 (Mündliche Verhandlung).

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SIEBENTER TEIL
AUSFÜHRUNGSVORSCHRIFTEN ZUM SIEBENTEN TEIL DES ÜBEREINKOMMENS

Kapitel I
Entscheidungen, Bescheide und Mitteilungen des Europäischen Patentamts

Regel 69
Form der Entscheidungen

(1) Findet eine mündliche Verhandlung vor dem Europäischen Patentamt statt, so können die Entscheidungen verkündet werden. Später sind die Entscheidungen schriftlich abzufassen und den Beteiligten zuzustellen.

(2) Die Entscheidungen des Europäischen Patentamts, die mit der Beschwerde angefochten werden können, sind zu begründen und mit einer schriftlichen Belehrung darüber zu versehen, daß gegen die Entscheidung die Beschwerde statthaft ist. In der Belehrung sind die Beteiligten auch darauf hinzuweisen, innerhalb welcher Frist und in welcher Form die Beschwerde beim Europäischen Patentamt einzureichen ist, und daß die Beschwerdegebühr zu entrichten ist. Die Beteiligten können aus der Unterlassung der Rechtsmittelbelehrung oder aus in ihr enthaltenen Fehlern keinerlei Ansprüche herleiten.

Vgl. Artikel 90 (Formalaufprüfung), 96 (Zurückweisung oder Erteilung), 101 (Widerruf oder Aufrechterhaltung), 103 (Kosten), 110 (Entscheidung über die Beschwerde), 111 (Entscheidung oder Stellungnahme der Großen Beschwerdekammer) und 115 (Mündliche Verhandlung).

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PART VII
IMPLEMENTING REGULATIONS TO PART VII OF THE CONVENTION

Chapter I
Decisions and communications of the European Patent Office

Rule 69
Form of decisions

(1) Where oral proceedings are held before the European Patent Office, the decision may be given orally. Subsequently the decision in writing shall be notified to the parties.

(2) Decisions of the European Patent Office which are open to appeal shall be reasoned and shall be accompanied by a written communication of the possibility of appeal. The communication shall also inform the parties of the period within which and the form in which the appeal may be filed with the European Patent Office, and shall specify that the fee for appeal must be paid. The parties may invoke neither the omission of the communication nor any errors contained therein.

Cf. Articles 90 (Examination as to formal requirements), 96 (Refusal or grant), 101 (Revocation or maintenance of the patent), 103 (Costs), 110 (Decision in respect of appeals), 111 (Decision or opinion of the Enlarged Board of Appeal) and 115 (Oral proceedings).

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Rule 70
Feststellung eines Rechtsverlusts

(1) Stellt das Europäische Patentamt fest, daß ein Rechtsverlust aufgrund des Übereinkommens eingetreten ist, ohne daß eine Entscheidung über die Zurückweisung der europäischen Patentanmeldung oder über die Erteilung, den Widerruf oder die Aufrechterhaltung des europäischen Patents oder über die Beweisaufnahme ergangen ist, so teilt es dies dem Betroffenen nach Artikel 118 mit.

(2) Ist der Betroffene der Auffassung, daß die Feststellung des Europäischen Patentamts nicht zutrifft, so kann er innerhalb von zwei Monaten nach Zustellung der

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Rule 70
Noting of loss of rights

(1) If the European Patent Office notes that the loss of any right results from the Convention, without any decision concerning the refusal of the European patent application or the grant, revocation or maintenance of the European patent, or the taking of evidence, it shall communicate this to the person concerned in accordance with the provisions of Article 118.

(2) If the person concerned considers that the finding of the European Patent Office is inaccurate, he may, within two months after notification of the communication referred to in paragraph 1, apply for a decision on
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

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

PROJET DE RÈGLEMENT D’EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTerteilungsverfahrens 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

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

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

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

1972
The ICC was in favour of the date of dispatch, and IAPIP considered that the decisive factor should be the date on the postmark. CNIPA, EIRMA (with the majority of their representatives), FEMIPT, IFIA and UNEPA, on the other hand, wanted the date of receipt of the document by the applicant to determine the beginning of the period.

