Article 33 E

Travaux Préparatoires
(EPC 1973)

Comment:

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Art. 33

MPO

Befugnisse des Verwaltungsrats in bestimmten Fällen

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Council could amend Article 17, in the light of experience, so as to provide that an Examining Division shall consist of one technical examiner. The majority of the Committee considered that a higher degree of flexibility was needed to ensure the smooth, efficient running of the European Patent Office; in addition, it was necessary to make clear that the Council was empowered to reverse any decision it took on this matter. These points have been met by amending Article 31 so as to delete paragraph 1 (a) and include a new paragraph 2 (a).

6. Under Article 18, an Opposition Division dealing with an opposition on a particular patent can include an examiner who dealt with the case before grant. Recognising that this arrangement could improve efficiency, the Committee has retained this possibility, but with a view to giving the users of the European system greater confidence in the European Patent Office, it is now provided that in such cases the examiner in question may not be the Chairman of the Opposition Division.

7. A new Article 18a provides for a Legal Division which is to be responsible for decisions concerning entries in the Register of European Patents and the registration of professional representatives on the list referred to in Article 134.

8. Some changes have been made in the Articles dealing with the Boards of Appeal and the Enlarged Board of Appeal. As regards the composition of a Board of Appeal, as defined in Article 19, the Committee decided that it was unnecessary to provide for a technically qualified member who would act as rapporteur but would take no part in the Board’s decision. Article 21, paragraph 1, of the 1972 draft contained no provision for the removal from office of members of the Boards of Appeal and the Enlarged Board of Appeal before the expiry of their term, although Article 11, paragraph 4, contains disciplinary powers. The Committee considered that specific powers for removal were required, and Article 21 now enables the Administrative Council to decide on removal from office on serious grounds on a proposal from the Enlarged Board of Appeal. Article 22 of the 1972 draft enabled a party to an appeal to object to members of the Board of Appeal or the Enlarged Board of Appeal, as the case may be, at any time. In order to avoid unjustifiable delays, this has been revised to stipulate that, if a party is aware of a reason for objection, he must make it before he proceeds any further.

9. Article 31, paragraph 3, has been extended so as to empower the President of the European Patent Office with the authorisation of the Administrative Council to enter into agreements with documentation centres set up as a result of agreements with inter-governmental organisations. The Committee recognised that this was without prejudice to the powers of the President to enter into commercial contracts on behalf of the European Patent Office, in accordance with the provisions of Article 10, paragraph 2 (a).

10. Finally, in this section dealing with the Convention, it is necessary to refer to Article 166. This Article, which concerns reservations, has a long history stretching back to the negotiations at the Strasbourg Convention of 1963 on the unification of certain points of patent law. It provoked a great deal of discussion in the Committee. There was general agreement that it was highly desirable for the Convention to embrace as many European countries as possible. It was also recognised that, particularly because of the maximum solution that has been adopted, some reservations should be permissible for a transitional period so as to enable certain countries to make the necessary adjustments. However, there was considerable disagreement as to the extent to which any State might make a reservation, and as to the time during which such a reservation should have effect; various proposals were tabled on these points by Greece, Portugal, Spain, Turkey and
(France), submitted the report on the results of Main Committee III's proceedings to the Committee of the Whole. The text of the report is given in Annex III.

The United Kingdom delegation especially welcomed the fundamental observations relating to financial questions contained in the report.

The report was unanimously approved by the Committee of the Whole.

IV. Results of the proceedings of the General Drafting Committee (M/146 R/1 - R/15, M/151 R/16)

16. The Committee of the Whole agreed to request the Chairman of the General Drafting Committee only to deal with those drafts in respect of which his Committee had made new proposals.

17. The Chairman of the General Drafting Committee, Mr. van Benthem (Netherlands), stated that in his presentation of the Drafting Committee's work, he would not deal with simple drafting amendments which had been made when the texts were being co-ordinated and the terminology checked. He did however point out to the Committee of the Whole that the title of the Convention had been altered by the Drafting Committee.

The Committee of the Whole approved the new title which reads as follows in the three languages:
— Übereinkommen über die Erteilung europäischer Patente
— Convention sur le Grant of European Patents
— Convention sur la délivrance de brevets européens.

18. Chapters A to F below deal with the proposals for amendments submitted to the Committee of the Whole by the Chairman of the General Drafting Committee or the delegations.

A. Convention

Article 10 and Article 33 (R/1 and R/2) — Direction of the EPO and competence of the Administrative Council in certain cases

19. The General Drafting Committee requested the Committee of the Whole to confirm that the term "inter-governmental organisations" in Article 33, paragraph 4, also covered organisations such as the Commission of the European Communities.

20. The French delegation thought that this was the case. The term would have to include all inter-governmental organisations including bodies which, although not actually inter-governmental, were set up by governments.

21. The Committee of the Whole confirmed the General Drafting Committee's interpretation whereby the term "inter-governmental organisations" as used in Article 33 also included the Commission of the European Communities.

22. In this connection and in response to a further request from the Drafting Committee for clarification, the Committee of the Whole confirmed that the President of the European Patent Office only required the authorisation of the Administrative Council for negotiations concerning the conclusion of agreements with States or inter-governmental organisations and that he was empowered to conclude agreements with private organisations or other international organisations under Article 10 without requiring special authorisation from the Administrative Council.

Article 20 — Legal Division

23. The United Kingdom delegation pointed out that in Article 20, Main Committee I had made registration on, and deletion from, the list of professional representatives the prerogative of the Legal Division and that in accordance with the conclusions of Main Committee II, decisions on these matters were to be taken by one legally qualified member. However, in Article 134, paragraph 8(c), all questions relating to disciplinary matters had been left open as it had been considered premature to lay down provisions of this nature at this stage. The United Kingdom delegation accordingly felt that a general clause should be inserted in Article 20 enabling the Legal Division to take further decisions concerning registration on the list of professional representatives.

24. The German delegation stated that Article 134 had been drafted on the assumption that disciplinary powers would not necessarily be exercised by the European Patent Office but that a European disciplinary board might be created to exercise such powers.

25. The Netherlands delegation argued that the above-mentioned questions might not in every case fall within the purview of the Legal Division. Situations could arise where the Boards of Appeal and perhaps even a body outside the European Patent Office would have to give decisions. Consequently, any new wording should be very flexible.

26. The Chairman suggested that any proposed amendment to cover the eventuality of the European Patent Office being able to implement disciplinary measures in addition to deciding on entries on and deletions from the list should be drawn up with reference to all measures relating to professional representatives.

27. The Committee of the Whole instructed the General Drafting Committee to examine any proposal which the United Kingdom delegation might submit and to refer the matter back to it only if difficulties were encountered.

Article 70 (R/3) — Authentic text of a European patent application or European patent

28. The Committee of the Whole approved the action taken by the Drafting Committee which, on the basis of a majority decision of Main Committee I (see M/PR/I, point 171), had aligned the English and French versions of paragraph 3, as regards the protection conferred by translations, on the German text.

Article 76 (R/3) — European divisional applications

29. For greater clarity, the General Drafting Committee had condensed the prerequisites for the filing of a divisional application — previously set out in two separate paragraphs — into paragraph 1 of Article 76.

The Committee of the Whole agreed to this change.

Article 110 (R/4) — Examination of appeals

30. The Committee of the Whole approved the extension made by the Drafting Committee in response to a majority decision of Main Committee I (see M/PR/I, point 507), whereby in the case of this Article, the application would not be deemed to be withdrawn if the decision under appeal was taken by the Legal Division.

Article 116 (R/5) — Oral proceedings

31. In this case also, the Committee of the Whole accepted the amendment made by the Drafting Committee in response to a suggestion made by the United Kingdom and Netherlands delegations in Main Committee I (see M/PR/I, point 528). Under the new text of paragraph 1 a request for further oral
Minutes of the proceedings of the Committee of the Whole

1. The Committee of the Whole, which was established by the Plenary of the Conference and comprised all the Government delegations (see Rule 14 of the Rules of Procedure)*, was, pursuant to paragraph 4 of Rule 14, chaired by Dr. Kurt Haerter (Federal Republic of Germany), President of the German Patent Office and Chairman of Main Committee I. Mr. François Savignon (France), Director of the French Industrial Property Office and Chairman of Main Committee II, was First Vice-Chairman; Mr. Edward Armitage (United Kingdom), Comptroller-General of the United Kingdom Patent Office and Chairman of Main Committee III was Second Vice-Chairman.

2. In accordance with Rule 14 of the Rules of Procedure, the terms of reference of the Committee of the Whole were to take decisions on proposals from the General Drafting Committee on drafts established by Main Committees I, II and III and on proposals submitted to it directly and to forward the drafts approved by it to the Plenary of the Conference for adoption.

3. The Committee of the Whole met under the direction of the Chairman from 1 to 4 October 1973.

4. At the meeting on 1 October 1973, the Committee of the Whole received the reports of Main Committees I and II. Main Committee I's report was approved without debate (see Section I below).

5. At its meeting on 2 October 1973, the Committee of the Whole discussed Main Committee II's report. The discussion and subsequent approval of the report are dealt with below in Section II.

6. At the same meeting, it heard and approved Main Committee III's report (see Section III below); it also discussed the results of the proceedings of the General Drafting Committee (M/146 R/1 to R/15 and M/151 R/16). These discussions are covered in Section IV below.

7. On 3 October 1973, the Committee of the Whole received and approved the report of the Credentials Committee (see Section V below). The problems of a European School and the European Patent Office building in Munich were then dealt with (see Sections VI and VII).

8. At its last meeting on the morning of 4 October 1973, the Committee of the Whole discussed the organisation and work programme of the Interim Committee. These discussions are presented in Section VIII below. It finally considered a proposal from the Yugoslav delegation for a Resolution on technical assistance (Section IX) and a Recommendation regarding the status and remuneration of certain employees (Section X).

I. Report of the discussions and decisions of Main Committee I

8. The rapporteur of this Main Committee, Mr. Paul Braendli, Vice-Director of the Federal Intellectual Property Office (Switzerland), presented the report on the work of Main Committee I to the Committee of the Whole. The text of this report is given in Annex I.

The report was unanimously adopted by the Committee of the Whole.

II. Report on the work of Main Committee II

9. Subject to a few minor amendments, the Committee of the Whole unanimously approved the report presented by the rapporteur of Main Committee II, Mr. R. Bowen (United Kingdom), Assistant Comptroller of the United Kingdom Patent Office. The text of the report as adopted by the Committee of the Whole is given in Annex II. The discussions concerning the proposals for amendments to the report are summarised in the following paragraphs.

10. As regards the section of the report concerning the Protocol on Centralisation, the Netherlands delegation, commenting on the first sentence in point 16, stated that the obligations of the European Patent Office towards the Member States of the International Patent Institute had simply been clarified rather than extended. However, the French and United Kingdom delegations maintained that the obligations had in fact been extended since the original text had only referred to tasks at present incumbent upon the Institute whereas now tasks entrusted to the IIB after the signing of the Protocol were expressly covered. While disagreeing with this view, the Netherlands delegation did not insist on an amendment.

11. The Netherlands delegation proposed, also with regard to point 16, that the last sentence should state that the EPO would also undertake searches for Member States of the IIB which had not submitted any applications for search before the entry into force of the Convention. This would make provision for those States which, up to the time in question, had submitted no applications for search to the IIB although they were entitled to do so.

The Committee of the Whole agreed to amend the part of the report concerned as follows: "...the Office will also assume this responsibility in respect of a Member State of the Institute which prior to the entry into force of the Convention, has agreed to submit national applications to the Institute for search.”

12. The Committee of the Whole adopted a proposal from the Swedish delegation that the idea proposed by the Scandinavian countries at the beginning of point 22 be worded as follows: "Consideration was given to the idea, proposed by the Scandinavian countries, that such work might be entrusted to national offices, possessing the minimum documentation, whether or not they possessed the other qualifications, required of an International Searching Authority under the Patent Cooperation Treaty. It also approved an addition at the end of the third sentence in this point to the effect that national offices would have to "fully" qualify as Searching Authorities.

13. The Austrian delegation suggested that in the English version of point 22, in the middle of page 14, the words "some search work" be used so as not to prejudice the question of the amount of such search work, which had deliberately been left open. The text would therefore read: "difficulties resulting from a renunciation under Section I.2, to entrust some search work to national offices whose language is ..."

The Committee of the Whole accepted this suggestion. The German and French texts remained unaltered.

14. With regard to the part of the report dealing with Article 166 (Article 167 of the signed version) of the Convention, the Greek delegation proposed that point 11 be amended at the top of page 7 so as to state, not that Main Committee II had accepted the view as to the effects of a reservation, but that it had considered such a possibility. The rapporteur and the Netherlands delegation stated that this view had been generally accepted in Main Committee II.

The Committee of the Whole accordingly decided not to amend the draft which had been submitted.

III. Report on the results of Main Committee III's proceedings

15. Main Committee III's rapporteur, Mr. Pressonnet, Deputy Director of the National Industrial Property Office

* The Rules of Procedure (M/34) had previously been adopted unanimously by the Plenary (see M/PR/K/1, point 10).
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
Article 33

Competition of the Administrative Council in certain cases

(1) The Administrative Council shall be competent to amend the following provisions of this Convention:

(a) Deleted

(b) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 94 only in the conditions laid down in Article 75;

(c) the Implementing Regulations.

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions:

(a) the Financial Regulations;

(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature, and rules for the grant, of any supplementary benefits;

(c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;

(d) the Rules relating to Fees;

(e) its Rules of Procedure.

3 Notwithstanding Article 3, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technical examiner. Such decision may be rescinded.

