Article 22 E

Travaux Préparatoires
(EPC 1973)

Comment:

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Art22eTPEPC1973
Art. 22
MPÜ
Große Beschwerdekammer

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MUNICH DIPLOMATIC CONFERENCE

FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 1
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 1 to 26
b) drei technisch vorgebildeten Mitgliedern und zwei rechtsskundigen Mitgliedern, wenn die Prüfungsabteilung, gegen deren Entscheidung sich die Beschwerde richtet, aus vier Mitgliedern bestand, oder wenn die Beschwerdekammer der Meinung ist, daß es die Art der Entscheidung erfordert;

c) drei rechtsskundigen Mitgliedern in allen anderen Fällen.

(4) Bei Beschwerden gegen eine Entscheidung der Einspruchsabteilung setzen sich die Beschwerdekammern zusammen aus:

a) zwei technisch vorgebildeten Mitgliedern und einem rechtsskundigen Mitglied mit Unterstützung eines technisch vorgebildeten Mitglieds als Berichterstatter, das nicht an der Entscheidung teilnimmt, bei Beschwerden gegen eine von einer aus drei Mitgliedern bestehenden Einspruchsabteilung gefaßten Entscheidung;

b) drei technisch vorgebildeten Mitgliedern und zwei rechtsskundigen Mitgliedern, wenn die Einspruchsabteilung, gegen deren Entscheidung sich die Beschwerde richtet, aus vier Mitgliedern bestand, oder wenn die Beschwerdekammer der Meinung ist, daß es die Art der Beschwerde erfordert.

Vgl. Regeln 10 (Geschäftsverteilung für die zweite Instanz und Bestimmung ihrer Mitglieder) und 11 (Verfahrensordnungen für die zweite Instanz)

Artikel 20
Große Beschwerdekammer

(1) Die Große Beschwerdekammer ist zuständig für:

a) Entscheidungen über Rechtsfragen, die ihr von den Beschwerdekammern vorgelegt werden;

b) die Abgabe von Stellungnahmen zu Rechtsfragen, die ihr vom Präsidenten des Europäischen Patentamts nach Artikel 111 vorgelegt werden.


Vgl. Regeln 10 (Geschäftsverteilung für die zweite Instanz und Bestimmung ihrer Mitglieder) und 11 (Verfahrensordnungen für die zweite Instanz)

Artikel 21
Unabhängigkeit der Mitglieder der Kammern

(1) Die Mitglieder der Großen Beschwerdekammer und der Beschwerdekammern werden für einen Zeitraum von fünf Jahren ernannt und können während dieses Zeitraums ihrer Funktion nicht enthoben werden.

(2) Die Mitglieder der Kammern dürfen nicht der Eingangsstelle, den Prüfungsabteilungen oder den Einspruchsabteilungen angehören.

(b) three technically qualified members and two legally qualified members, when the Examining Division against whose decision the appeal is made consisted of four members, or when the Board of Appeal considers that the nature of the decision so requires;

(c) three legally qualified members in all other cases.

(4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:

(a) two technically qualified members and one legally qualified member, assisted by a technically qualified member who shall act as rapporteur but shall not take part in the decision, when the appeal is from a decision of an Opposition Division consisting of three members;

(b) three technically qualified members and two legally qualified members, when the Opposition Division against whose decision the appeal is made consisted of four members, or when the Board of Appeal considers that the nature of the appeal so requires.

Cf. Rules 10 (Allocation of duties to the departments of the second instance and designation of their members) and 11 (Rules of Procedure of the departments of the second instance)

Article 20
Enlarged Board of Appeal

(1) The Enlarged Board of Appeal shall be responsible for:

(a) deciding points of law referred to it by Boards of Appeal and

(b) giving opinions on points of law referred to it by the President of the European Patent Office under the conditions laid down in Article 111.

(2) For giving decisions or opinions, the Enlarged Board of Appeal shall consist of five legally qualified members and two technically qualified members. One of the legally qualified members shall be the Chairman.