140. In this connection UNEPA raised the question of which was to be the determining date in the converse situation of the applicant having to send a document to the European Patent Office. It was pointed out that in such cases the date of receipt of the document at the European Patent Office would have to be the decisive date.

Re. Article 141, No. 3, IR (Duration of time limits)

141. IAPIP felt that it was not right that time limits could only be extended "in certain special cases"; it should always be possible to extend them "on reasoned request".

Article 142 (Restitutio in integrum)

142. IFIA wanted the possibility of restitutio in integrum extended to cover cases of negligence as well as those of force majeure.

Re. Article 145, No. 5, IR (Notification of possibility of appeal)

143. IAPIP was opposed to the provision of paragraph 2, according to which the parties may not invoke the omission of or any errors contained in the notification of possibility of appeal.
M I N U T E S

of the

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

Part II

Hearing of the non-governmental international organisations on the Second Preliminary Draft of a Convention establishing a European System for the Grant of Patents

(Luxembourg, 26 January to 1 February 1972)
Zu Artikel 145  
Nummer 3

Form der Entscheidungen des Europäischen Patentamts

(1) Findet eine mündliche Verhandlung vor dem Europäischen Patentamt statt, so können die Entscheidungen verkündet werden. Später sind die Entscheidungen schriftlich abzufassen und den Beteiligten zuzustellen.

(2) Die Entscheidungen, die mit der Beschwerde angefochten werden können, und die Endentscheidungen der Beschwerdekammer werden mit Gründen versehen.

Zu Artikel 145  
Nummer 4

Berichtigung von Amts wegen


Zu Artikel 145  
Nummer 5

Rechtsmittelbelehrung

(1) Entscheidungen des Europäischen Patentamts, gegen die eine Beschwerde stattfindet ist, sind mit einer schriftlichen Belehrung über dieses Rechtsmittel zu versehen; in der Belehrung sind die Beteiligten darauf hinzuweisen, daß die Beschwerde gegen die Entscheidung stattfindet, innerhalb welcher Frist und in welcher Form die Beschwerde beim Europäischen Patentamt einzulegen ist, und daß die Beschwerdegebühr zu entrichten ist.

(2) Die Beteiligten können aus der Unterlassung der Rechtsmittelbelehrung oder aus in ihr enthaltenen Fehlern keinerlei Ansprüche herleiten.

Zu Artikel 145  
Nummer 6

Ausstellung von beglaubigten Abschriften


Zu Artikel 145  
Nummer 7

Unterbrechung des Verfahrens

(1) Das Verfahren vor dem Europäischen Patentamt wird unterbrochen:

a) im Fall des Todes oder der Handlungsunfähigkeit des Anmelders oder Patentinhabers oder der Person, die

Re. Article 145  
No. 3

Form of decisions of the European Patent Office

(1) If there is a hearing in proceedings before the European Patent Office, the decision may be given orally. Subsequently the decision in writing shall be notified to the parties.

(2) Decisions which are open to appeal and the final decision of the Board of Appeal shall include the reasons for such decisions.

Re. Article 145  
No. 4

Ex officio rectification

Linguistic or clerical errors or obvious mistakes contained in decisions of the European Patent Office, in the Register of European Patents and in publications of the European Patent Office, may be rectified ex officio.

Re. Article 145  
No. 5

Notification of possibility of appeal

(1) Decisions of the European Patent Office which are open to appeal shall be accompanied by a written notification informing the parties that an appeal against the decision may be brought, and stating the period within which and the form in which the appeal may be lodged with the European Patent Office, and specifying the amount of the appeal fee which must be paid.

(2) The parties may invoke neither the omission of the notification nor any errors contained therein.

Re. Article 145  
No. 6

Issue of certified copies

The European Patent Office shall issue on request certified copies of the European patent application upon payment of the fee prescribed by the Rules relating to Fees adopted pursuant to the Convention. However, before publication of the application for a European patent, such copies shall be issued only to the applicant for the European patent or to any person authorised by him.

