Article 114 E

Travaux Préparatoires
(EPC 1973)

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### Art. 114

MPÖ

Ermittlung von Amts wegen

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S. 163, 186/187
Ad Article 96

Examen du recours

1. Documents:
   a) Loi suisse sur les brevets, article 107 en corrélation avec l'article 103, paragraphe 1;
   b) loi néerlandaise sur les brevets, article 24 A, paragraphe 2, 2ème phrase;
   c) loi autrichienne sur les brevets, § 39 a, alinéa 1;
   d) loi allemande sur les brevets, texte du 9 mai 1961, § 41 b, alinéa 1.

2. Remarques:

   L'avant-projet de Convention considère que la procédure de recours n'est qu'une prolongation de la procédure en première instance. Comme la première instance est soumise au régime de l'instruction d'office, dans lequel les parties ne peuvent, en principe, déclencher par leurs requêtes que certaines mesures d'office, ce système a été maintenu en seconde instance. Par conséquent, la procédure de recours se distingue elle aussi essentiellement d'une procédure judiciaire de droit civil, celle-ci revêtant la forme d'une procédure opposant deux parties.

   Le principe de l'instruction d'office est énoncé en tête de cet article. Il s'ensuit que même lorsque le recours ne porte que sur une partie relativement peu importante de la décision, la chambre de recours peut réexaminer la requête dans sa totalité; une "réformatio in pejus" est donc possible. Par conséquent, si un titulaire du brevet fait appel du fait que son brevet européen provisoire a été annulé en partie lors de l'examen, la chambre de recours peut, sur la base des pièces déjà mentionnées mais aussi de celles qui n'ont pas encore été
Article 96

Examen du recours

1) La Chambre de recours examine d'office les faits. Elle n'est pas liée par les arguments et les offres de preuves des participants.

2) La Chambre de recours n'a pas à tenir compte de faits nouveaux ou de preuves nouvelles qui ne sont pas contenus dans l'exposé des motifs du recours ou dans la réplique au recours.

3) La Chambre de recours peut requérir la section d'examen de soumettre un rapport complémentaire sur la nouveauté de l'invention.
Kurt Haertel

Bonn, le 28 juillet 1961.

CONFIDENTIEL

Premier avant-projet de Convention relatif à un droit européen des brevets

Articles 91 à 100

IV/5569/61-F
Orig.: D.
Sur une intervention de M. Van Benthem, relative au rapport complémentaire, le Président expose qu'il n'est pas souhaitable d'avoir recours à l'Institut international de La Haye. Tout d'abord le bureau d'examen de l'Office européen peut effectuer cette recherche supplémentaire sur base de sa documentation et de la documentation d'un Office voisin à examen préalable. Ensuite, le recours à l'Institut international risque d'entraîner de nouveaux frais. Enfin, l'intervention de cet Institut entraînerait des retards dans la procédure d'examen.

L'article 95 est transmis au Comité de rédaction.

La séance est levée à 15 heures 15.
Discussion de l'article 94 de l'avant-projet de Convention.

Le groupe unanime estime que cette disposition n'a pas pour effet d'interrrompre la procédure d'examen lorsqu'une requête en participation a été rejetée. Cela permettrait aux concurrents du demandeur de retarder considérablement l'examen. La décision concernant l'effet suspensif dépendra, pour chaque cas particulier, de l'appréciation du bureau d'examen.

M. Van Berthem se demande s'il ne faut pas prévoir expressément que la décision ne sera définitive qu'après écoulément du délai de recours.

A cet effet, le groupe charge le Comité de rédaction d'examiner une disposition générale devrait être insérée dans la Convention.

L'article 94 est transmis au Comité de rédaction.

Discussion de l'article 95 de l'avant-projet de Convention.

Avec la précision que le délai prévu à l'alinéa 2 commence à courir à partir de l'introduction du recours, l'article est transmis au Comité de rédaction.

Discussion de l'article 96 de l'avant-projet de Convention.

Après une discussion approfondie, le Président souligne que le principe de l'examen d'office n'imprime pas l'examen du fond dans les cas où le recours n'est pas recevable à raison de vices de forme. En outre, la Chambre de recours peut donner suite au recours, sur base de ses propres constatations, même si les motifs invoqués par le requérant ne sont pas valables. Une telle faculté lui est ouverte par la deuxième phrase de l'alinéa 1. Enfin, la Chambre de recours peut aller au-delà de ce que le requérant a demandé dans son recours.

Etant donné que la Chambre de recours est libre d'apprécier les faits nouveaux, elle ne sera pas obligée de les faire figurer dans sa décision (cf. article 96, alinéa 2).
Résultats de la troisième session
du groupe de travail "Brevets"
qui s'est tenue à Bruxelles
du 25 septembre au 6 octobre 1961
Bruxelles, le 27 septembre 1961

Article 96
Examen du recours

(1) Si le recours est recevable, la Chambre de recours procède à l'examen d'office des faits; cet examen ne se limite ni aux arguments et aux offres de preuve des participants ni aux prétentions sur lesquelles le recours se fonde, pour autant que celles-ci n'impliquent pas une modification de la demande de brevet européen ou du brevet européen provisoire de la part du déposant ou du titulaire.

(2) La Chambre de recours peut ôter pas tenir compte de faits nouveaux ou de preuves nouvelles qui ne sont pas contenus dans l'exposé des motifs du recours ou dans la réplique au recours.

(3) La Chambre de recours peut requérir de la section d'examen un rapport complémentaire sur la nouveauté de l'invention.
Résultats de la troisième session du groupe de travail "Brevets" qui s'est tenue à Bruxelles du 25 septembre au 6 octobre 1961
L'article 85 est transmis au Comité de rédaction.

**Article 86**

Le Comité de rédaction est chargé d'examiner si les tiers peuvent également intervenir en ce qui concerne la condition d'activité inventive.

**Article 88**

Le paragraphe 3 doit être supprimé en raison de la disposition de l'article 97, paragraphe 4. L'article 88 est adopté.

**Article 88 a**

La délégation française maintient sa remarque qui devrait être soumise au Comité de coordination.

L'article 89 est adopté.

**Article 90**

Le paragraphe 2 est supprimé.

**Article 90 a**

Le paragraphe 4 est supprimé.

**Article 90 a bis**

Les deux variantes du paragraphe 2 sont maintenues jusqu'à la décision du groupe lors de la prochaine session.

Le Comité de rédaction est invité à marquer sa préférence.

Les articles 90 a, 90 a ter jusqu'à 90 f sont adoptés.

