Article 102 E

Travaux Préparatoires
(EPC 1973)

Comment:
The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
### Art. 102

**MPÜ**

Widerruf oder Aufrechterhaltung des europäischen Patents

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5. Filing and requirements of the European patent application (Articles 73-84 and Rules 24-37)

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

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

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

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

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


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

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

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

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

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

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

In Article 98 and in Rule 61 the Committee added new provisions which also make possible the filing of notice of opposition and consequently the continuation of opposition proceedings when the proprietor has completely surrendered the European patent or when it has lapsed for all the
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 Haerzel (Federal Republic of Germany), President of the German Patent Office and Chairman of Main Committee I. Mr. Francois 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.

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

6. 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.

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 EIB 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 EIB, 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 EIB although they were entitled to do so.

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

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

13. The Austrian delegation suggested that in the English version of point 22, in the middle of page 14, the words "some search work" be used so as not to prejudice the question of the amount of such search work, which had deliberately been left open. The text would therefore read: "...difficulties resulting from a renunciation under Section 12, to entrust some search work to national offices whose language is...".

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

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

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

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

15. Main Committee III's rapporteur, Mr. Fressonnet, Deputy Director of the National Industrial Property Office
were not official languages of the European Patent Office wanted translations of specifications and publication of those translations to be required; three months each had been agreed on for translation and publication. The remaining three months had been considered as time for consideration by the patentee’s competitors in that State.

399. The Netherlands and Swiss delegations took up the Observer delegations’ point. The Netherlands delegation stressed that as a result of the Main Committee’s decision the applicant should provide translations of the patent claims into the two other official languages of the European Patent Office (see point 378), the period of time specified in Article 96, paragraph 4, would probably have to be extended by two months, with the result that extra time would be gained for translation. It thus seemed justified to shorten the time allowed for filing opposition correspondingly.

400. The United Kingdom delegation did not want the period of nine months allowed for filing opposition to be changed immediately. If it were to emerge later that it was too long, the Administrative Council could always shorten it then. It was also worthy of note that the United Kingdom’s experience of shorter time limits had been unfortunate; in that notices of opposition had not been drawn up with sufficient care and had had to be amended later.

401. The delegation of the Federal Republic of Germany thought that competitors should in any case have six months in which to give notice of opposition. Consideration had also to be given, however, to competitors in other countries who would probably require translations of patents in their own languages; in such countries — for example Sweden — the patent would only be available for examination in the national language much later, with the result that even in the event of a nine-month period for filing opposition those competitors would be much worse off than those in countries whose national language was the language of the proceedings. The period should be allowed to stand at least for the present.

402. The Swedish delegation thought that the period of nine months which had been agreed upon hitherto should be used to start with and that it should be left to the Administrative Council to make any reduction in this period on the basis of practical experience.

403. The Netherlands delegation pointed out that the time allowed for providing translations of specifications under Article 63 (65), paragraph 1, started from the moment when an applicant was informed by the European Patent Office of the form which it was intended the grant of a patent would take. Only after these three months, which were to be extended to five, could mention of the grant be made in the European Patent Bulletin. The period allowed for filing opposition only began with the publication of that mention. In all, that amounted to fourteen months and it would therefore be quite justifiable to reduce the period allowed for filing opposition to, for instance, seven months.

404. The Norwegian delegation, taking into account the views of interested circles in Norway, was in favour of retaining the present period.

405. The Irish delegation did not think that the period for filing opposition should be changed for the time being.

406. In the ensuing vote, three delegations were in favour of reducing the period for filing opposition to six months, ten were in favour of retaining the nine-month period, and three delegations abstained.

407. The Member States of the European Communities proposed that a new paragraph provide that opposition might still be filed even where the patent had been surrendered or had lapsed for all designated States (see M/14, point 4).

408. The United Kingdom delegation explained this proposal by pointing out that the effect of a patent’s being surrendered or lapsing was immediate, but that there might be residual legal effects which could appropriately be removed subsequently by means of the opposition procedure.

409. The Main Committee adopted this proposal.

410. The Netherlands delegation said that paragraph 4 constituted an exception to the principle of the uniform treatment of proprietors laid down in Article 117 (118) in that a previous proprietor and the person who replaced him in respect of a designated Contracting State were not treated as joint proprietors. It followed therefore that two separate patents would be involved, which might turn out quite differently as regards claims, descriptions and so on. Because of this fact textual drafting changes would probably have to be made in the Implementing Regulations.

411. The Chairman noted that this was also the view of the Main Committee.

Article 99(100) — Grounds for opposition

412. The Main Committee referred to the Drafting Committee a proposal for the wording of sub-paragraph (b) of this Article by the delegation of the Federal Republic of Germany (M/11, point 26).

Article 100(101) — Examination of the opposition

413. The Norwegian delegation withdrew its proposal concerning Article 100 (M/28, point 10).

Article 101(102) — Revocation or maintenance

414. A proposal by Member States of the European Communities concerning the wording of paragraph 2 (M/14, point 5) was referred to the Drafting Committee.