Re. Article 145  
No. 7

Interruption of proceedings

(1) Proceedings before the European Patent Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of
FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS
TO THE CONVENTION ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

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

— 1971 —
Swiss and German delegations emphasised in this respect that this rule could not be interpreted in such a way that the oral decision would constitute an exception. The Drafting Committee, furthermore, thought it desirable to lay down a general provision relating to the form of the decisions taken by all the departments of the European Patent Office (See footnote to the text)."

7. In the last paragraph of point 55 for "from the point of view of international law" read "as an international convention was concerned".

8. Delete the text of point 57 and substitute "Following this decision, the German delegation reserved its position on paragraph 2. It stated that in its opinion it was illogical to lay down a binding rule under which decisions subject to appeal should be accompanied by a notification stating the conditions of appeal, and yet, in paragraph 2, to debar any legal consequences in the event of an infringement of that rule."
ANNEX III

Amendments to the minutes of the meeting from 20 to 23 October 1970

1. Delete the text of point 43 and substitute:
"The Sub-Committee made provision for the reimbursement of the appeal fee in the event of an interlocutory revision, or when the Board of Appeal allows the appeal, on condition that the reimbursement is equitable by reason of a substantial procedural violation."

2. This amendment does not concern the English text.

3. Under point 22 add: "See the footnote to the text."

4. Under point 23 delete the text and substitute "No comments."

5. Under point 27 delete the last paragraph and substitute:
"Paragraph 2 states the deficiencies which may be rectified even after expiry of the opposition period. Nevertheless if no rectification has taken place within a certain period to be laid down by the Opposition Division, the latter will reject the opposition as inadmissible."

6. Delete the texts of points 52, 53 and 20 and substitute:
"This provision lays down that in the event of a hearing or oral proceedings the decisions of the European Patent Office may be given orally at the hearing. They should then be put in writing and notified to the parties. The
MINUTES
of the 4th meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 23-27 November 1970)

I.

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

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

(1) See the list of participants in Annex I.
There should however be a time limit on this suspension, so as to take the interests of third parties into account. The majority of the members of the Sub-Committee did not agree with this concept, and decided that the parties should have no rights in the case of error omission by the European Patent Office in this matter.

57. Following this decision, the German delegation reserved its position on paragraph 2, stating that "it was not logical to create an obligation for the European Patent Office without authorizing the necessary countermeasure, i.e., a party in the event of a complaint, to be heard and to have the possibility of a judgment in the event of an infringement of their acts."

Re. Article 159, No. 6 - Issue of certified copies

58. No comments.

Advance payment of fees

59. The Sub-Committee considered that the provision on page 53 of the Chairman's proposals Re. Article 159, No. 7, falls within the competence of the Sub-Committee on Rules relating to Fees.

Re. Article 159, No. 7 - Interruption of proceedings

60. The first paragraph makes provision for the interruption of proceedings in the case of the death of the applicant for or proprietor of the patent. The Sub-Committee agreed to adopt a broad formulation for the resumption of proceedings, by including not only the intervention of heirs, but also that of executors of a will, of joint heirs or holders of claims on the estate.
Re. Article 152, No. 5 - Notification of possibility of appeal

55. The Sub-Committee discussed the question of whether an appealable decision should or should not be accompanied by a notification to the parties informing them of the possibility of appeal and giving them all the information necessary for drawing up a valid appeal.

There were two conflicting concepts on this subject. Certain delegations felt that such notification was not necessary, on the principle that no-one can plead ignorance of the law. Other delegations, on the other hand, stated that it was indispensable to inform the parties of such a serious matter, this principle being sometimes found in their Constitutions.

The majority of the members of the Sub-Committee finally came to the conclusion that from the point of view of international law, it was preferable to require the European Patent Office to make such notification (first paragraph).

56. Following this conclusion, however, a new discussion arose concerning paragraph 2 which deals with the legal consequences resulting from omission of such communication by the Patent Office.