**Article 90 g**

La phrase entre crochets du paragraphe 4 est rayée en vue de la disposition de l'article 164, paragraphe 5.

Les articles 91 à 98 sont adoptés.

IV/3076/62-F
Résultats de la cinquième session du groupe de travail "Brevets" qui s'est tenue à Bruxelles du 2 au 18 avril 1962
Article 108. Time-limit and form of appeal

An appeal must be lodged, in writing, at the European Patent Office within a period of two months from the date of the decision appealed from; it must set out the grounds on which it is based. An appeal shall not be deemed to be lodged until after the payment of the fee for appeal prescribed by the Regulations relating to fees adopted pursuant to this Convention.

Article 109. Interlocutory revision

(1) If the authority whose decision is contested considers the appeal to be admissible and well-founded, it shall rectify its decision. It may order the fee for appeal to be refunded.

(2) If the appeal is not allowed within the two weeks following its receipt, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

(3) The provisions of paragraph 1 shall not apply when third parties participate in the proceedings.

Article 110. Examination of appeals

(1) If the appeal is admissible, the Board of Appeal shall examine the facts; this examination shall not be restricted to the arguments and evidence of the parties concerned nor to the contentions on which the appeal is based, provided that these contentions do not involve amendment of the application for a European patent, or of the provisional European patent, by the applicant or the proprietor respectively.

(2) The Board of Appeal may disregard fresh facts or evidence which were not included in the statement of grounds of appeal or in the reply to the appeal.

(3) The Board of Appeal may require a supplementary report from the Examining Section on the novelty of the invention.

Article 111. Oral proceedings

The Board of Appeal, when it considers such procedure suitable, may, either at its own instance or at the request of a party, deliver a decision following oral proceedings.

Article 112. Decision in respect of appeals

(1) If the appeal does not comply with the requirements of Articles 105, 107 and 108, or with those of the Implementing Regulations of the present Convention, the Board of Appeal will reject it as inadmissible.

(2) If the Board of Appeal, following the examination specified in Article 110, paragraph 1, considers that the appeal cannot be allowed, it will dismiss it as unfounded.

(3) If the appeal is allowable in whole or in part, the Board of Appeal will annul the decision attacked, in whole or in part. The Board may either decide upon the matter itself or if, having regard to the state of the proceedings, it should consider such action necessary, it may remit the matter to the authority responsible for the decision in question, for the necessary action to be taken.
Translation of a Draft Convention relating to a European Patent Law

LONDON
HER MAJESTY'S STATIONERY OFFICE
FIVE SHILLINGS NET
intenté.

A la suite d'une intervention de M. Roscioni, le Président précise qu'il ne peut y avoir de révisions préjudiciables que lorsqu'il n'y a pas de tiers qui participe à la procédure.

A la suite d'un échange de vues, le groupe charge le Comité de revoir la rédaction de l'article 109 afin que cette dernière précision y figure très clairement.

A la suite d'une intervention de M. Gajac, le groupe charge également le Comité de rédaction de voir s'il est possible de préciser davantage la notion de "tiers" qui figure au § 3 de l'article.

**Article 110**

Cet article traite de l'examen du recours. Au sujet du § 3, M. van Benthem propose d'y prévoir également la faculté de demander un avis complémentaire à l'Institut international des brevets de La Haye. En effet, une telle faculté a été prévue au cours de la première instance (voir article 94).

Le groupe estime une telle addition logique, confie au Comité de rédaction le soin de modifier le paragraphe 3 en ce sens. Enfin, au sujet du paragraphe 2, le Royaume-Uni remarque que celui-ci se réfère à la réplique au recours, mais qu'il n'y a pas de disposition antérieure visant cette réplique. Il est remarqué que le Règlement d'exécution donne satisfaction à cette observation.

**Article 111**

Cet article déclare que la Chambre des recours décide s'il y a ou non procédure orale.

M. Fressonnet demande s'il y a souvent procédure orale devant les Offices allemands ou néerlandais. Il lui est répondu qu'en vertu de la loi, il y a toujours procédure orale en cas de recours. Mais que de telles procédures allongent considérablement les délais. L'Union et l'UNICE se prononcent contre le texte de l'article 111. Le groupe "Marques" a également décidé qu'il y aurait procédure orale si une partie le demandait. Le groupe décide de maintenir

.../...
Résultats de la quatorzième session
du groupe de travail " Brevets "
qui s'est tenue à Munich
du 1er au 12 juin 1964

COMPTES RENDUS
Règlement d'exécution

Ad article 159

Numéro 9

Observations tardives

L'Office européen des brevets peut ne pas tenir compte des observations qui n'ont pas été formulées en temps utile.
Groupe de travail " BREVETS "

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

Avant-projet
de règlement d'application de la convention relative à un droit européen des brevets
61. During the discussion of this entire article, it was stressed that interruption of proceedings could have repercussions on time limits only in so far as the parties and not third parties, were concerned. Thus the interruption would have no effect on the nine-month opposition period. If a third party lodges opposition within this time limit, such opposition will be valid. Nevertheless, proceedings may only begin after the cause of the interruption has ceased to exist. The same will apply to a request for examination submitted by a third party. It was also stated that the 18-month period laid down for publication of the application could not be suspended. The text of the provision will state this explicitly.

62. In addition, the Sub-Committee considered that when the cause of the interruption had ceased to exist, time limits should come into full force again. The text in this respect should be reviewed, for it sometimes uses the term "interruption" and sometimes the term "suspension". Finally, the Sub-Committee agreed on the necessity of drawing the close attention of the government legal experts to paragraph 4, which deals with interruption in the case of bankruptcy. This paragraph has been drawn up in very general terms in order to take into account the differences between national legislations on this matter. Certain delegations however feared that drafting this provision in such broad terms would have the effect of causing delays which would adversely affect the resumption of proceedings.

Re. Article 159. No. 8 - Related Observations

63. No comments.
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. PRESSONET, Deputy Director, French Industrial
Property Institute, in the Chair.

In addition to the national delegations represent-
ted 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.
be re-examined, and also to maintain conformity with the
text of the First Preliminary Draft Convention (see
BR/48/70, page 24).

Re. Article 155, No. 1 - Calculation of time limits

39. The Sub-Committee agreed to amend the text of this
already adopted provision (see BR/59/70) so that there
should be no possible ambiguity in paragraph 2. It should
be clear that in the case of a notification, the period
will begin as from the date of receipt of the document
notified (see also point 49).

Re. Article 159, No. 7 - Interruption of proceedings

40. This provision had been adopted at the end of the
previous meeting (see BR/60/70, point 60 et seq.), but it
had not been possible for the Drafting Committee to complete
its wording. See also point 6 of the present Minutes.

