Article 83 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.
Art. 83
MFU
Offenbarung der Erfindung

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Bemerkung zu Art. 64
und nicht auf ander...
Minutes of the proceedings of the Committee of the Whole

1. The Committee of the Whole, which was established by the Plenary of the Conference and comprised all the Government delegations (see Rule 14 of the Rules of Procedure)*, was, pursuant to paragraph 4 of Rule 14, chaired by Dr. Kurt Haebel (Federal Republic of Germany), President of the German Patent Office and Chairman of Main Committee I. Mr. François Savignon (France), Director of the French Industrial Property Office and Chairman of Main Committee II, was First Vice-Chairman; Mr. Edward Armitage (United Kingdom), Comptroller-General of the United Kingdom Patent Office and Chairman of Main Committee III was Second Vice-Chairman.

2. In accordance with Rule 14 of the Rules of Procedure, the terms of reference of the Committee of the Whole were to take decisions on proposals from the Gerneral Drafting Committee on drafts established by Main Committees I, II and III and on proposals submitted to it directly and to forward the drafts approved by it to the Plenary of the Conference for adoption.

3. The Committee of the Whole met under the direction of the Chairman from 1 to 4 October 1973.

4. At the meeting on 1 October 1973, the Committee of the Whole received the reports of Main Committees I and II. Main Committee I's report was approved without debate (see Section I below).

5. At its meeting on 2 October 1973, the Committee of the Whole discussed Main Committee II's report. The discussion and subsequent approval of the report are dealt with below in Section II.

6. At the same meeting, it heard and approved Main Committee III's report (see Section III below); it also discussed the results of the proceedings of the General Drafting Committee (M/146 R/1 to R/15 and M/151 R/16). These discussions are covered in Section IV below.

7. On 3 October 1973, the Committee of the Whole received and approved the report of the Credentials Committee (see Section V below). The problems of a European School and the European Patent Office building in Munich were then dealt with (see Sections VI and VII).

8. At its last meeting on the morning of 4 October 1973, the Committee of the Whole discussed the organisation and work programme of the Interim Committee. These discussions are presented in Section VIII below. It finally considered a proposal from the Yugoslav delegation for a Resolution on technical assistance (Section IX) and a Recommendation regarding the status and remuneration of certain employees (Section X).

I. Report of the discussions and decisions of Main Committee I

8. The rapporteur of this Main Committee, Mr. Paul Braendli, Vice-Director of the Federal Intellectual Property Office (Switzerland), presented the report on the work of Main Committee I to the Committee of the Whole. The text of this report is given in Annex I.

The report was unanimously adopted by the Committee of the Whole.

II. Report on the work of Main Committee II

9. Subject to a few minor amendments, the Committee of the Whole unanimously approved the report presented by the rapporteur of Main Committee II, Mr. R. Bowen (United Kingdom), Assistant Comptroller of the United Kingdom Patent Office. The text of the report as adopted by the Committee of the Whole is given in Annex II. The discussions concerning the proposals for amendments to the report are summarised in the following paragraphs.

10. As regards the section of the report concerning the Protocol on Centralisation, the Netherlands delegation, commenting on the first sentence in point 16, stated that the obligations of the European Patent Office towards the Member States of the International Patent Institute had simply been clarified rather than extended. However, the French and United Kingdom delegations maintained that the obligations had in fact been extended since the original text had only referred to tasks at present incumbent upon the Institute whereas now tasks entrusted to the IIB after the signing of the Protocol were expressly covered. While disagreeing with this view, the Netherlands delegation did not insist on an amendment.

11. The Netherlands delegation proposed, also with regard to point 16, that the last sentence should state that the EPO would also undertake searches for Member States of the IIB which had not submitted any applications for search before the entry into force of the Convention. This would make provision for those States which, up to the time in question, had submitted no applications for search to the IIB although they were entitled to do so.

The Committee of the Whole agreed to amend the part of the report concerned as follows: "... the Office will also assume this responsibility in respect of a Member State of the Institute which prior to the entry into force of the Convention, has agreed to submit national applications to the Institute for search."