415. As regards paragraph 3, the Main Committee decided that, in the same way as it had been laid down that the applicant would be required to have the patent claims translated into the two other official languages of the European Patent Office (see point 378 above), the proprietor of the patent would have to supply a translation of any claims changed as a result of opposition proceedings.

Article 103(104) — Costs*

Article 104(105) — Intervention of the assumed infringer

416. A proposal by the delegation of the Federal Republic of Germany concerning the wording of paragraphs 1 and 2 (M/47/I/II/III, point 41) was referred to the Drafting Committee.

417. In connection with paragraph 1, the Swiss delegation proposed that a third party should also be allowed to intervene in opposition proceedings if it showed that, after being warned of infringement by the proprietor of the patent, it had instituted proceedings against the proprietor of the patent in order to have a ruling that he was not infringing the patent (see M/54/I/II/III, page 15). This remedy was available under the law of a number of countries and had proved to be of value.

418. The UNICE delegation supported this proposal. It stressed, however, that warning by the proprietor of the patent could not be considered sufficient grounds for intervention, but that a party wanting to intervene would have to have started proceedings for a ruling.

419. The CEIF and UNION delegations, the latter making reference to its own proposal in M/28, point 8, also supported this proposal.

* For an explanation of these Articles, see points 2012, 2015 and 2016.
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
Article 90

Only concerns German text

Article 93

(1) ... It shall be published simultaneously with the publication of the specification of the European patent when the grant of the patent has become effective before the expiry of the period referred to above.

Article 102

Only concerns German text

Article 116

Only concerns German text

Article 117

Only concerns German text

Article 124

Only concerns German text

Article 133

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Article 134

Only concerns German text

Article 143

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

- 1973 -

Munich, 4 October 1973
M/160/K
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee
Subject: Amendments to the texts of document M/146/R.1 to 15
Article 101

Revocation or maintenance of the European patent

(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 prejudice the maintenance of the European patent, it shall revoke the patent.

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 do not prejudice the maintenance of the patent unamended, it shall reject the opposition.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that:

(a) it is established, in accordance with the provisions of the Implementing Regulations, that the proprietor of the patent approves the text in which the Opposition Division intends to maintain the patent;

(b) the fee for the printing of a new specification of the European patent is paid within the time limit prescribed in the Implementing Regulations.

(4) If the fee for the printing of a new specification is not paid in due time, the patent shall be revoked.

(4a) Provision may be made in the Implementing Regulations for the proprietor of the patent to file a translation of any amended claims in the two official languages of the European Patent Office other than the language of the proceedings. If the translation has not been filed in due time the patent shall be revoked.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 4
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 84 to 111
Article 101

Revocation or maintenance of the European patent

(1) Only concerns German text.

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 99 do not prejudice the maintenance of the patent unamended, it shall reject the opposition.

(3) )

Only concern French and German texts.

(a)

(b) The fee for the printing of a new specification of the European patent is paid within the time limit prescribed in the Implementing Regulations.

(4) If the fee for the printing of a new specification is not paid in due time, the patent shall be revoked.

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

- 1973 -

Munich, 27 September 1973

M/136/I/R 10

Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 26 SEPTEMBER 1973

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Article 101

Revocation or maintenance of the European patent

(1) Only concerns German text.

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 99 do not prejudice the maintenance of the patent unamended, it shall reject the opposition.

(3) Only concern French and German texts.

(b) the fee for the printing of a new specification of the European patent is paid within the time limit prescribed in the Implementing Regulations.

(4) If the fee for the printing of a new specification is not paid in due time and the translation of any amended claims is not filed in due time, the patent shall be revoked.

(4a) Provision may be made in the Implementing Regulations for the proprietor of the patent to file a translation of any amended claims in the two official languages of the European Patent Office other than the language of the proceedings. If the translation has not been filed in due time the patent shall be revoked.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 22 September 1973
M/124/I/R 8
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 21 SEPTEMBER 1973

Articles of the Convention:

Article 96
Article 101
Article 157
Article 161

Rules of the Implementing Regulations:

Rule 29
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Rule 50
Rule 52
Rule 59
Article 101

Revocation or maintenance of the European patent

1) Only concerns German text

2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 99 do not prejudice the maintenance of the European patent unamended, it shall reject the opposition.

3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the European patent and the invention to which it relates meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that:

   (a) it is established, in accordance with the provisions of the Implementing Regulations, that the proprietor of the patent approves the text in which the Opposition Division intends to maintain the patent;

   (b) the fee for the printing of a new European patent specification is paid within the time limit prescribed in the Implementing Regulations; and

   (c) the proprietor of the patent has filed a translation of any amended claims in the two official languages of the European Patent Office other than the language of the proceedings before the end of the time limit referred to in sub-paragraph (b).

4) If the fee for the printing of a new European patent specification is not paid in due time and the translation of any amended claims is not filed in due time, the European patent shall be revoked.