Again, there were two conflicting concepts. Certain delegations felt that the European Patent Office is merely rendering a service to the parties who, consequently, should not be able to take advantage of an error or omission on the part of the Patent Office. Others, on the contrary, asserted that the European Patent Office's obligation to make the notification constitutes a right of the parties. Hence, the omission of such communication should imply suspension of the time-limits for appeal.
Re. Article 159, No. 3 - Form of decisions of the European Patent Office

52. During the discussion of this article, the Sub-Committee thought that it would be opportune to formulate here a general provision laying down the form of the decisions taken by the various departments of the European Patent Office and determining particularly when these decisions should be in writing and when they should state the reasons on which they have been based. To this end, the Sub-Committee agreed to include in this article the rule set down in Re. Article 115, which prescribes that decisions concerning appeals may be given orally at the hearing, and that they are later put in writing and notified to the parties (see under 20). See also the Drafting Committee's footnote to the text.

53. It should be noted that the decision to grant a European patent does not have to state the reasons on which it is based. However, if a patent is granted as a result of a decision from the Board of Appeal, such decision must indicate its motivation and set forth the reasons which led the Board of Appeal to take a different decision from that adopted by the Examining Division.

Re. Article 159, No. 4 - Ex officio rectification

54. This provision is concerned with errors contained in published documents, and does not duplicate the new Article 159a of the Preliminary Draft Convention, which is concerned with rectification of procedural errors.
MINUTES
of the 3rd meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg; 20-23 October 1970)

I

1. The third working meeting of the Sub-Committee
instructed by Working Party I to draw up draft
Implementing Regulations to the Convention was held at
Luxembourg, from Tuesday 20 to Friday 23 October 1970,
with Mr. PRESSONET, Deputy Director, French Industrial
Property Institute, in the Chair.

In addition to the national delegations represent-
ed in the sub-Committee, the meeting was attended by
BIRPI and the International Patents Institute (IIP) (1).

(1) See the list of participants in Annex I.
Ad article 159
Numéro 6

Avis indiquant les voies de recours

(1) Les décisions de l'Office européen des brevets contre lesquelles est ouvert un recours, un pourvoi en cassation ou une action doivent en principe être accompagnées d'un avis écrit indiquant aux parties quelle voie de recours leur est ouverte, auprès de quelle instance, dans quel délai et sous quelle forme le recours peut être formé et, le cas échéant, quelle taxe doit être versée.

(2) Les parties ne peuvent se prévaloir de l'omission de l'avis, ni des erreurs dont il pourrait être entaché.

Remarque :
La question du maintien de cet article sera réexaminée.
Ad article 159

Numéro 3

Forme des décisions de l'Office européen des brevets

(1) Les décisions des instances de l'Office européen des brevets par lesquelles il est mis fin à une procédure à l'égard d'un participant sont faites par écrit.

(2) Les décisions mentionnées au paragraphe 1 sont motivées dans la mesure où il ne s'agit pas de décisions des sections d'examen par lesquelles un brevet européen provisoire est délivré ou de décisions des divisions d'examen par lesquelles un brevet européen provisoire est confirmé sans que des tiers aient participé à la procédure de confirmation.

(3) Le président de l'Office européen des brevets peut décider que d'autres décisions doivent être faites par écrit ou motivées.

Remarque :

De l'adoption de cette disposition résulte la suppression des dispositions de la Convention qui, par exemple, dans les articles 100, paragraphe 3, 112, paragraphe 5, 134, paragraphes 5 et 149, paragraphe 5, prescrivent une décision écrite ou motivée.
Groupe de travail "BREVETS"

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

VE AO 1964

Avant-projet

de règlement d'application de la convention relative à un droit européen des brevets
Après une intervention de M. van Exter, le Groupe décide de placer tout ce numéro entre crochets, afin de le soumettre à l'avis des experts des Ministères de la Justice. Il décide, en outre, à la suite d'une suggestion du Président, d'inscrire une note en bas de page signalant que dans le cas où ce texte serait retenu, le Groupe devrait encore examiner le problème des conséquences résultant des fautes contenues dans l'avis. À cette occasion, il devrait trancher le problème de savoir si la responsabilité de l'Office doit ou non être mise en cause dans un pareil cas. Les conséquences juridiques suivantes pourraient être retenues ou l'invocation de la force majeure (l'erreur assimilée à la force majeure) ou la possibilité de ne pas faire courir les délais ou enfin des dommages-intérêts à payer par l'Office.