12. The Committee of the Whole adopted a proposal from the Swedish delegation that the idea proposed by the Scandinavian countries at the beginning of point 22 be worded as follows: "Consideration was given to the idea, proposed by the Scandinavian countries, that such work might be entrusted to national offices, possessing the minimum documentation, whether or not they possessed the other qualifications, required of an International Searching Authority under the Patent Cooperation Treaty." It also approved an addition at the end of the third sentence in this point to the effect that national offices would have to "fully" qualify as Searching Authorities.

13. The Austrian delegation suggested that in the English version of point 22, in the middle of page 14, the words "some search work" be used so as not to prejudice the question of the amount of such search work, which had deliberately been left open. The text would therefore read: "difficulties resulting from a renunciation under Section I, 2, to entrust some search work to national offices whose language is..."

The Committee of the Whole accepted this suggestion. The German and French texts remained unaltered.

14. With regard to the part of the report dealing with Article 166 (Article 167 of the signed version) of the Convention, the Greek delegation proposed that point 11 be amended at the top of page 7 so as to state, not that Main Committee II had accepted the view as to the effects of a reservation, but that it had considered such a possibility. The rapporteur and the Netherlands delegation stated that this view had been generally accepted in Main Committee II.

The Committee of the Whole accordingly decided not to amend the draft which had been submitted.

III. Report on the results of Main Committee III's proceedings

15. Main Committee III's rapporteur, Mr. Fresonnet, Deputy Director of the National Industrial Property Office
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
should suffice as evidence of assignment, and further documents should not be required; the declaration should be required in all cases and not only where a designated State had corresponding regulations; the inventor should merely be notified of the application and should not receive a copy of the patent application; finally, the legal relationship between the applicant and the inventor or third persons should in no way be impaired by such a declaration.

276. The Chairman pointed out that he had understood the compromise proposal by the delegation of the Federal Republic of Germany as meeting the requirements laid down by the United Kingdom delegation.

He noted that (subject to its wording) no delegation had opposed the proposal, and asked the delegation of the Federal Republic of Germany to submit its proposal in writing so that a formal vote could be taken on it (see points 282 et seq., 321 et seq., 2038 et seq., 2047 et seq., 2090 et seq. and 2245).

277. The Swiss delegation said it was withdrawing its proposal on Article 58, paragraph 3 (M/54/II/II/III, page 11), which was merely intended as an alternative to the Scandinavian proposal.

278. The delegation of the International Chamber of Commerce raised the question of how to deal with a case where an initially correct designation of the inventor were to prove incorrect in the course of the procedure, for example if someone were designated in the application as one of a number of inventors but a claim for that part of the invention with which he had been associated were rejected. This delegation felt that it would be undesirable for this person also to appear in the patent specification as an inventor.

279. The Chairman recalled that in such a case, the designation of the inventor could be rectified in accordance with Rule 19, which would require the consent of the person concerned, however*.

280. The delegation of the International Chamber of Commerce considered that this could not solve all conceivable problems, but saw no real possibility of improving Rule 19.

281. Regarding the suggestion made by the Yugoslav delegation that the inventor should not be designated if he wished to remain anonymous (see point 236 above), the Main Committee left it up to this delegation to submit an appropriate proposal in writing.

282. At a subsequent meeting, the Main Committee examined the compromise proposal which had been formulated in the meantime by the delegation of the Federal Republic of Germany in M/118/1 (see point 276).

283. In this connection, the delegation of the Federal Republic of Germany pointed out that it proposed resolving the fundamental issue of the designation of the inventor in a separate Article. The first sentence of its proposal, whereby the inventor would have to be designated in the European application, had been decided by the Main Committee. The compromise suggested by it was contained in the second sentence, to the effect that if the applicant were not the inventor or not the sole inventor, the designation of the inventor would have to contain a declaration as to how the applicant acquired the right to the European patent.

284. The Chairman pointed to the fact that the wording of the German proposal meant that "identification of the inventor" would comprise identification of the inventor and the statement on the transfer of the right in cases where the applicant was not the inventor.

285. The Swedish delegation, which also spoke on behalf of the other Scandinavian delegations, could accept the compromise proposal subject to certain improvements in the drafting. Its thanks were due to the German delegation for the proposal, the unanimous adoption of which by the Main Committee and by the Conference would be greatly appreciated.

286. The Yugoslav delegation drew attention to the fact that under Yugoslav law it was possible for a number of persons working in a firm or institute to be responsible for an invention without there being any need to designate the inventor. The questions arose as to whether such cases would be covered by the compromise proposal.

