Article 150 E

Travaux Préparatoires
(EPC 1973)

Comment:
The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
Art. 150
MPÜ
Anwendung des Vertrags über die internationale Zusammenarbeit auf dem Gebiet des Patentwesens

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provision was also adopted to authorise the national authorities of the host country to withdraw the right to a place of business for reasons of "ordre public".

(d) Deletion from the list of professional representatives

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

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

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

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

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

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

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

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

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

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

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

REPORT

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

on the results of Main Committee I's proceedings

ANNEX II

REPORT

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

on the results of Main Committee II's proceedings

ANNEX III

REPORT

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

on the results of Main Committee III's proceedings

ANNEX IV

REPORT

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

on the results of the Credentials Committee's proceedings

with regard to full powers for signing the Convention
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MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Situations might arise where the renewal fees for the European patent were payable by the proprietor very soon after the date of the mention of the grant of the patent. This would give rise to difficulties for the proprietor. The Member States of the European Communities therefore proposed a solution which would in any event allow a minimum of two months for payment as from the date of the mention of the grant of the patent.

869. The Committee agreed to this proposal.

Article 142 — Unitary patents

870. The Committee referred the comment by the Swiss delegation concerning the title of this Article to the Drafting Committee for examination (see M/54, page 22).

871. The Netherlands delegation wondered whether Article 35 of the Community Patent Convention pursuant to which the applicant was required to file at the European Patent Office a translation of the claims in one of the official languages of each of the Contracting States to that Convention which did not have English, French or German as an official language was covered by Article 63 of the European Patent Convention, which provided that any Contracting State may prescribe that the applicant for or proprietor of the patent must supply a translation of the text in which the European Patent Office intends to grant a European patent. If Article 63 were considered as not authorising the Member States of the European Communities to lay down a requirement such as that contained in Article 35 of the Community Patent Convention, an appropriate provision would have to be inserted, if necessary, in Article 142 of the European Patent Convention. This delegation also wondered if the words "supply to its central industrial property office" could be interpreted under the Community Patent Convention as covering the "central department" set up by the Contracting States by a special agreement.

872. The Committee considered that Article 63 of the Convention did in fact authorise the Contracting States of the Community Patent Convention to stipulate the requirement laid down in Article 35 thereof and also gave an affirmative reply to the question of interpretation raised.

873. The Netherlands delegation finally wondered whether Article 63 covered Article 35, paragraph 4, of the Community Patent Convention, which provided that translations of the claims were to be published by the European Patent Office.

874. The United Kingdom delegation considered that this provision was covered by Article 143, paragraph 1, which stated that the group of Contracting States could give additional tasks to the European Patent Office.

875. The Committee agreed with the United Kingdom delegation's opinion.

Article 143 — Special departments of the European Patent Office

876. The delegation of the Federal Republic of Germany explained to the Committee the proposal submitted by the Member States of the European Communities for an addition to be made to paragraph 2 of this Article (see M/14, point 11). This proposal was intended to ensure that, for the running of the special Departments set up under a special agreement, the President of the European Patent Office had all the powers provided under Article 10 for the general conduct of the Office's operations.

877. The Committee agreed to this proposal.

Article 144 — Professional representation before special departments

878. The Chairman noted that a proposal had been put forward as regards this Article by the delegation of the Federal Republic of Germany (see M/47, point 19), and another by the United Kingdom delegation (M/64, page 3). If the German proposal were adopted it would not be necessary to examine the United Kingdom proposal, the substance of which was contained in the German proposal.

879. The delegation of the Federal Republic of Germany suggested that this Article be simplified in order to make it as flexible and comprehensive as possible. It therefore proposed that the provision in question be confined to stating that the group of Contracting States could lay down special arrangements to govern representation of parties before the special departments without any limitations being applied.

880. The Netherlands delegation supported this proposal.

881. The United Kingdom delegation was prepared to support the German proposal and withdraw its own. It wondered whether the title of the Article should not be amended by deleting the word "professional" in order to broaden its scope and render it applicable also to representation by employees.

882. The Committee agreed to the German proposal and the amendment suggested by the United Kingdom delegation.

Article 149 — Joint designation

883. The Committee referred the proposals of the Netherlands delegation (see M/52, page 14) and of the delegation of the Federal Republic of Germany (see M/47, point 44) to the Drafting Committee, for examination.

