Article 163 E

Travaux Préparatoires (EPC 1973)

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Art. 163
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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
115. The French delegation feared that the effect of the proposal which had not been discussed and of the new proposal would be substantially the same. Indeed the new proposal went even further in that the conditions set out in the original proposal governing the manner in which search work was to be carried out had been removed, with the result that the Administrative Council could in principle transfer such work to all Contracting States with such languages.

116. The Chairman of the Committee of the Whole explained the difference as he saw it between the original proposal submitted by the Finnish and Norwegian delegations and the second proposal. On the basis of the original proposal it would have been possible to subject all European patent applications to a compulsory additional search in Finnish or Norwegian. By way of contrast, the new proposal referred solely to Section V, paragraphs 1 and 2, and would mean that only Finnish or Norwegian applicants could request an additional search. The costs incurred in such additional searches would in any case be borne by the applicant.

The scope of this proposal was therefore considerably less than that of the original proposal, all the more so as there was the condition that the Administrative Council had to give prior authorisation for such additional searches to be carried out. The Chairman of the Committee of the Whole therefore considered that the misgivings expressed by the French delegation were unfounded. If the EPO National Office wished to be entrusted with search work but failed to meet the requisite conditions, the Administrative Council would exercise its powers by refusing authorisation.

117. The Italian delegation had no difficulty in agreeing to the new proposal.

118. The Swiss delegation likewise supported the Finnish-Norwegian proposal. In the interests of greater clarity it proposed that the new paragraph be amplified as follows: the Administrative Council may also extend the authorisations for in paragraphs 1 and 2, "under the conditions of those paragraphs", to the central industrial property office, etc.

119. The Chairman of the Committee of the Whole stated that this suggestion would be referred to the Drafting Committee if the proposal were adopted.

120. The IIB delegation voiced doubts as to whether it would be possible to carry out an additional search in a foreign language without giving rise to costs on the part of the EPO. Upon receipt of such search reports the EPO examiner responsible for the search would in each case be obliged to apprise himself of the content and check whether the priorities indicated were correct in the event of any reference which was prejudicial to novelty. Under such a system additional costs would be unavoidable, always assuming that such a system was at all workable.

121. The Chairman of the Committee of the Whole pointed out that such misgivings applied not only to the new paragraph 3 but also to paragraphs 1 and 2 as already adopted.

122. The French delegation was of the opinion that whatever the circumstances the quality of such additional searches ought to be guaranteed, as the good repute of European searches might otherwise be compromised. Paragraphs 1 and 2 of this Section provided a guarantee in that the additional searches concerned would be carried out by sub-offices of the European Patent Office. Such was not the case with paragraph 3. Without wishing in any way to support the two delegations which had made this proposal, it should be made clear that the central industrial property offices entrusted with such work would have to be suitably qualified and that the search activities in question were to be co-ordinated. If these conditions were referred to in the Minutes, the French delegation would be prepared to accept the proposal under discussion.

123. The Committee of the Whole concluded by adopting the proposal for the addition of a new paragraph 3 to this Section and referred it to the Drafting Committee.

Application of the Protocol on Centralisation in conjunction with Article 162, paragraph 2, of the Convention

124. The WIPO delegation raised the question of the processing of international applications for which the EPO would act as a receiving Office in cases where the EPO restricted the processing of applications in respect of certain areas of technology in accordance with Article 162, paragraph 2, of the Convention. In such cases the international application could of course be converted into a national application. However, there still remained the matter of the drawing up of the international search report, inasmuch as the Protocol on Centralisation stipulated that following the opening of the EPO, central industrial property offices — with the exception of those referred to in Section III of the Protocol — would not be allowed to carry out PCT searches. This problem could be resolved by interpreting Article 162, paragraph 2, as not applying to international applications for which the EPO acted as a receiving Office. If this solution proved unworkable, appropriate measures would have to be adopted by the Administrative Council. As it was at present intended that the Directorate-General for Searching would operate in all areas of technology from the very beginning, this question was probably of purely theoretical importance. However, if for any reason the Administrative Council were to restrict the processing of applications, it would have to be stipulated that the EPO could in any event carry out searches in all areas of technology in its capacity as an International Searching Authority.

125. The Chairman of the Committee of the Whole pointed out that in the course of discussions on Article 162 the intention had been recorded in the Minutes of having search reports for all areas of technology drawn up as from the opening of the EPO (see M/PR/1, points 970 et seq.).

126. The Committee of the Whole took note of WIPO's statements concerning the possibility of difficulties in this connection, but considered that as it was unlikely that such difficulties would in fact arise, there was no need to attempt to meet them at this stage.

F. Final Act (M/11/G)

127. The Chairman of the Committee of the Whole raised the question of comments on the draft of the final document, which was to be signed by all delegations irrespective of which delegations would subsequently sign the Convention itself.

128. The Committee of the Whole adopted the draft and instructed the General Drafting Committee to re-examine the text with regard to the date of signing and the title of the Convention.

129. At a subsequent meeting the Turkish delegation asked to be informed of the importance which was to be attached to the signing of the Final Act. It called in particular for clarification as to whether the signing of the Final Act implied adoption of the Convention by the Turkish Government or whether this would simply be taken as an indication that the Turkish delegation had taken part in the Conference.

130. The representative of the Council Legal Department gave the following exposition of the situation: the signing of the Final Act did not mean that the Governments were in any way bound by the Convention or that they were in agreement with the text of the Convention, either in part or in its entirety. The
Contracting States from laying down less restrictive provisions within the framework of the Convention.

1011. The Netherlands delegation supported this proposal. 1012. The Committee agreed to the proposal.

C. Implementing Regulations* (M/2)

2001. The Main Committee, acting on a proposal by its Chairman, set up a Working Party on Implementing Regulations to deal with those Rules which, on account (for example) of the complicated nature of the questions involved, did not allow of an immediate decision by the Main Committee.

The Working Party was composed of the French, German, Netherlands, Swedish, Swiss and United Kingdom delegations, which had previously elaborated the Draft Implementing Regulations. Other delegations which might make proposals concerning any of the Rules would take part in the Working Party’s discussions on the matter.

Rule 2 — Derogations from the provisions concerning the language of the proceedings in oral proceedings

2002. With regard to paragraph 1, the CEIF delegation suggested that any party to proceedings who wished to use an official language other than the language of the proceedings should be bound to inform the European Patent Office to that effect one month before proceedings were initiated.

Furthermore, the CEIF delegation held that in such cases the European Patent Office should make provision for interpretation into the language of the proceedings and that costs incurred on that score should be borne by the party concerned (see M/22, points 28 and 29).

2003. The IAPIP delegation contended that in cases where a party to proceedings wished to use an official language other than the language of the proceedings, not only the European Patent Office but also the other parties to the proceedings should be notified.

2004. The UNICE delegation supported the CEIF and IAPIP delegations (see M/19, points 29 and 30).

2005. The FICIP delegation also considered that a party to proceedings should be obliged, one month before proceedings were initiated, to indicate to the European Patent Office that he intended to use a language other than the language of the proceedings (see M/15, point 53).

2006. The Chairman pointed out that the purpose of paragraph 1 was to ensure that the European Patent Office was informed in good time prior to the proceedings of the intention to use a language other than the language of the proceedings and to enable it to make provision for official interpretation. On the other hand, what the proposals put forward by the various organizations sought to ensure was that the other parties would also be informed, and this would require an extension of the time limit.

2007. The French delegation drew attention to the fact that paragraph 1 governed only the use of, but not changes in, the language of the proceedings. This meant that as a general rule the parties concerned would have to continue using the language of the proceedings and that only parties to oral proceedings would merely have the option of using a different official language. Any party wishing to do so was obliged to give 2 weeks’ notice to the European Patent Office to allow it to make provision for interpretation into the language of the proceedings. Even if the party concerned failed to give due notice, he could still make provision himself for interpretation into the language of the proceedings subject to his defraying the costs involved. On the basis of this interpretation of paragraph 1 the French delegation failed to comprehend the purport of the proposals put forward by the observer delegations, inasmuch as the time limit of two weeks was of concern only to the European Patent Office.

2008. The Chairman considered that the French delegation’s interpretation was correct. He was, however, also sensible of the doubts expressed by the various Observer delegations, which wished to go one step further than the provision by the European Patent Office for interpretation of oral proceedings into the language of the proceedings and ensure that the other parties had prior cognizance of the other language to be used in proceedings.

2009. The Italian delegation supported the proposals made by the above-mentioned Observer delegations with regard to paragraph 1.

2010. The Chairman stated that in the absence of support from a second Government delegation the proposals by the Observer delegations could not be taken into account.

He further considered that there was no danger attendant upon the retention of Rule 2, paragraph 1, in its present form, on the grounds that it could be adjusted to practical needs by the Administrative Council should it prove to be inadequate. The President of the European Patent Office could, moreover, issue administrative instructions to the effect that a copy of the notice referred to in paragraph 1 was to be forwarded to all parties to proceedings to enable them to adapt to the new situation.

2011. The French delegation wondered what procedure was to be adopted in cases where the interpretation into the language of the proceedings by one of the parties was unsatisfactory.

2012. The delegation of the Federal Republic of Germany stated in reply that incompetent interpretation should be deemed tantamount to a failure to provide interpretation, with the result that in cases of this nature the party concerned would have failed to comply with the obligation under the first sentence of paragraph 1. The oral proceedings would then either have to be adjourned, or the European Patent Office could intervene and provide an interpreter. Any additional costs incurred as a result of adjournment would have to be borne by the party concerned. The above procedure could be justified by reference to Article 103 (104), paragraph 1, of the Convention.

2013. The United Kingdom delegation endorsed the views expressed by the German delegation.

2014. The French delegation was satisfied with the above interpretation.

2015. The Swiss delegation claimed that Article 103 (104), paragraph 1, governed only costs incurred in proceedings before the Office, but not costs incurred by the parties.

2016. The delegation of the Federal Republic of Germany held that Article 103 (104), paragraph 1, and Rule 64 (63) clearly applied to costs incurred by the parties. This would mean that the travelling costs incurred by parties which had appeared to no avail at oral proceedings would be reimbursed by the other party in all cases where it had been necessary to conduct new oral proceedings on account of faulty interpretation.

2017. The Main Committee referred to the Drafting Committee a drafting proposal on paragraph 1 submitted by the United Kingdom delegation (M/40, point 27).

2018. With regard to paragraph 2, the COPRICE delegation considered that it should be expressly laid down that statements made by employees of the European Patent Office in the course of oral proceedings must be performed to be translated into the language of the proceedings (see M/16, point 14).

2019. The Chairman replied that such a provision was not needed under paragraph 2, as the legal consequence called for by COPRICE was available under paragraph 5.

* All provisions under the Implementing Regulations prior to Rules 8—12 fall within the purview of Main Committee I (see M/34 and M/56/I/II/III).
Federal Republic of Germany with regard to representation before the German Patent Office, or whether this text also concerned other limitations.

992. The Chairman noted that the Committee was of the opinion that the only limitation in question was that contained in the laws of the Federal Republic of Germany.

993. The Italian delegation wondered whether this limitation was only applicable within the State concerned or whether it also applied in the other Contracting States.

994. The Chairman stated that on the basis of paragraph 2, taken in conjunction with paragraph 6, it seemed that the persons subject to a limitation under German law were subject to the same limitation with regard to European proceedings, both under the first and second Conventions.