Re. Article 159, No. 8 - Belated observations

41. Same comment as made under point 40.

Re. Article 161, No. 1 - General provisions on notifications

42. When adopting this provision the Sub-Committee decided
not to use a system of notification by deposit in pigeon-
holes, so as to avoid giving an unfair advantage to patent
agents and consultants having their offices in the town
where the European Patent Office is situated.
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 23 December 1970

BR/68/70

Secretariat

AnnEXUM

see BR/84/71 - Annex III

MINUTES

of the 4th meeting of Working Party I Sub-Committee on "Implementing Regulations"

(Luxembourg, 23-27 November 1970)

I.

1. The fourth meeting of the Sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention was held at Luxembourg, from Monday 23 to Friday 27 November 1970, with Mr. FRESSONNET, Deputy Director, French Industrial Property Institute, in the Chair.

In addition to the national delegations represented in the Sub-Committee, the meeting was attended by WIPO and the International Patent Institute (1).

(1) See the list of participants in Annex I.
Article 110

Examen de recours

(1) Si le recours est recevable, la chambre de recours procède à l'examen d'office des faits; cet examen ne se limite ni aux moyens invoqués, ni aux demandes formées par des participants.

(2) La chambre de recours peut ne pas tenir compte de faits nouveaux ou de preuves nouvelles produits par les participants et qui ne sont pas contenus dans l'exposé des motifs du recours ou dans la réplique au recours.

(3) La chambre de recours peut requérir de l'Institut International des Brevets de la Haye ou de la section d'examen un avis documentaire additionnel sur l'état de la technique.

Remarque:
Pour le paragraphe 3, voir remarque sous article 78.
Modifications de l'avant-projet de Convention relatif à un droit européen des brevets
(article 1 à 175)

Ce document remplace le document 11155/IV/64-F du 2 octobre 1964 (articles 1 à 105)
a time limit for the payment of an additional fee, and to provide that the application shall be deemed to be withdrawn if the additional fee is not paid within the period fixed.

On the other hand, the Working Party agreed that the appellant should not have to pay a fee when he is not responsible for an additional report on the state of the art having to be obtained. The Working Party was of the opinion that this point must be regulated either in Article 165 or elsewhere.

52. In paragraph 3, the Working Party wished to make it clear that under certain circumstances further information may be required which does not necessitate an additional report on the state of the art as such, but can be provided by the Examining Sections. The Working Party amended this paragraph accordingly.

Article 111 - Hearings on appeal

53. The Working Party was asked whether there should not always be a hearing on appeal in appeal proceedings. The Working Party certainly recognized that the appeal proceedings were of a judicial nature, but did not consider that a compulsory hearing should be prescribed in every case, particularly when none of the parties wanted a hearing.
49. The Working Party wished to prescribe that an appeal should be remitted to the Board of Appeal immediately, only where parties to the proceedings are opposed to each other, and not where several parties (for example, a majority of applicants) have similar interests. It amended the first sentence of paragraph_3 accordingly.

**Article 110 - Examination of appeals**

50. In the discussion of paragraph_2, it was considered whether the submission of fresh facts or evidence should not be excluded in all cases, but the Working Party thought it would be better to leave it to the judgment of the Board of Appeal whether such submissions are to be taken into consideration. If one were to forbid new facts and evidence being taken into account, one would in fact be contradicting paragraph_1 to a certain extent, whereas paragraph_1 does not restrict the Board of Appeal to submissions made by the parties.

51. The Working Party agreed to include in paragraph_3 a provision corresponding to Article 94, paragraph_4, for the case in which an additional report on the state of the art becomes necessary on account of amendments to the claims made by the applicant. It therefore decided to introduce
MINUTES
of the meeting of Working Party I
(Luxembourg, 24 to 28 November 1969)

I.

1. The third working meeting of Working Party I was held at Luxembourg from Monday 24 to Friday 28 November 1969, with Dr. HAERTHEL, 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 German delegation for Articles 88 to 96 c (Examination procedure) (2),

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(1) See Annex for list of those attending the meeting of the Working Party.

(2) It was originally agreed at the October meeting that the German delegation should produce a report for Articles 88 to 104.

BR/12 e/69 kel/PA/mk
Artikel 113 (früher Artikel 110)
Prüfung der Beschwerde

(1) Ist die Beschwerde zulässig, so ersucht die Beschwerdekommission über den Sachverhalt von Amts wegen; diese Prüfung ist weder auf das Vorbringen noch auf die Anträge der Beteiligten beschränkt.

(2) Die Beschwerdekommission braucht neue von den Beteiligten vorgebrachte Tatsachen und Beweismittel nicht zu berücksichtigen, die nicht in der Beschwerdebegründung oder in der Erwiderung auf die Beschwerde enthalten sind.

(3) Die Beschwerdekommission kann die Prüfungsstelle um die Erteilung ergänzender Auskünfte über den Stand der Technik ersuchen oder beim Internationalen Patentinstitut in Den Haag einen ergänzenden Bericht über den Stand der Technik einholen. Stellt die Beschwerdekommission fest, daß der ergänzende Bericht mit Rücksicht auf Änderungen der Patentansprüche notwendig ist, die der Anmelder vorgenommen hat, so fordert sie den Anmelder auf, innerhalb einer Frist von einem Monat die in der Gebührenordnung zu diesem Zweck von der Patentbehörde zu vorgeschriebene Zusatzgebühr zu entrichten. Wird die Gebühr nicht rechtzeitig entrichtet, so gilt die Anmeldung als zurückgenommen.

Artikel 114 (früher Artikel 111)
Mündliche Verhandlung

Eine mündliche Verhandlung findet entweder auf Antrag eines Beteiligten oder, sofern die Beschwerdekommission dies für sachdienlich erachtet, von Amts wegen statt.

Artikel 115 (früher Artikel 112)
Entscheidung über die Beschwerde

(1) Entspricht die Beschwerde nicht den Artikeln 108, 110 und 111 oder den Verschränkungen der Ausführungsordnung zu diesem Übereinkommen, so verwirft die Beschwerdekommission sie als unzulässig.

(2) Ist die Beschwerdekommission nach der in Artikel 113 Absatz 1 vorgesehenen Prüfung der Auffassung, daß der Beschwerde nicht stattgegeben werden kann, so weist sie die Beschwerde als unbegründet zurück.

