Rule 55 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 55
**MPÜ**

**Inhalt der Einspruchsschrift**

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

Those who advocated the approach set out in the draft argued that the public could be considered to be sufficiently informed about the subject-matter of the invention only if the micro-organism were made available to the public at the time of the publication of the application; furthermore, it was only by such a disclosure that the micro-organism could be comprised in the stage 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 other rights 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 lastly, pursuant to Article 114, any person who wishes to help to establish the legal facts of the matter may present, free of charge, observations concerning the patentability of an invention in respect of which an application has been filed. By a vast majority the Committee also refused to shorten to six months the nine-month opposition period laid down in Article 98, paragraph 1, which had been adopted as a compromise solution at an earlier stage in the negotiations.

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

Rule 35
Content of the notice of opposition

The notice of opposition shall contain:

(a) the name and address of the opponent and the State in which his residence or principal place of business is located, in accordance with the provisions of Rule 26, paragraph 2(c);

(b) the number of the European patent against which opposition is filed, and the name of the proprietor and title of the invention;

(c) a statement of the extent to which the European patent is opposed and of the grounds on which the opposition is based as well as an indication of the facts, evidence and arguments presented in support of these grounds;

(d) if the opponent has appointed a representative, his name and the address of his place of business, in accordance with the provisions of Rule 26, paragraph 2(c).
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
PART V

IMPLEMENTING REGULATIONS TO PART V
OF THE CONVENTION

Rule 56

Content of the notice of opposition

The notice of opposition shall contain:

(a) the name and address of the opponent and the State in which his residence or principal place of business is located, in accordance with the provisions of Rule 26, paragraph 2(c);

(b) }

(c) \{ Unchanged from 1972 published text.

(d) )
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 24 September 1973
M/126/I/R 9
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 22 SEPTEMBER 1973

Articles of the Convention:

- Article 14
- Article 133
- Article 134

Rules of the Implementing Regulations:

- Rule 26
- Rule 51
- Rule 56
- Rule 69
- Rule 76
- Rule 79
- Rule 93
- Rule 95

Draft Protocol on the Recognition of Decisions in respect of the Right to the Grant of a European Patent:

- Article 2
PART V

IMPLEMENTING REGULATIONS TO PART V
OF THE CONVENTION

Rule 56

Content of the notice of opposition

The notice of opposition shall contain:

(a) 
(b) Unchanged from 1972 published text.
(c) 
(d) 

M/88/1/R 3
IMPLEMENTING REGULATIONS
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 17 September 1973
M/88/I/R 3
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 15 SEPTEMBER 1973

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**Rules of the Implementing Regulations:**

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ministration peut prévoir ... d'autres personnes morales qui ont leur siège sur le territoire ...”.

Begründung:

Die vorgeschlagene Ausdrucksweise soll sicherstellen, daß der englische und der französische Text dem im deutschen Text verwendeten Ausdruck „Sitz“ entsprechen.

b) Im englischen Text sollte in der letzten Zeile des Absatzes 3 der Ausdruck „economic links“ durch den Ausdruck „economic connections“ ersetzt werden.

9 Artikel 138 Absatz 1 Buchstabe d

Diese Bestimmung sollte wie folgt formuliert werden:

„d) der Schutzbereich des europäischen Patents erweitert worden ist;”

Begründung:


9 Article 138, paragraph 1(d)

It is proposed that this sub-paragraph be worded as follows:

“if the protection conferred by the European patent has been extended;”

Reason:

The deletion of the words “contrary to Article 122, paragraph 3” and “during opposition proceedings” would authorise each Contracting State to include as a ground for revocation in its national law any extension of the protection conferred by the European patent, in particular by an amendment to the claims, during national revocation or limitation proceedings. The Member States of the European Communities wish to make use of this possibility in the Second Convention by providing as a ground for revocation of a Community patent not only any extension of the protection during the opposition proceedings but also any extension of protection, in particular by an amendment to the claims, during the limitation or revocation proceedings which will be centralised and take place before the special departments of the European Patent Office. However, unless such a possibility is open to them under Article 138 of the First Convention, they will be unable to apply such a measure.