995. The CEIF delegation asked the Committee for an interpretation with regard to the expression "representatives" in paragraph 3. Referring in particular to the problem of representatives acting on behalf of industry, the CEIF wished the Committee to confirm that, provided that the person concerned could furnish proof of having habitually acted as a representative for at least five years and provided that the national administration could confirm this by means of documentary proof on file, namely an authorisation repeatedly designating the person concerned by name, that person should be considered as a representative for the purpose of Article 162, paragraph 3.

996. The French delegation thought that the answer to this question should be positive: the text of paragraph 3 should be interpreted to the effect that all persons who had habitually acted as professional representatives for at least five years, either independently or on behalf of industry, should, provided that the national office had proof on file, be considered as representatives within the meaning of Article 162, paragraph 3.

997. The Italian delegation, supporting the French delegation's interpretation, wondered whether it might not be preferable to make it clearer in this Article that the provision in question also applied to the persons referred to by the CEIF delegation.

998. The Committee agreed to instruct the Drafting Committee to examine whether the clarification suggest by the Italian delegation could be made.

999. During examination of the Drafting Committee's work on paragraph 2 (see M/142, page 3) the FICPI delegation asked the Committee what the position would be if a national patent office closed down after the entry into force of the Convention. In such an event, would representatives previously entitled to act before that Office be able to obtain a certificate from a national office of another Contracting State?

The Committee thought that this highly unlikely situation did not make any amendment to the text necessary, especially since the certificate would not be issued by the national patent offices, but by the national industrial property offices of the Contracting States.

None of the delegations supported the FICPI suggestion that this paragraph should be amended so that each national office could be entitled to issue certificates irrespective of the nationality of the representative and of whether or not he had his place of business or employment in the territory of the State concerned.

1000. The Committee then examined the French delegation's proposed amendment to paragraph 6 (M/112, page 3).

The French delegation stated that its proposal was to delete the reference at the end of paragraph 6 to the exercise of the profession "in the Contracting States" and to replace it by a reference to the exercise of the profession "before the central industrial property office". The aim of this amendment was to take account of the situation in certain Contracting States where the representatives referred to in the present Convention could not act before judicial bodies, since this was the prerogative of lawyers.

1001. In reply to a request for clarification from the United Kingdom delegation, the Chairman stated that the aim of the French delegation's proposal was to ensure that, if, under national law, a representative was only entitled to act before the national office (actions before judicial bodies being confined to lawyers) he should be entitled to act before the European Patent Office in all proceedings. Without such a provision, applicants would be obliged to change representatives during the proceedings.

1002. The Committee agreed to the French delegation's proposal.

1003. The Committee then examined the proposed amendment to paragraph 7 submitted by the delegation of the Federal Republic of Germany (see M/11, point 7).

1004. The delegation of the Federal Republic of Germany stated that the aim of its proposal was to take account of the special situation of two categories of representatives in the Federal Republic of Germany: the "Patentassessoren" and the "Erlaubnisscheinhaber". German law stipulated that a "Patentassessor" could not be authorised as a patent agent if he devoted most of his time and energies in industrial property matters to working for one company. On the basis of the present text of paragraph 7, "Patentassessoren" could be entered on the list of professional representatives subject to the limitation applicable to them under their national legislation. The German delegation did not wish to alter this state of affairs, but simply to request that if, before the end of the transitional period, a "Patentassessor" changed his professional status and became a patent agent, he should not be obliged to take the European qualifying examination in order to be entered on the list of professional representatives without limitations. A similar problem arose for "Erlaubnisscheinhaber". These were representatives on a slightly lower level than patent agents, with the result that German law permitted them to represent only German nationals before the German Patent Office. It was possible for such representatives to take an examination enabling them to become patent agents. Therefore, in this case also, the delegation of the Federal Republic of Germany proposed that the limitation on the exercise of the profession, contained in the present text of paragraph 7, should be deleted, if the person concerned became a patent agent before the end of the transitional period.

1005. The proposal by the delegation of the Federal Republic of Germany was supported by several delegations.

1006. The FEMPI delegation asked the Committee if it could agree to the proposal submitted by UNICE (see M/19, point 40) that persons entered on the list during the transitional period should remain on the list without any restrictions on their entitlement to act after the expiry of the transitional period.

1007. The Chairman noted that the UNICE proposal went further than that of the delegation of the Federal Republic of Germany and asked the Committee whether any of the Government delegations were prepared to put forward the UNICE proposal.

1008. The Italian, French and Swedish delegations were prepared to do so.

1009. The delegation of the Federal Republic of Germany stated that although it had not proposed such a solution itself, it was prepared to support it.

1010. The Swiss delegation said it would favour an even more radical solution, namely deletion of the second sentence of paragraph 2 and the whole of paragraph 7. It considered that the matter at present under discussion concerned peculiarities of national law and that there was nothing to prevent the
Netherlands delegation had been able to agree to the French delegation's proposal, it could not accept the proposal now under consideration.

967. The Chairman added a further argument concerning the consequences of accepting the proposal under consideration. If, when the European Patent Office opened, it was not possible to make searches in all areas of technology, the Administrative Council would have to decide that no searches be made, since it would only have a choice between drawing up search reports in all areas or none at all. This solution would be far from satisfactory.

968. The United Kingdom delegation supported the Netherlands delegation's view.

969. The French delegation stated that it could not share the view expressed by the United Kingdom and Netherlands delegation. It was convinced that the IIB would be able to deal with all requests for a European search report. Moreover, it was not realistic to assess the number of European patent applications filed with the European Patent Office in the first year at 40,000.

970. The CEIF delegation requested that the statements which had just been made should be recorded in the minutes of the Conference, for the attention of the Administrative Council, and that the Government delegations present should solemnly affirm their desire that every effort should be made to ensure that, as far as possible, as soon as the European Patent Office opened, documentary search reports could be drawn up in all areas of technology.

971. The Netherlands delegation proffered another argument. Some Contracting States would probably be obliged to adapt their national legislation to the provisions of the European Patent Convention. It was possible that when doing this certain countries which at present did not carry out prior examination might wish to introduce such a system. If this happened, there might be grave doubts as to the IIB's ability to deal with requests for search reports. The Netherlands delegation could however support the CEIF delegation's suggestion that a statement be recorded in the Conference minutes.

972. The delegation of the Federal Republic of Germany hoped and believed that it would be possible to draw up search reports for all areas of technology as from the opening of the European Patent Office. However, it shared the Netherlands delegation's objections and supported the suggestion made by the interested circles that a suitable statement be recorded in the Conference minutes.

973. The French delegation stated that if the Swiss delegation agreed to withdraw the proposal which the two delegations had made jointly, it could support the CEIF delegation's suggestion that a statement be recorded in the Conference minutes.

974. The Swiss delegation stated that it withdrew its proposal and was prepared to agree to a statement expressing a formal intention to implement Article 161 in such a way that the European Patent Office was able to draw up search reports for all European patent applications.

975. The Chairman noted the Committee's agreement on the insertion of this statement in the minutes.

**Article 162 (163) — Professional representatives during a transitional period**

976. The Committee examined the French delegation's proposed amendment to paragraph 1 and paragraph 4, given in M/112, page 2.

The French delegation stated that the aim of its proposal was that Article 162 should contain the same provision as currently appeared in Article 134 with regard to the requirement of being a national of one of the Contracting States. To this end, it proposed adding a further requirement to Article 162, paragraph 1, (that of being a national of one of the Contracting States) and, in paragraph 4, giving the President of the European Patent Office the right to grant exemptions from this requirement. The French delegation intended that such exemption should be automatic for persons fulfilling the other conditions for entry on the list on the date of the signing of the Convention.

977. The Chairman noted that the French delegation's proposal was supported by several delegations.

978. The Swedish delegation stated that, although it had no specific objections to this proposal, it preferred the current text.

979. The Committee approved the French delegation's proposal for the first paragraph by seven votes to two, with four abstentions. It then examined the amendment to paragraph 4, which was the second aspect of the French delegation's proposal.

980. The United Kingdom delegation stated that it did not seem appropriate to refer to the date of the signing of the Convention, since Article 164 stipulated that the Convention was open for signature until a certain date.

981. The Chairman shared this view and stated that he thought it preferable to determine a precise point in time rather than a period as proposed by the French delegation. He asked the French delegation if it could agree to amend its proposal by referring to the date of the signing of the Convention in Munich on 5 October 1973.

982. The French delegation agreed to this amendment.

983. The delegation of the Federal Republic of Germany asked the French delegation whether it was possible for the two persons concerned to have exercised their profession outside the Contracting States or whether it was necessary for them to have done so within a Contracting State.

984. The French delegation stated that its intention was that the profession should have been exercised in one of the Contracting States.

985. The Chairman noted that the Committee also agreed to the French delegation's second proposal.

986. The Committee then examined proposed amendments to paragraph 2, namely a proposal from the French delegation, given in M/112, and a proposal from the delegation of the Federal Republic of Germany, given in M/147, page 7.

987. The French delegation felt that the two proposals were closely allied. The present text was rather ambiguous, particularly in its use of the expression "the extent of the entitlement to act as a professional representative before this authority". Article 134, paragraph 3, entitled representatives to act before all the departments of the European Patent Office and in all its proceedings. The limitations referred to in Article 182, paragraph 2, could only concern the persons which the applicant was entitled to represent. It therefore seemed preferable to make explicit reference to "the persons which the applicant is entitled to represent".

988. The delegation of the Federal Republic of Germany was prepared to agree to the French delegation's proposal and therefore withdrew its own proposal.

989. The Committee agreed to this proposal.

990. The Committee referred the French delegation's proposal given in point 22 of M/26 to the Drafting Committee for examination.

991. The FEMIPI delegation wondered whether the limitations regarding persons represented laid down in paragraph 2 were merely those resulting from the laws of the
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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
(4) The President of the European Patent Office may grant exemption from:

(a) the requirement of paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way;

(b) the requirement of paragraph 1(a) in special circumstances.

(4a) The President of the European Patent Office shall grant exemption from the requirement of paragraph 1(a) if on 5 October 1973 the applicant fulfilled the requirements of paragraph 1(e) and (c).

(5) Persons having their places of business or employment in a State which acceded to this Convention less than one year before the expiry of the transitional period referred to in paragraph 1 or after the expiry of the transitional period, may, under the conditions laid down in paragraphs 1 to 5, during a period of one year calculated from the date of entry into force of the accession of that State, be entered on the list of professional representatives.

(7) After the expiry of the transitional period, any person whose name was entered on the list of professional representatives during that period shall, without prejudice to any disciplinary measures taken under Article 134, paragraph 8(c), remain thereon or be restored thereto, provided that he then fulfills the requirement of paragraph 1(b).
Article 163
Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfills the following conditions may be entered on the list of professional representatives:

(a) he must be a national of a Contracting State;

(b) he must have his place of business or employment within the territory of one of the Contracting States;

(b) he must be entitled to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.

(2) Entry shall be effected upon request, accompanied by a certificate furnished by the central industrial property office, which must indicate that the conditions laid down in paragraph 1 have been fulfilled.

(3) When, in any Contracting State, the entitlement referred to in paragraph 1(b) is not conditional upon the requirement of special qualifications, persons applying to be entered on the list who act in patent matters before the central industrial property office of the said State must have habitually so acted for at least five years. However, persons whose professional qualification to represent natural or legal persons in patent matters before the central industrial property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/46/R 6
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 140 to 166
Article 162 (continued)

(4) The President of the European Patent Office may grant exemption from:

(a) the requirement of paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way;

(b) the requirement of paragraph 1(x) in special circumstances.