287. The delegation of the Federal Republic of Germany considered that such cases would be covered neither by Article 79 as it stood, nor by the version which it had submitted.

288. The Chairman pointed out that in the case referred to by the Yugoslav delegation, the principle of designation of the inventor as adopted by the Main Committee meant that corporate bodies responsible for inventions would have to be designated by name.

He went on to note that all the delegations were basically in agreement with the compromise proposal.

289. The Swedish delegation pointed out that the German version of the proposal contained in M/118/1 differed from the English and French versions. As the proposal stood in German, the identification of the inventor would, under certain circumstances, have to contain a statement on the transfer of the right, whereas according to the other two versions the statement was simply to be attached. This difference could affect the sanction applied in cases where such statements were not provided. It considered that the sanction referred to in Article 90 (91), paragraph 5, i.e. whereby the application would be deemed to be withdrawn, should be applied in such cases. The Swedish delegation therefore suggested that the English and French be brought into line with the German version.

290. The Main Committee referred the matter to the Drafting Committee.

291. The French delegation wondered whether it could not be inferred from the proposal contained in M/118/1 that omission of a statement on the transfer of the right implied that the applicant was the sole inventor. This seemed unjustified and a better method would be to require applicants who were sole inventors to give notice to that effect.

292. The Netherlands delegation contended that applicants who were sole inventors should not be required to furnish a separate document to that effect.

293. The Chairman's opinion was that the Convention gave no grounds for inferring that applicants were in fact the inventors unless they gave some indication to the contrary. Even in cases where the applicant was the inventor, that fact would have to be indicated; such applicants would, however, simply omit the statement on the transfer of the right. Designation of the inventor would then be governed by Article 58 (60).

294. After due reflection the French delegation found the proposed text to be adequate on the premise that if the applicant were the sole inventor, he was bound to give indication to that effect in the application. If he were not the inventor, or not the sole inventor, he would have to include in the application a statement indicating the origin of the right to the European patent.

295. The Main Committee called upon the Drafting Committee to examine whether some clarification of Article 79 was necessary in the light of discussions on the matter (points 291 to 294).*

* For Rule 19, see points 2047 et seq.

Article 81 (83) — Disclosure of the invention

296. The Main Committee referred to the Drafting Committee a drafting proposal submitted by the French delegation (M/58/II/II).

* No amendments were made to Article 79 by the Drafting Committee.
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
Artikel 83
Offenbarung der Erfindung

Die Erfindung ist in der europäischen Patentanmeldung so deutlich und vollständig zu offenbaren, daß ein Fachmann sie ausführen kann.

The english version is not available.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 3
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 55 to 83
Article 81
Disclosure of the invention

Only concerns French text.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973
M/141/I/R 12
Original: English/French/German

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

Articles of the Convention:

Articles 81
113
134

Implementing Regulations:

Rules 38
54
58
61
63
67
The French delegation submits herewith a number of purely drafting amendments to be made to the French text of the Draft Convention and the Draft Implementing Regulations (N/1 and N/2):

ARTICLE 50.

Paragraph 3: Only concerns French text.

ARTICLE 67.

Note: Only concerns French text

ARTICLE 81.

Only concerns French text

ARTICLE 85.

Paragraph 1: Only concerns French text

ARTICLE 113.

Paragraph 2: Only concerns French text

ARTICLE 167.

Paragraph 3: "... il a effectué une déclaration en vertu du paragraphe 1. Cette nouvelle déclaration prend effet ..."

("... it has made a declaration pursuant to paragraph 1. Such new declaration shall take effect ...")

(It would seem necessary to make this amendment in the three languages. To refer to "a notification pursuant to paragraph 1" is incorrect, since the declaration referred to in paragraph 1 may be made either in the instrument of ratification or accession or in a subsequent notification. Hence reference should be to the declaration in general and not merely to that contained in the notification. To avoid any ambiguity, it should be made clear that the declaration at the beginning of the second sentence of paragraph 3 is the "new" declaration made under that paragraph).

HUE 14.

Only concerns French text.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973
M/58/I/II
Original: French

CONFERENCE DOCUMENT

Drawn up by: French delegation

Subject: Proposals for amendments to the Draft Convention and the Draft Implementing Regulations
Artikel 79
Erfindernennung

In der europäischen Patentsprache ist der Erfinder zu nennen, wenn das nationale Patentrecht zumindest eines der benannten Vertragsstaaten die Erfindernennung für nationale Patentanmeldungen vorschreibt.