4 The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements on behalf of the European Patent Organisation with States, international organisations and with documentation centres set up by virtue of agreements with such organisations.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/146/R 2
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee
Subject: Convention: Articles 27 to 54
Article 31

Competence of the Administrative Council
in certain cases

(1) The Administrative Council shall be competent to amend
the following provisions of this Convention:

(a) Deleted

(b) Unchanged from 1972 published text

(c) Unchanged from 1972 published text

(2) The administrative Council shall be competent, in conformity
with this Convention, to adopt or amend the following provisions:

(a) Unchanged from 1972 published text

(b) Only concerns German text

(c) Unchanged from 1972 published text

(2a) Notwithstanding Article 17, paragraph 2, the Administrative
Council shall be competent to decide, in the light of experience,
that in certain categories of cases Examining Divisions shall
consist of one technical examiner. Such decision may be rescinded.

(3) The Administrative Council shall be competent to authorise
the President of the European Patent Office to negotiate and,
with its approval, to conclude agreements on behalf of the
European Patent Organisation with States, with international
organisations and with documentation centres set up by virtue
of agreements with such organisations.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 24 September 1973
M/130/II/R 6
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II
AT THE MEETING ON 24 SEPTEMBER 1973

Articles of the Convention:

Articles

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Implementing Regulations:

Protocol on Privileges and Immunities
of the European Patent Organisation

Protocol on the Centralisation of the
European Patent System and on its
Introduction
Article 31

Competence of the Administrative Council in certain cases

(1) The Administrative Council shall be competent to amend the following provisions of this Convention:

(a) Deleted

(b) } unchanged from 1972 published text

(c) }

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions:

(a) Unchanged from 1972 published text

(b) Only concerns German text

(c) }

(d) } unchanged from 1972 published text

(e) }

(2a) Notwithstanding Article 17, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technical examiner. Such decision may be rescinded.

(3) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements on behalf of the European Patent Organisation with States, with international organisations and with documentation centres set up by virtue of agreements with such organisations.

M/111/II/R 5 prk
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 20 September 1973

M/111/II/R 5

Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II
AT THE MEETING ON 19 SEPTEMBER 1973

Articles of the Convention: Article 22
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176
Rule 52, paragraph 4 should be supplemented as follows:

Before ... request him to pay within three months the fees for grant and printing and to file a translation of the claims in each of the other official languages of the European Patent Office. If the applicant ....

new paragraph 4a:

If the translation provided for in paragraph 4 is not filed in due time, the European patent application shall be deemed to be withdrawn.

In the eventuality of the versions of Article 14, paragraph 7 and Article 96, paragraphs 2 and 3 of the Convention as decided by Main Committee I remaining as they stand, the Swiss delegation proposes the following supplement to Article 31, paragraph 1, as a possibility:

New subparagraph (bb):

(bb) Article 14, paragraph 7 and Article 96, paragraphs 2 and 3, with regard to the procedure for the translation of claims in the two official languages other than the language of the proceedings;
CONFERECE DOCUMENT

Drawn up by: Swiss delegation

Subject: Request to reconsider the Netherlands proposals concerning Article 14, paragraph 7 and Article 96, paragraphs 2 and 3
(Conference Document M/52/I/II/III, pages 2 and 13)
1. Article 31, paragraph 3

(3) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements on behalf of the European Patent Organisation with States, with international organisations and with documentation centres set up on the basis of agreements with such organisations.

2. Article 132, paragraph 2

(2) The European Patent Office may conclude agreements relating to the exchange of publications with or their supply to the central industrial property offices or other authorities of any State which is not a party to this Convention, and international organisations and documentation centres set up on the basis of agreements with such organisations.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 13 September 1973
M/78/I/II
Original: German

CONFERENCE DOCUMENT

Drawn up by: Austrian delegation

Subject: Proposal for amendment to the Austrian Government's proposal submitted under document M/41, point 3 and proposal for amendment to Article 132, paragraph 2, of the Draft Convention
Article 31, paragraph 1 (a bis)(new)

Proposal: The following new sub-paragraph should be added to paragraph 1:

"(a bis) Article 17, paragraph 2, as amended pursuant to sub-paragraph (a) above, so as to restore it to its original form where general experience has shown that examination by a single examiner is not satisfactory;"

Reason: It is at least doubtful whether the Administrative Council would be competent to restore the Examining Divisions to their original composition of three technical examiners, should the assumption of the functions of the Examining Divisions by a single examiner prove to be a failure. We are proposing a clarification of this case.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/54/I/II/III
Original: German

CONFERENCE DOCUMENT

Drawn up by: The Swiss delegation

Subject: Proposals for amendments to the draft texts
be issued not by the Examining Divisions but by the Boards of Appeal.

Article 31

4. According to paragraph 1 (a) the AC may decide that an Examining Division shall consist of a single examiner. This means that patent applications can be refused by a single examiner if the AC takes such a decision. This system does not seem to give sufficient legal security to the applicants. A decision to refuse a patent application should in any case be taken by a collegial body or at least by two examiners. We therefore propose to add the following sentence to paragraph 1 (a): "Such an amendment shall include a provision still requiring a collegial body for refusing a patent application."

Article 67

5. The declaration to Article 67 should be amended to make it clear that the patentee should not be able to profit from obscurities in the patent claims. The reasons for this amendment are given in the document M 13. The following should therefore be added to the end of the declaration, "avoiding that the patentee should be able to profit from obscurities in the patent claims."

Article 94

6. To safeguard the interests of third parties the Swedish delegation proposes the following wording of paragraph 2. "If the AC extends the period third parties shall be entitled to make request for examination. The AC shall determine the appropriate rules in the Implementing Regulations."

Article 128

7. To safeguard the interest of third parties the files of European patent applications must be open to inspection as soon as possible after the 18 months period. Pursuant to Article 128, however, inspection cannot take place until the patent application is published according to Article 92. Thus if the publication is delayed due to technical difficulties the possibility of inspection is correspondingly delayed. During previous discussions it has been said that third parties anyway do not know anything about the patent applications until they are published according to Article 92. However, paragraph 5 of Article 128 provides for information to third parties at an early date concerning the existence of the patent applications. Therefore the wording of paragraphs 1 and 4 should be amended in the following way.

(1) The files relating to European patent applications shall not be made available for inspection, without the consent of the applicant, until 18 months after the filing date or, if priority is claimed, after the date of priority.
(4) The European patent application and the files relating to such an application and the resulting European patent may subsequent to the period of 18 months after filing or, if priority is claimed,
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973
M/53/I/II
Original: English

CONFERENCE DOCUMENT

Drawn up by: Swedish delegation
Subject: Proposals for amendments to the draft texts
II. Drafting proposals

A. Convention

37. Article 9

"(2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the European Patent Office in the performance of their duties shall be governed by the provisions of the law ..."

38. Article 23

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 18 (only concerns German text).

39. Article 31

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 19:

"(2) ...

(b) the Service Regulations for permanent employees, the conditions of employment of other employees of the European Patent Office and the salary scales of the said permanent and other employees"
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
M/3 Protocol on the Recognition of Decisions

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</table>

3. Article 31, paragraph 3

It is proposed that the President of the European Patent Office be empowered to negotiate agreements on the exchange of information with central documentation offices such as the International Patent Documentation Centre in Vienna.

"Article 31

...............

(3) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements on behalf of the European Patent Organisation with States, with international organisations and with central documentation offices."

4. Article 103

The wording of paragraph 3, whereby decisions of the European Patent Office as to costs are to be dealt with in the same way as final decisions of the State concerned, should be brought into line with the overwhelming majority of bilateral and multilateral agreements on enforcement to the effect that such decisions are to be enforceable in the Contracting States.

.../...
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 22 August 1973
M/ 41
Original: German

PREPARATORY DOCUMENT

Drawn up by: Austrian Government

Subject: Proposals for amendments to the Drafts of the Convention, the Implementing Regulations, the Protocol on the Recognition of Decisions, the Protocol on Privileges and Immunities and the Protocol on Centralisation
5. **Article 9**
   In paragraph (4)(b) "court" should be amended to "courts".

6. **Article 10**
   In paragraph (2)(b) "performed before" should be amended to read "carried out at".

7. **Article 12**
   Paragraph 1 should be amended as follows to be fully consistent with Article 214 of the Rome Treaty:
   
   
   "(1) The employees of the European Patent Office shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy".

8. **Article 21**
   Paragraph 4 is ambiguous and should be amended to read:
   
   "(4) The Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal shall be adopted in accordance with the provisions of the Implementing Regulations. They shall be subject to the approval of the Administrative Council".

9. **Article 25**
   In the second sentence of paragraph 2 "It" should be amended to read "The term of office".

10. **Article 31**
    In paragraph 1(a), "a single" should be amended to read "one".

11. **Article 35**
    Paragraphs (b) and (c) should be amended to read "....made by the Contracting States....".

12. **Article 38**
    In the first sentence, paragraph 7, "....at a rate the same...." should be amended to read "....at a rate which shall be the same....".

13. **Article 61**
    Since there is nothing similar to a state of war, "similar emergency conditions" should be amended to read "other serious emergency situation".

.../...
PREPARATORY DOCUMENT

Drawn up by: The United Kingdom Government

Subject: Proposed amendments concerning the Draft Convention, the Draft Implementing Regulations, the Draft Protocol on Recognition and the Draft Protocol on Privileges and Immunities
4. Article 31, paragraph 1(a)

The circumstances in which the Administrative Council may decide to reduce the Examining Division to a single technical examiner should be specified. If the Examining Division were to be so reduced it would be important to retain a composition of three technical examiners for decisions to refuse an application as opposed to decisions to grant a patent.

5. Article 58, paragraph 1

Since this paragraph relates to two basically different questions (inventions by employees and inventions made by a number of persons independently of each other), it would be better if they were dealt with in two separate paragraphs.

6. Article 65, paragraph 2

In the last sentence the phrase "the applicant can claim compensation reasonable in the circumstances from any person who has used, etc ..." should be replaced by "the applicant can demand a settlement reasonable in the circumstances from any person who has used, etc ...". A settlement may of course comprise the payment of compensation, as provided for in the present text, but it may also contain many other types of condition and even exclude payment of compensation if an applicant who is deemed to have suffered a loss wishes to forgo compensation and obtain some other form of indemnity. A contractual settlement would be all the more justified since the rights at issue here are based on a European patent application which has been published and not on a patent which has definitively been granted. If the present text were retained, the compensation would presumably have to be repaid if the proprietor of the European patent application did not request the examination proceedings to be opened or where the patent was refused after examination or revoked as a result of opposition proceedings. Since a contractual settlement would not necessarily require the immediate payment of compensation, it would, inter alia, enable the final outcome of the patent application to be taken into...
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Brussels, 23 May 1973

M/30

Original: French

PREPARATORY DOCUMENT

Drawn up by: Centre Européen de l'Entreprise Publique (CFEP)

Subject: Comments relating to the Draft Convention establishing a European System for the Grant of Patents
14 Die nachstehenden Bemerkungen betreffen gegebenenfalls zugleich die Artikel des Übereinkommensentwurfes und die Regeln des Ausführungsordnungs-entwurfes.

15 Artikel 14, Regel 2 Absatz 1
Wenn die Verfahrenssprache gewechselt wird, sollte dies früher mitgeteilt werden; für die Übersetzung sollte das Patentamt sorgen, und die Kosten hierfür hätte der Beteiligte zu tragen, der den Wechsel der Verfahrenssprache beantragt.

16 Artikel 16
Im Zusammenhang mit den Artikeln 6, 15 und 73 sollte klargestellt werden, daß auch die Zweigstelle des Patentamts in Den Haag befugt ist, europäische Patentanmeldungen entgegenzunehmen.

17 Artikel 17, 18 und 31 Absatz 1 Buchstabe a
Die Prüfungsabteilungen sollten nicht unbedingt und für ständig auf einen einzigen Prüfer verringert werden; ferner sollte ein Prüfer, der in einer Einspruchsabteilung mitwirkt, weder deren Vorsitzender noch Berichterstatter sein.

18 Artikel 67 Absatz 2
Es sollte klargestellt werden, daß der gemäß den ursprünglichen Patentansprüchen verliehene einstweilige Schutz im Falle einer „Verlagerung“ (Shifting) der Patentansprüche während des Verfahrens nicht gegeben ist.

19 Artikel 74, Regel 25 Absatz 1a
Es sollte die Möglichkeit vorgesehen werden, eine Anmeldung jederzeit zu teilen, sofern der Gegenstand der Teilanmeldung in mindestens einem der anfänglich eingereichten Patentansprüche enthalten ist.

20 Artikel 76, Regel 24 Absatz 2
Das Europäische Patentamt sollte zur Kontrolle auf der Empfangsbescheinigung neben dem Tag des Eingangs und der Nummer der Anmeldung auch noch systematisch alle eingegangenen Unterlagen aufführen.

Draft Convention establishing a European System for the Grant of Patents (Document M/1) and the Draft Implementing Regulations to that Convention (Document M/2), published on 8 December 1972 as preparatory documents for the Munich Diplomatic Conference.

14 The comments below relate, where so indicated, both to the Articles of the Draft Convention and to the Rules of the Draft Implementing Regulations.

15 Article 14; Rule 2, paragraph 1
Where the language of the proceedings is changed notification should be made much earlier and provision for interpreting should be made by the European Patent Office at the expense of the party requesting the change.

16 Article 16
In connection with Articles 6, 15 and 73, it should be made clear that the branch of the office at The Hague is also competent to receive European patent applications.

17 Articles 17, 18 and 31, paragraph 1(a)
Examination of cases by only one examiner in the Examining Divisions should not be of an absolute and permanent nature; in addition an examiner who is a member of an Opposition Division should not be the Chairman or rapporteur of that Division.