(4a) The President of the European Patent Office shall grant exemption from the requirement of paragraph 1(x) if on 5 October 1973 the applicant fulfilled the requirements of paragraph 1(a) and 1(b).

(5) Only concerns French text.

(6) Deleted.

(7) After the expiry of the transitional period, any person whose name was entered on the list of professional representatives during that period may, without prejudice to any disciplinary measures taken under Article 134, paragraph 7(c), remain thereon or be restored thereto, provided that he then fulfills the requirement of paragraph 1(a).
Article 162

Professional representatives during a transitional period

(1) Only concerns French text.

(x) he must be a national of a Contracting State;

(a) Only concerns French and German texts.

(b) he must be entitled to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.

(2) Entry shall be effected upon request, accompanied by certificates, furnished by the central industrial property office, which must indicate that the above-mentioned conditions are fulfilled.

(3) When, in any Contracting State, the entitlement referred to in paragraph 1(b) is not conditional upon the requirement of special qualifications, persons applying to be entered on the list who act in patent matters before the central industrial property office of the said State must have habitually so acted for at least five years. However, persons whose professional qualification to represent natural and legal persons in patent matters before the central industrial property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.
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
Article 162:

Insert the following new paragraph between paragraphs (4) and (5):

"The President of the European Patent Office may in special circumstances grant exemption from the requirement of paragraph 1(a). Exemption shall always be granted for persons whose main occupation at the time up to 5 October 1973 was that of acting as representatives before the central industrial property office of a Contracting State."

Article 162, paragraph 6:

Add the following:

"This provision shall not affect the applicability of Article 134, paragraph 3."

Rule 107:

In line 3 between "or" and "has" insert "for reasons other than change of place of business or employment".

Rule 107:

Add the following paragraph:

"If a representative ceases to fulfil the condition of Article 162, paragraph 1(b)*, the European Patent Office shall suspend him from the list provided for in Article 134, paragraph 1. If at a later time, before or after the expiry of the transitional period provided for in Article 162, paragraph 1, the representative again fulfils the condition of Article 162, paragraph 1(b)*, he shall have the right to be re-entered without having to take the European Qualifying Examination."

* Article 162, paragraph 1(a) of present text.
The delegations of the three organisations have jointly reviewed the question of representation before the European Patent Office and have extracted the following simplified recommendations from their previous comments.

**Article 133, paragraph 2:**

Natural and legal persons not having their residence or their seat within the territory ... (continue as present text).

**Article 133, paragraph 3:**

Natural and legal persons having their residence or their seat within the territory ... (continue as present text).

**Article 134:**

Add a new paragraph:

"All provisions of this Article and Article 133 regarding proceedings before the European Patent Office shall also apply to proceedings in the matter of European patent applications before any national office which conduct examination and/or search on behalf of the European Patent Office. Paragraph 4 of this Article shall also apply to Contracting States in which such national offices are located."

**Article 162, paragraph 1:**

Add a first condition as follows:

"(a) he must be a national of one of the Contracting States" and re-index present conditions (a) and (b) as (b) and (c) respectively."
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 20 September 1973

M/115/I

Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: CNIPA, FICPI and UNEPA

Subject: Joint recommendation for Articles 133, 134 and 162 of the Convention and for Rule 107 of the Implementing Regulations
Article 162 (continued)

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

(7) Unchanged

IMPLEMENTING REGULATIONS

Rule 103.

Provisional or definitive deletion of the professional representative from the list.

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

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

Rule 107

- deleted -

M/112/I kin/HM/mb
Article 162 (continued)

c) he must be authorised to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.

(2) Entry shall be effected upon request, accompanied by a certificate (...) which must indicate that the abovementioned conditions are fulfilled. The certificate furnished by the central industrial property office must (...) specify, where appropriate, the persons which the applicant is entitled to represent before this authority.

(3) Delete the word "agréé" in accordance with M/26, Nos. 21, 22

(4) The President of the European Patent Office may grant exemption:

(a) from the requirement referred to in paragraph 3, first sentence (...), if the applicant furnishes proof that he has acquired the requisite qualification in another way;

(b) from the requirement referred to in paragraph 1(a) in cases resulting from a particular situation. Such exemption shall be automatic for persons who fulfil all the other conditions for entry on the list and who were exercising their profession on the date of the signing of the Convention.

(5) Unchanged

(6) Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives may only act before the European Patent Office to the extent that they are entitled, within the terms of the certificate furnished by the central industrial property office to act as (...) representatives.
Article 134 (continued)

(4) Any person whose name appears on the list of professional representatives shall be entitled to establish a place of business in the Federal Republic of Germany, the Netherlands and in any Contracting State benefiting from the provisions of the Protocol on the Centralisation of the European Patent Office and on its Introduction, for the period during which these provisions apply, for the purpose of acting as a professional representative in proceedings before the European Patent Office. Professional representatives, their associates, assistants and employees shall have the unrestricted right to reside with their families and exercise their profession within the said States.

(5) Unchanged

(6) Professional representation before the European Patent Office, on the same basis as a professional representative, may also ... (the rest remaining unchanged).

(7) Unchanged

Article 162

Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must be a national of one of the Contracting States;

(b) he must have his place of business or place of employment within the territory of one of the Contracting States;
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: French delegation

Subject: Representation - Articles 133, 134 and 762 -
Rules 103 and 107
2. UNEPA is specifically against the following proposals for amendments:

- **Article 133**
  - M/22 No. 43
  - M/23 No. 4, 5

- **Article 135**
  - M/26 No. 17
  - M/19 No. 22

- **Article 161**
  - M/22 No. 46
  - M/19 No. 40, 41

- **Article 162**
  - M/22 No. 44 - 46
  - M/23 No. 6 - 9
Rule 51 Paragraph 2

The proposal made under No. 34 of the Comment M/21 UNEPA is withdrawn in view of Article 120.

Rule 69 Paragraph 2

The proposal made under No. 35 of the Comment M/21 UNEPA is withdrawn in view of Article 120.

NOTES

1. The greater part of the above proposals is essentially in line with proposals made in Comments delivered by others. However, the above proposals do contain further desirable amendments.

The UNEPA agrees, without further proposal for amendment, with a great number of proposals contained in Comments delivered by others. These are particularly the following proposals:

- Article 67
- Article 86 Paragraph 1
- Article 105 Paragraph 1
- Article 141
- Article 157 Paragraph 2
- Article 162
- Rule 107
- Rule 108

M/18 No. 7, 8
M/32 No. 16
M/14 No. 6
M/14 No. 10
M/14 No. 13
M/19 No. 23
M/32 No. 23
M/11 No. 7
M/15 No. 15
M/15 No. 21.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 11 September 1973
M/62/I/II
Original: German/English/French

CONFERENCE DOCUMENT

Drawn up by: Union of European Patent Agents (UNEPA)

Subject: Additional comments
Art. 162 (2), (3) and (6). The French government in M/26, points 21-22, pages 32o-1, objects to the term "mandataire agréé" in the French text of Art. 162 (2), (3) and (6), because in many countries there are no regulations governing entitlement to represent and therefore there could not be any "mandataire agréé" on the national level. The French government therefore proposes to cancel the word "agréé". This is of course correct, but it may be considered whether the word "professionelle" should be inserted instead, as in the English text. It should then also be considered whether the word "beruflich" should be inserted in the German text.

Art. 162 (7). The UNEPA proposes in M/21, point 21, pages 224-5, to cancel the last part of Art. 162 (7) beginning with the words "without having to ....". The FICPI does not agree that the passage in question is superfluous because it has in fact been proposed from various quarters at various times that representatives admitted to the list of representatives under the transitional provisions and not having passed a national qualifying examination should take the European Qualifying Examination within a certain number of years as a condition for remaining on the list.

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

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

H. Editorial questions.

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

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

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

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

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

Art. 134 (3). The German government proposes in M/11, point 32, pages 68-69, to cancel Art. 134 (3). The CNIPA in M/20, point 30, pages 208-9, makes a similar observation but points to the possible significance of Art. 134 (3) as applicable to persons mentioned in Art. 162 (6). In this connection the attention is drawn to the proposal of the FICPI in M/15, points 31-32, pages 118-9, where it is proposed to add at the end of Art. 162 (6)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. The UNICE in M/19, point 4a, pages 182-3, and the CIFE in M/22, point 44, pages 268-9, propose to provide in Art. 162 (7) that if a person has been entered on the list of professional representatives with restrictions on his entitlement to act, these restrictions should automatically be lifted at the end of the transitional period.

13. The FEMIP in M/23, point 12, pages 29a-1, also proposes such lifting of the restrictions, but subject to the condition that the qualifications of the representative have been recognized by the certificate furnished by the central industrial property office pursuant to Art. 162 (2) and (3).

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

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

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

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

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

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

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

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

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

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

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

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

In fact, a provision of the type wanted by the FEMIPI could be quite simple,
e.g. as follows (taking the official version of Art. 162 (1) and (2) as the point of departure):
"(2 bis). When, in any Contracting State, entitlement to act as a professional
representative before the central industrial property office of that State is
conditional upon the requirement of special professional qualifications, the
certificate furnished by the central industrial property office must indicate
that the applicant fulfils this requirement."
clearly constitute an improper interference with established national regulations and institutions.

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

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

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

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

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

*) oddly enough the German translation, which has apparently not been made by the FEMIPI itself, uses the word "Vertretung", which is an example of the fragility of the "acting/representing" distinction.
A. Proposals of the UNICE and the CIFE in respect of Art. 162 (1) (b) and 162 (3).

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

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

3.

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

Attached are:

Memorandum A on representation before the European Patent Office,
Art. 133, 134, 144, 162, Rules 1o3, 1o7.

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

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

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

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

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: PICPI

Subject: Memoranda on:
- representation
- evidence of transfer of the inventor's right
- multiple priorities and partial priorities
- withdrawal of the European patent application
- extension of periods as related to language problems
20. Article 162

On the basis of the proposal by UNEPA in M/21, No. 19:

"(2) ... The certificate furnished by the central industrial property office must also specify where appropriate to what persons his entitlement to act before this authority is limited."

21. Rule 8

On the basis of the proposal by WIPO in M/27, No. 4:

"... of 19 December 1954 or, after the entry into force of the Strasbourg Agreement Concerning the International Patent Classification of 24 March 1971, in Article 1 thereof, hereinafter ..."

22. Rule 9

"(2) ... Examining Divisions, Opposition Divisions and Legal Division."


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
24. Article 162, paragraph 1(b)  
Amend to read "he must be authorised to act on behalf of natural or legal persons in patent matters ...".

25. Article 162, paragraph 3  
Amend to read "When, in any Contracting State, entitlement to act in patent matters before the central industrial property office is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in patent matters before the central industrial property office of the said State must have habitually exercised the profession for at least five years. However, persons whose professional qualification ...".

26. Article 162, paragraph 4  
Amend to read "The President of the European Patent Office may grant exemption from the requirement of having habitually acted for five years in patent matters before the central industrial property office of a Contracting State in accordance with paragraph 3, first sentence ...".

27. Article 162, paragraph 6  
Amend to read "Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives may act before the European Patent Office only to the extent that they are entitled, within the terms of the certificate furnished by the central industrial property office, to act in patent matters in the Contracting States in which they exercise their profession".

