Article 105 E

Travaux Préparatoires (EPC 1973)

Comment:

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Beitritt des vermeintlichen Patentverletzers

**Art. 105**

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

and

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 26 November 1971 -
81. In the event that the defendant in the infringement proceedings does not intervene in the opposition proceedings until it is at the appeals stage, should the Board of Appeal be obliged to refer the matter to the Opposition Division? One delegation was in favour of its being compulsory so to refer such a matter, as otherwise a body to which to appeal would be lost to the person making the intervention. Most of the delegations nevertheless held the provision of Article 115 paragraph 3, whereby the Board of Appeals can decide itself, to be sufficient; this would be the case, for instance, if the person making the intervention were to bring no new facts forward. Here there would be no need to refer a matter to the Opposition Division.

The Working Party accordingly decided not to provide for compulsory reference.

82. The Working Party thereupon adopted a new Article 106(a), in accordance with the arguments adduced under points 75 to 81.

In addition, in the sequence of wording in the new Article 101(6) it laid down that the prescriptions for opposition proceedings (Re. Article 101, No. 1 to No. 5) are to be suitably applied to the intervention.

83. The Working Party further came to agreement that the attention of interested parties be drawn in an appropriate manner to the possibility which the defendant in infringement proceedings has to intervene in opposition proceedings, as in practice this provision may possibly assume great importance.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING-UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 16 December 1971
BR/144/71

- Secretariat -

MINUTES

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

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

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

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

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

BR/144 e/71 ley/prk
Unrevised translation

.../...
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83. The Working Party further came to agreement that the attention of interested parties be drawn in an appropriate manner to the possibility which the defendant in infringement proceedings has to intervene in opposition proceedings, as in practice this provision may possibly assume great importance.

BR/144 e/71 son/pmg
warnings. Moreover, a precondition too wide in scope might lead to the proprietor of the patent being faced with large numbers of persons making interventions.

The Working Party reached agreement to the effect that the presumed patent infringer would have to prove before the European Patent Office that the proprietor of the patent had instituted infringement proceedings against him.

In this connection it was agreed that the intervener himself would also have to adduce grounds for revocation, in accordance with Article 101.

79. Should the defendant in infringement proceedings also be allowed to intervene if the opposition proceedings are before the Board of Appeal?

The answer to this question was in the affirmative all round, as the appeals proceedings form part of the opposition proceedings.

80. Should the European Patent Office be able to reject intervention by the defendant in infringement proceedings, at the request of the first opponent? This was proposed by the British delegation, to preclude the possibility of the opposition proceedings being too long drawn out.

The Working Party spoke out against such a possibility. The British delegation reserved the right to return to this issue later.

BR/144 e/71 son/gc  .../...
76. At this juncture the French delegation pointed out that a provision of this sort would run counter to the wishes of the Contracting States to the Second Convention, with reference to Article 59a: according to this provision no application for revocation could be made as long as the opposition proceedings are pending at the European Patent Office or as long as opposition can be lodged.

In this connection it was further pointed out that the proposal by no means represented a prescription to the advantage of the EEC Member Countries, but was, rather, of interest to all the Contracting States to the First Convention. Furthermore it was not to be ruled out that States which did not subscribe to the Second Convention might also feel themselves induced to adopt a rule corresponding to Article 59a of the Second Convention in their national laws.

77. The Working Party declared itself basically in agreement with the French delegation's proposal. Merely the following details were discussed:

78. As from when should the presumed patent infringer be given the opportunity to intervene in opposition proceedings?

One delegation was of the opinion that if the presumed patent infringer had been warned by the proprietor of the patent, this ought to suffice. Against this it was objected that it would be difficult to distinguish between simple requests to desist from a certain practice, and formal
EXAMINATION OF THE QUESTIONS WHICH AROSE DURING THE WORK OF
THE EEC MEMBER STATES ON THE PRELIMINARY DRAFT OF THE
CONVENTION FOR THE EUROPEAN PATENT FOR THE COMMON MARKET
(SECOND CONVENTION) AND WHICH ALSO CONCERN
THE FIRST CONVENTION

(Item 2(c) of the agenda)

Article 106 (new) and Article 101 AO (6) (new) -

Intervention of the presumed infringer in opposition proceedings pending before the European Patent Office

\[ BR/GT I/125/71 \]

75. The French delegation proposed that it be laid down that anyone who has instituted infringement proceedings against the proprietor of a patent may intervene in opposition proceedings still pending, if he has allowed the opposition period to expire without taking advantage of it (BR/GT I/125, page 10).

The object of this is to ensure that the presumed patent infringer is not compelled to bring an action for revocation before the courts in the named Contracting States as long as central opposition proceedings are still pending. This would ensure a saving of time and also minimise as far as possible the danger of counter-rulings being made.
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING-UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 16 December 1971
BR/144/71

SECRETARIAT

MINUTES

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

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

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

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

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

BR/144 e/71 ley/prk
Unrevised translation
Article 105a (Effect of the decision)

The Conference was of the opinion that there were no valid grounds for amending the present text of this provision. It considered that, in fact, in accordance with the principle of the *ex tunc* effect of the revocation, it was for the national laws to lay down the implementing procedures in respect of licensing contracts, for example.

Article 106a (Intervention of the presumed infringer in opposition proceedings pending before the European Patent Office)

Taking account of the remarks made by some delegations, (cf. BR/169/72, point 109) and of reservations made by the United Kingdom, Austrian and Netherlands delegations, the Conference decided to place the text proposed by Working Party I in square brackets. It asked Working Party I to examine whether the question of a limited period dating from the infringement action should be imposed on the presumed infringer for intervening in the opposition proceedings. Working Party I was also instructed to examine whether the intervention should be confined to the lower department.
MINUTES

of the

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

Parts 1 and 3

(Luxembourg, 24–25 January and 2–4 February 1972)
CNIPA stated that it could agree to a provision such as Article 106a, provided however that the right to intervene were subject to a time limit running from the moment when the infringement proceedings were instituted and, that the intervention would only be admitted during first proceedings and not during appeal proceedings.

Article 107a (Translation of the patent specification)

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

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

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

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

111. Furthermore, UNICE observed that it should be made clear that the language in which the patent was granted was to be authentic in any State even if that State required a translation into one of its official languages under Article 107a.
UNEPA also considered that in paragraph 3, last sentence - and in Article 103 as well - the discretionary powers of the Opposition Division ("if it considers it expedient") should be replaced by the right of the third parties involved to submit their observations.

Article 105a (Effect of the decision)

EIRMA and IFIA proposed that it be left to national law to regulate the consequences - for rights attached to a patent - of the ex tunc effect of the revocation of the patent.

Moreover, IAPTP observed that it would be useful to introduce a provision laying down that, in the event of revocation of the patent following opposition, licences should continue to have effect until the date of the revocation, provided that they were issued prior to the decision revoking the patent.

Article 106a (Intervention of the presumed infringer in opposition proceedings pending before the European Patent Office)

The introduction of this provision in the Convention met with opposition from EIRMA, FICPI and ICC, owing to the complication and delays which would result in the opposition proceedings. FICPI also observed that any third party would be free to submit observations on a patent which was the subject of opposition proceedings and that if such observations seemed well founded, the European Patent Office could examine them ex officio.
MINUTES
of the
5th Meeting of the Inter-Governmental Conference
for the Setting up of a European System
for the Grant of Patents

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

(Luxembourg, 26 January to 1 February 1972)
Article 106a

Intervention of the presumed infringer in opposition proceedings pending before the European Patent Office

(1) Subject to payment of the fee provided for in Article 101, paragraph 1, a third party who, after the opposition period has expired, provides the European Patent Office with proof that the proprietor of a patent granted by that Office has instituted infringement proceedings against him may intervene in opposition proceedings which have been instituted against the same patent and which are pending before an Opposition Division or a Board of Appeal. The application for intervention, which is to be addressed to the department before which the opposition is lodged, shall be made by means of a reasoned request containing the contentions and conclusions of the person making the intervention and accompanied by copies of the supporting documents. The Opposition Division or the Board of Appeal shall decide on the intervention.