18 Article 67, paragraph 2
It should be stated that provisional protection on the basis of the original claims does not apply where there is a shifting of claims during the procedure.

19 Article 74; Rule 25, paragraph 1(a)
It should be stated that divisional applications may be made at any time provided that the subject-matter of the divisional application is comprised in at least one of the claims originally filed.

20 Article 76; Rule 24, paragraph 2
For control purposes the receipt issued by the Office should always list the number of documents received in addition to the date of receipt and the application number.
STELLUNGNAHME DES
FEMIPI
Europäischer Verband der Industrie-Patentingenieure

COMMENTS BY
FEMIPI
European Federation of Agents of Industry in Industrial Property

PRISE DE POSITION DE LA
FEMIPI
Fédération européenne des mandataires de l'industrie en propriété industrielle
Artikel 17 – Prüfungsabteilungen – Absatz 2 und Artikel 31 Absatz 1 Buchstabe a

14 Nach Artikel 31 Absatz 1 Buchstabe a kann der Verwaltungsrat des Europäischen Patentamts beschließen, die Zusammensetzung der Prüfungsabteilungen auf einen einzigen Prüfer zu beschränken, „wenn die Erfahrungen dies rechtfertigen“. Es wird vorgeschlagen, daß

− der Verwaltungsrat einen solchen Beschuß für jede einzelne Abteilung fassen muß;
− dieser Beschuß vorbehaltlich einer Verlängerung seiner Geltungsdauer befristet ist;

Artikel 76 Absatz 1 – Regel 24 Absatz 2 – Erfordernisse der europäischen Patentanmeldung


Es dürfte wünschenswert sein, in der Empfangsbescheinigung alle eingegangenen Unterlagen systematisch aufzuführen. Es kann durchaus geschehen, daß beim Versand versehentlich unterlassen wird, die eine oder andere sogar sehr wichtige Unterlage beizulegen; es dürfte also von großer Bedeutung sein, daß der Anmelder hiervon so rasch wie möglich Kenntnis erhält.

Regel 24 Absatz 4 – Allgemeine Vorschriften

16 Es wird angeregt, diesen Absatz am Ende wie folgt zu ändern:

„... so teilt es dem Anmelder mit, wann es die Anmeldung erhalten hat“. 

Artikel 90 – Formalprüfung – Regel 41 Absatz 2

17 Nach der Regel 41 Absatz 2 kann ein Anmelder, der eine Priorität beansprucht, bei der Einreichung der europäischen Patentanmeldung jedoch den Tag oder Staat der früheren Anmeldung nicht angegeben hat, dieses Versäumnis nicht mehr gutmachen.

Diese Bestimmung erscheint sehr streng. Sie sollte entfallen, da die Möglichkeit besteht, durch Vorlage

Article 17 – Examining Division – paragraph 2, Article 31, paragraph 1(a)

14 Under Article 31, paragraph 1(a), the Administrative Council of the European Patent Office may decide "in the light of experience" that an Examining Division shall consist of a single technical examiner.

It is suggested that

− the Administrative Council take such a decision only for individual divisions,
− such a decision only stands for a limited period, which may be renewable,
− such a decision should not have an absolute character, leaving the President of the European Office free to reconstitute the full complement of three examiners in difficult cases or for certain particularly complex classes.

Article 76, paragraph 1. Rule 24, paragraph 1 – Requirements of the European patent application

15 The European patent application comprises a number of documents (request, description, claim(s), drawing(s), abstract). The European Patent Office is to issue a receipt to the applicant including at least the application number and the date of receipt.

It would seem desirable that the receipt systematically includes a list of documents received. When the documents are sent from the applicant’s office, some document may inadvertently be left out of the envelope, and it is important that the applicant should be made aware of this as soon as possible.

Rule 24, paragraph 4 – General provisions

16 It is suggested to amend the end of this paragraph as follows:

“... it shall inform the applicant of the date on which it has received the application“.

Article 90 – Examination as to formal requirements – Rule 41, paragraph 2

17 Under Rule 41, paragraph 2, it is not possible for an applicant who has claimed priority but who failed to indicate the date or the country of the earlier application, when filing the European patent application, to repair this omission later.

This would seem to be extreme rigour. The abrogation of this clause is requested, considering the fact
STELLUNGNAHME DES
CIFE
Rat der Europäischen Industrieverbände

COMMENTS BY
CEIF
Council of European Industrial Federations

PRISE DE POSITION DU
CIFE
Conseil des fédérations industrielles d’Europe

(1) English translation submitted by CEIF

CNIPA ist ein Ausschuß, der die Berufsunvereinigungen der Patentanwälte Deutschlands, der Niederlande, Österreichs und des Vereinigten Königreichs — also von Ländern, in denen eine vorherige Eignungsprüfung für Patentanwälte besteht — vertritt.


Die vorliegenden schriftlichen Bemerkungen sind in der Reihenfolge der Artikel angeordnet, auf die sie sich beziehen, und enthalten einen allgemeinen Kommentar zu der praktischen Anwendung der Befugnisse des Verwaltungsrats.

Einige weitere Bemerkungen, die sich beispielsweise zu redaktionellen Punkten und Übersetzungsfragen ergeben können, könnten der Einfachheit halber auf der Diplomatischen Konferenz mündlich vorgetragen werden. CNIPA begrüßt es deshalb, der Konferenz bewohnen zu können.

Befugnisse des Verwaltungsrats


Die guten Arbeitsbeziehungen zwischen der Regierungskonferenz und den interessierten Kreisen haben dazu geführt, daß die Rechtsvorschriften des Übereinkommens verbessert wurden, was — wie CNIPA hofft — zu einer reibungslosen Anwendung des Übereinkommens wesentlich beitragen wird. CNIPA wünscht daher, diese guten Beziehungen fortzusetzen, und hofft, daß künftig die entsprechenden interessierten Kreise konsultiert werden, bevor der Verwaltungsrat im Rahmen seiner Befugnisse Maßnahmen trifft, die die Anmelder und zugelassene Vertreter betrifft.

This report is presented in accordance with the invitation contained in the letter from the Inter-Governmental Conference to the interested international circles, dated 16 November 1972.

CNIPA is a committee representing the professional institutes of patent agents in Austria, Germany, the Netherlands and the United Kingdom, in each of which countries there is examination before qualification of patent agents.

The Preparatory Documents (ISBN 3 87910 1248) M/1 to M/8 and Annex have been studied by each of these Institutes and their views, co-ordinated by CNIPA, form the basis of this report.

Delegates from CNIPA attended the two Conferences in Luxembourg at which the views of the interested circles were expressed orally. CNIPA appreciated those opportunities and the opportunities for submitting written comments. It noted with pleasure that many of the views there expressed have resulted in changes and additions which are reflected in the Preparatory Documents now under consideration.

The present written comments are arranged in order of the Articles to which they refer and include a general comment on the implementation of the powers of the Administrative Council.

There may be further comments, for example, on some drafting points and on translation, which would more conveniently be expressed verbally at the Diplomatic Conference itself. CNIPA is therefore grateful for the opportunity to attend the Conference.

Powers of the Administrative Council

In many places in the Draft Convention, power is given to the Administrative Council to draw up Rules, Implementing Regulations and similar provisions for the effective operation of the Convention. The majority of these are concerned with the internal arrangements of the European Patent Organisation and its constituent parts, but there are some which would be of direct consequence to applicants and to professional representatives.

The good working relationship established between the Inter-Governmental Conference and the interested circles has resulted in improvements to the legal provisions of the Convention which it is hoped will materially assist the smooth operation of the Convention. CNIPA accordingly wishes to record its desire to continue this good relationship and to express the hope that, where action is to be taken by the Administrative Council under such powers which would affect applicants and professional representatives, consultation with appropriate interested circles will take place in the future.
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
I.

ENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTerteilungsVERFAHREN

Artikel 16

1 Es besteht Veranlassung, die französische Fassung des Textes zu verbessern, um klar hervortreten zu lassen, daß die Eingangsstelle ihre Befugnis verliert, wenn die beiden in Artikel 16 aufgeführten Elemente vorliegen.

Artikel 18 (2)

2 Der Artikel sieht vor, daß in der Einspruchsabteilung ein Prüfer mitwirken kann, der in dem Verfahren zur Erteilung des europäischen Patents mitgewirkt hat. Es ist wünschenswert zu präzisieren, daß dieser Prüfer in der Einspruchsabteilung weder Präsident noch Berichterstatter sein kann.

Artikel 31 (1) a)


Artikel 52 (5)

4 Die jetzige Fassung könnte dazu führen, daß eine Substanz, die in der Humanmedizin Verwendung gefunden hat, für die Veterinärmedizin nach der Doktrin der „ersten Indikation“ nicht mehr patentierbar wäre und umgekehrt. Um dieses sicherlich nicht beabsichtigte Ergebnis zu vermeiden, wäre es wünschenswert, Artikel 52 (5) zu präzisieren.

Artikel 58 (1)

5 Die Vorschrift würde an Klarheit gewinnen, wenn die darin behandelten zwei Fragen ihren Platz in zwei getrennten Absätzen finden würden.

Artikel 67 (2)

6 Wenn diese Bestimmung das Problem des vorläufigen Schutzes im Falle der Einschränkung und der Erweiterung der Ansprüche löst, so scheint es, daß das Problem des vorläufigen Schutzes im Falle einer Verlagerung (shifting) der Ansprüche offen bleibt. In letzterem Fall ist ein vorläufiger Schutz nach den ersten Ansprüchen nicht gerechtifert. In dieser Hinsicht scheint eine Präzisierung wünschenswert.

I. DRAFT CONVENTION

ESTABLISHING A EUROPEAN SYSTEM

FOR THE GRANT OF PATENTS

Article 16

1 The French text should be improved in order to make it clear that the Receiving Section will cease to be responsible once the two conditions mentioned in Article 16 are both fulfilled.

Article 18, paragraph 2

2 This Article provides that the Opposition Division may include one examiner who has taken part in the proceedings for grant of the European patent. It should be specified that this examiner may be neither the Chairman nor the rapporteur of the Opposition Division.

Article 31, paragraph (1a)

3 Under this Article the Administrative Council may decide that any Examining Division may be composed of only one technical examiner. In general UNICE would wish the Examining Divisions to be composed of three technical examiners.

Article 52, paragraph 5

4 The present wording could lead to a substance used in human medicine no longer being patentable for veterinary medicine and vice-versa under the "first disclosure" rule. To avoid this effect, which is certainly not intended, the wording of Article 52, paragraph 5, should be clarified.

Article 58, paragraph 1

5 This provision would be rendered clearer if the two questions which it covers were dealt with in two separate sub-paragraphs.

Article 67, paragraph 2

6 Although this provision solves the problem of provisional protection in cases of a limitation or extension of the claims, it would appear that the problem of provisional protection in the case of a shifting of claims remains open. In the latter case provisional protection on the basis of the claims first filed would not be justified and this point should therefore be clarified.
STELLUNGNAHME DER
UNICE
Union der Industrien der Europäischen Gemeinschaft

COMMENTS BY
UNICE
Union des Industries de la Communauté européenne

PRISE DE POSITION DE
L'UNICE
Union des Industries de la Communauté européenne

(1) Deutsche Übersetzung der Stellungnahme und der Anlage 2 vorgelegt von UNICE
(2) Annex 3 to these Comments submitted by UNICE in English
Artikel 31

19 In Absatz 2 Buchstabe b sollten die Worte „sowie die Art der zusätzlichen Vergütung und die Verfahrensratslinien für deren Gewährung“ gestrichen werden, da der durch diese Worte gekennzeichnete Tatbestand bereits in den Worten „ihre Besoldung“ geregelt ist.

Artikel 41

20 In Absatz 2 sollte der deutsche Text enger an die anderen Fassungen angeglichen werden.

Artikel 50


„Artikel 50
Patentfähige Erfindungen

(1) Europäische Patente werden für Erfindungen erteilt, die neu sind, auf einer erfinderischen Tätigkeit beruhen und gewerblich anwendbar sind.

(2) Als Erfindungen im Sinn des Absatzes 1 werden insbesondere nicht angesehen:

a) Entdeckungen sowie wissenschaftliche Theorien und Methoden;

b) ästhetische Formschöpfungen;

c) Pfläne, Regeln und Verfahren für gedankliche Tätigkeiten, für Spiele oder für geschäftliche Tätigkeiten sowie Programme für Datenverarbeitungsanlagen;

d) die Wiedergabe von Informationen.

(3) Absatz 2 steht der Patentierbarkeit nur insofern entgegen, als sich die europäische Patentanmeldung auf die in den Buchstaben a–d ausgeführten Gegenstände oder Tätigkeiten als solche bezieht.

(4) Als gewerblich anwendbare Erfindungen im Sinne des Absatzes 1 werden nicht angesehen Verfab-
STELLUNGNAHME

DER REGIERUNG DER BUNDESREPUBLIK DEUTSCHLAND

COMMENTS

BY THE GOVERNMENT OF THE FEDERAL
REPUBLIC OF GERMANY

PRISE DE POSITION

DU GOUVERNEMENT DE LA
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTeilUNGSSVERFAHRENS 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

_____________________________________________________

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

_____________________________________________________

1973
a) Artikel 17 Absatz 2 dahingehend, daß die Prüfungs-
abteilungen aus einem einzigen technisch vorgebildeten 
Prüfer bestehen, wenn die Erfahrungen dies rechtfer-
gen;
b) die Dauer der in diesem Übereinkommen festgesetz-
ten Fristen; dies gilt für die in Artikel 93 genannte Frist 
nur unter den in Artikel 94 festgelegten Voraussetzun-
gen;
c) die Ausführungsnormung.

