Rule 82 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 82
MPÜ
Heilung von Zustellungsmängeln

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Vorschl.d.Vors.</td>
<td>161 Nr. 13</td>
<td>7669/IV/63</td>
<td>S. 70</td>
</tr>
<tr>
<td>VE 1964 (AO)</td>
<td>161 Nr. 1213</td>
<td>BR/68/70</td>
<td>Rdn. 53</td>
</tr>
<tr>
<td>VE 1971 (AO)</td>
<td>148 Nr. 12</td>
<td>BR/169/72</td>
<td>Rdn. 145</td>
</tr>
</tbody>
</table>

Dokumente der MDK

<table>
<thead>
<tr>
<th>1972</th>
<th>R 83</th>
<th>M/15</th>
<th>S. 130</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>M/146/R 10</td>
<td>k 82</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>M/PR/G</td>
<td>S. 207/207</td>
</tr>
</tbody>
</table>

\[\text{\underline{\text{\(186/187\)}}}\]
designated Contracting States. The valid interests of an
assumed infringer in the retroactive revocation of the patent
may thus be upheld. In this connection it may be noted that this
amendment has raised the opposition proceedings another step
towards the level of actual revocation proceedings.

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

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

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

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

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

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

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

The rules governing time limits and the arrangements for
dealing with unobserved time limits were adopted by the
Committee with the following amendments. In Article 120 the
time limit concerning the request for further processing of the
European patent application was adapted to the new time limit
for filing appeals and was therefore quite rightly reduced from
three to two months. There was a detailed discussion on the
concept of "force majeure" required in accordance with Article
121 for the re-establishment of rights. This condition was
generally felt to be too strict because it would justify
re-establishment only in the rarest of cases. The Committee
also considered conditions such as those of the "unavoidable
event" or of the "legitimate excuse" which are based on national
laws of Contracting States. After comparing the laws of various
States, the Committee finally agreed, in accordance with the
conclusions of the Working Party which it had set up, that the
justification for the re-establishment of rights was an
impediment which, in spite of all due care required by the
circumstances having been taken, had led to the non-observ-
ance 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 representation in the proceedings when the applicant
drew 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
## 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</td>
<td>9</td>
</tr>
<tr>
<td>Opening Meeting</td>
<td></td>
</tr>
<tr>
<td>(M/PR/K/1)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of the Credentials Committee</td>
<td>25</td>
</tr>
<tr>
<td>(M/PR/V)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee I</td>
<td>27</td>
</tr>
<tr>
<td>(M/PR/I)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee II</td>
<td>109</td>
</tr>
<tr>
<td>(M/PR/II)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee III</td>
<td>155</td>
</tr>
<tr>
<td>(M/PR/III)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of the Committee of the Whole</td>
<td>163</td>
</tr>
<tr>
<td>(M/PR/G)</td>
<td></td>
</tr>
<tr>
<td>Report on the meeting of the Plenary</td>
<td>199</td>
</tr>
<tr>
<td>Final Meeting</td>
<td></td>
</tr>
<tr>
<td>(M/PR/K/2)</td>
<td></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
Rule 82
Irregularities in the notification

Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt.
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
Wenn nun die Regel 43(1) in ihrer gegenwärtigen Form die Bedeutung haben sollte, daß der Anmelder, wenn er meint, daß die Beschreibung Gegenstände enthält, die ohne Bezugnahme auf die Zeichnung verständlich sind, die Beschreibung in ihrer Gesamtheit zu revidieren hat, um nur solche Gegenstände zu umfassen und diese in guter Form darzulegen, so könnte dies manchmal viel Arbeit mit sich bringen, die in diesem Stadium des Verfahrens zwecklos wäre; es kann nämlich nur die Prüfungsabteilung entscheiden, ob eine so revidierte Beschreibung über den Offenbarungsinhalt der einge reichten Beschreibung hinausgeht. Außerdem kann es leicht möglich sein, daß der Anmelder im Zuge einer Änderung gemäß der Regel 87(2) und (3) Zeichnungen einbringen oder wieder einbringen will; wenn sich nun die Prüfungsabteilung auf den Standpunkt stellt, daß der Anmelder dies ohne Verletzung des Art. 122(2) durchführen darf, so wäre eine daraus resultierende Revision der Beschreibung zwecklos. Wenn aber die Prüfungsabteilung meint, daß die Zeichnungen ohne Verletzung des Art. 122(2) nicht eingebracht oder wieder eingebracht werden können, so muß der Anmelder dann selbstverständlich die Revision der Beschreibung in diesem Stadium des Verfahrens durchführen.