Vgl. Regel 17 (Einreichung der Erfindernennung), 18 (Bekanntmachung der Erfindernennung) und 19 (Berichtigung oder Widerruf der Erfindernennung)

Artikel 80
Einheitlichkeit der Erfindung

Die europäische Patentanmeldung darf nur eine einzige Erfindung enthalten oder eine Gruppe von Erfindungen, die untereinander in der Weise verbunden sind, daß sie eine einzige allgemeine erfinderische Idee verwirklichen.

Vgl. Regel 29 (Form und Inhalt der Patentansprüche) und 30 (Patentansprüche verschiedener Kategorien)

Artikel 81
Offenbarung der Erfindung

Die Erfindung ist in der europäischen Patentanmeldung so deutlich und vollständig zu offenbaren, daß ein Fachmann sie ausführen kann.

Vgl. Regel 28 (Erfordernisse europäischer Patentanmeldungen betreffend Mikroorganismen)

Artikel 82
Patentansprüche

Die Patentansprüche müssen den Gegenstand angeben, für den Schutz begehrt wird. Sie müssen deutlich, knapp gefaßt und von der Beschreibung gestützt sein.

Vgl. Regel 25 (Form und Inhalt der Patentansprüche)

Artikel 79
Identification of the inventor

The European patent application shall identify the inventor where the national law of at least one of the designated Contracting States requires such identification to be supplied for national patent applications.

Cf. Rules 17 (Identification of the inventor), 18 (Publication of the mention of the inventor) and 19 (Rectification or cancellation of the designation of an inventor)

Artikel 80
Unity of invention

The European patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Cf. Rules 29 (Form and content of claims) and 30 (Claims in different categories)

Artikel 81
Disclosure of the invention

A European patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

Cf. Rule 28 (Requirements of applications relating to microorganisms)

Artikel 82
The claims

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

Cf. Rule 29 (Form and content of claims)
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE 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
COPRICE suggested, and was seconded by EIRMA, that sub-paragraphs (a) and (b) should be combined to form a single provision allowing independent claims for a process, a use, an apparatus and a product in the same application; to this end, the word "or" at the end of (a) should be replaced by "and".

FICPI put forward very general objections to this provision of the Implementing Regulations; in its opinion an examiner could be led to confirm the unity of an invention only in cases where the claims conformed to the pattern set out in this provision, whereas there would be other cases of unity. On the other hand, FICPI asked whether unity could be denied even if the claims were in conformity with the conditions set out in Re. Article 70, No. 1.

Article 71 (Disclosure of the invention)

69. CNIPA proposed that the problem posed by the use in an invention of a micro-organism not generally available, which had not yet been solved in the Convention, should be dealt with along the lines advocated in the Banks Report (No. 552).

Re. Article 71, No. 1, IR (Number of claims)

70. CNIPA, FICPI and UNEPA recommended that it should be made clear in paragraph 1 that the fees for the eleventh and every following claim would only be levied once.
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)
Article 69a - Naming of the inventor

89. The Conference instructed the Drafting Committee to examine whether the desire expressed by one organisation, that the failure to name the inventor should not simply result in the application being deemed to be withdrawn (cf. BR/169/72, point 66), should be reflected in this Article.

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

90. The Conference agreed that Re. Article 70, No. 1, of the Implementing Regulations required to be re-examined in relation to the definitive version of Re. Article 66, No. 3.

Article 71 - Disclosure of the invention

91. The Conference instructed Working Party I to examine whether, at the request of one organisation, the problem of the depositing of a micro-biological culture not available to the public could be settled in a manner similar to that recommended for British law by the Banks Report (No. 552).

Article 71a - The claims

92. The Conference decided that Working Party I should examine the questions whether, as most of the organisations proposed, the word "fully" should be deleted and whether it should be replaced by a less restrictive wording.
MINUTES

of the

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

Parts 1 and 3

(Luxembourg, 24-25 January and 2-4 February 1972)
Artikel 71
Offenbarung der Erfindung
Die Erfindung ist in der europäischen Patentanmeldung so deutlich und vollständig zu offenbaren, daß ein Fachmann sie ausführen kann.