Cf. Rules 10 (Allocation of duties to the departments of the second instance and designation of their members) and 11 (Rules of Procedure of the departments of the second instance)

Article 21
Independence of the members of the Boards

(1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term.

(2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, or Opposition Divisions.
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
Article 116 - Decision or opinion of the Enlarged Board of Appeal on certain points of law

45. With regard to paragraph 1(b), the Working Party agreed by a majority that the President of the European Patent Office may only call upon the Enlarged Board of Appeal when two Boards of Appeal have given different decisions on the same question; the more widely drafted first sub-section of this sub-paragraph was therefore deleted. The Netherlands delegation voted against this deletion, as it considered the wider wording more suitable.

Re. Article 135 IR - Membership of the Boards of Appeal

46. The French delegation proposed that those members of the Board of Appeal who had a previous interest in the matter should not participate, although they would be permitted to make statements. The Working Party considered that it was not desirable to extend the grounds for exclusion of members of the Boards and this proposal was not accepted.

47. The question was raised as to whether a member of a Board of Appeal who considered that he came under one of the grounds for exclusion given in Article 135, paragraph 1, could nevertheless take part, subject to the agreement of the parties. The retention of such a member might in fact prove quite useful in view of his special knowledge of a case in point.
Article 56 - Boards of Appeal

36. A proposal by the French delegation, according to which the Boards of Appeal should always be presided over by one of their legally qualified members, was not supported by the Working Party. Several delegations could see no reason, particularly in the light of experience in their own countries, why technically qualified examiners should be automatically excluded from this office.

37. The Working Party also agreed that the Chairmen of the Boards of Appeal should be appointed by the Administrative Council (see above, Article 37, point 26).

Article 57 - Enlarged Board of Appeal

38. The Working Party added to paragraph 1 (b) a reference to Article 116 (see point 45 below).

39. On the proposal of the French delegation it was laid down in paragraph 2 that the Chairman of the Enlarged Board of Appeal will always be a legally qualified member.
INTER-GOVERNMENTAL CONFERENCE Brussels, 28th October 1971
FOR THE SETTING UP BR/132/71
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 HAERTHEL,
   President of the German Patent Office, in the Chair.

   This meeting, which was devoted primarily to the exami-
   nation 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 meet-
   ing (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).

(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 Imple-
   menting Regulations to be examined at the meeting
   (BR/GT I/111/71).

BR/132 e/71 ley/EM/ad
b) the division of such an application,
(c) the grant of a European patent,
and in the event of an appeal against a decision
taken by an Opposition Division consisting of three
members;
— three legally qualified members in all other cases.

Article 57
Enlarged Board of Appeal
(1) The Enlarged Board of Appeal shall be responsible for:
(a) deciding points of law referred to it by Boards of Appeal and
(b) giving opinions on points of law referred to it by the President of the European Patent Office.
(2) The Enlarged Board of Appeal shall consist of seven members of whom five shall be legally qualified members and two technically qualified members.

Article 58
Independence of the members of the Boards
(1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term.
(2) The members of the Boards may not be members of the Examining Sections, Examining Divisions, or Opposition Divisions.
(3) In their decisions the members of the Boards shall not be bound by any instructions. They shall comply only with the provisions of this Convention and with those adopted in implementation thereof.

KAPITEL IV
Register und Veröffentlichungen
Artikel 59
Europäisches Patentregetishe

CHAPTER IV
Register and publications
Article 59
Register of European Patents
(1) The European Patent Office shall keep a register, to be known as the “Register of European Patents”, which shall contain those particulars the registration of which is provided for by this Convention. No entry shall be made in the register prior to the date of publication under Article 85.
(2) The Register of European Patents shall be open to public inspection. Extracts from its entries shall be delivered on request on payment of the fee prescribed by the Rules relating to Fees adopted pursuant to this Convention.
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 —
118. In addition, the same organisations asked that the parties should have the opportunity to be heard by the Enlarged Board or to intervene before it, regardless of whether it was they or the Board of Appeal that referred the point in question to the Enlarged Board of Appeal.