Le numéro est transmis au Comité de rédaction.

Ad. Article 159 - N° 7

Ce numéro se rapporte à la délivrance de copies conformes de la demande, en vue d'assurer un droit de priorité.

A la suite d'une intervention de M. van Benthem, le Groupe décide de maintenir le paragraphe 1 et d'y ajouter le principe essentiel que l'Office ne peut délivrer de telles copies que moyennant le paiement préalable des frais.

Les paragraphes 2 et 3 sont supprimés; ils se rapportent au cas exceptionnel où l'Office aurait délivré une copie sans paiement préalable.

A ce sujet, un échange de vues a lieu concernant l'article 170 relatif à l'exécution forcée en matière de frais et d'amendes. Le Groupe décide que le texte du premier paragraphe doit être modifié. Il faut, en effet, que toutes les décisions de l'Office constatant un défaut de paiement de taxes (sensu stricto) constituent un titre exécutoire.

Toutefois, M. van Benthem estime qu'il serait peu élégant de prévoir en faveur de l'Office européen la faculté de prendre une décision exécutoire pour le remboursement d'un simple service rendu.

Après une longue discussion, le Groupe décide que le Comité de rédaction rédigera un nouveau paragraphe 1 à l'article 170 visant le non-
Ad. Article 159 - N° 2

Ce numéro traite des procès-verbaux des audiences, des procédures orales et des instructions. Ils sont approuvés par les intéressés, mais pas signés par eux. Ils sont signés par les fonctionnaires qui les dressent. Cette disposition répond à des exigences pratiques, explique M. Singer. Il s'agit de permettre aux fonctionnaires de prendre ces dépositions en sténographie, par exemple. Ce numéro est accepté et transmis au Comité de rédaction.

Ad. Article 159 - N° 3

Ce numéro vise la forme des décisions. Il a pour but l'information des instances de recours. Il est adopté sans discussion et transmis au Comité de rédaction.

Ad. Article 159 - N° 4

Ce numéro traite du versement anticipé des taxes. Il est biffé, à la suite d'une intervention de M. Fressonnet. En outre, à l'article 78, paragraphe 1, sont biffés également les mots "à moins que la dite taxe n'ait déjà été versée", puisque ces mots se rapportent également au versement anticipatif de la taxe.

Ad. Article 159 - N° 5

Ce numéro a pour objet les rectifications d'office des décisions. Le Comité de rédaction veillera particulièrement à la concordance des textes français et allemand, et s'inspirera également de la rédaction de l'article 81 de la Convention.

Ad. Article 159 - N° 6

Ce texte déclare, en son paragraphe 1, que les décisions de l'Office sont accompagnées d'un avis indiquant les voies de recours. En son paragraphe 2, il précise que les parties ne peuvent se prévaloir de l'omission de cet avis.
Résultats de la neuvième session du groupe de travail "Brevets" qui s'est tenue à Munich du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 159
Numéro 6

Avis indiquant les voies de recours

(1) Les décisions de l'Office européen des brevets contre lesquels un recours, un pourvoi en cassation ou une action sont recevables, doivent être accompagnées d'un avis écrit indiquant ces voies de recours. Cet avis doit faire connaître aux parties quelle voie de recours leur est ouverte, auprès de quel service, dans quel délai et sous quelle forme le recours peut être formé et, le cas échéant, quelle taxe doit être versée.

(2) Les parties ne peuvent faire valoir de droits en excipant de l'omission d'un avis indiquant les voies de recours.

Remarque :
On se rapportera au procès-verbal de la quatrième session du groupe de travail, page 15, à l'article 154 du projet.
Projet

concernant le

règlement d'application

de la

Convention relative à un droit européen des brevets

Proposition concernant l'application des

articles 153 à 159

de la Convention
Zu Artikel 159
Nummer 6
Rechtsmittelbelehrung

(1) Entscheidungen des Europäischen Patentamts, gegen die eine Beschwerde, Rechtsbeschwerde oder Klage statthaft ist, sollen mit einer schriftlichen Belehrung über dieses Rechtsmittel versehen sein. In der Belehrung sind die Beteiligten darauf hinzuweisen, welches Rechtsmittel gegen die Entscheidung gegeben ist, bei welcher Stelle, innerhalb welcher Frist und in welcher Form es einzulegen ist und gegebenenfalls welche Gebühr zu entrichten ist.