(2) The provisions of Article 101, paragraphs 2 and 3, Article 101a, Article 101u, Article 102, Article 103, Article 105 and Article 115 shall be extended to cover intervention proceedings.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 6 December 1971
BR/139/71

- Secretariat -

DOCUMENT CORRECTING

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

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

and

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 26 November 1971 -

BR/139 e/71
but that the opponent should be able to appeal against the
grant of the patent in its final form. Other delegations,
on the other hand, were in favour of the opponent and any
intervenor also having the right to object. The Working
Party agreed on a compromise solution whereby the European
Patent Office is entitled, but not obliged, to continue the
opposition proceedings where a party expresses disapproval
of the text in which it is intended to maintain the patent.

Article 106a - Intervention of the presumed infringer in
opposition proceedings pending before the
European Patent Office

61. In compliance with a suggestion by several of the
international organisations, the Working Party decided to
limit the right of a presumed infringer to intervene in
opposition proceedings after the expiry of the opposition
period to a period of three months from the date on which
the infringement proceedings were instituted (cf. BR/168/72,
point 128).

On the other hand, the Working Party did not adopt the
suggestion that intervention should no longer be admissible
when an appeal was pending on the opposition proceedings.

The other amendments made by the Working Party
involved drafting only.
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 13 April 1972
BR/177/72

SECRETARIAT

REPORT

on the 11th meeting of Working Party I
held in Luxembourg from 28 February to 3 March 1972

1. Working Party I held its 11th meeting in Luxembourg from 28 February to 3 March 1972 with Dr Haertel, President of the Deutsches Patentamt in the Chair.

Representatives of the Commission of the European Communities, the IIB and WIPO attended the meeting as observers. The Representatives of the Council of Europe sent apologies for absence. Those present at the 11th meeting are listed in Annex I to this report.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/143/72; it was agreed that Articles 153 and 154 would be dealt with by the Co-ordinating Committee at its next meeting scheduled for 15 to 19 May 1972. The provisional agenda is contained in Annex II to this report.

3. The Drafting Committee of Working Party I was chaired by Mr van Benthem, President of the Octrooiraad.

The results of the Drafting Committee's work were circulated under reference BR/176/72.

BR/177'e/72 oyd/AH/prk
Article 104 (106a)

Intervention of the assumed infringer

(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him may, after the opposition period has expired, intervene in the opposition proceedings, if he gives notice to the European Patent Office of intervention within three months of the date on which the infringement proceedings were instituted.

(2) Notice of intervention shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid. Thereafter the intervention shall be treated as an opposition.

Note to Article 104:
Working Party I proposes that the square brackets be deleted.

A/prk
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
8 to 24 March and 10 to 20 April 1972)
Article 104
Rule 58

73. The Committee did not adopt the proposal from FICPI to the effect that the Opposition Division or Board of Appeal be granted the option of refusing the intervention of the assumed infringer if such intervention could cause undue delay in proceedings.

However, in order to take account of the concern on which FICPI's request was based, the Committee introduced a new paragraph 4 in Rule 58, laying down that the Opposition Division, by virtue of its discretionary power of appreciation, might dispense with the communications to the proprietor of the patent and to the other opponents, as provided for in paragraphs 1 to 3 of that Rule. If the competent authority had recourse to this option, this would not permit it to dispense with the examination of the grounds on which the notice of intervention was based.

Article 140

74. The Committee noted that the difficulties cited by CHIPA with regard to the payment of renewal fees for applications could easily be settled by administrative means. Indeed, it would be possible to ensure that a patent was not granted immediately before the date on which the renewal fee was due, and that the granting of the patent could only take place after payment had been recorded.

The Swiss delegation however stressed that difficulties still existed, particularly owing to the fact that by deferring the grant of the patent beyond the date on which
MINUTES

of the second meeting of the Co-ordinating Committee

held in Brussels from 15 to 19 May 1972

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

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

2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:
Article 104 (106a)

Intervention of the assumed infringer

(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him may, after the opposition period has expired, intervene in the opposition proceedings, if he gives notice to the European Patent Office of intervention within three months of the date on which the infringement proceedings were instituted.

(2) Notice of intervention shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid. Thereafter the intervention shall be treated as an opposition.

Note to Article 104:
Working Party I proposes that the square brackets be deleted.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
Article 104

45. The Danish delegation wondered whether there was not a contradiction between the last sentence of this Article and Rule 58, paragraph 4, which provides for different rules of procedure in the case of observations by an intervening party as compared with an opponent.

In order to take account of this observation the Conference recorded its agreement to an amendment of the sentence referred to in Article 104, reserving the application of the provisions of the Implementing Regulations. It was also pointed out that Rule 58, paragraph 4, in no way implied that the observations of the intervening party would not be taken into account, but merely exempted the Opposition Division from the obligation of notifying them to the other parties concerned.

Article 120

46. In reply to a question from the Belgian delegation, it was stated that the time limit of three months laid down in paragraph 2 for the case of refusal of the application was adopted by analogy with the period granted for appealing against a decision of the Office (Article 107). In addition, the period of two months laid down in the same paragraph for cases where the application is deemed to be withdrawn was laid down by analogy with the period fixed in Rule 70, paragraph 2, for applying for a decision by the Office.
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)
Artikel 58
22 Aus Gründen der besseren Übersichtlichkeit wird vorgeschlagen, Absatz 1 Satz 3 zu einem neuen Absatz auszugestalten.

Artikel 62
23 Um das Verhältnis zwischen Artikel 62 und Artikel 67 klarzustellen, wird vorgeschlagen, Artikel 62 wie folgt zu ändern:
„Vorbehaltlich Artikel 67 gewährt das europäische Patent seinem Inhaber...“

Artikel 74
24 In Absatz 2 des deutschen Textes sollte in der letzten Zeile das Wort „gegebenenfalls“ gestrichen werden.

Artikel 92
25 In Regel 50 Absatz 1 Satz 2 der Ausführungsordnung wird davon ausgegangen, daß die Zusammenfassung veröffentlicht wird. Da Artikel 92 die Einzelheiten der Veröffentlichung der europäischen Patentanmeldung regelt, sollte in Absatz 2 die Zusammenfassung aufgenommen werden.

Artikel 99
26 In Anpassung an Artikel 81 sollte im Buchstaben b das Wort „danach“ gestrichen werden.

Artikel 104
27 Um mögliche Missverständnisse zu vermeiden, wird vorgeschlagen, die Worte „Antrag auf Beitritt“ zu streichen und statt dessen eine Fassung zu wählen, die zum Ausdruck bringt, daß der Beitritt innerhalb der Dreimonatsfrist erklärt werden muß.

Artikel 105
28 In Absatz 2 sollte im deutschen Text das Wort „sofortige“ durch „gesonderte“ ersetzt werden, da

practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to substances or compositions intended for use in any of the above-mentioned methods.”

Article 58
22 For the sake of greater clarity it is proposed that the third sentence of paragraph 1 should form a separate paragraph.

Article 62
23 In order to make the relationship between Article 62 and Article 67 clear, it is proposed that Article 62 should be amended as follows:
“Subject to Article 67, a European patent shall confer on its proprietor...”

Article 74
24 In the German text the word “gegebenenfalls” should be deleted in the last line of paragraph 2.

