Rule 52 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 52
MPÜ
Erteilung des europäischen Patents an verschiedene Anmelder

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ANNEXE I

RAPPORT

établi par M. Paul Braendli, Lic. iur.
Directeur adjoint du Bureau fédéral de la propriété intellectuelle (Suisse)

sur les résultats des travaux du Comité principal I

ANNEXE II

RAPPORT

établi par M. R. Bowen
Assistant Comptroller, British Patent Office

sur les résultats des travaux du Comité principal II

ANNEXE III

RAPPORT

établi par M. Fressonnet
Directeur adjoint de l'Institut National de la Propriété Industrielle (France)

sur les résultats des travaux du Comité principal III

ANNEXE IV

RAPPORT

établi par M. A. Fernandez Mazarambroz
Directeur de l'Office espagnol des brevets

sur les résultats des travaux de la Commission de vérification des pouvoirs
en ce qui concerne les pleins pouvoirs permettant de signer la Convention
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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 52

Grant of the European patent to different applicants

Where different persons are entered in the Register of European Patents as applicants in respect of different Contracting States, the Examining Division shall grant the European patent for each Contracting State to the applicant or applicants registered in respect of that State.
MUNICH DIPLOMATIC CONFERENCE

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

- 1973 -

Munich, 30 September 1973
M/ 146/R 9

Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 27 to 53
Regel 53
Erteilung des europäischen Patents an verschiedene Anmelder

Sind als Anmelder für verschiedene Vertragsstaaten verschiedene Personen in das europäische Patentregister eingetragen, so erteilt die Prüfungsabteilung das europäische Patent den verschiedenen Anmeldern jeweils für die sie betreffenden Vertragsstaaten.

Vgl. Artikel 96 (Zurückweisung oder Erteilung)

Kapitel V
Patentschrift

Regel 54
Angaben auf der Patentschrift

Regel 50 Absätze 1 und 2 ist auf die Patentschrift entsprechend anzuwenden. Außerdem wird in der Patentschrift die Frist angegeben, innerhalb deren Ein- spruch gegen das europäische Patent eingelegt werden kann.

Vgl. Artikel 97 (Veröffentlichung des europäischen Patents)

Regel 55
Urkunde über das europäische Patent


Vgl. Artikel 97 (Veröffentlichung des europäischen Patents)

Rule 53
Grant of the European patent to different applicants

Where different persons are entered in the Register of European Patents as applicants in respect of different Contracting States, the Examining Division shall grant the European patent for each Contracting State to the applicant or applicants registered in respect of that State.

Cf. Article 96 (Refusal or grant)

Chapter V
The patent specification

Rule 54
Particulars to be included in the specification

Rule 50, paragraphs 1 and 2, shall apply mutatis mutandis to the specification of the European patent. The specification shall also contain an indication of the time limit for opposing the European patent.

Cf. Article 97 (Publication of a European patent)

Rule 55
Certificate for a European patent

(1) As soon as the patent specification has been published the European Patent Office shall issue to the proprietor of the patent a certificate for a European patent, to which the specification shall be annexed. The certificate shall certify that the patent has been granted, in respect of the invention described in the patent specification, to the person named in the certificate, for the Contracting States designated in the specification.

(2) The proprietor of the patent may request that duplicate copies of the European patent certificate be supplied to him upon payment of an administrative fee.

Cf. Article 97 (Publication of a European patent)
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
PATENTTEILUNGSVERFAHRENS 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
elaborés 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
80. In this connection, the Conference decided, upon a proposal from the Co-ordinating Committee, to refer in Rule 29, paragraph 1(e), to the "title of the subject-matter of the invention".

Rule 53

81. The United Kingdom delegation raised the question as to how this provision, according to which the European patent could be granted to various applicants for various States, could be harmonised with the unitary nature of the Community patent, as laid down in the Second Convention.

The United Kingdom delegation reserved the right to discuss this question in greater detail when the Second Convention was being prepared and, if necessary, to return to the problem at the Diplomatic Conference.

Rule 64

82. The Conference agreed to wait until the Diplomatic Conference before fixing the amount, left open in paragraph 5, which had to be exceeded before the decision fixing the amount of costs according to Article 105, paragraph 4, of the Convention can become the subject of an appeal.
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)
Article 53 (Re. 97, No. 1)

Grant of the European patent to different applicants

Where different persons are entered in the Register of European Patents as applicants in respect of different Contracting States, the Examining Division shall grant the European patent for each Contracting State to the applicant or applicants registered in respect of that State.
As agreed by the Co-ordinating Committee, the Implementing Regulations will contain "Rules" and not "Articles". As it stands, the Draft does not yet take account of the consequences that this decision will have upon the drafting.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 25 May 1972
BR/200/72

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

(Stage reached on 20 May 1972)

BR/200 e/72
5. Filing and requirements of the European patent application (Articles 73-84 and Rules 24-37)

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

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

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

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

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

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

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

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

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

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

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

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

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