Rule 91 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 91

APU

Verzicht auf Beitreibung

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(Additional notes or annotations are not visible on the image provided.)
Annex 1

designated Contracting States. The valid interests of an assumed infringer in the retroactive revocation of the patent may thus be upheld. In this connection it may be noted that this amendment has raised the opposition proceedings another step towards the level of actual revocation proceedings.

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

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

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

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

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

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

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

The rules governing time limits and the arrangements for dealing with unobserved time limits were adopted by the Committee with the following amendments. In Article 120 the time limit concerning the request for further processing of the European patent application was adapted to the new time limit for filing appeals and was therefore quite rightly reduced from three to two months. There was a detailed discussion on the concept of "Force majeure" required in accordance with Article 121 for the re-establishment of rights. This condition was generally felt to be too strict because it would justify re-establishment only in the rarest of cases. The Committee also considered conditions such as those of the "unavoidable event" or of the "legitimate excuse" which are based on national laws of Contracting States. After comparing the laws of various States, the Committee finally agreed, in accordance with the conclusions of the Working Party which it had set up, that the justification for the re-establishment of rights was an impediment which, in spite of all due care required by the circumstances having been taken, had led to the non-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
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
Chapter VII

Waiving of enforced recovery procedures

Rule 91

Waiving of enforced recovery procedures

The President of the European Patent Office may waive action for the enforced recovery of any sum due if the sum to be recovered is minimal or if such recovery is too uncertain.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 83 to 106
b) wenn der Fall des Artikels 133 Absatz 2 nicht vorliegt, daß das Verfahren vom Tag der Zustellung dieser Mitteilung an mit dem Anmelder oder Patentinhaber wieder aufgenommen wird.

(4) Die am Tag der Unterbrechung für den Anmelder oder Patentinhaber laufenden Fristen, mit Ausnahme der Frist zur Stellung des Prüfungsantrags und der Frist für die Einrichtung der Jahresgebühren, beginnen an dem Tag von neuem zu laufen, an dem das Verfahren wieder aufgenommen wird. Liegt dieser Tag später als zwei Monate vor Ablauf der Frist zur Stellung des Prüfungsantrags, so kann ein Prüfungsantrag noch bis zum Ablauf von zwei Monaten nach diesem Tag gestellt werden.

Vgl. Artikel 88 (Eingangsprüfung), 98 (Einspruch) und 105 (Beschwerdefähigkeitsentscheidungen)

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Kapitel VII
Verzicht auf Beitreibung

Regel 92
Verzicht auf Beitreibung

Der Präsident des Europäischen Patentamts kann davon absehen, geschuldete Geldbeträge beizutreiben, wenn der betreffende Betrag geringfügig oder die Beitreibung zu ungewiß ist.

Vgl. Artikel 126 (Beendigung von Zahlungsverpflichtungen)

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Kapitel VIII
Unterrichtung der Öffentlichkeit

Regel 93
Eintragungen in das europäische Patentregister

(1) Im europäischen Patentregister müssen folgende Angaben eingetragen werden:

a) Nummer der europäischen Patentanmeldung;

b) Anmeldetag der europäischen Patentanmeldung;

c) Bezeichnung der Erfindung;

d) Symbole der Klassifikation der europäischen Patentanmeldung;

e) die benannten Vertragsstaaten;

f) Name, Vornamen und Wohnsitz oder amtliche Bezeichnung und Sitz des Anmelders oder Patentinhabers;

g) Name, Vornamen und Wohnsitz des von Anmelder oder Patentinhaber genannten Erfinders, sofern er nicht nach Regel 18 Absatz 3 auf seine Nennung verzichtet hat;

---

Chapter VII
Waiving of enforced recovery procedures

(a)

Rule 92
Waiving of enforced recovery procedures

The President of the European Patent Office may waive action for the enforced recovery of any sum due if the sum to be recovered is minimal or if such recovery is too uncertain.

Cf. Article 136 (Termination of financial obligations)

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Chapter VIII
Information to the public

Rule 93
Entries in the Register of European Patents

(1) The Register of European Patents shall contain the following entries:

(a) number of the European patent application;

(b) date of filing of the European patent application;

c) title of the invention;

d) classification code given to the European patent application;

(e) the Contracting States designated;

(f) family name, given names and address or official designation and registered place of business of the applicant for or proprietor of the European patent;

(g) family name, given names and address of the inventor designated by the applicant for or proprietor of the patent unless he has renounced his title as inventor under Rule 18, paragraph 3;
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
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
Rule 93

30. The Committee recorded its agreement on the transfer of the first three paragraphs of this Rule to the Convention as Article 125a, by reason of the subject matter dealt with therein. Paragraph 4 was retained in the Implementing Regulations as Rule 93.

Rules 96 and 100

31. In order to avoid the communication of the files of patent applications or of documents by the European Patent Office for inspection by national courts causing delays in the proceedings pending before the European Patent Office, it was stipulated in the new paragraph 1 of Rule 100 that such inspection shall be of the original documents or of copies thereof. In addition, to harmonise the terminology, the word "copy" has been used in both paragraph 1 and paragraph 3 of Rule 96.