Article 92
25 Rule 50, paragraph 1, 2nd sentence, of the Implementing Regulations assumes that the abstract will be published. Since Article 92 lays down the details for the publication of a European patent application, the abstract should be included in paragraph 2.

Article 99
26 In the German text, sub-paragraph (b), the word “danach” should be deleted so that the text corresponds with Article 81.

Article 104
27 In order to avoid possible misunderstandings it is proposed that the words “notice... of intervention” be deleted and a wording used which makes it clear that the intervention must be filed within the three-month period.

Article 105
28 In the German text of paragraph 2 the word “sofortige” should be replaced by “gesonderte”
STELLUNGNAHME

DER REGIERUNG DER BUNDESREPUBLIK DEUTSCHLAND

COMMENTS

BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

PRISE DE POSITION

DU GOUVERNEMENT DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
45. Es wird daher vorgeschlagen, den ersten Satz des Art. 93(2) wie folgt abzufassen:

"(2) Ein Prüfungsantrag kann durch den Anmelder bis zum Ende von sechs (6) Monaten nach dem Datum eingereicht werden, an dem der Recherchenbericht gemäß Art. 91(3) dem Anmelder übersandt wurde. Die Frist zur Einreichung des Antrages soll jedoch in keinem Fall vor 24 Monaten nach dem Einreichtdatum oder der am weitesten zurückliegenden Prioritätfrist ablaufen."

46. Regel 51 würde dann überflüssig werden und wäre zu streichen.

47. Da das IIB in das Europäische Patentamt eingegliedert wird, wird angenommen, daß einer Übersendung nach Art. 91(3) die Maßnahme einer Zustellung gemäß Art. 118 zukommen würde.

48. Es wird vorgeschlagen, im französischen Text Art. 104(1), Zeile 3 von oben, die Worte "contre le" durch "sur la base du" zu ersetzen, um diese Stelle klarer zu formulieren.

49. Die Gesamtfrist von drei (3) Monaten für die Einreichung einer Beschwerde samt einer Beschwerde begründung wird oft als zu kurz angesehen werden, insbesondere dann, wenn umfangreiche Dokumente zu übersetzen und an überseeische Anmelder zusammen mit Erklärungen und Vorschlägen weiterzuleiten sind. Andererseits haben die übrigen Beteiligten, wie auch die Öffentlichkeit, ein natürliches Interesse daran, so rasch wie möglich zu erfahren, ob die Entscheidung des Patentamts bekämpft wird oder nicht.

50. Es wird daher vorgeschlagen, die Gesamtfrist in eine erste Frist zum Einreichen einer Formalbeschwerde und eine zweite Frist zur Vorlage der Beschwerde begründung aufzuspalten. Die erste Frist soll nicht weniger als zwei (2) Monate betragen, und es wird vorgeschlagen, daß dann die zweite Frist auf zwei (2) Monate festgesetzt werden könnte, ohne eine übermäßige Störung oder Verzögerung zu verursachen.

51. Es wird gerne zur Kenntnis genommen, daß Art. 110(1) nunmehr die Bestimmung enthält, daß "die Beschwerdekammer im Rahmen der Zuständigkeit der Stelle tätig wird, die die angefochtene Entscheidung erlassen hat". Da im Erteilungs- und Einspruchsverfahren die Entscheidung, die mit der Beschwerde angefochten wird, entweder von der Prüfungsabteilung oder von der Einspruchs-Anmelde-Abteilung gefällt worden sei muß, und da beide

45. It is therefore suggested to amend the first sentence of Art. 93(2) so as to read:

"(2) A request for examination may be filed by the applicant up to the end of six (6) months after the date on which the search report has been communicated to him under Art. 91(3). However, the time limit for filing the request shall in no case expire earlier than 24 months after the filing date or earliest priority date."

46. Rule 51 would then become superfluous and should be cancelled.

47. It is presumed that since the IIB is to be incorporated in the European Patent Office, transmission under Art. 91(3) would acquire the status of a communication under Art. 118.

48. For clarity it is proposed in the French text of Art. 104(1), line 3 to replace the words "contre le" by "sur la base du".

49. The total time limit of three (3) months for filing an appeal setting out the grounds on which it is based will frequently be felt too short, particularly when extensive documents have to be translated and communicated to overseas applicants accompanied by comments and recommendations. On the other hand, any other parties to the case, as well as the general public have a natural interest in knowing as soon as possible whether the decision of the Patent Office is contested or not.

50. It is therefore suggested to split up the total time limit into a first time limit for filing a Notice of Appeal and a second time limit for setting out the grounds on which the appeal is based. The first time limit should not be less than two (2) months, and it is suggested that the second time limit could then, without causing undue disturbance or delay, be fixed at two (2) months.

51. It is noted with satisfaction that Art. 110(1) now contains the provision that "the Board of Appeal may exercise any power within the competence of the department which was responsible for the decision appealed". Since in the granting and opposition procedures the decision appealed must have been taken either by the Examining Division, or by the Opposition Division, and since both have the power of accepting amendments, it seems to
STELLUNGNAHME DER
FICPI
Fédération Internationale des Conseils en Propriété Industrielle

COMMENTS BY
FICPI
Fédération Internationale des Conseils en Propriété Industrielle

PRISE DE POSITION DE LA
FICPI
Fédération Internationale des Conseils en Propriété Industrielle

(1) Deutsche Übersetzung vorgelegt von FICPI
(2) La traduction française a été fournie par la FICPI
STELLUNGNAHME DER

StKIHK
Ständige Konferenz der Industrie- und Handelskammern
der Europäischen Wirtschaftsgemeinschaft

COMMENTS BY

CPCCI
Standing Conference of the Chambers of Commerce and Industry
of the European Economic Community

PRISE DE POSITION DE LA

CPCCI
Conférence Permanente des Chambres de Commerce et d’Industrie
de la Communauté Économique Européenne
im Rahmen des Artikels 94 nicht als eine im Ermessen des Verwaltungsrats liegende Gunst, sondern als ein Recht zuerkannt werden, das ihnen aufgrund der vom Verwaltungsrat beschlossenen Verlängerung der Fristen automatisch zusteht.

Artikel 98 – Einspruch


Artikel 104 – Beitritt des Patentverletzers zum Einspruchsverfahren


Artikel 124 – Ergänzender europäischer Recherchenbericht


Artikel 166 – Vorbehalte


Falls durch eine solche Möglichkeit die Ratifizierung des Übereinkommens erleichtert werden kann, so würden sie sich damit einverstanden erklären, daß diese Vorbehalte für eine Höchstdauer von fünf Jahren eingelegt werden können.

them under Article 94, not as a favour left to the discretion of the Administrative Council, but as a right which is automatically granted where the Council decides to extend the period in question.

Article 98 – Opposition

13 The STANDING CONFERENCE is in favour of there being opposition proceedings particularly since they constitute the only proceedings which may be brought before a European body involving a dispute as to the validity and extent of a European patent. These proceedings are likely to encourage the development of common jurisprudence on these two major problems which have basically been left to the interpretation of national courts.

Article 104 – Intervention of the infringer in the opposition proceedings

14 The STANDING CONFERENCE supports the possibility accorded to the assumed infringer against whom proceedings for infringement have been instituted to intervene in opposition proceedings. It considers that, in order to take account of the concern expressed with regard to Article 67, the possibility of extending this provision should be examined so that an assumed infringer against whom proceedings for infringement have been instituted may request the opinion of the European Patent Office as to the validity and scope of the patent in question by means of direct action.