28. Article 162, paragraph 7  
Amend to read "Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives shall remain entered on that list after the expiry of the transitional period without any other restrictions on their entitlement to act than those laid down in paragraph 6, and without having to take the European qualifying examination under Article 134, paragraph 2(c), even though they may not be nationals of one of the Contracting States".
21. Article 133
The question of representation gave rise to numerous verbal and written comments in 1972. In particular, on a proposal of the Chairman of the Inter-Governmental Conference, the representatives of industry and the representatives of patent agents met in Munich on 3 and 4 March 1972 to harmonise their points of view and to propose joint conclusions on Article 154 of the Second Preliminary Draft of the Convention, at the Conference. It is important that the present Article 133 should deal with the representation of legal persons not having their registered place of business within the territory of one of the Contracting States and having economic links with a legal person having its residence or registered place of business within the territory of one of the Contracting States.

22. Article 135, paragraph 1
Under this paragraph the central industrial property office of a designated Contracting State is able to apply the procedure for the grant of a national patent only in two specific types of situation. This also applies, somewhat differently, to Article 88, paragraph 2 (applications not dealt with as European patent applications because the deficiencies noted have not been remedied in accordance with the requirements specified, thereby preventing a date of filing being accorded); thus the only course open to the applicant would be for the State in question to convert the application not recorded by the European Patent Office into a national application, if the applicant so desires and if the State agrees.

23. Article 162
Because of the successive amendments which have been made to this very important Article, the present text still contains a number of traces of previous versions which should be eliminated. CEEP suggests the following amendments:
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS.

- 1973 -

Brussels, 23 May 1973

M/30

Original: French

PREPARATORY DOCUMENT

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

Subject: Comments relating to the Draft Convention establishing a European System for the Grant of Patents


20 Es wird deshalb vorgeschlagen, die beiden ersten Absätze des Artikels 161 wie folgt zu ändern:

(1) Satz 2: „In der Anfangszeit kann die Prüfung der Patentanmeldungen nach Artikel 93 auf bestimmte Gebiete der Technik beschränkt und stufenweise ... werden.“

(2) „Der Verwaltungsrat kann auf Vorschlag des Präsidenten des Europäischen Patentamts beschließen, daß die Behandlung der Patentanmeldungen auf bestimmten Gebieten der Technik in der Anfangszeit anderen Beschränkungen als denjenigen nach Absatz 1 unterliegt. Jedoch ...“ (Rest unverändert).

Artikel 162 – Zugelassene Vertreter während einer Übergangszeit

21 In den Absätzen 2, 3 und 6 des Artikels 162 ist in der französischen Fassung von „mandataires agréées“ („zugelassenen Vertretern“) die Rede, die zur Vertretung vor der Zentralbehörde für den gewerblichen Rechtsschutz jedes Vertragsstaates befugt sind. In Frankreich gibt es jedoch keine Vertreter, die eine Zulassung zur Ausübung ihrer Tätigkeit vor der französischen Zentralbehörde für den gewerblichen Rechtsschutz besitzen. Ähnlich dürfte die Lage in anderen Vertragsstaaten sein.

22 Es wird deshalb vorgeschlagen, in Artikel 162 Absätze 2, 3 und 6 das Wort „gréé“ hinter dem Wort „mandataire“ zu streichen.

Patent Office from a date fixed by the Administrative Council (1st sentence), but, that the examination as to patentability, carried out upon the filing of the request laid down in Article 93, will initially be carried out only with respect to applications falling within certain areas of technology. It may be assumed on the basis of paragraph 1 that right from the start all applications will be subject to the first part of the procedure which extends from the filing of the European patent application to its publication and the publication of the European search report.

Paragraph 2 of the same Article permits the Administrative Council to “further restrict” the processing of a European patent application affected by the restriction provided for in paragraph 1. The further restrictions on processing could therefore apply subsequently to the decisions taken by the Administrative Council pursuant to paragraph 1. For example, in certain areas of technology the Administrative Council could suspend the procedure for the drawing up of the European search report. To suspend the services of the European Patent Office in this way is unacceptable.

20 It is therefore proposed that the first two paragraphs of Article 161 be amended as follows:

(1) 2nd sentence: “To begin with, the examination of European patent applications pursuant to Article 93 may be restricted to certain areas...” (only concerns French text).

(2) “The Council may, on the recommendation of the President of the European Patent Office, decide that the processing of patent applications in certain areas of technology will, to begin with, be subject to other restrictions in addition to the restriction laid down in paragraph 1. However, ...” (rest unchanged).

Article 162 (*) – Professional representatives during a transitional period

21 The words “mandataires agréées” (authorised representatives) before the central industrial property office of any Contracting State are used in paragraphs 2, 3 and 6 of Article 162. However in France representatives do not receive any certificate authorising them to carry out their profession before the French central industrial property office. A similar situation probably exists in other Contracting States.

22 Consequently it is proposed that the word “agrée” (authorised) which follows the word “representative” in paragraphs 2, 3 and 6 of Article 162 be deleted.

(*) Really only concerns French text since the English term used is “professional representatives”.

320
STELLUNGNAHME
DER FRANZÖSISCHEN REGIERUNG

COMMENTS
BY THE FRENCH GOVERNMENT

PRISE DE POSITION
DU GOUVERNEMENT FRANÇAIS
28 Artikel 107 und 108

Das Beschwerdeverfahren sollte in zwei Phasen abgewickelt werden können; in einer ersten Phase, in der die formelle Beschwerde innerhalb von zwei Monaten eingelegt werden muß, und einer zweiten Phase, in der die Beschwerde innerhalb von höchstens sechs Monaten zu begründen ist.

29 Artikel 120 Absatz 2 (Der FEMIPI führt diesen Artikel lediglich als Beispiel an)

Der FEMIPI empfiehlt eindringlich, daß die im Verfahren vorgeschriebenen Fristen – wie beispielsweise die Frist nach Artikel 120 Absatz 2 – mindestens zwei Monate betragen.

30 Artikel 128 Absatz 5

Zu den Auskünften, die Dritten vor der Veröffentlichung erteilt werden können, sollten gegebenenfalls auch die Angabe der Priorität und des PCT-Urteils der Anmeldung gehören.

31 Artikel 130 und 131

Nach Ansicht des FEMIPI sollte sich die Erteilung von Auskünften an nationale Patentämter von Nichtvertragsstaaten keinesfalls auf Sachangeben erstrecken.

Ferner sollten die betreffenden Stellen ohne Rücksicht auf die Gründe bei diesen Auskunftserteilungen und sonstigen Mitteilungen den Grundsatz der Geheimhaltung im Interesse des Anmelders beachten.

32 Artikel 133, 134 und 162

Die Stellungnahmen, Bemerkungen und Vorschläge des FEMIPI zu diesen Artikeln, die die Vertretung vor dem Europäischen Patentamt betreffen, sind in den Nummern 1 bis 12 enthalten.

In diesem Zusammenhang legt der FEMIPI angesichts der Unterschiedlichkeit der zur Zeit gelten- den einzelstaatlichen Regelungen und im Interesse einer Vereinheitlichung, Wert auf die Feststellung, daß die Vertreter der Industrie bis an die Grenze der für sie annehmbaren Zugeständnisse gegangen sind, die zum Teil übrigens dazu führen, daß Vorrechte, die sie zur Zeit in Anspruch nehmen können, hinfällig werden.

33 Artikel 135

Es dürfte sowohl im Interesse der Patentinhaber als auch der Dritten nicht zweckmäßig sein, die „Umwandlung“ einer europäischen Patentanmeldung unter den in Artikel 135 Absatz 1 Buchstabe b vorgesehenen Bedingungen zuzulassen.

28 Articles 107 and 108

The appeals procedure should be divided into two stages: the first, the formal lodging of the appeal, being required to be made within a period of two months, and the second, the statement of the grounds on which the appeal is based, being required to be made within a maximum period of six months.

29 Article 120, paragraph 2 (This Article has been taken by FEMIPI as an example)

FEMIPI strongly recommends that the time limits provided for the procedure, such as that laid down in Article 120, paragraph 2, should be at least two months.

30 Article 128, paragraph 5

The information available to third parties before publication should also, where appropriate, comprise the reference to the priority and the reference to the PCT origin of the application.

31 Articles 130 and 131

In the opinion of FEMIPI, information communicated to the national offices of non-Contracting States should in no event include information of substance.

In addition, whatever the reasons for such exchanges of information and for any other communications, the principle of the secrecy of the proceedings of the bodies concerned should be observed in the interests of the applicant.

32 Articles 133, 134 and 162

The observations, comments and suggestions of FEMIPI on these Articles, which deal with representation before the European Patent Office, are contained in references 1 to 12.

In this connection FEMIPI would stress that in view of the diversity of the present national systems and in the interests of standardisation, agents of industry have made all the possible concessions acceptable to them even to the extent of making certain concessions which will lead to a loss of some rights at present enjoyed.

33 Article 135

Both in the interests of patentees and in the interests of third parties it would appear to be undesirable to permit the "conversion" of a European patent application in the circumstances laid down in Article 135, paragraph 1(b).
14 Die nachstehenden Bemerkungen betreffen gegebenenfalls zugleich die Artikel des Übereinkommens-entwurfs und die Regeln des Ausführungsordnungs-entwurfs.

15 Artikel 14, Regel 2 Absatz 1

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

16 Artikel 16

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

17 Artikel 17, 18 und 31 Absatz 1 Buchstabe a

Die Prüfungsabteilungen sollten nicht unbedingt und für ständig auf einen einzigen Prüfer verringert werden; ferner sollte ein Prüfer, der in einer Einspruchsabteilung mitwirkt, weder deren Vorsitzender noch Berichterstatter sein.

18 Artikel 67 Absatz 2

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

19 Artikel 74, Regel 25 Absatz 1a

Es sollte die Möglichkeit vorgesehen werden, eine Anmeldung jederzeit zu teilen, sofern der Gegenstand der Teilanmeldung in mindestens einem der anfänglich eingereichten Patentansprüche enthalten ist.

20 Artikel 76, Regel 24 Absatz 2

Das Europäische Patentamt sollte zur Kontrolle auf der Empfangsbescheinigung neben dem Tag des Eingangs und der Nummer der Anmeldung auch noch systematisch alle eingegangenen Unterlagen aufführen.

(4) Der Präsident des Europäischen Patentamts kann von dem in Absatz 3 Satz 1 genannten Erfordernis, daß die Vertretung oder eine Tätigkeit auf dem Gebiet des Patentwesens auf andere Weise fünf Jahre lang ausgeübt worden ist, Befreiung erteilen, wenn der Antragsteller nachweist, daß er die erforderliche Befähigung anderweitig erworben hat.


(7) Personen, die in die Liste der zugelassenen Vertreter aufgrund Absatz 1 eingetragen sind, bleiben auch nach Ende der Übergangszeit, ohne die europäische Eignungsprüfung nach Artikel 134 Absatz 2 Buchstabe c ablegen zu müssen, unberührt der Bestimmungen des Absatzes 6 unbeschrankt zur Vertretung vor dem Europäischen Patentamt rechtlich, selbst wenn sie nicht Angehörige eines Vertragsstaats sind, sofern gemäß den Absätzen 2 und 3 ihre Befähigung durch die Bescheinigung der Zentralbehörde für den gewerblichen Rechtsschutz festgestellt worden ist.

Die nachstehenden Bemerkungen des Europäischen Verbands der Industrie-Patentingenieurwesen (FEMIPI) betreffen den Entwurf eines Übereinkommens über...

