Rule 72 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.
<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr.</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstelle im Dokument</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vorschlag, Vors.</td>
<td>154 Nr. 1</td>
<td>7669/IV/63</td>
<td>S. 54</td>
</tr>
<tr>
<td>Vorschlag, Vors.</td>
<td>159 Nr. 1</td>
<td>7669/IV/63</td>
<td>S. 59</td>
</tr>
<tr>
<td>VE 1964 (AO)</td>
<td>154 Nr. 1</td>
<td>BR/60/70</td>
<td>Rdn. 31, 32</td>
</tr>
<tr>
<td>VE 1964 (AO)</td>
<td>154 Nr. 3</td>
<td>BR/60/70</td>
<td>Rdn. 34</td>
</tr>
<tr>
<td>VE 1964 (AO)</td>
<td>154 Nr. 5</td>
<td>BR/60/70</td>
<td>Rdn. 36-39</td>
</tr>
<tr>
<td>VE 1964 (AO)</td>
<td>159 Nr. 1</td>
<td>BR/60/70</td>
<td>Rdn. 50</td>
</tr>
<tr>
<td>VE 1971 (AO)</td>
<td>136 Nr. 1</td>
<td>BR/144/71</td>
<td>Rdn. 60</td>
</tr>
<tr>
<td>VE 1971 (AO)</td>
<td>136 Nr. 3</td>
<td>BR/144/71</td>
<td>Rdn. 61</td>
</tr>
<tr>
<td>VE 1971 (AO)</td>
<td>136 Nr. 5</td>
<td>BR/144/71</td>
<td>Rdn. 66</td>
</tr>
<tr>
<td>VE 1971 (AO)</td>
<td>145 Nr. 1</td>
<td>BR/144/71</td>
<td>Rdn. 61</td>
</tr>
<tr>
<td>VE 1971 (AO)</td>
<td>145 Nr. 1</td>
<td>BR/132/71</td>
<td>Rdn. 58</td>
</tr>
<tr>
<td>BR/59/70</td>
<td>159 Nr. 1</td>
<td>BR/84/71</td>
<td>Rdn. 36</td>
</tr>
</tbody>
</table>

**Dokumente der MDK**

<table>
<thead>
<tr>
<th>E 1972</th>
<th>R 73</th>
<th>M/11</th>
<th>S. 60</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;</td>
<td></td>
<td></td>
<td>S. 15</td>
</tr>
<tr>
<td>&quot;</td>
<td></td>
<td></td>
<td>S. 18</td>
</tr>
<tr>
<td>&quot;</td>
<td></td>
<td></td>
<td>S. 29</td>
</tr>
</tbody>
</table>
designated Contracting States. The valid interests of an assumed infringer in the retroactive revocation of the patent may thus be upheld. In this connection it may be noted that this amendment has raised the opposition proceedings another step towards the level of actual revocation proceedings.

A further procedural amendment was made to Article 104 whereby any person who has been given notice by the proprietor as a result of a claimed patent infringement may also intervene in the opposition proceedings, if he proves that he has instituted proceedings to establish that the act in question did not infringe the patent. This text takes into account the fact that national laws of Contracting States allow such actions for negative declaratory judgments.

9. Appeals procedure (Articles 105-111/Rules 65-68)

Corresponding to the amendment to Article 98 with reference to the possibility of continuing the opposition proceedings despite the lapse of the patent, the Committee decided also to allow an appeal against a decision of the Opposition Division in such cases and to amend Article 105 accordingly. It was consequently made clear in Article 106 that all parties to proceedings of the first instance are also parties to appeal proceedings, even if they do not actively participate in the proceedings, so that for example a decision concerning costs by the Boards of Appeal which differs from the decision of the lower department will be binding for all parties.

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

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

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

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

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

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

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

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— 186 —
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
2323. The Chairman invited the Committee to express its views on the Swiss proposal that the person concerned should not be able to invoke the omission of the communication but that in the event of an incorrect communication he should not suffer any detriment as a result.

2324. The Austrian delegation supported the Swiss proposal.

2325. The Netherlands delegation did not think it could be the responsibility of the European Patent Office to calculate the time limits for appellants or for any other parties. It thought it would suffice if the European Patent Office drew parties' attention to the provisions of Article 107. If such an arrangement were to be adopted, the Swiss and Austrian delegations' proposals would be superfluous, since in practical terms there could not be any incorrect indications.

2326. The Chairman thought that the Committee should first decide on this proposal by the Netherlands delegation which involved an appreciable amendment of the present text. If this proposal were adopted, there would be no further need to examine the Swiss delegation's proposal.

2327. The Belgian delegation supported the Netherlands delegation's proposal.

2328. The Yugoslav delegation was in favour of the Netherlands delegation's proposal, provided that the form bore a clear reference to Articles 105 to 107.

2329. Referring to the Committee's decision on Rule 51, the United Kingdom delegation declared its support for the Netherlands delegation's proposal.

2330. The Swiss delegation said that if the Netherlands delegation's proposal were to be understood to mean that the form would not only bear a reference to Articles 105 to 107 but also quote the texts of those Articles, it could support it.

2331. The Netherlands delegation stated that its proposal should be understood in the sense just indicated by the Swiss delegation.

2332. The Austrian delegation asked whether adoption of the Netherlands delegation's proposal would render meaningless the last sentence of paragraph 2, which dealt with the omission of communication.

2333. The Chairman considered that this was a purely hypothetical question, since the formal communication envisaged by the Netherlands delegation would be by way of indications on a form, and any omissions would be extremely hard to imagine.

2334. The Committee agreed to the Netherlands delegation's proposal.

Rule 70 (69) — Noting of loss of rights

2335. The Committee examined the Netherlands delegation's proposal as given in M/52, page 26.

2336. The Netherlands delegation found the present text inadequate and proposed to add a stipulation at the end of paragraph 2 that where the European Patent Office shared the view of an appellant it should inform that appellant accordingly in writing.

2337. The Chairman noted that the Netherlands delegation's proposal was supported by a number of delegations and that it was shared by at least four of the delegations of the interested circles.

2338. The Committee recorded its agreement to this proposal by the Netherlands delegation.

2339. The Austrian delegation withdrew its proposal for an amendment given in M/89.

Rule 73 (72) — Taking of evidence by the European Patent Office

2340. The delegation of the Federal Republic of Germany explained the reasons for its proposed amendment to paragraph 4 as given in M/47, page 15, point 30. The present text seemed incomplete and the delegation proposed adding a provision stipulating that relevant questions might be put to the testifying parties, witnesses and experts. The effect of the amendment was firstly to increase the number of persons who could be heard by including the parties, and secondly to stipulate that questions could only be put to persons giving evidence.

2341. The Committee agreed to this proposal.

Rule 77 (76) — Minutes of oral proceedings and taking of evidence

2342. The Committee examined the proposed amendment submitted by the delegation of the Federal Republic of Germany in M/47, page 15, point 31.

2343. The delegation of the Federal Republic of Germany felt it advisable to stipulate in paragraph 7 that the minutes should also contain details of the place and date of the proceedings and the names of those taking part.

2344. The Netherlands and French delegations, while they had no objection to this proposal, wondered whether the problem might not be settled administratively.

2345. The Chairman asked the delegation of the Federal Republic of Germany whether it could agree to an entry in the Conference minutes recording the Committee's agreement on the substance of the proposal, without the text as such being included in the Convention.

2346. The delegation of the Federal Republic of Germany agreed to this solution.

2347. The Chairman noted that the Committee agreed on the substance of the proposal made by the delegation of the Federal Republic of Germany but that it thought that it should be left to the President of the European Patent Office to take the appropriate administrative measures.