119. IAPIP hoped that the parties would be able to intervene before the Enlarged Board of Appeal, and pointed out that its preference was for a supra-national court, such as the maximum approach would indicate. IAPIP expressed anxieties regarding the consequences that referral to the Enlarged Board by the parties could have on the duration of the proceedings.

120. FICPI suggested that in the event of a referral to the Enlarged Board of Appeal by the President of the European Patent Office, the interested professional circles might be heard.

121. At the end of the hearing UNICE submitted a drafting proposal (Working Document No. 7 of 27 January 1972).

Article 122 (International search report) and Article 160a (Application of Article 122)

122. IAPIP pointed out that the PCT did not oblige national authorities to recognise the PCT international search report. For the purposes of the PCT, the First Convention constituted a regional treaty which would have the same status in its Contracting States as their national laws. Working on this assumption, the deletion of Article 122 as such, or at least an amendment to the wording to make such recognition optional rather than compulsory ("may take the place of" instead of "shall take the place of"), could be envisaged.

BR/169 e/72 ley/PB/prk
Article 116 (Decision or opinion of the Enlarged Board of Appeal on certain points of law)

117. Several organisations (ICQ, CEIF, COPRICE, EIRMA, FICPI, UNEPA and UNICE) asked for a provision that the parties, as well as the Board of Appeal, may refer questions to the Enlarged Board of Appeal, without this necessitating the lodging of a further appeal. They considered that if the opportunity to refer points to the Enlarged Board of Appeal for an interlocutory decision, as provided in paragraph 1(a), were to be restricted to the Board of Appeal, the desired aim, which was to ensure the uniform application of the law or to clarify a fundamentally important point of law, would not be fully achieved.

Firstly, the Boards of Appeal would not necessarily always realise when they were up against a fundamentally important point of law, and secondly, failure to refer points to the Enlarged Board would not be subject to sanctions.

So as to avoid abuses, the Enlarged Board would have the discretionary power to accept or refuse referral. It would not have to state the grounds for its decision, which would have to be given within quite a short space of time, such as two or three months. If no decision were given within that period, the referral would be deemed to have been refused.

The Board of Appeal concerned would have to stay its decision and would be bound by the interlocutory decision of the Enlarged Board.

BR/169 e/72 ley/PB/prk .../...
five members - three technically qualified members and two legally qualified members.

CEIPA asked in what form the Board of Appeal would take the decision, in the case provided for in paragraph 2, first sub-section, (b).

UNEPA wondered about the scope of the provision laid down in paragraph 2, second sub-section, (c). It was noted that in certain cases it would be possible for the proprietor of the patent to introduce an appeal because the form in which the patent was granted had not received his approval.

Article 57 (Enlarged Board of Appeal)

49. See observations under Article 116.

Article 58 (Independence of the members of the Boards)

50. CEIF noted that the members of the Enlarged Board of Appeal and the Boards of Appeal could, in so far as they were not engaged full time as such, be given other duties within the European Patent Office, subject to the provisions of paragraph 2. In this connection it could be specified that the irremovability from office laid down in paragraph 1 only concerned their duties on the Boards.

Article 59 (Register of European Patents)

51. CEIF asked that an amendment be made to the second sentence of paragraph 1 to permit the transfer of an application to be recorded, even if the application had not yet been published.

BR/169 e/72 oyd/KM/prk .../...
MINUTES
of the
5th Meeting of the Inter-Governmental Conference for the Setting up of a European System for the Grant of Patents

Part II
Hearing of the non-governmental international organisations on the Second Preliminary Draft of a Convention establishing a European System for the Grant of Patents

(Luxembourg, 26 January to 1 February 1972)
delegations considered that the parties should only have the right to ask a Board of Appeal to refer the matter to the Enlarged Board of Appeal; the Boards of Appeal would, however, be free either to accept or to reject that request.

