Rule 73 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 73

#### MPÜ

**Beauftragung von Sachverständigen**

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

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

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

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

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

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

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

REPORT

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

on the results of Main Committee I's proceedings

ANNEX II

REPORT

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

on the results of Main Committee II's proceedings

ANNEX III

REPORT

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

on the results of Main Committee III's proceedings

ANNEX IV

REPORT

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

on the results of the Credentials Committee's proceedings
with regard to full powers for signing the Convention
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 73

Commissioning of experts

(1) The European Patent Office shall decide in what form the report made by an expert whom it appoints shall be submitted.

(2) The terms of reference of the expert shall include:
   (a) a precise description of his task;
   (b) the time limit laid down for the submission of the expert report;
   (c) the names of the parties to the proceedings;
   (d) particulars of the rights which he may invoke under the provisions of Rule 74, paragraphs 2 to 4.

(3) A copy of any written report shall be submitted to the parties.

(4) The parties may object to an expert. The department of the European Patent Office concerned shall decide on the objection.
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
c) die Bezeichnung der am Verfahren Beteiligten;

d) einen Hinweis auf die Rechte, die ihm nach Regel 75 Absätze 2 bis 4 zustehen.

(3) Die Beteiligten erhalten eine Abschrift des schriftlichen Gutachtens.

(4) Die Beteiligten können den Sachverständigen ablehnen. Über die Ablehnung entscheidet die Stelle des Europäischen Patentamts, die für die Beauftragung des Sachverständigen zuständig ist.

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Vgl. Artikel 116 (Beweisaufnahme)

Regel 75
Kosten der Beweisaufnahme

(1) Das Europäische Patentamt kann die Beweisaufnahme davon abhängig machen, daß der Beteiligte, der sie beantragt hat, beim Europäischen Patentamt einen Vor- schuß hinterlegt, dessen Höhe im Wege einer Schätzung der voraussichtlichen Kosten bestimmt wird.

(2) Zeugen und Sachverständige, die vom Europäischen Patentamt geladen worden sind und vor diesem erscheinen, haben Anspruch auf Erstattung angemessener Reise- und Aufenthaltskosten. Es kann ihnen eine Vorschüsse auf diese Kosten gewährt werden. Satz 1 ist auch auf Zeugen und Sachverständige anzuwenden, die ohne Ladung vor dem Europäischen Patentamt erscheinen und als Zeugen oder Sachverständige vermommen werden.

(3) Zeugen, denen nach Absatz 2 ein Erstattungsanspruch zusteht, haben Anspruch auf eine angemessene Entschädigung für Verdienstausfall; Sachverständige haben Anspruch auf Vergütung ihrer Tätigkeit. Diese Entschädigung oder Vergütung wird dem Zeugen und Sachverständigen gezahlt, nachdem sie ihren Pflicht an ihrem Auftrag genügt haben.

(4) Der Verwaltungsrat legt die Einzelheiten der Anwendung der Absätze 2 und 3 fest. Das Europäische Patentamt zahlt die nach den Absätzen 2 und 3 fälligen Beträge aus.

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Vgl. Artikel 116 (Beweisaufnahme)

Regel 76
Beweis sicherung

(1) Das Europäische Patentamt kann auf Antrag zur Sicherung eines Beweises unverzüglich eine Beweisaufnahme über Tatsachen vornehmen, die für eine Entscheidung von Bedeutung sein können, die das Europäische Patentamt hinsichtlich einer europäischen Patentanmeldung oder eines europäischen Patents wahr- scheinlich zu treffen hat, wenn zu besorgen ist, daß die Beweisaufnahme zu einem späteren Zeitpunkt erschwert oder unmöglich sein wird. Der Zeitpunkt der Beweisaufnahme ist dem Anmelder oder Patentinhaber so rechtzeitig mitzuteilen, daß er daran teilnehmen kann. Er kann sachdienliche Fragen stellen.

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Rule 75
Costs of taking of evidence

(1) The taking of evidence by the European Patent Office may be made conditional upon deposit with it, by the party who requested the evidence to be taken, of a sum the amount of which shall be fixed by reference to an estimate of the costs.