Artikel 71a
Patentansprüche
Die Patentansprüche müssen den Gegenstand angeben, für den Schutz begehrt wird. Sie müssen deutlich und knapp gefaßt und in vollem Umfang von der Beschreibung gestützt sein.

Artikel 72
Erfordernisse der Ausführungsordnung für die europäische Patentanmeldung
Die europäische Patentanmeldung muß den Erfordernissen genügen, die in der Ausführungsordnung zu diesem Übereinkommen vorgeschrieben sind.

KAPITEL II
Priorität
Artikel 73
Prioritätsrecht


2) Als prioritätsbegründend wird jede Anmeldung anerkannt, der nach dem nationalen Recht des Staates, in dem die Anmeldung eingereicht worden ist, oder nach zwei- oder mehrseitigen Verträgen die Bedeutung einer vorschiftsmäßigen nationalen Anmeldung zukommt.

3) Unter vorschiftsmäßiger nationaler Anmeldung ist jede Anmeldung zu verstehen, die zur Festlegung des Tages ausreicht, an dem die Anmeldung in dem betreffenden Staat eingereicht worden ist, wobei das spätere Schicksal der Anmeldung ohne Bedeutung ist.

4) Als erste Anmeldung, von deren Einreichung an die Prioritätsfrist läuft, wird auch eine jüngere Anmeldung angesehen, die denselben Gegenstand betrifft wie eine erste ältere in demselben Staat eingereichte Anmeldung, sofern diese ältere Anmeldung bis zur Einreichung der jüngeren Anmeldung zurückgenommen, fallengelassen oder zurückgewiesen worden ist, und zwar bevor sie öffentlich ausgelegt worden ist und ohne daß Rechte bestehen geblieben sind: ebensowenig darf diese ältere Anmeldung schon Grundlage für die Inanspruchnahme des Prioritätsrechts gewesen sein. Die ältere Anmeldung kann in diesem Fall nicht mehr als Grundlage für die Inanspruchnahme des Prioritätsrechts dienen.

CHAPTER II
Priority
Article 73
Priority right

1) A person who has duly filed in or for any State party to the Paris Convention for the Protection of Industrial Property, an application for a patent or for the registration of a utility model or for a utility certificate or for an inventor's certificate, or his successors in title, shall enjoy, for the purpose of filing an application for a European patent in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.

2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral treaties shall be recognised as giving rise to a right of priority.

3) By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed in the country concerned, whatever may be the outcome of the application.

4) A subsequent application for the same subject-matter as a previous first application within the meaning of paragraph 3 above and filed in the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.
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 EUROPEÉEN DE DÉLIVRANCE DE BREVETS

ainsi que
PREMIER AVANT-PROJET DE RÈGLEMENT D’EXÉCUTION DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPEÉEN DE DÉLIVRANCE DE BREVETS
et
PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

APRIL
1971
34. As regards the consequences of failure to pay designation fees, the Working Party adopted a system similar to that laid down in Article 68 (see point 31 above).

35. The Working Party examined the question of whether the European patent could be requested for one Contracting State only (see also Article 2a, doc. BR/6/69). It concluded that it was advisable, subject to the provisions of paragraph 4, to allow the designation of a single State, since it would be easy for an applicant to get round any prohibition of the designation of a single Contracting State. What is more, the same principle has been adopted in the PCT plan.

Article 68b - Date of the application

36. This provision incorporates the gist of Article 68, paragraph 3, of the 1965 Draft. In addition, in order to incorporate a similar provision of the PCT plan, it specifies that the application must contain information identifying the applicant.

Article 68c (new) - Failure to pay the filing fee or to provide a translation

37. Cf. 31 above.

Article 69 - Unity of invention

38. The wording of this provision is analogous to that of the corresponding rule of the PCT plan.

Article 70 - Disclosure of the invention

39. The Working Party agreed that the Implementing Regulations could lay down certain details concerning the formulation of applications and, in particular, of the description and the claims similar to those laid down in the text which have been drafted for revising the Strasbourg Convention on the unification of certain points of Substantive Law relating to Patents for Invention.

Article 71 - Requirements of the Implementing Regulations

40. No comment.

R3/10 e/69 kel/PA/zk.../...
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 12 November 1969
BR/10/69

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SECRETARIAT

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MINUTES

of the meeting of Working Party I

(Luxembourg, 14 - 17 October 1969)

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I

1. The second working meeting of Working Party I was held at Luxembourg from Tuesday 14 to Friday 17 October 1969, with Dr. HAERTEL, President of the German Patent Office, in the Chair.