M/80/I/R 2
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 14 September 1973

M/80/I/R 2

Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 13 SEPTEMBER 1973

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5 Artikel 101 Absatz 2

Diese Bestimmung sollte wie folgt formuliert werden:

„Ist die Einspruchsabteilung der Auffassung, daß die in Artikel 99 genannten Einspruchsgründe einer Aufrechterhaltung des Patents in unveränderter Form nicht entgegenstehen, so weist sie den Einspruch zurück.“

Begründung:


5 Artikel 101, paragraph 2

It is proposed that the following wording be adopted for this provision:

“If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 99 do not prejudice the maintenance of the patent unamended, it shall reject the opposition.”

Reason:

The phrase “if there is no need to amend the specification” in the present text of this provision should be replaced by the proposed text since the provision as it stands could lead to an erroneous interpretation. The structure of Article 101 makes a clear distinction between the three possible results of the procedure: revocation of the patent (paragraph 1), maintenance of the patent unamended (paragraph 2), maintenance of the patent in amended form (paragraph 3).
STELLUNGNAHME

DER MITGLIEDSTAATEN DER EUROPÄISCHEN GEMEINSCHAFTEN

COMMENTS

BY THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

PRISE DE POSITION

DES ÉTATS MEMBRES DES COMMUNAUTÉS EUROPÉENNES
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
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)

CONFÉRENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)

(Munich, 10 septembre - 6 octobre 1973)

STELLUNGNAHMEN
zu den vorbereitenden Dokumenten
herausgegeben von der
Regierung der Bundesrepublik Deutschland

COMMENTS
on the preparatory documents
published by the
Government of the Federal Republic of Germany

PRISES DE POSITION
sur les documents préparatoires
publiées par le
Gouvernement de la République fédérale d'Allemagne

1973
(2) Bei der Prüfung des Einspruchs, die nach Maßgabe der Ausführungsordnung durchzuführen ist, fordert die Einspruchsabteilung die Beteiligten so oft wie erforderlich auf, innerhalb einer von ihr zu bestimmenden Frist eine Stellungnahme zu ihren Bescheiden oder zu den Schriftsätzen anderer Beteiligter einzureichen.

Vgl. Regeln 57 (Verwerfung des Einspruchs als unzulässig), 58 (Vorbereitung der Einspruchsprüfung), 59 (Prüfung des Einspruchs), 60 (Anforderung von Unterlagen) und 71 (Form der Bescheide und Mitteilungen)

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Artikel 101
Widerruf oder Aufrechterhaltung

(1) Ist die Einspruchsabteilung der Auffassung, daß die in Artikel 99 genannten Einspruchsgründe der Aufrechterhaltung des Patents entgegenstehen, so widerruft sie das europäische Patent.

(2) Ist die Einspruchsabteilung der Auffassung, daß die in Artikel 99 genannten Einspruchsgründe der Aufrechterhaltung des Patents nicht entgegenstehen, so weist sie den Einspruch zurück, wenn eine Änderung der Patentschrift nicht erforderlich ist.

(3) Ist die Einspruchsabteilung der Auffassung, daß unter Berücksichtigung der vom Patentinhaber im Einspruchsverfahren vorgenommenen Änderungen das Patent und die Erfindung, die es zum Gegenstand hat, den Erfordernissen dieses Übereinkommens genügen, so beschließt sie die Aufrechterhaltung des europäischen Patents in dem geänderten Umfang, vorausgesetzt, daß

a) gemäß der Ausführungsordnung feststeht, daß der Patentinhaber mit der Fassung, in der die Einspruchsabteilung das Patent aufrechterhalten beabsichtigt, einverstanden ist, und
b) die Druckkostengebühr für eine neue Patentschrift innerhalb der in der Ausführungsordnung vorgeschriebenen Frist entrichtet worden ist.

(4) Wird die Druckkostengebühr für eine neue Patentschrift nicht rechtzeitig entrichtet, so wird das europäische Patent widerrufen.

Vgl. Regeln 59 (Prüfung des Einspruchs), 69 (Form der Entscheidungen) und 90 (Berichtigung von Fehlern in Entscheidungen)

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Article 101
Revocation or maintenance of the patent

(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 99 prejudice the maintenance of the European patent, it shall revoke the patent.

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 99 do not prejudice the maintenance of the patent, it shall reject the opposition, if there is no need to amend the specification.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that:

(a) it is established, in accordance with the provisions of the Implementing Regulations, that the proprietor of the patent approves the text in which the Opposition Division intends to maintain the patent; and
(b) the fee for the printing of a new specification is paid within the time limit prescribed in the Implementing Regulations.

(4) If the fee for the printing of a new specification is not paid in due time, the European patent shall be revoked.

Cf. Rules 59 (Examination of opposition), 69 (Form of decisions) and 90 (Correction of errors in decisions)

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Artikel 102
Veröffentlichung einer neuen Patentschrift

Ist das europäische Patent nach Artikel 101 Absatz 3 geändert worden, so gibt das Europäische Patentamt gleichzeitig mit der Bekanntmachung des Hinweises auf

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Article 102
Publication of a new specification

If a European patent is amended under Article 101, paragraph 3, the European Patent Office shall, at the same time as it publishes the mention of the opposition
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
The Conference recorded its agreement to the conclusions of the Co-ordinating Committee concerning these three provisions.