(3) Kann der Beschwerde ganz oder teilweise stattgegeben werden, so hebt die Beschwerdekommission die angefochtene Entscheidung ganz oder teilweise auf. Sie kann entweder selbst das Verfahren bis zu der in Artikel 97 Absatz 1 einschließlich vorgesehenen Mitteilung fortsetzen oder mit der Reaktion des europäischen Patents entscheiden oder, wenn sie dies angesichts des Standes des Verfahrens für notwendig hält, angemessen zur weiteren Entscheidung an die Stelle zurückverweisen, die die angefochtene Entscheidung erteilt hat.

(4) Verweist die Beschwerdekommission die Sache zur weiteren Behandlung an die Stelle zurück, die die angefochtene Entscheidung erteilt hat, so hat diese ihrer weiteren Entscheidung in dieser Sache die Entscheidung der Beschwerdekommission zugrunde zu legen. Ist die angefochtene Entscheidung von der Prüfungs-

Article 113 (former Article 110)
Examination of appeals

(1) If the appeal is admissible, the Board of Appeal shall examine the facts; this examination shall not be restricted to the arguments or contentions of the parties concerned.

(2) The Board of Appeal may disregard fresh facts or evidence submitted by the parties concerned which were not included in the statement of grounds of appeal or in the reply to the appeal.

(3) The Board of Appeal may ask the Examining Section for further information concerning the state of the art, or may obtain an additional report on the state of the art from the International Patent Institute at The Hague. If the Board of Appeal finds that the additional report is necessary because of amendments to the claims made by the applicant, it shall invite the applicant to pay within one month, the additional fee prescribed by the Rules relating to fees adopted pursuant to this Convention. If the additional fee has not been paid within the period fixed, the application shall be deemed to be withdrawn.

Artikel 114 (former Article 111)
Hearings on appeal

A hearing on appeal shall take place at the request of any party to the proceedings or at the instance of the Board of Appeal if it considers this to be expedient.

Article 115 (former Article 112)
Decision in respect of appeals

(1) If the appeal does not comply with Articles 108, 110 and 111 and with the provisions of the Implementing Regulations to this Convention, the Board of Appeal shall reject it as inadmissible.

(2) If, following the examination specified in Article 113, paragraph 1, the Board of Appeal considers that the appeal cannot be allowed, it shall dismiss it as unfounded.

(3) If the appeal is allowable in whole or in part, the Board of Appeal shall annul the decision attacked, in whole or in part. The Board may either continue the proceedings up to and including the communication provided for in Article 97, paragraph 1, or decide on the grant of the European patent, or if, having regard to the state of the proceedings, it should consider such action necessary, it may remit the matter for further decision to the authority responsible for the decision in question.

(4) If the Board of Appeal remits the matter for action by the authority which issued the decision in question, such authority shall ensure that its final decision in the matter conforms with that of the Board of Appeal. If the decision in question emanated from the Examining Section, the Examining Division shall also be bound by the decision of the Board of Appeal.
REGIERUNGSKONFERENZ
ÜBER DIE EINFÜHRUNG
EINES EUROPÄISCHEN
PATENTERTeilungsverfahrens

ERSTER VORENTWURF EINES
ÜBEREINKOMMENS ÜBER EIN
EUROPÄISCHES
PATENTERTeilungsverfahren

INTER-GOVERNMENTAL
CONFERENCE FOR THE SETTING
UP OF A EUROPEAN SYSTEM FOR
THE GRANT OF PATENTS

FIRST PRELIMINARY DRAFT OF A
CONVENTION ESTABLISHING A
EUROPEAN SYSTEM FOR THE GRANT
OF PATENTS

CONFÉRENCE
INTERGOUVERNEMENTALE POUR
L'INSTITUTION D'UN SYSTÈME
EUROPÉEN DE DÉLIVRANCE
DE BREVETS

PREMIER AVANT-PROJET DE
CONVENTION INSTITUANT UN
SYSTÈME EUROPÉEN DE
DÉLIVRANCE DE BREVETS

— 1970 —
75. Article 113: Examination of appeals

The Working Party amended paragraph 3 in view of the new provision set out in Article 137. Given the terms of that provision and of the note thereto, the Working Party decided to delete the note to Article 113 (3).

76. Article 122: International search report

Paragraph 2 of this provision was deleted in view of the new provision set out in Article 137. Consequently, the note to Article 122, paragraph 2, was deleted.

77. Article 130: Payment of renewal fees

The Swedish delegation withdrew its request to provide for a fee, per designated State, for the renewal of the application.

78. Article 137: Supplementary report on the state of the art

The adoption of this new provision, which synthesises the provisions of the Preliminary Draft relating to the supplementary report on the state of the art, enabled the Working Party to delete Articles 82, paragraph 3, 93, paragraph 2, part of paragraph 3 of Article 113, and Article 122, paragraph 2.
MINUTES

of the meeting of Working Party I
held at Luxembourg from 30 November to 2 December 1970
and of the meeting held on 3 December 1970 by that Working
Party, acting in its capacity as Co-ordinating Committee

Item 1 on the agenda (1) : Opening of the meeting and adoption
of the provisional agenda

1. The Working Party held its sixth meeting at
Luxembourg from Monday, 30 November to Wednesday,
2 December 1970, with Dr. HAERTEL, President of the German
Patent Office, in the Chair.

Representatives of the Commission of the European
Communities, WIPO-BIRPI and the International Patent
Institute took part in the meeting (2). The representative
of the General Secretariat of the Council of Europe sent
his apologies for being unable to attend.

2. The Drafting Committee, under the chairmanship of
the President of the Netherlands Octrooiraad (Patent Office),
Mr. J. B. van BENTHEM, held its meetings directly after the
deliberations of the Working Party.

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.
(2) For the list of participants, see Annex II.
Article 101b
Examination of opposition

(1) If the opposition is admissible, the Opposition Division shall examine the facts, in so far as they lie within the grounds for opposition laid down in Article 101a; this examination shall not be restricted to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The Opposition Division may disregard fresh facts or evidence submitted by the parties concerned, which were not included in the statement of grounds for opposition or in the reply to the opposition.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 21 December 1970
BR/70/70

FIRST PRELIMINARY DRAFT
OF A CONVENTION ESTABLISHING
A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Articles drafted by Working Parties I, II, III and IV)

BR/70 e/70 gc
Article 101b (new) : Examination of opposition

9. The Working Party supported the proposal of the Chairman to apply to opposition proceedings the principle that the department concerned may act on its own initiative. Several delegations considered it to be in the public interest that the European Patent Office should be able to revoke the patent on a ground not invoked by the opponent himself, where it finds that the patent ought not to have been granted. The Working Party based its decision on the consideration that the principle of the department being able to act on its own initiative had been contained in the system originally envisaged of opposition prior to grant; the change to the system of belated opposition had been decided by the Conference for a different reason and should not affect the application of the principle that the Office may act on its own initiative.

