Rule 69 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.
Regel 69  
MPÜ  
Feststellung eines Rechtsverlust

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Annex I

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

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

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

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

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

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

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

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

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

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

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

ANNEX II
REPORT
by Mr. R. Bowen
Assistant Comptroller, British Patent Office
on the results of Main Committee II's proceedings

ANNEX III
REPORT
by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)
on the results of Main Committee III's proceedings

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

2324. The Austrian delegation supported the Swiss proposal. 2325. The Netherlands delegation did not think it could be the responsibility of the European Patent Office to calculate the time limits for appellants or for any other parties. It thought it would suffice if the European Patent Office drew parties' attention to the provisions of Article 107. If such an arrangement were to be adopted, the Swiss and Austrian delegations' proposals would be superfluous, since in practical terms there could not be any incorrect indications.

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

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

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

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

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

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

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

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

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

Rule 70 (69) — Noting of loss of rights

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

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

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

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

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

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

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

2341. The Committee agreed to this proposal.

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

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

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

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

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

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

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

Rule 82 (81) — Notification to representatives

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

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

Rule 85 (84) — Duration of time limits

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

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

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

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

2354. The Swedish delegation felt that it was unnecessary to amend its proposal, since the European Patent Office would be free to fix time limits within the margin laid down.
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 69

Noting of loss of rights

(1) If the European Patent Office notes that the loss of any right results from the Convention, without any decision concerning the refusal of the European patent application or the grant, revocation or maintenance of the European patent, or the taking of evidence, it shall communicate this to the person concerned in accordance with the provisions of Article 119.

(2) If the person concerned considers that the finding of the European Patent Office is inaccurate, he may, within two months after notification of the communication referred to in paragraph 1, apply for a decision on the matter by the European Patent Office. Such decision shall be given only if the European Patent Office does not share the opinion of the person requesting it; otherwise the European Patent Office shall inform the person requesting the decision.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 10
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 54 to 82
Rule 70
Noting of loss of rights

(1) Unchanged from 1972 published text.

(2) If the person concerned considers that the finding of the European Patent Office is inaccurate, he may, within two months after notification of the communication referred to in paragraph 1, apply for a decision on the matter by the European Patent Office. Such decision shall be given only if the European Patent Office does not share the opinion of the person requesting it; otherwise the European Patent Office shall inform the person requesting the decision.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973
M/ 142/I/R 13
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 27 SEPTEMBER 1973

Articles of the Convention:

- Articles 59
- Articles 162

Rules of the Implementing Regulations:

- Rules 51
- Rules 69
- Rules 70
- Rules 73
- Rules 85
- Rules 89
- Rules 91
- Rules 97
- Rules 100
- Rules 103
- Rules 107


- Articles 3
- Articles 6

Recommendation on preparations for the opening of the European Patent Office

Decision on Training Staff for the European Patent Office
Rule 70

Paragraph 3 (new)

If the applicant has paid a fee the levy of which he considers to have been unjust, he may, within (two) months after the expiry of the time limit for payment, apply for a decision on the matter by the European Patent Office. Such decision shall be given only if the European Patent Office does not share the opinion of the person requesting it and does not refund the fee.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 17 September 1973
M/ 89/I
Original: German

CONFERENCE DOCUMENT

Drawn up by: the Austrian delegation

Subject: Proposal for a paragraph 3 in Rule 70 of the Implementing Regulations

Rule 70, paragraph 2, the second sentence should be amended to read: "Such a decision shall be given only if the European Patent Office does not share the opinion of the person requesting it, in the other case it shall inform the latter by simple notice."
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
- 1973 -

Munich, 10 September 1973
M/52/I/II/III
Original: English

CONFERENCE DOCUMENT

Drawn up by: Netherlands delegation

Subject: Proposals for amendments to the draft texts
the same time (in paragraph 2) any responsibility for errors made in that information. The applicant could easily be led astray by an error in the indication of that date. We suggest to amend the last two lines of this paragraph in such a way that the European Patent Office shall draw applicant's attention to the contents of Article 93, par. 2 and 3. When this is done in a general way errors can not be made.

36. **Rule 58, par. 1:**

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

We propose to cancel the last sentence of this paragraph.

Unnecessary to say that Article 122, par. 5, remains applicable.

37. **Rule 69, par. 2:**

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

38. **Rule 70, par. 2:**

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

- 1973 -

Brussels, 1 June 1973
M/32
Original: English

PREPARATORY DOCUMENT

Drawn up by: Netherlands Government

Subject: Observations and proposed amendments concerning the Draft Convention and the Draft Implementing Regulations
unter anderem auf die Regel 36 Absatz 1 zu verweisen. In dieser letztgenannten Regel wird wiederum auf die Regeln 27 und 29 sowie 32 bis 35 verwiesen. Einige dieser Regeln enthalten jedoch materiell-rechtlich nicht nur Formvorschriften.

Regel 44 Absatz 2 – Inhalt des europäischen Recherchenberichts

27 CIFE beantragt, die Worte „soweit erforderlich“ zu streichen. Seines Erachtens ist es nämlich für den Anmelder stets wichtig zu wissen, welche Seiten, Spalten und Zeilen der Schriftstücke Anlaß zu deren Zitierung gegeben haben.

Artikel 14 und Regel 2 Absatz 1 – Sprachen des Europäischen Patentamts

28 Hat ein an einem mündlichen Verfahren vor dem Europäischen Patentamt Beteiligter die Absicht, sich einer anderen Amtssprache des Patentamts als der Verfahrenssprache zu bedienen, so sollte nach Ansicht des CIFE der betreffende Beteiligte gehalten sein, dies dem EPA schon einen Monat und nicht erst zwei Wochen vor der Anhörung mitzuteilen. Noch zweckmäßiger dürfte es wohl sein, bei jedem Beteiligten so zu verfahren, der sich einer der Amtssprachen eines der Vertragsstaaten bedienen möchte.