With regard to Rule 25, the French delegation reserved the right to raise the problem again at the Diplomatic Conference.

With regard to Article 129, the Conference, on a proposal from the United Kingdom delegation, recorded its agreement to amend the wording of paragraph 1 in such a way that information concerning not only national applications but also applications for a European patent filed with the national office be made subject to national provisions regarding secrecy.

Article 101, paragraph 3

44. The Austrian delegation asked whether, subsequent to opposition proceedings, the proprietor of a patent must agree to the amended form in which the Opposition Division intends to maintain the patent.

It was established that, in accordance with the general system laid down in the Convention, the proprietor of the patent must record his agreement to the text in which the patent is granted.
MINUTES

of the

6th meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
Article 101 (105)

Revocation or maintenance of the patent

(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 99 prejudice the maintenance of the European patent, it shall revoke the patent.

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 99 do not prejudice the maintenance of the patent, it shall reject the opposition, if there is no need to amend the specification.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that:

(a) it is established, in accordance with the provisions of the Implementing Regulations, that the proprietor of the patent approves the text in which the Opposition Division intends to maintain the patent; and

(b) the fee for the printing of a new specification is paid within the time limit prescribed in the Implementing Regulations.

(4) If the fee for the printing of a new specification is not paid in due time, the European patent shall be revoked.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
but that the opponent should be able to appeal against the grant of the patent in its final form. Other delegations, on the other hand, were in favour of the opponent and any intervenor also having the right to object. The Working Party agreed on a compromise solution whereby the European Patent Office is entitled, but not obliged, to continue the opposition proceedings where a party expresses disapproval of the text in which it is intended to maintain the patent.

Article 106a - Intervention of the presumed infringer in opposition proceedings pending before the European Patent Office

61. In compliance with a suggestion by several of the international organisations, the Working Party decided to limit the right of a presumed infringer to intervene in opposition proceedings after the expiry of the opposition period to a period of three months from the date on which the infringement proceedings were instituted (cf. BR/168/72, point 128).

On the other hand, the Working Party did not adopt the suggestion that intervention should no longer be admissible when an appeal was pending on the opposition proceedings.

The other amendments made by the Working Party involved drafting only.
A provision to this effect was inserted in the Implementing Regulations as Re. Article 85, No. 3.

Article 97 - Grant of the European patent

58. The Working Party made clear in paragraph 2 the legal consequences of the applicant not being in agreement with the grant of the patent in the form envisaged: it would result in the communication of the text in which it was intended to grant the patent being deemed to be withdrawn and in the continuation of the examination proceedings (cf. BR/168/72, point 123).

The Working Party agreed that the applicant should state his grounds for disapproving the intended form of the grant of the patent.

59. For the amendments to paragraphs 3 and 4, see point 21 above.

Article 105 - Decision in opposition proceedings

60. By analogy with the clarification made in Article 97, paragraph 2 (see point 58 above), it was necessary to state in this Article the legal consequences of the proprietor of the patent (or the opponent) not being in agreement with the amended form of the patent.

Some delegations considered that only the proprietor of the patent should have the right to object to the grant of the patent; that the opponent should have no such right;
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Secretariat

BR/177/72

REPORT

on the 11th meeting of Working Party I
held in Luxembourg from 28 February to 3 March 1972

1. Working Party I held its 11th meeting in Luxembourg
from 28 February to 3 March 1972 with Dr Haertel,
President of the Deutsches Patentamt in the Chair.

Representatives of the Commission of the European
Communities, the IIB and WIPO attended the meeting as
observers. The Representatives of the Council of Europe
sent apologies for absence. Those present at the 11th
meeting are listed in Annex I to this report.

2. Working Party I adopted the provisional agenda as
contained in BR/GT I/143/72; it was agreed that Articles
153 and 154 would be dealt with by the Co-ordinating
Committee at its next meeting scheduled for 15 to 19 May
1972. The provisional agenda is contained in Annex II to
this report.

3. The Drafting Committee of Working Party I was chaired
by Mr van Benthem, President of the Octrooiraad.

The results of the Drafting Committee's work were
circulated under reference BR/176/72.

BR/177 e/72 oyd/AH/prk

.../...
**Artikel 104**

Beschränkung der Änderung des Patents

(1) Im Einspruchsverfahren dürfen die Patentansprüche des europäischen Patents nicht in der Weise geändert werden, daß der Schutzbereich erweitert wird.

(2) Ein europäisches Patent darf nicht in der Weise geändert werden, daß sein Gegenstand weiter ist als der Inhalt der eingereichten Anmeldung.

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**Article 104**

Limitation of amendment of the patent

(1) The claims of the European patent may not be amended during opposition proceedings in such a way as to extend the protection conferred.