Rule 82 (81) — Notification to representatives

2348. The FICPI delegation asked whether the Committee shared its interpretation of this Rule, whereby notification directly to the applicant and not to the representative (assuming a representative had been appointed) could be a procedural error and should not therefore be taken into consideration for the start of any time limits.

2349. The Committee shared the FICPI delegation's interpretation.

Rule 85 (84) — Duration of time limits

2350. The Committee examined the Swedish delegation's proposal given in M/53, page 2, point 10.

2351. The Swedish delegation stated that the four month time limit laid down in this Rule as the maximum seemed much too short, particularly if allowance were to be made for translation for those countries whose official language was not one of the three official languages of the European Patent Office. The delegation therefore proposed that the upper limit should be six months.

2352. The Finnish, Netherlands, Norwegian and Italian delegations supported this proposal.

2353. The United Kingdom delegation had doubts about accepting the Swedish delegation's proposal with regard to proceedings after publication of the application. Extension of the time limit to six months should only be possible for the examination proceedings.

2354. The Swedish delegation felt that it was unnecessary to amend its proposal, since the European Patent Office would be free to fix time limits within the margin laid down.
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>7</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Opening Meeting</td>
<td>9</td>
</tr>
<tr>
<td>(M/PR/K/1)</td>
<td></td>
</tr>
<tr>
<td>Minutes of the proceedings of the Credentials Committee (M/PR/V)</td>
<td>25</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee I (M/PR/I)</td>
<td>27</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee II (M/PR/II)</td>
<td>109</td>
</tr>
<tr>
<td>Minutes of the proceedings of Main Committee III (M/PR/III)</td>
<td>155</td>
</tr>
<tr>
<td>Minutes of the proceedings of the Committee of the Whole (M/PR/G)</td>
<td>163</td>
</tr>
<tr>
<td>Report on the meeting of the Plenary Final Meeting (M/PR/K/2)</td>
<td>199</td>
</tr>
<tr>
<td>List of participants</td>
<td>211</td>
</tr>
</tbody>
</table>
MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Rule 65

(1) If the appeal does not comply with Articles 106 to 108 and with Rule 1, paragraph 1, and Rule 64, sub-paragraph (b), the Board of Appeal shall reject it as inadmissible, unless each deficiency has been remedied before the relevant time limit laid down in Article 108 has expired.

(2) If the Board of Appeal notes that the appeal does not comply with the provisions of Rule 64, sub-paragraph (a), it shall communicate this to the appellant and shall invite him to remedy the deficiencies noted within such period as it may specify. If the appeal is not corrected in good time, the Board of Appeal shall reject it as inadmissible.

Rule 72

Only concerns German text

Protocol on Privileges and Immunities:

Article 3

Only concerns German text

Article 10

(1) ... enjoy the most favourable treatment accorded by that State to any other international organisation.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 4 October 1973
M/160/K
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Amendments to the texts of document M/146/R.1 to 15
Rule 72
Taking of evidence by the European Patent Office

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

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

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

(b) the names of the parties to the proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Rule 70, paragraphs 2 to 4;

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

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

(4) The parties may attend an investigation and may put relevant questions to the testifying parties, witnesses and experts.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 10
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee
Subject: Implementing Regulations: Rules 54 to 82
Rule 73
Taking of evidence by the European Patent Office

(1)

(2)

(a) Unchanged from 1972 published text.

(b)

(c)

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

(4) The parties may attend an investigation and may put relevant questions to the testifying parties, witnesses and experts.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

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

Articles of the Convention:

Articles 59
162

Rules of the Implementing Regulations:

Rules 51
69
70
73
85
89
91
97
100
103
107


Articles 3
6

Recommendation on preparations for the opening of the European Patent Office

Decision on Training Staff for the European Patent Office
Rule 73
Taking of evidence by the European Patent Office

(1) 
(2) 
(a) Unchanged from 1972 published text.
(b) 
(c) 

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

(4) Unchanged from 1972 published text.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 17 September 1973
M/88/I/R 3
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 15 SEPTEMBER 1973

Articles of the Convention:

<table>
<thead>
<tr>
<th>Articles</th>
<th>52</th>
<th>53</th>
<th>63</th>
<th>86</th>
<th>87</th>
<th>95</th>
<th>104</th>
<th>105</th>
<th>107</th>
<th>108</th>
<th>111</th>
<th>113</th>
<th>115</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>116</td>
<td>120</td>
<td>121</td>
<td>122</td>
<td>123</td>
<td>124</td>
<td>125</td>
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<td>130</td>
<td>131</td>
<td>132</td>
<td>135</td>
<td></td>
</tr>
</tbody>
</table>

Rules of the Implementing Regulations:

<table>
<thead>
<tr>
<th>Rules</th>
<th>56</th>
<th>65</th>
<th>73</th>
<th>96</th>
</tr>
</thead>
</table>
Article 116, paragraphs 5 and 6, and Rule 73, paragraph 3

Proposal: In Article 116, paragraph 5, and Rule 73, paragraph 3, the following should be inserted in every case after the word "affirmation", and after the word "oath" in the fourth line of Article 116, paragraph 5:

"... or in a hearing where a warning has been given by the judge that false statements are punishable ..."

In Article 116, paragraph 6, insert after "affirmation":

"... or after a warning has been given by the judge that false statements are punishable ..."

Reason: Evidence taken by a Swiss court at the request of the European Patent Office will be governed by the rules of procedure of the Canton where the party being heard has his place of residence. Since the taking of an oath may be refused on the basis of the freedom of faith and thought guaranteed under the Swiss constitution, the rules of procedure of only a few Cantons recognise statements made under oath as evidence. Instead of statements made under oath, the party being heard is warned by the judge at the beginning of the hearing to tell the truth and informed of the criminal consequences of making false statements. This warning and notice constitute the basis for the imposition of a penalty for false statements. The above supplement proposed for Article 116 and Rule 73 is therefore indispensable for Switzerland.
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
(5) deleted, see para. 4, 2nd sentence

(6) unchanged"

30. Rule 73

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 10:

"(4) ... relevant questions to the parties heard, witnesses and experts."

31. Rule 77

Text for the proposal by the Government of the Federal Republic of Germany in M/11, No. 12:

"(1) ... shall be drawn up. They shall contain:

(a) the place and date of the oral proceedings or the taking of evidence;

(b) the names of those taking part;

(c) the essentials of the oral proceedings or of the taking of evidence;

(d) the relevant statements made by the parties and the testimony of the parties, witnesses or experts; and

(e) the result of any inspection."
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/47/I/II/III
Regel 73

10 Absatz 4 erscheint unvollständig. Wird ein Beteiligter selbst vernommen, so muß ein anderer Beteiligter die Möglichkeit haben, sachdienliche Fragen an den vernommenen Beteiligten zu richten. Absatz 4 sollte daher insoweit ergänzt werden.

11 Im Zusammenhang mit Absatz 4 darf darauf hingewiesen werden, daß eine ausdrückliche Vorschrift darüber fehlt, in welcher Weise die vernommene Person gegen sachfremde oder in ungehöriger Form gestellte Fragen geschützt werden kann. Die Bundesregierung geht davon aus, daß ein solcher Schutz für die erste Instanz durch interne Weisungen des Präsidenten nach Artikel 10 und für die zweite Instanz durch Bestimmungen der Verfahrensordnung (vgl. Regel 11) gewährleistet wird.