(2) Der Verwaltungsrat ist befugt, in Übereinstimmung 
mit diesem Übereinkommen folgende Vorschriften zu 
erlassen und zu ändern:
a) die Finanzordnung;
b) das Statut der Beamten sowie die Beschäftigungs-
bedingungen für die sonstigen Bediensteten des Euro-
päischen Patentamts, ihre Besoldung sowie die Art der 
zusätzlichen Vergütung und die Verfahrensrichtlinien für 
den Gewähnung;
c) die Versorgungsordnung und Erhöhungen der Ver-
sorgungsbezüge entsprechend einer Erhöhung der Dienst-
bezüge;
d) die Gebührenordnung;
e) seine Geschäftsordnung.

(3) Der Verwaltungsrat ist befugt, den Präsidenten des 
Europäischen Patentamts zu ernennen. Verhandlungen 
über den Abschluß von Abkommen mit Staaten oder 
internationalen Organisationen zu führen und diese 
Abkommen mit Genehmigung des Verwaltungsrats für 
die Europäische Patentorganisation zu schließen.

Artikel 32
Stimmrecht

(1) Stimmberechtigt im Verwaltungsrat sind nur die 
Vertragsstaaten.

(2) Jeder Vertragsstaat verfügt über eine Stimme, so-
weit nicht Artikel 34 anzuwenden ist.

Artikel 33
Abstimmungen

(1) Der Verwaltungsrat faßt seine Beschlüsse vorbehalt-
lich Absatz 2 mit der einfachen Mehrheit der vertretenen 
Vertragsstaaten, die eine Stimme abgeben.

(2) Dreiviertelmehrheit der vertretenen Vertragsstaaten, 
die eine Stimme abgeben, ist für die Beschlüsse erfor-
derlich, zu denen der Verwaltungsrat nach den Artikeln 
7, 11 Absatz 1, 21, 37 Absatz 1, 38 Absätze 2 und 5, 44, 
85, 94, 134, 151 Absatz 3, 154 Absatz 2, 155, 156 
Absätze 2 bis 4, 161, 162, 165 und 171 befugt ist.

(3) Stimmenthaltung gilt nicht als Stimmabgabe.

(a) Article 17, paragraph 2, so as to provide, in the light 
of experience, that an Examining Division shall consist 
of a single technical examiner;
(b) the time limits laid down in this Convention; this 
shall apply to the time limit laid down in Article 93 only 
in the conditions laid down in Article 94;
(c) the Implementing Regulations.

(2) The Administrative Council shall be competent, in 
conformity with this Convention, to adopt or amend the 
following provisions:
(a) the Financial Regulations;
(b) the Service Regulations for permanent employees 
and the conditions of employment of other employees 
of the European Patent Office, the salary scales of the 
said permanent and other employees, and also the 
nature, and rules for the grant, of any supplementary 
benefits;
(c) the Pension Scheme Regulations and any appropriate 
increases in existing pensions to correspond to increases 
in salaries;
(d) the Rules relating to Fees;
(e) its Rules of Procedure.

(3) The Administrative Council shall be competent to 
authorise the President of the European Patent Office to 
negotiate and, with its approval, to conclude agreements 
on behalf of the European Patent Organisation with 
States and with international organisations.

Artikel 32
Voting rights

(1) The right to vote in the Administrative Council 
shall be restricted to the Contracting States.

(2) Each Contracting State shall have one vote, subject 
to the application of the provisions of Article 34.

Article 33
Voting rules

(1) The Administrative Council shall take its decisions 
other than those referred to in paragraph 2 by a simple 
majority of the Contracting States represented and 
voting.

(2) A majority of three-quarters of the votes of the 
Contracting States represented and voting shall be 
required for the decisions which the Administrative 
Council is empowered to take under Article 7, Art-
cicle 11, paragraph 1, Article 31, Article 37, paragraph 1, 
Article 38, paragraphs 2 and 5, Article 44, Article 85, 
Article 94, Article 134, Article 151, paragraph 3, Art-
cicle 154, paragraph 2, Article 155, Article 156, par-
agraphs 2 to 4, Article 161, Article 162, Article 165 and 
Article 171.

(3) Abstentions shall not be considered as votes.
Artikel 28
Teilnahme von Beobachtern

(2) Die Weltorganisation für geistiges Eigentum ist auf den Tagungen des Verwaltungsrats nach Maßgabe eines Abkommens vertreten, das die Europäische Patentorganisation mit der Weltorganisation für geistiges Eigentum über die gegenseitige Zusammenarbeit schließt.

(3) Andere zwischenstaatliche Organisationen, die mit der Durchführung internationaler patentrechtlicher Verfahren beauftragt sind und mit denen die Organisation ein Abkommen geschlossen hat, sind, wenn dieses Abkommen entsprechende Vorschriften enthält, nach Maßgabe dieser Vorschriften ebenfalls auf den Tagungen des Verwaltungsrats vertreten.

(4) Alle anderen zwischenstaatlichen Organisationen, die eine die Organisation betreffende Tätigkeit ausüben, können vom Verwaltungsrat eingeladen werden, sich auf seinen Tagungen bei der Erörterung von Fragen, die von gemeinsamem Interesse sind, vertreten zu lassen.

Artikel 29
Sprachen des Verwaltungsrats
(1) Der Verwaltungsrat bedient sich der deutschen, englischen und französischen Sprache.

(2) Die dem Verwaltungsrat unterbreiteten Dokumente und die Protokolle über seine Beratungen werden in den drei in Absatz 1 genannten Sprachen erstellt.

Artikel 30
Personal, Arbeitsräume und Mittel
Das Europäische Patentamt stellt dem Verwaltungsrat sowie den vom Verwaltungsrat eingesetzten Ausschüssen das Personal, die Arbeitsräume und die materiellen Mittel zur Verfügung, die sie zur Durchführung ihrer Aufgaben benötigen.

Artikel 31
Befugnisse des Verwaltungsrats in bestimmten Fällen
(1) Der Verwaltungsrat ist befugt, folgende Vorschriften zu ändern:

Article 28
Attendance of observers
(1) The International Patent Institute shall be represented at the meetings of the Administrative Council, in accordance with the provisions contained in the Agreement concluded with the Organisation laying down the procedure for the collaboration of the International Patent Institute with the European Patent Office.

(2) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with the provisions of an agreement to be concluded between the European Patent Organisation and the World Intellectual Property Organization.

(3) Any other inter-governmental organisation charged with the implementation of international procedures in the field of patents with which the Organisation has concluded an agreement shall be represented at the meetings of the Administrative Council, in accordance with any provisions contained in such agreement.

(4) Any other inter-governmental organisation exercising an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.

Article 29
Languages of the Administrative Council
(1) The languages in use in the deliberations of the Administrative Council shall be English, French and German.

(2) Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up in the three languages mentioned in paragraph 1.

Article 30
Staff, premises and equipment
The European Patent Office shall place at the disposal of the Administrative Council and any body established by it such staff, premises and equipment as may be necessary for the performance of their duties.

Article 31
Competence of the Administrative Council in certain cases
(1) The Administrative Council shall be competent to amend the following provisions of this Convention:
MÜNCHNER DIPLOMatische KONFERENZ
ÜBER DIE EINTRAGUNG EINES EUROPÄISCHEN
PATENTERTeilungsVERFAHRENS 1973

(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973

(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)

(Munich, 10 septembre - 6 octobre 1973)

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

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

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

1972
Article 4

15. One delegation wondered whether the text of Article 4 was adequate, since once a European patent had been granted, the European Patent Office also had jurisdiction if opposition proceedings were brought.

Article 10, paragraph 2

15. The Committee simplified the text of sub-paragraph (d) by mentioning only the management report of the President of the Office, since the other responsibilities of the President towards the Administrative Council in budgetary matters were already dealt with in Article 47, paragraph 3.

Article 28, paragraph 2

17. The representative of WIPO reserved the right to submit, at the next meeting of the Conference, a proposed amendment stipulating that an agreement should be concluded between the European Patent Office and WIPO in order to ensure that WIPO be represented at meetings of the Administrative Council.

Article 31

18. One delegation proposed that the present paragraph 3 should be made into a separate article. The Committee finally agreed to amend the title of Article 31 in order to cover also the powers laid down in paragraph 3.
MINUTES

of the

second meeting of the Co-ordinating Committee

held in Brussels from 15 to 19 May 1972

1. The second meeting of the Co-ordinating Committee was held in Brussels from 15 to 19 May 1972 with Dr HAERTEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, of the IIB and of WIPO took part as observers. The representatives of the Council of Europe sent their apologies for being unable to attend. The list of those taking part in the meeting is given in Annex I to this report.

2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:
(1) The Administrative Council shall be competent to amend the following provisions of this Convention:

(a) Article 17, paragraph 2, so as to provide, in the light of experience, that an Examining Division shall consist of a single technical examiner;

(b) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 93 only in the conditions laid down in Article 94;

(c) the Implementing Regulations.

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions:

(a) the Financial Regulations;

(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature, and rules for the grant, of any supplementary benefits;

(c) the Rules relating to Fees;

(d) its Rules of Procedure;

(e) any other rules necessary for the implementation of this Convention.

(3) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements with States and with international organisations.

A/gc
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 24 April 1972
BR/184/72

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the
Conference Drafting Committee
8 to 24 March and 10 to 20 April 1972)

BR/184 e/72
66. Concerning paragraph 1(b), the Conference did not adopt the suggestion made by certain organisations to the effect that the time limit for opposition should not be one of those which could be altered by the Administrative Council, acting by a qualified majority. As for the fear that this provision might be interpreted as enabling the Administrative Council to alter the priority period of 12 months referred to in Article 73, paragraph 1, the Conference considered this to be groundless. This priority period was, after all, laid down in the Paris Convention and the present Convention would constitute a special arrangement within the meaning of that Convention. This in turn ruled out any possibility of the Administrative Council altering the period in question.

Article 35n (Voting rules)

67. Cf. relevant observations on Article 35a under point 65 above.

Article 36 (Administration)

68. The Conference instructed the Drafting Committee to work out a form of words for paragraph 2 specifying that the powers of the President of the European Patent Office were to be exercised in accordance with the full body of provisions in force and in particular in the case of sub-paragraph (f), in accordance with the regulations referred to in Article 38, paragraph 3.

Article 38 (Duties of office)

69. The Conference accepted the amendment to the English text of paragraph 2 as drawn up by the Drafting Committee (BR/160/72).

BR/168 e/72 ett/KM/gc
oral proceedings using an official language of one of the Contracting States other than one of the three working languages of the European Patent Office. The Conference noted that Re. Article 34, No. 2 already made provision for a reduction in fees on behalf of parties in the situation in question.

Article 35a (Adoption and amendment of general rules)

65. The Conference endorsed the principle proposed by Working Party I, making provision for the Administrative Council to be enabled to amend Article 55, paragraph 2, in such a way that an Examining Division might be composed of a single technical examiner (paragraph 1(a)). The Conference also noted that this option seemed to have obtained acceptance among most of the interested circles.

The Conference nevertheless thought it necessary to lay down that such a decision could only be taken by a qualified majority of three-quarters of the Administrative Council. Article 35n was duly amended to that effect (BR/150/72).

As regards the request made by certain organisations (cf. BR/169/72, point 43) that, when applying paragraph 1(a), the option should not be ruled out of retaining – for certain areas of technology – an Examining Division made up of three examiners, it was noted that this provision gave the Administrative Council the power to act according to the conditions obtaining.

BR/168 e/72 ett/KM/gc .../...
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)
Article 35a (Adoption and amendment of general rules)

43. Several organisations (EIRMA, CNIPA, FICPI) recorded their agreement to the provisions of paragraph 1(a), taking particular account of the fact that initially problems would arise in respect of the harmonisation of concepts (for example, concerning inventive step) as well as linguistic problems.

UNICE also recorded its agreement that an Examining Division could be reduced, as a general rule, to one examiner. However, the composition of the Examining Division, for certain important decisions, should be kept at three members. CEIF shared this opinion.

ICC, on the basis of the experience of several countries, expressed the opinion that there was no need to provide for a Division of three members. The Convention should lay down, at the beginning, that an Examining Division was to consist of one examiner.

44. CNIPA and FICPI stated, in this connection, that the number of three technical examiners laid down for the Opposition Divisions (Article 55a) should not be open to reduction.

45. With regard to the amendment of certain time limits (paragraph 1(b)), CNIPA asked that this provision should not apply to the priority period laid down in the Paris Convention. UNICE suggested that a distinction should be made between the important time limits of the Convention which should not be open to amendment by the Administrative Council and time limits of a purely procedural nature. CEIF supported this position. IAPIIP asked that the opposition period should be excluded from those which could be amended by the Administrative Council.

BR/169 e/72 cyd/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)
Article 35a

Adoption and amendment of general rules

(1) The Administrative Council shall be competent to amend:

(a) Article 55, paragraph 2, so as to provide, in the light of experience, that an Examining Division shall consist of a single technical examiner;

(b) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 88, paragraph 2, only in the conditions laid down in Article 88a;

(c) +

(2) +

(3) The Administrative Council shall take the decisions referred to in Articles 88a, 157 and 160a.

(4) The Administrative Council shall take the decisions referred to in the Implementing Regulations to this Convention.

BR/139 e/71 prk
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 6 December 1971
BR/139/71

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
Thus the Conference took into account the fact that a collegial body such as the Administrative Council which, moreover, only meets at certain intervals, might hardly be in a position to conclude such agreements itself.