(2) A European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

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**Artikel 105**

Entscheidung über den Einspruch

(1) Ist die Einspruchsabteilung der Auffassung, daß die in Artikel 101a genannten Einspruchsgründe einer Aufrechterhaltung des Patents entgegenstehen, so widerruft sie das europäische Patent.

(2) Ist die Einspruchsabteilung der Auffassung, daß die in Artikel 101a genannten Einspruchsgründe einer Aufrechterhaltung des Patents nicht entgegenstehen, so weist sie den Einspruch zurück, wenn es einer Änderung der Patentschrift nicht bedarf.


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**Article 105**

Decision in opposition proceedings

(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 101a prejudice the maintenance of a patent, it shall revoke the European patent.

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 101a do not prejudice the maintenance of the patent, it shall reject the opposition, if there is no need to amend the specification.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the grounds for opposition mentioned in Article 101a do not prejudice the maintenance of the patent, it shall inform the parties that it intends to maintain the patent as amended and shall request the proprietor of the patent to pay, within a period of one month, the fee prescribed for the printing of a new specification by the Rules relating to Fees adopted pursuant to this Convention. If the fee is not paid in due time, the European patent shall be revoked. When the fee for the printing of the new specification has been paid, the Opposition Division shall decide to maintain the European patent as amended. The provisions of Article 20, paragraph 2, are applicable mutatis mutandis.

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**Artikel 105a**

Wirkung der Entscheidung


**Article 105a**

Effect of the decision

Once the decision revoking the European patent wholly or in part has become final, the patent shall be deemed, to the extent that it has been revoked, not to have had, as from the outset, the effects specified in Article 18.

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**Artikel 106**

— gestrichen — (siehe Artikel 140).

**Article 106**

— deleted — (Cf. Article 140).
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

— 1971 —
71. **Article 101**: Opposition

The Working Party decided to delete the notes to this Article in view of the new provisions it adopted for opposition proceedings (Article 101a dealing with grounds for opposition and Article 55a dealing with Opposition Divisions). Note 3 is covered by a provision of the Implementing Regulations.

72. **Article 105**: Decision in opposition proceedings

(a) The note to this Article was deleted (cf. Article 101a).

(b) Paragraph 4 was deleted, its contents having been transferred to Article 138.

(c) Paragraph 5 was deleted, its contents having been transferred to the Implementing Regulations.

73. **Article 106**: Hearings before the Examining Division

This Article was deleted, its contents having been transferred to Article 139. The Working Party also decided to delete the two notes relating to Articles 101 to 106, in view of the provisions adopted for opposition proceedings.

74. **Article 108**: Decisions subject to appeal

The Working Party retained paragraph 1 in its present form (subject to the addition of the mention of Opposition Divisions). Paragraph 2 was not amended at this stage, to allow the interested circles time to submit their observations.

BR/87 e/71 nan/BS/prk
12. The Working Party agreed unanimously that the European patent should only be revocable on the grounds for opposition mentioned in Article 101b. It thereby rejected a more far-reaching wording of Article 105, according to which the Examining Division would have been able to object to all formal deficiencies as well as to any lack of unity of the invention protected.

It was therefore necessary to include in Article 101b a reference to Article 94, which deals with the division of a European patent application after a request for examination has been made.

13. The UK delegation said that in its opinion, certain points in the opposition proceedings needed supplementing. It reserved the right to make proposals on the subject at a later date.

14. The Working Party incorporated Paragraph 4 in the new Article 138 (see under Point 79) and decided to transfer the provisions of Paragraph 5 to the Implementing Regulations.

Article 105a (new): Effect of the decision
(See also BR/GT I/80/70)

15. It was established that the question of the retrospective effect of revocation is closely connected with the question of the retrospective effect of the annulment of the patent, and it was noted that the Contracting States had decided on the retrospective effect of annulment when they signed the Strasbourg Convention of 27 November 1963 on the Unification of Certain Points of Substantive Law on Patents for Invention (Article 1 Sentence 3). It would be only logical for the Contracting States to adopt
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.
Artikel 102 (früher Artikel 97)
Prüfungsbescheid im Einspruchsverfahren
Ist die Prüfungsabteilung nach Prüfung des Einspruchs der Auffassung, daß das europäische Patent nicht hätte erteilt werden dürfen, so findet Artikel 95 entsprechende Anwendung. Der Prüfungsbescheid und die Stellungnahme des Patentinhabers werden den übrigen Beteiligten mitgeteilt.

Artikel 103 (früher Artikel 97a)
Stellungnahmen der Beteiligten
Die Prüfungsabteilung fordert die übrigen Beteiligten auf, sich innerhalb einer von ihr zu bestimmenden Frist zu Stellungnahmen des Patentinhabers zu äußern, sofern diese wesentliches neues Vorbringen enthalten oder die Prüfungsabteilung dies aus anderen Gründen für sächlich hält.