29 Schließlich sollte jeder Beteiligte, der sich einer anderen Sprache als der Verfahrenssprache bedient, die Kosten für die Übersetzung übernehmen müssen, aber nicht für die Übersetzung selbst Sorge tragen; dies sollte dem EPA überlassen werden, zumindest in den Fällen, in denen die verwendete Sprache eine andere Amtssprache des Patentamts ist, damit die Qualität der Übersetzung einheitlich und von möglichst hohem Niveau ist.

Artikel 18 Absatz 2 – Einspruchsabteilungen

30 Der CIFE vertritt die Auffassung, daß das Mitglied der Einspruchsabteilung, das unter Umständen am Erteilungsverfahren beteiligt war, weder mit der Bearbeitung des Einspruchs noch mit dem Vorsitz der Abteilung betraut werden dürfte.

Artikel 96 und Regel 70 – Feststellung eines Rechtsverlusts

31 Falls jemand, der von einem Rechtsverlust betroffen ist, die Auffassung vertritt, daß die Feststellung des Europäischen Patentamts nicht zutrifft, und das Patentamt sich dieser Auffassung anschließt und demnach das Verfahren fortsetzt, dürfte es wünschenswert sein, daß der Betreffende hiervon unterrichtet wird.

Referenz zu Regel 36, Satz 1. Die letzte Regel bezieht sich auf die Regeln 27 und 29 und 32 bis 35. Einige dieser Regeln enthalten jedoch materiell-rechtlich nicht nur Formvorschriften.

Rule 44, paragraph 2 – Content of the European search report

27 CEIF requests deletion of the words "If necessary," as it is considered that it will always be important for the applicant to know what are the pages, columns and lines of the documents cited that have motivated citation of these documents.

Article 14 and Rule 2, paragraph 1 – Languages of the European Patent Office

28 When a party in an oral procedure before the European Patent Office wishes to use one of the other official languages of the Office rather than the language of the proceedings, it seems desirable to CEIF that said party be required to notify the EPO one month rather than two weeks before the oral proceedings. It also seems even more desirable that the same should apply to any party wishing to use one of the official languages of the Contracting States.

29 Also, it seems preferable that a party using a language other than the language of the proceedings should bear the cost of interpretation but not assume responsibility for interpretation, which would be left to the European Patent Office, at any rate when the language used is one of the other official languages of the Office, so as to ensure translation of a uniform and if possible high quality.

Article 18, paragraph 2 – Opposition Divisions

30 CEIF thinks that the member of the Opposition Division who may have participated in proceedings for the grant of the patent should not be given the task of examination of the opposition, nor should he chair the Division.

Article 96 and Rule 70 – Noting of loss of rights

31 In a case where a person concerned considers that the finding of loss of right of the European Patent Office is inaccurate and the Office accepts his view, and consequently continues the proceedings, it seems desirable that the person concerned be informed accordingly.
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
Regel 48

33 **Vorschlag:**

Die Regel sollte gestrichen werden, wenn dem Abschnitt I des Protokolls über die Zentralisierung des europäischen Patentsystems und seine Einführung zugestimmt wird.

**Begründung:**

Die Regel ist dann überflüssig.

Regel 51, Absatz (2)

34 **Vorschlag:**

Die Worte „und aus in ihr enthaltenen Fehlern“ sollten gestrichen werden.

Rule 48

33 **Proposal:**

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

**Grounds:**

The Rule is then superfluous.

Rule 51, paragraph 2

34 **Proposal:**

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

Regel 69, Absatz (2)

35 **Vorschlag:**

Die Worte „oder aus in ihr enthaltenen Fehlern“ sollten gestrichen werden.

**Begründung zu Regel 51(2) und 69(2):**

Es kann dem Empfänger einer solchen Mitteilung des Europäischen Patentamtes nicht zugemutet werden, daß er den vom Europäischen Patentamt begangenen Irrtum erkennt, beispielsweise erkennt, daß eine in der Mitteilung angegebene Frist oder Höhe einer Gebühr im Widerspruch zu einer vorrangigen Bestimmung steht.

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

Rule 69, paragraph 2

35 **Proposal:**

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

**Grounds Re. Rules 51(2) and 69(2)**

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

Regel 70, Absatz (2), Satz 2

36 **Vorschlag:**

Der Text sollte lauten „Eine solche Entscheidung ist innerhalb von 2 Monaten nach Eingang des Antrages beim Europäischen Patentamt zu treffen“.

**Begründung:**

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

Rule 70, paragraph 2, 2nd sentence

36 **Proposal:**

The text should read “Such decision shall be given within two months from the date of application for the decision at the European Patent Office.”

**Grounds:**

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

COMMENTS BY
UNEPA
Union of European Patent Agents

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

(1) English translation submitted by UNEPA
(2) La traduction française a été fournie par l'UNEPA
lediglich ergehen, wenn sie negativ sind. Teilt das Europäische Patentamt die Auffassung des Anmelders, so wird dieser davon nicht unterrichtet und könnte somit in der Annahme handeln, daß schließli-
ch noch eine negative Entscheidung getroffen wird. Zur Beschleunigung des Verfahrens wird vorgeschla-
gen, den letzten Satz dahingehend zu ändern, daß dem Anmelder zumindest mitgeteilt wird, in wel-
chem Sinn das Patentamt entschieden hat. Im Falle einer positiven Entscheidung sind für den Anmelder
nicht so sehr die Gründe wie das Ergebnis von Bedeutung.