103. The Conference also added further powers for the Administrative Council to those contained in paragraphs 1, 2, and 3, as Working Party II had not been able to consider them when drafting Article 35a. For purposes of simplification, the Conference divided the now completed Article 35a into three separate Articles (35aa, 35ab, and 35ac; BR/118/71, pages 3 to 6).

Article 35b (Preparatory duties of the Administrative Council)

104. The Conference deleted this Article. The power to prepare revision conferences, together with the power to convene such conferences, is already covered in the previous Article. The power to prepare such adaptations to the Convention as may be rendered necessary by the accession of third countries did not, in the opinion of the Conference, need to be laid down expressly. Should the necessity for such adaptations arise a revision conference would have to be convened, as in the case of other amendments.

Article 35c (Representation of Contracting States)

105. The Conference decided that only the representatives of the Contracting States could be members of the Administrative Council, and worded paragraph 1 accordingly. The representatives of the inter-governmental organisations
Council for not acting without its approval in certain cases (see point 97 above). The Conference accordingly deleted sub-paragraph (f).

101. The Austrian delegation proposed that a new sub-paragraph (g) in paragraph 2 should lay down that it is the responsibility of the Administrative Council to instruct the President of the European Patent Office, at the request of a Contracting State, to make a report. The Conference did not agree to this request, because the Administrative Council's power to instruct the President to make a report is already implicit in its general supervisory rights. The Conference did not however see the expediency of obliging the Administrative Council to comply with the request of a single Contracting State.

102. In connection with paragraph 3 B the Conference noted that the necessity might arise for the European Patent Office to conclude agreements other than those listed in this provision. It therefore replaced this list with a provision drawn up in general terms. Acting on a request made by the Netherlands delegation and endorsed by the Austrian delegation, the Conference also laid down the respective responsibilities of the Administrative Council and the President of the European Patent Office for the conclusion of agreements with States or international organisations, making the President responsible for the actual negotiations and the conclusion of the agreements, although he must obtain the approval of the Administrative Council before opening the negotiations and concluding the agreements.
President and the Administrative Council. This does not mean that dealings undertaken by the President without the required approval are to be invalidated because approval was not obtained, but that the President is to be responsible to the Administrative Council for them (cf. point 100).

98. The Conference did not endorse the United Kingdom delegation's proposal that in *paragraph 1* the Administrative Council should be empowered to amend the time-limit laid down in Article 88, paragraph 2. It was the Conference's opinion that this time limit constituted such an essential feature of the deferred examination system that, except in the case referred to in Article 159, amendment should only be possible by means of a revision of the Convention.

99. In order to make a clear distinction between the duties of the Administrative Council (supervision of the activities of the European Patent Office) and those of the President (direction of the European Patent Office), the Conference deleted *sub-paragraph (a)* from *paragraph 2*.

100. In connection with *paragraph 2(f)* it was agreed that the Administrative Council must be empowered to specify the cases in which the President of the European Patent Office must obtain the prior approval of the Administrative Council before he undertakes actions at law. The Conference was however of the opinion that it was not necessary to restrict the President's powers of representation in respect of third parties. The desired aim would also be achieved just as satisfactorily if the President were to be responsible to the Administrative...
CHAPTER I a

Powers and Functions of the Administrative Council

Article 35a (Powers of decision of the Administrative Council)

96. The Conference noted in connection with paragraph 1 A that this provision only says down that the Administrative Council is competent to amend the Implementing Regulations, whereas the Diplomatic Conference is to adopt them. It therefore considered that it would be expedient to specify in a final provision that the Implementing Regulations form an integral part of the Convention (see point 127 under Article 161a) (BR/121/71, Page 5).

97. The Conference deleted from paragraph 1 B(a) the power of the Administrative Council to adopt Administrative Regulations, as all the administrative regulations required are either contained in the Implementing Regulations or may be adopted by the President of the European Patent Office as part of his task of directing its business, in which he is supervised by the Administrative Council.

The power provided for in sub-paragraph (d) to adopt any other rules necessary for the implementation of the Convention allows the Administrative Council, in the Conference's opinion, to determine the cases in which the President of the European Patent Office will require the approval of the Administrative Council to exercise the legal capacity of the European Patent Office internally. This condition of approval is not however to restrict the President's power to represent the European Patent Office externally but is to apply only to the internal relations between the
INTER-GOVERNMENTAL CONFERENCE
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- Secretariat -

MINUTES

of the
4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 20 to 28 April 1971)

BR/125 e/71 leY/KM/bp
Article 35a continued:

(c) the agreements with Contracting States to the Patent Co-operation Treaty which are not Contracting States to this Convention referred to in Article 119, paragraph 2;

(d) any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;

C. decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Patent Co-operation Treaty, in the case provided for in Article 119, paragraph 3;

D. decide upon the creation of branches for information and liaison purposes in the Contracting States or with the International Patent Institute at The Hague or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or the organisation concerned.

1. Note to Article 35a, paragraph 1 (E):

It should be re-examined whether provision should be made for an exception, as provided for in E 2nd sentence, to be made for other time-limits.

2. Note to Article 35a, paragraph 2 (f):

Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3), which should be completed as follows: "in accordance with the provisions laid down in Article 35a, paragraph 2 (f)".

BR/88 e/71 gc
Article 35a continued:

(2) In addition, the Administrative Council shall:

(a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office;

(b) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;

(c) audit and approve each year the accounts and inventories and the balance sheet;

(d) approve the annual management reports of the President of the European Patent Office;

(e) appoint the senior officials referred to in Article 37, subject to the conditions laid down in that Article, and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them;

(f) give, in each particular case, to the President of the European Patent Office, to whom the President of the Administrative Council shall to this end address a written communication, an authorisation to exercise the legal capacity of the European Patent Office for the purposes of:

- actions at law with the exception of those of an urgent or protective nature, or those in which the European Patent Office has been made a defendant,

- acts relating to the disposal of immovable property, or relating to the disposal of movable property when the sum involved exceeds the exchange value of 20 kilograms of fine gold, as well as acts affecting, in the two cases referred to above, the ownership of such property.

(3) Furthermore, the Administrative Council shall:

A. give its decision on requests for accession to this Convention formulated by third countries;

B. conclude or amend on behalf of the European Patent Office:

(a) the agreement with the International Patent Institute at The Hague laying down the procedures for its collaboration with the European Patent Office;

(b) any agreement with the International Bureau provided for in the Patent Co-operation Treaty, for the purposes of applying Articles 117 to 123 of this Convention;

BR/88 e/71 gc
CHAPTER Ia (1)

Powers and functions of the Administrative Council

Article 35a
Powers of decision of the Administrative Council

(1) The Administrative Council shall be competent to:

A. amend the Implementing Regulations to this Convention;

B. adopt or amend:

(a) the Administrative and Financial Regulations of the European Patent Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature and the rules for the grant of the supplementary benefits which may be accorded to them;

(c) the Rules relating to fees;

(d) any other rules necessary for the implementation of this Convention;

C. take the decisions referred to in Article 159;

D. amend Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions;

E. amend the time limits laid down in this Convention independently of any revision under Article 162. This shall not apply to the time limit laid down in Article 88, paragraph 2, subject to the provisions of Article 159.

(1) The provisions of Chapters Ia, Ib and Ic will require to be harmonised with the other provisions of the Convention at a later date.

The position of these Chapters in the Convention is provisional.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
providing in the Convention for a maximum duration such as might possibly be interpreted as an amendment to the examining system currently prescribed in the Convention. As no majority came out in favour of any of the options proposed, ranging from 1 to 5 years, the Working Party decided not to lay down a maximum period.

Regarding the procedure by which the decision in the matter would have to be taken, the Working Party considered that in conformity with the Convention system, a three-quarters majority should be required, as for other important decisions, but that the weighting of the votes should not be laid down.

With regard to the position of these provisions in the Convention, the Working Party was of the opinion that, as they no longer formed a transitional measure but, on the contrary, constituted one of the powers of the Administrative Council concerning the time limit laid down in Article 83, a new Article 88a should be inserted to this effect, since the former Article 160 had been deleted. The provision governing the majority required for such a decision was laid down in Article 35a, paragraph 1(b).

Article 88 (Request for examination)

121. After discussing Article 88a, the Working Party dealt with the question, which is mentioned in the first note to Article 88, of whether the period referred to in paragraph 2 should be increased from six to twelve months.
Following a discussion in the course of which the delegations noted their proposals on this specific point and on the more general problem of deferred examination, a compromise solution emerged, whereby there would be no transitional period and the time limit prescribed in Article 88, paragraph 2, would apply immediately. But the Administrative Council would have the permanent option of extending the six-month period provided in Article 88. This option would nevertheless be subject to one of the following conditions: either it would have to be established that the European patent applications could not be examined in due time, or an extension would have to be in the general interest. The Working Party agreed that such a decision taken in the first hypothesis would in any case have to be preceded by any measures required to meet the needs of the situation and that the extension of the period could only be applied for a limited time and would have to be accompanied by measures taken with a view to restoring the period provided under Article 88, paragraph 2, as soon as possible. The second hypothesis would materialise in the event of an overwhelming opinion in favour of an inescapable extension of the six-month period. It was understood that in both hypotheses, the Council would have to discuss the case with the interested circles before taking a decision of this nature. It considered however that it would not be expedient to include an explicit provision to that effect in the Convention.

The Working Party also discussed the usefulness of providing for a maximum extension of the period within which the request for examination may be made, and which the Administrative Council would in no event be able to exceed. Some delegations expressed hesitancy about
Article 82 (Amendment of the documents)

Article 83 (Amendment of the claims)

Article 95a (Amendment of the application)

117. The Working Party agreed to examine at its next meeting the possibility of combining these three provisions to form a single general provision (cf. point 58 above).

118. In connection with Article 83, the Working Party also decided to defer until its next meeting its examination of the note submitted by the Netherlands delegation (BR/GT I/124/7) on the publication of pending European patent applications and its repercussions for third parties.

Article 85 (Publication of a European patent application)

119. For this Article see the remark contained in point 62 of these minutes.

Article 88a (Former Article 160) (Amendment of the period within which a request for examination may be made)

120. In accordance with the mandate given to it by the Conference, Working Party I examined the problems raised by Article 160. The United Kingdom delegation made a proposal (BR/GT I/113/71) that this Article should be amended so that the Administrative Council may, if necessary, increase the Article 88, paragraph 2, period up to a maximum of two years and, where appropriate, reduce any such extended period.

BR/135 e/71 ley/prk .../...
MINUTES

of the 9th meeting of Working Party I
held from 12 to 22 October 1971, in Luxembourg

1. Working Party I held its 9th meeting in Luxembourg from 12 to 22 October 1971, with Dr. Haertel, President of the German Patent Office, in the Chair.

Representatives from the IIB and WIPO took part in the meeting as observers. The representatives of the Commission of the European Communities and the Council of Europe sent their apologies for being unable to attend. See Annex I to these minutes for the list of those present at the 9th meeting.

2. Working Party I adopted the provisional agenda as contained in BR/GT I/120/71 and attached to this document as Annex II.

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

BR/135 e/71 prk
(Unrevised translation)
KAPITEL 1a
Zuständigkeit des Verwaltungsrats

Artikel 35a

Erlaß und Änderung allgemeiner Vorschriften

(1) Der Verwaltungsrat ist befugt, folgende Vorschriften zu ändern:

a) die in den Artikeln 54 und 55 vorgesehene Aufteilung der Zuständigkeiten zwischen den Prüfungsstellen und Prüfungsabteilungen, um sie den sich aus der Praxis ergebenden Erfordernissen anzupassen;

b) die in diesem Übereinkommen festgesetzten Fristen; dies gilt, vorbehaltlich Artikel 160, nicht für die in Artikel 88 Absatz 2 vorgesehene Frist;

c) die Ausführungsordnung zu diesem Übereinkommen.

(2) Der Verwaltungsrat ist befugt, folgende Vorschriften festzulegen und zu ändern:

a) die Finanzordnung des Europäischen Patentamts;

b) das Statut der Beamten sowie die Beschäftigungsbedingungen für die sonstigen Bediensteten des Europäischen Patentamts, ihre Besoldung sowie die Art der zusätzlichen Vergütungen und die Verfahrensregeln für deren Gewährung;

c) die Gebührenordnung;

d) sonstige Vorschriften, die für die Durchführung dieses Übereinkommens erforderlich sind.

(3) Der Verwaltungsrat faßt die in den Artikeln 157 und 160 vorgesehenen Beschlüsse.

Artikel 35b

Überwachung der Tätigkeit des Europäischen Patentamts

(1) Im Rahmen seiner Aufgabe, die Tätigkeit des Europäischen Patentamts zu überwachen, obliegt es dem Verwaltungsrat:

a) jährlich den Haushaltsplan des Europäischen Patentamts – gegebenenfalls auch Berichtigungshaushaltspläne oder Nachtragshaushaltspläne, die ihm der Präsident des Patentamts unterbreitet – festzustellen und die Ausführung zu überwachen;

b) die Anzahl der Rechnungsprüfer zu bestimmen, sie zu bestellen und ihre Vergütung festzulegen;

b) die Zahl der Rechnungsprüfer zu bestimmen, sie

c) jährlich die Rechnungen des abgelaufenen Haushaltsjahrs für die Rechnungsvorgänge des Haushaltsplans und die Übersicht über das Vermögen und die Schulden zusammen mit dem Bericht des Kontrollausschusses zu prüfen und dem Präsidenten des Europäischen Patentamts Entlastung zur Ausführung des Haushaltsplans zu erteilen;

d) die jährlichen Tätigkeitsberichte des Präsidenten des Europäischen Patentamts zu billigen.