Article 124 – Supplementary European search report

15 The STANDING CONFERENCE supports the possibility accorded to the European Patent Office to obtain at any time a supplementary search report on the state of the art from the International Patent Institute, particularly in the case provided for under Article 156 of the Convention. The European Patent Office, which is responsible for the grant of the patent, must be the sole judge of the desirability of obtaining a supplementary report having regard to the information at its disposal for taking its decision on the application.

Article 166 – Reservations

16 The STANDING CONFERENCE deplores the option granted to the Contracting States to make reservations, which will be valid for a period of ten years, both as concerns the patentability of food and pharmaceutical products and agricultural or horticultural processes and as concerns the period of validity of European patents.

If it is felt that such an option would encourage States to ratify the Convention, it could accept these reservations being limited to a maximum period of five years.
STELLUNGNAHME DER

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

COMMENTS BY

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

PRISE DE POSITION DE LA

FICPI

Fédération Internationale des Conseils en Propriété Industrielle

(1) Deutsche Übersetzung vorgelegt von FICPI
(2) La traduction française a été fournie par la FICPI
einem Dritten gewährt, auch demjenigen zuzuerken-
nen, der vom Patentinhaber eine Warnung erhalten hat, und der deswegen eine Klage gegen letzteren erhebt mit dem Antrag, daß das Gericht feststelle, der Kläger habe keine Patentverletzung begangen (negative Feststellungsklage).

**Artikel 107**

15 Aus praktischen Gründen ist es wünschenswert, daß die Beschwerde innerhalb von zwei Monaten einzulegen ist (formelle Beschwerde) und daß außerdem eine weitere Frist von vier Monaten besteht, innerhalb der die Beschwerde zu begründen ist.

**Artikel 120 (2)**

16 Es erscheint wünschenswert, für beide in Absatz (2) vorgesehenen Fristen zwei Monate festzulegen.

**Artikel 124 (3)**

17 Die Frist von einem Monat für die Entrichtung der Zusatzrecherchegebühr erscheint zu kurz; sie sollte zwei Monate betragen.

**Artikel 128 (5)**

18 Zu den Angaben, die das Europäische Patentamt Dritten gegenüber machen kann, sollten hinzugefügt werden:
- Prioritäten, falls der Anmelder sie geltend macht,
- PCT-Ursprung, falls es sich um eine PCT-Anmel-
dung handelt.

**Artikel 130 (3)**

19 Für den Fall, daß das Europäische Patentamt den Zentralbehörden für den gewerblichen Rechtsschutz von Staaten, die nicht Vertragsstaaten sind, Auskünfte erteilt, sollten diese den Beschränkungen des Artikels 128 unterliegen. Folglich sollte die Bezugnahme in Artikel 130 Absatz (3) nur den Artikel 128 Absatz (1) erfassen.

**Artikel 131 (1)**

20 Es scheint, daß dieser Artikel sich teilweise mit dem Artikel 130 überschneidet.

**Artikel 135**

21 In der englischen und französischen Fassung dieses Artikels kommt an keiner Stelle der Begriff „Umwandlung“ vor. Aus Gründen der Klarheit erscheint dies jedoch wünschenswert.

Article 104 to third parties should also be granted to any person who has received notice from the patent proprietor and as a result brings an action against the latter requiring the court to declare that he has not committed an infringement.

**Artikel 107**

15 For practical reasons it would be desirable for the appeal to be filed within two months (formal appeal) and for an additional time limit of four months to be provided within which the grounds on which the appeal is based must be stated.

**Article 120, paragraph 2**

16 The two time limits laid down in paragraph 2 should each be of two months.

**Article 124, paragraph 3**

17 The period of one month for payment of the additional search fee seems to be too short; it should be extended to two months.

**Article 128, paragraph 5**

18 The following should be added to the data which the European Patent Office may communicate to third parties:
- any priorities claimed by the applicant,
- the PCT origin in the case of a PCT application.

**Article 130, paragraph 3**

19 Where the European Patent Office supplies information to the central industrial property office of any State which is not a party to this Convention, such information should be subject to the restrictions laid down in Article 128. The reference in Article 130, paragraph 3, should therefore only be to Article 128, paragraph 1.

**Article 131, paragraph 1**

20 This Article seems to duplicate partially what has already been stated in Article 130.

**Article 135**

21 The concept of “conversion” is nowhere contained in the English and French versions of this Article. In the interests of clarity this term should be included.
Artikel 73 (1)


Artikel 86 (2) und (3)

8 Es ist vorgesehen, daß der Anmelder für eine europäische Patentanmeldung mehrere Prioritäten in Anspruch nehmen kann. Jedoch scheint es notwendig zu präzisieren, daß für einen Anspruch mehrere Prioritäten gefordert werden können.

Artikel 88 (2)

9 Der letzte Satz von Absatz 2 könnte in seiner Form verbessert werden. Anstelle des Satzteiles: „so wird die Anmeldung nicht als europäische Patentanmeldung behandelt“ könnte es heißen: „so gilt die Anmeldung als nicht gestellt“.

Rücknahme einer Anmeldung

10 Es scheint, daß es im Abkommensentwurf keine Vorschrift gibt, die ausdrücklich vorsieht, daß der Anmelder seine Anmeldung zurücknehmen kann, obwohl Regel 49 eine solche Möglichkeit voraussetzt.

Artikel 92 (2)

11 Nach der Regel 50 (3) sind außer den ursprünglichen Patentansprüchen auch die neuen oder geänderten Patentansprüche zu veröffentlichen, sofern diese vor Abschluß der technischen Vorbereitungen für die Veröffentlichung vorliegen. Es erscheint der U.N.I.C.E., daß diese Vorschrift in das Abkommen selbst eingefügt werden sollte.

Artikel 96 (2) und (3)

12 Es erscheint zweckmäßig, die Druckkostengebühr und die Erteilungsgebühr zu einer einheitlichen Gebühr zusammenzufassen.

Artikel 97

13 Es ist wünschenswert, daß die Patentschrift auch die Dokumente angibt, die die Prüfer zitiert haben.

Artikel 104

14 Es scheint logisch, die Rechte, die Artikel 104
STELLUNGNAHME DER UNICE Union der Industrien der Europäischen Gemeinschaft

COMMENTS BY UNICE Union des Industries de la Communauté européenne

PRISE DE POSITION DE L'UNICE Union des Industries de la Communauté européenne

(1) Deutsche Übersetzung der Stellungnahme und der Anlage 2 vorgelegt von UNICE
(2) Annex 3 to these Comments submitted by UNICE in English
Begründung:
Die Korrektur ist erforderlich, um den deutschen Text an den englischen und französischen Text anzupassen, die den richtigen Sinn wiedergeben.

Artikel 96, Absatz (2) b

5 Vorschlag:
Die Worte „und die Druckkostengebühr“ werden gestrichen.

Begründung:
Im Interesse einer Vereinfachung des Verfahrens ist es besser, eine Erteilungsgebühr solcher Höhe vorzu- sehen, daß sie die durchschnittlichen Druckkosten deckt.

6 Anmerkung: In Art. 101(3)b sollen die Druckkosten beibehalten werden.

Artikel 98, Absatz (1)

7 Vorschlag:
In Zeile 1 wird das Wort „neun“ durch „sechs“ ersetzt.

Begründung:

Artikel 104

8 Vorschlag:
In Zeile 4 ist nach den Worten „worden ist“ einzufügen „oder daß er aufgrund einer Verwarnung eine Klage auf Feststellung, daß er das Patent nicht verletzt hat, erhoben hat“.

Begründung:
Ein wegen Verletzung des Patentes Verwarneter sollte die gleiche Möglichkeit haben wie ein Beklagter; jedoch nur dann, wenn er dagegen Klage erhoben hat.

