Rule 79 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 79

MPU

Zustellung durch unmittelbare Übergabe

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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 followed 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 was notified at 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 also submitted which aimed to make provision for a one-month extension, on request, of any time limit for representatives who in the proceedings had to draw up documents to the European Patent Office in a language other than the official language of their State or residence. The Committee recognised unanimously that during a transitional period such translation difficulties should be deemed to be "certain special circumstances" within the meaning of paragraph 1 of Rule 85, in so far as the parties complied with their obligation to take due care in obtaining translations.

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

ANNEX II
REPORT
by Mr. R. Bowen
Assistant Comptroller, British Patent Office
on the results of Main Committee II's proceedings

ANNEX III
REPORT
by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)
on the results of Main Committee III's proceedings

ANNEX IV
REPORT
by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office
on the results of the Credentials Committee's proceedings
with regard to full powers for signing the Convention
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 29
Notification by delivery by hand

Notification may be effected on the premises of the European Patent Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.
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
Rule 80

Notification by delivery by hand

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

- 1973 -

Munich, 27 September 1973

M/140/I/R 11

Original: English/French/German

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

Rules of the Implementing Regulations:

Rules 2
13
17
19
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42
44
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46
47
48
52
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80
86
95
(5) Soweit die Zustellung durch die Post durch die Absätze 1 bis 4 nicht geregelt ist, ist das Recht des Staats anzuwenden, in dessen Hoheitsgebiet die Zustellung erfolgt.

Vgl. Artikel 118 (Zustellung)

(5) To the extent that notification by post is not covered by the provisions of this Rule, the law of the State on the territory of which the notification is made shall apply.

Cf. Article 118 (Notification)

Regel 80
Zustellung durch unmittelbare Übergabe


Vgl. Artikel 118 (Zustellung)

Rule 80
Notification by delivery by hand

Notification may be effected on the premises of the European Patent Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Cf. Article 118 (Notification)

Regel 81
Öffentliche Zustellung

(1) Kann der Aufenthaltsort des Empfängers nicht festgestellt werden, so wird durch öffentliche Bekanntmachung zugestellt.

(2) Der Präsident des Europäischen Patentamts bestimmt, in welcher Weise die öffentliche Bekanntmachung erfolgt und wann die Frist von einem Monat zu laufen beginnt, nach deren Ablauf das Schriftstück als zugestellt gilt.

Vgl. Artikel 118 (Zustellung)

Rule 81
Public notification

(1) If the address of the addressee cannot be established, notification shall be effected by public notice.

(2) The President of the European Patent Office shall determine how the public notice is to be given and the beginning of the period of one month on the expiry of which the document shall be deemed to have been notified.

Cf. Article 118 (Notification)

Regel 82
Zustellung an Vertreter

(1) Ist ein Vertreter bestellt worden, so werden die Zustellungen an den Vertreter gerichtet.

(2) Sind mehrere Vertreter für einen Beteiligten bestellt, so genügt die Zustellung an einen von ihnen.

(3) Haben mehrere Beteiligte einen gemeinsamen Vertreter, so genügt die Zustellung nur eines Schriftstücks an den gemeinsamen Vertreter.

Vgl. Artikel 118 (Zustellung)

Rule 82
Notification to representatives

(1) If a representative has been appointed notifications shall be addressed to him.

(2) If several such representatives have been appointed for a single interested party, notification to any one of them shall be sufficient.

(3) If several interested parties have a common representative notification of a single document to the common representative shall be sufficient.

Cf. Article 118 (Notification)
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
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 161, No. 6 - Notification by delivery by hand

47. No comments.

Re. Article 161, No. 7 - Notification by ordinary letter

48. No comments.

Re. Article 161, No. 8 - Public notification

49. The purpose of this provision is to establish a specific date from which time limits for appeals are to run, in cases in which the European Patent Office is not in a position to deliver a notification to the person in question because his address is unknown to it (for example, after a removal).

Re. Article 161, No. 9 - Notification to professional representatives

50. When adopting this provision, the United Kingdom delegation expressed a reservation on paragraph 3 of the proposal concerning notifications to be made to several representatives. This reservation is bound up with the whole problem of professional representation (Article 171 of the Preliminary Draft Convention) which will have to be reviewed after due consultation with the interested circles (see BR/49/70, points 41 to 43).

Re. Article 161, No. 10 - Appointment of a common representative

51. The Sub-Committee agreed to base this provision on Rule 4.8(b) of the Regulations under the PCT, which lays down that in the event of no common representative having
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

BRUSSELS, 23 December 1970
BR/68/70

MINUTES

of the 4th meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 23-27 November 1970)

I.

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

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

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

BR/68 e/70 ley/KM/bm
Ad article 161
Numéro 5

Signification par remise directe

(1) Si le destinataire est dans les locaux de l'Office européen des brevets, la signification peut s'effectuer par remise directe de la pièce à signifier au destinataire qui en accuse réception.

(2) La signification est réputée faite même si le destinataire refuse d'accepter la pièce à signifier ou d'en accuser réception. Mention est portée dans les dossiers de la date du refus d'accepter ou d'accuser réception.

Remarque :
RPCJCE signifie : Règlement de procédure de la Cour de justice des Communautés européennes.
Groupe de travail "BREVETS"

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

VE AO 1964

Avant-projet
de règlement d'application de la convention relative à un droit européen des brevets
délai court.

Enfin, le groupe décide d'allonger le délai prévu à 7 jours au lieu de 5.