Artikel 120 Absatz 2

24 Es ist nicht klar, warum unterschiedliche Fristen gewählt worden sind. Diese Unterschiede könnten leicht zu Irrtümern Anlaß geben, und es wird daher vorgeschlagen, eine einheitliche Frist von 3 Monaten vorzusehen.

Artikel 121 Absatz 5

25 Es dürfte vernünftig sein, höhere Gewalt als einen Grund für die verspätete Zahlung von Gebühren zu akzeptieren, was zur Zeit aus diesem Absatz ausgeklammert ist. Es hat nicht den Anschein, als ob der Artikel 120 oder die Regel 70 angewendet werden könnten.

Artikel 130 Absatz 3


Artikel 133 Absätze 2 und 3

27 In bezug auf die juristischen Personen, die sich vertreten lassen müssen oder die sich durch einen Angestellten vertreten lassen können, wird vorgeschlagen, die Definition dem Staatsangehörigkeits-
erfordernis nach der Regel 18.2 (b) des PCT anzu-
gleichen. Der neue Text könnte dann wie folgt lautet:

„(2) Die natürlichen Personen, die keinen Wohnsitz in einem Vertragsstaat haben, und die juristischen Personen, die nicht nach dem Recht eines Vertrags-
staats gegründet worden sind, müssen ...

(3) Die natürlichen Personen mit Wohnsitz in einem Vertragsstaat und die juristischen Personen,
applicant. In case the European Patent Office shares the opinion of the applicant, the latter will not be made aware of this and may act on the assumption that an unfavourable decision may eventually be given. To speed up the proceedings, it is suggested that the last sentence be amended so that at least the sense of the decision reached be communicated to the applicant. In the case of a favourable decision, the reasons are of less importance to the applicant than the result.

Article 120 (2)

24 The reasons for different time limits are not clear. Such differences may easily give rise to error and it is suggested that a common limit of 3 months be used.

Article 121 (5)

25 It seems reasonable that force majeure be accepted as an excuse for late payment of fees excluded by this paragraph. It does not appear that Article 120 or Rule 70 could be applicable.

Article 130 (3)

26 During the period following the filing of a European application without priority, the applicant has the privilege of withdrawing the application without disclosure and perhaps to benefit from Article 4.C. (4) of the Paris Convention. During this period, the contents should be sacrosanct (except under Article 131 to national courts) and it is strongly urged that communication under Article 130 be subject to the restrictions laid down in Article 128.

Article 133 (2) and (3)

27 As regards legal persons, required to be represented or free to act through employees, it is suggested that the definition be aligned with the nationality requirement in Rule 18.2 (b) of PCT. Thus the new wording could read:

“(2) Natural persons not having a residence within, and legal persons not constituted according to the law of, one of the Contracting States must be represented...

(3) Natural persons having their residence within, and legal persons constituted according to the law of, one of the Contracting States may be represented…”
Artikel 86 Absatz 3
18 Die Verwendung des Ausdrucks „Merkmale“ im deutschen Text ist unverständlich. Wenn die beanspruchte europäische Erfindung eine Kombination von A und B ist, dürfte es unangebracht sein, eine Priorität einzuräumen, wenn durch die frühere Anmeldung lediglich A oder B und nicht die Kombination offenbart wurde.

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

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

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

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

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

CNIPA
Committee of National Institutes of Patent Agents

COMMENTS BY

CNIPA
Committee of National Institutes of Patent Agents

PRISE DE POSITION DU

CNIPA
Committee of National Institutes of Patent Agents
abgeändert werden sollte. Die gewünschten Änderungen sind in der Anlage 3 erläutert.

Regel 30 (a)
35 Es wird vorgeschlagen, die Worte „besonders angepaßtes“ zu streichen.

Regel 40
36 Es ist wünschenswert, die Regel 40 so zu verbessern, daß sie keine Bezugsnahme auf die gesamte Regel 36 (1) enthält. Die Regel 36 (1) nimmt ihrerseits nämlich Bezug auf Vorschriften, die den Bereich der reinen Formvorschriften überschreiten.

Regel 41
37 Es besteht Anlaß, eine größere Freiheit für die Korrektur der Prioritätsangaben einzuräumen, d.h. der Anmelder sollte eine Frist von zwei Monaten haben, um solche Korrekturen vornehmen zu können.

Regel 70 (2)
38 Es ist unumgänglich, daß das Europäische Patentamt dem Betroffenen mitteilt, ob es seinen Antrag stattgegeben hat, damit er die Weiterbehandlungsgebühr entrichten kann.

Regel 99 (3)

ANLAGE 1

40 Vorschlag für eine Neufassung des Artikels 162

„Zugelassene Vertreter während einer Übergangszeit

(1) Während einer Übergangszeit, deren Ende der Verwaltungsrat bestimmt, kann in Abweichung von Artikel 134 Absatz 2 in die Liste der zugelassenen Vertreter jede natürliche Person eingetragen werden, die die folgenden Voraussetzungen erfüllt:
a) Die Person muß ihren Geschäftssitz oder Arbeitsplatz im Gebiet eines Vertragsstaats haben;

ANNEX 1

40 Proposal for a new text for Article 162

“Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfills the following conditions may be entered on the list of professional representatives:
(a) he must have his place of business or employ-
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
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
Mitteilung nach Absatz I eine Entscheidung des Europäischen Patentamts beantragen. Eine solche Entscheidung wird nur getroffen, wenn das Europäische Patentamt die Auffassung des Antragstellers nicht teilt.