Article 150 - Application of the Patent Co-operation Treaty

884. The Committee referred the proposal by the Luxembourg delegation (see M/9, point 28) to the Drafting Committee for examination.

Article 153 — The European Patent Office as a designated Office

885. The Committee examined the Norwegian delegation's proposal (see M/71, page 3) concerning paragraph 2 of the Article, to the effect that the reference to Article 39, paragraph 1, of the Co-operation Treaty, should be deleted.

886. The Chairman said that if the Committee subscribed to the Norwegian delegation's opinion that Article 153 should refer only to Chapter I of the PCT, whereas the fee referred to in Article 39 related to Chapter II, it would have to be considered whether another provision, the content corresponding to that of Article 153, paragraph 2, with a reference to Article 39 of the PCT, should not be included, possibly in Article 155. Failing such a provision the Convention would contain no stipulation regarding the national fee for the procedure under Chapter II of the PCT.

887. The WIPO delegation considered that this problem could be resolved in one of two ways: either by adopting the Norwegian delegation's proposal and adding a provision to Article 155, as mentioned by the Chairman, or else keeping Article 153, paragraph 2, as it stood — which would have the advantage of making superfluous one part of the Norwegian delegation's proposal on Article 155, paragraph 2, first sentence, i.e. the addition of a sentence regarding the periods of time laid down in Article 39 of the PCT.
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
PART X
INTERNATIONAL APPLICATION PURSUANT
TO THE PATENT COOPERATION TREATY

Article 150
Application of the Patent Cooperation Treaty

(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the Cooperation Treaty, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the Cooperation Treaty may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the Cooperation Treaty shall prevail. In particular, for an international application the time limit within which a request for examination must be filed under Article 94, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Cooperation Treaty as the case may be.

(3) An international application, for which the European Patent Office acts as designated Office or elected Office, shall be deemed to be a European patent application.

(4) Where reference is made in this Convention to the Cooperation Treaty, such reference shall include the Regulations under that Treaty.
MUNICH DIPLOMATI n CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1975
M/ 146/R 6
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee
Subject: Convention: Articles 140 to 166
PART X

INTERNATIONAL APPLICATION PURSUANT TO THE PATENT COOPERATION TREATY

Article 150

Application of the Patent Cooperation Treaty

(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the Cooperation Treaty, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the Cooperation Treaty may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the Cooperation Treaty shall prevail. In particular, for an international application the time limit within which a request for examination must be filed under Article 93, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Cooperation Treaty as the case may be.

(3) Unchanged from 1972 published text.

(4) Where reference is made in this Convention to the Cooperation Treaty, such reference shall include the Regulations under that Treaty.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973
M/ 136/I/R 10
Original: English/French/German

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

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Artikel 131 — Rechtshilfe

26 Absatz 1

Die Verwendung des Ausdrucks „sur requête“ („auf Antrag“) würde nach französischer Terminologie einen schriftlichen Antrag erfordern; dies ist aber nicht gemeint („quod non!“). Für die Antragstellung ist wohl keine besondere Form vorgeschrieben.

Vorschlag:

Statt des Ausdrucks „sur requête“ sollte „à la requête“ oder „à la demande“ stehen.

Artikel 138 — Nichtigkeitsgründe

27 Absatz 2

Der Inhalt des Wortes „partiellement“ („teilweise“) sollte geklärt werden. Aus dem Entwurf geht nämlich scheinbar hervor, daß der Fall gemeint ist, in dem nur einige von mehreren Nichtigkeitsgründen auf das Patent zutreffen; dies würde sicher nicht dem eigentlichen Sinn dieser zweifellos sehr nuancierten Vorschrift entsprechen.

Vorschlag:

Der Beginn dieses Absatzes könnte folgende Fassung erhalten: „Si les motifs de nullité n’affectent le brevet européen qu’en partie ...“ oder „n’affectent que partie du brevet ...“ („Treffen die Nichtigkeitsgründe nur auf einen Teil des europäischen Patents zu, ...“).

Artikel 150 — Anwendung des Zusammenarbeitvertrags

28 Absatz 2

Der Begriff „procédure“ läßt im Französischen ausschließlich an die Form und nicht an den Inhalt eines Vorgangs denken, wie dies im Deutschen und im Englischen bei den Ausdrücken „Verfahren“ und „proceedings“ doch wohl der Fall ist, die ein bestimmtes Objekt bei einer gerichtlichen Instanz abdecken. Auf jeden Fall muß verhindert werden, daß die Vorstellung Raum gewinnt, der Zusammenarbeitvertrag sei nur auf Verfahrensfragen anwendbar.

