Rule 102 E

Travaux Préparatoires
(EPC 1973)

Comment:

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Regel 102
MPÜ
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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 uncontented.
The general principles concerning representation in Article 133
were also unchanged. The Main Committee generally
considered that these principles should also be valid for the
transitional period. The Committee also specified that legal
persons could be represented not only by their employees — as
laid down in paragraph 3 of Article 133 — but also by their
departments. Such representation by their departments is
regarded as a matter of course, is understood from paragraph 1
of Article 133 and does not need to be expressly laid down.

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

Article 134 provided that the representatives entered on the
list were entitled to establish a place of business in the Federal
Republic of Germany and the Netherlands for the purpose of
practising their profession before the European Patent Office.
In view of proceedings before national authorities carrying out
duties on behalf of the European Patent Office, as provided for
in the Protocol on Centralisation, the Main Committee
supplemented Article 134 accordingly. Professional representa-
tives 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
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
2454. The Chairman pointed out that the representatives referred to in Article 162 were entered on the basis of certificates furnished by the central industrial property offices of the appropriate States. Such representatives must be deleted in accordance with Rule 107 when the grounds for such certificates no longer existed, namely when the persons concerned could no longer exercise their profession as representatives in accordance with their national law.

2455. The delegation of the Federal Republic of Germany thought the difficulty was to distinguish between the two cases. It therefore seemed advisable to add a provision to Rule 103 to the effect that representatives entered on the list under Article 162 would be subject to the conditions for deletion laid down in Rule 107.

2456. The Chairman explained to the Committee the possible form of the new Rule 103 resulting from these discussions. The present Rule 103 would become paragraph 1. Paragraph 2 would consist of the proposal by the delegation of the Federal Republic of Germany, subject to the complementary proposal by the Finnish delegation. A new paragraph 3 would provide that a professional representative would be re-entered on the list upon request as soon as he satisfied the conditions laid down in Article 134, paragraph 2, once again. A new paragraph 4 would provide that the representatives to whom Rule 107 applied could also be deleted under that Rule.

2457. The COPRICE delegation referred to the possibility of deletion as a result of loss of place of business or employment within the territory of a Contracting State, and said that a distinction should be made between independent representatives and those in salaried employment. The situation of representatives in salaried employment was more delicate in that they could lose their employment and then not exercise their profession, even for a considerable period of time. The problem was therefore to establish at what stage the European Patent Office would have to decide to delete the person concerned.

2458. The Chairman noted that, subject to an examination of the Finnish delegation's proposal, the Committee agreed to the new form of Rule 103 as described above.

He therefore proposed that the Finnish delegation's proposal be discussed. It covered two possibilities, the second of which was already dealt with by Rule 107. The Committee therefore had to consider the case where a decision by a national court disqualified a person from acting as a professional representative before the European Patent Office. The Chairman wondered whether such a situation was possible in practice, since there were some doubts whether a national court was competent to decide whether a person could act as a representative before the European Patent Office. A decision of this nature would appear to be the preserve of the body provided for in the last paragraph of Article 134.

2459. The United Kingdom delegation subscribed to the opinion expressed by the Chairman, since it did not think that provisions concerning a matter which should be decided by the body provided for in Article 134, paragraph 7, ought to be included in the Implementing Regulations.

2460. The Finnish delegation declared itself satisfied with the remarks made by the Chairman and withdrew its proposal.

2461. The FICIP delegation thought that a final decision on this Rule should be postponed until the Committee had considered Rule 107.

2462. The Chairman noted that subject to this reservation the Committee agreed to the new version of Rule 103.

2463. When examining the results of the Drafting Committee's proceedings (M/142, page 15), the Committee agreed, in support of a comment made by the Austrian delegation, that where the institute referred to in Article 134, paragraph 7, decided to introduce grounds for deletion other than those laid down in the Implementing Regulations, it would be for the Administrative Council to amend paragraph 2 of this Rule accordingly.

2464. During that examination, the Chairman put to the Committee the question whether the text produced by the Drafting Committee covered the decisions taken by the Committee or whether a sentence should be added to paragraph 3 stipulating that Rule 107, paragraph 4, should also apply after the end of the transitional period.

2465. The French delegation did not think that such an addition was necessary. First of all, paragraph 1 of that Rule stated that it was applicable to any "professional representative", regardless of his origins. Secondly, paragraph 1 of Rule 107 stipulated that that rule was only valid for the duration of the transitional period. The French delegation therefore thought that the present texts made it sufficiently clear that as regards deletion after the transitional period all representatives would be treated in the same way.

2466. The delegation of the Federal Republic of Germany was also of the opinion that the possibility referred to by the Chairman was already covered by the present wording on the grounds that Article 162, paragraph 7, provided that after the expiry of the transitional period persons whose names had been entered on the list of professional representatives during that period should be entered on it again, provided that they fulfilled the requirements of paragraph 1 (b), which referred to the place of business or employment alone.

2467. The Committee subscribed to this interpretation.

**Rule 107 (106) — Withdrawal of the certificate enabling a representative to be entered on the list**

2468. The Committee examined the French delegation's proposal, as given in M/112, page 4, that this Rule be deleted.

2469. The French delegation said that as a result of the discussions of Rule 103, and in particular the elucidations given by the Chairman, it had decided to withdraw its proposal for the complete deletion of this Rule. Instead, it would prefer Rule 107 to be amended to provide that the withdrawal of the certificate by the central industrial property office would be effected in the same circumstances and for the same reasons as those enumerated in Rule 103 for the definitive period.

2470. The Chairman said that as a result of the amendments made to Article 162 by the Committee, entry on the list during the transitional period required fulfillment of the following three conditions: the nationality of one of the Contracting States, a place of business or of work within the territory of one of the Contracting States, and the qualification to act before the national patent office.

Rule 107, which was intended to lay down the grounds for deletion from the list during the transitional period covered only the third of those conditions at present. In fact, the withdrawal of national qualification, under the appropriate national law, resulted in the professional representative's being deleted from the list of professional representatives before the European Patent Office.

The Committee had therefore to decide whether this Rule should be extended to include the two other conditions mentioned in Article 162. Furthermore, it should be provided that where these conditions were again fulfilled, the person concerned was entitled to reinstatement on the list.

The Chairman asked the Committee whether it could agree to this approach, which also took account of the United Kingdom delegation's proposal as given in M/64.

2471. The United Kingdom delegation said that the intention of its proposal was to cover another eventuality as well, where
deletion in the proposal by the delegation of the Federal Republic of Germany overlapped partly with the proposal by the French delegation, given in M/112.

2437. The French delegation stressed that this overlap was only partial, since its own proposal sought to provide that the representative could request that his deletion from the list of professional representatives be only temporary. This possibility was open, since for one reason or another a professional representative might no longer have his place of business within the territory of one Contracting State, although he intended to resume the exercise of his profession at a later date. The French delegation also stressed that its proposal for an amendment to this Rule was comprehensible only if it were examined in conjunction with the proposal for the deletion of Rule 107.

2438. The Chairman wondered whether it was really advisable to provide for temporary deletion as proposed by the French delegation. If a professional representative were to change his place of business, it could not be foreseen if he would return to his previous place of business, and if so when. It seemed more appropriate to reinstate him on the list if he did return. Furthermore, the arrangement proposed by the French delegation did not seem to be totally in accordance with the systematic basis of the Implementing Regulations, the various parts of which corresponded to the respective parts of the Convention. From this point of view, it would not be in accordance with the system to insert in Rule 103 a provision relating to Article 162 when its proper place was in Rule 107.

2439. The Chairman asked the Committee whether there were any objections to the principle of the proposal by the delegation of the Federal Republic of Germany.

2440. The French delegation said that as a result of the Chairman's explanation that even after deletion from the list the representative could be re-entered simply by request, it had no further objection to the proposal by the delegation of the Federal Republic of Germany.

