Rule 70 E

Travaux Préparatoires
(EPC 1973)

Comment:
The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
Regel 70

MPU

Form der Bescheide und Mitteilungen

<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr. im Entwurf/Dokument</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstelle im Dokument</th>
</tr>
</thead>
<tbody>
<tr>
<td>VE 1971 /AO)</td>
<td>145 Nr. 9</td>
<td>BR/132/71</td>
<td>Rdn. 60</td>
</tr>
</tbody>
</table>

Dokumente der MDK

<table>
<thead>
<tr>
<th>E 1972</th>
<th>R 71</th>
<th>M/30</th>
<th>S. 8</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/146/R 10</td>
<td>R. 70</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>M/PR/G</td>
<td>S. 207, 208, 186, 187</td>
</tr>
</tbody>
</table>
designated Contracting States. The valid interests of an assumed infringer in the retroactive revocation of the patent may thus be upheld. In this connection it may be noted that this amendment has raised the opposition proceedings another step towards the level of actual revocation proceedings.

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

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

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

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

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

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

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

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

The Main Committee extended the maximum duration of time limits to be set by the European Patent Office under Rule 85 from four to six months for certain special circumstances. However, a proposal was not accepted which aimed to make provision for a one-month extension, on request, of any time limit for representatives who in the proceedings had to draw up documents to the European Patent Office in a language other than the official language of their State or residence. The Committee recognised unanimously that during a transitional period such translation difficulties should be deemed to be "certain special circumstances" within the meaning of paragraph 1 of Rule 85, so far as the parties complied with their obligation to take due care in obtaining translations.

The provision in Article 124 concerning the procedure for drawing up supplementary search reports provided a large amount of material for discussion. This Article was deleted. The Committee considered it unnecessary to impose search costs on the applicant in the event of his making necessary an additional search due to an amendment to the claims. This financial problem could be settled by slightly increasing the standard amount of the main search fee. After lengthy discussions the Committee reached the majority decision that additional fees for additional searches which were drawn up outside the procedure for international search reports under Article 156, could be dispensed with, especially since such an additional cost would have an unfavourable visual effect in the Convention. At the same time the Committee stated expressly
ANNEX I

REPORT

by Mr. Paul Braendli, Lic. iur.
Vice-Director of the Federal Intellectual Property Office (Switzerland)

on the results of Main Committee I's proceedings

ANNEX II

REPORT

by Mr. R. Bowen
Assistant Comptroller, British Patent Office

on the results of Main Committee II's proceedings

ANNEX III

REPORT

by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)

on the results of Main Committee III's proceedings

ANNEX IV

REPORT

by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office

on the results of the Credentials Committee's proceedings
with regard to full powers for signing the Convention
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>7</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Opening Meeting (M/PR/K/1)</td>
<td>9</td>
</tr>
<tr>
<td>Minutes of the proceedings of the Credentials Committee (M/PR/V)</td>
<td>25</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee I (M/PR/I)</td>
<td>27</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee II (M/PR/II)</td>
<td>109</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee III (M/PR/III)</td>
<td>155</td>
</tr>
<tr>
<td>Minutes of the proceedings of the Committee of the Whole (M/PR/G)</td>
<td>163</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Final Meeting (M/PR/K/2)</td>
<td>199</td>
</tr>
<tr>
<td>List of participants</td>
<td>211</td>
</tr>
</tbody>
</table>
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
Rule 3-Q
Form of communications from the
European Patent Office

Any communication from the European Patent Office is
to be signed by and to state the name of the competent
employee. Instead of the signature and statement of
name a printed or stamped seal of the European Patent
Office may be used.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 10
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 54 to 82
II. Draft Implementing Regulations (M/2)

29. Rule 24

It might be desirable for the European patent application to bear not only the date of filing but also the time of filing in order to facilitate the settlement of any questions which may arise concerning two applications dealing with similar inventions which are filed on the same day. In addition it is not clear whether the European patent application will in fact have two filing numbers, one belonging to a national series and notified in accordance with paragraph 2, and the other belonging to a European series and notified by the European Patent Office pursuant to paragraph 4.

30. Rule 46, paragraph 1

Where the invention lacks unity and the applicant is informed by the International Patent Institute that the search report has not covered all the parts of the invention, this should be clearly distinguished from the situation provided for under Article 124 (supplementary report requested by the European Patent Office) by specifying that the applicant is not obliged to ask for search reports on the parts of the invention not covered by the report of the International Patent Institute.

31. Rule 71

The provision contained in the first sentence of this Rule is an excellent one: any notification from the European Patent Office must state the name of the competent employee. This is in accord with the efforts at present being made by the authorities of all countries to "personalise" contacts between their representatives and the client. Unfortunately the second sentence of this Rule deprives this provision of all substance. It should read "Instead of the signature of the employee, whose name must in all cases be stated, a printed or stamped seal of the European Patent Office may be used".
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS.