The Commission of the European Communities, BIRPI, the General Secretariat of the Council of Europe and the International Patent Institute took part in the meeting (1).

2. The Working Party agreed to appoint the following as rapporteurs:

- a member of the Swiss delegation for Articles 24 to 65
  (organisation of the departments - register, publications, classification - relations with national authorities);

(1) See Annex I for list of participants in the meeting of the Working Party.

BR/10 e/69 ksl/PA/mk

.../...
Artikel 70

Offenbarung der Erfindung

(1) Die Erfindung ist in der europäischen Patentanmeldung so deutlich und vollständig zu offenbaren, dass ein Fachmann sie danach ausführen kann.

(2) (gestrichen)
Arbeitsgruppe "Patente"  

Brüssel, den 22. Januar 1965  

2335/IV/65-D  

Vertraulich  

VE 1965 (Uc)  

Änderungen des Vorentwurfs eines Abkommens über ein europäisches Patentrecht  

(Artikel 1 bis 175)  

Dieses Arbeitsdokument ersetzt das Arbeitsdokument 14155/IV/64-D vom 2. Oktober 1964 (Artikel 1 bis 703).  

Vorkunde (in franz.)  

2335/IV/65-D  

English version is not available
Zu Artikel 70

Der Vorsitzende wirft die Frage auf, ob die Anzahl der Patentansprüche in einer europäischen Anmeldung einer Begrenzung unterworfen werden solle.

Eine andere Lösung bestände darin, von einer bestimmten Anzahl von Ansprüchen ab einer Zusatzgebühr zu verlangen.

Die Gruppe spricht sich einstimmig für die zweite Lösung aus, und zwar solle eine Zusatzgebühr dann erforderlich sein, wenn die Zahl der Ansprüche (Haupt- und Unteransprüche) über zehn hinausgeht. Für jeden weiteren Anspruch solle dann eine Zusatzgebühr gezahlt werden müssen. Die Frage, ob man eine progressiv gestaffelte Zusatzgebühr verschen solle, soll bei der Ausarbeitung der Gebührenordnung geprüft werden.

Der Vorsitzende erinnert daran, daß das gleiche Problem der Zusatzgebühr von Herrn Pressonnet bereits bei der Beschreibung aufgeworfen worden sei. Zu diesem Punkt weist der Vorsitzende Herrn Pressonnet darauf hin, daß in Gegensatz zur Praxis bestimmter Mitgliedstaaten das europäische Abkommen bereits vorsehe, daß der Anmelder die Druckkosten zu tragen habe. Diese umfassen einerseits die reinen Druckkosten und andererseits die Kosten, die aus der Verwaltungsarbeit für die Vorbereitung der Akte herrühren. So wurde der Anmelder eines europäischen Patents eine Gebühr zu zahlen haben, die desto höher liege, je länger die Beschreibung sei.

Herr Pressonnet erklärt sich mit dieser Lösung einverstanden. Die Arbeitsgruppe beschließt, für die Beschreibung der Patentanmeldung keine besondere Regelung vorzusehen.

Die Sitzung wird um 18.15 Uhr aufgehoben.
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Artikel 68
Erfordernisse der Anmeldung

(1) Die europäische Patentanmeldung muss enthalten
a) einen Antrag auf Erteilung des europäischen Patents,
b) eine Beschreibung der Erfindung, gegebenenfalls mit den Zeichnungen, auf die die Beschreibung sich bezieht.

Die Anmeldung muss in einer der in Artikel 34 Absätze 1 und 2 vorgesehenen Sprachen abgefasst sein.

(2) Für die europäische Patentanmeldung ist die Anmeldegebühr zu entrichten, die in der Gebührenordnung zu diesem Abkommen vorgeschrieben ist.

(3) Die europäische Patentanmeldung gilt als zu dem Zeitpunkt eingereicht, an dem die Erfordernisse des Absatzes 1 dieses Artikels erfüllt sind, sofern die Anmeldegebühr innerhalb einer Frist von einem Monat von diesem Zeitpunkt an entrichtet wird.