(2) Die Beteiligten können aus der Unterlassung der Rechtsmittelbelehrung oder aus in ihr enthaltenen Fehlern keinerlei Ansprüche herleiten.

Bemerkung:
Die Frage der Aufrechterhaltung dieses Artikels wird erneut geprüft werden.
Zu Artikel 159
Nummer 3

Form der Entscheidungen des Europäischen Patentamts

(1) Die Entscheidungen der Organe des Europäischen Patentamts, die ein Verfahren gegenüber einem Beteiligten abschließen, werden schriftlich abgefaßt.

(2) Die in Absatz 1 genannten Entscheidungen werden mit Gründen versehen, sofern es sich nicht um Entscheidungen der Prüfungsstellen handelt, durch die ein vorläufiges europäisches Patent erteilt wird, oder um Entscheidungen der Prüfungsabteilungen, durch die ein vorläufiges europäisches Patent, ohne daß Dritte am Verfahren beteiligt sind, bestätigt wird.

(3) Der Präsident des Europäischen Patentamts kann bestimmen, daß auch sonstige Entscheidungen schriftlich abzufassen oder zu begründen sind.

Bemerkung:
Aus der Annahme dieser Vorschrift ergibt sich die Streichung, die etwa in den Artikeln 100 Absatz 3, 112 Absatz 5, 134 Absatz 5 und 149 Absatz 5 eine schriftlich abgefaßte oder mit Gründen versehene Entscheidung vorschreiben.
ARBEITSGRUPPE
"Patente"

Brüssel, den 20. Januar 1964

VERTRAULICH

VE 40 1964

Vorentwurf

einer Ausführungsordnung zum Abkommen über
ein europäisches Patentrecht

4419/IV/63-D
Auf einen Einwand von Herrn van Exter beschließt die Gruppe, diese Nummer in Klammern zu setzen und den Sachverständigen der Justizministerien zur Stellungnahme vorzulegen. Sie beschließt weiterhin, einer Anregung des Vorsitzenden Folge zu leisten und in einer Fußnote darauf hinzuweisen, daß bei Beibehaltung dieses Textes die Arbeitsgruppe noch die Frage der Folgen einer fehlerhaften Rechtsmittelbelehrung prüfen müsse. Bei dieser Gelegenheit müsse auch die Frage behandelt werden, ob in einem solchen Fall die Verantwortlichkeit des Patentamtes in Erwägung zu ziehen sei. Die rechtslichen Folgen könnten beschränkt werden auf die Berufung auf höhere Gewalt (wobei der Irrtum ähnlich wie die höhere Gewalt behandelt werden könnte), auf die Möglichkeit, keine Fristen in Lauf zu setzen oder letztlich auf die Leistung von Schadensersatz durch das Patentamt.

Die Nummer wird dem Redaktionsausschuß überwiesen.

Artikel 159 Nr. 7

Diese Nummer bezieht sich auf die Erteilung von Abschriften der Anmeldung zur Sicherung eines Prioritätsrechtes

Auf einen Einwand von Herrn van Benthem beschließt die Gruppe, Absatz 1 beizubehalten und dort den Grundsatz einzufügen, daß das Patentamt derartige Abschriften nur gegen vorherige Zahlung der Kosten erteilen solle.

Die Absätze 2 und 3 werden gestrichen; sie bezogen sich auf den Ausnahmefall, wo das Patentamt eine Abschrift ohne vorherige Bezahlung erteilt hatte.

Hierzu ergibt sich ein Meinungsaustausch über Artikel 170, der sich auf die Zwangsvollstreckung wegen der Kosten und Geldbußen bezieht. Die Arbeitsgruppe beschließt, daß der Wortlaut von Absatz 1 geändert werden muß. Es sollen nämlich alle Entscheidungen des Patentamtes, in denen die Nichtzahlung von Gebühren (im engeren Sinne) festgestellt wird, einen vollstreckbaren Titel darstellen.