With regard to the possibility of parties being heard before the Enlarged Board of Appeal, two delegations were in favour, one stating that in its opinion Article 140 already allowed for this possibility. On the other hand, another delegation thought that it was inappropriate to follow up this request, but that the possibility of submitting a written statement could be provided for.

The request of one organisation to lay down that the interested circles could be consulted in the case provided for in paragraph 1(b) was rejected.


Some delegations asked that sub-paragraph (b) of paragraph 1 be deleted since in their opinion it was of no help to ask the Enlarged Board of Appeal to give decisions outside proceedings on a case.

The Conference did not adopt this proposal.
Appeal. In this respect, some delegations confessed their perplexity as to the consequences which could arise from the texts in their present form. In fact, these delegations wondered, with regard to paragraph 2, what would happen if either all or part of the patent application or patent was not affected by the decision in respect of the appeal. For such cases these delegations thought it would be useful to lay down the same rights as those provided for in paragraph 3.

The Conference agreed that this problem should be examined again by Working Party I.

135. Reservations were made concerning paragraph 4 by the Swedish and United Kingdom delegations, the latter being opposed to the possibility, implicit in that paragraph, that an authority which has to settle an inter partes dispute should be bound by an ex parte decision.

Article 116 (Decision or opinion of the Enlarged Board of Appeal on certain points of law)

136. The Conference discussed the comments submitted by the organisations concerned, relating to the right of the parties to refer any question to the Enlarged Board of Appeal and to be heard before it.

With regard to the parties' right of reference, one delegation said it was in favour of such a possibility, while limiting it nevertheless to points of law of fundamental importance and on the understanding that the Enlarged Board of Appeal would have the power to accept or refuse the question referred. On the other hand, several
the cases provided for in the first two sub-paragraphs of paragraph 2 (cf. BR/169/72, point 48).

It was, moreover, the view of the Conference that the question of determining under what circumstances as regards composition the Board of Appeal might find that the nature of the decision in question required a composition of three technically qualified members and two legally qualified members (paragraph 2, second sub-paragraph, (b)), could be resolved by the Rules of Procedure of the Boards of Appeal referred to in Re. Article 56, No. 1.

73. The Conference provisionally reserved its position on paragraph 2, second sub-paragraph, (c) pending a review of Article 97 to be undertaken by Working Party I (cf. point 123 below).

Article 57 (Enlarged Board of Appeal)

74. Cf. comments on Article 116.

75. The Luxembourg delegation continued to express reservations on paragraph 1(b).

76. The Conference instructed the Drafting Committee to review the drafting of Re. Article 53, No. 2a, in relation to the text of Article 37, paragraph 3, so as to avoid the possibility of the whole body of provisions concerning the composition of the Enlarged Board of Appeal being interpreted as meaning that the legally qualified members were permanent members while the technically qualified members held their membership on a purely temporary basis.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

MINUTES

of the

5th Meeting of the Inter-Governmental Conference
for the Setting up of a European System
for the Grant of Patents

Parts 1 and 3

(Luxembourg, 24-25 January and 2-4 February 1972)

BR/168 e/72 eld/KM/gc
Article 57

Enlarged Board of Appeal

(1) The Enlarged Board of Appeal shall be responsible for:

(a) deciding points of law referred to it by Boards of Appeal and

(b) giving opinions on points of law referred to it by the President of the European Patent Office, under the conditions laid down in Article 116.

(2) For giving decisions or opinions, the Enlarged Board of Appeal shall consist of seven members:

- five legally qualified members, one of whom shall be the Chairman;

- two technically qualified members.
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 6 December 1971
BR/139/71

- Secretariat -

DOCUMENT CORRECTING

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

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

- Stage reached on 26 November 1971 -

BR/139 e/71
of them) should adopt a scheme on the basis of which the various Boards of Appeal would be composed.