Grounds:
The correction is necessary in order to adapt the German text to the English and French texts which provide the correct sense.

5 Proposal:
The words “and printing” to be deleted.

Grounds:
In the interest of simplifying the procedure it is better to provide a granting fee of an amount which covers the average printing costs.

6 Note: The printing costs are to be retained in Article 101, paragraph 3(b).

Article 98, paragraph 1

7 Proposal:
The word “nine” to be replaced by “six” in line 1.

Grounds:
With a term of 9 months, the patentee and public would only learn at a very late date whether the patent has been opposed or has remained unopposed. The patentee and the public have however a justified interest in this information not being unnecessarily delayed. Since in countries which provide for an opposition, the opposition term generally amounts to 3 months, a term of 6 months would certainly be sufficient for filing an opposition against a European patent, particularly as the public had already known of the patent application through the publication thereof according to Article 92.

Article 104

8 Proposal:
In line 4, after the word “him”, insert the words: “or that as a result of a warning he has instituted proceedings to establish that he has not infringed the patent”.

Grounds:
A person cautioned for infringing the patent should have the same possibility as a defendant; however only when he has lodged a complaint.
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 104 – Beitritt des vermeintlichen Patentverletzers

6 Es ist vorgesehen, daß jeder Dritte, „der nachweist, daß gegen ihn Klage wegen Verletzung dieses Patents erhoben worden ist“, einem bereits eingelegten Einspruchsverfahren beitreten kann, selbst wenn die normale Einspruchsfrist abgelaufen ist.


Artikel 135 – Umwandlungsantrag

7 Absatz 1 Buchstabe a gibt dem Einreicher einer europäischen Patentanmeldung das Recht, seine europäische Anmeldung in nebeneinander zu behandelnde nationale Anmeldungen umzuwandeln.

Aus dem Wortlaut des Absatzes 1 geht dies jedoch nicht ausdrücklich hervor. Es wird deshalb vorgeschlagen, ihn wie folgt zu ändern:

„(1) Die Zentralbehörde ... eines nationalen Patents anhand einer europäischen Patentanmeldung oder eines europäischen Patents auf Antrag des Anmelders oder Inhabers nur in den folgenden Fällen ein.“

8 Das Recht auf Umwandlung besteht dann, wenn die europäische Patentanmeldung nach Artikel 75 Absatz 5 (die Anmeldung ist nicht binnen 14 Monaten eingegangen) oder Artikel 161 Absatz 3 (Nichtdurchführung der Prüfung in der dem Erfindungsgegenstand entsprechenden Klasse) als zurückgenommen gilt.

Zum letztgenannten Fall ist zu bemerken, daß bei der europäischen Patentanmeldung bereits eine Formprüfung durchgeführt und ein europäischer Recherchenbericht erstellt worden sind und daß der Anmelder auf ihrer Grundlage unter Umständen neue Patentansprüche geltend gemacht hat.

Es wird vorgeschlagen zu präzisieren, daß im Falle einer Umwandlung die nationalen Verfahren anhand der Akten der europäischen Anmeldung einzuleiten sind, und zwar nach dem Stand des Zeitpunkts der Umwandlung, nicht aber nach dem Stand des Zeitpunkts der Einreichung der Anmeldung.

9 Absatz 1 Buchstabe b gibt dem Anmelder das Recht, seine europäische Anmeldung unter zweierlei Voraussetzungen in nebeneinander zu behandelnde Anmeldungen umzuwandeln:

a) Das nationale Recht eines Staates muß dies vorsehen;

b) die europäische Anmeldung muß zurückge-

Artikel 104 – Intervention of the assumed infringer

6 This Article gives any third party “who proves that proceedings for infringement of the same patent have been instituted against him” the possibility of intervening in opposition proceedings even after the normal opposition period has expired.

It is suggested that any third party having instituted proceedings to obtain a statement that he is not an infringer of a patent should also have the right, within three months from the date of instituting such proceedings, to intervene in opposition proceedings concerning the same patent, after the opposition period has expired.

Article 135 – Request for the application of national procedure

7 Paragraph 1(a) gives the applicant for a European patent the right to convert his European application into parallel national applications.

However, the text of paragraph 1 does not specify this explicitly. That is why the following amendment is suggested:

(1) The central industrial property office ... of a national patent on the basis of European patent application or a European patent only at the request of the applicant or proprietor (and) in the following circumstances”.

8 The right to conversion is obtained when the application for a European patent is deemed to be withdrawn pursuant to Article 75, paragraph 5, (application not reaching the European Office within 14 months) or Article 161, paragraph 3 (non-activation of examination in the class corresponding to the invention).

In the latter case, it is pointed out that the European patent application has already undergone examination as to formal requirements, has been the subject of a European search report and may have led to the filing of new claims by the applicant.

It is suggested that it should be laid down that in a case of conversion, national procedures should be started on the basis of the European file as it exists on the date of conversion and not as on the date of filing of the application.

9 Paragraph 1(b) gives the applicant for a European patent the right to convert the application into parallel national applications under two types of condition:

(a) that national legislation of the State concerned provides for such conversion,

(b) that the European application has been refused,
STELLUNGNAHME DES CIFE
Rat der Europäischen Industrieverbände

COMMENTS BY CEIF
Council of European Industrial Federations

PRISE DE POSITION DU CIFE
Conseil des fédérations industrielles d’Europe

(1) English translation submitted by CEIF
21 Artikel 76, Regel 27 Absatz 1d

Die derzeitige Formulierung „...außerdem sind gegebenenfalls die vorteilhaften Wirkungen ... anzugießen” wäre bei erschöpfender Auslegung unangemessen; es ist wünschenswert, diese Auflage auf die Angabe einiger vorteilhafter Wirkungen zu beschränken.

22 Artikel 80, Regel 30

Es wird vorgeschlagen, die Worte „besonders angepaßtes” zu streichen, da diese Forderung unbegründet erscheint.

23 Artikel 86 Absatz 3

Es sollte klargestellt werden, daß nicht nur für ein und dieselbe Anmeldung, sondern auch für ein und denselben Patentanspruch dieser Anmeldung mehrere Prioritäten in Anspruch genommen werden können.

24 Artikel 90, Regel 41 Absatz 2

Die in dieser Regel enthaltene unangemessene Auflage sollte durch die Möglichkeit ersetzt werden, innerhalb einer begrenzten Frist nach der Einreichung der Anmeldung die beanspruchten Prioritäten anzugeben oder die sich hierauf beziehenden Angaben zu berichtigen.

25 Artikel 92, Regeln 49, 50 und 52

Es wird festgestellt, daß für die Rücknahme einer Anmeldung keine Bestimmung eigens vorgesehen ist, obwohl sich das Recht hierzu aus der Regel 49 Absatz 2 ergibt.

Die Bestimmung in Regel 50 Absatz 3 ist nach Ansicht des FEMIPI so wichtig, daß sie in Artikel 92 aufgenommen werden sollte.

26 Artikel 97

Es wird empfohlen, in der Patentschrift auch die von den Prüfern im Verlauf des Verfahrens genannten Unterlagen aufzuführen.

27 Artikel 104

Es wird vorgeschlagen, dem Dritten, der vom Patentinhaber eine Aufforderung zur Unterlassung erhalten und eine Klage zur Feststellung eingereicht hat, daß keine Patentverletzung vorliegt, dieselben Rechte eingeräumt werden wie dem beitretenden Patentverletzer.

21 Article 76; Rule 27, paragraph 1(d)

The present wording „...and state the advantageous effects, if any, of...” would, if interpreted as requiring an exhaustive list, be much too excessive; this provision should be limited to a requirement for certain advantageous effects to be specified.