CHAPTER 1a

Powers and functions of the Administrative Council

Article 35a

Adoption and amendment of general rules

(1) The Administrative Council shall be competent to amend:

(a) Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions;

(b) the time limits laid down in this Convention; this shall not apply to the time limit laid down in Article 88, paragraph 2, subject to the provisions of Article 160;

(c) the Implementing Regulations to this Convention.

(2) The Administrative Council shall be competent to adopt or amend the following:

(a) the Financial Regulations of the European Patent Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature, and the rules for the grant, of any supplementary benefits which may be accorded to them;

(c) the Rules relating to Fees;

(d) any other rules necessary for the implementation of this Convention.

(3) The Administrative Council shall take the decisions referred to in Articles 157 and 160.

Article 35b

Supervision of the activities of the European Patent Office

(1) Within the framework of its function of supervising the activities of the European Patent Office, the Administrative Council shall:

(a) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;

(b) fix the number of auditors, appoint them, and determine their remuneration;

(c) examine annually the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the European Patent Office, together with the report of the Audit Board, and give the President of the European Patent Office a discharge in respect of the implementation of the budget;

(d) approve the annual management reports of the President of the European Patent Office.
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 —
79. Article 138 : Notification of the grounds

The adoption of this new provision, which deals with prior notification of the grounds on which a decision of the Office is to be based, enabled the Working Party to delete Articles 78, paragraph 5, 96, paragraph 2, 105, paragraph 4, 115, paragraph 5

80. Article 139 : Oral proceedings

The adoption of this provision, concerning oral proceedings before the European Patent Office, enabled the Working Party to delete Articles 84, 106 and 114.

81. Article 35a, paragraph 1, sub-paragraph E : Powers of decision of the Administrative Council

Following a previous decision, the Working Party decided to add a sub-paragraph E, authorising the Administrative Council to amend the time limits laid down in the Convention independently of any revision under Article 162 and subject to the provisions of Article 159. The Working Party reserved the right to study whether other time limits in the Convention should be excluded from the simplified procedure for amendment contained in sub-paragraph E.

82. Article 68, paragraph (c) : Date of the application

At the request of the Swiss delegation, the Working Party agreed to examine at one of its next meetings a note in which the Swiss delegation will explain the reasons which in its opinion justify mentioning drawings, as well as description and claims, in paragraph (c).

BR/87 e/71 nan/BS/prk
MINUTES

of the meeting of Working Party I

held at Luxembourg from 30 November to 2 December 1970

and of the meeting held on 3 December 1970 by that Working

Party, acting in its capacity as Co-ordinating Committee

Item 1 on the agenda (1) : Opening of the meeting and adoption

of the provisional agenda

1. The Working Party held its sixth meeting at

Luxembourg from Monday, 30 November to Wednesday,

2 December 1970, with Dr. HAERTEL, President of the German

Patent Office, in the Chair.

Representatives of the Commission of the European

Communities, WIPO-BIRPI and the International Patent

Institute took part in the meeting (2). The representative

of the General Secretariat of the Council of Europe sent

his apologies for being unable to attend.

2. The Drafting Committee, under the chairmanship of

the President of the Netherlands Octrooiraad (Patent Office),

Mr. J. B. van BENTHEM, held its meetings directly after the

deliberations of the Working Party.

(1) For the provisional agenda (BR/GT I/62/70), see Annex I.

(2) For the list of participants, see Annex II.
insurmountable obstacle, as the Statutes of the Court authorised it to call in experts.

The Working Party did not feel that it could adopt this proposal. It considered that the technical nature of the disputes would make arbitration procedure preferable, especially as the number of disputes would probably be too small to allow the International Court of Justice to become really specialised in this respect. It also pointed out that there was nothing to prevent a Judge of this Court being appointed as arbitrator for disputes which did not involve technical matters.

The Swiss delegation reserved the right, however, to raise this question in the Conference itself.

Article h - Limitation of reservations

22. The Working Party did not wish to allow the possibility for reservations to be made other than in the cases explicitly provided for in the Convention.

Article i - Duration of the Convention

23. The Working Party felt it expedient to state formally that the purpose of the Convention was to set up a permanent system.

Article j - Denunciation

24. The Working Party decided to choose the date of deposit of the instrument of denunciation as marking the beginning of the period on the expiry of which a denunciation should take effect, by analogy with the provisions on the coming into effect of ratification and accession.

25. The Working Party also agreed to specify that where a State which had denounced the Convention ceased to be party thereto pursuant to Article a, paragraph 4(b) before the expiry of the period laid down for denunciation to take effect, the Convention would immediately cease to be applicable to that State.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 8 October 1970
BR/53/70

- Secretariat -

MINUTES
of the Meeting of Working Party II
(Luxembourg, 1-4 September 1970 - 2nd meeting)

I

1. The second meeting of Working Party II was held
at Luxembourg, from Tuesday 1. to Friday 4 September
1970, under the Chairmanship of Mr. R. LABRY, Counsellor
at the Ministry of Foreign Affairs (France).

The Commission of the European Communities and the
International Patent Institute attended the meeting as
observers. (1).

2. The Working Party would draw attention to the
provisional nature of the wording of the texts it
adopted.

Bearing in mind the timetable laid down for the
meetings of the other Working Parties, the outcome of
which might lead the Working Party to revise some of the
provisions which it had previously adopted, in particular
those relating to the Administrative Council,

(1) The list of those attending the meeting is given in the
Annex.

BR/53 e/70 son/FB/prk
Article i

Rules of Procedure

The Administrative Council shall lay down its own Rules of Procedure.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 13 March 1970
BR/33/70

- Secretariat -

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

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)

BR/33 e/70 mrk
moment, its intention to ratify the revised text, could not, in the event, suspend the time limit following which the said State would cease to be a party to the Convention.

9. The Working Party agreed to draw the attention of its "Supplementing Regulations" sub-Committee to the need to provide for publication in the Official journal of the European Patent Office, both of the amendments referred to in Article 2 and of the situation of the States in relation to the revised text, in order to ensure that private individuals were kept informed. It was pointed out that this note was also relevant to accessions to the Convention, to denunciations, and to the various declarations relating to the territorial field of application.

Article 2 - Reservation of acquired rights in cases of non-ratification

10. As the principle of acquired rights for patents granted before the revision raised no problems, the Working Party examined the case of applications under consideration by the European Patent Office at the time of entry into force of the revised text. It considered that it would be up to each reviewing Conference to decide what should be done about these applications as regards the States which had agreed to the revised text. Since, however, the rules drawn up by the reviewing Conference could not be imposed on any States which abstained from ratifying the new text - because, on this assumption, these States would be excluded from the new legal system - it would be advisable to lay down a ruling in the Convention itself on what was to be done about applications, which designated one or more such States, in so far as these States were concerned.
gratification of the revised text, this being the same majority as had been adopted in the decision on accession (See Article d).

7. The Working Party agreed to extend to one year the period provided for in Paragraph 4(a). Thus, the entry into force of the revised text, on the expiry of this period, would mark the point at which those States which had not ratified the revised text would cease to be parties to the Convention. The Working Party felt it necessary to leave each State sufficient time, in view of the necessary internal procedures, to decide whether it would be expedient to ratify the revised text or to be excluded from the Convention, with effect from the time when the State could be sure that the revision would come into force, by reason of the deposit of a sufficient number of instruments of ratification.

8. This set of safeguards enabled the Working Party to rule that any States having failed to ratify the revised text or to abide by it would cease to be parties to the Convention with effect from the entry into force of the revised text (Paragraph 4(b)). One delegation suggested providing for each proposed amendment to be accompanied by a vote on the issue of whether, in each particular case, refusal to ratify the revised text should entail exclusion from the Convention. This system was found to be too complicated and liable to give rise to scarcely acceptable consequences, since it would result either in the application of two different texts of the Convention, or in imposing a new legal system on States which had not agreed to it.

In this same context, it was agreed that a declaration by a Contracting State, making known, at a given
Article a - Revision

5. The overriding preoccupation of the Working Party was, in the event of an amendment not being accepted by all the States, to avoid two different texts being in force simultaneously. The solution adopted by the Working Party was to lay down that all States which had not ratified the revised text would cease to be parties to the Convention. Nevertheless, in order to avoid, as far as possible, such situations as might arise as consequence of these provisions, the Working Party adopted certain adjustments (See points 6, 7 and 8 below).

6. The Working Party was at pains to avoid a proliferation of amendments, bearing in mind the serious consequences of the entry into force of a revised text for any States which might be unable to ratify or abide by the revised Convention once the revised text came into force. The Working Party accordingly decided against the principle of a reviewing Conference, meeting periodically, and preferred to leave it to the Administrative Council to decide when such meetings would be appropriate. The Working Party also agreed to fix a rather high quorum for deliberations at any reviewing conference which might be held. This enabled it to agree to a reduction, in relation to the Chairman's initial proposal, in the majorities required both for the adoption and for the
The second meeting of Working Party II was held at Luxembourg, from Tuesday 1 to Friday 4 September 1970, under the Chairmanship of Mr. R. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities and the International Patent Institute attended the meeting as observers. (1).

2. The Working Party would draw attention to the provisional nature of the wording of the texts it adopted.

Bearing in mind the timetable laid down for the meetings of the other Working Parties, the outcome of which might lead the Working Party to revise some of the provisions which it had previously adopted, in particular those relating to the Administrative Council,

(1) The list of those attending the meeting is given in the Annex.

BR/53 e/70 son/PB/prk
(3) Furthermore, the Administrative Council shall:

A. give its decision on requests for accession to this Convention formulated by third countries;

B. conclude or amend on behalf of the European Patent Office:

   (a) the agreement with the International Patent Institute laying down the procedures for its collaboration with the European Patent Office;

   (b) any agreement with the International Bureau provided for in the Patent Co-operation Treaty, for the purposes of applying Articles 117 to 123 of this Convention;

   (c) the agreements with Contracting States to the Co-operation Treaty which are not Contracting States to this Convention referred to in Article 119, paragraph 2;

   (d) any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;

C. decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Co-operation Treaty, in the case provided for in Article 119, paragraph 3;

D. decide upon the creation of branches for information and liaison purposes in the Contracting States or with the International Patent Institute or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or the organisation concerned.
Article a contd.

(f) give, in each particular case, to the President of the European Patent Office, to whom the President of the Administrative Council shall to this end address a written communication, an authorisation to exercise the legal capacity of the European Patent Office for the purposes of:

- actions at law with the exception of those of an urgent or protective nature, or those in which the European Patent Office has been made a defendant,

- acts relating to the disposal of immovable property, or relating to the disposal of movable property when the sum involved exceeds the exchange value of 20 kilograms of fine gold, as well as acts affecting, in the two cases referred to above, the ownership of such property.

Note:
Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3), which should be completed as follows: "in accordance with the provisions laid down in Article a, paragraph 3 (f)".
Article 2 contd.

C. amend the procedure for requests for examination, in accordance with the provisions of Article 89, paragraphs 1 to 3.

Note:—
The Working Party, to take into account the note to Articles 54 and 55, proposes to introduce a new paragraph D as follows:

D. amend Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions.

(2) In addition, the Administrative Council shall:

(a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office;

(b) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;

(c) audit and approve each year the accounts and inventories and the balance sheet;

(d) approve the annual management reports of the President of the European Patent Office;

(e) appoint the senior officials referred to in Article 37, subject to the conditions laid down in that Article, and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them;
PART III bis
THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT OFFICE

CHAPTER I
POWERS AND FUNCTIONS

Article 4a
Powers of decision of the Administrative Council

(1) The Administrative Council shall be competent to:

A. amend the Implementing Regulations to this Convention;

B. adopt or amend:

(a) the Administrative and Financial Regulations of the European Patent Office;

(b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature and the rules for the grant of the supplementary benefits which may be accorded to them;

(c) the Rules relating to fees;

(d) any other rules necessary for the implementation of this Convention;
FIRST PRELIMINARY DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)
Article g - Board of the Administrative Council

23. In the intervals between meetings of the Council, which in principle will only take place once a year (cf. Article h), and in view also of the importance of the functions of the Council, the President should, in the opinion of the Working Party, carry out certain duties, in doing which he would be assisted by a Board. The composition of this Board is dealt with in Article g. The terms under which the Board will assist the President of the Council will be laid down by the Rules of Procedure of the Board.

Article h - Meetings of the Administrative Council

24. The Working Party believed that the provisions of this Article were of sufficient importance for them to be incorporated in the provisions of the Convention dealing with the proceedings of the Council.

Article i - Rules of Procedure

25. The Working Party did not discuss the contents of the Rules of Procedure. It restricted itself to noting that these Rules should include a provision whereby the decisions taken by the Council would state the date of their entry into force.

Article j - Languages

26. In paragraph 1, the Working Party adopted a provision similar to that of Article 34 (1) of the Draft Convention. For reasons of efficiency, it did not seem possible to the Working Party to extend the number of languages which may be used in the deliberations of the Administrative Council.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 20 March 1970
BR/34/70

- Secretariat -

MINUTES
of the meeting of Working Party II
(Luxembourg, 4–6 March 1970)

I

1. The first working meeting of Working Party II, set up by the Conference at the latter's meeting of 13–16 January 1970, was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Luxembourg on 16 January 1970, the Chair was taken by Mr. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and the International Patent Institute (IIB) took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe, who had also been invited to take part in the meeting, apologized for being unable to attend (1).