The Implementing Regulations will also have to lay down provisions governing the division of responsibilities between the various Boards of Appeal.

V

Articles 66 to 75

Applications for European patents - Filing and requirements of the application - Priority

(Report by the Netherlands delegation: BR/19/69)

25. The question was raised à propos of Article 72 whether the European patent application constituted an application under Article 4A (2) of the Paris Convention.

26. In the view of the representative of BIRPI, the provisions of Article 72 (6), which deal with reciprocity, together with Article 75, should lead to the consequence that all members of the Paris Convention should recognize the European patent application as a national application for priority purposes. There was however no uniform method of
IV

**Articles 54 to 65**

Departments - Register, publications, classification - Relations with national authorities

(Report by the Swiss delegation: BR/18/69)

22. The Conference adopted the system proposed by Working Party I, which divides examination of the application between an Examining Section and an Examining Division and lays down that Examining Divisions should be composed of three examiners, at least during the "running in" period of the European Patent Office (EPO).

The Conference also agreed that it would be advisable to provide in the final provisions that, should it prove necessary, this system may be amended later by a more flexible method than that of revision of the Convention.

23. On the subject of Articles 58 and 58a (Boards of Appeal and Enlarged Board of Appeal), the Conference observed that although it was not formally stated that the President of the EPO might not be a member of either of these Boards, the Administrative Council would refrain from appointing him to membership of either body.

24. As regards the appointment of the members of the individual Boards of Appeal, the Conference agreed that this matter would have to be dealt with in the Implementing Regulations, which might, for example, lay down that all the members of the Boards of Appeal (or a limited number...
Item 1 on the agenda (BR/14/69) (1)

OPENING OF THE MEETING

1. The Conference began its work at 10.00 a.m. on Tuesday 13 January at the Kirchberg European Centre, Luxembourg, with Dr. HAERTEL, President of the German Patent Office, in the Chair (2).

Item 2 on the agenda

ADOPTION OF THE PROVISIONAL AGENDA

2. The Conference adopted the provisional agenda submitted by the President.

(1) The agenda is given in Annex I
(2) The list of those attending the 2nd meeting is given in Annex II.
Article 58a (new)

Enlarged Board of Appeal

Working Party text

(1) The Enlarged Board of Appeal shall be responsible for:

(a) deciding points of law referred to it by Boards of Appeal and

(b) giving opinions on points of law referred to it by the President of the European Patent Office.

(2) The Enlarged Board of Appeal shall consist of seven members, of whom five shall be legally qualified members and two technically qualified members.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 7 November 1969
BR/9/69

- Secretariat -

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

Articles 54 to 96
prepared by Working Party I
(14 October to 17 October 1969)

compared synoptically with

- the 1962 and 1965 versions of the Draft Convention as established by the EEC "Patents" Working Party and

- the Draft of an open European Patent Convention drawn up by the Member States of the European Free Trade Association

BR/9 e/69 mk
the Working Party believed it necessary to provide for an Enlarged Board of Appeal which can be referred to by a Board of Appeal where the latter is faced with an important point of law, in particular where it intends to depart from the decision of another Board of Appeal.

The majority of the Working Party considered that the President of the European Patent Office should be able to ask the Enlarged Board of Appeal for an opinion on such questions. Reference was made to the existing practice in France whereby the Conseil d'Etat may give the Government an opinion when requested to do so. The Section of the Conseil d'Etat which gives its opinion is in all cases distinct from the Section which will have to decide in any dispute.

18. It was agreed that the Enlarged Board of Appeal would not be a permanent body, but would only meet when questions such as those referred to in point 17 were submitted to it. It would normally be composed of members of the Boards of Appeal (the presidents of the latter, for example).

The Working Party decided that the details of the competence of the Enlarged Board of Appeal should be laid down in a new Article 112a (new), which will be examined at a later date (1).

In addition, it was agreed that the Implementing Regulations would lay down if and under what conditions the Enlarged Board of Appeal is to hear the parties.