Artikel 104 (früher Artikel 97b)
Beschränkung der Änderung der Ansprüche
Im Einspruchsverfahren dürfen die Patentsansprüche des europäischen Patents nicht in der Weise geändert werden, daß der Schutzbereich erweitert wird.

Artikel 105 (früher Artikel 101)
Entscheidung über den Einspruch
(1) Ist die Prüfungsabteilung der Auffassung, daß die in Artikel .... vorgesehenen Erfordernisse nicht erfüllt sind, so widerruft sie das europäische Patent.

(2) Ist die Prüfungsabteilung der Auffassung, daß die in Artikel .... vorgesehenen Erfordernisse erfüllt sind, ohne daß es einer Änderung der Patentschrift bedarf, so weist sie den Einspruch zurück.


(4) Das europäische Patent darf nicht aus Gründen widerrufen werden, die dem Patentinhaber nicht vorher mitgeteilt worden sind.


Article 102 (former Article 97)
Notification of the result of the examination in opposition proceedings
If, after having examined the opposition, the Examining Division considers that the European patent should not have been granted, Article 95 shall apply mutatis mutandis. The result of the examination and the observations of the proprietor of the patent shall be communicated to the other parties concerned.

Article 103 (former Article 97a)
Reply of the parties concerned
The Examining Division shall invite the other parties concerned to comment, within a period to be fixed by the Division, on the observations of the proprietor of the patent in so far as these contain substantial new elements or in so far as the Examining Division considers this expedient for other reasons.

Article 104 (former Article 97b)
Limitation of amendment of claims
The claims of the European patent may not be amended during opposition proceedings in such a way as to extend the protection conferred.

Article 105 (former Article 101)
Decision in opposition proceedings
(1) If the Examining Division is of the opinion that the requirements referred to in Article .... have not been met, it shall revoke the European patent.

(2) If the Examining Division is of the opinion that the requirements referred to in Article .... have been met, without any need to amend the specification, it shall reject the opposition.

(3) If the Examining Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the requirements referred to in Article .... have been met, it shall inform the parties that it intends to maintain the European patent as amended and shall request the proprietor of the patent to pay, within a period of one month, the fee prescribed for the printing of a new specification by the Rules relating to fees adopted pursuant to this Convention. If the fee is not paid in due time, the European patent shall be revoked. When the fee for the printing of the new specification has been paid, the Examining Division shall decide to maintain the European patent as amended. The provisions of Article 20, paragraph 2, are applicable mutatis mutandis.

(4) The European patent may not be revoked on grounds which have not been previously communicated to the proprietor.

(5) The decision on the opposition shall be communicated to the parties concerned, and shall be entered in the Register of European Patents and published in the European Patent Bulletin.
FIRST PRELIMINARY DRAFT OF A CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
37. If the patent is maintained as amended during the opposition proceedings, pursuant to paragraph 2, the question arises whether the part of the patent which is not maintained must be expressly revoked. The Working Party was of the opinion that this is not necessary, but that the retroactive limitation of the extent of the protection is sufficiently clear from the reference to Article 21, paragraph 2.

38. Paragraph 4, together with individual provisions in other Articles, could be combined later into a general provision applicable for all proceedings before the European Patent Office.

Article 102 - Hearings before the Examining Division

39. No comment; The observations on opposition procedure made under Article 102 in BR/11/69 are discussed in the present document under points 17 and 36.

Article 103 - Publication of a new specification

40. No comment.

Article 104 - Certificate for a European patent

41. No comment.
Article 99

34. For the time being, the Working Party has not included any Article corresponding to Article 99 of the earlier drafts in its Draft. At the time of its first examination, it considered that the circumstances are too varied to be covered by a general rule, and thought it better to leave the decision to the competent authorities in individual cases. It wishes to examine later whether the possible effects of the lapse of a patent on the examination proceedings do in fact require express regulation in this Convention (also see note 1 under Article 102 in BR/11/69).

Article 100

35. No comment.

Article 101 - Decision in opposition proceedings

36. If the requirements for giving notice of opposition were not left open, as hitherto in Article 96d, but were set out in a special Article, there would have to be a reference to this new Article in paragraphs 1, 2, and 3. It might then be necessary to amend the text of these paragraphs with reference to the wording of this new Article.

BR/12 e/69 ern/PA/mk .../...
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. HAEFTEL, 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.
Article 101

Confirmation du brevet européen provisoire

(1) Si la division d'examen estime que les conditions visées à l'article 94, paragraphe 2, sont satisfaites, compte tenu des modifications apportées par le titulaire du brevet, elle fait connaître à celui-ci qu'elle envisage de confirmer entièrement ou partiellement le brevet européen provisoire, et l'invite à verser dans un délai d'un mois les taxes prévues pour la confirmation et l'impression par le règlement relatif aux taxes pris en exécution de la présente convention.

(2) Lorsque les taxes de confirmation et d'impression ont été versées, la division d'examen confirme le brevet européen provisoire en brevet européen définitif. La décision est notifiée aux participants.

(3) La confirmation du brevet européen provisoire en brevet européen définitif est inscrite au registre européen des brevets et publiée au Bulletin européen des brevets lorsqu'elle est devenue définitive.