Vorschlag:

In Satz 2 sollte es anstatt „Dans ces procédures“ („In diesem Verfahren“) heißen: „À ces demandes“ („Auf diese Anmeldungen“).

this Convention and to be observed vis-à-vis the authorities of such State), or: “... au droit d’un Etat contractant ... quant aux délais ...” (English text unchanged) (the first version would be preferable).

Article 131 — Legal co-operation

26 Paragraph 1

The expression “sur requête” (on request) (5th line) would in French require a written act (quod non!). Here, however, no special form would seem to be necessary for the submission of the request.

Proposal:

Replace “sur requête” by “à la requête” or “à la demande” (in English all three mean: on request).

Article 138 — Grounds for revocation

27 Paragraph 2

The exact meaning of the word “partially” should be specified. The text of the draft would seem to refer more to the case of only some grounds out of several affecting the patent, which obviously is not the true meaning of this provision which has a very special sense.

Proposal:

State: “If the grounds for revocation only affect the European patent in part...” or “only affect a part of the patent...”.

Article 150 — Application of the Patent Cooperation Treaty

28 Paragraph 2

In French the term “procédure” (proceedings) has a special meaning which relates it exclusively to the form and not to the content of the proceedings as seems to be the case of the German and English terms “Verfahren” and “proceedings”, which also cover the actual court in that it has a specific object. In any event the impression must be avoided that the Patent Cooperation Treaty is only applicable to procedural aspects.

Proposal:

Replace (2nd sentence) the words “Dans ces procédures...” (In such proceedings) by “À ces demandes, les dispositions... sont applicables” (The provisions... shall be applied to such applications).
STELLUNGNAHME
DER LUXEMBURGISCHEN REGIERUNG

COMMENTS
BY THE LUXEMBOURG GOVERNMENT

PRISE DE POSITION
DU GOUVERNEMENT LUXEMBOURgeois
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

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

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

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

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

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

1973
ZEHNTER TEIL
INTERNATIONALE ANMELDUNG NACH DEM VERTRAG ÜBER DIE INTERNATIONALE ZUSAMMENARBEIT AUF DEM GEBIET DES PATENTWESENS

Artikel 150
Anwendung des Vertrags über die internationale Zusammenarbeit auf dem Gebiet des Patentwesens


(3) Eine internationale Anmeldung, für die das Europäische Patentamt als Bestimmungsamt oder ausgewähltes Amt tätig wird, gilt als europäische Patentanmeldung.

(4) Soweit in diesem Übereinkommen auf den Zusammenarbeitsvertrag Bezug genommen ist, erstreckt sich die Bezugnahme auch auf dessen Ausführungsordnung.

PART X
INTERNATIONAL APPLICATION PURSUANT TO THE PATENT CO-OPERATION TREATY

Article 150
Application of the Patent Co-operation Treaty

(1) The Patent Co-operation Treaty of 19 June 1970, hereinafter referred to as the Co-operation Treaty, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the Co-operation Treaty may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the Co-operation Treaty shall prevail. In particular, for an international application the time limit within which a request for examination must be filed under Article 93, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Co-operation Treaty as the case may be.

(3) An international application, for which the European Patent Office acts as designated Office or elected Office, shall be deemed to be a European patent application.

(4) Where reference is made in this Convention to the Co-operation Treaty, such reference shall include the Regulations under that Treaty.

Artikel 151
Das Europäische Patentamt als Anmeldeamt

(1) Das Europäische Patentamt kann Anmeldeamt im Sinn des Artikels 2 Ziffer xv des Zusammenarbeitsvertrags sein, wenn der Anmelder Staatsangehöriger eines Vertragsstaats dieses Übereinkommens ist, für den der Zusammenarbeitsvertrag in Kraft getreten ist; das gleiche gilt, wenn der Anmelder in diesem Staat seinen Sitz oder Wohnsitz hat.

