Rule 100 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.

Rule100eTPEPC1973
Regel 100
MPÜ
Bestellung eines gemeinsamen Vertreters

<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>VE 1964 (AO)</td>
<td>161, Nr. 10</td>
<td>BR/68/70</td>
<td>Rdn. 51</td>
</tr>
<tr>
<td>BR/200/72</td>
<td>Artikel X 102</td>
<td>BR/219/72</td>
<td>Rdn. 87</td>
</tr>
<tr>
<td>E 1972</td>
<td>R 101</td>
<td>M/146/R 11</td>
<td>R 100</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>M/PR/G</td>
<td>S. 203/204</td>
</tr>
</tbody>
</table>

der MDK

S. 187/188
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-
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
representatives should consequently also be able to establish a place
of business in the Contracting States concerned. There was also
discussion of a provision which would have expressly granted
the right to practise a profession to a professional
representative, his associates, employees and colleagues and
the right of establishment to these persons including their
families. It was said in reply to the advocates of such a
provision, who considered it to be a necessary adjunct to the
right of residence, that this would be to bring a "foreign body"
into the Convention and might possibly conflict with existing
agreements in the field of 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. A
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
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>7</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Opening Meeting</td>
<td>9</td>
</tr>
<tr>
<td>(M/PR/K/1)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of the Credentials Committee (M/PR/V)</td>
<td>25</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee I (M/PR/I)</td>
<td>27</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee II (M/PR/II)</td>
<td>109</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee III (M/PR/III)</td>
<td>155</td>
</tr>
<tr>
<td>Minutes of the proceedings of the Committee of the Whole (M/PR/G)</td>
<td>163</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Final Meeting (M/PR/K/2)</td>
<td>199</td>
</tr>
<tr>
<td>List of participants</td>
<td>211</td>
</tr>
</tbody>
</table>
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 X

Representation

Rule 105

Appointment of a common representative

(1) If there is more than one applicant and the request for the grant of a European patent does not name a common representative, the applicant first named in the request shall be considered to be the common representative. However, if one of the applicants is obliged to appoint a professional representative this representative shall be considered to be the common representative unless the first named applicant has appointed a professional representative. The same shall apply mutatis mutandis to third parties acting in common in filing notice of opposition or intervention and to joint proprietors of a European patent.

(2) If, during the course of proceedings, transfer is made to more than one person, and such persons have not appointed a common representative, paragraph 1 shall apply. If such application is not possible, the European Patent Office shall require such persons to appoint a common representative within two months. If this request is not complied with, the European Patent Office shall appoint the common representative.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 11
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 83 to 106
(8) Haben nach dem Recht des ersuchten Staats die Beteiligten selbst für die Aufnahme der Beweise zu sorgen und ist die ersuchte Behörde zur Erledigung des Rechtshilfeersuchens außerstande, so kann diese Behörde mit Einverständnis des Europäischen Patentamts eine geeignete Person mit der Erledigung beauftragen. Bei der Einholung des Einverständnisses des Europäischen Patentamts gibt die zuständige Behörde die ungefähre Höhe der Kosten an, die durch dieses Vorgehen entstehen. Durch das Einverständnis des Europäischen Patentamts wird die Organisation verpflichtet, die entstehenden Kosten zu erstatten; ohne ein solches Einverständnis ist die Organisation zur Zahlung der Kosten nicht verpflichtet.

Vgl. Artikel 131 (Rechts- und Amtshilfe)

Kapitel X
Vertretung

Regel 101
Bestellung eines gemeinsamen Vertreters


(2) Erfolgt im Laufe des Verfahrens ein Rechtsübergang auf mehrere Personen und haben diese Personen keinen gemeinsamen Vertreter bezeichnet, so ist Absatz 1 entsprechend anzuwenden. Ist eine entsprechende Anwendung nicht möglich, so fordert das Europäische Patentamt die genannten Personen auf, innerhalb von zwei Monaten einen gemeinsamen Vertreter zu bestellen. Wird dieser Aufforderung nicht entsprochen, so bestimmt das Europäische Patentamt den gemeinsamen Vertreter.