22 Article 80; Rule 30

It is suggested that the phrase “specifically designed” should be deleted since it would seem to constitute an unjustified requirement.

23 Article 86, paragraph 3

It should be stated that multiple priorities may be claimed not only in respect of one and the same application but also in respect of one and the same claim of that application.

24 Article 90; Rule 41, paragraph 2

The excessive requirement laid down under this Rule should be replaced by the possibility of indicating the priorities claimed or of correcting statements concerning the latter within a specific period from the filing of the application.

25 Article 92; Rules 49, 50 and 52

It is pointed out that there is no express provision relating to the withdrawal of an application, although the right to withdrawal is implicit in Rule 49, paragraph 2.

In addition, the provision of Rule 50, paragraph 3, is of such great importance in the view of FEMIPI, that it should be inserted in Article 92.

26 Article 97

It is recommended that the patent specification should also mention the documents cited by the examiners during the procedure.

27 Article 104

It is suggested that any third party against whom a suit is brought by the patentee and who has filed a declaratory action to confirm that there has been no infringement, should have the same rights as the intervening infringer.
STELLUNGNAHME DES
FEMIPI
Europäischer Verband der Industrie-Patentingenieure

COMMENTS BY
FEMIPI
European Federation of Agents of Industry in Industrial Property

PRISE DE POSITION DE LA
FEMIPI
Fédération européenne des mandataires de l'industrie en propriété industrielle
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)

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

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

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

1973
12. Some members of CEEP however consider that if the provisions at present laid down in Article 94 are retained, the maximum length for the provisionally extended period should be laid down as should a time limit after which the period may not be extended.

13. **Article 97**

It would be very desirable for the specification of the European patent to contain not only the description, the claims and any drawings, but also a list of the documents cited in the course of the procedure.

14. **Article 104, paragraph 1**

Concerns the French text only.

15. **Article 128**

The paragraphs of this Article would be clearer if the terminology relating to concepts at different levels and with opposite meanings were more precise. Thus, whereas paragraph 1 lays down a restriction on making files relating to European patent applications which have not yet been published available for inspection, and paragraphs 2 and 3 provide for exceptions to this restriction (these exceptions providing for cases where files may be made available for inspection), paragraph 4, on the other hand, lays down the general principle of files relating to published applications or to patents being made available for inspection and this principle is subject to exceptions (providing for cases where files may not be made available for inspection as in the case of the restriction in paragraph 1). In particular the "exceptions" provided for in paragraph 4 could better be described as "restrictions", as is the case in Article 130, paragraph 3, Article 131, paragraph 1, and Rule 99, paragraph 3.

16. In addition the exceptions (or restrictions) in paragraph 4 on the inspection of files relating to a published application or to a patent would seem to be confined in the Implementing Regulations...
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 23 May 1973
M/30
Original: French

PREPARATORY DOCUMENT

Drawn up by: Centre Européen de l'Entreprise Publique (CEEP)

Subject: Comments relating to the Draft Convention establishing a European System for the Grant of Patents
(2) If the applicant proves technological progress, this shall be considered in deciding whether there has been an inventive step.

Article 104

3. Under Swiss law, any person notified by the patent proprietor that he is infringing his patent may institute court proceedings for a ruling that he is not infringing the patent. As in the case of the defendant in infringement proceedings, any person notified by the patent proprietor that he is infringing the patent and who has instituted proceedings against the latter for a ruling that he is not infringing the patent should also be able to intervene in the opposition proceedings even after the opposition period has expired.

4. It is therefore proposed that Article 104, paragraph 1, be amended as follows:

(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him or any third party who proves that he has been notified by the proprietor of that patent that he is infringing the patent and that he has instituted proceedings against the proprietor for a court ruling that he is not infringing that patent, may ...

Article 128

5. Under paragraph 5, the European Patent Office may even before publication communicate certain data on the application, in particular as concerns the date of filing (item (b)). Communication of data on the date of filing without at the same time giving the date of any priority claim may be misleading for third parties.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 28 May 1973
M/31
Original: German/French

PREPARATORY DOCUMENT

Drawn up by: Swiss Government

Subject: Comments on the Convention establishing a European System for the Grant of Patents
40. Article 41

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 20 (only concerns German text).

41. Article 104

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 27:

"(1) ... after the opposition period has expired, intervene in the opposition proceedings, if he files the intervention within three months of the date on which the infringement proceedings were instituted.

(2) The intervention shall be filed in a written reasoned statement. It shall not be effective until the opposition fee ... ."

42. Article 128

On the basis of the proposal by CEEP in M/30, No. 15:

"(4) ... may be inspected on request subject to the restrictions laid down in the Implementing Regulation."
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973

M/47/1/II/III

Original: German

CONFERENCE DOCUMENT

Drawn up by: The delegation of the Federal Republic of Germany

Subject: Proposals for amendments to the draft texts
Proposal: Article 104, paragraph 1, should be supplemented as follows:

"(1) ... proceedings for infringement of the same patent have been instituted against him or any third party who proves that he has been notified by the proprietor of that patent that he is infringing the patent and that he has instituted proceedings against the proprietor for a court ruling that he is not infringing that patent may ...".

Reason: See N/31 No. 3.
MUNICH DIPLOMATIC CONFERENCE

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

- 1973 -

Munich, 10 September 1973

M/54/II/III

Original: German

CONFERENCE DOCUMENT

Drawn up by: The Swiss delegation

Subject: Proposals for amendments to the draft texts
Article 104 (1)

Intervention of the assumed infringer

(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him, or any third party who proves that he has been notified by the proprietor of that patent that he is infringing the patent and that he has instituted proceedings against the proprietor for a court ruling that he is not infringing that patent, may, after the opposition period has expired, intervene in the opposition proceedings, if he gives notice of intervention within three months of the date on which the infringement proceedings were instituted.

(2) Unchanged from 1972 published text.

(1) The Drafting Committee has decided to revise the drafting of this Article.

M/80/I/P 2
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 14 September 1973

M/80/I/R 2

Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 13 SEPTEMBER 1973

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Article 104

Intervention of the assumed infringer

(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him may, after the opposition period has expired, intervene in the opposition proceedings, if he gives notice of intervention within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any third party who proves both that the proprietor of the patent has requested that he cease alleged infringement of the patent and that he has instituted proceedings for a court ruling that he is not infringing the patent.

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

- 1973 -

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

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

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Article 104

Intervention of the presumed infringer

(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him may, after the opposition period has expired, intervene in the opposition proceedings; if he gives notice of intervention within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any third party who proves both that the proprietor of the patent has requested that he cease alleged infringement of the patent and that he has instituted proceedings for a court ruling that he is not infringing the patent.

(2) Notice of intervention shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid. Thereafter the intervention shall, subject to any exceptions laid down in the Implementing Regulations, be treated as an opposition.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 4
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 84 to 111
420. The EIRMA delegation suggested that Article 104 (105) be completely deleted. Discussion of the length of time to be allowed for filing opposition had shown that nobody wanted to extend this period more than was necessary for legal certainty. There was a danger here in the case of intervention that the opposition procedure might be held up. At the moment, however, there was no need to provide for intervention since the assumed infringer could both file opposition within the permitted period and/or initiate an action for revocation in national courts.

If Article 104 were to be retained, the time limits set for the grant and opposition procedures would have to be reconsidered in the interests of the research-oriented industries.

421. The Chairman replied that no extension proper of these periods was involved since opposition proceedings had to be in progress already. Article 104 was intended to protect third parties, against whom proprietors of patents had not initiated infringement proceedings until after the expiry of the period allowed for filing opposition, from having to initiate revocation proceedings in a number of national courts.

He further noted that the suggestion that Article 104 be deleted had not been taken up by the delegation of any Government.