(1) See list of participants in the meeting of the Working Party given in Annex II. As regards Annex I, see point 38 on page 16.
Article i

Rules of Procedure

The Administrative Council shall lay down its own Rules of Procedure.
FIRST PRELIMINARY DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)
On the other hand, the Working Party did provisionally adopt (while waiting to know the final contents of the Implementing Regulations) a solution to be applied only to those cases where unanimity is required. This solution consists in allowing any Contracting State to declare, upon the adoption of a decision, that its entry into force requires, by virtue of that State’s national constitution, the completion of certain formalities of internal law. Under this system, such a decision would only enter into force when the State concerned had notified the Administrative Council of the completion of such formalities. The text adopted to this end has been incorporated in Article n (2) by the Working Party.

12. The Working Party wondered whether the list of decisions contained in paragraph 1 (b) should be completed by reference to:

(i) the list of posts
(ii) the staff complement
(iii) the establishment plan of the European Patent Office.

It did not eventually complete the said provision in this manner, for the following reasons:

As regards the list of posts, where this is understood as an abstract description of the duties of each grade, it was of the opinion that such a list would be contained in the Service Regulations; and, where this is understood as an establishment plan of the Office, it would be contained in the provisions of the Administrative Regulations provided for in B (a). Finally, the numbers of officials and other employees would be laid down for each Class in the budget of the European Patent Office, to be adopted by the Administrative Council under paragraph 2 (b).
Working Parties, between the Convention itself and the Implementing Regulations remained completely open, as had been pointed out by Working Party I. Accordingly, the Working Party noted that the provision relating to the power of the Administrative Council to amend the Implementing Regulations could be re-examined at a later stage, in the light of the contents of the Implementing Regulations. Since it was not yet certain what the contents of the Implementing Regulations would be, the Working Party was not able to affirm immediately that the Administrative Council will be able to exercise its power to amend the Implementing Regulations without this in certain (admittedly limited) cases entailing recourse by any given Contracting State to certain procedures of internal law (such as parliamentary approval) before the latter could finally approve the amendments in question.

At this stage in the proceedings, the Working Party considered it expedient to examine the means allowing any difficulties which might face the Administrative Council to be solved, in view of the problems brought forward above. To this end, it considered a first proposal consisting in delaying the entry into force of the decisions of the Council for a fixed period, during which any State faced with such problems should be able to complete the required formalities. After thorough examination, the Working Party rejected this proposal. It did indeed appear difficult to the Working Party to fix a priori a standard period for entry into force for all future decisions of the Council, when the administrative requirements of the European Patent Office could call for the immediate or early entry into force of such decisions.
9. It was further agreed that the order of the various provisions contained in Part III bis and examined by the Working Party was provisional and could be reconsidered at a later stage.

III

MAIN COMMENTS ON THE VARIOUS ARTICLES
RELATING TO THE ADMINISTRATIVE COUNCIL

PART III bis OF THE CONVENTION

The Administrative Council of the European Patent Office

CHAPTER I

Article a – Powers of decision of the Administrative Council

10. In paragraph 1(a), the Working Party provided that the Administrative Council shall have the power to amend the Implementing Regulations to the Convention. It was of the opinion that the responsibilities of the Administrative Council did not extend to the adoption of these Regulations, which should indeed be drawn up at the same time as the Convention itself. The Working Party therefore assumed that it would be for the diplomatic Conference to decide on the manner in which the Implementing Regulations were to be adopted.

11. The Working Party further noted that the question of the distribution of the various provisions drawn up by Working Party I, and of those to be drawn up by the other
MINUTES

of the meeting of Working Party II
(Luxembourg, 4–6 March 1970)

I

1. The first working meeting of Working Party II, set up by the Conference at the latter's meeting of 13–16 January 1970, was held at Luxembourg from Wednesday 4 to Friday 6 March 1970.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Luxembourg on 16 January 1970, the Chair was taken by Mr. LABRY, Counsellor at the Ministry of Foreign Affairs (France).

The Commission of the European Communities, BIRPI and the International Patent Institute (IIB) took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe, who had also been invited to take part in the meeting, apologized for being unable to attend (1).

(1) See list of participants in the meeting of the Working Party given in Annex II. As regards Annex I, see point 38 on page 16.
Article a contd.

(3) Furthermore, the Administrative Council shall:

A. give its decision on requests for accession to this Convention formulated by third countries;

B. conclude or amend on behalf of the European Patent Office:

(a) the agreement with the International Patent Institute laying down the procedures for its collaboration with the European Patent Office;

(b) any agreement with the International Bureau provided for in the Patent Co-operation Treaty, for the purposes of applying Articles 117 to 123 of this Convention;

(c) the agreements with Contracting States to the Co-operation Treaty which are not Contracting States to this Convention referred to in Article 119, paragraph 2;

(d) any agreement with any other inter-governmental organisation exercising an activity in which the European Patent Office has an interest;

C. decide as to the possibility of the European Patent Office acting as a receiving Office within the meaning of Chapter I of the Co-operation Treaty, in the case provided for in Article 119, paragraph 3;

D. decide upon the creation of branches for information and liaison purposes in the Contracting States or with the International Patent Institute or other inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or the organisation concerned.

BR/33 e/70 bn
Article a contd.

(f) give, in each particular case, to the President of the European Patent Office, to whom the President of the Administrative Council shall to this end address a written communication, an authorisation to exercise the legal capacity of the European Patent Office for the purposes of:

- actions at law with the exception of those of an urgent or protective nature, or those in which the European Patent Office has been made a defendant,

- acts relating to the disposal of immovable property, or relating to the disposal of movable property when the sum involved exceeds the exchange value of 20 kilograms of fine gold, as well as acts affecting, in the two cases referred to above, the ownership of such property.

Note:

Adoption of the provision contained in (f) would necessitate an amendment of Article 32 (3), which should be completed as follows: "in accordance with the provisions laid down in Article a, paragraph 3 (f)".
Article 2 contd.

C. amend the procedure for requests for examination, in accordance with the provisions of Article 89, paragraphs 1 to 3.

Note:

- The Working Party, to take into account the note to Articles 54 and 55, proposes to introduce a new paragraph D as follows:

D. Amend Articles 54 and 55 so as to re-allocate in the light of experience the responsibilities entrusted to the Examining Sections and Examining Divisions.

(2) In addition, the Administrative Council shall:

(a) take any necessary measures for the purpose of ensuring the smooth functioning of the European Patent Office;

(b) adopt each year the budget of the European Patent Office and such amending or supplementary budgets as may be submitted to it by the President of the European Patent Office, and supervise the implementation thereof;

(c) audit and approve each year the accounts and inventories and the balance sheet;

(d) approve the annual management reports of the President of the European Patent Office;

(e) appoint the senior officials referred to in Article 37, subject to the conditions laid down in that Article, and may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them;}
PART III bis
THE ADMINISTRATIVE COUNCIL
OF THE EUROPEAN PATENT OFFICE

CHAPTER I
POWERS AND FUNCTIONS

Article 1a
Powers of decision of the Administrative Council

(1) The Administrative Council shall be competent to:

A. amend the Implementing Regulations to this Convention;
B. adopt or amend:
   (a) the Administrative and Financial Regulations of the European Patent Office;
   (b) the Service Regulations for officials and the conditions of employment of other employees of the European Patent Office, the salary scales of the said officials and other employees, and also the nature and the rules for the grant of the supplementary benefits which may be accorded to them;
   (c) the Rules relating to fees;
   (d) any other rules necessary for the implementation of this Convention;

BR/33 e/70 bm
FIRST PRELIMINARY DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Provisions relating to the Administrative Council
Text drawn up by Working Party II
(4 to 6 March 1970)
Article 38 (48), 39 (48 b), 40 (48 + 48 a), 41 (274)

Ces articles sont adoptés sans observations. À la suite d'une question de M. Degevre, le Président précise que les crochets sont maintenus autour des mots "Conseil d'administration" pour indiquer qu'une décision doit être prise au sujet de ce Conseil dans le cadre de la convention générale.

Article 42 (49)

La discussion de cet article est différée jusqu'à l'arrivée de M. Roscioni et de la délégation française.

Articles 43 (194), 44 (195), 45 (196), 46 (197), 47 (198), 48 (199), 49 (200), 50 (201), 51 (202), 52 (203) et 53 (204)

Ces articles inspirés par ceux du Traité de Rome relatifs aux dispositions financières sont adoptés sans discussion.

Article 54 (32), 55 (51), et 57 (55)

Ces articles sont adoptés.

Article 56 (32)

Après une intervention de M. van Benthom, au sujet du paragraphe 3 et un échange de vues sur la composition des divisions d'examen, le groupe maintient la composition de trois membres prévue à l'avant-projet en ajoutant toutefois que la division d'examen peut faire appel à un membre juriste pour prendre des décisions où interviennent des questions de droit. En outre, il désire faire figurer sous cet article une remarque disant que le Président devrait pouvoir définir les cas dans lesquels la division devrait s'assurer le concours d'un membre juriste. L'article est adopté avec cette observation et transmis au Comité de rédaction.
Résultats de la sixième session
du groupe de travail "Brevets"
qui s'est tenue à Munich
du 13 au 23 juin 1962
Artikel 38 (48), 39 (48 b), 40 (48 + 48 a), 41 (274)

Diese Artikel wurden ohne Änderungsvorschläge angenommen. Eine Frage des Herrn Degavre beantwortete der Vorsitzende dahingehend, daß die eckigen Klammern für den Ausdruck "Verwaltungsrat" beibehalten werden sollen, um darauf hinzuweisen, daß im Rahmen des allgemeinen Abkommens noch eine Entscheidung über diesen Rat getroffen werden müsse.

Artikel 42 (49)

Die Besprechung dieses Artikels wird bis zur Ankunft des Herrn Roscioni sowie der französischen Delegation vertagt.

Artikel 43 (194), 44 (195), 45 (196), 46 (197), 47 (198), 48 (199), 49 (200), 50 (201), 51 (202), 52 (203) und 53 (204)

Diese mit den Artikeln des Rom-Vertrages zusammenhängenden Artikel über die Finanzvorschriften wurden ohne Diskussion angenommen.

Artikel 54 (50), 55 (51), und 57 (55)

Diese Artikel wurden gleichfalls angenommen.

Artikel 56 (52)

Nach einer Zwischenfrage von Herrn van Bentheim wegen Absatz 3 und einem Gedankenaustausch über die Zusammensetzung der Prüfungsabteilungen behielt die Gruppe die im Vorentwurf vorgesehene Zusammensetzung aus drei Prüfern bei, fügte jedoch hinzu, daß die Prüfungsabteilung bei Entscheidungen über Rechtsfragen um einen rechtssenken Prüfer erweitert werden könne. Ferner beabsichtigte die Gruppe, diesem Artikel eine Bemerkung anzufügen, wonach der Vorsitzende die Fälle bestimmen soll, in denen die Prüfungsabteilung ein rechtssenken Mitglied hinzuziehen müsse. Der Artikel wurde mit dieser Bemerkung angenommen und dem Redaktionsausschuß überwiesen.

...

.../...
Ergebnisse der sechsten Sitzung
der Arbeitsgruppe "Patente"
vom 13. bis 23. Juni 1962
in München
Article 38 (48)

Devoirs de la fonction

(1) Les fonctionnaires et autres agents de l'Office européen des brevets sont tenus, même après la cessation de leurs fonctions, de ne pas divulguer les informations qui par leur nature sont couvertes par le secret professionnel.

(2) Les fonctionnaires et autres agents de l'Office européen des brevets ne peuvent durant l'exercice de leurs fonctions déposer des demandes de brevet directement ou par personne interposée.

(3) Le Conseil d'administration arrête le statut des fonctionnaires et le régime applicable aux autres agents de l'Office européen des brevets.
AVANT-PROJET DE CONVENTION
RELATIF À
UN DROIT EUROPÉEN DES BREVETS

= VE Mai 1962
Artikel 38 (48)

Amtspflichten

(1) Die Beamten und sonstigen Bediensteten des Europäischen Patentamts sind verpflichtet, auch nach Beendigung ihrer Amtstätigkeit Kenntnisse, die ihrem Wesen nach unter das Berufsgeheimnis fallen, nicht preiszugeben.

(2) Die Beamten und sonstigen Bediensteten des Europäischen Patentamts dürfen während der Dauer ihres Dienstverhältnisses weder selbst noch durch einen Mittelsmann Patentanmeldungen einreichen.

(3) Der Verwaltungsrat erläßt das Statut der Beamten sowie die Beschäftigungsbedingungen für die sonstigen Bediensteten des Europäischen Patentamts.
Arbeitsgruppe "Patente"  
Redaktionsausschuss

Brüssel, den 26. Mai 1962

STRENG VERTRAULICH

Vorentwurf

eines Abkommens über ein europäisches Patentrecht
Une définition du secret professionnel ne lui paraît pas nécessaire. Il est certain que toute connaissance des demandes de brevets déposés tombent sous le secret professionnel; d'autre part, des publications scientifiques restent libres.

Quant aux sanctions contre la violation du secret professionnel, le Président remarque que des sanctions de droit civil après la cessation des fonctions ne peuvent entraîner que des mesures disciplinaires visant la suppression de paiements éventuels au fonctionnaire inculpé. Des sanctions pénales ne seraient possibles que sous condition de prévoir dans la Convention l'obligation des États membres de poursuivre la violation du secret professionnel. De pareilles dispositions n'existent dans aucun accord international et paraissent difficilement réalisables.

M. de Nuyser se demande si l'on pourrait admettre qu'un fonctionnaire de l'Office européen utilise sans violer le secret professionnel, ses connaissances générales acquises à l'Office pour donner des conseils à des tiers.

Le Président lui répond que de telles activités des fonctionnaires doivent être interdites étant donné qu'il s'agit de connaissances acquises dans l'exercice des fonctions. Mais de pareils cas devraient être réglés dans le statut du personnel.