10 Artikel 141

Es sollte ein neuer Absatz 2 folgenden Wortlauts angefügt werden:


10 Article 141

It is proposed that a second paragraph worded as follows, be added:

“(2) Any renewal fees falling due within two months after the publication of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.”
Il est proposé d’insérer un nouveau paragraphe 1a ainsi rédigé :
«1a) Un recours peut être formé contre la décision de la division d’opposition même s’il a été renoncé au brevet européen ou si celui-ci s’est éteint pour tous les États désignés.»

Motivation :

Cette proposition constitue un complément à la proposition d’un nouveau paragraphe 2a pour l’article 98 (cf. point 4 ci-dessus). Une telle disposition pourrait ne pas être indispensable si l’on estime que le droit au recours reste ouvert indépendamment de la question de savoir si le brevet qui a fait l’objet de la décision contestée est ou non encore en vigueur. Toutefois, il semble préférable de prévoir expressément cette possibilité afin d’éviter que l’on ne puisse, par une argumentation à contrario, faire valoir que l’absence d’une disposition correspondante à l’article 98, paragraphe 2a, constitue une indication de l’intention de vouloir exclure le recours dans un tel cas.

7 Article 106

Il est proposé de supprimer les mots « à l’exception de celles qui ont renoncé à ce droit » à la dernière phrase.

Motivation :

Il a été considéré que les parties à une procédure ayant conduit à une décision qui fait l’objet d’un recours restent ipso jure parties à la procédure de recours et que ce principe doit être maintenu pour éviter des difficultés notamment au cas où l’instance de recours réformerait la décision de l’instance précédente également en ce qui concerne la répartition des frais entre les parties. Les mots dont la suppression est proposée peuvent être interprétés comme un abandon dudit principe ce qui n’était pas l’intention. On a voulu exprimer que la qualité de parties devant l’instance de recours reconnue aux parties devant l’instance précédente n’implique pas l’obligation pour celles qui n’y auraient pas d’intérêt à participer de manière active à la procédure de recours, mais cette non-obligation reste acquise même sans disposition expresse.

8 Article 133, paragraphes 2 et 3

a) Il est proposé de remplacer :

— dans le texte en langue anglaise, les termes «registered place of business» par «seat» (1);

— dans le texte en langue française, le terme «établissement» par «siège». De plus, la dernière

(1) Note concerning No 8:

La même expression devrait être utilisée dans les dispositions suivantes :

a) Convention
   Article 14, paragraphe 2

b) Règlement d’exécution
   Règle 26, paragraphe 2, lettre c)
   Règle 56, paragraphe 2, lettre a)
   Règle 79, paragraphe 2, lettre a)
   Règle 86, paragraphe 2
   Règle 93, paragraphe 1, lettre f)
   Règle 95, paragraphe 2

c) Protocole sur la reconnaissance
   Article 2
6 Artikel 105

Es sollte ein neuer Absatz 1a folgenden Wortlauts eingefügt werden:


Begründung:


7 Artikel 106

Die Worte „mit Ausnahme derjenigen, die auf ihre Beteiligung an diesem Verfahren verzichtet haben“ im letzten Satz sollten gestrichen werden.

Begründung:

Derjenige, der an dem Verfahren beteiligt war, das zu der angefochtenen Entscheidung geführt hat, bleibt am Beschwerdeverfahren beteiligt; bei diesem Grundsatz sollte es sein Bewenden haben, damit Schwierigkeiten insbesondere für den Fall vermieden werden, daß die Beschwerdeinstanz die Entscheidung der Vorinstanz auch hinsichtlich der Verteilung der Kosten auf die Beteiligten ändern sollte. Die Worte, deren Streichung vorgeschlagen wird, könnten als Abweichung von diesem Grundsatz aufgefaßt werden, was indes nicht beabsichtigt ist. Vielmehr soll ausgedrückt werden, daß die Beteiligung der Parteien des Verfahrens der Vorinstanz am Beschwerdeverfahren nicht bedeutet, daß jeder am Beschwerdeverfahren aktiv teilnehmen muß; dies braucht aber nicht ausdrücklich bestimmt zu werden.