2441. In reply, the Chairman said that, to take account of the French delegation's proposal, a new paragraph 3 could be added to Rule 103, to read as follows: "A professional representative who has been deleted from the list in accordance with paragraph 2 shall be re-entered thereon upon his request if the grounds for his deletion no longer exist."

2442. The French delegation declared its agreement to this proposal.

2443. The CEIF delegation pointed out that in the French language version of the proposal by the delegation of the Federal Republic of Germany the expression "incapacité professionnelle" did not appear to translate the corresponding German expression exactly.

2444. The Chairman considered that this point could be entrusted to the Drafting Committee which would be responsible for harmonising terminology of the three languages, and would take account of the wording of Rule 91 among other things.

2445. The UNION delegation wanted to know whether the expression "legal incapacity" also covered cases where the professional representative acting before the European Patent Office lost the right to act before his own national office.

2446. The Chairman said that the hypothesis postulated by the UNION delegation came within the scope of Article 162 and not of Article 134, namely professional representatives who had passed the European qualifying examination. It was therefore Rule 107 that should govern this eventuality and not Rule 103, which dealt with the deletion of professional representatives entered on the list after the end of the transitional period.

2447. The Finnish delegation declared its support for the proposal by the delegation of the Federal Republic of Germany, subject to the addition of a further condition for being struck off the list, which should also be possible in cases where the representative had been deprived of the right to act as a professional representative before the European Patent Office as a result of a court ruling or where as a result of such a ruling he had been deleted from the register kept by the central industrial property office of a Contracting State.

2448. The Chairman suggested that this proposal by the Finnish delegation be laid aside for the time being and that the proposal by the delegation of the Federal Republic of Germany be examined first.

2449. The UNION delegation wondered whether the problem the Committee was discussing might have some bearing on that of the addition of a new paragraph 8 to Article 134, which had been examined but not settled by the Committee.

2450. The Chairman said that these were two different things. The proposal by the delegation of the Federal Republic of Germany for a new paragraph 8 in Article 134 was not related to the question of the deletion of a professional representative from the list. The delegation of the Federal Republic of Germany proposed that the President of the European Patent Office be empowered to withdraw an authorisation to establish a place of business in a Contracting State. If such an authorisation were withdrawn, that did not mean, however, that the person concerned would be deleted from the list. He remained on the list, but could not exercise his profession as from a place of business in that Contracting State.

2451. Referring to the Chairman's observations that Rule 103 only concerned deletion from the list of professional representatives who had been entered on it after the end of the transitional period, the Swiss delegation wondered whether this list referred only to professional representatives who had passed the European qualifying examination. Since it was extremely unlikely that two lists would be provided for, one for professional representatives entered during the transitional period and the other for professional representatives entered after the end of that period, it followed that representatives entered on the list during the transitional period who, under Article 162, would be able to continue to act before the European Patent Office without having to pass the qualifying examination, would appear on the list. The question therefore arose whether there was not some conflict, at least in the drafting, between point (b) of the proposal by the delegation of the Federal Republic of Germany which sought to provide that the loss of nationality of one of the Contracting States constituted a ground for deletion, and Article 162, paragraph 7, which provided that professional representatives entered on the list during the transitional period would remain on that list even if they did not have the nationality of one of the Contracting States.

2452. The Chairman confirmed that the European Patent Office would have only one list. It would comprise two categories of persons: representatives provided for by Article 134, namely those who had passed the European qualifying examination, and those who had been entered in accordance with Article 162. The grounds for deletion for these two categories were not the same.

2453. The French delegation expressed some doubts as to the interpretation of the relationship between the transitional period and the definitive period. To judge by its content, the first phrase of Rule 103 as contained in the proposal by the delegation of the Federal Republic of Germany did not seem to refer to the transitional period. The content of such a provision should however apply during both the transitional period and the definitive period.
Rule 96 (95) — Communication of information contained in the files

2416. The Committee referred to the Drafting Committee the examination of the proposal made by the delegation of the Federal Republic of Germany, as given in M/47, point 48.

Rule 97 (96) — Additional publications by the European Patent Office

2417. The Committee referred to the Drafting Committee the examination of the proposal concerning paragraph 2 made by the Norwegian delegation, as given in M/71, page 7.

Rule 99 (98) — Inspection of files by or via courts or authorities of the Contracting States

2418. The UNICE delegation recalled the suggestion, given in M/19, point 39, that the Convention should include a provision to the effect that all bodies concerned should be obliged to observe secrecy, so that the applicant would be able to withdraw his application within the time limit of eighteen months without the invention being published.

2419. The Chairman pointed out that under Rule 99, paragraph 2 the communication of files to third parties by Courts and Public Prosecutors' Offices of the Contracting States must be effected in accordance with the conditions laid down in Article 128, namely with the consent of the applicant.

2420. The UNICE delegation was satisfied by this reply.

Rule 100 (99) — Procedure for letters rogatory

2421. The Italian delegation wondered whether paragraph 4 should not be made clearer. It would appear necessary to stipulate that, where the authority to which the letters rogatory were transmitted was not competent to execute them, they should automatically be transmitted to the central authority provided for in paragraph 1. The present wording provided for transmission to the authority in the same State which was competent. Under paragraph 1, the Member States must designate a central authority which would undertake to receive letters rogatory. It would be preferable for an authority which was not competent to return the letters rogatory to the central authority, which would then instruct the authority which was competent.

2422. The FICPI delegation, referring to paragraph 6, asked whether the parties as well as members of the departments concerned would be permitted to attend enquiries.

2423. The Chairman was of the opinion that this paragraph provided merely for the attendance of members of the department concerned, since parties' right of attendance followed from general principles of law.

2424. The Committee agreed to request the Drafting Committee to examine the wording of paragraph 4 with a view to taking account of the remarks made by the Italian delegation. It also instructed the Drafting Committee to delete from the French language text the word "judiciaire", the equivalent of which did not appear in the other two language versions.

2425. When the results of the Drafting Committee's proceedings were being examined (see M/142/I R 13), the Italian delegation thought that this Rule should include a provision governing the possibility of there being no territorial competence at all. It quite frequently occurred in international practice that letters rogatory were incorrectly transmitted to an authority of a State which was not competent to execute them. In the absence of a provision specifying what was to be done with such letters rogatory, certain States could encounter difficulties.

2426. The French delegation supported this proposal.

2427. The Committee approved this proposal and agreed to instruct the Drafting Committee to incorporate an appropriate provision in this Rule.

Rule 102 (101) — Authorisations

2428. The United Kingdom delegation expounded the amendment it proposed in M/10, point 10. It thought that as it stood paragraph 8 appeared to sanction a breach of an authorisation given by the applicant to his representatives. The intention was to give the European Patent Office complete freedom in its dealings with representatives, and the United Kingdom delegation proposed that this paragraph be worded as follows: "If several representatives are appointed by the same party, the European Patent Office shall not be bound by any provision in their authorisations as to whether they shall act singly or jointly."

2429. The Netherlands delegation supported this proposal.

2430. In reply to an observation by the Austrian delegation, the Chairman said that the principal difference between the text as it stood at present and the version proposed by the United Kingdom delegation was as follows: the present wording provided that if a number of representatives was appointed, each of them was empowered to act, even if the authorisation provided otherwise. Under the United Kingdom delegation's proposal, it would be a matter for the discretion of the European Patent Office to determine whether, in such a case, it would require all the representatives to act jointly or whether it would suffice if they acted separately.

2431. The delegation of the Federal Republic of Germany expressed its preference for the present version, since it sought to protect third parties in cases where more than one representative was appointed. Moreover, since the PCT included a similar provision, it would be regrettable if different rules were to apply in this matter.