422. In response to the Swiss delegation's supplementary proposal, the French delegation said that there was no provision in French law for actions intended to produce such negative rulings. It also wondered whether there was not a certain difference between the present provisions of paragraph 1, which the French delegation understood as being in the interest of the proprietor of the patent, and the Swiss delegation's proposal, which might in fact cause the procedure to be more drawn out than before. In the event of a vote on the matter the French delegation would probably abstain.

423. The Chairman concluded by establishing that no Government Delegation opposed the Swiss proposal and that the proposal was therefore adopted.

**Article 105 (106) — Decisions subject to appeal**

424. The Main Committee adopted a proposal by the delegation of the Federal Republic of Germany that paragraph 1 be amended to the effect that appeals should also lie from decisions of the Legal Division (M/47/I/II/III, points 6 and 17).

425. The Main Committee noted a proposal by Member States of the European Communities that a new paragraph be included (see M/14, point 6).

426. The Main Committee referred to the Drafting Committee a proposal by the Luxembourg delegation (M/9, point 17) and two proposals by the delegation of the Federal Republic of Germany (M/11, points 28 and 29) concerning the wording of paragraph 2.

427. With the support of the Netherlands and Austrian delegations, the Swedish delegation suggested that in paragraph 4, because of the minimum permitted amount for an appeal against a decision fixing the amount of costs, no reference be made to the Implementing Regulations; the minimum amount should be fixed by the Convention itself or — a second possibility — by the Rules relating to Fees (see M/54/I/II/III, page 16).

As regards the figure for this minimum amount, consideration might be given to fixing it at three times the opposition fee, which had been fixed at present at 20 UA (equal to about DM 140.00). If three times the opposition fee were reached or exceeded, then it would no longer be a question of a small amount, and appeals against decisions fixing the amounts of costs would be in order.

428. The United Kingdom delegation reminded the meeting that the appeal fee would also be high and was expected to be 50 UA. If the minimum payment were fixed at three times the opposition fee, i.e. 60 UA, then nobody would, in practice, make use of the possibility of making an appeal. In its view the best solution was not to allow any appeal at all against decisions fixing the amounts of costs since they were purely discretionary.

429. The French delegation opposed the Swiss delegation's proposal on the grounds that it might not be wise to fix an amount in the Convention; it preferred an amount to be laid down in the Implementing Regulations since then it could be more easily changed. If it were done in this way, the French delegation could agree to three times the amount of the opposition fee.

430. The delegation of the Federal Republic of Germany did not think that the minimum permitted amount for an appeal should be linked to the opposition fee. The opposition fee could be fixed in accordance with widely differing criteria and might perhaps in the course of time undergo changes.

Moreover, it would be preferable not to fix a minimum payment in the Convention so that it might be more easily changed. For these reasons the delegation of the Federal Republic of Germany could not support the Swiss delegation's main proposal.

431. After the Swiss delegation had withdrawn its main proposal in a subsequent meeting, the Main Committee accepted its alternative proposal that the minimum permitted amount for appeals be fixed in the Rules relating to Fees; at the same time it deleted Rule 64 (63), paragraph 5.

**Article 106 (107) — Persons entitled to appeal and to be parties to appeal proceedings**

432. The Main Committee referred drafting proposals by the Luxembourg (M/9, point 18) and Swiss (M/54/I/II/III, page 17) delegations to the Drafting Committee.

433. The Member States of the European Communities proposed that in the second sentence the words "with the exception of those who have abandoned that right" be deleted (M/14, point 7).

434. The delegation of the Federal Republic of Germany thought that the aim of this proposal was for parties to proceedings of the first instance also to be entitled to take part in the appeal proceedings. Most national regulations governing civil proceedings included provisions embodying this principle. The present draft, on the other hand, could lead to difficulties in the allocation of costs in appeal proceedings. If one of the parties to the proceedings of the first instance were able to drop appeal proceedings, it might well be that the other party would have to bear the full costs in the event of a court's ruling in its favour. Such an outcome was naturally not desirable; the power to drop appeal proceedings should therefore be ruled out.

435. The FICPI delegation asked whether a party to proceedings who was convinced of the hopelessess of an appeal could be compelled to take part in appeal proceedings and thereby run the danger of being required, possibly years later, to contribute to costs.

436. The UNION delegation thought that that would be an unjustifiable burden. By way of illustration it gave the following example: proceedings brought by two opponents has led to the limitation of the patent. One of the opponents is content with that result; the other, however, wants the whole patent to be revoked and starts appeal proceedings. If all parties were bound to be party to the appeal proceedings, it could happen that in the event of an unfavourable ruling the first opponent
were not official languages of the European Patent Office wanted translations of specifications and publication of those translations to be required; three months each had been agreed on for translation and publication. The remaining three months had been considered as time for consideration by the patentee's competitors in that State.

399. The Netherlands and Swiss delegations took up the Observer delegations' point. The Netherlands delegation stressed that as a result of the Main Committee's decision the applicant should provide translations of the patent claims into the two other official languages of the European Patent Office (see point 378), the period of time specified in Article 96, paragraph 4, would probably have to be extended by two months, with the result that that extra time would be gained for translation. It thus seemed justified to shorten the time allowed for filing opposition correspondingly.

400. The United Kingdom delegation did not want the period of nine months allowed for filing opposition to be changed immediately. If it were to emerge later that it was too long, the Administrative Council could always shorten it then. It was also worthy of note that the United Kingdom's experience of shorter time limits had been unfortunate, in that notices of opposition had not been drawn up with sufficient care and had had to be amended later.

401. The delegation of the Federal Republic of Germany thought that competitors should in any case have six months in which to give notice of opposition. Consideration had also to be given, however, to competitors in other countries who would probably require translations of patents in their own languages; in such countries — for example Sweden — the patent would only be available for examination in the national language much later, with the result that even in the event of a nine-month period for filing opposition those competitors would be much worse off than those in countries whose national language was the language of the proceedings. The period should be allowed to stand at least for the present.

402. The Swedish delegation thought that the period of nine months which had been agreed upon hitherto should be used to start with and that it should be left to the Administrative Council to make any reduction in this period on the basis of practical experience.

403. The Netherlands delegation pointed out that the time allowed for providing translations of specifications under Article 63 (65), paragraph 1, started from the moment when an applicant was informed by the European Patent Office of the form which it was intended the grant of a patent would take. Only after these three months, which were to be extended to five, could mention of the grant be made in the European Patent Bulletin. The period allowed for filing opposition only began with the publication of that mention. In all, that amounted to fourteen months and it would therefore be quite justifiable to reduce the period allowed for filing opposition to, for instance, seven months.

404. The Norwegian delegation, taking into account the views of interested circles in Norway, was in favour of retaining the present period.

405. The Irish delegation did not think that the period for filing opposition should be changed for the time being.

406. In the ensuing vote, three delegations were in favour of reducing the period for filing opposition to six months, ten were in favour of retaining the nine-month period, and three delegations abstained.

407. The Member States of the European Communities proposed that a new paragraph provide that opposition might still be filed even where the patent had been surrendered or had lapsed for all designated States (see M/14, point 4).

408. The United Kingdom delegation explained this proposal by pointing out that the effect of a patent's being surrendered or lapsing was immediate, but that there might be residual legal effects which could appropriately be removed subsequently by means of the opposition procedure.

409. The Main Committee adopted this proposal.

410. The Netherlands delegation said that paragraph 4 constituted an exception to the principle of the uniform treatment of proprietors laid down in Article 117 (118) in that a previous proprietor and the person who replaced him in respect of a designated Contracting State were not treated as joint proprietors. It followed therefore that two separate patents would be involved, which might turn out quite differently as regards claims, descriptions and so on. Because of this fact textual drafting changes would probably have to be made in the Implementing Regulations.