Regel 77

12 Absatz 1 sollte dahin ergänzt werden, daß neben der Niederschrift auch das Tonbandprotokoll zugelassen wird. Außerdem sollte der in Absatz 1 genannte Katalog der in die Niederschrift aufzunehmenden Angaben um Angaben über Ort und Tag der Verhandlung sowie über die mitwirkenden Personen ergänzt werden.

III.
BESTIMMUNGEN DES ANERKENNUNGSPROTOKOLLS

Artikel 3


IV.
EMPFEHLUNG
betreffend den Status und die Vergütung der in Artikel 159 Absatz 2 des Übereinkommens genannten Bediensteten

14 Nach Ziffer 2 dieser Empfehlung sollen die an die nach Artikel 159 Absatz 2 des Übereinkommens angestellten Personen zu entrichtenden Bezüge nach der Dienstalterstufe 6 der Besoldungsgruppe A/1 gezahlt werden. Da die Mitglieder der Beschwerde-

Rule 73

10 Paragraph 4 appears to be incomplete. Where a party to the proceedings is himself heard, the other party must be able to put relevant questions to him. Paragraph 4 should therefore be supplemented to this effect.

11 As regards paragraph 4, it should be noted that there is no express provision as to how a person being heard may be protected against irrelevant questions or questions put in an improper way. The German Government assumes that in the case of the departments of the first instance such protection is provided by the internal instructions given by the President pursuant to Article 10 and in the case of departments of the second instance by the provisions of the Rules of Procedure (see Rule 11).

Rule 77

12 Paragraph 1 should be supplemented so as to include tape-recordings of the proceedings in addition to the minutes. Details of the place and date of the proceedings and the persons involved should be added to the items to be contained in the minutes as listed in paragraph 1.

III.
PROVISIONS OF THE PROTOCOL ON RECOGNITION

Article 3

13 In order to align with Article 58, paragraph 1, 2nd sentence, of the Convention, to which Article 3 of the Protocol on the Recognition of Decisions refers, the words in the German text “der Anspruch auf Erteilung eines europäischen Patents” should be replaced by “das Recht auf das europäische Patent” (English text unchanged).

IV.
RECOMMENDATION regarding the status and remuneration of the employees referred to in Article 159, paragraph 2, of the Convention

14 Under paragraph 2 of this Recommendation, persons appointed under Article 159, paragraph 2, of the Convention shall receive the remuneration of an employee of Grade A1, step 6. Since the members of the Boards of Appeal and the Enlarged
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
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
Regel 73

Beweisaufnahme durch das Europäische Patentamt

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

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

a) einen Auszug aus der in Absatz 1 genannten Entscheidung, aus der insbesondere Tag, Uhrzeit und Ort der angeordneten Beweisaufnahme sowie die Tatsachen hervorgehen, über die die Beteiligten, Zeugen und Sachverständigen vernommen werden sollen;
b) die Namen der am Verfahren Beteiligten sowie die Ansprüche, die den Zeugen und Sachverständigen nach Regel 75 Absätze 2 bis 4 zustehen;
c) einen Hinweis darauf, daß der Beteiligte, Zeuge oder Sachverständige seine Vernehmung durch das zuständige Gericht seines Wohnsitzstaats verlangen kann, sowie eine Aufforderung, dem Europäischen Patentamt innerhalb einer von diesem festgesetzten Frist mitzuteilen, ob er bereit ist, vor dem Europäischen Patentamt zu erscheinen.

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

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

Vgl. Artikel 116 (Beweisaufnahme)

Regel 74

Beauftragung von Sachverständigen

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

(2) Der Auftrag an den Sachverständigen muß enthalten:

a) die genaue Umschreibung des Auftrags;
b) die Frist für die Erstattung des Gutachtens;

Rule 73

Taking of evidence by the European Patent Office

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

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

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

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

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

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

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

Cf. Article 116 (Taking of evidence)

Rule 74

Commissioning of experts

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

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

(a) a precise description of his task;

(b) the time limit laid down for the submission of the expert report;
ENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

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

PROJET DE RÈGLEMENT D’EXÉCUTION
DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTENTEILUNGSVERFAHRENS 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
This provision stems from the idea contained in the note to the provision Re. Article 97 (BR/59/70, page 5). As a result of a decision taken by Working Party I, the word "hearing" was deleted and the more general expression "oral proceedings" was retained. This improved wording was to be extended to all the relevant texts in the First Preliminary Draft Convention and the Implementing Regulations. In this connection, see also the amendment to Re. Article 159, No. 1, paragraph 1.

Re. Article 139, No. 2 - Conduct of oral proceedings

35. This Article refers to the conduct of oral proceedings before the Boards of Appeal, Examining Divisions and Opposition Divisions. See the two footnotes to the text.

Re. Article 159, No. 1 - Summons

36. See point 34.

Re. Article 159, No. 7 - Interruption of proceedings

37. The Sub-Committee decided to add a fourth paragraph to this Article which it had previously adopted (cf. BR/67/70). This new paragraph prescribes that the interruption of proceedings shall be mentioned in the Register and in the Bulletin as is the case for suspension of proceedings. In fact it is of particular interest to the public that it should be kept informed of the interruption of proceedings particularly with a view to knowing whether the time limit for making a request for examination has expired or not.
of view reserving the right to re-examine it later if other delegations put forward any proposals on this subject.

Re. Article 128, No. 1 - National publications in the event of conversion of a European patent application

32. The Sub-Committee adopted this provision which was contained in the proposals put forward by the Chairman of Working Party I, the Working Party having decided to transfer it to the Implementing Regulations. The provision of this text was considered indispensable since it imposes an obligation on the States and thus guarantees that any application for a European patent which is converted to an application for a national patent will be communicated to the public.

Re. Article 130, No. 2 - Renewal fees due in respect of applications for divisional European patents

33. The United Kingdom delegation drew the Sub-Committee's attention to the question of establishing which date is to be taken into consideration for the duration of the validity of a divisional patent (the date of filing of the original application or not). The Sub-Committee decided to discuss this question again at a subsequent meeting.

Re. Article 139, No. 1 - Failure of parties to appear at oral proceedings

34. The provision adopted lays down that the oral proceedings may continue even if a party fails to appear.
This provision stems from the idea contained in the note to the provision Re. Article 97 (BR/59/70, page 5). As a result of a decision taken by Working Party I, the word "hearing" was deleted and the more general expression "oral proceedings" was retained. This improved wording was to be extended to all the relevant texts in the First Preliminary Draft Convention and the Implementing Regulations. In this connection, see also the amendment to Re. Article 159, No. 1, paragraph 1.

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BR/84 e/71 nan/KM/prk

.../...
MINUTES

of the 5th meeting of the "Implementing Regulations" Sub-Committee of Working Party I
(Luxembourg, 12 - 14 January 1971)

I

1. The fifth meeting of the "Implementing Regulations" Sub-Committee was held in Luxembourg from 12 to 14 January 1971, with Mr FRESSONNET, Deputy Director, French Industrial Property Institute, in the Chair.

In addition to the national delegations represented in the Sub-Committee, the meeting was attended by representatives of WIPO/OMPI and the International Patent Institute.\(^1\)

2. The Drafting Committee met each day, under the Chairmanship of Mr NEERVOORT, Secretary of the Octrooiraad, following the Sub-Committee's meetings.

\(^1\) See the list of participants in Annex I.
(1) A summons to a hearing, or a preliminary investigation shall give a minimum of one month's notice unless the party agrees to a shorter period.