2432. The Committee rejected the United Kingdom delegation's proposal by seven votes to three, with two abstentions.

Rule 103 (102) — Deletion of the professional representative from the list

2433. The Chairman disclosed that two proposals for amendments had been submitted: one was by the delegation of the Federal Republic of Germany, given in M/47, point 34, and the other by the French delegation, given in M/112, page 4. Since the proposal by the Federal Republic of Germany involved greater changes in the present text, the Chairman proposed that it be discussed first.

2434. The delegation of the Federal Republic of Germany explained that its proposal was for a new paragraph 2, the purpose of which was to permit the deletion of professional representatives from the list provided for in Article 134, paragraph 1, in circumstances other than those at present specified by Rule 103. Such deletion would be carried out in the three circumstances specified in (a), (b) and (c) of the proposal by the delegation of the Federal Republic of Germany, namely death or legal incapacity of the representative, his failure to satisfy the nationality requirement, and no longer having his place of business or employment within the territory of a Contracting State.

2435. One delegation supported the proposal by the delegation of the Federal Republic of Germany.

2436. The Chairman indicated that the third ground for
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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 162

Amendment of the list of professional representatives

(1) The entry of the professional representative shall be deleted from the list of professional representatives at his request.

(2) After the expiry of the transitional period provided for in Article 163, paragraph 1, the entry of any professional representative may be deleted automatically in the following cases only:

(a) in the event of the death or legal incapacity of the professional representative;

(b) in the event of the professional representative no longer being a national of one of the Contracting States and not having been granted exemption by the President of the European Patent Office in accordance with Article 134, paragraph 6;

(c) in the event of the professional representative no longer having his place of business or employment within the territory of one of the Contracting States.

(3) A person whose entry has been deleted shall, upon request, be re-entered in the list of professional representatives if the conditions for deletion no longer exist.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 11
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Implementing Regulations: Rules 83 to 106
Rule 103

Amendment of the list of professional representatives

(1) The entry of the professional representative shall be deleted from the list of professional representatives at his request.

(2) After the expiry of the transitional period provided for in Article 162, paragraph 1, the entry of any professional representative may be deleted automatically in the following cases only:

(a) in the event of the death or legal incapacity of the professional representative;

(b) in the event of the professional representative no longer being a national of one of the Contracting States and not having been granted exemption by the President of the European Patent Office in accordance with Article 134, paragraph 5;

(c) in the event of the professional representative no longer having his place of business or employment within the territory of one of the Contracting States.

(3) A person whose entry has been deleted shall, upon request, be re-entered in the list of professional representatives if the conditions for deletion no longer exist.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973
M/ 142/I/R 13
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 27 SEPTEMBER 1973

Articles of the Convention:

Articles 59
162

Rules of the Implementing Regulations:

Rules 51
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Protocol on Jurisdiction and the Recognition of Decisions
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Recommendation on preparations for the opening of the
European Patent Office

Decision on Training Staff for the European Patent Office
Article 162 (continued)

before the central industrial property office of the Contracting State in which they exercise their profession.

(7) Unchanged

IMPLEMENTING REGULATIONS

Rule 103

Provisional or definitive deletion of the professional representative from the list

(1) Upon his own request, the professional representative shall be deleted provisionally or definitively from the list provided for in Article 134, paragraph 1.

(2) A professional representative who ceases to have his place of business or place of employment within the territory of one of the Contracting States shall be deleted from the list provided for in Article 134, paragraph 1. Upon his own request, he shall automatically be re-entered on this list as soon as he again satisfies the conditions of Article 134, paragraph 2(b), or of Article 162, paragraph 1(a), [as amended above].

Rule 107

- deleted -

M/112/I kin/Hi/mb
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 20 September 1973
M/112/I
Original: French

CONFERENCE DOCUMENT

Drawn up by: French delegation

Subject: Representation – Articles 133, 134 and 162 – Rules 103 and 107
43. Art. 162 (2), (3) and (6). The French government in M/26, points 21-22, pages 320-1, objects to the term "mandataire agréé" in the French text of Art. 162 (2), (3) and (6), because in many countries there are no regulations governing entitlement to represent and therefore there could not be any "mandataire agréé" on the national level. The French government therefore proposes to cancel the word "agréé". This is of course correct, but it may be considered whether the word "professionelle" should be inserted instead, as in the English text. It should then also be considered whether the word "beruflich" should be inserted in the German text.

44. Art. 162 (7). The UNEPA proposes in M/21, point 21, pages 224-5, to cancel the last part of Art. 162 (7) beginning with the words "without having to ....".

The FICPI does not agree that the passage in question is superfluous because it has in fact been proposed from various quarters at various times that representatives admitted to the list of representatives under the transitional provisions and not having passed a national qualifying examination should take the European Qualifying Examination within a certain number of years as a condition for remaining on the list.

1. Comments and proposals of the FICPI in M/15.

45. These previous comments and proposals are not affected by the present memorandum, except (marginally) where expressly referred to above.
35. The FICPI supports the British proposal, but suggests that an express reference should be made in Art. 144 not only to Art. 133 but also to Art. 134.

H. Editorial questions.

36. Art. 134. It is pointed out by the German government in M/11, point 31, pages 68-69, that the term "zugelassene Vertreter" of the German version is not in accordance with the term "professional representatives" of the English version. The German government therefore proposes to change "zugelassene" to "geschäftsmässige".

37. The same observation is made by the UNICE in M/19, point 25, pages 176-7, the CIFE in M/22, point 43, pages 266-7, and the FEMIP in M/23, point 4, pages 282-3, but the correction proposed by these organizations is the opposite, viz. to insert a marginal note to the effect that the term "professional representatives" comprises both persons exercising the profession on a self-employed basis and persons working on a salaried basis.

38. In the opinion of the FICPI it is not usual to refer to the profession as "Geschäft", but the FICPI has no objections to the amendment proposed by the German government, if this is considered useful for clarification.

39. As regards the marginal note proposed by the UNICE, the CIFE and the FEMIP, such an explanation is hardly called for, but at any rate care should be taken not to introduce an interpretation incompatible with the German word "zugelassene" which means persons entitled to represent parties other than their employer.

40. There might of course alternatively be a possibility of finding an English expression corresponding to "zugelassene", e.g. "licensed", "recognized" or "acknowledged".

41. Art. 134 (3). The German government proposes in M/11, point 32, pages 68-69, to cancel Art. 134 (3). The CNIPA in M/20, point 3α, pages 208-9, makes a similar observation but points to the possible significance of Art. 134 (3) as applicable to persons mentioned in Art. 162 (6). In this connection the attention is drawn to the proposal of the FICPI in M/15, points 31-32, pages 118-9, where it is proposed to add at the end of Art. 162 (6)

"The provision shall not affect the applicability of Art. 134 (3)."

42. This proposal thus depends on the maintenance of Art. 134 (3), and if the latter is cancelled, its substance should therefore preferably be taken up in Art. 162 (6). But why not leave things as they are? It is also observed that if Art. 134 (3) is amended as proposed by the FICPI in M/15, point 27, pages 116-7, it will no longer be superfluous in respect of Art. 134 as such.
would positively prescribe the adoption of provisions regarding group representation by the Administrative Council if no such provisions are adopted by the Diplomatic Conference itself, and the possibility that there may be found no need for such provisions is left out of consideration. In the opinion of the FICPI it is preferable to leave the matter entirely to the Administrative Council, as in the official text, because the adoption of provisions for which there is no need, or extending beyond the needs which may be found to exist, just because of a prescription in the Convention, would be regrettable. If the question of group representation is left to the Administrative Council, this will be just one of the many points on which we shall all have to trust the Administrative Council for competence and fairness if the European Patent Convention is to work at all.