Vgl. Artikel 57 (Mehrere Anmelder) und 133 (Vertretung)

Rule 101
Appointment of a common representative

(1) If there is more than one applicant and the request for the grant of a European patent does not name a common representative, the applicant first named in the request shall be considered to be the common representative. However, if one of the applicants is obliged to appoint a professional representative this representative shall be considered to be the common representative unless the first named applicant has appointed a professional representative. The same shall apply mutatis mutandis to third parties acting in common in filing notice of opposition or intervention and to joint proprietors of a European patent.

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Vgl. Articles 57 (Multiple applicants) and 133 (Representation)

Rule 102
Authorisations

(1) Representatives acting before the European Patent Office must file with it a signed authorisation for insertion on the files. The authorisation may cover one European patent application or European patent or several of them and shall be filed in the corresponding number of copies.
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilUNGSDERFAHREN

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
87. As in the case of Rule 1, this Rule was also extended to cover parties intervening in opposition proceedings. Accordingly, the square brackets in paragraph 1 were deleted.

(iv) Draft Rules relating to Fees (BR/201/72)

88. Mr Brändli, Deputy Director at the Swiss Patent Office, in his capacity as Chairman of the Sub-Committee on Rules relating to Fees, elucidated the amendments which Working Party I or the Co-ordinating Committee had made to the Draft Rules relating to Fees. He noted in particular that both the unit of account (100 BFr$) and the newly calculated fees had been taken over from the most recent version of Working Party IV's Financial Report (BR/197/72). In Article 2 the fee for further processing had been included as No. 13; certain less important fees had been deleted from Article 2 and were now to be fixed as administrative fees by the President of the European Patent Office in accordance with Article 3.

89. The Netherlands delegation stated with reference to Article 2 that it agreed in principle with the Draft Rules relating to Fees, but reserved the right to return to the amounts of the individual fees at a later date. In the opinion of the delegation, it was quite possible to raise the fees which hitherto amounted only to roughly twice the amount of the Netherlands fees. Higher fees were particularly
MINUTES

of the

6th meeting of the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents (Luxembourg, 19 to 30 June 1972)
CHAPTER X
Representation

Article 102 (Re. 148, No. 10)
Appointment of a common representative

(1) If there is more than one applicant and the request for the grant of a European patent does not name a common representative, the applicant first named in the request shall be considered to be the common representative. However, if one of the applicants is obliged to appoint a professional representative this representative shall be considered to be the common representative unless the first named applicant has appointed a professional representative. The same shall apply mutatis mutandis to third parties acting in common in filing notice of opposition or intervention and to joint proprietors of a European patent.

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

(Stage reached on 20 May 1972)
been appointed, the applicant first named is to be considered as such. This fiction was extended to cover a number of other cases. It was also decided that where the application of the fiction proved impossible, the European Patent Office would lay down a time limit on the expiry of which it would make the appointment itself. Furthermore, the Sub-Committee considered that the fiction should not be extended to cover professional patent agents since there was not the same community of interests between them as existed between applicants. The fiction was, on the other hand, extended to cover the compulsorily appointed representative of the applicant first named. For, in such cases the applicant could, under Article 172 of the Preliminary Draft Convention, only take part validly in proceedings through his representative.

Re. Article 161, No. 11 - Notification to the common representative

52. No comments. Text of point 50

Re. Article 161, No. 12 - Irregularities in the notification

53. The purpose of this article is to remedy two situations involving irregular notification, namely, cases in which the European Patent Office unable to prove that it has been correctly notified, or where it has not complied with the provisions concerning notification. The provision assumes that notification will take effect on the day on which it is proved that the addressee has received it. This avoids any legal uncertainty and enables time limits for appeals to run from a given date.