(2) Das Europäische Patentamt kann auch Anmeldeamt sein, wenn der Anmelder Staatsangehöriger eines Staats ist, der nicht Vertragsstaat dieses Übereinkommens, jedoch Vertragsstaat des Zusammenarbeitsvertrags ist und der mit der Organisation eine Vereinbarung geschlossen hat, nach der das Europäische Patentamt nach Maßgabe des Zusammenarbeitsvertrags anstelle des nationalen Amts dieses Staats als Anmeldeamt tätig wird; das gleiche gilt, wenn der Anmelder in diesem Staat seinen Sitz oder Wohnsitz hat.

Article 151
The European Patent Office as a receiving Office

(1) The European Patent Office may act as a receiving Office within the meaning of Article 2(xv) of the Co-operation Treaty if the applicant is a resident or national of a Contracting State to this Convention in respect of which the Co-operation Treaty has entered into force.

(2) The European Patent Office may also act as a receiving Office if the applicant is a resident or national of a State which is not a Contracting State to this Convention, but which is a Contracting State to the Co-operation Treaty and which has concluded an agreement with the Organisation whereby the European Patent Office acts as a receiving Office, in accordance with the provisions of the Co-operation Treaty, in place of the national office of that State.
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

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

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

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

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

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

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

1972
51. Certain amendments were made to the wording of the German and French texts of this Article. The terms "berufsmäßiger Vertreter" and "mandataire professionnel" were replaced by the terms "zugelassener Vertreter" and "mandataire agréé".

These new terms refer only to the qualifications required for the exercise of the functions in question, without suggesting that these functions must be exercised on a continuous and permanent basis.

52. In reply to one delegation's observation that difficulties could arise in the context of the Second Convention owing to the fact that Article 159 provides for exemption from the requirement of nationality of one of the Contracting States, it was observed that Article 142a merely presented an option for the group of States referred to in Article 141 and that they were free to adopt a more liberal position.

53. The Conference amended paragraph 3 of this provision in order to take greater account of the provisions of Article 11, paragraph 3 of the Co-operation Treaty which stipulates that an international application has, from the date on which it is filed, the effects of an ordinary national application.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 26 September 1972
BR/219/72

MINUTES

of the

6th meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
PART X

INTERNATIONAL APPLICATION PURSUANT TO THE
PATENT CO-OPERATION TREATY

Article 148 (117)

Application of the Patent Co-operation Treaty

(1) The Patent Co-operation Treaty of 19 June 1970, hereinafter referred to as the Co-operation Treaty, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the Co-operation Treaty may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the Co-operation Treaty shall prevail. In particular, for an international application the time limit within which a request for examination must be filed under Article 93, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Co-operation Treaty as the case may be.

(3) From the time when an international application reaches the European Patent Office acting in its capacity as designated Office or elected Office, the international application shall be deemed to be a European patent application.

(4) Where reference is made in this Convention to the Co-operation Treaty, such reference shall include the Regulations under that Treaty.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

Brussels, 25 May 1972
BR/199/72

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)

BR/199 e/72
C. EXAMINATION OF THE RESULTS ACHIEVED BY THE SUB-COMMITTEE OF WORKING PARTY I

(Draft Protocol on the Recognition of Decisions in respect of the Right to the Grant of a European Patent)
(BR/3T I/161/72) (Item 3 on the agenda)

77. On the basis of his report on the work of the Sub-Committee (BR/194/72), Mr BALMARY gave a survey of the results achieved by the Sub-Committee and which are embodied in the Draft Protocol.

78. The Committee agreed to submit the Draft Protocol to the Conference, and one delegation reserved the right to submit observations on the text.

D. EXAMINATION OF THE WORK OF WORKING PARTY II

(Item 4 on the agenda)

79. Mr LABRY, Chairman of Working Party II, said that, in accordance with the mandate that it had received from the Conference at its 4th and 5th Meetings, the Working Party,
the renewal fee became due, the European Patent Office automatically acquired the right to payment of the renewal fee for the following year, in accordance with Article 84, paragraph 4, of the Convention. The patent could not be granted, however, unless the renewal fees had been paid in accordance with Article 96, paragraph 2(c). The Swiss delegation reserved the right to submit a document on this problem to the Conference.

Article 148

75. The Committee did not adopt the proposal for a different wording of Article 148, paragraph 2, submitted by FICPI. It was considered that the Administrative Council, by means of an addition to the Implementing Regulations, could determine which options in the PCT should be binding for the European system, since Article 148, paragraph 2, only applied to the provisions of the PCT which were directly binding. However, the problem could be raised again at the Conference, should the examination of the list of options currently being prepared by WIPO make it apparent that possible problems still existed.