The Working Party also expressed the hope that in practice this principle would be applied within reasonable bounds.

Article 104 : Limitation of amendment of the patent

10. With regard to Article 104, the Working Party reached the conclusion that it was not sufficient merely to prevent the claims being amended in such a way as to extend the protection conferred but that it was equally important that the patent should not be extended beyond the content of the application as filed. As a result of this consideration, paragraph 2 was added to Article 104.

11. The Working Party incorporated in Article 83a a provision corresponding to Article 104, paragraph 2 (new), for the patent application at the stage prior to the filing of a request for examination.

BR/87 e/71 ght/KM/prk .../...
MINUTES

of the meeting of Working Party I

held at Luxembourg from 30 November to 2 December 1970

and of the meeting held on 3 December 1970 by that Working Party, acting in its capacity as Co-ordinating Committee

Item 1 on the agenda (1) : Opening of the meeting and adoption of the provisional agenda

1. The Working Party held its sixth meeting at Luxembourg from Monday, 30 November to Wednesday, 2 December 1970, with Dr. HAERTEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, WIPO-BIRPI and the International Patent Institute took part in the meeting (2). The representative of the General Secretariat of the Council of Europe sent his apologies for being unable to attend.

2. The Drafting Committee, under the chairmanship of the President of the Netherlands Octrooiraad (Patent Office), Mr. J. B. van BENTHEM, held its meetings directly after the deliberations of the Working Party.

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.
(2) For the list of participants, see Annex II.

BR/87 e/71 ght/BS/prk
Artikel 111

Frist und Form


Artikel 112

Abhilfe

(1) Erachtet die Stelle, deren Entscheidung angefochten wird, die Beschwerde für zulässig und begründet, so hat sie ihr abzuwenden.

(2) Wird der Beschwerdefall innerhalb der Frist von zwei Monaten nach ihrem Eingang nicht abgewiesen, so ist sie ohne sachliche Stellungnahme unverzüglich der Beschwerdekammer vorzulegen.

(3) Absatz 1 ist nicht anzuwenden, wenn dem Beschwerdegebühr ein anderer an dem Verfahren Beteiligter gegenübersteht. In diesem Falle ist die Beschwerde unverzüglich nach ihrem Eingang der Beschwerdekammer vorzulegen.

Artikel 113

Prüfung der Beschwerde

(1) Ist die Beschwerde zulässig, so erforscht die Beschwerdekammer den Sachverhalt von Amts wegen; diese Prüfung ist weder auf das Vorbringen noch auf die Anträge der Beteiligten beschränkt.

(2) Die Beschwerdekammer braucht neue von den Beteiligten vorgebrachte Tatsachen und Beweismittel nicht zu berücksichtigen, die nicht in der Beschwerdebegründung oder in der Erwiderung auf die Beschwerde enthalten sind.

(3) Die Beschwerdekammer kann die Prüfungsstelle um die Erteilung ergänzender Auskünfte über den Stand der Technik ersuchen.

Artikel 114

− gestrichen − (siehe Artikel 140).

Artikel 115

Entscheidung über die Beschwerde

(1) Entspricht die Beschwerde nicht den Artikeln 108, 110 und 111 oder den Vorschriften der Ausführungsordnung zu diesem Übereinkommen, so verwirft die Beschwerdekammer sie als unzulässig.

Article 111

Time limit and form of appeal

An appeal must be lodged in writing at the European Patent Office within a period of two months from the date of notification of the decision appealed from; it must set out the grounds on which it is based. An appeal shall not be deemed to be lodged until after the payment of the fee for appeal prescribed by the Rules relating to Fees adopted pursuant to this Convention. An additional written statement setting out the grounds of appeal in greater detail may be submitted within a period of one month after the lodging of the appeal.

Article 112

Interlocutory revision

(1) If the authority whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision.

(2) If the appeal is not allowed within a period of two months following its receipt, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

(3) The provisions of paragraph 1 shall not apply where the appellant is opposed by another party to the proceedings. In this case the appeal shall be remitted to the Board of Appeal as soon as it is lodged.

Article 113

Examination of appeals

(1) If the appeal is admissible, the Board of Appeal shall examine the facts; this examination shall not be restricted to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The Board of Appeal may disregard fresh facts or evidence submitted by the parties concerned which were not included in the statement of grounds of appeal or in the reply to the appeal.

(3) The Board of Appeal may ask the Examining Section for further information concerning the state of the art.

Article 114

− deleted − (Cf. Article 140).

Article 115

Decision in respect of appeals

(1) If the appeal does not comply with Articles 108, 110 and 111 and with the provisions of the Implementing Regulations to this Convention, the Board of Appeal shall reject it as inadmissible.
REGIERUNGSKONFERENZ ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTERTEILUNGSVERFAHREN
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
CONFERENCE INTERGOVERNEMENTALE POUR L'INSTITUTION D'UN SYSTÈME EUROPEEN DE DÉLIVRANCE DE BREVETS

ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN
sowie
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN
und
ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

SECOND PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
with
FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS TO THE
CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT
OF PATENTS
and
FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

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

— 1971 —
It was laid down in the new paragraph 4 that a request may be made for a decision by the Opposition Division reviewing the decision of the registry. As a fee was laid down for such a request, Article 2 of the Rules relating to Fees had to be extended accordingly (Article 2, No. 13a, of the Rules relating to Fees).

25. The provisions listed below were amended without discussion; the amendment consisted almost exclusively in replacing the term "Examining Section(s)" by the term "Receiving Section".

(a) Second Preliminary Draft of the Convention:

Art. 55, para. 1, Art. 56, para. 1, Art. 58, para. 2, Art. 108, para. 1, Art. 113, para. 3, Art. 140, para. 2, Art. 147, para. 1;

(b) First Preliminary Draft of the Implementing Regulations:

Re. Art. 53, Nos. 1 and 1a, Re. Art. 54, Nos. 1 and 2.

Article 68 - Date of filing

26. The Chairman had proposed the following rule for according a filing date in sub-paragraph (c): where the application mentions drawings which are referred to in the description or the claims and where the drawings are not filed with the application itself, the date of filing would be the date on which the drawings actually reach the European Patent Office; the presence of the drawings would thus be a requirement for awarding a filing date.

BR/135 e/71 lor/prk
MINUTES

of the 9th meeting of Working Party I
held from 12 to 22 October 1971, in Luxembourg

1. Working Party I held its 9th meeting in Luxembourg from 12 to 22 October 1971, with Dr. Haertel, President of the German Patent Office, in the Chair.