**Article 161 - N° 4**

Sur demande de M. van Benthem, le Président précise que l'existence d'une raison valable pour le refus d'acceptation est constatée par l'Office européen. Une telle raison pourrait être le doute sur le présent destinataire résultant d'une erreur d'adresse. Le numéro est adopté.

**Article 161 - N° 5**

La disposition est adoptée.

**Article 161 - N° 6**

M. Pressonnet doute de l'utilité de ce numéro, étant donné que l'étranger est obligé par la Convention d'agir par représentant et de ce fait d'avoir un domicile élu à l'intérieur des pays membres. Le Président lui fait remarquer que le numéro 6 est indispensable. Par exemple, il est nécessaire de signifier une décision qui rejette une demande déposée par un étranger sans l'intermédiaire d'un représentant. Il en est de même dans les cas où un étranger a déposé une demande, lorsqu'un tiers introduit une action en nullité.

M. Pressonnet marque son accord, mais il lui paraît nécessaire de supprimer la référence à l'article 172 de la Convention. En effet, le numéro 6 joue aussi un rôle dans les cas où l'importance d'un représentant n'est pas encore claire...
Résultats de la neuvième session du groupe de travail "Brevets" qui s'est tenue à Munich du 1er au 12 juillet 1963.

COMPTES RENDUS
Ad article 161

Numéro 5

Signification par remise à l'intérieur de l'Office européen des brevets

(1) Lorsque le destinataire est présent dans l'immeuble qui abrite les services de l'Office européen des brevets, la signification peut avoir lieu par remise de la pièce à signifier. Le destinataire en accuse réception.

(2) La signification est considérée comme faite même lorsque le destinataire refuse de l'accepter ou d'en accuser réception après l'avoir acceptée. Il y a lieu de noter dans les dossiers:

a) En cas de refus d'accepter la signification, la date du refus;

b) En cas de refus d'accuser réception de la signification, la date de l'acceptation de celle-ci et le fait qu'il a été refusé d'accuser réception de la signification.

Remarque:
RPCJCE signifie: règlement de procédure de la Cour de justice des Communautés européennes.
Projet
concernant
le règlement d'exécution
de la
convention relative à un droit européen des brevets

Propositions relatives à l'application des articles 160 à 163
de la Convention
Zu Artikel 161
Nummer 5

Zustellung durch unmittelbare Übergabe

(1) Ist der Empfänger im Dienstgebäude des Europäischen Patentamts anwesend, so kann die Zustellung durch unmittelbare Übergabe des zuzustellenden Schriftstücks an den Empfänger bewirkt werden, der den Empfang zu bescheinigen hat.

(2) Die Zustellung gilt auch dann als bewirkt, wenn der Empfänger die Annahme des zuzustellenden Schriftstücks oder die Ausstellung der Empfangsbescheinigung verweigert. In den Akten ist der Tag der Verweigerung der Annahme oder Ausstellung der Empfangsbescheinigung zu vermerken.

Bemerkung:

VOGEG bedeutet Verfahrensordnung des Gerichtshofs der Europäischen Gemeinschaften.
ARBEITSGRUPPE "Patente"

4419/IV/63-D

VE 40 1964

Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht

VERTRAULICH

Brüssel, den 20. Januar 1964
Schließlich beschließt die Gruppe, die vorgesehene Frist von 5 auf 7 Tage zu verlängern.

**Artikel 161 Nr. 4**

Auf Antrag von Herrn van Benthem stellt der Vorsitzende klar, daß das Patentamt feststellen, ob ein berechtigter Grund zur Verweigerung der Annahme vorhanden sei. Ein solcher Grund könne in Zweifeln über den Empfänger bestehen, die sich aus einem Irrtum über die Adresse ergeben. Die Nummer wird angenommen.

**Artikel 161 Nr. 5**

Die Vorschrift wird angenommen.

**Artikel 161 Nr. 6**


Herr Pressonnet erklärt sein Einverständnis, ihm erscheine aber die Streichung der Verweisung auf Artikel 172 des Abkommens notwendig. Nummer 6 spiele nämlich auch eine Rolle in dem Fall, wo ein Vertreter noch keine Bedeutung habe, wie in dem zweiten vom Vorsitzenden angeführten Beispiel.
Arbeitsgruppe
"Patente"

7669/IV/63-D
Orig. F

Brüssel, den 6. November 1963

Vertraulich

Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 161
Nummer 5

Zustellung durch Übergabe im Europäischen Patentamt

(1) Ist der Empfänger im Dienstgebäude des Europäischen Patentamts anwesend, so kann die Zustellung durch Übergabe des zuzustellenden Schriftstücks bewirkt werden. Der Empfänger hat den Empfang zu bescheinigen.

(2) Wird die Annahme oder die Ausstellung der Empfangsbescheinigung nach der Annahme verweigert, so gilt die Zustellung gleichwohl als bewirkt. In den Akten ist zu vermerken,

a) bei Verweigerung der Annahme deren Zeitpunkt,

b) bei Verweigerung der Ausstellung der Empfangsbescheinigung der Zeitpunkt der Annahme und die Tatsache der Verweigerung.

Bemerkung:

VOGEG bedeutet Verfahrensordnung des Gerichtshof der Europäischen Gemeinschaften.
Arbeitsentwurf
zu einer
Ausführungsordnung
zum
Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der
Artikel 160 bis 163
des Abkommens
that Article 156, paragraph 3, was to be interpreted as an
authorisation for the Administrative Council to provide for the
levy of a search fee for each and every international patent
application, irrespective of whether additional searches within
the meaning of this provision should be carried out in the
individual cases.

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

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

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

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

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

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

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

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