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Vgl. Artikel 14 (Sprachen des Europäischen Patentamts), 75 (Übermittlung europäischer Patentanmeldungen), 77 (Bennung von Vertragsstaaten), 84 (Jaheisgebühren für die europäische Patentanmeldung), 88 (Eingangsprüfung), 90 (Formalprüfung), 93 (Prüfungsnachricht), 95 (Prüfung der europäischen Patentanmeldung), 96 (Zurückweisung oder Erteilung), 98 (Einspruch), 104 (Beitritt des vermeintlichen Patentverletzers), 107 (Frist und Form), 109 (Prüfung der Beschränkungen, 120 (Weiterbehandlung der europäischen Patentanmeldung), 121 (Wiedererstattung in den vorgang), 123 (Angaben über nationale Patentanmeldungen), 124 (Ergebnis der europäischen Recherchenbericht), 135 (Umwandlungsantrag), 136 (Einreichung und Übermittlung des Antrages), 156 (Internationaler Recherchenbericht) und 161 (Stufenweise Ausdehnung des Tätigkeitsbereichs des Europäischen Patentamts)

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Regel 71
Form der Bescheide und Mitteilungen


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Vgl. Artikel 88 (Eingangsprüfung), 90 (Formalprüfung), 95 (Prüfung der europäischen Patentanmeldung), 100 (Prüfung des Einspruchs), 109 (Prüfung der Beschwerde), 114 (Einwendungen Dritter), 116 (Beleidigungsaufnahme), 123 (Angaben über nationale Patentanmeldungen), 124 (Ergebnis der europäischen Recherchenbericht), 128 (Akteneinsicht) und 161 (Stufenweise Ausdehnung des Tätigkeitsbereichs des Europäischen Patentamts)

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Kapitel II
Mündliche Verhandlung und Beweisaufnahme

Regel 72
Ladung zur mündlichen Verhandlung

(1) Zur mündlichen Verhandlung nach Artikel 115 werden die Beteiligten unter Hinweis auf Absatz 2 geladen. Die Ladungsfrist beträgt mindestens einen Monat, sofern die Beteiligten nicht mit einer kürzeren Frist einverstanden sind.

(2) Ist ein zu einer mündlichen Verhandlung ordnungsgemäß geladener Beteiligter vor dem Europäischen Patentamt nicht erschienen, so kann das Verfahren ohne ihn fortgesetzt werden.

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Vgl. Artikel 115 (Mündliche Verhandlung)
SIEBENTENER TEIL
AUSFÜHRUNGSVORSCHRIFTEN ZUM SIEBENTEN
TEIL DES ÜBEREINKOMMENS

Kapitel I
Entscheidungen, Bescheide und Mitteilungen
der Europäischen Patentämter

Regel 69
Form der Entscheidungen

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

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

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

Regel 70
Feststellung eines Rechtsverlusts

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

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

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

PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTERTEILUNGSVERFAHRENS 1973

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

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

(Munich, 10 September to 6 October 1973)

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

(1973)

(Munich, 10 septembre - 6 octobre 1973)

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

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

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

1972
In the light of these arguments, the German delegation withdrew its proposal.

**Article 21** (Patents of addition)

103. The Working Party had been given a mandate by the Conference to examine the advisability of retaining the system of patents of addition in view of the fact that it would have no bearing on fees in the system set out in Articles 11 and 13. It was agreed that patents of addition should not be included. It was consequently decided to delete Article 21 and the provisions of the Convention and Implementing Regulations which dealt with patents of addition (Article 88, paragraph 4, Article 129, paragraph 3, Re. Article 21, Nos. 1, 2 and 3, Re. Article 34, No. 7, Re. Article 59, No. 1, paragraph 1(k), (n) and (o), Re. Article 130, No. 1, and Re. Article 145, No. 11, paragraph 1(c). In the light of this decision, two other provisions of the Implementing Regulations had to be amended: Re. Article 34, No. 8 and Re. Article 66, No. 1, paragraph 2.

**Article 22** (Unitary character of the European patent application in proceedings before the European Patent Office)

104. As the problems concerning this provision were closely bound up with those raised by Articles 15 and 16, the Working Party decided to defer discussion of them until such time as a final text for these Articles has been adopted.

**Article 23** (Transfer of a European patent application)

105. As a note to Article 23 stated that provisions would have to be made to inform the European Patent Office of any change of ownership of the European patent during the opposition period or during opposition proceedings, the Working Party discussed the drafting of such provisions.
45. In another new provision (paragraph 2b) the Working Party, laid down at the proposal of the United Kingdom delegation, what would be the legal consequences should the date of the first filing given in the request for the grant of the patent precede the date of filing of the European application by more than one year. In such a case the applicant would be invited by the Receiving Section to renounce the priority claim or to specify the correct date. Should the applicant fail to comply with this invitation, the priority date would be deemed to be withdrawn.

46. In connection with the cases referred to in points 44 and 45, the Working Party agreed that the cancellation by the European Patent Office of the claim to priority must be notified, so that the applicant may lodge an appeal. To this end it added sub-paragraph (f) to Re: Article 145, No. 11. paragraph 1, IR.

47. The Working Party also provided in paragraph 6 that the period within which the inventor must be identified is to commence on the filing date or the date or earliest date of priority, in conformity with other provisions of the Convention.

48. Apart from an amendment to the drafting, paragraph 7 was left unchanged.

49. A result of the elimination of the examination for obvious deficiencies, which was previously to have included examination as to whether the content of the description, claims and drawings met the requirements of the Implementing Regulations, could be that prohibited matter which might possibly be contained in the application, would be published.

BR/135 e/71 ley/prk

.../...
MINUTES
of the 9th meeting of Working Party I
held from 12 to 22 October 1971, in Luxembourg

1. Working Party I held its 9th meeting in Luxembourg from 12 to 22 October 1971, with Dr. Haertel, President of the German Patent Office, in the Chair.