76. The Committee also noted that the problem relating to the production of a translation of the international application in the official languages of the European Patent Office had in the meantime been settled by the new text of Article 155 which no longer required translation of an international application published by the International Bureau.

BR/209 e/72 Ley/EM/prk .../...
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:

BR/209 e.72 i.c./KM/prk
Article 84, paragraph 3

19. One delegation considered that the second sentence in paragraph 3 was superfluous. The Committee however decided to maintain this sentence, in order to rule out the possibility of a national court having to take a decision with regard to the non-payment of a renewal fee.

Article 90, paragraph 5

20. Following a request by the Swedish delegation, the Committee decided to transfer to the Convention the sixteen month period laid down for the identification of the inventor; the Drafting Committee had transferred the said period to the Implementing Regulations. Rule 42 henceforward lays down only procedural details.

Articles 124 and 148

21. A new paragraph 3 in Article 148 stipulates that the international application is deemed to be a European application from the time that such application reaches the European Patent Office, acting in its capacity as designated Office or elected Office. This clarification has enabled the reference to the international application in Article 124, paragraph 3 to be deleted.

When the Conference has taken a decision on the content of Article 154, paragraph 2, the wording of (a) and (b) of the said provision may be reviewed accordingly.
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.

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2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:

BR/209 e/72 i:c/EM/prk
PART X
INTERNATIONAL APPLICATION PURSUANT TO THE
PATENT CO-OPERATION TREATY

Article 148 (117)
Application of the Patent Co-operation Treaty

(1) The Patent Co-operation Treaty of 19 June 1970, hereinafter referred to as the Co-operation Treaty, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the Co-operation Treaty may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the Co-operation Treaty shall prevail. In particular, for an international application the time limit within which a request for examination must be filed under Article 93, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Co-operation Treaty as the case may be.

(3) Where reference is made in this Convention to the Co-operation Treaty, such reference shall include the Regulations under that Treaty.

B/prk
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)
CHAPTER V

International application
pursuant to the Patent Co-operation Treaty

Article 117 (Application of the Patent Co-operation Treaty)

71. With regard to paragraph 2, cf. observations on Article 88, point 54.
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)
CHAPTER V

International application pursuant to the Patent Co-operation Treaty of 19 June 1970

Article 117

Application of the Patent Co-operation Treaty

(1) The Patent Co-operation Treaty of 19 June 1970, hereinafter referred to as "the Co-operation Treaty", shall be applied in accordance with the provisions of this Chapter.

(2) In proceedings before the European Patent Office in respect of international applications made under the Co-operation Treaty, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention.

(3) Where reference is made in this Convention to the Co-operation Treaty, such reference shall include the Regulations under that Treaty.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
Article 117 (Application of the Patent Co-operation Treaty)

146. The Working Party considered that it would be advisable to specify expressis verbis and in the Convention itself that "international applications made under the PCT may be the subject of proceedings before the European Patent Office". It also agreed with the WIPO representatives that Article 117, paragraph 2, did not convey with sufficient clarity the principle that in the event of conflict between the PCT provisions and those of the Convention regarding international applications, the former provisions were to prevail, and it amended the paragraph accordingly.

Article 123 (Publication of the international application)

147. The Working Party discussed the question raised by the United Kingdom delegation of who would be responsible for the translation of the claims of an international application into the official languages of the European Patent Office in the cases referred to in Article 123, paragraphs 2 and 3.

The Working Party considered that the present system under the Convention seemed to oblige the European Patent Office to provide such translations, along with the publication of the claims, the date of the publication determining the date on which the provisional protection referred to in Article 19 was to come into effect. The Working Party however reserved the right to return to its examination of this problem.

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)

(2) Für das Verfahren vor dem Europäischen Patentamt über internationale Anmeldungen nach dem Zusammenarbeitsvertrag sind dessen Vorschriften und ergänzend die Vorschriften dieses Übereinkommens anzuwenden, soweit diese den Vorschriften des Zusammenarbeitsvertrags nicht entgegenstehen. Insbesondere läuft die in Artikel 88 Absatz 2 dieses Übereinkommens genannte Frist zur Stellung des Prüfungsantrags für eine internationale Anmeldung nicht vor der in Artikel 22 oder 39 des Zusammenarbeitsvertrags genannten Frist ab.