The present comments have been drawn up by the European Federation of Agents in Industry in Industrial Property (FEMIPI). They concern the...
tretung in Verfahren vor dem Europäischen Patentamt zu begründen.

(5) Der Präsident des Europäischen Patentamts kann in besonders gelagerten Fällen von der Voraussetzung nach Absatz 2 Buchstabe a Befreiung ertheilen.


(7) Der Verwaltungsrat kann Vorschriften über die Vorbildung und die Ausbildung erlassen, die eine Person besitzen muß, um zu der europäischen Eignungsprüfung zugelassen zu werden, über die Durchführung der europäischen Eignungsprüfung, die Errichtung oder Anerkennung eines Instituts, in denen die zugelassenen Vertreter zusammen geschlossen sind, sowie über die Disziplinargewalt, die dieses Institut oder das Europäische Patentamt über diese Person besitzt."

12 Artikel 162 — Zugelassene Vertreter während einer Übergangszeit

"(1) Während einer Übergangszeit, deren Ende der Verwaltungsrat bestimmt, kann in Abweichung von Artikel 134 Absatz 2 in die Liste der zugelassenen Vertreter jede natürliche Person eingetragen werden, die (. . .)

a) ihren Geschäftsitz oder Arbeitsplatz im Gebiet eines Vertragsstaats hat;

b) befugt ist, die Vertretung auf dem Gebiet des Patentwesens in dem Vertragsstaat, in dem sie ihren Geschäftsitz oder Arbeitsplatz hat, gemäß einer Bescheinigung auszuüben, die die Zentralbehörde für den gewerblichen Rechtsschutz des betreffenden Vertragsstaats ausgestellt hat.

Die Eintragung erfolgt auf Antrag, dem Bescheinigungen beizufügen sind, aus denen sich die Erfüllung der obengenannten Voraussetzungen ergibt.

(2) Unterliegt in einem Vertragsstaat die Befugnis zur Vertretung auf dem Gebiet des Patentwesens nationalen Vorschriften und dem Erfordernis einer besonderen Befähigung, so muß sich aus der Bescheinigung der Zentralbehörde für den gewerblichen Rechtsschutz dieses Staates ergeben, daß der Antragsteller eine besondere Eignungsprüfung abgelegt hat; gegebenenfalls muß sich aus dieser Bescheinigung auch ergeben, in welchem Umfang der Antragsteller die Vertretung vor dieser Behörde wahrnehmen darf.

(3) Unterliegt in einem Vertragsstaat die Befugnis zur Vertretung auf dem Gebiet des Patentwesens keinen nationalen Vorschriften und/oder nicht dem establish a place of business in the Federal Republic of Germany and the Netherlands for the purpose of acting as a professional representative in proceedings before the European Patent Office.

(5) The President of the European Patent Office may, in special circumstances, grant exemption from the requirement of paragraph 2(a).

(6) (. . .) Representation before the European Patent Office may also be undertaken by any legal practitioner qualified in one of the Contracting States and having his place of business within such State, to the extent that he is able, within the said State, to act as a (. . .) representative in patent matters. Paragraph 4 shall apply mutatis mutandis.

(7) The Administrative Council may adopt provisions governing the qualifications and training required of a person for admission to the European qualifying examination, the conduct of the European qualifying examination, the establishment or recognition of an institute constituted by the persons entitled to act as professional representatives, and any disciplinary power to be exercised by that institute or the European Patent Office on such persons."

12 "Article 162 — Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person (. . .) may be entered on the list of professional representatives who:

(a) has his place of business or employment within the territory of one of the Contracting States;

(b) is authorised to act in patent matters in the territory of the Contracting State in which he has his place of business or employment, pursuant to a certificate issued by the central industrial property office of the said Contracting State.

Entry shall be effected upon request, accompanied by certificates which must indicate that the above mentioned conditions are fulfilled.

(2) When, in any Contracting State, entitlement to act in patent matters is governed by national regulations and is conditional upon the requirement of special qualifications, the certificate furnished by the central industrial property office of that State must (. . .) indicate that the person applying to be entered on the list has passed a special qualifying examination and must also specify, where appropriate, the extent to which he may act as a (. . .) representative before this authority.

(3) When in any Contracting State, entitlement to act in patent matters is not governed by national regulations and/or conditional upon the requirement of special qualifications, persons applying to
"Article 133 – Representation"

(1) Subject to the provisions of paragraph 2, no person shall be compelled to be represented before the European Patent Office (…).

(2) Natural and legal persons not having either a residence or registered place of business within the territory of one of the Contracting States must be represented in all proceedings before the European Patent Office by a professional representative and act through him vis-à-vis that Office, other than in filing the European patent application; the Implementing Regulations may permit other exceptions.

(3) Natural and legal persons having their residence or registered place of business within the territory of one of the Contracting States shall be entitled to be represented in any proceedings before the European Patent Office by an employee, who need not be a professional representative but who must be authorised in accordance with the Implementing Regulations. The Implementing Regulations shall determine under what conditions an employee of such a legal person may also represent other legal persons which have their residence or (…) their registered places of business within the territory of one of the Contracting States and which have economic links with the first legal person.

(4) The Implementing Regulations shall prescribe special provisions concerning the (…) representation of parties acting in common.”

"Article 134 – Professional representatives"

(1) Representation of natural and legal persons in all proceedings before the European Patent Office may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the Office.

(2) Any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must be a national of one of the Contracting States;

(b) he must have his place of business or employment within the territory of one of the Contracting States;

(c) he must have passed the European qualifying examination.

Entry shall be effected upon request, accompanied by certificates which must indicate that the above conditions are fulfilled.

(3) Persons whose names appear on the list of professional representatives shall be entitled to act before all departments of the European Patent Office.

(4) Any person whose name appears on the list of professional representatives shall be entitled to
Der FEMIPI schlägt deshalb vor, in Artikel 162 Absätze 2 und 7 vorzusehen, daß eine besondere Eignungsprüfung abzulegen ist bzw. daß jede Einschränkung der Möglichkeit, die Vertretung vor dem Europäischen Patentamt nach der Übergangszeit auszuüben, aufgehoben wird.

8 In bezug auf Artikel 162 Absatz 3, der nach Ansicht des FEMIPI für die Vertragsstaaten gilt, in denen keine Vorschriften über die Befugnis zur Vertretung auf dem Gebiet des Patentwesens bestehen, möchte der FEMIPI nachdrücklich hervorheben,

a) daß in mehreren Ländern, die als Vertragsstaaten in Frage kommen, die Formalitäten bei der Einreichung und Prüfung von Patentanmeldungen es durchaus nicht für alle Gruppen von Vertretern erforderlich machen, vor der Zentralbehörde für den gewerblichen Rechtsschutz dieser Länder persönlich aufzutreten;

b) daß die Vertreter der Industrie im allgemeinen zur Aufgabe haben, Patenterteilungsverfahren in eigener Verantwortung zu bearbeiten, und zwar auch in den Ländern, in denen dieses Verfahren mit einer vorherigen Neuheits- und Patentierbarkeitsprüfung verbunden ist.

Der FEMIPI befürchtet deshalb, daß eine zu enge Auslegung des Artikels 162 Absatz 3 dazu führen könnte, daß in einigen Ländern entweder bei der Anwendung des Übereinkommens oder bei der Aufstellung von Vorschriften über die Befugnis zur Vertretung auf dem Gebiet des Patentwesens, mit denen dem genannten Artikel entsprochen werden soll, die derzeitigen Vorrechte der Industrievertreter in einer nach Ansicht des FEMIPI ungerechtfertigten Weise eingeschränkt werden.

Der FEMIPI beantragt daher, in Artikel 162 Absatz 3 ausdrücklich vorzusehen, daß die Berechtigung zur Vertretung auf dem Gebiet des Patentwesens vor dem Europäischen Patentamt nicht nur dann gegeben ist, wenn eine Vertretung vor der Zentralbehörde für den gewerblichen Rechtsschutz eines Vertragsstaats tatsächlich ausgeübt worden ist, sondern auch dann, wenn die Tätigkeit in der Eigenschaft als Vertreter der Industrie in einer besonderen Abteilung eines Unternehmens mit Sitz in einem Vertragsstaat ausgeübt wurde.

9 Der FEMIPI möchte abschließend darauf hinweisen, daß seine Bemerkungen und Vorschläge die Grundsätze der Artikel 133, 134 und 162 in der von der Regierungskonferenz erarbeiteten Fassung nicht in Frage stellen, sondern vielmehr zum Ziel haben, diese Bestimmungen genauer zu fassen oder gegebenenfalls Schwierigkeiten bei ihrer Anwendung vorzubehalten.

Der vollständige Wortlaut der Artikel 133, 134 und 162 in der sich aus den Bemerkungen und Vorschlägen des FEMIPI ergebenden Fassung wird nachstehend wiedergegeben; die weggefallenen Textstellen sind durch (…) gekennzeichnet, und die Änderungen sind kursiv gedruckt.

Finally, FEMIPI wishes to stress that the comments and suggestions which it has put forward are not intended to question the principles at the basis of the provisions of Articles 133, 134 and 162 as drawn up by the Inter-Governmental Conference, but that they are only intended to render these provisions more explicit and to forestall certain difficulties which might otherwise arise when they are applied.

The following gives in full the texts of Articles 133, 134 and 162 produced on the basis of the comments and suggestions made by FEMIPI; the deleted passages are indicated by (…) and the amendments are printed in italics.
Bemerkungen und Vorschlägen der FEMIPI ergeben den Texte sind in der Form von Textvorschlägen für die Artikel 133, 134 und 162 unter den Nummern 10 bis 12 wiedergegeben.

4 Hinsichtlich der Artikel 133, 134 und 162 in ihrer Gesamtheit möchte der FEMIPI die Frage stellen, ob der in der englischen Fassung des Übereinkommens verwandte Ausdruck ’professional representative’ den in den anderen Fassungen benutzten Ausdrücken, nämlich ’mandataire agréé’ bzw. ’zugelassener Vertreter’, wirklich entspricht.

Der FEMIPI glaubt nicht, daß diese Ausdrücke einander völlig entsprechen, und befürchtet daher, daß sich hieraus in der Praxis gewisse Schwierigkeiten ergeben könnten; im Übereinkommenstext sollte keine Unklarheit bestehen bleiben, die — entgegen den Grundzügen der von der Regierungskonferenz angenommenen Bestimmungen — zu einem Widerspruch gleich welcher Art führen könnte.

5 In bezug auf Artikel 133 Absatz 3 ist der FEMIPI der Ansicht, daß diese Bestimmung ’positiv’ ausgedrückt werden muß; in der Ausführungsordnung müssen also mit Inkrafttreten des Übereinkommens die Voraussetzungen festgelegt sein, unter denen ein Angestellter einer juristischen Person, der nicht auf der Liste der zugelassenen Vertreter steht, für andere juristische Personen, die zu derselben Unternehmensgruppe wie die erstgenannte juristische Person gehören, handeln kann.

6 Hinsichtlich des Artikels 162 Absatz 1 meint der FEMIPI, daß diese Bestimmung so gefaßt werden sollte, daß sie eine Parallelbestimmung zu Artikel 134 Absatz 2 bildet; der Artikel 162 Absätze 2 und 3 würde somit lediglich die Vertragsstaaten betreffen, in denen Vorschriften über die Befugnis zur Vertretung auf dem Gebiet des Patentwesens bestehen bzw. nicht bestehen.