8 Artikel 133 Absätze 2 und 3

a) im englischen Text sollte der Ausdruck „registered place of business“ durch den Ausdruck „seat“ ersetzt werden (1);

b) im französischen Text sollte der Ausdruck „établissement“ durch den Ausdruck „siège“ ersetzt werden. Außerdem sollte der letzte Satz des Absatzes 3 wie folgt lauten: „... Le Conseil d’ad-

8 Article 133, paragraphs 2 and 3

(a) It is proposed that:

— in the English text, the words “registered place of business” be replaced by “seat” (1);

— in the French text, the word “établissement” be replaced by “siège”. In addition the last sentence of
STELLUNGNAHME

DER MITGLIEDSTAATEN DER EUROPÄISCHEN GEMEINSCHAFTEN

COMMENTS

BY THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

PRISE DE POSITION

DES ÉTATS MEMBRES DES COMMUNAUTÉS EUROPÉENNES
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTTERTEILUNGSVERFAHRENS 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
Fünfter Teil
AusführungsVorschriften zum fünften Teil des Übereinkommens

Regel 56
Form des Einspruchs

Der Einspruch muß enthalten:

a) den Namen, die Anschrift und den Staat des Wohnsitzes oder Sitzes des Einsprechenden nach Maßgabe der Regel 26 Absatz 2 Buchstabe c;

b) die Nummer des europäischen Patents, gegen das der Einspruch eingelegt wird, sowie die Bezeichnung des Inhabers dieses Patents und der Erfindung;

c) eine Erklärung darüber, in welchem Umfang gegen das europäische Patent Einspruch eingelegt und auf welche Einspruchsgründe der Einspruch gestützt wird, sowie die Angabe der zur Begründung vorgebrachten Tatsachen und Beweismittel;

d) falls ein Vertreter des Einsprechenden bestellt ist, seinen Namen und seine Geschäftsanschrift nach Maßgabe der Regel 26 Absatz 2 Buchstabe c.

Vgl. Artikel 98 (Einspruch) und 104 (Beitritt des vermeintlichen Patentverletzers)

Regel 57
Verwerfung des Einspruchs als unzulässig

(1) Stellt die Einspruchsabteilung fest, daß der Einspruch Artikel 98 Absatz 1 sowie Regel 1 Absatz 1 und Regel 56 Buchstabe c nicht entspricht oder daß das europäische Patent, gegen das der Einspruch eingelegt wird, nicht hinreichend bezeichnet ist, so verwirft sie den Einspruch als unzulässig, sofern die Mängel nicht bis zum Ablauf der Einspruchsfrist beseitigt worden sind.

(2) Stellt die Einspruchsabteilung fest, daß der Einspruch anders als den in Absatz 1 bezeichneten Vorschriften der Regel 56 nicht entspricht, so teilt sie dies dem Antragsteller mit und fordert ihn auf, innerhalb einer von ihr zu bestimmenden Frist die festgestellten Mängel zu beseitigen. Werden die Mängel nicht rechtzeitig beseitigt, so verwirft die Einspruchsabteilung den Einspruch als unzulässig.

(3) Jede Entscheidung, durch die ein Einspruch als unzulässig verworfen wird, wird dem Patentinhaber mit einer Abschrift des Einspruchs mitgeteilt.

Vgl. Artikel 100 (Prüfung des Einspruchs) und 104 (Beitritt des vermeintlichen Patentverletzers)

Part V
Implementing Regulations to Part V of the Convention

Rule 56
Form of the notice of opposition

The notice of opposition shall contain:

(a) the name and address of the opponent and the State in which his residence or registered place of business is located, in accordance with the provisions of Rule 26, paragraph 2(c);

(b) the number of the European patent against which opposition is filed, and the name of the proprietor and title of the invention;

(c) a statement of the extent to which the European patent is opposed and of the grounds on which the opposition is based as well as an indication of the facts, evidence and arguments presented in support of these grounds;

(d) if the opponent has appointed a representative, his name and the address of his place of business, in accordance with the provisions of Rule 26, paragraph 2(c).

Cf. Articles 98 (Opposition) and 104 (Intervention of the assumed infringer)

Rule 57
Rejection of the notice of opposition as inadmissible

(1) If the Opposition Division notes that the notice of opposition does not comply with the provisions of Article 98, paragraph 1, Rule 1, paragraph 1, and Rule 56, sub-paragraph (c), or does not provide sufficient identification of the patent against which opposition has been filed, it shall reject the notice of opposition as inadmissible unless these deficiencies have been remedied before expiry of the opposition period.