(3) Soweit in diesem Übereinkommen auf den Zusammenarbeitsvertrag Bezug genommen ist, erstreckt sich die Bezugsnahme auch auf dessen Verfahrensregelung.

Artikel 118
— gestrichen —

Artikel 119
Das Europäische Patentamt als Anmeldeamt

(1) Das Europäische Patentamt kann Anmeldeamt im Sinne des Artikels 2 Ziffer xv des Zusammenarbeitsvertrags sein, wenn der Anmelder Staatsangehöriger eines Vertragsstaats dieses Übereinkommens ist, für den der Zusammenarbeitsvertrag in Kraft getreten ist; das gleiche gilt, wenn der Anmelder in diesem Staat seinen Sitz oder Wohnsitz hat.

(2) Das Europäische Patentamt kann auch Anmeldeamt sein, wenn der Anmelder Staatsangehöriger eines Staats ist, der nicht Vertragsstaat dieses Übereinkommens, jedoch Vertragsstaat des Zusammenarbeitsvertrags ist und der mit dem Verwaltungsrat eine Vereinbarung geschlossen hat, wonach das Europäische Patentamt gemäß den Vorschriften des Zusammenarbeitsvertrags anstelle des nationalenAmts dieses Staats als Anmeldeamt tätig wird; das gleiche gilt, wenn der Anmelder in diesem Staat seinen Sitz oder Wohnsitz hat.

(3) Das Europäische Patentamt kann vorbehaltlich der vorherigen Zustimmung des Verwaltungsrats auch Anmeldeamt sein, wenn der Anmelder Staatsangehöriger eines Mitgliedsstaats der Pariser Verbandsübereinkunft zum Schutz des gewerblichen Eigentums ist, für den die Versammlung des Internationalen Verbands für die Zusammenarbeit auf dem Gebiet des Patentwesens das Europäische Patentamt als zuständiges Anmeldeamt bestimmt hat; das gleiche gilt, wenn der Anmelder in diesem Staat seinen Sitz oder Wohnsitz hat.

Artikel 120
Einreichung und Weiterleitung der internationalen Anmeldung

(1) Wählt der Anmelder das Europäische Patentamt als Anmeldeamt für seine internationale Anmeldung, so hat er diese unmittelbar beim Europäischen Patentamt einzureichen. Artikel 64 Absatz 2 ist jedoch anzuwenden.

(2) In proceedings before the European Patent Office in respect of international applications made under the Co-operation Treaty, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention in so far as they are not in conflict. In particular, for an international application the time limit within which a request for examination must be made under Article 88, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Co-operation Treaty as the case may be.

(3) Where reference is made in this Convention to the Co-operation Treaty, such reference shall include the Regulations under that Treaty.

Artikel 118
— deleted —

Artikel 119

The European Patent Office as a receiving Office

(1) The European Patent Office may act as a receiving Office within the meaning of Article 2(xv) of the Co-operation Treaty if the applicant is a resident or national of a Contracting State to this Convention, in respect of which the Co-operation Treaty has entered into force.

(2) The European Patent Office may also act as a receiving Office if the applicant is a resident or national of a State which is not a Contracting State to this Convention, but which is a Contracting State to the Co-operation Treaty and which has concluded an agreement with the Administrative Council whereby the European Patent Office acts as a receiving Office, in accordance with the provisions of the Co-operation Treaty, in place of the national Office of that State.

(3) Subject to the prior approval of the Administrative Council, the European Patent Office may also act as a receiving Office if the applicant is a resident or national of a State party to the Paris Convention for the Protection of Industrial Property in respect of which the Assembly of the International Patent Co-operation Union has appointed the European Patent Office as a competent receiving Office.

Artikel 120
Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 64, paragraph 2, shall nevertheless apply mutatis mutandis.
(2) Ist die Beschwerdekammer nach der in Artikel 113 Absatz 1 vorgesehenen Prüfung der Auffassung, daß der Beschwerde nicht stattgegeben werden kann, so weist sie die Beschwerde als unbegründet zurück.