The CEEP in M/30, point 21, page 6 (not included in the printed volume) does not make any precise proposals, but urges that Art. 133 (3), second sentence should be extended so as also to deal with the representation of legal persons not having their registered place of business within the territory of one of the Contracting States, but having economic links with such legal persons. In this respect, the CEEP goes further than the UNICE, the CIFE and the FEMIP. Such an extension must be opposed by the FICPI, because it would come very close to a complete undermining of the fundamental provisions of Art. 133 (2) and 134 (1).

F. Art. 162 (8) - new paragraph.

The German government proposes in M/11, point 6, pages 56-57, to adopt a new paragraph (8) to Art. 134 prescribing that if a person whose name appears on the list of professional representatives repeatedly and seriously infringes the laws of the Federal Republic of Germany or of the Netherlands, the competent authorities of these States shall be authorized, after consulting the President of the European Patent Office, to deprive such person of the right to establish a place of business pursuant to paragraph 4.

The FICPI agrees that there should be such a sanction, but would prefer to have it adopted as an express item of the disciplinary measures laid down in Rule 108 as proposed by the FICPI, if it is found that the situation is not already covered by the proposed Rule 108.

G. Proposals of the British government and the CNIPA in respect of Art. 144.

It has been suggested by the British government in M/10, point 9, pages 44-45, to extend Art. 144 so as also to apply to representatives referred to in Art. 133 (3). A similar observation is made by the CNIPA in M/20, point 28, pages 208-9.
Probably, the reason of the Intergovernmental Conference for leaving this question to the Administrative Council was that it is difficult to determine at the present time, what the need will be for group representation through persons not on the list in order to make it possible for the patent departments of industries to continue their activity. As long as this need cannot be determined, it is extremely difficult to draw up a provision covering that need, but not going beyond it. The proposal of the UNICE and the CIFE for Art. 161 bis is in fact a very good illustration of that difficulty.

It seems in fact probable that the patent departments conducting group representation to-day would have no difficulty in immediately getting a sufficient number of employees on the list of representatives in order to continue group representation without any change of their manner of operation. They would probably have ample opportunities of supplementing by employing people already on the list, and as soon as the European Qualifying Examination is established the employees of patent departments would have the same opportunity as persons in the free profession of being entered on the list by taking that examination, whereafter they could conduct group representation at their pleasure. It therefore may well be that the need for group representation through persons not on the list will be very small. The experience under the systems of the U.K. and the Netherlands seem to indicate that patent departments of industries may very well thrive without group representation through employees not on the list. The organizations of industries have not supplied any analysis of the needs for such group representation and have not succeeded in proposing workable provisions allowing for such group representation.

Therefore, it seems as if the possibilities of the Diplomatic Conference to determine the needs for group representation through persons not on the list and drawing up provisions in accordance therewith are just as small to-day as they were at the time when the Intergovernmental Conference decided to leave the question to the Administrative Council, so it is probably better to leave things as they are.

If, however, the Diplomatic Conference should decide to formulate definitive rules for group representation through persons not on the list, then it goes without saying that Art. 133 (3), second sentence would have to be cancelled, though this has not been pointed out by the UNICE and the CIFE.

The FEMPI has not made any proposals similar to Art. 161 bis, but in M/23, point 10, pages 286-7, proposes to amend Art. 133 (3), second sentence so as to provide that the Implementing Regulations shall determine on which conditions group representation (through persons not on the list) shall be permissible. In this form, Art. 133 (3), second sentence,
"acquired rights" or "vested rights", and since the English translation was furnished by the CIFE itself, it seems as if the CIFE makes no distinction between "existing rights" and "acquired rights".

However, such a distinction has to be made, because the European Patent Convention obviously could not and should not respect all existing rights. E.g. the whole population of most of the Convention countries (all those where there are no regulations governing entitlement to represent) are to-day entitled to represent any party before their national patent offices, and this right is taken away from them on the European level by the Convention and is only maintained for the small number of them who have exercised the right for at least five years.

Now, analyzing the provision proposed by the CIFE (and identically proposed by the UNICE in M/19, point 41, pages 184-5), it will be noted that this amounts to a statement of certain existing rights, with no requirement that these rights should have been exercised and thereby have become acquired rights.

Besides, the provision, as formulated by the UNICE and the CIFE, is so broad that it says in fact that in countries where there are no regulations governing representation, any person who is an employee of a legal person should be entitled to represent any other legal person having its seat within any of the Contracting States before the European Patent Office, no matter whether the two legal persons have any connection with one another, no matter whether his employment has anything to do with patents, and no matter whether he has ever tried to act in patent matters before. E.g. a French postman would be entitled to represent a Norwegian company before the European Patent Office. A French patent expert who happens not to be an employee of a legal person would not be so entitled, unless he could prove that he had habitually acted as a professional representative for at least five (5) years. Naturally, it has not been the intention of the organizations that the provision should be interpreted to have this breadth, but the interpretation is incontestable.

If a transitional provision regarding group representation has to be adopted, the proposal of the two organizations would therefore at least have to be supplemented by statements as to the existence of economic links between the legal persons, and the exercise of the relevant right of representation before the entry into force of the Convention, or even before the signing of the Convention.

However, in the opinion of the FICPI it is not true that "the present right that in some States companies have to represent other companies has been forgotten", seeing that Art. 133 (3), second sentence, has been adopted by the Intergovernmental Conference exactly to take care of that right to the extent that it exists as an acquired right.
D. Proposals of various parties in respect of Art. 162 (7).

12. The UNICE in M/19, point 40, pages 182-3, and the CIFE in M/22, point 44, pages 268-9, propose to provide in Art. 162 (7) that if a person has been entered on the list of professional representatives with restrictions on his entitlement to act, these restrictions should automatically be lifted at the end of the transitional period.

13. The FEMIP1 in M/23, point 12, pages 290-1, also proposes such lifting of the restrictions, but subject to the condition that the qualifications of the representative have been recognized by the certificate furnished by the central industrial property office pursuant to Art. 162 (2) and (3).

14. The CEEP in M/30, point 28, page 7 (not included in the printed volume) proposes that the restrictions should remain unchanged after the transitional period.

15. The German government in M/11, point 7, pages 56-57, proposes that the restrictions should be lifted not only during the transitional period, but also after the transitional period if the restrictions are lifted on the national level.

16. The proposals of the UNICE, the CIFE and the FEMIP1 suffer from the drawback that situations may occur where a representative, by the mere expiry of the transitional period, will obtain more comprehensive rights of representation before the European Patent Office than he has before his national patent office, which will constitute an improper interference with established national regulations and institutions, particularly so when the amendment proposed by the organizations is seen in conjunction with the proposals of these organizations in respect of Art. 162 (1) (b) and (3). Besides, the proposals of the three organizations obviously go beyond the principle of acquired rights.

17. On the other hand, the proposal of the CEEP seems to be too restrictive.

18. The proposal of the German government seems to be well balanced and fair and is fully supported by the FICPI.

E. Art. 161 bis proposed by the UNICE and the CIFE, and other proposals pertaining to group representation.

19. The CIFE in M/22, point 45, pages 268-9, points to the desire of the Conference of Experts to respect during the transitional period existing rights and situations without extension or reduction, and then in point 46 goes on to say that in this context the present right that in some states companies have to represent other companies has been forgotten.

20. The term used in the French text of the CIFE comment is "droits acquis" and in the German text "erworbene Rechte". The correct English translation of that would have been
concerned, whether inventors or enterprises not having a patent department, or the patent departments of industries.

8. But until the time when this goal can be achieved, compromises must be accepted. There must be representatives available to applicants right from the beginning in all Contracting States including those where there is not even any possibility of checking their qualifications on the national level (5 years of practice under Art. 162 (3) is of course no guarantee of qualification). Patent departments of industries must be able to continue their activities under the new system. People who have made it their living to handle patent work, must not be deprived of the possibility of continuing their professional existence under the new system.