(2) If the Opposition Division notes that the notice of opposition does not comply with the provisions of Rule 56 other than those mentioned in paragraph 1, it shall communicate this to the opponent and shall invite him to remedy the deficiencies noted within such period as it may specify. If the notice of opposition is not corrected in good time, the Opposition Division shall reject it as inadmissible.

(3) Any decision to reject a notice of opposition as inadmissible shall be communicated to the proprietor of the patent, together with a copy of the notice.

Cf. Articles 100 (Examination of the opposition) and 104 (Intervention of the assumed infringer)
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
as having been completed. A footnote to the text draws
the attention of Working Party I to the fact that it might
be opportune to amend the text of Article 85, paragraph 3,
so that the publication cannot include amendments unless
they were communicated before the completion of the tech-
nical preparations.

Re. Article 97, No. 1 - Grant of a European patent to
     joint applicants

26. No comments.

Re. Article 101, No. 1 - Form of the notice of opposition

27. The Sub-Committee decided to add to the text of sub-
paragraph (c) that the notice of opposition shall indicate
besides the grounds for opposition, the facts, evidence
and arguments presented in support of these grounds. This
addition is intended to implement a decision taken by
Working Party I at its meeting in December, 1970. It must
be pointed out that the documents which have to be produced
to support these facts, evidence and arguments may be
communicated later, within a period of time which is
specified in the Implementing Regulations, Re. Article 101,
No. 2.

Finally, the Sub-Committee considered that it would be
superfluous to provide for a special entry in the Bulletin
to mention the absence of opposition.

Re. Article 101, No. 5 - Communications to the other
     opponents

28. When adopting this article, the Sub-Committee
wondered whether it would be opportune to combine in a
single provision the various cases of notification mentioned
MINUTES

of the 5th meeting of the "Implementing Regulations" Sub-Committee of Working Party I

(Luxembourg, 12 - 14 January 1971)

I

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.
Re. Article 130, No. 1 - Renewal fees in respect of applications for patents of addition which have become independent

22. No comments. See footnote to the text

Re. Article 130, No. 2 - Renewal fees in respect of applications for divisional European patents

23. See the note addressed to Working Party I below the text of the provision. This concerns the payment of renewal fees which must be made in advance.

24. Having concluded their examination of the Chairman's proposals contained in BR/GT I/52/70, the Subcommittee turned to the proposals contained in BR/GT I/63/70, beginning with the Implementing Regulations to the Articles relating to opposition procedure.

Re. Article 101, No. 1 - Form of the Notice of opposition

25. It was stressed that the opponent must base his opposition on at least one of the grounds listed in Article 101a (new) of the Preliminary Draft. See also the note under the provision as to whether a certain rule should appear in the Convention or in the Implementing Regulations.

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MINUTES
of the 3rd meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 20-23 October 1970)

I

1. The third 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 20 to Friday 23 October 1970, with Mr. FRESSONET, 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.
No. 1, on the form of the request for examination.

Paragraph 2 (c) of the second sentence of the first preliminary draft convention lays down that the notice of opposition shall contain:

(a) the name and address of the opponent and of the person against whom the opposition is lodged, and the name of the proposition to which the opposition is based;

(b) a statement of the grounds of opposition;

(c) a statement of the extent to which the European patent is opposed and of those grounds;

(d) if the opposition has been notified in accordance with the provisions of Article 96, No. 1, Paragraph 2 (c), as amended by Article 101, (new) of the convention, on which opposition is based;

In accordance with the provisions of Article 66, No. 1, Paragraph 2 (c), the notice of opposition must be given in writing. It will be appropriate to examine whether this notice is in accordance with the provisions of Article 66, No. 1, Paragraph 2 (c), as amended by Article 101, (new) of the convention.
of the first preliminary draft convention


Preliminary draft implementing regulations

(20 to 23 October 1970)

of Working Party I

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

- Secretariat -

BR/59/70
Proceedings 9 November 1970

FOR THE GRANT OF PATENTS
FOR THE SETTING UP OF A EUROPEAN SYSTEM
INTERNATIONAL CONFERENCE
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 time limits 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-observance 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