- 1973 -

Brussels, 23 May 1973

M/30

Original: French

PREPARATORY DOCUMENT

Drawn up by: Centre Européen de l’Entreprise Publique (CEEP)

Subject: Comments relating to the Draft Convention establishing a European System for the Grant of Patents
Mitteilung nach Absatz 1 eine Entscheidung des Europäischen Patentamts beantragen. Eine solche Entscheidung wird nur getroffen, wenn das Europäische Patentamt die Auffassung des Antragstellers nicht teilt.

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Regel 71
Form der Bescheide und Mitteilungen


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Vgl. Artikel 89 (Eingangsprüfung), 90 (Formalsprüfung), 95 (Prüfung der europäischen Patentanmeldung), 100 (Prüfung des Einspruchs), 109 (Prüfung der Beschwerde), 114 (Einwendungen Dritter), 116 (Beweisaufnahmen), 123 (Angaben über nationale Patentanmeldungen), 124 (Ergänzender europäischer Recherchenbericht), 128 (Akteneinsicht) und 161 (Stufenweise Aus­ dehnung des Tätigkeitsbereichs des Europäischen Patentamts)

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Kapitel II
Mündliche Verhandlung und Beweisaufnahme

Regel 72
Ladung zur mündlichen Verhandlung

(1) Zur mündlichen Verhandlung nach Artikel 115 werden die Beteiligten unter Hinweis auf Absatz 2 geladen. Die Ladungsfrist beträgt mindestens einen Monat, sofern die Beteiligten nicht mit einer kürzeren Frist einverstanden sind.

(2) Ist ein zu einer mündlichen Verhandlung ordnungsgemäß geladener Beteiligter vor dem Europäischen Patentamt nicht erschienen, so kann das Verfahren ohne ihn fortgesetzt werden.

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Vgl. Artikel 115 (Mündliche Verhandlung)

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the matter by the European Patent Office. Such decision shall be given only if the European Patent Office does not share the opinion of the person requesting it.

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Cf. Articles 14 (Languages of the European Patent Office), 75 (Forwarding of European patent applications), 77 (Designation of Contracting States), 84 (Renewal fees for European patent applications), 88 (Examination on filing), 90 (Examination as to formal requirements), 93 (Request for examination), 95 (Examination of the European patent application), 96 (Refusal or grant), 98 (Opposition), 104 (Intervention of the assumed infringer), 107 (Time limit and form of appeal), 109 (Examination of appeals), 120 (Further processing of the European patent application), 121 (Restitutio in integrum), 123 (Information concerning national patent applications), 124 (Supplementary European search report), 135 (Request for the application of national procedure), 136 (Submission and transmission of the request), 156 (International search report) and 161 (Progressive expansion of the field of activity of the European Patent Office)

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Rule 71
Form of communications from the European Patent Office

Any communication from the European Patent Office is to be signed by and to state the name of the competent employee. Instead of the signature and statement of name a printed or stamped seal of the European Patent Office may be used.

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Cf. Articles 88 (Examination on filing), 90 (Examination as to formal requirements), 95 (Examination of the European patent application), 100 (Examination of the opposition), 109 (Examination of appeals), 114 (Observations by third party), 116 (Taking of evidence), 123 (Information concerning national patent applications), 124 (Supplementary European search report), 128 (Inspection of files) and 161 (Progressive expansion of the field of activity of the European Patent Office)

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Chapter II
Oral proceedings and taking of evidence

Rule 72
Summons to oral proceedings

(1) The parties shall be summoned to oral proceedings provided for in Article 115 and their attention shall be drawn to paragraph 2 of this Rule. At least one month's notice of the summons shall be given unless the parties agree to a shorter period.

(2) If a party who has been duly summoned to oral proceedings before the European Patent Office does not appear as summoned, the proceedings may continue without him.

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Cf. Article 115 (Oral proceedings)

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270
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

DRAFT IMPLEMENTING REGULATIONS
TO THE CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMatische KONFERENZ
ÜBER DIE EINFLÜHRUNG 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)

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
Re, Article 145, No. 2, IR - Minutes of oral proceedings and preliminary investigations

59. The German delegation submitted a proposal that it should be specified that the minutes referred to in the first paragraph must, in cases of inspection of premises, mention not only the fact that the inspection was made but also the results thereof.

The Working Party agreed to amend the text along these lines.

Re, Article 145, No. 9, IR - Form of notices and other communications from the European Patent Office

60. To make the process simpler, the German delegation proposed the deletion of the requirement that notices and communications be signed by the responsible official.

The Working Party considered that the procedure envisaged in this proposal would make it too difficult for the addressee of documents from the European Patent Office to make any necessary evaluation of the authenticity of the documents, and therefore did not adopt the proposal.