411. The Chairman noted that this was also the view of the Main Committee.

Article 99 (100) — Grounds for opposition

412. The Main Committee referred to the Drafting Committee a proposal for the rewording of sub-paragraph (b) of this Article by the delegation of the Federal Republic of Germany (M/11, point 26).

Article 100 (101) — Examination of the opposition

413. The Norwegian delegation withdrew its proposal concerning Article 100 (M/28, point 10).

Article 101 (102) — Revocation or maintenance

414. A proposal by Member States of the European Communities concerning the wording of paragraph 2 (M/14, point 5) was referred to the Drafting Committee.

415. As regards paragraph 3, the Main Committee decided that, in the same way as it had been laid down that the applicant would be required to have the patent claims translated into the two other official languages of the European Patent Office (see point 378 above), the proprietor of the patent would have to supply a translation of any claims changed as a result of opposition proceedings.

Article 103 (104) — Costs*

Article 104 (105) — Intervention of the assumed infringer

416. A proposal by the delegation of the Federal Republic of Germany concerning the wording of paragraphs 1 and 2 (M/47/I/II/III, point 41) was referred to the Drafting Committee.

417. In connection with paragraph 1, the Swiss delegation proposed that a third party should also be allowed to intervene in opposition proceedings if he showed that, after being warned of infringement by the proprietor of the patent, he had instituted proceedings against the proprietor of the patent in order to have a ruling that he was not infringing the patent (see M/54/I/II/III, page 15). This remedy was available under the law of a number of countries and had proved to be of value.

418. The UNICE delegation supported this proposal. It stressed, however, that warning by the proprietor of the patent could not be considered sufficient grounds for intervention, but that a party wanting to intervene would have to have started proceedings for a ruling.

419. The CEIF and UNION delegations, the latter making reference to its own proposal in M/28, point 8, also supported this proposal.

* For an explanation of these Articles, see points 2012, 2015 and 2016.
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 — summed 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 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 112/113.

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 second provision was added to allow 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
5. Filing and requirements of the European patent application (Articles 73-84 and Rules 24-37)

During its discussion of Article 73, the Main Committee was faced with the question of which office of the European Patent Office the European patent application should be filed at. In the interests of the applicant, it gave him the choice of Munich or The Hague and amended Article 73, paragraph 1(a) and Article 74, paragraph 1, accordingly.

In connection with the requirements of the application under Article 76, the Main Committee examined the need to file the abstract. It considered that if this were not done, there would be a loss of information and therefore maintained this requirement. It also decided to prescribe the compulsory publication of the abstract with the search report under Article 92.

Closely connected with the substantive requirement of disclosing the invention under Article 81 was the problem of making special provisions for European patent applications covering micro-organisms. It was not contested that the relevant provision, Rule 28, should lay down that micro-organisms which are not available to the public should be deposited with a recognised culture collection no later than at the time of filing the application, that the micro-organism should be adequately described in the application, and that the culture collection should be identified either in the application itself or within a short time thereafter. It was also agreed that the disclosure of the micro-organism should be subject to certain measures to protect the applicant. Views differed, however, on the latest time at which the micro-organism should be made available to the public. Contrary to the draft of Rule 28, which provided for this to be no later than the date of publication of the application, it was proposed that the applicant should not be obliged to make the micro-organism available to the public until the time of the grant of the patent, at which point the provisional protection would be lost. The main arguments put forward in defence of this standpoint were that the approach contained in the draft laid an unfair burden on such applicants in comparison to inventors in other fields of technology by requiring the subject-matter of the invention to be deposited, and that the applicant was forced to reveal know-how, thus making it easier for his invention to be copied at a time when it was not yet definite whether or not the application would lead to the grant of a patent.

Those who advocated the approach set out in the draft argued that the public could be considered to be sufficiently informed about the subject-matter of the invention only if the micro-organism were made available to the public at the time of the publication of the application; furthermore, it was only by such a disclosure that the micro-organism could be comprised in the state of the art under Article 52, paragraph 3, with the result that this was the only means whereby duplication of patents could be avoided and legal uncertainty in relation to national patent applications could be removed.

After detailed consideration of the various arguments for and against the two approaches, the Main Committee decided by a majority to retain the solution proposed in the draft and to lay down that the micro-organism should be made available to the public at the latest at the date of publication of the European patent application. At the same time, it added provisions to Rule 28 which gave the applicant far-reaching guarantees against misuse of the disclosed micro-organism during the existence of the provisional protection conferred by the application and the definitive protection of the European patent. These guarantees consisted in requiring that any third party who had access to a sample of the culture would have to make certain undertakings vis-à-vis the culture collection or the applicant for or proprietor of the patent in respect of the ways in which he used the culture. On the other hand, the Main Committee decided, in the same way as in respect of Article 67, not to adopt a procedural rule which would have obliged a third party who used a micro-organism disclosed by the applicant to prove that the culture concerned was not that described in the application, even though the reversal of the burden of proof would have reinforced the legal position of the applicant even further. It was also made clear in Rule 28 that the built-in safety clauses in favour of the applicant did not prejudice any national provisions concerning compulsory licences or uses in the interest of the State. The details governing the deposit, storage and availability of cultures were left to agreements to be concluded between the President of the European Patent Office and the recognised culture collections.

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

Apart from the amendment to Article 85, paragraph 5, already dealt with above in the chapter on “language questions”, the provisions of Articles 85-87 concerning priority led to few amendments. It may be mentioned that the extension of the priority right to States which are not members of the Paris Convention, in accordance with an amendment decided upon by the Committee in the interests of the Contracting States, will apply only if international reciprocity is granted not only in relation to European but also in relation to national applications by Contracting States.

7. Procedure up to grant (Articles 88-97/Rules 39-55)

In so far as individual provisions of Articles 88-97 and the corresponding Rules 39-55 concerning the procedure up to grant have already been discussed in connection with language questions, identification of the inventor and the abstract, reference should be made to the appropriate Chapters 1, 3 and 5.

During the discussion of Articles 93/94 the Committee confirmed the specified period within which requests for examination may be filed and also the possibilities for extending the time limits, both of which are the result of well thought out compromises. The Committee refused in particular to lay down in Article 94 an absolute right for third parties to request examination in the event of the Administrative Council extending a time limit. The need for such a right for third parties depends largely on the length of time by which the period is extended.

8. Opposition procedure (Articles 98-104/Rules 56-64)

The provisions concerning opposition procedure gave rise to very little discussion. A proposal to delete the opposition fee in Article 98, paragraph 1, on the ground that the opponent was to be considered as a person helping to establish the legal facts of the matter, was rejected by the majority. If the fee were to be dispensed with, dilatory opposition would be encouraged. Furthermore, the interests of the opponent are his main incentive and lastly, pursuant to Article 114, any person who wishes to help to establish the legal facts of the matter may present, free of charge, observations concerning the patentability of an invention in respect of which an application has been filed. By a vast majority the Committee also refused to shorten to six months the nine-month opposition period laid down in Article 98, paragraph 1, which had been adopted as a compromise solution at an earlier stage in the negotiations.

In Article 98 and in Rule 61 the Committee added new provisions which also made possible the filing of notice of opposition and consequently the continuation of opposition proceedings when the proprietor has completely surrendered the European patent or when it has lapsed for all the
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
Re. Article 101

No. 6

Intervention of the presumed infringer in opposition proceedings pending before the European Patent Office

The provisions of Articles ...
(Re. Article 101, Nos. 1, 2, 3, 4 and 5) shall be applicable to intervention proceedings under Article 106a of the Convention.