(3) Kann der Beschwerde ganz oder teilweise stattgegeben werden, so hebt die Beschwerde die angefochtene Entscheidung ganz oder teilweise auf. Sie kann entweder selbst das Verfahren bis zu der in Artikel 97 Absatz 1 oder in Artikel 105 Absatz 3 einschließlich vorgesehenen Mitteilung fortsetzen oder über die Erteilung, die Aufrechterhaltung oder den Widerruf des europäischen Patents entscheiden oder, wenn sie dies angesichts des Stands des Verfahrens für notwendig hält, die Angelegenheit zur weiteren Entscheidung an die Stelle zurückverweisen, die die angefochtene Entscheidung erlassen hat.

(4) Verweist die Beschwerdekammer die Sache zur weiteren Behandlung an die Stelle zurück, die die angefochtene Entscheidung erlassen hat, so hat diese ihrer weiteren Entscheidung in dieser Sache die Entscheidung der Beschwerdekammer zugrunde zu legen. Ist die angefochtene Entscheidung von der Prüfungsstelle erlassen worden, so ist die Prüfungsabteilung ebenfalls durch die Entscheidung der Beschwerdekammer gebunden.

**Artikel 116**

Entscheidung oder Stellungnahme der Großen Beschwerdekammer in bestimmten Rechtsfragen

(1) Zur Sicherung einer einheitlichen Rechtsanwendung oder wenn sich eine Rechtsfrage von grundsätzlicher Bedeutung stellt,

a) befaßt die Beschwerdekammer, bei der ein Verfahren anhängig ist, die Große Beschwerdekammer, sofern hierzu eine Entscheidung erforderlich ist;

b) kann der Präsident des Europäischen Patentamts: [— jederzeit die Große Beschwerdekammer in solchen Fällen um die Abgabe von Stellungnahmen ersuchen, in denen kein Verfahren anhängig ist.]

— eine Rechtsfrage der Großen Beschwerdekammer vorlegen, wenn zwei Beschwerdekammern über diese Frage voneinander abweichende Entscheidungen getroffen haben.

(2) Die in Absatz 1 Buchstabe a vorgesehene Entscheidung der Großen Beschwerdekammer ist für die Entscheidung der Beschwerdekammer über die anhängige Beschwerde bindend.

**KAPITEL V**

International Anmeldung nach dem Vertrag über die internationale Zusammenarbeit auf dem Gebiet des Patentwesens

**Artikel 117**

Anwendung des Vertrags über die internationale Zusammenarbeit auf dem Gebiet des Patentwesens

(1) Der Vertrag über die internationale Zusammenarbeit auf dem Gebiet des Patentwesens vom 19. Juni

**Article 116**

Decision or opinion of the Enlarged Board of Appeal on certain points of law

(1) In order to ensure uniform application of the law, or if an important point of law arises:

(a) the Board of Appeal shall, during proceedings on a case, refer any question to the Enlarged Board of Appeal when a decision is required for the above purposes;

(b) the President of the European Patent Office may: [— at any time ask the Enlarged Board of Appeal for an opinion on any question, except where such question arises in proceedings on a case;]

— refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.

(2) The decision of the Enlarged Board of Appeal referred to in paragraph 1(a) shall be binding on the Board of Appeal in respect of the appeal in question.

**CHAPTER V**

International application pursuant to the Patent Co-operation Treaty of 19 June 1970

**Article 117**

Application of the Patent Co-operation Treaty

(1) The Patent Co-operation Treaty of 19 June 1970, hereinafter referred to as "the Co-operation Treaty", shall be applied in accordance with the provisions of this Chapter.
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTERTeilungsverfahren

sowie

ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTERTeilungsverfahren und

ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

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 —
PCT, for which the European Patent Office is a designated Office, shall be deemed to form part of the state of the art only if it is confirmed, i.e. if it is communicated to the European Patent Office in one of its official languages and the national fee prescribed is paid. In order to create better information facilities for third parties, the Committee provided for a mention to be made in the European Patent Bulletin of the publication by the International Bureau of WIPO of the international application, and, where the publication by the International Bureau is not in one of the official languages of the European Patent Office, for the compulsory publication of the international application communicated to the European Patent Office.

The Committee then inserted a new Article 153a, which empowers the European Patent Office to act as an International Searching Authority within the meaning of the PCT, pursuant to an agreement to be concluded with WIPO at the appropriate time.