32. Concluding this item on the agenda, the Committee adopted the texts submitted by the Drafting Committee for the Draft Convention and Draft Implementing Regulations, account being taken of the amendments which the above-mentioned observations entailed.
MINUTES

of the

second meeting of the Co-ordinating Committee

held in Brussels from 15 to 19 May 1972

1. The second meeting of the Co-ordinating Committee was held in Brussels from 15 to 19 May 1972 with Dr HAEFTEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, of the IIB and of WIPO took part as observers. The representatives of the Council of Europe sent their apologies for being unable to attend. The list of those taking part in the meeting is given in Annex I to this report.

2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:
CHAPTER VII

Termination of financial obligations

Article 93 (Re. 145, No. 10 + Re. 152, No. 1)

Termination of financial obligations

(1) Rights of the European Patent Office to the payment of a fee shall be extinguished after four years from the end of the calendar year in which the fee fell due.

(2) Rights against the European Patent Office for the refunding of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.

(3) The period laid down in paragraphs 1 and 2 shall be suspended in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. After the suspension it shall begin again and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgement enters into force.

(4) The President of the European Patent Office may waive action for the enforced recovery of any sum due if the sum to be recovered is minimal or if such recovery is too uncertain.
DRAFT IMPLEMENTING REGULATIONS
TO THE CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
10 to 20 April 1972)
Re. Article 159, No. 9 - Form of notices and other communications from the European Patent Office

38. No comments.

Re. Article 159, No. 10 - Lapse

39. The Sub-Committee agreed to adopt this provision while adding a footnote to the text. In fact, the Sub-Committee considered that this Article should be studied in greater detail by government financial experts, with particular reference to establishing the financial consequences of this measure and whether the scope of the text under discussion could be extended or not.

Re. Article 159, No. 11 - Noting of certain legal consequences

40. The regulation Re. Article 69, No. 1 (BR/67/70, page 14) drawn up by the Sub-Committee at its meeting in November 1970 is intended to lay down a simplified procedure in the event of the European Patent Office noting that an application for a European patent is deemed to be withdrawn. The use of such a procedure - which reduces the workload of the Office while protecting the applicant's right of appeal - was justified because in reality only simple questions of fact were concerned, for example the payment of a fee within the time required.

On a proposal from the United Kingdom delegation, the Sub-Committee considered that this simplified procedure could be extended to other cases where only simple questions of fact were concerned. Consequently, the Sub-Committee adopted a text in which four new cases were added, and which
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.
It might be considered whether it would be suitable to extend this provision to all sums owed

Note:

(1) Right of the European Patent Office to the payment of a fee shall lapse four years after the end of the calendar year in which the fee falls due.

(2) Right to extend the European Patent Office for the refunding of fees or sums of money paid in excess of a fee, shall lapse four years after the end of the calendar year in which the right arose.

(3) The period of a right shall be suspended in the case covered by paragraph 1 by a request for

which it otherwise began.

Note:

Text drawn up by the Sub-committee

Lapse

No. 10

Re. Article 199
Draft Implementing Regulations

12 to 14 January 1971

Outcome of the Work of the Implementing Regulations Sub-Committee

Secretary -

System for the Grant of Patents

BR/81/71

Brussels, 20th January 1971
Ad article 170 - N° 2

Ce numéro règle les cas où le Président de l'Office peut renoncer au recouvrement par contrainte.

Le Président observe que cette disposition devra être revue avec les experts des Ministères des Finances.

A la demande de M. Froissart, il sera inséré une remarque disant qu'il faudra pour l'application de ce numéro prévoir l'intervention d'un contrôle financier.

Le numéro est transmis au Comité de rédaction.

Ad article 171 - N° 1

Adopté et transmis au Comité de rédaction.

Ad article 172

La remarque est transmise au Comité de rédaction.

Ad article 173 - N° 1

À une question de M. van Benthem, le Président répond que le mandat initial pourra octroyer au représentant le droit de disposer du brevet selon les articles 25, 26, 29 et 124 de la Convention.

Le numéro est adopté et transmis au Comité de rédaction.

Ad article 180

Ce numéro réglemente la compétence pour la fourniture des avis techniques. Les divisions d'examen sont compétentes. (1). Le Président déterminera quelle division fournit l'avis (2).
Résultats de la neuvième session
du groupe de travail "Brevets"
qui s'est tenue à Munich
du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 170

Numéro 2

Renonciation au recouvrement par contrainte

Le président de l'Office européen des brevets peut s'abstenir de procéder au recouvrement par contrainte d'une amende ou d'une taxe dont le non-paiement a été constaté par ledit office :

a) Lorsque la somme à recouvrer est minime ;

b) Lorsque le débiteur séjourne à titre permanent en un endroit où le recouvrement n'est pas possible ;

c) Lorsque l'Office européen des brevets sait qu'il est vraisemblable que le débiteur ne sera pas à même de payer avant longtemps.
Projet
concernant
le règlement d'exécution
de la
Convention relative à un droit européen des brevets

Proposition relative à l'application des
articles 164 à 217
de la Convention
Artikel 170 Nr. 2

Diese Nummer regelt den Fall, daß der Präsident des Patentamts auf die Beitreibung verzichten kann.