(1) A draft text prepared by the French and Dutch delegations is to be submitted to the Working Party.
Article 57 - Patent Administration Divisions

14. The Working Party was of the opinion that there was no justification for Patent Administration Divisions in the present Convention, since the aim of the latter was simply to set up a system for the grant of patents. Depending on the stage reached in the procedure, either the Examining Sections or the Examining Divisions would be competent to deal with any administrative questions arising in connection with applications (such as payment of fees). Where necessary, these bodies will be able to seek the advice of another member of the European Patent Office, if they are of the opinion that the matter to be settled requires specialized knowledge (legal knowledge in particular).

Article 58 - Boards of Appeal

15. The majority of the Working Party was in favour of a text which, basically following the 2nd variant in the 1965 Draft, provides that the Boards of Appeal are to be composed of an odd number of members.

16. In addition, the Working Party thought it necessary to ensure that where a Board of Appeal is required to give a decision on appeal from a decision of an Examining Division composed of four members, it must itself be composed of five members.

Article 58a (new) - Enlarged Board of Appeal

17. To ensure the uniform application of the law while at the same time avoiding the setting up of a further legal instance,
MINUTES

of the meeting of Working Party I
(Luxembourg, 14 - 17 October 1969)

I

1. The second working meeting of Working Party I was held at Luxembourg from Tuesday 14 to Friday 17 October 1969, with Dr. HAERTEL, President of the German Patent Office, in the Chair.

The Commission of the European Communities, BIRPI, the General Secretariat of the Council of Europe and the International Patent Institute took part in the meeting (1).

2. The Working Party agreed to appoint the following as rapporteurs:

- a member of the Swiss delegation for Articles 54 to 65 (organisation of the departments - register, publications, classification - relations with national authorities);

(1) See Annex I for list of participants in the meeting of the Working Party.
Article 58 (Suite)

membre technicien rapporteur qui ne participe pas à la décision et, si elles le jugent utile en raison d'une question juridique difficile ou importante, de trois membres techniciens dont le rapporteur et de deux membres juristes. Dans les autres cas, les chambres se composent de trois membres juristes.

(3) Les membres des chambres de recours ne peuvent être membres des section d'examen, des divisions d'examen, ni des divisions d'administration des brevets.

(4) Dans leurs décisions les membres des chambres de recours ne sont liés par aucune instruction. Ils ne doivent se conformer qu'aux dispositions de la présente convention et à celles arrêtées en vue de son application.

Remarque :
En ce qui concerne la première variante du paragraphe 2 de cet article, le groupe de travail estime que, dans le cas où les chambres de recours se composent de quatre membres, le président doit être un membre technicien.
Article 58

Chambres de recours

(1) Les chambres de recours sont compétentes pour statuer sur les recours exercés contre les décisions des sections d'examen, des divisions d'examen et des divisions d'administration des brevets.

(2) 1ère variante :
Pour statuer, les chambres de recours se composent de trois, quatre ou cinq membres. Lorsqu'elles statuent sur les recours exercés contre une décision de rejet d'une demande de brevet européen ou une décision relative à la division, à la confirmation ou à l'annulation d'un brevet européen provisoire, les chambres de recours se composent de trois membres techniciens et d'un membre juriste et, si elles le jugent utile en raison d'une question juridique difficile ou importante, de trois membres techniciens et de deux membres juristes. Dans les autres cas, elles se composent de trois membres juristes. Si une chambre est composée de quatre membres et qu'il y ait partage des voix, la voix du président est prépondérante.