(4) Wird die Anmeldegebühr nach Ablauf der in Absatz 3 vorgesehenen Frist entrichtet, so gilt die Anmeldung als zu dem Zeitpunkt der Zahlung eingereicht, sofern diese Zahlung spätestens zwei Monate nach einer Zahlungsaufforderung des Europäischen Patentamts eingeht.

Artikel 69
Einheitlichkeit der Erfindung

Eine europäische Patentanmeldung darf nur eine Erfindung enthalten.

Bemerkung

Die Bestimmung dieses Artikels schliesst nicht die Erteilung eines europäischen Patents für ein Verfahren, das damach hergestellte Erzeugnisse und eine Anwendung des Verfahrens aus, soweit Einheitlichkeit der Erfindung besteht.

Artikel 70
Inhalt der Beschreibung

(1) In der Beschreibung ist die Erfindung so deutlich und vollständig zu offenbaren, dass ein Fachmann sie danach ausführen kann.

(2) Am Schluss der Beschreibung ist in einem oder mehreren Patentansprüchen anzugeben, wofür der Anmelder Schutz begehrt.

Artikel 71
Erfordernisse der Ausführungsordnung

Die europäische Patentanmeldung muss den Erfordernissen genügen, die in der Ausführungsordnung zu diesem Abkommen vorgeschrieben sind.
AVANT-PROJET DE CONVENTION
relatif à un droit européen des brevets
élaboré par le groupe de travail «breveits»

VORENTWURF EINES ABKOMMENS
über ein europäisches Patentrecht
ausgearbeitet von der Arbeitsgruppe „Patente“

SCHEMA DI CONVENZIONE
sul diritto europeo dei brevetti
predisposto dal Gruppo di lavoro «brevetti»

VOORONTWERP VERDRAG
betreffende een Europees octrooirecht
opgesteld door de werkgroep «octrooiien»

Artikel 67 (62)
Auf Anregung des Herrn Roscioni bespricht die Gruppe die in Absatz 2 vorgesehene Frist. Schliesslich wird als Kompromisslösung die einmonatige Frist durch eine solche von sechs Wochen ersetzt.

Der Artikel wird genehmigt und an den Redaktionsausschuss weitergeleitet.

Artikel 70 (64)
Die Gruppe prüft nachstehenden französischen Vorschlag zu diesem Artikel:
"Im gleichen Antrag können Ansprüche hinsichtlich eines Verfahrens, einer Vorrichtung, eines Erzeugnisses und einer Verwendungsgattung geltend gemacht werden, falls zwischen diesen ein direkter Zusammenhang besteht". Dieser Vorschlag betrifft vornehmlich chemische Erzeugnisse.

Die Gruppe erkennt ebenso wie der Vorsitzende an, dass eine solche Vorschrift erforderlich sei. Sie gehört jedoch in die Ausführungsbestimmungen. Die Prüfung dieses Vorschlags wird daher für die Sitzung zurückgestellt, in welcher die Ausführungsbestimmungen besprochen werden.

Der Artikel wird angenommen.
Anträge; doch handele es sich um eine grundsätzliche Regelung und jeder der Vertragsstaaten habe das Recht, die Frist zu verlängern.

Herr Briganti machte darauf aufmerksam, daß nach den italienischen Vorschriften jede Patentanmeldung der Landesverteidigungsbehörde nach der Einreichung des Antrags 60 Tage lang zur Verfügung stehen müsse. Daher könne Italien nur schwer einer einmonatigen Frist zustimmen.

Der Vorsitzende war der Ansicht, die Arbeitsgruppe werde auch weiterhin den Grundsatz befolgen, daß keine Bestimmung vorgeschlagen wird, die zu nationalen Vorschriften über die Landesverteidigung im Widerspruch steht. Er schlägt daher vor, die einmonatige Frist durch eine Frist von sechs Wochen zu ersetzen. Die Entscheidung über diese Frage hängt von der italienischen Delegation ab, die sogleich nach Ankunft von Herrn Rosconi dazu Stellung zu nehmen verspricht.

Artikel 68 (63)

Der Artikel wurde angenommen.

Artikel 69 (65)

Der Artikel wurde angenommen.

Artikel 70 (64)

Diesen Artikel hat der Redaktionsausschuß eine Bemerkung angefügt, die auf einem französischen Vorschlag beruht. Die Aussprache über diesen Artikel wird daher bis zur Ankunft der französischen Delegation zurückgestellt.