During its discussions, the Sub-Committee agreed to amend Re. Article 155, No. 1 (see point 39).
Re. Article 161, No. 6 — Notification by delivery by hand

47. No comments.

Re. Article 161, No. 7 — Notification by ordinary letter

48. No comments.

Re. Article 161, No. 8 — Public notification

49. The purpose of this provision is to establish a specific date from which time limits for appeals are to run, in cases in which the European Patent Office is not in a position to deliver a notification to the person in question because his address is unknown to it (for example, after a removal).

Re. Article 161, No. 9 — Notification to professional representatives

50. When adopting this provision, the United Kingdom delegation expressed a reservation on paragraph 3 of the proposal concerning notifications to be made to several representatives. This reservation is bound up with the whole problem of professional representation (Article 171 of the Preliminary Draft Convention) which will have to be reviewed after due consultation with the interested circles (see BR/49/70, points 41 to 43).

Re. Article 161, No. 10 — Appointment of a common representative

51. The Sub-Committee agreed to base this provision on Rule 4.8(b) of the Regulations under the PCT, which lays down that in the event of no common representative having
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.
Ad article 161

Numéro 10

Élection de domicile commun

(1) Si une demande, une requête ou un recours sont introduits par plusieurs personnes qui n'ont pas de représentant, il doit être fait élection de domicile commun sur le territoire de l'un des États contractants. Il en va de même lorsqu'une demande, un brevet ou des droits afférents à une requête ou un recours se trouvent transférés à plusieurs personnes.

(2) S'il n'a pas été fait élection de domicile dans los cas mentionnés au paragraphe 1, l'Office européen des brevets invite les parties intéressées à le faire dans un délai à déterminer. S'il n'est pas fait élection de domicile dans ce délai, il suffit que la signification soit faite à l'une des parties intéressées.
Groupe de travail "BREVETS"

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

VE AO 1964

Avant-projet

de règlement d'application de la convention relative à un droit européen des brevets
Zu Artikel 161

Nummer 10

Bestellung eines gemeinsamen Zustellungsbevollmächtigten


(2) Ist in den Fällen des Absatzes 1 ein Zustellungsbevollmächtigter nicht bestellt, so fordert das Europäische Patentamt die Beteiligten auf, dies innerhalb einer von ihm zu bestimmenden Frist nachzuholen. Wird innerhalb der Frist ein Zustellungsbevollmächtigter nicht bestellt, so genügt die Zustellung an einen der Beteiligten.
VERTRÄGLICH

4419/IV/63-D

Brüssel, den 20. Januar 1964

VE 40 1964

Vorentwurf

einer Ausführungsordnung zum Abkommen über

ein europäisches Patentrecht
provision was also adopted to authorise the national authorities of the host country to withdraw the right to a place of business for reasons of "ordre public".

(d) Deletion from the list of professional representatives

The Main Committee examined the grounds for deletion of professional representatives from the list and re-arranged them in Rules 103 (permanent solution) and 107 (transitional period). No difficulties were presented by the three grounds for deletion which apply both in the transitional period and in the permanent solution, namely, death or legal incapacity of the representative, his ceasing to be a national of one of the Contracting States, where the President does not grant or is not required to grant exemption from this requirement, or his ceasing to have a place of business or employment in any of the Contracting States. There was unanimous agreement that, in respect of representatives during a transitional period, the national central industrial property office in question must, in these three cases, withdraw the certificate which it has issued and the representative must be deleted from the list. There was, however, disagreement as to whether the mere surrender of the place of business in the State in which the certificate was granted should result in the withdrawal of the certificate, if the representative establishes another place of business in another Contracting State. The Committee's answer was in the negative. The majority adopted the viewpoint that it would be unfair and unjustifiable to make representation before the European Patent Office during a transitional period dependent on a merely national requirement of any State that the place of business should be within its territory. This restriction on the national central industrial property offices was incorporated in Rule 107 relating to the transitional period, while at the same time it was laid down that the national offices could withdraw the certificate, apart from on one of the three above-mentioned grounds, pursuant to other conditions of national law and, in particular, on disciplinary grounds.