Irrtümer bei der Zustellung an Vertreter

67 Die FICPI ist immer noch über die Regel 83 beunruhigt und bezieht sich auf ihre Bemerkungen im Arbeitspapier FICPI 7112-02, Absätze 66 bis 68. FICPI ist nach wie vor der Meinung, daß eine bevorzugte Lösung die wäre, daß im Falle der Regel 83 das Dokument als nicht übersandt betrachtet werden sollte, so daß eine neue Übersendung nach Entdeckung des Fehlers erforderlich wäre.

Protokoll über die Anerkennung

68 Aus denselben Gründen wie die, die im Zusammenhang mit Art. 59 dargelegt wurden, ist es wünschenswert, daß der Entwurf eines Protokolls über die Anerkennung von Entscheidungen im Hinblick auf das Recht, Europa-Patente zu erteilen (M/3) in gleicher Weise dahingehend erweitert werden sollte, daß europäische Patente während der Prüfung eines Einspruchs oder während der Einspruchsfrist mit umfaßt sind.

Now, if Rule 43(1) in its present form is intended to mean that if the applicant believes that the description contains matter which can be understood without reference to the drawings, he will have to revise the description in its entirety to cover such matter only and to present it in good form; this could sometimes be an enormous amount of work which would be of no use at that stage of the proceedings because only the Examining Division can decide whether such a revised description goes beyond the content of the application as filed. Besides, it may very well happen that the applicant may wish to enter or re-enter the drawings in the form of an amendment under Rule 87(2) and (3), and if the Examining Division finds that he can do so without violation of Art. 122(2), the intermediate revision of the description will have been useless. If the Examining Division finds that the drawings cannot be entered or re-entered without violation of Art. 122(2), the applicant must then of course proceed with revising the description at that stage of the proceedings.

Errors in Communication to Representatives

67 The FICPI is still worried about Rule 83 and refers to its comment in FICPI paper 7112-02, paragraphs 66–68. The FICPI still feels that the preferred solution would be that in the case referred to in Rule 83 the document should be considered as not having been communicated so that a fresh communication should be sent as soon as the error is discovered.

Protocol on Recognition

68 For the same reasons as those explained in connection with Art. 59 it is desirable that the Draft Protocol on the Recognition of Decisions in respect of the Right to the Grant of a European Patent (M/3) should likewise be amplified to comprise European patents during the examination of an opposition or during the opposition period.

69 In Art. 7 of the Protocol on Recognition no provisions are made for the situation where proceedings based on the same claim and between the same parties are brought simultaneously before the courts of different Contracting States. This may prove to be a situation occurring more frequently than the successive bringing of proceedings before courts of different Contracting States. Simultaneous action in several Contracting States could even conceivably be used as a weapon of a financially stronger party
STELLUNGNAHME DER
FICPI
Fédération Internationale des Conseils en Propriété Industrielle

COMMENTS BY
FICPI
Fédération Internationale des Conseils en Propriété Industrielle

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

(1) Deutsche Übersetzung vorgelegt von FICPI
(2) La traduction française a été fournit par la FICPI
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
Regel 83
Heilung von Zustellungsmängeln

Kann das Europäische Patentamt die formgerechte Zustellung eines Schriftstückes nicht nachweisen oder ist das Schriftstück unter Verletzung von Zustellungs- vorschriften zugegangen, so gilt das Schriftstück als an dem Tag zugestellt, den das Europäische Patentamt als Tag des Zugangs nachweist.

Vgl. Artikel 118 (Zustellung)

Rule 83
Irregularities in the notification

Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt.

Cf. Article 118 (Notification)

Kapitel IV
Fristen

Regel 84
Berechnung der Fristen

(1) Die Fristen werden nach vollen Tagen, Wochen, Monaten oder Jahren berechnet.

(2) Bei der Fristberechnung wird mit dem Tag begonnen, an dem das Ereignis eingetreten ist, aufgrund dessen der Fristbeginn festgelegt wird; dieses Ereignis kann eine Handlung oder der Ablauf einer früheren Frist sein. Besteht die Handlung in einer Zustellung, so ist das maßgebliche Ereignis der Zugang des zugestellten Schriftstückes, sofern nichts anderes bestimmt ist.

(3) Ist als Frist ein Jahr oder eine Anzahl von Jahren bestimmt, so endet die Frist in dem maßgeblichen folgenden Jahr in dem Monat und an dem Tag, die durch ihre Benennung oder Zahl dem Monat und Tag entsprechen, an denen das Ereignis eingetreten ist; hat der betreffende nachfolgende Monat keinen Tag mit der entsprechenden Zahl, so läuft die Frist am letzten Tag dieses Monats ab.

(4) Ist als Frist ein Monat oder eine Anzahl von Monaten bestimmt, so endet die Frist in dem maßgeblichen folgenden Monat an dem Tag, der durch seine Zahl dem Tag entspricht, an dem das Ereignis eingetreten ist; hat der betreffende nachfolgende Monat keinen Tag mit der entsprechenden Zahl, so läuft die Frist am letzten Tag dieses Monats ab.

