Article 63 E

Travaux Préparatoires (EPC 1973)

Comment:

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
Art. 63
MPÜ
Laufzeit des europäischen Patents

<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr. im Entwurf/ Dokument</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstelle im Dokument</th>
</tr>
</thead>
<tbody>
<tr>
<td>√ BR/48/70</td>
<td>20a</td>
<td>√ BR/49/70</td>
<td>Rdn. 97/98</td>
</tr>
<tr>
<td>√ BR/88/71</td>
<td>20a</td>
<td>√ BR/125/71</td>
<td>Rdn. 24</td>
</tr>
</tbody>
</table>

Dokumente der MDK

<table>
<thead>
<tr>
<th>E 1972</th>
<th>61</th>
<th>√ M/40</th>
<th>S. 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;</td>
<td>61</td>
<td>√ M/146/R 3</td>
<td>Art. 63</td>
</tr>
<tr>
<td>&quot;</td>
<td>61</td>
<td>√ M/PR/I</td>
<td>S. 31</td>
</tr>
<tr>
<td>&quot;</td>
<td>61</td>
<td>√ M/PR/G</td>
<td>S. 200/201</td>
</tr>
</tbody>
</table>
official languages instead of only the language of the proceedings.

2. Patentability (Articles 50-55)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Report on the work of Main Committee II

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

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

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

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

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

13. The Austrian delegation suggested that in the English version of point 22, in the middle of page 14, the words "some search work" be used so as not to prejudice the question of the amount of such search work, which had deliberately been left open. The text would therefore read: "difficulties resulting from a renunciation under Setion I2, to entrust some search work to national offices whose language is...".

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

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

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

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

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

84. The problems connected with identification of the inventor are dealt with under Article 79 (points 227 et seq.).

85. The Main Committee referred to the Drafting Committee a drafting proposal from the delegation of the Federal Republic of Germany concerning the division of paragraph 1 into two separate paragraphs (M/11, point 22).

86. At a subsequent meeting the Main Committee discussed, on the basis of a text submitted by the Drafting Committee, whether reference had to be made in the new paragraph 2 (previously paragraph 2) not only to paragraph 1 (previously paragraph 1, first and second sentences) but to paragraph 2 (previously paragraph 1, third sentence) as well.

87. The Swiss delegation considered it appropriate to refer to paragraph 2 (new) as well.

88. In the opinion of the delegation of the Federal Republic of Germany there existed a request to be made to paragraph 2 (new), since under paragraph 3 (new) the European Patent Office was meant to be freed from the task of verifying entitlement even where there were several applicants.

89. The Netherlands delegation, however, had doubts about the fictitious case mentioned in paragraph 3 (new), but was prepared to refer the matter to the Drafting Committee.

90. The Main Committee accordingly referred the question to the Drafting Committee for examination and for a decision.

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

91. The problems connected with the mention of the inventor are dealt with under Article 79 (points 227 et seq.).

92. The Main Committee referred to the Drafting Committee a proposal from the Netherlands delegation concerning an amendment to the title of Article 59 (M/32, point 10) and a drafting proposal from the Member States of the European Communities concerning paragraph 1 (M/14, point 3). It also referred to it an oral drafting proposal from the Swiss delegation concerning the French text of the title, the introduction to paragraph 1 and paragraph 1 (b).

93. The Swiss delegation, seconded by the Austrian delegation, requested that in Article 59 (61), paragraph 2 reference should also be made to the first paragraph of Article 74 (76) (M/54/1/11III, page 12). It primarily wanted to ensure that there could be no room for doubt that the person entitled to a European patent could designate only those States which had also been designated in the initial application by the person not entitled to apply.

Secondly, it wanted to ensure that the new divisional application could be filed only in respect of subject-matter contained in the earlier application. Finally, the divisional application should also be filed directly with the European Patent Office and not be made through a national office.

94. After the United Kingdom and Netherlands delegations had pointed out with regard to the main problem that it was already laid down in Article 59, paragraph 1, that no Contracting States could be designated other than those originally designated, the Swiss delegation withdrew its request. It reserved the right to return to its other requests when Article 74 (76), paragraph 2, was discussed (see points 200 et seq.).

**Article 61 (63) — Term of the European patent**

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

96. The delegation of the Federal Republic of Germany withdrew a proposed addition to Article 62 (M/11, point 22).

97. The Main Committee adopted this Article in the version resulting from the discussion of Article 67 (69), paragraphs 3 and 4 (see below, points 121 et seq., 138 et seq.).

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

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

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

**Article 67 (69) — Extent of protection**

100. The Swedish delegation, seconded by the Finnish delegation, requested that the note to Article 67 (69) be drafted in such a way that the patentee should be able to profit from any ambiguity in the patent claims (M/53/1/11, point 5; see also M/13, point 7). The present version of the proposed declaration was not quite satisfactory in this respect. It also wished to point out that great importance had been attached to the wording in this respect when drawing up a Scandinavian patent law.

101. The Netherlands delegation opposed the request. In its opinion this addition would not improve the text. It wished, however, to point out above all that the declaration had been very carefully drafted after lengthy discussions.

102. In the considered opinion of the delegation of the Federal Republic of Germany the present text of the statement was very well-balanced. If the Swedish request were granted, a lack of balance, which nobody sought, might be created. It could therefore not support the proposed addition.