(2) Witnesses and experts who are summoned by and appear before the European Patent Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance for these expenses may be granted to them. The first sentence shall apply to witnesses and experts who appear before the European Patent Office without being summoned by it and are heard as witnesses or experts.

(3) Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. These payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks.

(4) The Administrative Council shall lay down the details governing the implementation of the provisions of paragraphs 2 and 3. Payment of amounts due pursuant to these paragraphs shall be made by the European Patent Office.

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Cf. Artikel 116 (Taking of evidence)

Rule 76
Conservation of evidence

(1) On request, the European Patent Office may, without delay, hear oral evidence or conduct inspections, with a view to conserving evidence of facts liable to affect a decision which it may be called upon to take with regard to an existing European patent application or a European patent, where there is reason to fear that it might subsequently become more difficult or even impossible to take evidence. The date on which the measures are to be taken shall be communicated to the applicant for or proprietor of the patent in sufficient time to allow him to attend. He may ask relevant questions.
Regel 73
Beweisaufnahme durch das Europäische Patentamt

(1) Hält das Europäische Patentamt die Vernehmung von Beteiligten, Zeugen oder Sachverständigen oder eine Augenscheinseinahme für erforderlich, so erläßt es eine entsprechende Entscheidung, in der das betreffende Beweismittel, die rechtsrelevante Tatsachen sowie Tag, Uhrzeit und Ort angegeben werden. Hat ein Beteiligter die Vernehmung von Zeugen oder Sachverständigen beantragt, so wird in der Entscheidung des Europäischen Patentamts die Frist festgesetzt, in der der antragstellende Beteiligter dem Europäischen Patentamt Name und Anschrift der Zeugen und Sachverständigen mitteilen muß, die er vernehmen zu lassen wünscht.

(2) Die Frist zur Ladung von Beteiligten, Zeugen und Sachverständigen zur Beweisaufnahme beträgt mindestens einen Monat, sofern diese nicht mit einer kürzeren Frist einverstanden sind. Die Ladung muß enthalten:

a) einen Auszug aus der in Absatz 1 genannten Entscheidung, aus der insbesondere Tag, Uhrzeit und Ort der angeordneten Beweisaufnahme sowie die Tatsachen hervorgehen, über die die Beteiligten, Zeugen und Sachverständigen vernommen werden sollen;

b) die Namen der am Verfahren Beteiligten sowie die Ansprüche, die den Zeugen und Sachverständigen nach Regel 75 Absätze 2 bis 4 zustehen;

c) einen Hinweis darauf, daß der Beteiligte, Zeuge oder Sachverständige seine Vernehmung durch das zuständige Gericht seines Wohnsitzstaats verlangen kann, sowie eine Aufforderung, dem Europäischen Patentamt innerhalb einer von diesem festgesetzten Frist mitzuteilen, ob er bereit ist, vor dem Europäischen Patentamt zu erscheinen.

(3) Beteiligte, Zeugen und Sachverständige werden vor ihrer Vernehmung darauf hingewiesen, daß das Europäische Patentamt das zuständige Gericht in ihrem Wohnsitzstaat um Wiederholung der Vernehmung und um Befragung ersuchen kann.

(4) Die Beteiligten können an der Beweisaufnahme teilnehmen und sachdienliche Fragen an die Zeugen und Sachverständigen richten.

Vgl. Artikel 116 (Beweisaufnahme)

Regel 74
Beauftragung von Sachverständigen

(1) Das Europäische Patentamt entscheidet, in welcher Form das Gutachten des von ihm beauftragten Sachverständigen zu erstatten ist.