Representatives from the IIB and WIPO took part in the meeting as observers. The representatives of the Commission of the European Communities and the Council of Europe sent their apologies for being unable to attend. See Annex I to these minutes for the list of those present at the 9th meeting.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/120/71 and attached to this document as Annex II.

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

BR/135 e/71 prk
(Unrevised translation)
Ad Article 145
Numéro 10

Prescription

(1) Le droit de l’Office européen des brevets d’exiger le paiement des taxes se prescrit par quatre ans à compter de la fin de l’année civile au cours de laquelle la taxe est devenue exigible.

(2) Les droits en matière de demandes de restitutions à l’encontre de l’Office européen des brevets pour des taxes ou tous autres montants payés en trop lors du versement d’une taxe se prescrivent par quatre ans à compter de la fin de l’année civile au cours de laquelle le droit en question est né.

(3) La prescription se trouve interrompue, dans le cas visé au paragraphe 1, par une invitation à verser la taxe et, dans le cas visé au paragraphe 2, par une requête écrite en vue de faire valoir le droit en question. La prescription court à nouveau après une interruption; sa durée est de six ans au maximum à compter de la fin de l’année au cours de laquelle elle avait commencé à courir pour la première fois.

Ad Article 145
Numéro 11

Notifications relatives à certaines situations juridiques

(1) Lorsque l’Office européen des brevets constate que,

a) une demande de brevet européen est, en tout ou en partie, réputée retirée,

b) la désignation d’un État contractant est réputée retirée,

c) une demande de brevet européen d’addition est réputée constituer une demande de brevet indépendant,

d) une opposition est réputée n’avoir pas été formée ou un recours n’avoir pas été introduit, ou

e) une personne participant à un recours est réputée avoir renoncé à participer à la procédure de recours, notification en est faite à la personne intéressée, conformément aux dispositions de l’article 148 de la Convention.

(2) Si la personne intéressée estime que les conclusions de l’Office européen des brevets ne sont pas adéquates, elle peut, dans un délai de deux mois à compter de la notification visée au paragraphe 1, requérir une décision de l’Office européen des brevets. Cette décision n’est prise que dans le cas où l’Office européen des brevets ne partage pas le point de vue du requérant.

Ad Article 148
Numéro 1

Dispositions générales sur les significations

(1) Dans les procédures devant l’Office européen des brevets, les significations visées à l’article 148 de la Convention portent sur l’original de la pièce à signifier ou sur une copie de celle-ci certifiée conforme par l’Office européen des brevets. Toutefois, la certification n’est pas requise pour les copies de pièce émanant des parties elles-mêmes.
Zu Artikel 145
Nummer 10

Verjährung

(1) Ansprüche des Europäischen Patentamts auf Zahlung von Gebühren verjähren in vier Jahren nach Ablauf des Kalenderjahrs, in dem die Gebühr fällig geworden ist.


(3) Die Verjährung wird im Fall des Absatzes 1 durch eine Aufforderung zur Zahlung der Gebühr und im Falle des Absatzes 2 durch eine schriftliche Geltendmachung des Anspruchs unterbrochen. Sie wird mit der Unterbrechung erneut in Lauf gesetzt; sie endet spätestens sechs Jahre nach Ablauf des Jahrs, in dem sie ursprünglich zu laufen begonnen hat.

Zu Artikel 145
Nummer 11

Feststellung des Eintritts gewisser Rechtsfolgen

(1) Stellt das Europäische Patentamt fest, daß
a) eine europäische Patentanmeldung ganz oder teilweise als zurückgenommen gilt,
b) die Benennung eines Vertragsstaats als zurückgenommen gilt,
c) die europäische Zusatzpatentanmeldung als Anmeldung eines selbständigen europäischen Patents gilt,
d) ein Einspruch oder eine Beschwerde als nicht eingelegt gilt oder
e) davon auszugehen ist, daß ein Beschwerdeführer auf seine Beteiligung am Beschwerdeverfahren verzichtet hat,
so teilt es dies dem Betreffenden gemäß Artikel 148 des Übereinkommens mit.

(2) Ist der Betreffende der Auffassung, daß die Feststellung des Europäischen Patentamts nicht zutrifft, so kann er innerhalb einer Frist von zwei Monaten nach Zustellung der Mitteilung gemäß Absatz 1 eine Entscheidung des Europäischen Patentamts beantragen. Eine solche Entscheidung würf nur getroffen, wenn das Europäische Patentamt die Auffassung des Antragstellers nicht teilt.

Zu Artikel 148
Nummer 1

Allgemeine Vorschriften über Zustellungen

(1) In den Verfahren vor dem Europäischen Patentamt ist Gegenstand der in Artikel 148 des Übereinkommens vorgesehenen Zustellung entweder das Original des zuzustellenden Schriftstückes oder eine vom Europäischen Patentamt beglaubigte Abschrift dieses Schriftstückes. Jedoch bedürfen Abschriften von Schriftstücken,

Re. Article 145
No. 10

Lapse

(1) Rights of the European Patent Office to the payment of a fee shall lapse four years after the end of the calendar year in which the fee fell due.

(2) Rights against the European Patent Office for the refunding of fees or sums of money paid in excess of a fee, shall lapse four years after the end of the calendar year in which the right arose.

(3) The period of lapse shall be suspended in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. After the suspension it shall begin again and shall end at the latest six years after the end of the year in which it originally began.