(2) The summons shall state the consequences to which non-appearance may give rise, pursuant to the Convention or to these Regulations.
of the first preliminary draft convention

194, 195, 196, 197 and 199

Re. Articles 85, 88, 97, 99, 101, 110, 111, 112, 117, 118, 119, 125, 129

PRELIMINARY DRAFT IMPLEMENTING REGULATIONS

(20 to 23 October 1970)
of Working Party I

Outcome of the work of the "Implementation Regulations" sub-committee

- Secretariat -

BR/59/70

9 November 1970

PROCESSES

FOR THE GRANT OF PATENTS

FOR THE SETTING UP OF A EUROPEAN SYSTEM

INTER-GOVERNMENTAL CONFERENCE
texts) the reference would be meaningless, as such "principles generally recognised in the Contracting States" would, in all probability, be non-existent. In such cases, the second part of the provision (reference to the laws of one or more Contracting States) would tend to be applied by the European Patent Office, and the other Contracting States might be unwilling to accept this situation.

The Working Party then agreed that the reference referred to in the first part of the provision should be interpreted to the effect that the principles referred to need not necessarily be recognised in all the Contracting States, and decided to amend the German and English texts so as to avoid any possibility of doubt in this respect.

57. The Working Party decided to delete the second part of the provision, as it now served no purpose. Nevertheless, the United Kingdom delegation observed that failing a generally recognised principle in the matter, the European Patent Office should be able to lay down its own rules. On the other hand the German delegation considered that in such a case the European Patent Office should base its actions on the law of a Contracting State which, on a given point, most closely corresponded to the European procedure.

Re. Article 145, No. 1, IR - Summons

58. The Working Party decided to incorporate this provision into Re. Article 136, No. 3, and agreed, as proposed by the French delegation, to make the summoning of witnesses and experts, like that of the parties, subject to a minimum period of notice.
INTER-GOVERNMENTAL CONFERENCE Brussels, 28th October 1971
FOR THE SETTING UP BR/132/71
OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

MINUTES

of the meeting of Working Party I,
held in Luxembourg from 14 to 17 September 1971

Opening of the meeting and adoption of the agenda

1. The Working Party held its 8th meeting in Luxembourg from
Tuesday 14 to Friday 17 September 1971, with Dr HAERTHEL,
President of the German Patent Office, in the Chair.

This meeting, which was devoted primarily to the exami-
nation of certain legal problems connected with the provisions
being drawn up, was also attended by legal experts from the
countries of the delegations to Working Party I.

Representatives from the Commission of the European
Communities, WIPO and the IIB were also present at the meet-
ing (1). The representative of the General Secretariat of
the Council of Europe sent his apologies for being unable
to attend.

The Working Party adopted the provisional agenda (2).

(1) See Annex I for list of those attending.
(2) See Annex II for the provisional agenda (BR/GT I/109/71)
and the list of the provisions of the Second Preliminary
Draft Convention and the First Preliminary Draft Imple-
menting Regulations to be examined at the meeting
(BR/GT I/111/71).
BR/132 e/71 ley/Ki/ad
event of the expert opinions being given by three members, should be specified.

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

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

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

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

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

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

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

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

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

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

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

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

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

63. The Working Party did not adopt a proposal made by the French delegation to the effect that the number of experts who may be called upon to give opinions (one or three) and the procedures for drawing up the report in the
court. This question was discussed and it was felt by the majority of the group that this matter was essentially a question for the court concerned which might allow direct or indirect questioning. Paragraph 9 as adopted by the Working Party gives this discretion to the court concerned.

(g) As regards parties, witnesses and experts from non-contracting countries, the Working Party was conscious that it was not possible to lay down binding formulae like those adopted for parties, witnesses and experts from the Contracting States. However, it appeared that in practice, a situation of this nature would not cause real difficulties vis-à-vis investigation by the departments of the European Patent Office. Article 136 has been drafted in a manner sufficiently general to enable it to be applied, where necessary, by the consenting courts of non-contracting countries.

Re. Article 136, No. 1 (Investigation by the European Patent Office)

60. The French delegation proposed that it should be laid down that when the European Patent Office decides to hear the oral evidence of parties, witnesses or experts or to inspect premises, it should take a decision on the means it intends to employ to do this.

Certain delegations observed that this would introduce a new and purely formal element into the proceedings and would involve a move away from the wording of the corresponding articles of the Rules of Procedure of the Court of
MINUTES

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

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

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

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

3. The Working Party I Drafting Committee met first under the chairmanship of Mr. van BENTHEM, President of the Octrooiraad, and, following his departure, under that of Mr. LABRY, Embassy Counsellor at the Ministry of Foreign Affairs (France).
(2) Wird dem Antrag auf Wiedereinsetzung stattgegeben, so wird ein Hinweis darauf in das europäische Patentregister eingetragen und im Europäischen Patentblatt bekanntgemacht, sofern ein Hinweis gemäß Artikel 86 des Übereinkommens erfolgt ist.

Zu Artikel 143
Nummer 1
Aufgebot
Der Präsident des Europäischen Patentamts bestimmt, in welcher Weise das Aufgebot veröffentlicht wird.

(2) If an application for re-establishment of the applicant's rights is granted, an entry to this effect shall be made in the Register of European Patents and published in the European Patent Bulletin, provided that an entry has been published in accordance with Article 86 of the Convention.

Re. Article 143
No. 1
Public notice
The President of the European Patent Office shall determine how the public notice is to be given.

(1) Zur mündlichen Verhandlung oder Beweisaufnahme werden die Beteiligten geladen. Die Ladungsfrist beträgt mindestens einen Monat, sofern die Beteiligten nicht mit einer kürzeren Frist einverstanden sind.

Zu Artikel 145
Nummer 1
Ladung
(1) The parties shall be summoned to oral proceedings or a preliminary investigation. A minimum of one month's notice shall be given unless they agree to a shorter period.

(2) In der Ladung wird auf die Folgen hingewiesen, die sich nach dem Übereinkommen oder der Ausführungsordnung aus dem Ausbleiben ergeben können.

(2) The summons shall state the consequences to which non-appearance may give rise, pursuant to the Convention or to these Implementing Regulations.

Re. Article 145
No. 1
Summons

Niederschrift über mündliche Verhandlungen und Beweisaufnahmen

(1) Über eine mündliche Verhandlung oder Beweisaufnahme wird eine Niederschrift aufgenommen, die den wesentlichen Gang der mündlichen Verhandlung oder Beweisaufnahme, die rechtsverheblichen Erklärungen der Beteiligten und die Aussagen der Zeugen, Sachverständigen oder Beteiligten enthalten soll.

(2) Die Niederschrift über die Aussage eines Zeugen, Sachverständigen oder Beteiligten wird diesem vorgelesen oder zur Durchsicht vorgelegt. In der Niederschrift wird vermerkt, daß dies geschehen und die Niederschrift von der Person genehmigt ist, die ausgesagt hat. Wird die Niederschrift nicht genehmigt, so werden die Einnahmen vermerkt.


(4) Die Beteiligten erhalten eine Abschrift der Niederschrift.

Re. Article 145
No. 2
Minutes of oral proceedings and preliminary investigations

(1) Minutes of oral proceedings and preliminary investigations shall be drawn up. These shall contain the essentials of the oral proceedings or preliminary investigation, the judicially important statements made by the parties and the testimony of the witnesses, experts or parties.

(2) The minutes of the testimony of a witness, expert or party shall be read out or submitted to him so that he may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. If his approval is not given, his objections shall be noted.

(3) The minutes shall be signed by the official of the European Patent Office who drew them up and by the official of the European Patent Office who conducted the oral proceedings or preliminary investigation.