(2) Der Auftrag an den Sachverständigen muß enthalten:

a) die genaue Umschreibung des Auftrags;

b) die Frist für die Erstattung des Gutachtens;

Rule 73
Taking of evidence by the European Patent Office

(1) Where the European Patent Office considers it necessary to hear the oral evidence of parties, witnesses or experts or to carry out an inspection, it shall make a decision to this end, setting out the investigation which it intends to carry out, relevant facts to be proved and the date, time and place of the investigation. If oral evidence of witnesses and experts is requested by a party, the decision of the European Patent Office shall determine the period of time within which the party filing the request must make known to the European Patent Office the names and addresses of the witnesses and experts whom it wishes to be heard.

(2) At least one month's notice of a summons issued to a party, witness or expert to give evidence shall be given unless they agree to a shorter period. The summons shall contain:

(a) an extract from the decision mentioned in paragraph 1, indicating in particular the date, time and place of the investigation ordered and stating the facts regarding which parties, witnesses and experts are to be heard;

(b) the names of the parties to the proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Rule 75, paragraphs 2 to 4;

(c) an indication that the party, witness or expert may request to be heard by the competent court of his country of residence and a requirement that he inform the European Patent Office within a time limit to be fixed by the Office whether he is prepared to appear before it.

(3) Before a party, witness or expert may be heard, he shall be informed that the European Patent Office may request the competent court in the country of residence of the person concerned to re-examine his evidence on oath or affirmation.

(4) The parties may attend an investigation and may put relevant questions to the witnesses and experts.

Cf. Article 116 (Taking of evidence)

Regel 74
Beauftragung von Sachverständigen

(1) The European Patent Office shall decide in what form the report made by an expert whom it appoints shall be submitted.

(2) The terms of reference of the expert shall include:

(a) a precise description of his task;

(b) the time limit laid down for the submission of the expert report;

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ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsverfahren

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

PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTerteilungsverfahrens 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

VORBEREITENDE DOKUMENTE
ausgearbeitet von der
Regierungskonferenz über die Einführung eines europäischen Patenterteilungsverfahrens
herausgegeben von der
Regierung der Bundesrepublik Deutschland

PREPARATORY DOCUMENTS
drawn up by the
Inter-Governmental Conference for the setting up of a European System for the Grant of Patents
and published by the
Government of the Federal Republic of Germany

DOCUMENTS PRÉPARATOIRES
élaborés par la
Conférence intergouvernementale pour l'institution d'un système européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d'Allemagne

1972
event of the expert opinions being given by three members, should be specified.

64. The Working Party noted its agreement in principle to a proposal made by the same déléguation that provision should be made for the parties to object to an expert. It nevertheless considered that it was not necessary at that stage to make detailed provisions on this matter in the Implementing Regulations, and that it should be sufficient to state the principle in the Implementing Regulations and let the European Patent Office base its decision on objections to experts on the principles generally recognised in the Contracting States.

65. In view of the deletion of Article 136, paragraph 3, the Working Party finally deleted paragraph 2(c).

Re. Article 136, No. 5 (Hearing of witnesses and experts)

66. In view of the solution adopted in Article 136 as regards oaths, the Working Party noted its agreement on the deletion of the part of the first sentence printed in square brackets and the second sentence, which have become superfluous.

Re. Article 136, No. 6 (Payment of expenses of witnesses and experts)

67. The Working Party amended the drafting of paragraph 3 of this Article.
Justice of the European Communities, upon which the wording of the provisions had been based.

The Working Party nevertheless decided, by a majority, to accept the French delegation's proposal.

Re. Article 136, No. 3 (Summons to give evidence)

61. The Working Party decided to make certain textual amendments as a direct result of the amendment to Article ... (Re. Article 136, No. 1).

The Working Party also agreed to include in this Article the provisions of Article ... (Re. Article 145, No. 1), which was deleted.

Finally, the Working Party agreed to lay down in this Article that the attention of the party, witnesses or expert summoned before the European Patent Office ought to be specifically drawn to his right to be heard by the competent judicial authority of his country.

Re. Article 136, No. 4 (Commissioning experts)

62. The Working Party considered that it should be made clear in the text that this Article applies only to experts designated by the European Patent Office.