Re. Article 145
No. 11

Noting of certain legal consequences

(1) If the European Patent Office notes that:
(a) a European patent application is deemed to be withdrawn in whole or in part;
(b) the designation of a Contracting State is deemed to be withdrawn;
(c) an application for a European patent of addition is deemed to be an application for an independent European patent;
(d) a notice of opposition or appeal is deemed not to have been given; or
(e) an appellant is deemed to have waived his right to participate in appeal proceedings;
then it shall so notify the person concerned in accordance with the provisions of Article 148 of the Convention.

(2) If the person concerned considers that the finding by the European Patent Office is inaccurate, he may, within a period of two months from the notification referred to in paragraph 1, apply for a decision by the European Patent Office. Such decision shall be given only if the European Patent Office does not share the opinion of the person requesting it.

Re. Article 148
No. 1

General provisions on notifications

(1) In proceedings before the European Patent Office, the notifications referred to in Article 148 of the Convention shall relate to the original of the document to be notified or to a copy thereof certified by the European Patent Office. Certification shall not, however, be required in respect of copies or documents emanating from the parties themselves.

256
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES
PATENTERTEILUNGSVERFAHREN

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

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN
EUROPÄISCHES PATENTERTeilungsVERFAHREN

sowie

ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

und

ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

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

with

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

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

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

ainsi que

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

et

PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

— 1971 —
At the same time, the Working Party decided that, in order to avoid any risk of varying interpretations, it would be appropriate to harmonise the text of Article 78 with that of Article 75 in such a way that the sanctions incurred by failure to accomplish certain obligations would be set forth in the same manner ("shall lead to the loss of the right to claim priority of filing").

Finally, the Working Party acknowledged that the British delegation reserved the right to submit proposals at a later date amending Article 77, sub-paragraph (e)bis and, possibly, Article 78, paragraphs 2a and 2b, so as also to cover the hypothesis referred to in paragraphs 2 and 2a of Article 75.

**Article 149 (Inspection of files)**

26. The Working Party noted, following an observation by the British delegation, that, where a European patent was granted before the expiry of the period of 18 months as from the date of filing, and, as a result, before publication of that application in accordance with Article 85, the relevant entry in the Register of European Patents and communication of the files to any interested third parties would take place at once, without it being necessary to make any special provision for an express derogation to Article 59, paragraph 1, and to Article 149, paragraph 4.

**Article 150 (Information concerning national applications)**

27. The Working Party adopted, by a majority, a proposal by the British delegation (BR/GT I/113/71), which laid down, in paragraph 2, that if the applicant did not comply with a request for information, that request would be deemed to have been withdrawn. In that case, the procedure provided for in Re. Article 145, No. 11 would become applicable, while the wording of the Second Preliminary Draft required that a decision be taken by the European Patent Office.
(c) This general body of regulations on time limits made it possible for the Working Party to consider the question of the relationship between Article 142, paragraph 5, and Re. Article 141, No. 2 as being resolved, in particular as regards priority time limits and the time limit for the submission of requests for examination. It was indeed quite clear, in view of the fact that Article 141 now covered all time limits, both those laid down by the Convention and those to be fixed by the European Patent Office, that the exclusion of the restitutio in integrum in the case of certain time limits, could not under any circumstances prevent the application of the relevant rules on the extension of time limits.

Re. Article 145, No. 11 (Noting of certain legal consequences)

24. On the basis of a proposal by the British delegation, the Working Party examined whether it would be appropriate to make provision, in paragraph 1 of this Article for the cases referred to in Article 142, paragraph 1 and in Re. Article 136, No. 7, paragraph 3. The Working Party agreed to make provision for these two cases under a new sub-paragraph (g). This would also cover the case referred to in Article 83, paragraph 2. It was however pointed out that the list included in that provision might prove to be incomplete and that it might therefore be appropriate to seek a general formulation, covering all cases in which a request was deemed not to have been made following non-payment of fees.

25. The Working Party next examined whether it would be advisable to include in this same provision cases in which the right to claim priority had been lost, by virtue of the provisions of Article 78, paragraphs 2a and 2b. While confirming that, in the event of loss of priority there was, under Article 75, paragraphs 1, 2 and 2a, no question of there being a fiction as in the other cases referred to in Re. Article 145, No. 11, the Working Party recorded its agreement that the procedure under this provision should be extended to cover this case, for which purpose it duly amended the wording of sub-paragraph (g).

BR/144 e/71 ett/cw
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).
Re. Article 145

No. 11

Noting of certain legal consequences

(1) If the European Patent Office notes that:

(a) +

(b) +

(c) - deleted -

(d) +

(e) +

(f) a priority claim is deemed not to have been made under Article 78, paragraph 2a and 2b,

it shall so notify the person concerned in accordance with the provisions of Article 148 of the Convention.

(2) +

Note to Re. Article 145, No. 11:

+ (1)

(1) The problem mentioned in this note seems to have been settled as regards Article 75, paragraph 1 but has still to be examined as regards Article 75, paragraphs 2 and 2a.
SECOND PRELIMINARY DRAFT OF THE CONVENTION
ESTABLISHING
A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

FIRST PRELIMINARY DRAFT
OF THE IMPLEMENTING REGULATIONS

FIRST PRELIMINARY DRAFT
OF THE RULES RELATING TO FEES

- Stage reached on 22 October 1971 -
will appear as an Implementing Regulation to Article 159 of the Convention. A footnote to the text stipulates that a study should be made at a later date to establish whether this provision should be extended to cover the case where the right to claim priority is lost for failure to comply with the requirements of Article 75, paragraphs 1 and 2, of the Convention.