16. Activities of the European Patent Office during a transitional period (Article 161/Rule 106)

The principle, laid down in Article 161, that the European Patent Office will, after opening, only be able to assume its activities progressively was not questioned. The Main Committee was also of the unanimous opinion that, during the transitional period, searches should be carried out in all areas of technology, a task which the European Patent Office should easily be in a position to perform after taking over the capacity of the IIB and the Berlin sub-office. This unequivocal declaration of intent was, like other general opinions expressed by the Main Committee, included in the Minutes. Nevertheless, in order to be able to meet difficulties, at present unforeseeable, which might subsequently arise, the Committee decided not to incorporate this principle in any binding form in Article 161. On the other hand, it was considered a firm principle that the Administrative Council should not be able to rescind decisions on the extension of the system once they had been adopted. Article 161 was re-worded accordingly.

17. Adjustment of the Convention to take account of the decisions of Main Committees II and III

The textual amendments adopted by Main Committee III did not affect the provisions dealt with by Main Committee I. Adjustments were, however, necessary in respect of two decisions of Main Committee II, relating to the inclusion of Search Divisions as departments in the proceedings (Article 15), a measure by which the Convention was adjusted to take account of the integration of the IIB provided for in the Protocol on Centralisation, and to the setting up of a Legal Division as a further department in the proceedings (Article 15) competent for certain decisions. These adjustments entailed purely drafting amendments (Articles 91, 105, paragraph 1, 109, paragraph 3, Rules 44-47), deletion of provisions which had become superfluous (Article 124, Rules 48, 67, paragraph 2) and new provisions such as the Article 153a referred to under point 15 above.

III Protocol on Recognition

The Protocol on Recognition, which lays down rules governing jurisdiction and the recognition of decisions of courts and other authorities of the Contracting States in respect of the right to the grant of a European patent required an amendment as to substance only in one point. With respect to the provision on jurisdiction in the Draft Protocol (Article 5), it was pointed out that a plaintiff residing in a Contracting State claiming the right to the grant of a European patent vis-à-vis an applicant not residing within the territory of a Contracting State would always have to bring proceedings before the German courts and not, as would be desirable, before the courts of his place of residence. The Main Committee agreed that this was a valid point and supplemented Article 5 to the effect that the courts of the plaintiff's place of residence shall also have jurisdiction in such cases, with, however, the subsidiary jurisdiction of the courts of the Federal Republic of Germany being retained.

IV Recommendation on Preparations for the Opening of the European Patent Office

The Main Committee approved the Recommendation which provides for the setting up of an Interim Committee responsible for preparatory work for the opening of the European Patent Office. In addition, in the interests of a clear delimitation of responsibilities the preparation both of the five-year plan mentioned in the Protocol on Centralisation and of the study on the extension of searches to the documentation of the Contracting States, introduced into that Protocol by Main Committee II, was assigned to the Interim Committee. With regard to the point that the Working Parties of the Interim Committee should, as a general rule, each be composed of six signatory States, the Committee decided that the Federal Republic of Germany and the Netherlands, as the countries in which the European Patent Office was based, should always be admitted as observers at meetings of Working Parties of which they were not members, and that other States should be admitted as observers at meetings where problems of special interest to them were dealt with. Furthermore, it was made clear that not only inter-governmental but also private international organisations could be invited as observers.

V Resolution on training staff for the European Patent Office

Finally, as the last item of the negotiations the Main Committee approved without discussion the draft Resolution on training staff for the European Patent Office contained in M/37 which essentially provides for the formation of an Interim Committee responsible for the training and recruiting of examiners.

D Final remarks

Here a report closes which has, perhaps, been too detailed, but which has attempted to summarise in the space of scarcely one hour the results of three weeks of extensive negotiations. The report may also have succeeded in showing that, in spite of the multitude of individual problems, which were usually resolved, those parts of the Draft Convention and the Draft Implementing Regulations which were the subject of the Main Committee's deliberations have been retained without any substantial changes. This is a happy state of affairs and demonstrates how thoroughly the Drafts were prepared.

The rapporteur feels he should not finish without paying tribute to the Chairman of the Main Committee, Dr. Kurt Haertel, for the efficient but gentle manner in which he has guided the negotiations, thus enabling the Main Committee to deal with such a multitude of problems. Main Committee I is also indebted to Mr. van Berthem, the indefatigable Chairman of Drafting Committee I, and his colleagues on that Committee, to the Secretariat staff, the interpreters and all the silent helpers whose selfless work has enabled the newly completed Drafts to be submitted today to the Committee of the Whole.