(4) The parties shall be provided with a copy of the minutes.
Ad Article 136
Numéro 5
Audition de témoins et d’experts
Avant que le témoin ou l’expert ne soit entendu, il est informé qu’il pourra avoir à certifier sa déposition sous serment [et qu’un faux témoignage pourrait faire l’objet de sanctions]. Le serment est prêté dans les formes prévues par la législation nationale du témoin ou de l’expert.

Bemerkungen zu Nummer 5 zu Artikel 136:
2. Siehe Artikel 47 §§ 4 und 5 VOGEG.

Notes to Re. Article 136, No. 5:
1. The provision concerning possible sanctions for false testimony has been placed between brackets in view of the connection between this provision and Article 136, paragraph 5, of the Convention, which is to be re-examined.
2. Cf. Article 47, paragraphs 4 and 5, of the RPCJEC.

Remarques concernant le numéro 5 ad article 136:
1. La disposition relative aux sanctions éventuelles des faux témoignages a été mise entre crochets, en raison des liens de cette disposition avec l’article 136, paragraphe 5, de la Convention, qui doit faire l’objet d’un nouvel examen.
2. Cf. article 47, paragraphes 4 et 5, du R.P.C.J.C.E.

Ad Article 136
Numéro 6
Indemnisation des témoins et des experts
(1) Les témoins et les experts qui comparaissent devant l’Office européen des brevets ont droit à un remboursement adéquat de leurs frais de déplacement et de séjour. Une avance peut leur être accordée sur ces frais.

(2) Les témoins qui comparaissent devant l’Office européen des brevets ont, en outre, droit à une indemnité adéquate pour manqué à gagner et les experts à des honoraires pour leurs travaux. Ces indemnités sont payées aux témoins et experts après l’accomplissement de leurs devoirs ou de leur mission.

(3) Le Conseil d’administration détermine les conditions d’application des dispositions des paragraphes 1 et 2 du présent article. Les paiements des sommes dues en vertu desdits paragraphes sont effectués par l'Office européen des brevets.

Bemerkung zu Nummer 6 zu Artikel 136:
Siehe Artikel 51 §§ 1 und 2 VOGEG.

Note to Re. Article 136, No. 6:
Cf. Article 51, paragraphs 1 and 2, of the RPCJEC.

Remarque concernant le numéro 6 ad article 136:
Cf. article 51, paragraphes 1 et 2, du R.P.C.J.C.E.

Ad Article 136
Numéro 7
Conservation de la preuve
(1) L’Office européen des brevets peut, sur requête, procéder sans délai à des mesures d’instruction, en vue de conserver la preuve des faits susceptibles d’intéresser une décision qu’il pourrait être appelé à prendre au sujet d’une demande ou d’un brevet européen, lorsqu’il a lieu de craindre que l’instruction ne devienne ultérieurement plus difficile ou même impossible.
Zu Artikel 136
Nummer 5

Vernehmung von Zeugen und Sachverständigen

Zeugen und Sachverständige werden vor ihrer Vernehmung darauf hingewiesen, daß sie beeidigt werden können [und daß eine falsche Aussage strafrechtlich verfolgt werden kann]. Der Eid wird in der vom Heimatrecht der Zeugen und Sachverständigen vorgesehenen Form geleistet.

Re. Article 136
No. 5

Hearing of witnesses and experts

Before a witness or expert may be heard, he shall be informed that he may be required to take an oath [and that false testimony may incur sanctions]. The oath shall be taken in the manner laid down by the national law of the witness or expert concerned.

Zu Artikel 136
Nummer 6

Entschädigung von Zeugen und Sachverständigen

(1) Zeugen und Sachverständige, die vor dem Europäischen Patentamt erscheinen, haben Anspruch auf Erstattung angemessener Reise- und Aufenthaltskosten. Es kann ihnen ein Vorschuß auf diese Kosten gewährt werden.

(2) Zeugen, die vor dem Europäischen Patentamt erscheinen, haben Anspruch auf eine angemessene Entschädigung für Verdienstausfall; Sachverständige haben Anspruch auf Vergütung ihrer Tätigkeit. Diese Entschädigung oder Vergütung wird den Zeugen und Sachverständigen gezahlt, nachdem sie ihrer Pflicht oder ihrem Auftrag genügt haben.

(3) Der Verwaltungsrat legt die Voraussetzungen der Anwendung der Absätze 1 und 2 fest. Die Zahlung der nach den Absätzen 1 und 2 fälligen Beträge wird durch das Europäische Patentamt bewirkt.

Re. Article 136
No. 6

Payment of expenses of witnesses and experts

(1) Witnesses and experts who appear before the European Patent Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance for these expenses may be granted to them.

(2) Witnesses who appear before the European Patent Office shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. These payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks.

(3) The Administrative Council shall lay down the conditions governing the implementation of the provisions of paragraphs 1 and 2 of this Article. Payment of amounts due pursuant to these paragraphs shall be made by the European Patent Office.

Zu Artikel 136
Nummer 7

Beweissicherung

(1) Das Europäische Patentamt kann auf Antrag zur Sicherung eines Beweises unverzüglich eine Beweisaufnahme über Tatsachen vornehmen, die für eine Entscheidung von Bedeutung sein können, die das Europäische Patentamt hinsichtlich einer europäischen Patentanmeldung oder eines europäischen Patents zu treffen haben könnte, wenn zu besorgen ist, daß die Beweisaufnahme zu einem späteren Zeitpunkt erschwert oder unmöglich sein wird.

Re. Article 136
No. 7

Conservation of evidence

(1) On request, the European Patent Office may, without delay, hear oral evidence or conduct inspections, with a view to conserving evidence of facts liable to affect a decision which it might be called upon to take with regard to an existing application or a European patent, where there is reason to fear that it might subsequently become more difficult or even impossible to take evidence.
Ad Article 136
Numéro 1

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

Ad Article 136
Numéro 2

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

Ad Article 136
Numéro 3

Citation à l'instruction
(1) Les témoins et les experts sont cités à l'instruction. La citation doit indiquer les faits au sujet desquels ils seront entendus.
(2) En plus des indications prévues au paragraphe 1 et à l'article ... (numéro 1 ad article 145), paragraphe 2, la citation doit contenir la désignation des parties à la procédure, ainsi que l'indication des droits auxquels le témoin ou l'expert peut prétendre en vertu des dispositions de l'article ... (numéro 6 ad article 136).

Ad Article 136
Numéro 4

Commission d'experts
(1) Les expertises peuvent être faites par écrit ou oralement.
(2) Le mandat de l'expert doit contenir:
a) une description précise de sa mission;
b) le délai fixé pour la présentation du rapport d'expertise;
c) l'indication qu'il pourra être appelé à prêter serment, dans les conditions prévues à l'article ... (numéro 3 ad article 136);
d) la désignation des parties à la procédure;
e) l'indication des droits auxquels il peut prétendre en vertu des dispositions de l'article ... (numéro 6 ad article 136).
(3) Une copie du rapport écrit est remise aux parties.
Zu Artikel 136
Nummer 1

Beweisaufnahme durch das Europäische Patentamt

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

Zu Artikel 136
Nummer 2

Vorschuß auf die Kosten der Beweisaufnahme

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

Zu Artikel 136
Nummer 3

Ladung zur Beweisaufnahme

(1) Zeugen und Sachverständige werden zur Beweisaufnahme geladen. Die Ladung muß die Tatsachen bezeichnen, über die die Zeugen und Sachverständigen vernommen werden sollen.