9. In order not to jeopardize the achievement of the final goal of Art. 134, the transitional provisions should go no further than necessary for serving the needs specified above. They should not be taken as an alternative method of determining with any degree of certainty who is competent and who is not, or who is more competent than whom.

C. Proposal of the FEMIPI for a new Art. 162 (2).

10. It is not at all a bad idea to add a special paragraph dealing with the countries where representation is governed by national regulations, as proposed by the FEMIPI in M/23, point 12, pages 288-9. It is observed, however, that owing to the ambiguity of the word "act", as used by the FEMIPI, it is unclear to which countries, if any, paragraph (2) as proposed by the FEMIPI would be applicable. On the other hand, the proposed provision is too strict in specifying the passing of a special qualifying examination as an absolute requirement. If a country recognizes, or during a transitional period has recognized, other evidence of qualification as equivalent to the passing of a qualifying examination, this must be respected for the purpose of admission to the European list of representatives.

11. In fact, a provision of the type wanted by the FEMIPI could be quite simple, e.g. as follows (taking the official version of Art. 162 (1) and (2) as the point of departure):

"(2 bis). When, in any Contracting State, entitlement to act as a professional representative before the central industrial property office of that State is conditional upon the requirement of special professional qualifications, the certificate furnished by the central industrial property office must indicate that the applicant fulfils this requirement."
clearly constitute an improper interference with established national regulations and institutions.

Therefore, the FICPI must oppose the amendment to Art. 162 (1) (b) and 162 (3) proposed by the UNICE and the CIFE and must maintain that Art. 134 and therefore also Art. 162 must be understood as dealing with entitlement to represent natural and legal persons of which the representative is not an employee (which of course does not exclude that such a representative may be an employee provided that he has a broader entitlement to represent).

4. **Proposal of the FEMIPI in respect of Art. 162 (1) (b) and (3).**

What has been said about the proposals of the UNICE and the CIFE, also applies to those of the FEMIPI in M/23, point 12, pages 288–9, but the FEMIPI has further extended the concept of "acting". In the FEMIPI version of Art. 162 (1) (b) "acting" need no longer be "before the central industrial property office", but may be any form of "acting in patent matters", and Art. 162 (3) as formulated by the FEMIPI even expressly refers to "acting in patent matters in some other manner". It seems as if this could mean anything and probably extends much further than visualized by the FEMIPI. It could include persons who have never had anything to do with the preparation, filing and prosecution of patent applications, e.g. persons dealing only with patent policy and the commercial exploitation of patents, patent brokers, inventors or research people who take an active part in the patenting procedure but have their actual patent work handled by professional representatives, persons who have specialized on the collection and dispatch of filing orders for exotic geographical areas, persons who conduct watch and search services in the patent field, etc.. It is recognized that the proper conduct of many of these activities may require high actual qualifications, but such activities are completely unaffected by the Convention and therefore need not be considered in the Chapter on representation before the European Patent Office.

6. It should be remembered that it is not the object of the transitional provisions on representation to classify people according to actual qualifications and to reward them accordingly, but just to make the exceptions to Art. 134 strictly necessary for the running-in period of the European Patent System.

7. By Art. 134 it is the clear intention of the Convention to provide for the establishment of a profession offering the maximum possible guarantees of qualified services to everybody

*) oddly enough the German translation, which has apparently not been made by the FEMIPI itself, uses the word "Vertretung", which is an example of the fragility of the "acting/representing" distinction.
FEDERATION INTERNATIONALE DES CONSEILS EN PROPRIETE INDUSTRIELLE
COMMISSION D'ETUDE ET DE TRAVAIL

Circulation date: August 9, 1973.

DRAFT

MEMORANDUM A

on

Representation before the European Patent Office

for presentation to the Munich Diplomatic Conference.

A. Proposals of the UNICE and the CIFE in respect of Art. 162 (1) (b) and 162 (3).

The main feature of the proposal of the UNICE and the CIFE for an amended version of Art. 162 is that they have transferred the word "agir" from the official text of Art. 133 (3) (French version), dealing with the instances where representation by a person on the list of Art. 134 is not required, to Art. 162 dealing with persons on that list. In the English translation furnished by the CIFE, the word "act" is used for "agir". In the German translation not furnished by either of the organizations, the word "auftreten" is used, but it can be taken for granted that this is intended to have the same significance as the word "handeln" used in the official text of Art. 133 (3), thus referring to the instances where representation by a person on the list of Art. 134 is not required. Also the word "act" used in the English translation of the UNICE-CIFE proposal will therefore be taken to have that significance.

The declared purpose of the amendment is, according to N/22, point 44, second paragraph, pages 266-7, to obtain a clarification which only concerns those countries where the choice of representative is free. It is doubtful, however, whether the amendment is in fact so limited, or will also extend to countries where the choice of representative is not free, i.e. where there are regulations governing representation. That will be the case if "acting" is to be interpreted as including "acting on behalf of an employer, and nobody else" (and if that is not the intended interpretation, what else could it be?).

It should not be forgotten that there are countries having regulations governing representation but where an employee can nevertheless always act on behalf of his employer. Examples of such countries are Germany and Austria, and there may be others. Now, if "acting" is to be understood as stated above, the condition of Art. 162 (1) (b) as formulated by the UNICE and the CIFE will be fulfilled by the whole population of Germany and Austria, and Art. 162 (3) will apply to these countries with no consideration whatsoever for the national rules governing representation. That is against the declared intention of the CIFE and would
Attached are:

Memorandum A on representation before the European Patent Office,
    Art. 133, 134, 144, 162, Rules 103, 107.

Memorandum B on evidence of transfer of the inventor’s right,
    Art. 58, 79, 90, Rules 14, 42.

Memorandum C on multiple priorities and partial priorities,
    Art. 86.

Memorandum D on withdrawal of the European patent application,
    Art. 58, Rules 14, 49.

Memorandum E on extension of periods, Rule 85, as related to
    language problems, Art. 14 (4) and Rule 6 (2).
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/ 48/I
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: PICPI

Subject: Memoranda on:

- representation
- evidence of transfer of the inventor's right
- multiple priorities and partial priorities
- withdrawal of the European patent application
- extension of periods as related to language problems
(c) in the event of the professional representative no longer having his place of business or employment within the territory of one of the Contracting States."

C. Protocol on Privileges and Immunities

35. Article 14

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 16:

"(1) Subject to the provisions of Articles 7 and 17, the President of the European Patent Office ..."

D. Recommendation on preparations for the opening of the European Patent Office

36. Point 4

"... the States represented on the Interim Committee, the delegations of the Federal Republic of Germany and the Netherlands shall take part in the meetings of "working Parties of which they are not members as observers."
32. Rule 85

"(2 new) During a transitional period, the end of which shall be determined by the Administrative Council, a period referred to in paragraph 1 shall be deemed, upon a request received by the European Patent Office before the expiry of such period, to be extended by one month, if the professional representative of the applicant has his place of business or employment in a Contracting State having as an official language a language other than the language of the proceedings."

33. Rule 87

"(4 new) Such consent shall be given where, in the case of Article 14, paragraph 2, the amendment is intended to make the translation of the European patent application conform to the text of the application as filed."

34. Rule 103

"(2) After the end of the transitional period provided for in Article 162, paragraph 1, the professional representative shall be deleted automatically from the list provided for in Article 134, paragraph 1:

(a) in the event of the death of the professional representative or of his inability to conduct his business;

(b) in the event of the professional representative no longer being a national of one of the Contracting States and not having been granted exemption by the President of the European Patent Office in accordance with Article 134, paragraph 5;"
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/47/I/II/III
Original: German

CONFERENCE DOCUMENT

Drawn up by: The delegation of the Federal Republic of Germany

Subject: Proposals for amendments to the draft texts
Begründung:
Es muß die Möglichkeit vorgesehen sein, Vertreter unter gewissen Umständen auch dann zu löschen, wenn sie nicht den Antrag auf Löschung stellen.