Re. Article 172, No. 1 - Exception to the rules governing compulsory representation

41. No comments.

Re. Article 186, No. 2 - Publication of restrictions affecting the examination

42. No comments.
Re. Article 159, No. 9 - Form of notices and other communications from the European Patent Office

38. No comments.

Re. Article 159, No. 10 - Lapse

39. The Sub-Committee agreed to adopt this provision while adding a footnote to the text. In fact, the Sub-Committee considered that this Article should be studied in greater detail by government financial experts, with particular reference to establishing the financial consequences of this measure and whether the scope of the text under discussion could be extended or not.

Re. Article 159, No. 11 - Noting of certain legal consequences

40. The regulation Re. Article 69, No. 1 (BR/67/70, page 14) drawn up by the Sub-Committee at its meeting in November 1970 is intended to lay down a simplified procedure in the event of the European Patent Office noting that an application for a European patent is deemed to be withdrawn. The use of such a procedure - which reduces the workload of the Office while protecting the applicant's right of appeal - was justified because in reality only simple questions of fact were concerned, for example the payment of a fee within the time required.

On a proposal from the United Kingdom delegation, the Sub-Committee considered that this simplified procedure could be extended to other cases where only simple questions of fact were concerned. Consequently, the Sub-Committee adopted a text in which four new cases were added, and which

BR/84 e/71 nan/KM/prk .../...
MINUTES
of the 5th meeting of the "Implementing Regulations" Sub-Committee of Working Party I
(Luxembourg, 12 - 14 January 1971)

1. The fifth meeting of the "Implementing Regulations" Sub-Committee was held in Luxembourg from 12 to 14 January 1971, with Mr FRESSONNET, Deputy Director, French Industrial Property Institute, in the Chair.

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

2. The Drafting Committee met each day, under the Chairmanship of Mr NEERVOORT, Secretary of the Octrooiraad, following the Sub-Committee's meetings.

(1) See the list of participants in Annex I.
Paragraph 1 and 2 of the Convention

The right to claim priority is lost for failure to comply with the requirements of Article 79.

It should be examined later whether the provision should be extended to cover the cases where

Note:

EUROPEAN PATENT OFFICE does not state the opinion of the person representing it. Such decision shall be given only if the application for a decision by the European Patent Office. Such decision shall be given only if the

Inaccurate, the wrong within a period of 2 months from the notification referred to in Paragraph 1. (2) If the person concerned consents that the finding by the European Patent Office to

Conference:

It shall notify the person concerned in accordance with the provisions of Article 16. of the

(a) any appeal is deemed to have waived the right to participate in appeal proceedings,

(a) any appeal is deemed to have waived the right to participate in appeal proceedings,

(b) a notice of opposition or appeal is deemed not to have been given of, or

(b) a notice of opposition or appeal is deemed not to have been given of, or

(c) an application for a European patent or addition to the European patent or application for an

(c) an application for a European patent or addition to the European patent or application for an

(d) the determination of a Convention State is deemed to be withdrawn,

(d) the determination of a Convention State is deemed to be withdrawn,

(e) a Convention patent application is deemed to be withdrawn in whole or in part,

(e) a Convention patent application is deemed to be withdrawn in whole or in part,

Text drawn up by the Sub-Committee

Motion of certain Ileat Committee

No. 11
Re. Article 79
OE. Articles 16, 17, 28, 34, 37, 43, 49, 56, 69, 79, 85, 97, 101, 120, 128, 138, 139, 179, 175 and 186

Preliminary Draft Implementing Regulations

(12 to 14 January 1971)

Outcome of the work of the "Implementing Regulations" sub-committee

- Secretary -

System for the Grant of Patents
For the Setting Up of a European Inter-Governmental Conference

BR 61/71

Progress, 20th January 1971
in which certain time limits had not been observed. The Chairman of the Sub-Committee instructed this delegation to locate such cases and, if appropriate, to make a proposal in this respect.

The Sub-Committee felt that it should draw the attention of Working Party I at the appropriate time to the fact that certain Articles in the First Preliminary Draft Convention should refer not only to other Articles of the Convention, but also to the Implementing Regulations. This affects, for example, Articles 88, 155, 159 and 161 of the First Preliminary Draft Convention.

Re. Article 70, No. 1 - Claims in different categories

29. As this provision had only been adopted by a majority decision at the second meeting of the Sub-Committee, the Chairman had decided to resume its examination at a later date with a view to obtaining a unanimous decision. (See BR/50/70, page 31 and BR/51/70, points 32 and 33). Subsequently, observations had been submitted by the United Kingdom delegation (BR/GT I/64/70), the Swedish delegation (BR/GT I/76/70) and the International Patent Institute (BR/GT I/75/70).

30. On the basis of these documents, a discussion was held as to whether the Implementing Regulation to be adopted on unity of invention in the case of claims in different categories should be as strict as Rule 13.2 of the Regulations under the PCT, or whether it should be more liberal, retaining the wording adopted earlier. It became

BR/68 c/70 lor/KM/fm
Paragraph 2 states that the applicant is to have two months in which he may apply for a decision by the European Patent Office, this decision being subject to appeal. This period makes it possible to provide for sending a notification pursuant to Article 161 of the First Preliminary Draft Convention. During this period no entry is to be made in the Register of European Patents. In this respect, it may be asked whether the implementing regulation adopted here goes beyond the terms of Article 161, which seem only to cover notifications provided for in the Convention or ordered by the President, there being no explicit reference to the notifications mentioned in the Implementing Regulations.

27. The problem was raised as to whether this provision could be applied in cases where the Board of Appeal noted that a European patent application was deemed to be withdrawn, for example in the event of non-payment of the fee for the supplementary report on the state of the art as provided for in Article 113, paragraph 3, of the First Preliminary Draft Convention. As the text stands at the moment, this provision cannot be applied, as decisions by the department in question are not subject to appeal. It was observed, however, that if the new proposals put forward by the Chairman of Working Party I were adopted, the problem would no longer exist, since these proposals stipulate that in such a case the application would be refused (see BR/GT I/67/70, page 33).