2ème variante :
Pour statuer, les chambres de recours se composent de trois ou cinq membres. Lorsqu'elles statuent sur les recours exercés contre une décision de rejet d'une demande de brevet européen ou une décision relative à la division, à la confirmation ou à l'annulation d'un brevet provisoire, les chambres de recours se composent de deux membres techniciens et d'un membre juriste assistés d'un
GROUPES DE TRAVAIL
"Brevets"

Bruxelles, le 22 Janvier 1965
2.335/IV/65-F

Confidentiel

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

(article 1 à 175)

Ce document remplace le document 11.155/IV/64-F du
2 octobre 1964 (articles 1 à 105)

2.335/IV/65-F
Unterstützung eines technisch vorgedachten Mitglieds als Berichterstatter, das nicht an der Entscheidung teilnimmt, und, falls sie es mit Rücksicht auf eine schwierige oder bedeutsame Rechtsfrage für zweckmäßig halten, in der Besetzung mit drei technisch vorgedachten Mitgliedern einschließlich des Berichterstatters und zwei rechtskundigen Mitgliedern. Im übrigen entscheiden die Beschwerdekammern in der Besetzung mit drei rechtskundigen Mitgliedern.

(3) Die Mitglieder der Beschwerdekammern dürfen nicht den Prüfungsstellen, Prüfungsabteilungen oder Patentverwaltungsabteilungen angehören.


Bemerkung:

Hinsichtlich der 1. Fassung des Absatzes 2 ist die Arbeitsgruppe der Auffassung, dass bei einer Besetzung der Beschwerdekammer mit vier Mitgliedern der Vorsitzende ein technisches Mitglied sein muss.
Artikel 58

Beschwerdekammern

(1) Die Beschwerdekammern sind fuer die Entscheidung ueber Beschwerden gegen die Entscheidungen der Pruefungsstellen, Pruefungsabteilungen und Patentverwaltungsabteilungen zustandig.

(2) Erste Fassung:
Fuer die Entscheidung setzen sich die Beschwerdekammern aus drei, vier oder fuemf Mitgliedern zusammen. Bei Beschwerden gegen eine Entscheidung ueber die Zurueckweisung einer europaeischen Patentanmeldung oder eine Entscheidung ueber die Teilung, die Bestaetigung oder die Aufhebung eines vorlaeufigen europaeischen Patents entscheiden die Beschwerdekammern in der Besetzung mit drei technisch vorgebildeten Mitgliedern und einem rechtsskundigen Mitglied und, falls sie es mit Ruecksicht auf eine schwierige oder bedeutsame Rechtsfrage fuer zweckmaessig halten, in der Besetzung mit drei technisch vorgebildeten Mitgliedern und zwei rechtsskundigen Mitgliedern. Im uebrigen entscheiden sie in der Besetzung mit drei rechtsskundigen Mitgliedern. Ist eine Beschwerdekammer mit vier Mitgliedern besetzt, so gibt bei Stimmengleichheit die Stimme des Vorsitzenden den Ausschlag.

Zweite Fassung:
Fuer die Entscheidung setzen sich die Beschwerdekammern aus drei oder fuemf Mitgliedern zusammen. Bei Beschwerden gegen eine Entscheidung ueber die Zurueckweisung einer europaeischen Patentanmeldung oder eine Entscheidung ueber die Teilung, die Bestaetigung oder die Aufhebung eines vorlaeufigen europaeischen Patents entscheiden die Beschwerdekammern in der Besetzung mit zwei technisch vorgebildeten Mitgliedern und einem rechtsskundigen Mitglied mit
Arbeitsgruppe "Patente"

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

Vertraulich

Änderungen des Vorentwurfs eines Abkommens
über ein europäisches Patentrecht
(Artikel 1 bis 175)

Dieses Arbeitsdokument ersetzt das Arbeitsdokument 155/IV/64-D vom 2. Oktober 1964 (Artikel 1 bis 103).

Article 26

Enlarged Board of Appeal

(1) The Enlarged Board of Appeal shall be responsible for:

(a) deciding points of law referred to it by Boards of Appeal;

(b) giving opinions on points of law referred to it by the President of the European Patent Office under the conditions laid down in Article 112.

(2) For giving decisions or opinions, the Enlarged Board of Appeal shall consist of five legally qualified members and two technically qualified members. One of the legally qualified members shall be the Chairman.