7 Was den Artikel 162 Absätze 2 und 7 anbelangt, so meint der FEMIPI, daß in den Vertragsstaaten, in denen die Befugnis zur Vertretung auf dem Gebiet des Patentwesens dem Erfordernis einer besonderen Eignungsprüfung unterworfen ist, die natürlichen Personen, die diese Prüfung bestanden haben, zur Vertretung vor dem Europäischen Patentamt nach Ablauf der Übergangszeit ohne irgendwelche Einschränkungen ermächtigt werden sollten.

Der FEMIPI bedauert es sehr, daß in Anwendung besonderer nationaler Vorschriften Diskriminierungen geschaffen werden oder geschaffen werden könnten, die auf der Staatsangehörigkeit des Vertreters beruhen oder mit den Bedingungen zusammenhängen, unter denen er seinen Beruf ausübt; es ist ihr Wunsch, daß diese Diskriminierungen in kürzester Frist beseitigt werden und daß sie jedenfalls am Ende der in Artikel 162 vorgesehenen Übergangszeit nicht mehr bestehen.

Articles 133, 134 and 162 as derived from these comments and suggestions is given under points 10 to 12.

4 With respect to Articles 133, 134 and 162 taken as a whole, FEMIPI wonders whether the expression “professional representative” in the English version of the Convention does in fact correspond exactly to the expressions used in the other versions, i.e. “mandataire agréé” and “zugelassener Vertreter”.

FEMIPI does not believe that the English text corresponds exactly with the versions in the other two languages and therefore fears that certain practical difficulties of application may arise; it does not wish there to be any ambiguity in the text of the Convention which might lead to any sort of conflict in contradiction with the general lines of the provisions adopted by the Inter-Governmental Conference.

5 FEMIPI is of the opinion that Article 133, paragraph 3, should be worded in a “positive” manner; the Implementing Regulations must therefore, as from the entry into force of the Convention, lay down the conditions under which an employee of a legal person who is not registered in the list of professional representatives, may represent other legal persons having economic links with the first legal person.

6 FEMIPI considers that Article 162, paragraph 1, should be so worded as to constitute a parallel with Article 134, paragraph 2, thereby leaving the provisions of Article 162, paragraphs 2 and 3, to deal respectively with Contracting States in which there are rules governing entitlement to act as a representative in patent matters and Contracting States in which there are no such rules.

7 With respect to Article 162, paragraphs 2 and 7, FEMIPI considers that in the Contracting States in which entitlement to act as a representative in patent matters is subject to a special qualifying examination, natural persons who have passed this examination should be entitled to act as representatives before the European Patent Office without any restrictions after the expiry of the transitional period.

FEMIPI profoundly regrets that, under certain national provisions, discrimination is or could be applied on the basis of the nationality of the representative or in connection with the conditions under which the latter may carry out his profession; it desires discrimination of this nature to be eliminated as soon as possible and, in any event, as from the expiry of the transitional period laid down in Article 162.

FEMIPI therefore proposes that Article 162, para-
Der Europäische Verband der Industrie-Patentingenieure (FEMIPI), der sich aus nachstehenden nationalen Vereinigungen zusammensetzt:

- Verband Vertretungsberechtigter Patentingenieure und Patentassessoren e.V., Bundesrepublik Deutschland
- Ring der Angestellten in Gewerblichen Rechtschutz, Österreich
- Union Belge des Conseils d’Industrie en Propriété Industrielle / Belgische Vereniging der Nijverheidsraadgevers in Nijverheidseigendom, Belgien
- Dansk Forening for Industris Patentingeniører Danmark
- Association Francaise des Specialistes en Propriété Industrielle de l’Industrie, Frankreich
- Associazione Italiana dei Consulenti in Proprieta Industriale di Enti o Imprese, Italien
- Norsk Forening for Industris Patentingeniører, Norwegen
- Svenska Industriens Patentingenjörers Förening, Schweden

nimmt nachstehend zu den Artikeln 133, 134 und 162 des Entwurfs eines Übereinkommens über ein europäisches Patenterteilungsverfahren (Dokument M/1), der am 8. Dezember 1972 als vorbereitendes Dokument für die Münchner Diplomatische Konferenz veröffentlichte wurde, Stellung.


Der FEMIPI stellt fest, daß die Arbeit der Regierungskonferenz zu Bestimmungen geführt hat, die in ihren Grundsätzen die interessierten Kreise weitgehend befriedigen dürften, obgleich hinsichtlich ihrer Anwendung noch einige Vorbehalte vorgebracht werden können.

Der FEMIPI stellt insbesondere fest, daß durch diese Bestimmungen für die endgültige Regelung der Grundsatz der Gleichberechtigung bei gleicher Qualifikation zwischen den freiberuflichen Patentanwälten und den durch Arbeitsvertrag gebundenen Vertretern der Industrie angenommen wird.

The present comments have been drawn up by the European Federation of Agents of Industry in Industrial Property (FEMIPI), an organisation which comprises the following national associations:

- Verband Vertretungsberechtigter Patentingenieure und Patentassessoren e.V., Federal Republic of Germany
- Ring der Angestellten in Gewerblichen Rechtschutz, Austria
- Union Belge des Conseils d’Industrie en Propriété Industrielle / Belgische Vereniging der Nijverheidsraadgevers in Nijverheidseigendom, Belgium
- Dansk Forening for Industris Patentingeniører, Denmark
- Association Française des Spécialistes en Propriété Industrielle de l’Industrie, France
- Associazione Italiana dei Consulenti in Proprietà Industriale di Enti o Imprese, Italy
- Norsk Forening for Industris Patentingeniører, Norway
- Svenska Industriens Patentingenjörers Förening, Sweden

They concern Articles 133, 134 and 162 of the Draft Convention establishing a European System for the Grant of Patents (Document M/1), published on 8 December 1972 as a preparatory document for the Munich Diplomatic Conference.

The new provisions of Articles 133, 134 and 162 of the Draft Convention as contained in the text of 8 December 1972, dealing with representation before the European Patent Office, undoubtedly constitute a considerable improvement on Articles 153 and 154 of the previous drafts.

FEMIPI considers that the work of the International Governmental Conference has resulted in provisions the broad lines of which should to a large extent satisfy the interested circles even though some reservations may still be made as concerns their application.

FEMIPI notes in particular that, as concerns the system which will finally be applied, these provisions confirm the principle of the equivalence of rights, where their qualifications are the same, of patent agents carrying out their profession on a self-employed basis and agents of industry bound by an employment contract.

However, in the interests of clarity and exactness, FEMIPI wishes to put forward some additional comments and suggestions, some of which only concern the wording of the text. The wording of
STELLUNGNAHME DES
FEMIPI
Europäischer Verband der Industrie-Patentingenieure

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

PRISE DE POSITION DE LA
FEMIPI
Fédération européenne des mandataires de l'industrie en propriété industrielle
zunehmen, der wie folgt lauten könnte:


Dabei ist zu bemerken, daß eine solche Vorschrift die heutigen Rechte der Gesellschaften der betreffenden Länder erheblich einschränkt, weil sie die Möglichkeit ausschließt, daß Angestellte von Gesellschaften dieser Länder für Gesellschaften handeln können, die ihren Sitz nicht in einem Vertragsstaat haben.

Diesbezüglich will CIFE es bei seinem Einverständnis mit dieser Einschränkung belassen, da es vergeblich wäre, von Nichtvertragsstaaten entsprechende Konzessionen zu erwarten.

Fünfter Teil
ERFORDERNISSE
EUROPÄISCHER PATENTANMELDUNGEN
BETREFFEND MIKROORGANISMEN
(Regel 28)

Regel 28 schreibt unter anderem vor, daß ein Muster des Mikroorganismus bei einer bezeichneten Sammelstelle zu hinterlegen ist; sie schreibt ferner vor, daß das Muster der Öffentlichkeit spätestens am Tag der Veröffentlichung der Patentanmeldung unwiderruflich zugänglich sein muß, d.h. spätestens achtzehn Monate nach dem Prioritätstag. Die betroffene Industrie hatte noch keine Gelegenheit, diese Vorschrift mit den Regierungsdelegationen und ihren Beratern zu erörtern. Das vorliegende Memorandum will daher die Vorschriften dieser Regel behandeln.

48 In ihrer derzeitigen Form ist Regel 28 für die betroffene Industrie insoweit nicht annehmbar, als demjenigen, der Patentanmeldungen für Mikroorganismen einreicht, vorgeschrieben wird, der Öffentlichkeit mehr zugänglich zu machen als ein Anmelder in irgendeinem anderen Bereich. Der Mikroorganismus selbst ist zum Großteil als Know-how zu betrachten, das der Öffentlichkeit im Normalfall in einer Patentanmeldung nicht zugänglich gemacht wird. In diesem Bereich ist der Anmelder somit aufgrund der Regel 28 gezwungen, seinen Konkur-

"During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 133, paragraph 3, an employee of a legal person having a registered place of business within the territory of one of the Contracting States may act in any proceedings before the European Patent Office on behalf of other legal persons having a registered place of business within the territory of one of the Contracting States, to the extent that he is entitled to do so before the central industrial property office of the State in which his employer has its registered place of business."

It may be noted that this does in fact comprise a considerable restriction in regard of present rights in the countries concerned, since it excludes the possibility for employees of legal persons in these countries to represent legal persons not having a registered place of business in one of the Contracting States.
CEIF does not retract from its acceptance of such a restriction, considering that one would hope in vain for reciprocity on behalf of the non-Contracting States.

Part Five
REQUIREMENTS OF APPLICATIONS RELATING TO MICRO-ORGANISMS
(Regel 28)

47 This Rule has been introduced into the said regulations recently and was published in the preparatory documents dated 8 December 1972. The said Rule requires inter alia the deposit of a sample of the micro-organism with an appointed culture collection; it is further required that the sample must be available to the public irrevocably not later than the date of publication of the application, that is not later than 18 months after the priority date. The industries concerned have not yet had the opportunity of discussing these requirements with the Government delegations and their advisers. It is, therefore, the aim of these comments to deal with the implications of the said Rule.

48 Rule 28 in its present form is unacceptable to the industries concerned, in as much as it requires the applicant of applications relating to micro-organisms to give more to the public than any applicant on other fields. The micro-organism itself must largely be regarded as know-how which is normally not disclosed to the public in the patent application. Thus, the applicant in the instant field is by means of Rule 28 required to put his competitors in a position to almost immediately copy his invention since he is to make available to the public the

(4) Der Präsident des Europäischen Patentamts kann vom Erfordernis der fünfjährigen regelmäßigen Ausübung einer Tätigkeit auf dem Gebiet des Patentwesens vor der Zentralbehörde für den gewerblichen Rechtsschutz eines Vertragsstaats nach Absatz 3 Satz 1 Befreiung erteilen, wenn der Antragsteller nachweist, daß er die erforderliche Befähigung auf andere Weise erworben hat.

(5) Personen, die ihren Geschäftssitz oder ihren Arbeitsplatz in einem Staat haben, der diesem Übereinkommen weniger als ein Jahr vor Ablauf der Übergangszeit nach Absatz 1 oder nach Ablauf der Übergangszeit beitrifft, können während einer Zeit von einem Jahr, gerechnet vom Zeitpunkt des Wirksamwerdens des Beitritts des genannten Staats an, unter den Voraussetzungen der Absätze 1 bis 4 in die Liste der zugelassenen Vertreter eingetragen werden.