III. PROTOKOLL ÜBER DIE ZENTRALISIERUNG DES EUROPÄISCHEN PATENTSYSTEMS UND SEINE EINFÜHRUNG

41 Vorschlag:
Der Abschnitt IV wird ergänzt durch folgenden Absatz:
„Die in Art. 134(4) vorgesehene Berechtigung bezieht sich auch auf jeden Vertragsstaat, dessen Zentralbehörde für den gewerblichen Rechtsschutz vom Verwaltungsrat die Bearbeitung von europäischen Patentanmeldungen übertragen worden ist, soweit zu diesen auch solche gehören, deren Anmelder weder Sitz noch Staatsangehörigkeit in jenem Vertragsstaat haben.“

Begründung:
Unter den genannten Voraussetzungen gelten für jene Länder die gleichen Verhältnisse wie für die in Art. 134, Abs. (4) erwähnten Länder.

Grounds:
There must be provided the possibility of cancelling representatives under certain circumstances even if they do not lodge a request for cancellation.

III. PROTOCOL ON THE CENTRALISATION OF THE EUROPEAN PATENT SYSTEM AND ON ITS INTRODUCTION

41 Proposal:
Section IV is completed by the following sentence: "The entitlement provided for in Article 134, paragraph 4, also relates to any Contracting State to whose central industrial property office the examination of European patent applications has been transferred by the Administrative Council in so far as these patent applications include those whose applicants have neither an office in nor citizenship of any Contracting State."

Grounds:
Under the said stipulations, the same conditions apply to these other countries as to the countries mentioned in Article 134, paragraph 4.
Regel 72, Absatz (1), Satz 2

37 Vorschlag:

Die Worte „einen Monat“ sind zu ersetzen durch „zwei Monate“.

Begründung:

Es muß berücksichtigt werden, daß die Beteiligten infolge großer Entfernung vom Sitz des Patentamtes und umfangreicher Übersetzungsarbeiten erhebliche Zeit zur Information ihrer Vertreter und zu einer ausreichenden Vorbereitung eine mündliche Verhandlung benötigen.

Regel 86, Absatz (2)

38 Vorschlag:

Das Wort „erstreckt“ ist zu ersetzen durch „verlängert“; die Worte „auf der“ sind zu ersetzen durch „um 2 Wochen nach dem“.

Begründung:

Es ist für die Beteiligten in der Regel nicht möglich, dafür zu sorgen, daß ein Schriftstück beim Europäischen Patentamt schon an dem Tage eintrifft, an dem die Störung wegfällt. Es genügt allerdings eine kurze, mit diesem Tage beginnende Nachfrist.

Regel 102, Absatz (4), Satz 2

39 Vorschlag:

Der Satz 2 ist zu streichen und durch folgende Bestimmung zu ersetzen:

„Wird die Vollmacht nicht rechtzeitig eingereicht und begründet der Vertreter innerhalb dieser Frist glaubhaft die Unmöglichkeit zur Beibringung der Vollmacht, so hat das Europäische Patentamt eine Nachfrist zu gewähren.“

Begründung:


Regel 103

40 Vorschlag:

Die Regel sollte ergänzt werden durch einen Hinweis darauf, daß der Vertreter auch gelöscht werden kann, wenn ihm durch ein rechtskräftiges Urteil die Qualifikation für die Eintragung in die Liste abgenommen worden ist.

Rule 72, paragraph 1, 2nd sentence

37 Proposal:

The words “one month” are to be replaced by “two months”.

Grounds:

It must be considered that since they may be far away from the seat of the Patent Office and owing to the considerable amount of translation involved, the parties concerned require reasonable time for instructing their agents and for sufficient preparation for an oral hearing.

Rule 86, paragraph 2

38 Proposal:

In the German text, the word “erstreckt” is to be replaced by “verlängert”; in the English text, line 5, the words “shall extend to” are to be replaced by the words: “shall be prolonged to two weeks after”.

Grounds:

As a rule, it is not possible for the parties concerned to ensure that a written statement arrives at the European Patent Office on the day on which the postal trouble subsides. A short subsidiary period beginning with this day is sufficient.

Rule 102, paragraph 4, 2nd sentence

39 Proposal:

The 2nd sentence is to be deleted and replaced by the following condition:

“If such an authorisation is not filed in due time but before the due time the representative states the reason why it was not possible to file the authorisation, the European Patent Office shall allow a supplementary term.”

Grounds:

The present wording causes an unnecessary hardship on an applicant who for reasons which he could not foresee is not in a position to send the authorisation within the appropriate time to his representative. The result of ignoring the term should not be a refusal of the patent application.

Rule 103

40 Proposal:

The Rule should be completed by a reference to the fact that the representative can be cancelled if he has been deprived by a legal judgment of his qualification for entry in the list.
STELLUNGNAHME DER
UNEPA
Union Europäischer Patentanwälte

COMMENTSBY
UNEPA
Union of European Patent Agents

PRISE DE POSITION DE
L'UNEPA
Union des Conseils en brevets européens

(1) English translation submitted by UNEPA
(2) La traduction française a été fournie par l'UNEPA
Artikel 134 – Regel 107

34 Damit vermieden wird, daß Personen ungerechtfer-
tigt in der Liste gelöscht werden, wird empfohlen, in
der 4. Zeile zwischen den Worten „oder“ und „nicht
mehr erfüllt“ folgende Worte einzufügen: „aus
anderen Gründen als dem Wechsel des Geschäftssitzen oder Arbeitsplatzes“.

Artikel 141

35 Da der genaue Termin der Erteilung nicht mit
Bestimmtheit vorausgesagt werden kann, entsteht
ein Problem, wenn er auf einen Tag fällt, der nahe
am Jahrestag der europäischen Patentanmeldung
liegt. Es wird empfohlen, den nationalen Behörden
to untersagen, Jahresgebühren, die innerhalb von
drei Monaten nach der Erteilung fällig werden, vor
Ablauf von drei Monaten nach der Erteilung zu
erheben.

Artikel 162 Absatz 2

36 Es wird empfohlen, die gleiche Bedingung wie nach
Artikel 134 Absatz 2 Buchstabe a vor den Arti-
kel 162 Absatz 1 Buchstabe a einzufügen. Ferner
sind ähnliche Ausnahmen wie nach Artikel 134
Absatz 5 erforderlich. Es wird nicht gewünscht,
vorhandene Kollegen zu diskriminieren, sondern die
Erfordernisse des Artikels 134 Absatz 2 Buchstabe a
so früh wie möglich zur Anwendung zu bringen.
Dementsprechend sollten Ausnahmen im Falle von
Vertretern vorgeschrieben werden, die die Bedingun-
gen für die Eintragung in die Liste zum Zeitpunkt
der Unterzeichnung des Übereinkommens erfüllt
haben.

Artikel 162 Absatz 2

37 Es ist nicht klar, worauf sich das Wort „Umfang“
bezieht. Bezieht es sich auf Gruppen oder Katego-
rionen von Anmeldern, für die er handeln kann, auf die
Abteilungen der Zentralbehörde für den gewerbli-
chen Rechtsschutz, vor denen er auftreten kann,
or auf die Anzahl der Anmeldungen, die er
einreichen kann? Es wird empfohlen, daß dieser
Absatz sowie Artikel 162 Absatz 6 die Anwendbar-
keit des Artikels 134 Absatz 3 nicht beeinträchtigen
dürfen.

rendering unfit to represent are examples of reasons
for such removal.

Article 134 – Rule 107

34 To prevent unfair removal, it is recommended that,
in line 3 between “or” and “has”, there be inserted
the words “for reasons other than change of place
of business or employment”.