63. The Working Party did not adopt a proposal made by the French delegation to the effect that the number of experts who may be called upon to give opinions (one or three) and the procedures for drawing up the report in the
MINUTES

of the 10th meeting of Working Party I,
held in Luxembourg from 22 to 26 November 1971

1. Working Party I held its 10th meeting in Luxembourg from 22 to 26 November 1971, with Dr. HAERTEL, President of the Deutsches Patentamt, in the Chair.

Representatives from the Commission of the European Communities, the IIB and WIPO attended the meeting as observers. The Council of Europe representatives sent their apologies for being unable to attend. For the list of those present at the 10th meeting see Annex I to these minutes.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/133/71 on the understanding that item 3 would also cover the examination of a number of problems including those referred to in BR/GT I/138/71. The provisional agenda is given in Annex II to these minutes.

3. The Working Party I Drafting Committee met first under the chairmanship of Mr. van BENTHEM, President of the Octrooiraad, and, following his departure, under that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).
Ad Article 136
Numéro 1

Instruction effectuée par l'Office européen des brevets
Lorsqu'il doit procéder à des mesures d'instruction comportant la comparution de témoins et d'experts ou la descente sur les lieux, l'Office européen des brevets communique aux parties la date à laquelle il sera procédé à ces mesures ainsi que les faits à prouver. Les parties peuvent assister à l'instruction et poser toutes questions utiles aux témoins et aux experts.

Bemerkung zu Nummer 1 zu Artikel 136:
Siehe Artikel 45 § 1 und Artikel 46 § 3 VOGEG.

Note to Re. Article 136, No. 1:
Cf. Article 45, paragraph 1, and Article 46, paragraph 3, of the RPCJEC.

Remarque concernant le numéro 1 ad article 136:
Cf. l'article 45, paragraphe 1, et l'article 46, paragraphe 3, du R.P.C.J.C.E.

Ad Article 136
Numéro 2

Acompte sur les frais de l'instruction
L'Office européen des brevets peut subordonner l'exécution de l'instruction au dépôt, auprès dudit Office et par la partie qui a demandé cette instruction, d'une provision dont il fixe le montant par référence à une estimation des frais.

Bemerkung zu Nummer 2 zu Artikel 136:
Siehe Artikel 47 § 3 VOGEG.

Note to Re. Article 136, No. 2:
Cf. Article 47, paragraph 3, of the RPCJEC.

Remarque concernant le numéro 2 ad article 136:
Cf. article 47, paragraphe 3, du R.P.C.J.C.E.

Ad Article 136
Numéro 3

Citation à l'instruction
(1) Les témoins et les experts sont cités à l'instruction. La citation doit indiquer les faits au sujet desquels ils seront entendus.

(2) En plus des indications prévues au paragraphe 1 et à l'article ... (numéro 1 ad article 145), paragraphe 2, la citation doit contenir la désignation des parties à la procédure, ainsi que l'indication des droits auxquels le témoin ou l'expert peut prétendre en vertu des dispositions de l'article ... (numéro 6 ad article 136).

Bemerkung zu Nummer 3 zu Artikel 136:
Siehe Artikel 49 §§ 1 und 6 VOGEG.

Note to Re. Article 136, No. 3:
Cf. Article 49, paragraphs 1 and 6, of the RPCJEC.

Remarque concernant le numéro 3 ad article 136:
Cf. article 49, paragraphes 1 et 6, du R.P.C.J.C.E.

Ad Article 136
Numéro 4

Commission d'experts
(1) Les expertises peuvent être faites par écrit ou oralement.

(2) Le mandat de l'expert doit contenir :
a) une description précise de sa mission;
b) le délai fixé pour la présentation du rapport d'expertise;
c) l'indication qu'il pourra être appelé à prêter serment, dans les conditions prévues à l'article ... (numéro 5 ad article 136);
d) la désignation des parties à la procédure;
e) l'indication des droits auxquels il peut prétendre en vertu des dispositions de l'article ... (numéro 6 ad article 136).

(3) Une copie du rapport écrit est remise aux parties.

Bemerkung zu Nummer 4 zu Artikel 136:
Siehe Artikel 49 §§ 1 und 6 VOGEG.