Während der Anhörung der interessierten Kreise in Luxemburg im Januar 1972 hat der Präsident der Konferenz die Absicht der Konferenz der Sachverständigen unterstrichen, während der Übergangsperiode die vorhandene Lage und die erworbenen Rechte zu respektieren, ohne sie auszuweiten oder einzuschränken.

Diesbezüglich ist darauf hinzuweisen, daß die gegenwärtigen Rechte zur Vertretung anderer Gesellschaften, über die Gesellschaften in manchen Mitgliedstaaten verfügen, vergessen worden sind. Folglich wird vorgeschlagen, einen Artikel 161 bis auf-

of the said State must have habitually done so for at least five years. However, persons whose professional qualification to represent natural and legal persons in patent matters before the central industrial property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.

(4) The President of the European Patent Office may grant exemption from the requirement of having habitually acted for five years before the central industrial property office of a Contracting State in accordance with paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(5) Persons having their places of business or employment in a State which acceded to this Convention less than one year before the expiry of the transitional period referred to in paragraph 1 or after the expiry of the transitional period, may, under the conditions laid down in paragraphs 1 to 4, during a period of one year calculated from the date of entry into force of the accession of that State, be entered on the list of professional representatives.

(6) Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives may only act before the European Patent Office to the extent that they are entitled, within the terms of the certificate furnished by the central industrial property office to act in patent matters in the Contracting States in which they exercise their profession.

(7) Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives, shall remain entered on that list, but without any restrictions on their entitlement to act after the expiry of the transitional period without having to take the European qualifying examination under Article 134, paragraph 2(c), even though they may not be nationals of one of the Contracting States.

The President of the Conference at the hearing at Luxembourg in January 1972 stressed the desire of the Conference of Experts to respect during the transitional period existing rights and situations without extension or reduction.

In this context it is noted that the present right that in some States companies have to represent other companies has been forgotten and it is therefore requested to add an Article 161(a) which might be worded:

45

46
43 The wording has been improved, but it still has not avoided the use of the words "profession" and "professional" in English and in French. The term does not cover exactly the same concept in the two languages, particularly if one takes into account differences at the national level in the United Kingdom and in European countries where the choice of representative is left free.

In order to improve matters, it is suggested to have these Articles preceded by a paragraph stating that the terms "profession, professional" are to be understood as applying to all persons habitually exercising an activity in the field of industrial property, on a self-employed basis or in industrial employment.

44 The wording of Article 162, even considering the cautionary statement according to the suggestion above, in the opinion of CEIF contains inappropriate expressions, in particular "represent" in paragraph 1(b), "en cette qualité" ("as professional representatives") in paragraph 3, "habituellement... as professional representative" in paragraph 4 "en qualité de mandataire agréé" (as professional representatives) in paragraph 6, for these clauses refer to national situations in which precisely there are no "mandataires agréés" nor is there "habilitation".

CEIF accordingly proposes the following purely editorial amendments which only concern those countries where the choice of representative is free.

Article 162 (amended)

(amended parts printed in italics)

"(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must have his place of business or employment within the territory of one of the Contracting States;

(b) he must be authorised to act on behalf of natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.

(2) Entry shall be effected upon request, accompanied by certificates which must indicate that the above-mentioned conditions are fulfilled. The certificate furnished by the central industrial property office must also specify the extent of the entitlement to act as a professional representative before this authority.

(3) When, in any Contracting State, entitlement to act in patent matters before the central industrial property office is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in patent matters before the central industrial property office
mit PCT-Ursprung handelt, sofern dies der Fall ist.

Artikel 157 — Veröffentlichung der internationalen Anmeldung

38 CIFE möchte, daß im Europäischen Patentblatt auf die Veröffentlichung der europäischen Anmeldung auch dann hingewiesen wird, wenn die entsprechende internationale Anmeldung bereits veröffentlicht worden ist.

Part Three
EDITORIAL COMMENTS

Article 16 — Competence of the Receiving Section

39 At least in the French text it would be desirable to improve the wording to render more explicit the cumulative character of the two conditions, the Receiving Section remaining responsible up to the date of the later of the two conditions to be fulfilled.

Artikel 58 Absatz 1 — Recht auf das europäische Patent

40 Es dürfte zweckmäßiger sein, den derzeitigen Absatz 1 wie folgt in zwei Absätze einzuteilen, wobei der bisherige Absatz 2 zu Absatz 3 würde:

(1) Das Recht auf das europäische Patent . . . , dem der Arbeitnehmer angehört.

(2) Haben mehrere eine Erfindung . . . benannten Vertragsstaaten.

(3) Im Verfahren . . . in den Absätzen 1 und 2 vorgesehene Recht geltend zu machen."

Artikel 88 Absatz 2 — Eingangsprüfung

41 Eine genauere Formulierung wäre wünschenswert. Anstelle von „so wird die Anmeldung nicht als europäische Patentanmeldung behandelt“ wäre es zweckmäßiger zu sagen: „so gilt die Anmeldung als nicht eingereicht“.

Part Four
REPRESENTATION

Artikel 133, 134 and 162

42 CIFE hält den derzeitigen Wortlaut der Artikel 133 und 134 in sachlicher Hinsicht für zufriedenstellend.

Articles 133, 134 and 162

42 The present text of Articles 133 and 134 is considered satisfactory by CEIF as to their substance.
STELLUNGNAHME DES
CIFE
Rat der Europäischen Industrieverbände

COMMENTS BY
CEIF
Council of European Industrial Federations

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

(1) English translation submitted by CEIF
der Vertretung im Beschwerdeverfahren vor dem Europäischen Patentamt ausgeschlossen seien.

Artikel 162, Absatz (3), Satz 1

20 *Vorschlag:*

Im deutschen Text ist in Zeile 1 nach dem Wort „zur“ einzufügen „beruflichen“ und in Zeile 6 der Ausdruck „regelmäßig“ zu ersetzen durch „berufsmäßig“.

Im französischen Text ist in Zeile 2 nach dem Wort „agir“ einzufügen „professionnellement“.

*Begründung:*

Die Korrekturen sind erforderlich, um den deutschen und den französischen Text dem englischen Text anzupassen, der den richtigen Sinn wiedergibt.

Artikel 162, Absatz (7)

21 *Vorschlag:*

Der mit „ohne daß“ beginnende letzte Satz des Absatzes ist zu streichen.

*Begründung:*

Dieser Teil ist überflüssig und könnte nur verwirrend wirken.

II. REGELN

Regel 2, Absatz (1)

22 *Vorschlag:*

Im deutschen Text werden in Zeile 4 das Wort „entweder“ gestrichen und in Zeile 5 die Worte „zwei Wochen“ ersetzt durch „einen Monat“.

In den Zeilen 6 bis 7 werden die Worte „oder selbst für die Übersetzung in die Verfahrenssprache sorgt“ gestrichen.

In Zeile 10 werden nach dem Wort „sorgt“ die Worte „und dies dem Europäischen Patentamt spätestens einen Monat vor dem angesetzten Termin mitteilt“ eingefügt.

*Begründung:*

Wenn gleich die Verhandlungen stets in der Verfahrenssprache durchgeführt werden, hat dann, wenn ein Beteiligter in einer anderen Amtssprache des Europäischen Patentamtes vorträgt, ein anderer Beteiligter — obwohl formell nur der Vortrag des Dolmetschers gilt — ein berechtigtes Interesse daran, sich darauf rechtzeitig einstellen zu können, wenn ein an der Verhandlung teilnehmendes Mitglied des

Article 162, paragraph 3, 1st sentence

20 *Proposal:*

In the German text, the word “beruflichen” is to be inserted in line 1 after the word “zur” and in line 6 the expression “regelmäßig” is to be replaced by “berufsmäßig”. In the French text, “professionnellement” is to be inserted in line 2 after the word “agir”.

*Grounds:*

The corrections are necessary in order to bring the German and French texts into conformity with the English text which conveys the correct meaning.

Article 162, paragraph 7

21 *Proposal:*

The last part of the paragraph beginning with “without having to” is to be deleted.

*Grounds:*

This part is superfluous and could only result in confusion.

II. RULES

Rule 2, paragraph 1

22 *Proposal:*

In line 11, after the word “proceedings” insert: “and that he notified the European Patent Office to this effect not later than one month before the date laid down”.

*Grounds:*

Although the hearings are always held in the language of the proceedings, if an interested party employs another official language of the European Patent Office, then any other interested party — although this formally only applies to submissions by the interpreter — has a justified right to be able immediately to follow the proceedings, even if a member of the Patent Office participating in the discussion can follow the submissions of the said interested party in such other language. As a rule it will be the submissions of the interested party in the language he uses, and not that of his interpreter, which will be decisive for the hearing.
Artikel 162, Absatz (1)

17 Vorschlag:

Der Absatz sollte wie folgt geändert werden:

„Während einer Übergangszeit, deren Ende der Verwaltungsrat bestimmt, kann in Abweichung von Art. 134, Abs. (2)c, in die Liste der zugelassenen Vertreter jede natürliche Person eingetragen werden, die befugt ist, natürliche oder juristische Personen auf dem Gebiet des Patentwesens vor der Zentralbehörde für den gewerblichen Rechtsschutz des Vertragsstaates zu vertreten, in dem sie ihren Geschäftssitz oder Arbeitsplatz hat“. Begründung:

Die Voraussetzung der Nationalität gemäß Art. 134, Abs. (2)a muß auch für die Übergangszeit gelten. Wenn nach dem Recht eines Vertragsstaates eine Person, die nicht die Staatsangehörigkeit dieses Vertragsstaates hat, zur Vertretung vor dem Patentamt dieses Vertragsstaates berechtigt ist, so wird dieses Recht durch die vorgeschlagene Regelung nicht beeinträchtigt. Es besteht jedoch kein hinreichender Grund, dieses Recht stets auf das Europäische Patentamt auszudehnen. Es genügt, daß für besonders gelagerte Fälle eine Regelung gemäß Art. 162, Abs. (5) vorgesehen ist.

Artikel 162, Absatz (1)b

18 Vorschlag:

Im englischen Text ist in Zeile 1 das Wort „authorised“ zu ersetzen durch „entitled“.

Begründung:

Der Ausdruck „authorised“ würde den irren Eindruck erwecken, als handele es sich hier um eine Bevollmächtigung durch einen Auftraggeber; tatsächlich handelt es sich jedoch um ein durch das Abkommen begründetes Recht.

Artikel 162, Absatz (2)

19 Vorschlag:

Die Worte „der Umfang ... Behörde anzugeben“ sind zu ersetzen durch „anzugeben, auf welchen Personenkreis die Befugnis zur Vertretung vor dieser Behörde beschränkt ist“.

Begründung:

Der Text sollte klären, daß die Beschränkung sich auf einen Teil der Personen bezieht, die vertreten werden könnten, und nicht etwa auf einen Teil der Zentralbehörde für den gewerblichen Rechtsschutz. Das ist überdies notwendig, damit nicht etwa Art. 162(6) ausgelegt werden könnte, daß beispielsweise französische Patentanwälte von...
STELLUNGNAHME DER

UNEPA
Union Europäischer Patentanwälte

COMMENT BY
UNEPA
Union of European Patent Agents

PRISE DE POSITION DE

L'UNEPA
Union des Conseils en brevets européens

(1) English translation submitted by UNEPA
(2) La traduction française a été fournie par l'UNEPA
und Verurteilung wegen einer Straftat schließen die Ausübung der Vertretung aus und sind beispielsweise Gründe für die Löschung in der Liste.