28. The United Kingdom delegation raised the question as to whether the benefits granted by the provision adopted might be extended to cases other than that of the application being deemed to be withdrawn, for example to those
ambiguity should mention a reference only to one other claim and not to one or more other claims.

For this purpose, the Swiss delegation subsequently submitted to the Sub-Committee a new proposal which will be examined at the next meeting (working document No. 17 of 27 November 1970).

Re. Article 65, No. 5 - Form and content of the abstract

25. The Sub-Committee endeavoured to retain as far as possible the text of Rule 8.1 of the Regulations under the PCT. See also the notes.

Re. Article 69, No. 1 - Notification sent to the applicant informing him that his patent application is deemed to be withdrawn

26. As the Sub-Committee had not been able to reach unanimous agreement at its second meeting, it had decided to postpone its discussion of this provision (see BR/51/70, points 30 and 31). Differences of views had appeared on the fact that the proposed procedure might not give the applicant sufficient opportunity to exercise his rights vis-à-vis the European Patent Office once the latter had noted that the request was deemed to be withdrawn.

The German delegation had subsequently submitted a proposed solution to the Sub-Committee (see Annex IV to the document quoted above) and this was examined, resulting in unanimous agreement.

BR/68 e/70 lor/KM/prk
MINUTES
of the 4th meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 23-27 November 1970)

I.

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

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

(1) See the list of participants in Annex I.
Again, such a finding in no way prevented the safeguarding of the applicants' rights. In the event of a disagreement, the applicant could always approach the EPO and thus obtain a decision which would be subject to appeal. Finally a simple recording would have the great advantage of lightening the task of the EPO examiners, since the procedure would be less formal than that required for a decision. In this connection, it was mentioned that certain national offices had, in 1960, had to make 5,600 rejection decision for non-payment of fees. Congestion on such a scale would endanger the smooth working of the European Patent Office.

31. Discussions centred upon the need for a time limit to be granted, during which no publication could take place, to enable the applicant to prove that his application had not lapsed. It became apparent that the question of the time limit was tied to the concept of notification ensuing from Article 161 of the First Preliminary Draft and that, this being the case, it would not be possible to avoid formal proceedings leading up to a decision. It thus appeared that the provision of a time limit called into question the very existence of the recording procedure which had already been accepted. It should be noted that the German delegation subsequently drew up a written proposal in an attempt to resolve this problem. This text (to be found in Annex IV to these Minutes) will be examined at the next meeting.

BR/51 e/70 ett/RT/prk
Re. Article 66, No. 11 - Telegraphic and telex communications during the course of proceedings

29. No comments.

Re. Article 69, No. 1 - Notification sent to the applicant informing him that his patent application is deemed to be withdrawn

30. The sub-Committee discussed this provision at length and eventually decided to place it between square brackets and to postpone its study until the next meeting. There were differences of views concerning the implementing procedures for the recording, by the EPO, of the finding that an application was deemed to be withdrawn and the notification of that finding to the applicant. A considerable proportion of the sub-Committee considered that an act of such consequence must necessarily be the outcome of a decision of a juridical nature, so that the applicant's rights would be safeguarded and he would be enabled to file an appeal within a certain period of time. Such a decision was imperative, especially as the fact that the application was deemed to have been withdrawn would be published in accordance with Article 86 of the First Preliminary Draft, thus enabling bona fide third parties to begin exploiting the now free invention.

Another section of the sub-Committee contended that a simple finding by the EPO should suffice for the purposes of deeming an application to have been withdrawn, without there necessarily being any call for a decision. Several arguments were advanced in support of this thesis. First of all, Working Party I and the Inter-Governmental Conference had endorsed this type of procedure, for which there was express provision, notably in Articles 69 and 86 of the First Preliminary Draft.

BR/51 e/ ett/RT/prk
MINUTES of the 2nd meeting of Working Party I sub-Committee on "Implementing Regulations" (Luxembourg, 15-18 September 1970)

I

1. The second working meeting of the sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention was held at Luxembourg from Tuesday 15 to Friday 18 September 1970, with Mr. FRESSONNET, Deputy Director, French Industrial Property Institute, in the Chair.

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

(1) See the list of participants in Annex I.
Re. Article 69
Number 1

Notification sent to the applicant informing him that his patent application is deemed to be withdrawn.

Text drawn up by the Sub-Committee

If the European patent application is deemed to be withdrawn, the European Patent Office shall record this and shall so inform the applicant.

Notes:

1. See Note on Article 69 of the First Preliminary Draft.

2. This provision shall be applicable in all cases in which the European patent application is deemed to be withdrawn. For this reason it contains no reference to Article 69, which refers to particular cases only. It is only attached to this Article for the record.

Note:

The Sub-Committee decided to re-examine this provision at a later date.
of the first preliminary draft convention
Re. Articles 62, 63, 64, 66, 69, 70, 71, 72, 79 and 85
Preliminary Draft Implementing Regulations
(15 to 16 September 1970)
of Working Party I
outcome of the work of the "Implementation Regulations" sub-committee

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Secretary

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Brussels, 5 October 1970

BR/50/70

FOR THE GRANT OF PATENTS
FOR THE SETTING UP OF A EUROPEAN SYSTEM
INTER-GOVERNMENTAL CONFERENCE
that Article 156, paragraph 3, was to be interpreted as an
authorisation for the Administrative Council to provide for the
levy of a search fee for each and every international patent
application, irrespective of whether additional searches within
the meaning of this provision should be carried out in the
individual cases.

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

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

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

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

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

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

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