Article 141

35 As the exact date of grant cannot be accurately
predicted, there is a problem when it falls close to
the anniversary date of the European patent appli-
cation. It is recommended to deny to national
authorities the right to collect renewal fees falling
due within 3 months of grant until 3 months from
grant has elapsed.

Article 162 (1)

36 It is recommended to have the same condition (a)
from Article 134 (2) inserted before Arti-
cle 162 (1) (a). There is a need for exemptions in a
similar manner to Article 134 (5). It is not desired
to discriminate against existing colleagues but to
make the requirements of Article 134 (2) (a) apply
as soon as possible. Accordingly, such exemptions
should be mandatory in the case of representatives
who fulfilled the conditions for entry at the time of
signature of the Convention.

Article 162 (2)

37 It is not clear to what “extent” reference is made. Is
it to the groups or categories of applicant for whom
he can act, the departments of the central industrial
property office before whom he can appear, or the
number of applications he can file. It is recom-
mended that this paragraph and paragraph 162 (6)
should not affect the applicability of Arti-
cle 134 (3).
die nach dem Recht eines Vertragsstaats gegründet worden sind, können . . ."

Artikel 133 Absatz 3


Artikel 133 – Regel 102 Absatz 4

29 Da im Falle ausländischer Anmelder Verzögerungen möglich sind, könnte die starre Anwendung dieser Regel zu Ungerechtigkeiten führen. Für den Fall von Vertretern, die in der Liste geführt werden, wird vorgeschlagen, ihre Handlungen auch ohne Vollmacht zu akzeptieren.

Artikel 134 Absatz 3

30 Dieser Absatz dürfte angesichts des Artikels 134 Absatz 1 (obgleich durch Artikel 144 eingeschränkt) entweder überflüssig sein oder sollte dahingehend klargestellt werden, daß er auf die in Artikel 162 Absatz 6 genannten Personen anwendbar ist.

Artikel 134 Absätze 3 und 4

31 Es wird zu bedenken gegeben, ob solche Rechte nicht auf Länder ausgedehnt werden sollen, deren Zentralbehörden für den gewerblichen Rechtsschutz mit Aufgaben im Rahmen des Protokolls M/S betraut werden, sofern dieses Protokoll angenommen wird.

Artikel 134 Absatz 6

32 Im englischen Text sollte zwecks Übereinstimmung mit dem deutschen und dem französischen Text das Wort „able“ durch „entitled“ ersetzt werden.

Artikel 134 – Neue Regel

33 Es wird empfohlen, eine der Regel 103 folgende neue Regel vorzusehen, damit Namen in der Liste gelöscht bzw. in diese wiederaufgenommen werden können. Tod, Konkurs, Unzurechnungsfähigkeit

Article 133 (3)

28 In the English text, the word “any” before “proceedings” is questioned. A professional representative on the list under Article 134 may be excluded under Article 144 from appearing before special departments created under Article 143 (2) because of his nationality, yet an unqualified employee of a company of that nationality may appear.

Article 133 – Rule 102 (4)

29 With possible delays in the case of foreign applicants, the inflexible application of this rule could produce inequities. In the case of representatives on the list, it is suggested that their actions be accepted, even without authorisation.

Article 134 (3)

30 This paragraph seems to be either superfluous in view of Article 134 (1) (though restricted by Article 144) or it should be clarified as to its applicability to persons mentioned in Article 162 (6).

Article 134 (3) and (4)

31 It is suggested that consideration be given to the extension of such rights to countries whose Central Industrial Property Offices are charged with tasks under Protocol M/5, if the Protocol is accepted.

Article 134 (6)

32 In the English text, it is thought that “able” should be “entitled”, to agree with the French and German texts.

Article 134 – New Rule

33 It is recommended that a new Rule following Rule 103 be adopted to enable the removal and restoration of names from and to the list. Death, bankruptcy, insanity and conviction for a crime
STELLUNGNAHME DES
CNIPA
Committee of National Institutes of Patent Agents

COMMENTS BY
CNIPA
Committee of National Institutes of Patent Agents

PRISE DE POSITION DU
CNIPA
Committee of National Institutes of Patent Agents
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

________________________

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

________________________

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

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

________________________

1973
(2) Die Beteiligten können allgemeine Vollmachten einreichen, die einen Vertreter zur Vertretung in allen ihren Patentangelegenheiten bevollmächtigen. Die allgemeine Vollmacht braucht nur in einem Stück eingereicht zu werden.

(3) Der Präsident des Europäischen Patentamts kann Form und Inhalt

a) einer Vollmacht, die die Vertretung von Personen im Sinn des Artikels 133 Absatz 2 betrifft, und

b) einer allgemeinen Vollmacht

bestimmen und im Amtsblatt des Europäischen Patentamts bekanntmachen.

(4) Wird dem Europäischen Patentamt die Bestellung eines Vertreters mitgeteilt, so ist die Vollmacht für diesen Vertreter innerhalb von zwei Monaten nach dieser Mitteilung einzureichen. Wird die Vollmacht nicht rechtzeitig eingereicht, so gelten die Handlungen des Vertreters mit Ausnahme der Einreichung einer europäischen Patentanmeldung als nicht erfolgt.

(5) Die Absätze 1 und 2 sind auf Schriftstücke über den Widerruf von Vollmachten entsprechend anzuwenden.

(6) Der Vertreter, dessen Vertretungsmacht erloschen ist, wird weiter als Vertreter angesehen, bis das Erlösen der Vertretungsmacht dem Europäischen Patentamt angezeigt worden ist.

(7) Sofern die Vollmacht nichts anderes bestimmt, erlischt sie gegenüber dem Europäischen Patentamt nicht mit dem Tod des Vollmachtgebers.

(8) Hat ein Beteiligter die Vertretung mehrerer Bevollmächtigter übertragen, so sind diese ungeachtet einer abweichenden Bestimmung in der Vollmacht berechtigt, sowohl gemeinschaftlich als auch einzeln zu handeln.

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Vgl. Artikel 133 (Vertretung) und 162 (Zugelassene Vertreter während einer Übergangszeit)

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Regel 103
Löschung des zugelassenen Vertreters

Der zugelassene Vertreter wird auf seinen Antrag in der Liste nach Artikel 134 Absatz 1 gelöscht.

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Vgl. Artikel 134 (Zugelassene Vertreter) und 162 (Zugelassene Vertreter während einer Übergangszeit)

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(2) A general authorisation enabling a representative to act in respect of all the patent transactions of the party making the authorisation may be filed. A single copy shall be sufficient.

(3) The President of the European Patent Office may determine and publish in the Official Journal of the European Patent Office the form and content of:

a) an authorisation in so far as it relates to the representation of persons as defined in Article 133, paragraph 2, and

b) a general authorisation.

(4) Where the appointment of a representative is communicated to the European Patent Office, the necessary authorisation shall be filed within two months after such communication. If such authorisation is not filed in due time, any procedural steps other than the filing of the European patent application taken by the representative shall be deemed not to have been taken.

(5) The provisions of paragraphs 1 and 2 shall apply mutatis mutandis to a document withdrawing an authorisation.

(6) Any representative who has ceased to be authorised shall continue to be regarded as the representative until the termination of his authorisation has been communicated to the European Patent Office.

(7) Subject to any provisions to the contrary contained therein, an authorisation shall not terminate vis-à-vis the European Patent Office upon the death of the person who gave it.

(8) If several representatives are appointed by the same party, they may, notwithstanding any provisions to the contrary in their authorisations, act either jointly or singly.

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Cf. Articles 133 (Representation) and 162 (Professional representatives during a transitional period)

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Rule 103
Deletion of the professional representative from the list

Upon his own request, the professional representative shall be deleted from the list provided for in Article 134, paragraph 1.