(2) Außer den Angaben nach Absatz 1 und nach Artikel . . . (Nummer 1 zu Artikel 145) Absatz 2 muß die Ladung die am Verfahren Beteiligten sowie die Ansprüche angeben, die den Zeugen und Sachverständigen aufgrund des Artikels . . . (Nummer 6 zu Artikel 136) zustehen.

Zu Artikel 136
Nummer 4

Beauftragung von Sachverständigen

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

(2) Der Auftrag an einen Sachverständigen muß enthalten:
   a) die genaue Umschreibung des Auftrags;
   b) die Frist für die Erstattung des Gutachtens;
   c) einen Hinweis darauf, daß eine Beedigung nach Maßgabe des Artikels . . . (Nummer 5 zu Artikel 136) erfolgen kann;
   d) die Bezeichnung der am Verfahren Beteiligten;
   e) einen Hinweis auf die Rechte, die ihm nach Artikel . . . (Nummer 6 zu Artikel 136) zustehen.

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

Re. Article 136
No. 1

Investigation by the European Patent Office

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

Re. Article 136
No. 2

Part payment of costs of taking evidence

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

Re. Article 136
No. 3

Summons to give evidence

(1) Witnesses and experts shall be summoned to give evidence. The summons shall give particulars of the facts regarding which they are to be heard.

(2) In addition to the particulars provided for in paragraph 1 and in Article . . . (Re. Article 145, No. 1), paragraph 2, a summons shall contain the names of the parties to the proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Article . . . (Re. Article 136, No. 6).

Re. Article 136
No. 4

Commissioning experts

(1) Expert reports may be made in writing or orally.

(2) The terms of reference of the expert shall include:
   a) a precise description of his task;
   b) the time limit laid down for the submission of the expert report;
   c) an indication that he may be called upon to take an oath, in accordance with the provisions of Article . . . (Re. Article 136, No. 5);
   d) the names of the parties to the proceedings;
   e) particulars of the rights which he may invoke under the provisions of Article . . . (Re. Article 136, No. 6).

(3) A copy of any written report shall be submitted to the parties.
ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG
ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES
PATENTERTeilungsverfahren

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

PREMIER AVANT-PROJET DE RÈGLEMENT D'EXÉCUTION
DE LA CONVENTION INSTITUANT UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
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 —
Re: Article 157, No. 1 - Public notice

48. The Sub-Committee rejected as inadequate the system of affixing such notice on a public notice board. It was agreed to leave to the appreciation of the President of the European Patent Office how public notice is to be given.

49. Before beginning examination of the Implementing Regulations to Article 159 of the Preliminary Draft Convention, the Sub-Committee thought it useful to indicate in the text of the Draft Implementing Regulations that at the present stage of preparation, the provisions in question have been grouped under Article 159 for the sake of convenience only.

Re: Article 159, No. 1 - Term and form of the summons

50. When this Article was adopted, it was specified that its text does not preclude postponements. The Sub-Committee also considered that notice given in a summons could only be shortened with the agreement of the parties.

Re: Article 159, No. 2 - Minutes of hearings and preliminary investigations

51. No comments.

BR/60 e/70 ico/KM/prk  .../...
39. At the request of the Swiss delegation, an addition was made to this Article to the effect that the witness or expert be informed, prior to his being heard, that perjury may incur sanctions. This last provision has been placed between brackets. On this subject, see the footnote to the text of the Article.

Re. Article 154, No. 6 - Payment of expenses of witnesses and experts

40. This Article conforms to the principle that each party bears the costs caused by him. It will be remembered that a possibility of derogating from this principle has been provided for in the new Article 164 of the Preliminary Draft Convention concerning the costs of opposition proceedings. In this respect, the Sub-Committee wondered whether the principle itself should also be contained in an Article of the Convention. This point must be decided by Working Party I.

In addition, it should be noted that the principle of the Administrative Council laying down the rates will offer the advantage of uniformity and equity in reimbursements.

Re. Article 154, No. 7 - Conservation of evidence

41. The purpose of this Article is to allow a third party, who is not a party to the proceedings, to present to the European Patent Office evidence which he will later substantiate when he initiates opposition proceedings. To have this done, the third party need only make a
Re. Article 154, No. 4 - Commissioning experts

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

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

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

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

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

BR/60 e/70 ley/HJ/prk
This question, which involves conflicting concepts of procedure, is to be settled by Working Party I at one of its next meetings. In the opinion of the United Kingdom delegation, it will also have to be examined closely by the government legal experts.

Re. Article 154, No. 2 - Party payment of the costs of taking evidence

33. The provision in question lays down that the European Patent Office may make the execution of a measure for taking evidence conditional upon the payment of a deposit if one of the parties has requested the measure. In this respect the Sub-Committee adopted wording which does not in any way prejudice the fundamental decisions referred to under 32.

The United Kingdom delegation did not see the necessity of intervention by the European Patent Office in order to settle questions of this nature. It was stated in reply that this system has the advantage of providing a uniform tariff as regards the refunding of costs, and also of respecting the principle that each party must bear his own costs (see under 40).

Re. Article 154, No. 3 - Summons to give evidence

34. The wording adopted for this provision does not prejudice the solution of the question referred to under 32.
Re. Article 106, No. 1 - Participation of the other parties at a hearing

29. No comments.

30. The Sub-Committee continued their examination of the Chairman's proposals (BR/GT I/63/70) with a discussion of the Implementing Regulations to the common procedural provisions before the European Patent Office. These provisions, which are partly based on the Rules of Procedure of the Court of Justice, begin with rules relating to Article 154 on measures for taking evidence. Particular emphasis was placed on the point that this Article and its Implementing Regulations are to be further examined with government legal experts.

Re. Article 154, No. 1 - Obtaining of evidence by the European Patent Office

31. The Sub-Committee adopted this provision, of which the sole aim is to lay down that that the European Patent Office must keep the parties informed when it takes measures for obtaining evidence involving the appearance of witnesses and experts or the inspection of premises.

32. At the request of the United Kingdom delegation, the Sub-Committee formally noted that this provision does not in any way prejudice the fundamental decision which must still be reached as to whether, in this matter, the European Patent Office is to be bound by the statements made by the parties or whether it may act ex officio and summon the witnesses and experts on its own initiative.

BR/60 e/70 ley/KL/prk .../...
MINUTES

of the 3rd meeting of Working Party I Sub-Committee
on "Implementing Regulations"
(Luxembourg, 20-23 October 1970)

I

The third working meeting of the Sub-Committee instructed by Working Party I to draw up draft Implementing Regulations to the Convention was held at Luxembourg, from Tuesday 20 to Friday 23 October 1970, with Mr. FRESONNET, Deputy Director, French Industrial Property Institute, in the Chair.

In addition to the national delegations represented in the sub-Committee, the meeting was attended by BIRPI and the International Patents Institute (IIB) (1).

(1) See the list of participants in Annex I.
Délai et forme de la citation

(1) Les citations à une audition, à une procédure orale ou à une instruction comportent un délai minimum d'un mois. Le délai peut être réduit en cas d'urgence.

(2) La citation mentionne les conséquences qui, en vertu de la Convention ou du présent règlement, peuvent résulter du défaut de comparution.

Remarque :
La question du maintien du paragraphe 2 de cet article devra être réexaminée.
Règlement d'exécution

Ad article 1er

Numéro 5

Audition de témoins

Avant que le témoin ne soit entendu, il est informé que, le cas échéant, il pourra avoir à certifier sa déposition sous serment. S'il est appelé à le faire, il prête le serment suivant après sa déposition :

"Je jure d'avoir dit la vérité, toute la vérité, rien que la vérité".