Subject to these limitations, representatives entered on the list during the transitional period will, throughout this period, be required to have a certificate issued by the national central industrial property office of a Contracting State. This requirement will, however, cease to apply on the expiry of the transitional period after which the certificate will be devoid of all effect. Thus, representatives during the transitional period and representatives newly authorised after having taken the European qualifying examination will have equal status under the permanent solution. Both kinds of representative will therefore be subject to the disciplinary power decided upon by the Administrative Council pursuant to Article 134, paragraph 7(c); in order to avoid a situation where there would be no disciplinary supervision, the disciplinary power should begin to apply not later than on the expiry of the transitional period.

The Main Committee also remedied other defects in Rules 103 and 107 by including in them provisions laying down that, when the ground for deletion no longer obtains, a representative deleted from the list may be re-entered on it.

13. Conversion procedure (Articles 135-137/Rules 104)

Article 135, paragraph 1, sets out the grounds for the conversion of a forfeited European patent application into a national application. It was proposed to delete the possibilities for conversion under the national laws of the Contracting States in paragraph 1(b). It was maintained that, firstly, Articles 120 and 121 protected the applicant sufficiently against the consequences of omissions and, secondly, that there were no grounds to justify pursuit at national level of European patent applications refused or European patents revoked on material grounds. The principal objection raised against this proposal for deletion was that it was a matter for the national laws whether conversion should be permissible in cases other than those compulsorily prescribed, i.e. in cases where national law provided for forms of protection such as utility models, the grant of which was conditional on less exacting requirements than those applicable to the grant of patents for invention. The great majority of the Committee subsequently rejected the proposal, so that the existing solution was retained.

14. Revocation and prior rights (Articles 138-139)

With regard to the grounds on which, pursuant to Article 138, a European patent may be revoked, the Main Committee made it clear that extension of the protection conferred can be a ground for revocation, irrespective of whether the extension occurs during opposition proceedings or national proceedings. This clarification takes account of the fact that a change in the claims of a European patent during national revocation proceedings or during national proceedings for partial surrender may result in an inadmissible extension of protection. Moreover, the Committee refused to impose, in paragraph 2 of the same Article, any restrictions on national law in respect of the form in which limitations of European patent claims can be made in cases of partial revocation.

A further proposal, in connection with the rules laid down in Article 139 governing the relationship between European and national patents, to provide that, in cases of collision, the European patent should always take precedence was also unsuccessful. The Committee, by a great majority, rejected this solution which would have been a further step towards adopting a maximum solution, principally in the belief that, in the interests of flexibility, the national laws of the Contracting States should be left to adopt such collision rules as they considered justified.

15. Relationship between the Convention and the PCT (Articles 150-157/Rules 105-106)

The Main Committee re-examined the provisions of Articles 150-157, linking the Convention and the Patent Cooperation Treaty/PCT, i.e., the provisions governing the procedure for international applications which are the subject of proceedings before the European Patent Office. In the course of this examination, it remedied the remaining defects and, where necessary, removed discrepancies between the provisions of the Convention and those of the PCT.

With regard to material content, the amendment made by the Main Committee to Article 157 concerning the effects of the publication of the international application on proceedings before the European Patent Office should be noted. A consequence of the previous text of paragraph 1, according to which publication of the international application by the International Bureau of WIPO takes the place of the publication of a European patent application, would have been that, in each case, the published international application would have formed part of the state of the art, pursuant to Article 52, paragraph 3. This legal consequence was regarded as unjustified where an application, which has not been published in an official language of the European Patent Office, is withdrawn before its communication to the European Patent Office. Therefore, the Committee, after a thorough examination of the relevant provisions of the PCT, decided by a large majority to take account of this case by providing that an international application published pursuant to Article 21 of the