(5) Ist als Frist eine Woche oder eine Anzahl von Wochen bestimmt, so endet die Frist in der maßgeblichen Woche an dem Tag, der durch seine Benennung dem Tag entspricht, an dem das Ereignis eingetreten ist.

Vgl. Artikel 119 (Fristen)

Chapter IV
Time limits

Rule 84
Calculation of time limits

(1) Periods shall be laid down in terms of full years, months, weeks or days.

(2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided.

(3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Cf. Article 119 (Time limits)
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
PATENTVERTEILUNGSVERFAHRENS 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 September - 6 October 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
Re. Article 148, No. 9, IR (Notification to professional representatives)

144. **FICPI** had suggested in its written observations (BR/150/72, points 63 to 65) that a representative who had not lodged an authorisation by the end of the period specified in Re. Article 155, No. 2, IR should still be deemed to have been authorised unless proof was brought to the contrary.

Re. Article 148, No. 12, IR (Irregularities in the notification)

145. In its written observations, (BR/150/72, points 66 to 68) **FICPI** had also suggested that in the event of a document not being duly notified, it should be deemed not to have been notified at all. It also requested a better wording for the provision.

**CNIPA** proposed that the party receiving the notification be given the opportunity to bring proof to the contrary.

Article 149 (Inspection of files)

146. **IFIA** requested that the English version of paragraph 2 be clarified and that paragraph 6 be deleted.

147. In its written observations (BR/150/72, point 35), **FICPI** had suggested that the scope of paragraph 4 be widened by deleting the word "directly" and extending the sentence.

148. With reference to paragraph 5, **FICPI** had suggested making inspection of files free of charge.

149. **UNIPA** requested that the number of any priority application should also be included in the particulars listed in paragraph 6.

BR/169 e/72 ley/SL/prk ...

.../...
MINUTES

of the

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

Part II

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

(Luxembourg, 26 January to 1 February 1972)
Zu Artikel 148  
Nummer 9

Zustellung an Vertreter

(1) Ist ein Vertreter nach Artikel 153 des Übereinkommens bestellt und die Vollmacht zu den Akten eingereicht, so werden die Zustellungen an den Vertreter gerichtet.

(2) Sind mehrere Vertreter für einen Beteiligten bestellt, so genügt die Zustellung an einen von ihnen.

Zu Artikel 148  
Nummer 10

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 einer Frist von zwei Monaten einen gemeinsamen Vertreter zu bestellen. Wird dieser Aufforderung nicht entsprochen, so besteht das Europäische Patentamt den gemeinsamen Vertreter.

Zu Artikel 148  
Nummer 11

Zustellung an den gemeinsamen Vertreter

Haben mehrere Beteiligte einen gemeinsamen Vertreter im Sinne des Artikels ... (Nummer 1 zu Artikel 66) Absatz 3 Buchstabe a oder des Artikels ... (Nummer 10 zu Artikel 148), so genügt die Zustellung eines Schriftstücks an den gemeinsamen Vertreter für alle Beteiligten.

Zu Artikel 148  
Nummer 12

Heilung von Zustellungsfehlern

Kann das Europäische Patentamt die formgerechte Zustellung eines Schriftstückes nicht nachweisen oder ist das Schriftstück unter Verletzung von Zustellungs- vorschriften zugegangen, so gilt das Schriftstück als an dem Tag zugestellt, den das Europäische Patentamt als Tag des Zugangs nachweist.

Re. Article 148  
No. 9

Notification to professional representatives

(1) If a representative has been appointed according to Article 153 of the Convention and the authorisation has been placed on the file, notifications shall be addressed to him.

(2) If several such representatives have been appointed for a single interested party, notification to any one of them shall be sufficient.

Re. Article 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 that applicant is obliged to appoint a representative under Article 154, paragraph 2, of the Convention, that representative shall be considered to be the common representative. The same shall apply where a request for examination, opposition or appeal is filed by several persons.

(2) If, during the course of proceedings, assignment 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 a period of two months. If this request is not complied with, the European Patent Office shall appoint the common representative.

Re. Article 148  
No. 11

Notification to the common representative

If several interested parties have a common representative within the meaning of Article ... (Re. Article 66, No. 1), paragraph 3 (a), or of Article ... (Re. Article 148, No. 10), notification of a single document to the common representative shall be sufficient for all the interested parties.

Re. Article 148  
No. 12

Irregularities in the notification

Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt.
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 —
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).
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 23 December 1970
BR/68/70

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.

BR/68 e/70 ley/KM/bm
Ad article 161
Numéro 13

Réparation des vices de signification

S'il ne peut être établi qu'un document a été régulièrement signifié ou si, le document étant parvenu à destination, des dispositions obligatoires relatives à la signification n'ont pas été observées, le document est réputé signifié à la date à laquelle il est prouvé que le destinataire l'a reçu.
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
Article 161 - N° 10

Cette disposition est adoptée. Le Comité de rédaction contrôlera la concordance avec le numéro 1, paragraphe 2, lettre e) à l'article 68.