Le serment peut être prêté dans les formes prévues par la législation nationale du témoin.

Remarque :

R.P.C.J.C.E. signifie : règlement de procédure de la Cour de justice des Communautés européennes.
Ad article 154

Numéro 3

Acompte sur les frais de l'instruction

L'Office européen des brevets peut subordonner l'exécution de l'instruction, demandée par une partie, au dépôt par celle-ci auprès de l'Office européen des brevets d'une provision dont il fixe le montant par référence à une estimation des frais.

Remarque :

R.P.C.J.C.E. signifie : règlement de procédure de la Cour de justice des Communautés européennes.
Ad article 154

Numéro 1

Instruction effectuée par l'Office européen des brevets

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

Remarque :

R.P.C.J.C.E. signifie : règlement de procédure de la Cour de justice des Communautés européennes.
VE AO 1964

Avant-projet

de règlement d'application de la convention relative à un droit européen des brevets
Artikel 156

Von seiten des Vorsitzenden oder der Gruppe liegen hierzu keine Vorschläge vor.

Artikel 157 Nr. 1

Diese Nummer enthält mehrere genaue Vorschriften über das Aufgebot. Auf einen Einwand von Herrn van Benthen werden die Absätze 2 und 3 gestrichen und dem Patentamt zur internen Regelung überlassen.

Absatz 1 wird an den Redaktionsausschuß überwiesen.

Artikel 158

Die Bemerkung in den Vorschlägen des Vorsitzenden wird an den Redaktionsausschuß überwiesen.

Artikel 159

Der Vorsitzende weist darauf hin, daß seine Vorschläge zu diesem Artikel sich nicht auf die Ausführung des Artikels selbst beziehen, sondern allgemeine Verfahrensvorschriften enthalten.

Artikel 159 Nr. 1

Diese Nummer regelt Frist und Form der Ladung.

Herr van Benthen möchte, daß Absatz 2 gestrichen wird. Dieser besagt, daß die rechtlichen Folgen des Nichterscheinens in der Ladung angegeben werden müssen. Seiner Auffassung nach könne man unterstellen, daß der Zeuge sich über die möglichen Folgen des Ausbleibens im klaren sei.

Dagegen ist Herr Pfanner der Ansicht, daß Absatz 2 insofern nützlich sei, als dann der Zeuge genau wisse, wessen er sich im Falle des Nichterscheinens aussetze.

Die Gruppe beschließt, Absatz 2 in Klammern zu setzen und hierzu die Ansicht der Sachverständigen der Justizministerien einzuholen.

Diese Nummer wird dem Redaktionsausschuß überwiesen.
Article 146

Remarque adoptée sans discussion.

Ad article 154 - N° 1

A la suite d'une intervention de M. Pfanner, le groupe demande au Comité de rédaction d'établir une remarque en bas de page signalant qu'il faudra encore examiner s'il faut prévoire comme dans le règlement de la Cour de Justice que l'Office détermine les moyens de preuve et les faits sur lesquels ils devront porter. C'est là une question qui devra être étudiée avec les experts des Ministères de la Justice.

Au lieu de "délai de l'instruction", lire "le jour de l'instruction".

Le numéro est transmis au Comité de rédaction.

Ad article 154 - N° 2

Le contenu des crochets est supprimé. En effet, il se rapporte à la compétence des juges nationaux en matière d'instruction.

Le numéro est transmis au Comité de rédaction.

Ad article 154 - N° 3 et 4

Adoptés sans discussion.
Résultats de la neuvième session
du groupe de travail " Brevets "
qui s'est tenue à Munich
du 1er au 12 juillet 1963.

COMPTES RENDUS

7669/IV/63-F-déf.
Ad article 159
Numéro 1

Délai et forme de la citation

(1) Les citations concernant une audition, une procédure orale ou une instruction comportent un délai d'un mois au minimum. En cas d'urgence, le délai peut être réduit.

(2) Les conséquences possibles du défaut de comparution sont indiquées dans la citation.
Ad article 154
Numéro 1

Instruction effectuée par l'Office européen des brevets

Lorsqu'il doit être procédé à des mesures d'instruction par l'Office européen des brevets, celui-ci communique aux parties à la procédure, le délai de l'instruction, les mesures d'instruction et les faits à prouver. Les parties peuvent assister à l'instruction. Elles peuvent poser toutes questions utiles aux parties, aux témoins et aux experts entendus.

Remarque :

RPCJCE signifie : règlement de procédure de la Cour de justice des Communautés européennes.
Kurt Haertel
Bonn, le 8 mai 1963

Projet
concernant le
règlement d'application
de la
Convention relative à un droit européen des brevets

Proposition concernant l'application des
articles 153 à 159
de la Convention
Zu Artikel 159
Nummer 1

Frist und Form der Ladung

(1) Zur Anhörung, mündlichen Verhandlung oder Beweiserhebung wird mit einer Frist von mindestens einem Monat geladen. In dringenden Fällen kann die Frist abgekürzt werden.

(2) In der Ladung wird auf die Folgen hingewiesen, die sich nach dem Abkommen oder der Ausführungsordnung aus einem Ausbleiben ergeben können.

Bemerkung:
Die Frage der Aufrechterhaltung des Absatzes 2 dieses Artikels muß erneut geprüft werden.
Zu Artikel 154
Nummer 5

Vernehmung von Zeugen

Der Zeuge wird vor seiner Vernehmung darauf hingewiesen, daß er unter Umständen seine Aussage zu beidigen hat. Wird der Zeuge beidigt, so leistet er nach Beendigung seiner Aussage folgenden Eid:

"Ich schwöre, daß ich die Wahrheit, die ganze Wahrheit und nichts als die Wahrheit gesagt habe".

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

Bemerkung:
VOEGEG bedeutet Verfahrensordnung des Gerichtshofs der Europäischen Gemeinschaften.
Zu Artikel 154
Nummer 3

Vorschuss auf die Kosten der Beweiserhebung

Das Europäische Patentamt kann die Beweiserhebung, die von einem Beteiligten beantragt worden ist, davon abhängig machen, daß der Beteiligte beim Europäischen Patentamt einen Vorschuss hinterlegt, dessen Höhe im Wege einer Schätzung der voraussichtlichen Kosten bestimmt wird.

Bemerkung:

VOGEG bedeutet Verfahrensordnung des Gerichtshofs der Europäischen Gemeinschaften.
Zu Artikel 154
Nummer 1

Beweiserhebung durch das Europäische Patentamt

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

Bemerkung:
VOEGE bedeutet Verfahrensordnung des Gerichtshofs der Europäischen Gemeinschaften.
Vorentwurf

einer Ausführungsordnung zum Abkommen über ein europäisches Patentrecht
Artikel 156

Von seiten des Vorsitzenden oder der Gruppe liegen hierzu keine Vorschläge vor.

Artikel 157 Nr. 1

Diese Nummer enthält mehrere genaue Vorschriften über das Aufgebot. Auf einen Einwand von Herrn van Benthem werden die Absätze 2 und 3 gestrichen und dem Patentamt zur internen Regelung überlassen.

Absatz 1 wird an den Redaktionsausschuss überwiesen.

Artikel 158

Die Bemerkung in den Vorschlägen des Vorsitzenden wird an den Redaktionsausschuss überwiesen.

Artikel 159

Der Vorsitzende weist darauf hin, daß seine Vorschläge zu diesem Artikel sich nicht auf die Ausführung des Artikels selbst beziehen, sondern allgemeineVerfahrensvorschriften enthalten.