103. The United Kingdom delegation considered that the Swedish proposal might well be suitable for most cases of obscure claims but not for all. It was therefore not advisable to become committed to an interpretation of obscure claims in the way proposed. Furthermore, the delegation referred to the lengthy discussions there had been on this very declaration. It was therefore better to retain the present text.

104. The Swiss delegation said that it would be sorry if the present, very well-balanced text were amended.

105. The FICPI delegation stated that it was understandable that the Swedish delegation wanted, with its proposed addition, to afford the greatest possible certainty for competitors of the proprietor of the patent. However, the applicant could simply not be expected to foresee, in drawing up his claims, all the possibilities of infringement. If he did not foresee them, it would be to his disadvantage under the Swedish proposal. Considered in this way, the proposal was even likely to detract to a large extent from the European patent’s appeal.

106. The delegation of the International Chamber of Commerce concurred in the statements of the Government delegations. In addition, it considered that the additional
MINUTES
OF THE
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
Chapter III
Effects of the European patent
and the European patent application

Article 63
Term of the European patent

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

(2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent under the same conditions as those applying to its national patents, in order to take into account a state of war or similar emergency conditions affecting that State.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 55 to 83
5. **Article 9**
In paragraph (4)(b) "court" should be amended to "courts".

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

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

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

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

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

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

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

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

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

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

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

- 1973 -

Brussels, 13 August 1973
M/40
Original: English

PREPARATORY DOCUMENT

Drawn up by: The United Kingdom Government

Subject: Proposed amendments concerning the Draft Convention, the Draft Implementing Regulations, the Draft Protocol on Recognition and the Draft Protocol on Privileges and Immunities
Kapitel III
Wirkungen des europäischen Patents und der europäischen Patentanmeldung

Artikel 61
Laufzeit des europäischen Patents

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

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

Artikel 62
Rechte aus dem europäischen Patent


Artikel 63
Übersetzung der Patentschrift


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

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

Article 61
Term of the European patent

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

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

Article 62
Rights conferred by a European patent

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

Article 63
Translation of the European patent specification

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

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant for or proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.
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
défavoris 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
Article 20a (Term of the European patent)

24. The Conference adopted this new Article, which lays down a legal term of 20 years for the European patent as from the date of filing of the application. It should be noted that Article 158 allows for any State to reserve the right to provide, at least during a certain period, for a shorter term.

CHAPTER IV

Patents of addition

Article 21 (European patents of addition)

25. The Conference adopted the proposed text, on the understanding that it provided a compromise solution and that Working Party I would have to re-examine the advisability of retaining the system of patents of addition, especially if the second sentence of Article 13 were to be finally adopted.

If it were decided to retain it, Working Party I would have to examine whether the period laid down in paragraph 1 should be modified so that it would be sufficient that the priority date of the application for a patent of addition (rather than the date of filing) should be prior to the date of publication of the application for the parent patent.

BR/125 e/71 ley/KM/prk

.../...
MINUTES

of the

4th Meeting of the Inter-Governmental Conference

for the setting up of a European System

for the Grant of Patents

(Luxembourg, 20 to 28 April 1971)
Article 20a

Term of the European patent

(1) The term of the European patent shall be 20 years as from the date of filing of the application or, in the case of a European patent of addition, from the date of filing the application for the parent patent.

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

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
97. As compared with the corresponding provision in the 1965 Draft, paragraph 1 was amended firstly to define the standard term of the patent more clearly, within the framework of the maximum approach and secondly to define the term of the patent of addition.

98. In order to take a request from the British delegation into account, paragraph 2 refers to the law of a Contracting State if that law lays down - in the circumstances referred to in the said paragraph, different provisions which would also govern national patents.

Article 188a (new): Reservations

99. With reference to paragraph 2, two opinions prevailed within the Working Party concerning the term of the limited period. It was urged in favour of a relatively short period (5 years from the entry into force of the Convention), that this term would in reality be longer, since the period of time between the signing of the Convention and its entry into force would have to be taken into account. In favour of a longer period, (10 years from the entry into force of the Convention), it was argued that, for the States which were not parties to the second Convention, it would be advisable to establish a sufficiently long period of time, so as not to complicate their accession to the Convention.

100. The French delegation, while in favour of the 5-year term reserved the right to ask the Conference not to lay down a limited period for the provisions of paragraph 1(a), as it seemed contradictory to provide for a maximum approach on the one hand and for the right to make reservations, on the other.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 26 October 1970
BR/49/70

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

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

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

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

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

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

BR/49 e/70 eld/PA/bcc

.../...
CHAPTER III
EFFECTS OF THE PATENT

Article 22a new
Term of the European patent

Text drawn up by the Working Party

(1) The term of the European patent shall be 20 years as from the date of filing of the application or, in the case of a European patent of addition, from the date of filing the application for the parent patent.

(2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent under the same conditions as those applying to its national patents, in order to take into account a state of war or similar emergency conditions affecting that State.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 23 September 1970
BR/48/70

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

Articles prepared by Working Party I
(7 to 11 September 1970)

BR/48 e/70 eld/RT pb
5. Filing and requirements of the European patent application (Articles 73-84 and Rules 24-37)

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

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

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

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

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


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

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

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

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

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

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

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