Herr van Benthem hält es für nicht sehr geschickt, wenn man zugunsten des Europäischen Patentamtes die Möglichkeit einer vollstreckbaren Entscheidung bei der Frage der Vergütung eines bloßen Verwaltungsdiensstes vorsähe.

Nach einer längeren Aussprache beschließt die Gruppe, daß der Redaktionsausschuß eine Neufassung von Absatz 1 zu Artikel 170 ausarbeiten solle,
Artikel 159 Nr. 2


Artikel 159 Nr. 3

Diese Vorschrift regelt die Form der Entscheidungen. Sie dient der Information der Beschwerdeinstanzen. Sie wird ohne Aussprache angenommen und an den Redaktionsausschuß weitergeleitet.

Artikel 159 Nr. 4

Diese Nummer behandelt die vorzeitige Entrichtung der Gebühren. Sie wird auf einen Einwand von Herrn Frossonnet gestrichen. Darüber hinaus werden auch in Artikel 78 Absatz 1 die Worte "es sei denn, daß die Gebühr bereits entrichtet worden ist", ebenfalls gestrichen, weil diese Worte sich auch auf die Vorausschaltung der Gebühr beziehen.

Artikel 159 Nr. 5

Bei dieser Vorschrift geht es um die Berichtigung der Entscheidungen von Amts wegen. Der Redaktionsausschuß soll besonders darauf achten, daß der französische und deutsche Text übereinstimmen und sich gleichzeitig von der Fassung des Artikels 81 des Abkommens leiten lassen.

Artikel 159 Nr. 6

Diese Vorschrift bestimmt in Absatz 1, daß die Entscheidungen des Patentamtes mit einer Rechtsmittelbelehrung versehen sind. Absatz 2 stellt klar, daß die Beteiligten sich nicht auf die Unterlassung der Rechtsmittelbelehrung berufen können.

.../...
Ergebnisse der neunten Sitzung

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

Sitzungsbericht
Zu Artikel 159
Nummer 6
Rechtsmittelbelehrung

(1) Entscheidungen des Europäischen Patentamts, gegen die eine Beschwerde, Rechtsbeschwerde oder Klage statthaft ist, sollen mit einer schriftlichen Belehrung über dieses Rechtsmittel versehen sein. In der Belehrung sind die Beteiligten darauf hinzuweisen, welches Rechtsmittel gegen die Entscheidung gegeben ist, bei welcher Stelle, innerhalb welcher Frist und in welcher Form es einzulegen ist und gegebenenfalls welche Gebühr zu entrichten ist.

(2) Aus der Unterlassung der Rechtsmittelbelehrung können die Beteiligten keinerlei Ansprüche herleiten.

Bemerkung:
Vergleiche die Niederschrift über die 4. Sitzung der Arbeitsgruppe, Seite 15, zu Artikel 154 des Arbeitsentwurfs.
Arbeitsentwurf
zu einer
Ausführungsordnung
zum
Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 153 bis 159
des Abkommens
that Article 156, paragraph 3, was to be interpreted as an authorisation for the Administrative Council to provide for the levy of a search fee for each and every international patent application, irrespective of whether additional searches within the meaning of this provision should be carried out in the individual cases.

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

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

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

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

The provisions of the Convention and the Implementing Regulations concerning representation before the European Patent Office were already discussed with the organisations concerned during the earlier stages of the negotiations and were, as far as possible adapted to their proposals and wishes. Fortunately this situation meant that the principles established by the Inter-Governmental Conference were no longer questioned as to their substance. In particular, the principle that during a transitional period the representatives' status would basically be controlled by the national law of Contracting States and afterwards by European law, remained uncontested. The general principles concerning representation in Article 133 were also unaltered. The Main Committee generally considered that these principles should also be valid for the transitional period. The Committee also specified that legal persons could be represented not only by their employees — as laid down in paragraph 3 of Article 133 — but also by their departments. Such representation by their departments is regarded as a matter of course, is understood from paragraph 1 of Article 133 and does not need to be expressly laid down.

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

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