Representatives from the IIB and WIPO took part in the meeting as observers. The representatives of the Commission of the European Communities and the Council of Europe sent their apologies for being unable to attend. See Annex I to these minutes for the list of those present at the 9th meeting.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/120/71 and attached to this document as Annex II.

3. The Drafting Committee of Working Party I met first under the chairmanship of Mr. van BENTHEM, President of the Octrooiraad, and after his departure, that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).

BR/135 e/71 prk
(Unrevised translation)
Article 101b
Examination of opposition

(1) If the opposition is admissible, the Opposition Division shall examine the facts, in so far as they lie within the grounds for opposition laid down in Article 101a; this examination shall not be restricted to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The Opposition Division may disregard fresh facts or evidence submitted by the parties concerned, which were not included in the statement of grounds for opposition or in the reply to the opposition.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
65. The Conference noted that the wording of Article 101a allows third parties to lodge opposition on the grounds of lack of novelty of the invention which constitutes the subject-matter of a European patent, provided that the priority on which the European patent application was based has been refuted.

Article 101b (Examination of opposition)

66. The Norwegian delegation wondered whether it was advisable to provide in paragraph 2 that the Opposition Division may disregard fresh facts or evidence. This seemed contrary to the spirit of paragraph 1, which laid down that the Opposition Division is to examine the facts.

In this connection it was pointed out that the Opposition Division would probably use its discretion in exercising this right which, moreover, may be exercised to counteract any delaying tactics employed by parties to opposition proceedings.

The Norwegian delegation reserved the right to submit a proposed amendment to this provision before the next Meeting of the Conference.
MINUTES

of the

4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 20 to 28 April 1971)
Article 113
Examination of appeals

(1) If the appeal is admissible, the Board of Appeal shall examine the facts; this examination shall not be restricted to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The Board of Appeal may disregard fresh facts or evidence submitted by the parties concerned which were not included in the statement of grounds of appeal or in the reply to the appeal.

(3) The Board of Appeal may ask the Examining Section for further information concerning the state of the art.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

FIRST PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING
A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
CHAPTER IV

Appeals

Article 108 (Decisions subject to appeal)

68. The Austrian delegation reserved the right to submit a proposed amendment to paragraph 3, since it foresaw difficulties if the right of appeal was not allowed where the sole subject of the appeal was the allocation of costs of proceedings. This observation did not, however, affect its agreement to the provision of paragraph 4.

69. The Conference decided that the minimum amount of costs of proceedings referred to in paragraph 4 which would be the subject of appeal, ought to be fixed by the Implementing Regulations and not by the Convention. This would make it easier to adjust the amount in future years, since all that would be required would be a decision taken by the Administrative Council pursuant to Article 35aa, paragraph 1(c) (BR/118/71, Page 3).

Article 113 (Examination of appeals)

70. The Norwegian delegation extended its reservation regarding Article 101 b, paragraph 2, to paragraph 2 of this Article. (cf. point 18 above).
MINUTES

of the

4th Meeting of the Inter-Governmental Conference

for the setting up of a European System

for the Grant of Patents

(Luxembourg, 20 to 28 April 1971)
Article 113 (107b + 113)

Ex officio examination

(1) In proceedings before it, the European Patent Office shall examine the facts ex officio; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The European Patent Office may disregard facts or evidence which are submitted late by the parties concerned.

prk
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
8 to 24 March and 10 to 20 April 1972)
SIEBENTER TEIL
GEMEINSAME VORSCHRIFTEN

Kapitel 1
Allgemeine Vorschriften für das Verfahren

Artikel 112
Rechtliches Gehör

(1) Entscheidungen des Europäischen Patentamts dürfen nur auf Grunde gestützt werden, zu denen die Beteiligten sich äußern konnten.

(2) Bei der Prüfung der europäischen Patentanmeldung oder des europäischen Patents und bei den Entscheidungen darüber hat sich das Europäische Patentamt an die vom Anmelder oder Patentinhaber vorgelegte oder gebilligte Fassung zu halten.

Artikel 113
Ermittlung von Amts wegen

(1) In den Verfahren vor dem Europäischen Patentamt ermittelt das Europäische Patentamt den Sachverhalt von Amts wegen; es ist dabei weder auf das Vorbringen noch auf die Anträge der Beteiligten beschränkt.

(2) Das Europäische Patentamt braucht Tatsachen und Beweismittel, die von den Beteiligten verspätet vorgebracht werden, nicht zu berücksichtigen.

Artikel 114
Einwendungen Dritter


(2) Die Einwendungen werden dem Anmelder oder Patentinhaber mitgeteilt, der dazu Stellung nehmen kann.

Vgl. Regel 71 (Form der Bescheide und Mitteilungen)

Artikel 115
Mündliche Verhandlung

(1) Eine mündliche Verhandlung findet entweder auf Antrag eines Beteiligten oder, sofern das Europäische Patentamt dies für sachdienlich erachtet, von Amts wegen statt.

PART VII
COMMON PROVISIONS

Chapter I
Common provisions governing procedure

Article 112
Basis of decisions

(1) The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

(2) The European Patent Office shall consider and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant for or proprietor of the patent.

Article 113
Ex officio examination

(1) In proceedings before it, the European Patent Office shall examine the facts ex officio; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 114
Observations by third parties

(1) Following the publication of the European patent application, any person may present observations concerning the patentability of the invention in respect of which the application has been filed. Such observations must be filed in writing and must include a statement of the grounds on which they are based. That person shall not be a party to the proceedings before the European Patent Office.

(2) The observations referred to in paragraph 1 shall be communicated to the applicant for or proprietor of the patent who may comment on them.