Artikel 71 (66)

Der Artikel wurde angenommen.
Ergebnisse der sechsten Sitzung
der Arbeitsgruppe "Patente"
vom 13. bis 23. Juni 1962
in München
The application shall be written in one of the languages referred to in paragraphs 1 and 2.

(2) The application for a European patent shall be subject to the payment of the filing fee prescribed in the Rules relating to fees made under this Convention.

(3) The application for a European patent shall be deemed to be filed on the date on which the conditions required under paragraph 1 of this Article have been met, provided that the filing fee be paid within one month following that date.

(4) If payment of the filing fee is made after the expiry of the period provided for in paragraph 3, the application shall be deemed to be filed on the date of payment, provided that the date in question is not later than two months after a demand for payment has been made by the European Patent Office.

Article 69. Unity of invention

An application for a European patent may relate to only one invention.

Note:
The requirement of this Article does not exclude the grant of a European patent in respect of a process, the resulting product and a method of application, as long as there is unity of invention.

Article 70. Contents of the specification

(1) The specification must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

(2) The specification shall conclude with one or more claims defining the protection applied for.

Article 71. Requirements of the Implementing Regulations

An application for a European patent must satisfy the conditions laid down in the Implementing Regulations to this Convention.

CHAPTER II—PRIORITY

Article 72. Priority right

(1) A person who has duly filed an application for a patent, or for the registration of a utility model, or his successors in title, shall enjoy, for the purpose of filing an application for a European patent in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.

(2) The day of filing shall not be included in the period. If at the office of the competent authority within the meaning of Article 66, paragraph 1, at which the application for a European patent has been filed, the last day of the period is an official holiday, or a day when the offices of that authority are not open for the filing of applications, the period shall be extended until the first following working day.
Translation of a Draft Convention relating to a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
FIVE SHILLINGS NET
Erörterungen zu Artikel 64 des Vorentwurfs

Herr de Kuysur bringt seine Befürchtung zum Ausdruck, dass durch eine unterschiedliche Auslegung des Ausdrucks "Fachmann" durch die einzelnen Länder Schwierigkeiten entstehen könnten.

Der Präsident teilt diese Bedenken nicht, da dieser Begriff nur vom europäischen Amt oder einem europäischen Gericht angewandt wurde.

Unter Bezugnahme auf eine Bemerkung zu Artikel 64 stellt Herr van Benthem die Frage, ob im Falle einer offensichtlich unsicheren Beschreibung der Anmelder nicht vom Prüfer aufgefordert werden müsse, die fehlenden Angaben zu ergänzen.


Die Gruppe ist damit einverstanden und überweist Artikel 63 dem Redaktionsausschuss.

Erörterungen zu Artikel 65 des Vorentwurfs

Herr Pfanner erklärt, Artikel 65 würde die Frage auf, ob der Begriff der einheitlichen Erfindung eng oder weit ausgelegt werden soll.

Nach einer gründlichen Erörterung dieser Frage gelangt die Gruppe zu der einhelliger Auffassung, dass in Artikel 65 die Einheitlichkeit der Erfindung und keineswegs das Vorliegen einer einzigen Erfindung im zahlenmäßigen Sinn gemeint sei. Eine genaue Definition über die Einheitlichkeit der Erfindung scheint nicht möglich zu sein. Der Begriff
Brüssel, den 18. Juli 1961

VERTRAULICH

Erbnisse der zweiten Sitzung
der Arbeitsgruppe "Patente"
vom 3. bis 14. Juli 1961
in Brüssel

english Version is not available
Artikel 64

Inhalt der Beschreibung

(1) In der Beschreibung ist die Erfindung so zu offenbaren, daß ein Fachmann sie danach ausführen kann.

(2) Am Schluß der Beschreibung ist in einem oder mehreren Patentansprüchen anzugeben, wofür der Anmelder Schutz begehrt.
Erster Arbeitsentwurf
eines Abkommens
über ein europäisches Patentrecht.

Artikel 61 bis 90 f

- 100

*English version is not available.*
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.


Apart from the amendment to Article 85, paragraph 5, already dealt with above in the chapter on "language questions", the provisions of Articles 83-87 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 opposition proceedings when the proprietor has completely surrendered the European patent or when it has lapsed for all the