Note to Re. Article 136, No. 4:
Cf. Article 49, paragraphs 1 and 6, of the RPCJEC.

Remarque concernant le numéro 4 ad article 136:
Cf. article 49, paragraphes 1 et 6, du R.P.C.J.C.E.
Zu Artikel 136
Nummer 1

Beweisaufnahme durch das Europäische Patentamt
Soll durch das Europäische Patentamt eine Beweisaufnahme durchgeführt werden, die das Erscheinen von Zeugen und Sachverständigen oder die Einnahme des Augenscheins erforderlich macht, so teilt das Europäische Patentamt den Beteiligten den Termin der Beweisaufnahme und die zu beweisenden Tatsachen mit. Die Beteiligten können an der Beweisaufnahme teilnehmen und sachdienliche Fragen an die Zeugen und Sachverständigen richten.

Zu Artikel 136
Nummer 2

Vorschluß auf die Kosten der Beweisaufnahme
Das Europäische Patentamt kann die Beweisaufnahme davon abhängig machen, daß der Beteiligte, der sie beantragt hat, beim Europäischen Patentamt einen Vorschluß hinterlegt, dessen Höhe im Wege einer Schätzung der voraussichtlichen Kosten bestimmt wird.

Zu Artikel 136
Nummer 3

Ladung zur Beweisaufnahme
(1) Zeugen und Sachverständige werden zur Beweisaufnahme geladen. Die Ladung muß die Tatsachen bezeichnen, über die die Zeugen und Sachverständigen vernommen werden sollen.
(2) Außer den Angaben nach Absatz 1 und nach Artikel . . . (Nummer 1 zu Artikel 145) Absatz 2 muß die Ladung die am Verfahren Beteiligten sowie die Ansprüche angeben, die den Zeugen und Sachverständigen aufgrund des Artikels . . . (Nummer 6 zu Artikel 136) zustehen.

Zu Artikel 136
Nummer 4

Beauftragung von Sachverständigen
(1) Die Begutachtung durch Sachverständige kann schriftlich oder mündlich erfolgen.
(2) Der Auftrag an einen Sachverständigen muß enthalten:
   a) die genaue Umschreibung des Auftrags;
   b) die Frist für die Erstattung des Gutachtens;
   c) einen Hinweis darauf, daß eine Beeidigung nach Maßgabe des Artikels . . . (Nummer 5 zu Artikel 136) erfolgen kann;
   d) die Bezeichnung der am Verfahren Beteiligten;
   e) einen Hinweis auf die Rechte, die ihm nach Artikel . . . (Nummer 6 zu Artikel 136) zustehen.
(3) Die Beteiligten erhalten eine Abschrift des schriftlichen Gutachtens.

Re. Article 136
No. 1

Investigation by the European Patent Office
Where the European Patent Office decides to hear the oral evidence of witnesses and experts or to inspect premises, it shall communicate to the parties the date on which these measures are to be taken and the facts to be proved. The parties may attend such preliminary investigation and may question the witnesses and experts.

Re. Article 136
No. 2

Part payment of costs of taking evidence
The taking of evidence by the European Patent Office may be made conditional upon deposit with it, by the party who requested the evidence to be taken, of a sum the amount of which shall be fixed by reference to an estimate of the costs.

Re. Article 136
No. 3

Summons to give evidence
(1) Witnesses and experts shall be summoned to give evidence. The summons shall give particulars of the facts regarding which they are to be heard.
(2) In addition to the particulars provided for in paragraph 1 and in Article . . . (Re. Article 145, No. 1), paragraph 2, a summons shall contain the names of the parties to the proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Article . . . (Re. Article 136, No. 6).