Par contre, il est nécessaire de maintenir la disposition du paragraphe 2 dans la Convention étant donné qu'elle prive les fonctionnaires de l'Office d'un droit qui appartient à quiconque.

Suivant une suggestion de M. Degavre, le groupe décide de préciser que le dépôt des demandes de brevet par des tierces personnes agissant comme mandataire d'un fonctionnaire de l'Office devrait également être interdit.

Accompagné de ces remarques, l'article 46 est transmis au Comité de rédaction.

L'article 46 a qui reprend le texte de l'article 215 du Traité de Rome est également adopté.
qu'en ce qui concerne le nombre, il sera limité par le budget. Quant au choix à effectuer parmi les candidatures le Président devrait rester libre. Une garantie contre tout abus en la matière réside tout d'abord dans la personne du Président et ensuite dans le statut du personnel qui devrait prévoir la possibilité d'un recours à une instance judiciaire, tel qu'il est prévu par le Traité de Rome.

Quant au choix des vice-présidents, le Président donne raison à M. Prosser et propose qu'ils soient nommés par le Conseil d'administration après avoir entendu le Président de l'Office sans que ce dernier ait le droit de proposer les vice-présidents.

Enfin le groupe suit la proposition de M. de Reusse de prévoir que le Conseil d'administration nommerait et licencierait outre les personnes mentionnées au paragraphe 1, les directeurs des divisions. « Un éditant ces propositions, la délégation française tiendra compte des décisions du groupe au sujet de l'article 47. 

Discussion de l'article 48 de l'avant-projet.

Les paragraphes 1 et 3 sont repris du Traité de Rome. Le paragraphe 1 ne pose qu'un principe dont les détails devront être fixés dans le statut du personnel.

Le Président propose de ne considérer que le fond des diverses dispositions de cet article en laissant à la délégation française le soin de déterminer leur emplacement dans l'ensemble du texte.

Le groupe décide qu'il faut prévoir un contrôle judiciaire des mesures disciplinaires pris par le Président et non pas un contrôle par le Conseil d'administration.

Répondant à deux questions de M. van Benthem, le Président explique que le texte du paragraphe 1 est littéralement copié du Traité de Rome.
Résultats de la cinquième session
du groupe de travail "Brevets"
qui s'est tenue à Bruxelles
du 8 au 19 janvier 1962
Es sei sicher, dass alle aus den eingereichten Patentanmeldungen erlangten Kenntnisse unter das Berufsgesheimnis fielen; dagegen würden die wissenschaftlichen Veröffentlichungen keiner Beschränkung unterliegen.


Herr de Muyser stellt die Frage, ob ein Beamter des Europäischen Patentamts auf Grund seiner beim Patentamt erlangten allgemeinen Kenntnisse Dritten Ratschläge erteilen könne, ohne das Berufsgesheimnis zu verletzen.

Der Präsident antwortet ihm, dass eine solche Tätigkeit der Beamten untersagt sein müsse, weil es sich um in Ausübung ihres Amtes erlangte Kenntnisse handele. Derartige Fälle müssten jedoch im Personalstatut geregelt werden.

Demgegenüber sei Absatz 2 im Abkommen aufrechtzuerhalten, weil er den Beamten des Patentamts ein Recht vorenthalte, das jedermann zustehe.

Auf Anregung von Herrn Degavre beschliesst die Gruppe klarzustellen, dass die Einreichung von Patentanmeldungen durch dritte Personen als Beauftragte eines Beamten des Patentamts gleichfalls verboten werden müsse.

Mit diesen Bemerkungen wird Artikel 48 an den Redaktionsausschuss überwiesen.


Hinsichtlich der Wahl der Vizepräsidenten gibt der Präsident Herrn Pressonnet recht und schlägt vor, dass sie nach Anhörung des Präsidenten des Patentamts durch den Verwaltungsrat ernannt werden sollen, ohne dass der Präsident ein Vorschlagsrecht habe.

Schließlich folgt die Gruppe dem Vorschlag von Herrn De Reuse, wonach der Verwaltungsrat ausser den im Absatz 1 genannten Personen auch die Abteilungsleiter ernennen und entlassen soll. Bei der Ausarbeitung dieser Vorschläge wird die französische Delegation die Beschlüsse der Gruppe zu Artikel 47 berücksichtigen.

**Erörterungen zu Artikel 48 des Vorentwurfes**

Absatz 1 und 3 sind aus dem Vertrag von Rom übernommen. Absatz 1 stellt nur einen Grundsatz auf, der in einzelnen im Personalstatut festgelegt werden muss.

Der Präsident schlägt vor, die einzelnen Bestimmungen dieses Artikels nur in sachlicher Hinsicht zu erörtern und der französischen Delegation die Entscheidung zu überlassen, an welcher Stelle im Textentwurf der Artikel stehen soll.

Die Gruppe ist der Ansicht, dass die Disziplinarmaßnahmen des Präsidenten einer gerichtlichen Überprüfung und nicht der Aufsicht des Verwaltungsrats unterliegen müssen.

Auf zwei Fragen von Herrn von Bontem erklärt der Präsident, dass der Wortlaut von Absatz 1 wörtlich aus dem Vertrag von Rom übernommen sei. Eine Definition für das Berufsgesheimnis hält er nicht für erforderlich. 

.../...
Ergebnisse der vierten Sitzung
der Arbeitsgruppe "Patente"
vom 8. bis 19. Januar 1962
in Brüssel
Ad article 48

Devoir de la fonction

1) Documents de base
   a) Traité de la CEE, articles 212 et 214;
   b) loi américaine sur les brevets, § 6.

2) Remarques
   Ad § 1.

   Cette disposition est presque littéralement calquée sur l'article 214 du traité de la CEE.

   Ad § 2.

   La réglementation proposée figure sous une forme plus détaillée dans l'article 6 de la loi américaine sur les brevets. Dans la république fédérale d'Allemagne, une pratique analogue a été récemment confirmée par la jurisprudence de la plus haute instance judiciaire. Les législations danoise, norvégienne et canadienne prévoient également cette interdiction.

   Ad § 3.

   Cette disposition est calquée sur l'article 212, § 1 du traité de la CEE.
Article 48

Devoirs de la fonction

(1) Les fonctionnaires et autres agents de l'Office européen des brevets sont tenus, même après la cessation de leurs fonctions, de ne pas divulguer les informations qui en raison de leur nature relèvent du secret professionnel.

(2) Les fonctionnaires et autres agents de l'Office européen des brevets ne peuvent durant l'exercice de leurs fonctions déposer des demandes de brevet.

(3) Le conseil d'administration arrête le statut des fonctionnaires et le régime applicable aux autres agents de l'Office européen des brevets.
Premier projet de convention
relative à un droit européen des brevets

Articles 41 à 60

Articles 41 à 49 a
Zu Artikel 48
Amtspflichten

1. Materialien:
   a) EWG-Vertrag, Art. 212 und 214;
   b) US-Patentgesetz, § 6.

2. Bemerkungen:
   Zu Abs. 1:
   Diese Bestimmung ist fast wörtlich dem Art. 214 des EWG-Vertrags entnommen.

   Zu Abs. 2:
   Die hier vorgeschlagene Regelung findet sich in weiterer Ausgestaltung in Art. 6 des amerikanischen Patentgesetzes. In der Bundesrepublik Deutschland wurde eine entsprechende Praxis kürzlich von der höchstrichterlichen Rechtsprechung bestätigt. Auch nach dänischem, norwegischem und kanadischem Recht besteht ein solches Verbot.

   Zu Abs. 3:
   Diese Bestimmung ist dem Art. 212 Abs. 1 des EWG-Vertrags nachgebildet.
Artikel 48
Amtspflichten

(1) Die Beamten und sonstigen Bediensteten des Europäischen Patentamts sind verpflichtet, auch nach Beendigung ihrerAmtstätigkeit Kenntnisse, die ihrem Wesen nach unter das Berufsgemheimnis fallen, nicht preiszugeben.

(2) Die Beamten und sonstigen Bediensteten des Europäischen Patentamts dürfen während der Dauer ihres Dienstverhältnisses keine Patentanmeldungen einreichen.

(3) Der Verwaltungsrat erläßt das Statut der Beamten sowie die Beschäftigungsbedingungen für die sonstigen Bediensteten des Europäischen Patentamts.
Erster Arbeitsentwurf

eines Abkommens

über ein europäisches Patentrecht

Artikel 41 bis 60

(Artikel 41 bis 49 a)
Art. 33
MPÜ
- S. 2 -

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Annex II

Yugoslavia. The Committee, by a majority, rejected these proposals as going too far, but ultimately elaborated a generally acceptable compromise on the basis of a German proposal, as amended in discussion.

11. The amended Article 166 goes further than the 1972 draft in that it extends the possibility of making reservations to new chemical products. It also clarifies the position as regards the effect of a reservation in respect of chemical, pharmaceutical or food products. The Committee accepted the view that such a reservation makes a European patent ineffective or revocable in the reserving country only insofar as the patent confers protection on products, which are not defined by reference to a process of manufacture or use of that product also covered by the patent.

12. It is also now provided in Article 166 that a reservation, other than one in connection with the Protocol on the Recognition of Decisions in respect of the Right to the Grant of a European Patent, not only applies to all European Patents granted on applications filed during the period in which the reservation has effect, but also continues for the whole term of such patents. This means that, in the fields of technology in which a reservation has been entered, the impact of European patents on the economy of the reserving country will be gradual.

13. Mainly for this reason, the majority of the Committee considered that there were insufficient grounds for extending the ten year reservation period to fifteen years or, as had also been suggested, until such time as the reserving country considered itself to be in a position to lift its reservation. However, the majority felt that a degree of flexibility in the reservation period was appropriate, since a country intending to make the necessary change may nevertheless find it impossible to meet the ten year deadline. Accordingly, Article 166 now admits of a single extension of no more than five years if the Administrative Council decides, in the light of a reasoned submission made by the reserving country, that the latter is not in a position to dispense with its reservation by the expiry of the ten year period.

Protocol on Privileges and Immunities

14. The Committee has made a few changes in the provisions of this Protocol, mainly in order to improve their clarity. One point worth mentioning here concerns Article 22, which provides that a Contracting State need not extend certain privileges and immunities to its own nationals or permanent residents. The Committee decided that this derogation should not apply to any person, other than a national of that State, who, at the time of taking up his functions with the European Patent Office, has his permanent residence in that State and is an employee of any other organisation whose staff are to be incorporated into the European Patent Office. This has been done in order to avoid any unfairness towards the staff of the International Patent Institute resulting from their transfer to the European Patent Office.

Protocol on the Centralisation of the European Patent System and on its Introduction

15. Section I.1 of the Protocol provides for the transfer of the assets, liabilities and staff of the International Patent Institute to the European Patent Organisation. This is to be effected by an agreement between the Institute and the Organisation which is to be implemented prior to the opening of the European Patent Office for the receipt of patent applications.

16. In order to meet the wishes of Belgium, Italy and Turkey, the obligations of the European Patent Office towards Member States of the Institute have been extended. As provided for in the 1972 draft, the Office will assume responsibility for carrying out searches for any Member State of the Institute which now submits its national applications to the Institute for this purpose, even though that State does not become party to the Convention. As redrafted, the text now provides that the Office will also assume this responsibility in respect of a Member State of the Institute which, prior to the entry into force of the Convention, has agreed to submit national applications to the Institute for search, provided this State is also a party to the Convention when it enters into force.

17. So far as concerns the Italian sub-office referred to in the third sub-paragraph of Section I.1 of the Protocol, it is now provided that the Italian Government shall enter into an agreement with the European Patent Organisation which, consistently with the terms of the Protocol, will put the sub-office in the same situation vis-à-vis the Organisation as it is now vis-à-vis the Institute.

18. Due to language problems and other practical difficulties, the search currently carried out by the International Patent Institute, extensive though it is, does not cover published patent specifications of all the States eligible to become parties to the Convention pursuant to Articles 164 and 165. Many of these specifications are duplicated in other languages which the staff of the Institute can cope with, and to this extent the search is sufficiently wide. It is clear, however, that some specifications, especially those relating to applications which are not used as the basis for filing applications in other countries under the Paris Convention, are not duplicated. The possibility therefore arises of a European Patent being revocable because of a prior specification in the language of a Member State which is not among the search material of the Institute. Moreover, it is possible that specifications and other technical literature, which are of considerable relevance in certain fields of technology, are available only in the language of one State. Mainly for these reasons, the Committee decided on the basis of proposals made by Finland, Italy and Norway that the absorption of the Institute by the Office, the search should in principle be extended to published patent specifications and other technical literature not contained in the search material of the European Patent Office when it opens for receipt of European patent applications. This is now stated in Section VIa of the Protocol. The Committee recognised, however, that any such extension of the search would be likely to have an appreciable impact on costs and on the level of staffing of the Search Department of the European Patent Office. In view of this, it is also provided in Section VIa that the Administrative Council shall decide, in the light of a study concerning particularly the financial and technical aspects, as to the scope, conditions and timing of any extension of the search.

19. Section VI.1 of the Protocol authorises the Italian sub-office to carry out searches among the search material which is in its possession and in its own language. This authority extends to carrying out searches on European applications filed by Italian nationals or residents, it being understood that the procedure for grant will not thereby be delayed and that the European Patent Organisation will not incur any additional costs. This provision, which was contained in the 1972 draft of the Protocol, has now been supplemented by a Section VI.2 authorising the sub-office also to carry out searches among the same documentations on any European patent application at the option of the applicant and at his expense. The authorisation so provided for is effective until the date when the search on all European patent applications is extended to cover this same search material, as envisaged by Section VIa.

20. The Austrian delegation proposed that the search on European applications be entrusted to "suitably qualified"