Artikel 159 Nr. 1

Diese Nummer regelt Frist und Form der Ladung.

Herr van Benthem möchte, daß Absatz 2 gestrichen wird. Dieser be- sagt, daß die rechtlichen Folgen des Nichterscheinens in der Ladung angegeben werden müssen. Seiner Auffassung nach könne man unterstellen, daß der Zeuge sich über die möglichen Folgen des Ausbleibens im klaren sei.

Dagegen ist Herr Pfanner der Ansicht, daß Absatz 2 insofern nützlich sei, als dann der Zeuge genau wisse, wessen er sich im Falle des Nichterscheinens aussetze.

Die Gruppe beschließt, Absatz 2 in Klammern zu setzen und hierzu die Ansicht der Sachverständigen der Justizministerien einzuholen.

Diese Nummer wird dem Redaktionsausschuss überwiesen.

.../...
Artikel 146

Die Bemerkung wird ohne Diskussion angenommen.

Artikel 154 Nr. 1

Auf einen Einwand von Herrn Pfeffer bittet die Gruppe den Redaktionsausschuß, eine Fußnote abzufassen, die besagt, daß noch zu prüfen bleibe, ob, wie in der Verfahrensordnung des Gerichtshofs vorgesehen werden müsse, das Patentamt die Beweismittel und die damit zu beweisenden Tatsachen angeben müsse. Es handelt sich dabei um eine Frage, die zusammen mit den Sachverständigen der Justizministerien geprüft werden müsse.

Anstelle von "Termin der Beweiserhebung" muß es "Tag der Beweiserhebung" heißen.

Die Vorschift wird dem Redaktionsausschuß überwiesen.

Artikel 154 Nr. 2

Der Inhalt in den Klammern wird gestrichen. Er fällt nämlich in den Zuständigkeitsbereich der nationalen Richter bei der Beweiserhebung.

Die Vorschrift wird dem Redaktionsausschuß überwiesen.

Artikel 154 Nr. 3 und 4

Die Vorschläge werden ohne Aussprache angenommen.

.../...
Arbeitsgruppe "Patente"

7669/IV/63-D
Orig. F

Brüssel, den 6. November 1963

Vertraulich

Ergebnisse der neunten Sitzung
der Arbeitsgruppe "Patente", die vom 1. bis 12. Juli 1963
in München stattfand

Sitzungsbericht
Zu Artikel 159
Nummer 1

Frist und Form der Ladung

(1) Zur Anhörung, mündlichen Verhandlung oder Beweiserhebung wird mit einer Frist von mindestens einem Monat geladen. In dringenden Fällen kann die Frist abgekürzt werden.

(2) In der Ladung wird auf die möglichen Folgen des Ausbleibens hingewiesen.


Zu Artikel 154
Nummer 1

Beweiserhebung durch das Europäische Patentamt


Bemerkung:
VOGEG bedeutet Verfahrensordnung des Gerichtshofs der Europäischen Gemeinschaften.
Arbeitsentwurf

zu einer

Ausführungsordnung

zum

Abkommen über ein europäisches Patentrecht

Vorschläge zur Ausführung der

Artikel 153 bis 159

des Abkommens
Regel 72

MPÜ

Beweisaufnahme durch das EPA (Forts)

<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr. im Entwurf/Dokument</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstelle im Dokument</th>
</tr>
</thead>
</table>

Dokumente der MDK

<table>
<thead>
<tr>
<th>L 1972</th>
<th>R 73</th>
<th>M/142/I/R 13</th>
<th>S. 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>M/146/R 10</td>
<td>R 72</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>M/160/K</td>
<td>S. 5</td>
</tr>
<tr>
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<td>M/PR/I</td>
<td>S. 192 96</td>
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<td>M/PR/G</td>
<td>S. 202, 203</td>
</tr>
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\(181,187\)
that Article 156, paragraph 3, was to be interpreted as an authorisation for the Administrative Council to provide for the levy of a search fee for each and every international patent application, irrespective of whether additional searches within the meaning of this provision should be carried out in the individual cases.

11. Information to the public of official authorities, legal and administrative co-operation (Articles 127-132, Rules 93-100)

Only a few amendments were made to these provisions. The inspection of files under Article 128 was supplemented so as to provide more precise information for the general public; thus, before the publication of the European patent application, not only the date of filing may be made known to third parties, but also the date, State and file number of any application of which the priority is claimed. The provisions of Articles 130/132 were drafted more generally so that the European Patent Office could make agreements concerning exchanges of information and exchanges of publications not only with States which were not a party to the Convention and with international patent granting authorities, such as WIPO, but with any other organisations, especially documentation centres such as INPADOC. It was also specified at the same time that the substantive content of applications which had not yet been published could not be the subject of such exchanges of information. In addition, the Administrative Council was authorised in Article 130, paragraph 3, to make provisions in respect of exchanges of information with the last-named organisations which derogated from the restrictions on the inspection of files, in so far as the confidential treatment of the information was guaranteed.

While dealing with the provisions of Article 131, the Main Committee discussed a proposal which, in the light of the procedure laid down in the Protocol on Recognition, aimed to supplement the prescribed legal co-operation between the European Patent Office and the Contracting States by an obligation for the Contracting States to provide legal assistance amongst themselves. This interesting idea was rejected generally because the proposed extension was considered to be an intrusion into international legal aid between Contracting States and also an obligation which far exceeded the purpose of the Convention. A further idea to allow the European Patent Office to intervene as an international notification authority in certain proceedings concerning European patents, also found little approval.

12. Representation (Articles 133-134, 162/Rules 101-103, 107)

The provisions of the Convention and the Implementing Regulations concerning representation before the European Patent Office were already discussed with the organisations concerned during the earlier stages of the negotiations and were, as far as possible adapted to their proposals and wishes. Fortunately this situation meant that the principles established by the Inter-Governmental Conference were no longer questioned as to their substance. In particular, the principle that during a transitional period the representatives' status would basically be controlled by the national law of Contracting States and afterwards by European law, remained uncontested. The general principles concerning representation in Article 133 were also unchanged. The Main Committee generally considered that these principles should also be valid for the transitional period. The Committee also specified that legal persons could be represented not only by their employees — as laid down in paragraph 3 of Article 133 — but also by their departments. Such representation by their departments is regarded as a matter of course, is understood from paragraph 1 of Article 133 and does not need to be expressly laid down.

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

(a) Conditions of admission

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

(b) Restrictions on authorisation to represent

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

(c) Questions concerning place of business

Article 134 provided that the representatives entered on the list were entitled to establish a place of business in the Federal Republic of Germany and the Netherlands for the purpose of practising their profession before the European Patent Office. In view of proceedings before national authorities carrying out duties on behalf of the European Patent Office, as provided for in the Protocol on Centralisation, the Main Committee supplemented Article 134 accordingly. Professional representatives should consequently also be able to establish a place of business in the Contracting States concerned. There was also discussion of a provision which would have expressly granted the right to practise a profession to a professional representative, his associates, employees and colleagues and the right of establishment to these persons including their families. It was said in reply to the advocates of such a provision, who considered it to be a necessary adjunct to the right of residence, that this would be to bring a "foreign body" into the Convention and might possibly conflict with existing agreements in the field of public law. The Committee therefore rejected the proposed supplement, but noted on the other hand that the stipulated right to a place of business in accordance with Article 134, paragraphs 3 and 4, would be meaningful only if its recognition was dealt with sensibly. A