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Cf. Articles 134 (Professional representatives) and 162 (Professional representatives during a transitional period)
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

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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
délabrés 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 171, No. 1 - Deletion of the representative from the list

61. When this provision was adopted, the United Kingdom delegation noted that the application of paragraph 2 and that of Article 171(2) of the Preliminary Draft Convention could not fail to raise serious difficulties in countries in which the power to appoint or to delete patent agents from the list was conferred upon a professional body or organisation. It was agreed that it would be necessary to re-examine these provisions after consulting the interested circles. (See BR/49/70, point 41 et seq.).

Re. Article 173, No. 1 - Authorisations

62. The purpose of this provision is to provide the European Patent Office with proof that a given representative has been regularly appointed and with particulars of the extent of his mandate. So as to simplify the task of the European Patent Office, provision has been made, in all cases where a general authorisation has been granted (and especially in that of compulsorily appointed representatives) for the President to be able to impose the use of a standard form.

Re. Article 173, No. 2 - Time limit for lodging authorisations

63. No comments.

Re. Article 180, No. 1 - Responsibility as regards the opinion of the European Patent Office

64. No comments.

Re. Article 186, No. 1 - Determining the areas of technology

65. No comments.
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. PRESSONNET, 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 171
Numéro 1

Radiation du représentant

(1) Sur sa requête, le représentant est radié de la liste prévue à l'article 171, paragraphe 1 de la Convention.

(2) Le service central de la propriété industrielle procède au retrait des attestations délivrées conformément à l'article 171, paragraphe 2 de la Convention si le représentant ne remplit pas ou cesse de remplir les conditions requises pour la délivrance de l'attestation. Si l'attestation est retirée, l'Office européen des Brevets radie le représentant de la liste prévue à l'article 171, paragraphe 1 de la Convention.
Groupe de travail "BREVETS"

Bruxelles, le 20 janvier 1964
CONFIDENTIEL

AVANT-PROJET

de règlement d'application de la convention relative à un droit européen des brevets
Zu Artikel 171
Nummer 1

Lösung des Vertreters

(1) Der Vertreter wird auf seinen Antrag in der Liste gemäß Artikel 171 Absatz 1 des Abkommens gelöscht.

(2) Die nationale Zentralbehörde für den gewerblichen Rechtsschutz hat eine gemäß Artikel 171 Absatz 2 des Abkommens erteilte Bescheinigung zurückzunehmen, wenn der Vertreter die Voraussetzungen für die Erteilung der Bescheinigung nicht oder nicht mehr erfüllt. Wird die Bescheinigung zurückgenommen, so löscht das Europäische Patentamt die Eintragung des Vertreters in der in Artikel 171 Absatz 1 des Abkommens vorgesehenen Liste.
Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht
provision was also adopted to authorise the national authorities of the host country to withdraw the right to a place of business for reasons of "ordre public".

(d) Deletion from the list of professional representatives

The Main Committee examined the grounds for deletion of professional representatives from the list and re-arranged them in Rules 103 (permanent solution) and 107 (transitional period). No difficulties were presented by the three grounds for deletion which apply both in the transitional period and in the permanent solution, namely, death or legal incapacity of the representative, his ceasing to be a national of one of the Contracting States, where the President does not grant or is not required to grant exemption from this requirement, or his ceasing to have a place of business or employment in any of the Contracting States. There was unanimous agreement that, in respect of representatives during a transitional period, the national central industrial property office in question must, in these three cases, withdraw the certificate which it has issued and the representative must be deleted from the list. There was, however, disagreement as to whether the mere surrender of the place of business in the State in which the certificate was granted should result in the withdrawal of the certificate, if the representative establishes another place of business in another Contracting State. The Committee's answer was in the negative. The majority adopted the viewpoint that it would be unfair and unjustifiable to make representation before the European Patent Office during a transitional period dependent on a merely national requirement of any State that the place of business should be within its territory. This restriction on the national central industrial property offices was incorporated in Rule 107 relating to the transitional period, while at the same time it was laid down that the national offices could withdraw the certificate, apart from on one of the three above-mentioned grounds, pursuant to other conditions of national law and, in particular, on disciplinary grounds.

Subject to these limitations, representatives entered on the list during the transitional period will, throughout this period, be required to have a certificate issued by the national central industrial property office of a Contracting State. This requirement will, however, cease to apply on the expiry of the transitional period after which the certificate will be voided of all effect. Thus, representatives during the transitional period and representatives newly authorised after having taken the European qualifying examination will have equal status under the permanent solution. Both kinds of representative will therefore be subject to the disciplinary power decided upon by the Administrative Council pursuant to Article 134, paragraph 7(c); in order to avoid a situation where there would be no disciplinary supervision, the disciplinary power should begin to apply not later than on the expiry of the transitional period.

The Main Committee also remedied other defects in Rules 103 and 107 by including in them provisions laying down that, when the ground for deletion no longer obtains, a representative deleted from the list may be re-entered on it.

13. Conversion procedure (Articles 135-137/Rule 104)

Article 135, paragraph 1, sets out the grounds for the conversion of a forfeited European patent application into a national application. It was proposed to delete the possibilities for conversion under the national laws of the Contracting States in paragraph 1(b). It was maintained that, firstly, Articles 120 and 121 protected the applicant sufficiently against the consequences of omissions and, secondly, that there were no grounds to justify pursuit at national level of European patent applications refused or European patents revoked on material grounds. The principal objection raised against this proposal for deletion was that it was a matter for the national laws whether conversion should be permissible in cases other than those compulsorily prescribed, i.e., in cases where national law provided for forms of protection such as utility models, the grant of which was conditional on less exacting requirements than those applicable to the grant of patents for invention. The great majority of the Committee subsequently rejected the proposal, so that the existing solution was retained.

14. Revocation and prior rights (Articles 138-139)

With regard to the grounds on which, pursuant to Article 138, a European patent may be revoked, the Main Committee made it clear that extension of the protection conferred can be a ground for revocation, irrespective of whether the extension occurs during opposition proceedings or national proceedings. This clarification takes account of the fact that a change in the claims of a European patent during national revocation proceedings or during national proceedings for partial surrender may result in an inadmissible extension of protection. Moreover, the Committee refused to impose, in paragraph 2 of the same Article, any restrictions on national laws in respect of the form in which limitations of European patent claims can be made in cases of partial revocation.

A further proposal, in connection with the rules laid down in Article 139 governing the relationship between European and national patents, to provide that, in cases of collision, the European patent should always take precedence was also unsuccessful. The Committee, by a great majority, rejected this solution which would have been a further step towards adopting a maximum solution, principally in the belief that, in the interests of flexibility, the national laws of the Contracting States should be left to adopt such collision rules as they considered justified.

15. Relationship between the Convention and the PCT (Articles 150-157/Rules 105-106)

The Main Committee re-examined the provisions of Articles 150-157, linking the Convention and the Patent Cooperation Treaty/PCT, i.e., the provisions governing the procedure for international applications which are the subject of proceedings before the European Patent Office. In the course of this examination, it remedied the remaining defects and, where necessary, removed discrepancies between the provisions of the Convention and those of the PCT.

With regard to material content, the amendment made by the Main Committee to Article 157 concerning the effects of the publication of the international application on proceedings before the European Patent Office should be noted. A consequence of the previous text of paragraph 1, according to which publication of the international application by the International Bureau of WIPO takes the place of the publication of a European patent application, would have been that, in each case, the published international application would have formed part of the state of the art, pursuant to Article 52, paragraph 3. This legal consequence was regarded as unjustified where an application, which has not been published in an official language of the European Patent Office, is withdrawn before its communication to the European Patent Office. Therefore, the Committee, after a thorough examination of the relevant provisions of the PCT, decided by a large majority to take account of this case by providing that an international application published pursuant to Article 21 of the