Cf. Rule 71 (Form of communications from the European Patent Office)

Article 115
Oral proceedings

(1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings.
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
14. Article 67  The comma in line 2, paragraph 1, should be deleted.
15. Paragraph 3 should read "...deemed to be void ab initio in that State".
16. Article 68  In line 3, paragraph 2, "determine" should be amended to read: "constitute the basis for determining".
17. Article 72  The word "Contracting" in the penultimate line should be deleted.
18. Article 111  In paragraph 1(a), "ex officio" should be amended to read "of its own motion".
19. Article 113  The title should be amended to read "Examination by the European Patent Office of its own motion" and in paragraph 1, "ex officio" should be amended to read "of its own motion".
20. Article 121  In line 2, paragraph 5, "specified" should be amended to read "referred to" since the time limit of Article 74(3) is in fact not specified in that Article but in the Implementing Regulations.
21. Article 131  In paragraph 1, the word "for" in line 1 should be deleted and the first sentence should read, "...Contracting States shall on request give assistance,...opening files for inspection"
22. Article 139  "prior right" should be amended to read "prior art".
23. Article 146  Paragraph 1, last sentence, should be amended to read:
"Article 37, paragraphs 3 and 4, and Article 39 shall apply mutatis mutandis".
24. Article 156  In sub-paragraphs (3)(a) and (b) "is to" should be amended to read "shall".
.../...
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 13 August 1973
M/40

Original: English

PREPARATORY DOCUMENT

Drawn up by: The United Kingdom Government

Subject: Proposed amendments concerning the Draft Convention, the Draft Implementing Regulations, the Draft Protocol on Recognition and the Draft Protocol on Privileges and Immunities
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 (F/1 and F/2):

ARTICLE 50. -

Paragraph 3: Only concerns French text.

ARTICLE 61. -

Note: Only concerns French text

ARTICLE 81. -

Only concerns French text

ARTICLE 86. -

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).

Rule 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
Article 113

Examination by the European Patent Office of its own motion

(1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

(2) Unchanged from 1972 published text.
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

Articles of the Convention:

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Rules of the Implementing Regulations:

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Article 113

Ex officio examination

(1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

(2) 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
Examination by the European Patent Office of its own motion

(1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 5
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 112 to 139
520. The IAPIP delegation wondered whether paragraph 1 might be so interpreted that, in taking a decision, the European Patent Office could consider facts or evidence which were unknown to the parties concerned.

In reply, the Chairman referred to Article 112 (113), whereby the European Patent Office could base its decisions only on grounds or evidence on which the parties concerned had had an opportunity to present their comments.

521. The Main Committee referred to the Drafting Committee a drafting proposal from the French delegation concerning paragraph 2 (M/58/1/II).

**Article 115 (116) — Oral proceedings**

522. The Main Committee referred to the Drafting Committee a drafting proposal from the Luxembourg delegation concerning this Article (M/9, point 21).

523. The Netherlands delegation, supported by the Italian delegation, proposed that Article 115 should be modified in such a way that the European Patent Office was not required to grant an application for more than one set of oral proceedings on the same question and could refuse to hold further proceedings (M/52/I/III, page 28). The present version provided no assurance against abuse of the right of request.

524. The Austrian delegation considered that any amendment of the provision should make clear that the higher body would not be entitled to refuse oral proceedings because, say, they had already been held before the lower body.

525. In the view of the FICPI delegation, it would be better to speak of "proceedings on the same subject-matter" rather than of "proceedings on the same issue", for it ought to remain possible to examine one and the same issue, for example inventive step, on the basis of different facts in several sets of proceedings.

526. The Main Committee adopted the Netherlands proposal and referred it to the Drafting Committee with a request to take account of the comments on drafting.

527. At a subsequent meeting, the Main Committee discussed the draft submitted by the Drafting Committee whereby the European Patent Office would be entitled to refuse a request for further oral proceedings in the same body, if the basic facts on which the proceedings were based remained unchanged.

528. At the request of the United Kingdom delegation, supported by the Netherlands delegation, the Main Committee made it clear that the right so to refuse applied only if the parties concerned also remained unchanged.

**Article 116 (117) — Taking of evidence**

529. The Main Committee referred to the Drafting Committee a drafting proposal from the delegation of the Federal Republic of Germany concerning paragraph 1, sub-paragraph (g) (M/13, point 30).

530. The Main Committee also referred to the Drafting Committee a drafting proposal from the Luxembourg delegation concerning paragraphs 4 to 6 (M/9, point 22).

531. The Swiss delegation proposed that paragraphs 5 and 6 should be so supplemented that the court in the country of residence of the person giving evidence could also be requested to take evidence following a warning by the judge that false statements were punishable (see M/54/1/11/II, page 18). Under Swiss procedural law, there was no oath in certain federal cantons, but instead the judge gave a warning of this nature and it was therefore essential for Switzerland that the Convention should be supplemented to this effect.

532. The Netherlands delegation supported this proposal since, under Netherlands law also, it was not always possible to demand an oath, and in certain cases an assurance had to suffice instead.

533. The United Kingdom delegation thought that it would be difficult to draft a text which took full account of the varying legal situation in all the Contracting States. It would be satisfied by a statement in the Conference minutes to the effect that persons giving evidence could make their statements in the form prescribed by the Contracting State concerned.

534. The FICPI delegation proposed that this provision should be worded to the effect that evidence could be confirmed either under oath or by means of a written statement comparable to an oath.

535. Finally, the Main Committee referred the Swiss proposal to the Drafting Committee with a request to examine and improve paragraphs 5 and 6 in the light of the discussions.

536. At a subsequent meeting, the Swiss delegation suggested that paragraphs 5 and 6, as formulated in the meantime by the Drafting Committee, should be amended, in German in any case, in order to convey that the form of statement permissible instead of an oath was binding on the person giving evidence.

537. This suggestion was referred to the Drafting Committee.

**Article 118 (119) — Notification**

538. The Main Committee referred to the Drafting Committee a drafting proposal from the Luxembourg delegation (M/9, point 23).

**Article 120 (121) — Further processing of the European patent application**

539. The Main Committee referred to the Drafting Committee a drafting proposal from the United Kingdom delegation concerning paragraph 1 (M/64/1, page 1).

540. The FICPI delegation said it had taken the German version of paragraph 1 to mean that a patent application could be further processed if it was to be or had been refused following failure to observe a time limit set by the European Patent Office or if — following failure to observe a time limit set by the European Patent Office or a contractual time limit — it was deemed to be withdrawn. It requested confirmation of its interpretation, particularly as the English version seemed to be more restrictive.

541. The Chairman replied that, in his view, it emerged clearly from the German version that further processing was permissible only when there had been failure to observe a time limit set by the European Patent Office. The same was obviously true in the case of an application which was deemed to be withdrawn. He considered that all three versions concurred on this point.

542. The FICPI delegation then suggested that the number of instances in which further processing was permissible where there was failure to observe a time limit should be extended in keeping with the FICPI delegation's understanding thereof.

This would cover only limited cases of time limits, but as regards practice they would be particularly important: e.g. the time limit for filing documents. Not to do so would in practice signify a degree of severity that was surely not intended by the authors of this provision.

543. The Chairman pointed out that it had been the Inter-Governmental Conference's deliberate intention — on the model of Scandinavian law, moreover — to limit this provision to the time limits laid down by the European Patent Office.

He noted that no Government Delegation was prepared to adopt the FICPI suggestion.