(4) Par l'effet de la publication visée au paragraphe 3, le brevet européen provisoire est transformé en brevet définitif.
Bruxelles, le 22 Janvier 1965
2.335/IV/65-F

Confidentiel

Modifications de l'avant-projet de Convention
relatif à un droit européen des brevets

(article 1 à 175)

Ce document remplace le document 11.155/IV/64-F du
2 octobre 1964 (articles 1 à 103)
Artikel 101

Botschaft des vorläufigen europäischen Patents

(1) Ist die Prüfungsabteilung der Luffassung, daß die in Artikel 94 Absatz 2 vorgesehenen Erfordernisse unter Berücksichtigung der vom Patentinhäber vorgenommenen Änderungen erfüllt sind, so teilt sie dem Patentinhäber mit, daß sie das vorläufige europäische Patent ganz oder teilweise zu bestätigen beabsichtigt, und fordert ihn auf, innerhalb einer Frist von einem Monat die Gebühren für die Botschaft und für die Druckkosten gemäß der Gebührenordnung zu diesem Abkommen zu entrichten.

(2) Sind die Gebühren für die Botschaft und die Druckkosten entrichtet, so bestätigt die Prüfungsabteilung das vorläufige europäische Patent als endgültiges europäisches Patent. Die Entscheidung wird den Beteiligten mitgeteilt.


Arbeitsgruppe "Patente"

Brüssel, den 22. Januar 1965
2335/IV/65-D

Vertraulich

Änderungen des Vorentwurfs eines Abkommens
über ein europäisches Patentrecht

(Artikel 1 bis 175)

Dieses Arbeitsdokument ersetzt das Arbeitsdokument 11.155/IV/64-D vom 2. Oktober 1964 (Artikel 1 bis 103).

2335/IV/65-D
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 a**

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.
Résultats de la cinquième session
du groupe de travail "Brevets"
qui s'est tenue à Bruxelles
du 2 au 18 avril 1962
Die niederländische Delegation soll dem Redaktionsausschuß einen Vor-
enschlag unterbreiten über die eventuell in Abs. 1 aufzunehmende Verpflichtung,
den Zwischenantrag zu begründen. Falls im Redaktionsausschuß keine Einstim-
mittel zu erreichen sei, soll er in der nächsten Sitzung der Arbeitsgruppe
die Frage erneut vorlegen.

Artikel 85 wird dem Redaktionsausschuß überwiesen.

Artikel 86

Der Redaktionsausschuß wird beauftragt, zu prüfen, ob Dritte auch be-
züglich der Voraussetzung einer neuen Erfindung das Widerspruchsrecht be-
nommen sollen.

Artikel 88

Wegen der Bestimmung des Art. 97 Abs. 4 muß Abs. 3 gestrichen werden.
Artikel 88 wird angenommen.

Artikel 88 a

Die französische Delegation besteht darauf, daß ihre Bemerkung dem
Koordinationsausschuß vorgelegt wird.

Artikel 89 wird angenommen.

Artikel 90

Absatz 2 wird gestrichen.

Artikel 90 a

Absatz 4 wird gestrichen.

Artikel 90 a bis

Die beiden Alternativen des Absatzes 2 werden bis zur Entscheidung der
Arbeitsgruppe in der nächsten Sitzung beibehalten.

Der Redaktionsausschuß soll sich darüber äußern, welche Alternative
er vorziehe.

Die Artikel 90 a, 90 a ter - 90 f werden angenommen.
Ergebnisse der fünften Sitzung
der Arbeitsgruppe "Patente"
vom 2. bis 18. April 1962
in Brüssel
Article 90 a ter

Confirmation de brevet européen provisoire

(1) Si, après application, des articles 90, 90 a et 90 a bis, la division d'examen estime que le brevet européen provisoire, l'invention qui en fait l'objet et la description publiée satisfont, compte tenu des modifications apportées par le titulaire du brevet, aux prescriptions de la présente Convention, elle fait connaître à celui-ci qu'elle envisage de confirmer entièrement ou partiellement le brevet européen provisoire et l'invite à verser dans un délai d'un mois les taxes prévues pour la confirmation et l'impression au règlement relatif aux taxes pris en exécution de la présente Convention.

(2) Lorsque les taxes de confirmation et d'impression ont été versées, la division d'examen confirme par une décision le brevet européen provisoire en brevet européen définitif. En cas d'intervention des tiers la décision doit être motivée. La décision est communiquée au titulaire du brevet et aux tiers participants au sens du paragraphe 2 de l'article 90 a.