Der Vorsitzende bemerkt, daß diese Vorschrift mit den Sachverständigen der Finanzministerien überprüft werden müsse.

Auf Antrag von Herrn Pressonnet soll eine Bemerkung eingefügt werden, daß zur Anwendung dieser Vorschrift die Mitwirkung einer Finanzkontrolle vorzusehen sei.

Die Vorschrift wird an den Redaktionsausschuß überwiesen.

Artikel 171 Nr. 1

Annahme und Überweisung an den Redaktionsausschuß.

Artikel 172

Die Bemerkung wird an den Redaktionsausschuß überwiesen.

Artikel 173 Nr. 1


Artikel 180

Diese Nummer regelt die Zuständigkeit zur Erstattung technischer Gutachten. Zuständig sind die Prüfungsabteilungen (Absatz 1). Der Präsident bestimmt, welche Prüfungsabteilung das Gutachten erstattet (Absatz 2).
Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 170
Nummer 2

Verzicht auf Beitreibung

Der Präsident des Europäischen Patentamts kann von der Beitreibung einer Geldbuße oder einer Gebühr, deren Nichtzahlung durch das Europäische Patentamt festgestellt worden ist, absehen,

a) wenn der beizutreibende Betrag geringfügig ist;

b) wenn sich der Zahlungspflichtige dauernd an einem Orte aufhält, an dem eine Beitreibung nicht möglich ist;

c) wenn dem Europäischen Patentamt bekannt ist, daß der Zahlungspflichtige voraussichtlich dauernd zur Zahlung nicht in der Lage ist.
Kurt Haertel

Bonn, den 10. Mai 1963

Arbeitsentwurf

zu einer

Ausführungsordnung

zum

Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 164 bis 205

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

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

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

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

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

The provisions of the Convention and the Implementing
Regulations concerning representation before the European
Patent Office were already discussed with the organisations
consulted during the earlier stages of the negotiations and
were, as far as possible adapted to their proposals and wishes.
Fortunately this situation meant that the principles established
by the Inter-Institutional Conference were no longer
questioned as to their substance. In particular, the principle that
during a transitional period the representatives' status would
basically be controlled by the national law of Contracting
States and afterwards by European law, remained uncontented.
The general principles concerning representation in Article 133
were also unchanged. The Main Committee generally
considered that these principles should also be valid for the
transitional period. The Committee also specified that legal
persons could be represented not only by their employees — as

laid down in paragraph 3 of Article 133 — but also by their
departments. Such representation by their departments is
regarded as a matter of course, is understood from paragraph 1
of Article 133 and does not need to be expressly laid down.

However, material for discussion was provided by the
following points: the uninterrupted change from the transition-
al period to the permanent arrangements, in particular with
reference to the continued effects of national requirements, the
reasons for the deletion of professional representatives from
the list, questions concerning place of business and other
individual problems. The following is a report on the main
questions:

(a) Conditions of admission

The Main Committee again discussed the question raised in
the earlier negotiations concerning possession of the
nationality of a Contracting State as a condition of entry on the
list of professional representatives. The majority concluded
that this condition should be laid down in Article 162 not only in
respect of the permanent solution, but also in respect of the
transitional period, in order to avoid the improper
acquisition of representation rights after the publication of the
Convention. The status quo was taken into account in so far
that failure to have the nationality of a Contracting State would
not prevent entry on the list, if the representative had a place of
business or employment and the right of representation in a
Contracting State on 5 October 1973, i.e. at the time of the
signing of the Convention.

(b) Restrictions on authorisation to represent

The question arose as to whether restrictions on
representation arising from national law should also be valid in
respect of proceedings before the European Patent Office
during the transitional period. The Committee unanimously
considered that such restrictions based on specific rules of
national law, in particular on the legislation of the Federal
Republic of Germany, are not justified in respect of European
proceedings. The corresponding provisions of Article 162,
paragraphs 2 and 6, were therefore deleted.

(c) Questions concerning place of business

Article 134 provided that the representatives entered on the
list were entitled to establish a place of business in the Federal
Republic of Germany and the Netherlands for the purpose of
practising their profession before the European Patent Office.
In view of proceedings before national authorities carrying out
duties on behalf of the European Patent Office, as provided for
in the Protocol on Centralisation, the Main Committee
supplemented Article 134 accordingly. Professional
representatives should consequently also be able to establish a place
of business in the Contracting States concerned. There was also
discussion of a provision which would have expressly granted
the right to practise a profession to a professional
representative, his associates, employees and colleagues and
the right of establishment to these persons including their
families. It was said in reply to the advocates of such a
provision, who considered it to be a necessary adjunct to the
right of residence, that this would be to bring a "foreign body"
into the Convention and might possibly conflict with existing
agreements in the field of public law. The Committee
thereupon rejected the proposed supplement, but noted on the
other hand that the stipulated right to a place of business in
accordance with Article 134, paragraphs 3 and 4, would be
meaningful only if its recognition were dealt with sensibly. A