Re. Article 136
No. 4

Commissioning experts
(1) Expert reports may be made in writing or orally.
(2) The terms of reference of the expert shall include:
   a) a precise description of his task;
   b) the time limit laid down for the submission of the expert report;
   c) an indication that he may be called upon to take an oath, in accordance with the provisions of Article . . . (Re. Article 136, No. 5);
   d) the names of the parties to the proceedings;
   e) particulars of the rights which he may invoke under the provisions of Article . . . (Re. Article 136, No. 6).
(3) A copy of any written report shall be submitted to the parties.
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
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 —
Re. Article 154, No. 4 - Commissioning experts

35. This provision was adopted subject to a reservation on the part of the United Kingdom delegation regarding the problem referred to under 32. It also considered that the experts should not be called upon unless asked to do so by the parties, and not by the European Patent Office, as the latter will employ a sufficient number of specialists.

Re. Article 154, No. 5 - Hearing of witnesses and experts

36. This Article refers to the oath to be taken by the witnesses and experts. The majority of the Sub-Committee decided that the oath should be taken in the manner laid down by the national law of the witness or expert concerned, and that this may be either before or after their testimony, according to the requirements of the national law in question.

37. The German delegation was unable to adopt the view of the majority and reserved its position. It said that such a provision would greatly complicate the work of the European Patent Office, which would be obliged to apply a large number of widely diverging national laws.

38. The Netherlands delegation reserved the right to reconsider the question but was able to agree with the majority, provided that the word "oath" could be interpreted in a wide sense, to cover less stringent forms, such as a solemn sworn statement.

BR/60 e/70 ley/KM/prk
MINUTES of the 3rd meeting of Working Party I Sub-Committee on "Implementing Regulations" (Luxembourg, 20-23 October 1970)

I

1. The third working meeting of the Sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention was held at Luxembourg, from Tuesday 20 to Friday 23 October 1970, with Mr. 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 BIRPI and the International Patents Institute (IIB) (1).

(1) See the list of participants in Annex I.
Règlement d'exécution

Ad article 154

Numéro 6

Commission et audition d'experts

(1) Les expertises peuvent être faites par écrit ou oralement.

(2) Le mandat de l'expert doit contenir :

a/ une description précise de sa mission ;

b/ le délai fixé pour la présentation du rapport d'expertise ;

c/ l'indication qu'il pourra le cas échéant être appelé à prêter serment ;

d/ la désignation des parties à la procédure ;

e/ l'indication des droits auxquels il peut prétendre en vertu des dispositions de l'article ... (ad article 154, numéro 8).

(3) Une copie du rapport écrit est remise aux parties.

(4) Si l'expert est appelé à prêter serment, il prête, après avoir présenté son rapport, le serment suivant :

"Je jure d'avoir accompli ma mission en conscience et en toute impartialité".

Le serment peut être prêté dans les formes prévues par la législation nationale de l'expert.

Remarque :

R.C.J.C.E. signifie : règlement de procédure de la Cour de Justice des Communautés européennes.

4419/IV/63-F
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
"Ich schwöre, daß ich meinen Auftrag unparteiisch und nach bestem Wissen und Gewissen erfüllt habe".

Der Eid kann in der vom Heimatrecht des Sachverständigen vorgesehenen Form geleistet werden.

**Bemerkung:**

VOGEG bedeutet Verfahrensordnung des Gerichtshofs der Europäischen Gemeinschaften.
Ausführungsordnung

20.12.1963

Zu Artikel 154

Nummer 6

Beauftragung und Vernehmung von Sachverständigen

(1) Die Begutachtung durch Sachverständige kann schriftlich oder mündlich erfolgen.

(2) Der Auftrag an einen Sachverständigen muß enthalten:

a) die genaue Umschreibung des Auftrags;

b) die Frist für die Erstattung des Gutachtens;

c) einen Hinweis darauf, daß unter Umständen eine Beeidigung erfolgen kann;

d) die Bezeichnung der an dem Verfahren Beteiligten;

e) einen Hinweis auf die Rechte, die ihm gemäß den Vorschriften des Artikels ... (Nummer 8 zu Artikel 154) zustehen.

(3) Die Beteiligten erhalten eine Abschrift des schriftlichen Gutachtens.

(4) Wird der Sachverständige beeidigt, so leistet er nach Erstattung seines Gutachtens folgenden Eid:
Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht
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 representative 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