Article 161 - N° 11

La disposition est adoptée.

Article 161 - N° 12

Répondant à M. van Exter, le Président explique que ce numéro est nécessaire comme condition de la régularité d'une signification. Contrairement à la règle du numéro 9, paragraphe 2 qui vise le représentant professionnel, la signification au domicile élu, réglée par le numéro 12, n'est effectuée que lorsque plusieurs copies certifiées sont envoyées.

Article 161 - N° 13

Le groupe décide que la règle contenue dans ce numéro doit être appliquée de façon générale. La disposition est transmise au Comité de rédaction.

La séance est levée à 13 heures 15.
Résultats de la neuvième session du groupe de travail "Brevets" qui s'est tenue à Munich du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 161

Numéro 13

Réparation des vices de signification

Lorsqu'il n'est pas possible de prouver qu'un document a été régulièrement signifié ou que, le document étant parvenu à destination, des dispositions obligatoires relatives à la signification ont été violées, le document est considéré comme ayant été signifié à la date à laquelle il est prouvé que le destinataire l'a reçu.

Remarque :

Il reste à examiner si cette disposition doit s'appliquer aussi aux significations qui font courir un délai de recours ou s'il y a lieu d'exiger dans ces cas une nouvelle signification exempte de vices.
Projet

concernant

le règlement d'exécution
de la

convention relative à un droit européen des brevets

Propositions relativos à l'application des

articles 160 à 163
de la Convention
Zu Artikel 161
Nummer 13

Heilung von Zustellungsmängeln

Lässt sich die formgerechte Zustellung eines Schriftstücks nicht nachweisen oder ist das Schriftstück unter Verletzung zwingender Zustellungsvorschriften zugegangen, so gilt es als in dem Zeitpunkt zugestellt, in dem es der Empfangsberechtigte nachweislich erhalten hat.
ARBEITSGRUPPE
"Patente"

4419/IV/63-D

Brüssel, den 20. Januar 1964

VERTRAULICH

VE 40 1964

Vorentwurf
einer Ausführungsordnung zum Abkommen über
ein europäisches Patentrecht
Artikel 161 Nr. 10

Diese Vorschrift wird angenommen. Der Redaktionsausschuß soll nachprüfen, ob sie mit Nr. 1 Absatz 2 Buchstabe e) zu Artikel 68 in Einklang steht.

Artikel 161 Nr. 11

Diese Vorschrift wird angenommen.

Artikel 161 Nr. 12

In Beantwortung einer Frage von Herrn van Exter führt der Vorsitzende aus, daß diese Nummer als Voraussetzung für die ordnungsgemäße Zustellung notwendig sei. Im Gegensatz zur Regelung in Nr. 9 Absatz 2, die sich nur auf den berufsmäßigen Vertreter beziehe, sei die in Nr. 12 geregelte Zustellung an den Zustellungsbevollmächtigten erst dann bewirkt, wenn mehrere beglaubigte Abschriften zugestellt sind.

Artikel 161 Nr. 13

Die Arbeitsgruppe beschließt, daß die in dieser Nummer enthaltene Regelung allgemeine Anwendung finden soll. Die Vorschrift wird an den Redaktionsausschuß überwiesen.

Die Sitzung wird um 18.15 Uhr aufge hoben.

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

Sitzungsbericht
Zu Artikel 161
Nummer 13
Heilung von Zustellungsmängeln

Lässt sich die formgerechte Zustellung eines Schrift-
stücks nicht nachweisen oder ist das Schriftstück unter
Verletzung zwingender Zustellungsvorschriften zuge-
gangen, so gilt es als in dem Zeitpunkt zugestellt,
in dem es der Empfangsberechtigte nachweislich er-
halten hat.

Bemerkung:
Es bleibt zu prüfen, ob diese Vorschrift auch auf Zu-
stellungen Anwendung finden soll, durch die Rechts-
mittelfristen in Lauf gesetzt werden, oder ob für diese
Fälle eine erneute mängelfreie Zustellung verlangt
wird.
Arbeitsentwurf

zu einer

Ausführungsvorschrift

zum

Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 160 bis 163

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

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

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

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

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

The provisions of the Convention and the Implementing
Regulations concerning representation before the European
Patent Office were already discussed with the organisations
concerned during the earlier stages of the negotiations and
were, as far as possible adapted to their proposals and wishes.
Fortunately this situation meant that the principles established
by the Inter-Governmental Conference were no longer
questioned as to their substance. In particular, the principle that
during a transitional period the representatives' status would
basically be controlled by the national law of Contracting
States and afterwards by European law, remained unchallenged.
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
transition 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.