(3) La confirmation du brevet européen provisoire en brevet européen définitif est inscrite au registre européen des brevets et publiée au bulletin européen des brevets lorsque la décision visée au paragraphe 2 est définitive.
GROUPE DE TRAVAIL "Brevets"

Bruxelles, le 18 juillet 1961

Confidentiel

Résultats de la deuxième session du groupe de travail "Brevets" qui s'est tenue à Bruxelles du 3 au 14 juillet 1961
Artikel 90 a ter

Bestätigung des vorläufigen europäischen Patents

(1) Ist die Prüfungsabteilung, gegebenenfalls nach Anwendung der Artikel 90, 90 a und 90 a bis der Auffassung, dass das vorläufige europäische Patent, die Erfindung, die Gegenstand dieses Patents ist, und die veröffentlichte Beschreibung unter Berücksichtigung der vom Patentinhaber vorgenommenen Änderungen den Vorschriften dieses Abkommens genügen, so teilt sie dem Patentinhaber mit, dass sie das vorläufige europäische Patent ganz oder teilweise zu bestätigen beabsichtigt, und fordert ihn auf, innerhalb einer Frist von einem Monat die Gebühren für die Bestätigung und für die Druckkosten gemäß der Gebührenordnung zu diesem Abkommen zu entrichten.

(2) Sind die Gebühren für die Bestätigung und die Druckkosten entrichtet, so bestätigt die Prüfungsabteilung das vorläufige europäische Patent durch Beschluss als endgültiges europäisches Patent. Im Falle einer Beteiligung Dritter ist die Entscheidung zu begründen. Die Entscheidung wird dem Patentinhaber und den Beteiligten im Sinne des Artikels 90 a Absatz 2 mitgeteilt.

(3) Die Bestätigung des vorläufigen europäischen Patents als endgültiges europäisches Patent wird in das europäische Patentregister eingetragen und im europäischen Patentblatt bekannt gemacht, sobald der Beschluss gemäß Absatz 2 rechtskräftig geworden ist.
Brüssel, den 18. Juli 1961

VERTRAULICH

Ergebnisse der zweiten Sitzung
der Arbeitsgruppe "Patente"
vom 3. bis 14. Juli 1961
in Brüssel
Session du 3 au 14 juillet 1961.


Le Président ouvre la séance à 9 heures 45.

L'approbation du procès-verbal de la séance du 7 juillet est reportée au lendemain.

Discussion des articles 90 a, 90 a bis et 90 a ter.

Le Président expose au groupe les principes contenus dans ces nouveaux articles qui sont inspirés d'une proposition de la délégation néerlandaise tendant à permettre aux tiers qui ont introduit une requête de participer à la procédure avant que la division des brevets ne prenne sa décision sur la confirmation du brevet provisoire.

Le Président fait observer qu'il manque encore un article régissant la question de la procédure orale. Cet article sera rédigé ultérieurement.

A la suite d'une observation de M. van Benthem, le Président explique que la communication des objections soumises par des tiers participant est prévue à l'alinéa 3 de l'article 90 a) parce qu'il est possible que le titulaire du brevet désire limiter lui-même sa demande étant donné ces objections.

Le groupe devra trancher ultérieurement la question de savoir si le respect des délais prévus à l'alinéa 3 sera indispensable en cas de procédure orale.

Le groupe adopte à l'unanimité les trois articles et les transmet au Comité de rédaction.
GROUPE DE TRAVAIL
"Brevets"

Bruxelles, le 18 juillet 1961

Confidentiel

Résultats de la deuxième session du groupe de travail "Brevets"
qui s'est tenue à Bruxelles
du 3 au 14 juillet 1961
Sitzung vom 3. bis 14. Juli 1961

Bericht über die Sitzung vom 11. Juli 1961

Der Präsident eröffnet die Sitzung um 9.45 Uhr.

Die Genehmigung des Protokolls über die Sitzung vom 7. Juli wird auf den nächsten Tag verschoben.

Erörterungen zu Artikel 90 a), 90 a bis und 90 a ter

Der Präsident erläutert der Gruppe die Grundsätze dieser neuen auf einen Vorschlag der niederländischen Delegation zurückgehenden Artikel, die den Dritten, die einen Antrag auf Beteiligung gestellt haben, die Möglichkeit gaben sollen, dem Vorfahren bis zur Entscheidung der Patentrechtsabteilung über die Bestätigung des vorläufigen Patentes beizutreten.

Der Präsident macht darauf aufmerksam, dass noch eine Bestimmung über das mündliche Verfahren fehlt. Diese Bestimmung soll später ausgearbeitet werden.

Auf eine Bemerkung von Herrn van Benthem erklärt der Präsident, die Mitteilung der Einwendungen beteiligter Dritter sei in Artikel 90 a) Absatz 3 vorgesehen, weil der Patentinhaber seine Anmeldung möglicherweise mit Rücksicht auf diese Einwendungen selbst beschränken wolle.

Die Gruppe soll die Frage erörtern, ob die in Absatz 3 vorgesehene Frist in Falle des mündlichen Verfahrens unbedingt beachtet werden muss.

Die Gruppe genehmigt einstimmig die drei Artikel und überweist sie an den Räumungsausschuss.
Ergebnisse der zweiten Sitzung
der Arbeitsgruppe "Patente"
vom 3. bis 14. Juli 1961
in Brüssel
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" in 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