Re, Article 145, No. 10, IR - Lapse

61. The French delegation's proposal to delete the note to this Article was adopted, as the Working Party felt that all sums owed other than those referred to expressly should be governed by national law. This also satisfied an observation of the same nature made by the United Kingdom delegation in connection with this Article.

BR/132 e/71 ley/PB/ms
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP
OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

MINUTES

of the meeting of Working Party I,
held in Luxembourg from 14 to 17 September 1971

Opening of the meeting and adoption of the agenda

1. The Working Party held its 8th meeting in Luxembourg from Tuesday 14 to Friday 17 September 1971, with Dr HAERTEL, President of the German Patent Office, in the Chair.

This meeting, which was devoted primarily to the examination of certain legal problems connected with the provisions being drawn up, was also attended by legal experts from the countries of the delegations to Working Party I.

Representatives from the Commission of the European Communities, WIPO and the IIB were also present at the meeting (1). The representative of the General Secretariat of the Council of Europe sent his apologies for being unable to attend.

The Working Party adopted the provisional agenda (2).

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(1) See Annex I for list of those attending.
(2) See Annex II for the provisional agenda (BR/GT I/109/71) and the list of the provisions of the Second Preliminary Draft Convention and the First Preliminary Draft Implementing Regulations to be examined at the meeting (BR/GT I/111/71).

BR/132 e/71 ley/KA/ad
nach dem Heimatrecht des Anmelders oder Patentinhabers zu dessen Vertretung berechtigt ist. Solange die genannten Ereignisse die Vertretungsbefugnis eines nach Artikel 153 des Übereinkommens bestellten Vertreters nicht berühren, tritt eine Unterbrechung des Verfahrens jedoch nur auf Antrag dieses Vertreters ein;

b) im Fall der Eröffnung des Konkurses über das Vermögen des Anmelders oder Patentinhabers oder im Fall der Eröffnung eines anderen gerichtlichen Verfahrens, das der gemeinschaftlichen Befriedigung der Gläubiger aus seinem Vermögen dient.

(2) Wird dem Europäischen Patentamt bekannt, wer nach dem Heimatrecht des Verstorbenen oder Handlungsunfähigten oder nach dem Recht des Staats, in dem das Konkursverfahren oder das andere gerichtliche Verfahren eröffnet worden ist, die Berechtigung erlangt hat, über das Vermögen zu verfügen, so teilt es dieser Person und gegebenenfalls den übrigen Beteiligten mit, daß das Verfahren nach Ablauf einer von ihm zu bestimmenden Frist wieder aufgenommen wird.

(3) Die am Tag der Unterbrechung für den Anmelder oder Patentinhaber laufenden Fristen, mit Ausnahme der Frist zur Stellung des Prüfungsantrags, beginnen an dem Tag von neuem zu laufen, an dem die Mitteilung nach Absatz 2 zugestellt wird. Erfolgt diese Mitteilung später als zwei Monate vor Ablauf der Frist zur Stellung des Prüfungsantrags, so kann die nach Absatz 2 verfügberechtigte Person einen Prüfungsantrag noch bis zum Ablauf von zwei Monaten nach der Mitteilung stellen.

(4) Vorbehaltlich Artikel 59 Absatz 1 Satz 2 des Übereinkommens wird ein Hinweis auf die Unterbrechung und die Wiederaufnahme des Verfahrens in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht.

Zu Artikel 145
Nummer 8
Verspätete Stellungnahmen
Das Europäische Patentamt braucht Schriftsätze und Beweismittel, die nicht rechtzeitig eingegangen sind, nicht zu berücksichtigen.

Zu Artikel 145
Nummer 9
Form der Bescheide und Mitteilungen des Europäischen Patentamts

Re. Article 145
No. 8
Belated observations
The European Patent Office may decide not to take into consideration observations or evidence not submitted within the period fixed.

Re. Article 145
No. 9
Form of notices and other communications from the European Patent Office
Notices and other communications from the European Patent Office are to be signed by and to state the name of the responsible official. Instead of the signature and statement of name a printed or stamped seal of the European Patent Office may be used.
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES
PATENTERTeilungsverfahren

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

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
REGIERUNGSKONFERENZ ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTerteilungsverfahrens
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
CONFERENCE INTERGOUVERNEMENTALE POUR L'INSTITUTION D'UN SYSTEME 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 —
that Article 156, paragraph 3, was to be interpreted as an authorisation for the Administrative Council to provide for the levy of a search fee for each and every international patent application, irrespective of whether additional searches within the meaning of this provision should be carried out in the individual cases.

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

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

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

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

The provisions of the Convention and the Implementing Regulations concerning representation before the European Patent Office were already discussed with the organisations 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 transitional 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.