544. The United Kingdom delegation proposed that both the
the applicant filed an appeal against the invitation to pay the additional search fee and then failed to observe a time limit. In such a case, only the appeal should be deemed to be withdrawn.

498. Summing up, the Chairman noted the Main Committee's view that Article 109, paragraph 3, should be restricted to appeals in the proceedings for grant which related to the application.

499. At a later meeting, the Main Committee discussed the following redraft of paragraph 3 submitted by the Drafting Committee:

"If the applicant fails to reply in due time to an invitation under paragraph 2, the European patent application shall be deemed to be withdrawn".

500. At the request of the Austrian delegation, the Main Committee noted that paragraph 3 was not intended to cover appeals in opposition proceedings; this should be clear from the use of the word "applicant" as against "proprietor of the patent".

501. So that paragraph 3 should not be applied to cases which, in its view, were unjustified — e.g. the refusal of a request for the entry in the European Patent Register of the transfer of rights with respect to the application, the Austrian delegation proposed that it should be supplemented as follows:

"If, in proceedings against a decision of the Receiving Section or the Examining Division in the proceedings for grant, the applicant fails to reply..." (otherwise unchanged).

502. The Swiss delegation supported the substance of this proposal and suggested that an explicit reference be made to decisions relating to the grant of the patent.

503. The United Kingdom delegation, while recognising that the Austrian delegation had a point, considered that it would be exceedingly difficult so to draft paragraph 3 as to cover all appeals against decisions in the proceedings for grant, and to exclude appeals against other decisions. It therefore suggested that, since Article 120 (121) laid down the applicant's entitlement — against payment of a fee — to request the further processing of an application deemed to be withdrawn, there was no need for a detailed enumeration of the appeals to which paragraph 3 would not apply.

504. In principle, the Netherlands delegation supported the United Kingdom delegation's view, but suggested that it should be made clear that the application would not be deemed to be withdrawn if the applicant had filed an appeal against a decision of the Legal Division. It considered that, with this exception, many of the cases which the Austrian delegation justifiedly wished to exclude could, in this way, be excluded.

505. The Austrian delegation thought that the Netherlands suggestion would certainly help to improve the version of paragraph 3 proposed by the Drafting Committee, but would not exclude all the cases which should be excluded. By contrast, the reference to the possibility of the further processing of the application under Article 120 was inapropos, since in certain cases it was unthinkable to uphold the view, as far as the applicant was concerned, that his application was deemed to be withdrawn, and these cases therefore had to be excluded a priori.

506. The Main Committee then put the Austrian proposal to the vote, as the most far-reaching one. 9 delegations voted in favour, 9 against and there were 2 abstentions.

507. The Netherlands delegation now formulated its earlier suggestion (see point 504) as a proposal.

All delegations but one voted in favour of the proposal, whereupon it was adopted by the Main Committee.

**Article 110 (111) — Decision in respect of appeals**

508. The FICPI delegation asked whether the applicant could submit an amendment of a statement of claims in appeal proceedings. This question could be of great significance in practice, as was demonstrated by the following example. Suppose an applicant filed an application with a principal and a secondary claim, and the principal claim were refused by the Examining Division. Could the applicant then base himself on the secondary claim in the appeal body? If so, he would have some chance of success with his amended statement of claim in the appeal body, even if the Board confirmed the rejection of the principal claim. If not, he ought not even to risk an appeal, but would have to limit himself to the secondary claim in the examining procedure.

509. In the view of the delegation of the Federal Republic of Germany, the Convention established that secondary claims could also be submitted to the appeal body. This procedure corresponded, moreover, with practice under German patent law.

510. The Chairman noted that the Main Committee was of the same view.

**Article 111 (112) — Decision or opinion of the Enlarged Board of Appeal**

511. The Main Committee referred to the Drafting Committee a United Kingdom drafting proposal for paragraph 1 (M/40, point 18).

512. The IAPIP delegation expressed the wish that the parties concerned should also be allowed to take part in proceedings before the Enlarged Board of Appeal under paragraph 1(a).

513. The Netherlands delegation, which concurred, nonetheless felt that its wish was already satisfied by virtue of Article 115 (116), paragraph 4, whereby oral proceedings before the Enlarged Board of Appeal were generally public.

514. The Chairman pointed out that Articles 112 et seq. (113 et seq.) applied to all bodies of the European Patent Office and therefore also to the Enlarged Board of Appeal. In his view, this meant that the Enlarged Board of Appeal could not take any decisions without the parties concerned being able to give their views on the matter, and that the Enlarged Board of Appeal was obliged to conduct oral proceedings, if one of the parties concerned so requested.

515. The French delegation considered that, under Article 111 as it stood at present, the applicant for or proprietor of the patent was not entitled to participate in proceedings before the Enlarged Board of Appeal, although he could initiate them, and therefore could not request oral proceedings either. Only the Enlarged Board of Appeal could so order.

516. The Chairman noted that the Inter-Governmental Conference had previously inclined to the view that in proceedings before the Enlarged Board of Appeal under Article 111, paragraph 1(a), all parties concerned should be given the right to be heard and to request oral proceedings.

517. The Main Committee referred this issue to the Drafting Committee, requesting it to examine and if need be clarify it.

At a subsequent meeting, it adopted the version proposed by the Drafting Committee embodying the wish of the IAPIP delegation*.

518. The Main Committee referred to the Drafting Committee a drafting proposal from the Luxembourg delegation concerning paragraph 2 (M/9, point 20).

**Article 113 (114) — Ex officio examination**

519. The Main Committee referred to the Drafting Committee a drafting proposal from the United Kingdom delegation concerning paragraph 1 (M/40, point 19).

* See Article 112, paragraph 2, of the Convention.
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
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.

II. 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
centering European patents, also found little approval.

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

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

7. 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.

9. 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.

12. 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."

13. 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.

14. 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 I2, 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.

15. 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.

16. 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

17. Main Committee III's rapporteur, Mr. Fressonnet, Deputy Director of the National Industrial Property Office
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complétée sera soumise à un examen approfondi par plusieurs membres de l'instance de recours hautement qualifiés et spécialisés dans le domaine général de la technique considérée. Cette procédure sera appliquée surtout dans les cas où le requérant ne maintiendra, dans la procédure de recours, qu'une seule revendication ou un petit nombre de revendications. En pareille hypothèse, il est concevable que les rapporteurs de l'Institut international des brevets n'aient pas, à l'époque où ils ont établi le rapport sur la nouveauté, accordé aux revendications restantes toute l'importance qu'elle ont revêtue par la suite.