Artikel 134 – Regel 107


Artikel 141

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

Artikel 162 Absatz 2

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

Artikel 162 Absatz 2

37 Es ist nicht klar, worauf sich das Wort „Umfang“ bezieht. Bezieht es sich auf Gruppen oder Kategorien von Anmeldern, für die er handeln kann, auf die Abteilungen der Zentralbehörde für den gewerblichen Rechtsschutz, vor denen er auftreten kann, oder auf die Anzahl der Anmeldungen, die er einreichen kann? Es wird empfohlen, daß dieser Absatz sowie Artikel 162 Absatz 6 die Anwendbarkeit des Artikels 134 Absatz 3 nicht beeinträchtigen dürfen.
STELLUNGNAHME DES
CNIPA
Committee of National Institutes of Patent Agents

COMMENTS BY
CNIPA
Committee of National Institutes of Patent Agents

PRISE DE POSITION DU
CNIPA
Committee of National Institutes of Patent Agents
Die Anlage 2

41 Vorschlag eines neuen Artikels

Artikel 161 bis
Vertretung während einer Übergangszeit


Die Anlage 3


Regel 28 schreibt unter anderem vor, daß ein Muster des Mikroorganismus bei einer bezeichneten Sammelstelle zu hinterlegen ist; sie schreibt ferner vor, daß das Muster der Öffentlichkeit spätestens am Tag der Veröffentlichung der Patentanmeldung unwiderruflich zugänglich sein muß, d.h. spätestens achtzehn Monate nach dem Prioritätsaß. Die betroffene Industrie hatte noch keine Gelegenheit, diese Vorschriften mit den Regierungsdelegationen und ihren Beratern zu erörtern. Die vorliegende Stellungnahme will daher die Vorschriften dieser Regel behandeln.

43 In ihrer derzeitigen Form ist Regel 28 für die betroffene Industrie insoweit nicht annehmbar, als denjenigen, der Patentanmeldungen für Mikroorganismen einreicht, vorgeschrieben wird, der Öffentlichkeit mehr zugänglich zu machen als ein
b) Die Person muß befugt sein, für natürliche oder juristische Personen auf dem Gebiet des Patentwesens vor der Zentralbehörde für den gewerblichen Rechtsschutz des Vertragsstaats aufzu treten, in dem sie ihren Geschäftsitz oder Arbeitsplatz hat.

(2) Die Eintragung erfolgt auf Antrag, dem Bescheinigungen beizufügen sind, aus denen sich die Erfüllung der in Absatz 1 genannten Voraussetzungen ergibt. In der Bescheinigung der Zentralbehörde für den gewerblichen Rechtsschutz ist auch der Umfang der Befugnis zur Vertretung vor dieser Behörde anzugeben.


(4) Der Präsident des Europäischen Patentamts kann vom Erfordernis der fünfjährigen regelmäßigen Ausübung einer Tätigkeit auf dem Gebiet des Patentwesens vor der Zentralbehörde für den gewerblichen Rechtsschutz eines Vertragsstaats nach Absatz 3 Satz 1 Befreiung erteilen, wenn der Antragsteller nachweist, daß er die erforderliche Befähigung auf andere Weise erworben hat.


(7) Personen, die in die Liste der zugelassenen Vertreter aufgrund Absatz 1 eingetragen sind, bleiben auch nach Ende der Übergangszeit in dieser
ment within the territory of one of the Contracting States;

(b) he must be authorised to act on behalf of any natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.

(2) Entry shall be effected upon request, accompanied by certificates which must indicate that the above-mentioned conditions are fulfilled. The certificate furnished by the central industrial property office must also specify the extent of the entitlement to act as a professional representative before this authority.

(3) When, in any Contracting State, entitlement to act in patent matters before the central industrial property office is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in patent matters before the central industrial property office of the said State must have habitually done so for at least five years. However, persons whose professional qualification to represent natural and legal persons in patent matters before the central industrial property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.

(4) The President of the European Patent Office may grant exemption from the requirement of having habitually acted for five years in patent matters before the central industrial property office of a Contracting State in accordance with paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(5) Persons having their places of business or employment in a State which acceded to this Convention less than one year before the expiry of the transitional period referred to in paragraph 1 or after the expiry of the transitional period, may, under the conditions laid down in paragraphs 1 to 4, during a period of one year calculated from the date of entry into force of the accession of that State, be entered on the list of professional representatives.

(6) Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives may only act before the European Patent Office to the extent that they are entitled, within the terms of the certificate furnished by the central industrial property office to act in patent matters in the Contracting States in which they exercise their profession.

(7) Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives shall remain entered on that list, but without
abgeändert werden sollte. Die gewünschten Änderungen sind in der Anlage 3 erläutert.

Regel 30 (a)

35 Es wird vorgeschlagen, die Worte „besonders angepaßtes“ zu streichen.

Regel 40

36 Es ist wünschenswert, die Regel 40 so zu verbessern, daß sie keine Bezugsnahme auf die gesamte Regel 36 (1) enthält. Die Regel 36 (1) nimmt ihrerseits nämlich Bezug auf Vorschriften, die den Bereich der reinen Formvorschriften überschreiten.

Regel 41

37 Es besteht Anlaß, eine größere Freiheit für die Korrektur der Prioritätsangaben einzuräumen, d.h. der Anmelder sollte eine Frist von zwei Monaten haben, um solche Korrekturen vornehmen zu können.

Regel 70 (2)

38 Es ist unumgänglich, daß das Europäische Patentamt dem Betroffenen mitteilt, ob es seinen Antrag stattgegeben hat, damit er die Weiterbehandlungsgebühr entrichten kann.

Regel 99 (3)


ANLAGE 1

40 Vorschlag für eine Neufassung des Artikels 162

„Zugelassene Vertreter während einer Übergangszeit

(1) Während einer Übergangszeit, deren Ende der Verwaltungsrat bestimmt, kann in Abweichung von Artikel 134 Absatz 2 in die Liste der zugelassenen Vertreter jede natürliche Person eingetragen werden, die die folgenden Voraussetzungen erfüllt:
   a) Die Person muß ihren Geschäftssitz oder Arbeitsplatz im Gebiet eines Vertragsstaats haben;

40 Proposal for a new text for Article 162

„Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:
   a) he must have his place of business or employ-
Die U.N.I.C.E. ist der Ansicht, daß die Umwandlung in den in Absatz (1)b vorgesehenen Fällen ausge- schlossen werden sollte. Dies erfordert nicht nur die Streichung des Absatzes (1)b, sondern ein formelles Verbot für die Vertragsstaaten, die Umwandlung in den aufgezeigten Fällen zuzulassen.

Artikel 157

22 UNICE considers that conversion should be excluded in the circumstances laid down in paragraph 1(b). This would not only require paragraph 1(b) to be deleted, but also require the Contracting States to the Convention to be formally prohibited from allowing conversions in such cases.

Es ist wünschenswert, in einer Notiz im Europa- päischen Patentblatt auf die Veröffentlichung internationaler Anmeldungen nach Artikel 21 des Zu- sammenarbeitsvertrages hinzuweisen, damit die interessierten Kreise einen Gesamtüberblick über die eingereichten Anmeldungen haben können, wenn sie nur die Veröffentlichungen dieses Patentblattes ver- folgen.

Article 157

23 The European Patent Bulletin should contain a note on the publication under Article 21 of the Cooperation Treaty of international applications so that the interested circles may obtain an overall view of the applications filed by consulting this Bulletin alone.

Eine Klärung erscheint wünschenswert, ob für alle Anmeldungen ein Recherchenbericht erstellt wird, auch wenn sie anschließend nicht weiterverfolgt werden können.

Article 161

24 It should be clarified whether or not search reports should be drawn up for all applications even where they cannot be followed up.

Um zu vermeiden, daß der englische Text, der den Begriff „professional representatives“ verwendet, zu einer Auslegung führt, die mit dem deutschen und französischen Text nicht vereinbar ist (im Deut- schen: „zugelassener Vertreter“, im Französischen: „mandataires agréés“), sollte in einer Randnote präzisiert werden, daß dieser Begriff Angestellte und Freiberufliche umfaßt.

Article 162

25 In order to avoid the English text, which uses the term “professional representatives”, suggesting an interpretation which is incompatible with the German and French texts (in German: “zugelassener Vertreter”, in French: “mandataires agréés”), it should be stated in a note in the margin that this term comprises both persons exercising the profession on a self-employed basis and those doing so on a salaried basis.


Article 162

26 The improved text of Article 162 still contains some traces of the old version which should be adjusted to the amendments made. In this connection, UNICE proposes a text which is enclosed in Annex 1.

Während der Anhörung der interessierten Kreise in Luxemburg im Januar 1972 hat der Präsident der Konferenz die Absicht der Konferenz der Sachver- ständigenden unterstrichen, während der Übergangsperiode die vorhandene Lage und die erworbenen Rechte zu respektieren, ohne sie auszuweiten oder einzuschränken.

Artikel 166 (2) a

27 Während der Anhörung der interessierten Kreise in Luxemburg im Januar 1972, der Präsident der Konferenz die Absicht der Konferenz der Sachver- ständigenden unterstrichen, während der Übergangsperiode die vorhandene Lage und die erworbenen Rechte zu respektieren, ohne sie auszuweiten oder einzuschränken.


28 UNICE wishes the period within which reservations
STELLUNGNAHME DER
UNICE
Union der Industrien der Europäischen Gemeinschaft

COMMENTS BY
UNICE
Union des Industries de la Communauté européenne

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

(1) Deutsche Übersetzung der Stellungnahme und der Anlage 2 vorgelegt von UNICE
(2) Annex 3 to these Comments submitted by UNICE in English
wird vorgeschlagen, zwischen „ou“ und „son“ einzusetzen „le lieu de“.

30 In der englischen Fassung des Art. 162(1)(b) wird vorgeschlagen, „authorised“ zu ändern in „entitled“.

31 Trotz der Versicherungen, die wiederholt von Behörden gegeben wurden, scheint doch an einigen Stellen ein Zweifel zu bestehen, ob Art. 162(6) möglicherweise im Sinne einer Beschränkung im Hinblick darauf, vor welchen Organen des Europäischen Patentamtes ein Vertreter einschreiten darf, auszulegen ist und so gegebenenfalls Art. 134(3) derogiert werden könnte.

32 Um jedwede derartige Zweifel auszuschließen, wird vorgeschlagen, am Ende des Art. 162(6) anzufügen: „Diese Bestimmung soll die Anwendbarkeit des Art. 134(3) nicht beeinträchtigen.“

Annahme von ins einzelne gehenden Regeln

33 Die FICPI drückt höflich den Wunsch aus, die Berufsorganisationen zu hören, bevor im Hinblick auf die vielen Regeln Entscheidungen getroffen werden, die vom Verwaltungsrat und dem Präsidenten des Europäischen Patentamtes anzunehmen sind, um die Bestimmungen des Vertrages zu verwirklichen.

34 In der deutschen Fassung des Art. 68(3) wird vorgeschlagen, die Worte „enger ist als der Schutzbereich in der Verfahrenssprache“ zu ersetzen durch „nicht über den Schutzbereich in der Verfahrenssprache hinausgeht“.

35 Dies scheint der Ausdrucksweise in der englischen und französischen Fassung besser zu entsprechen.

TEIL II
BEMERKUNGEN
zu anderen Artikeln, Regeln und Dokumenten

Übersetzung in Landessprachen

36 Es wird vorgeschlagen, in Art. 71, Zeile 1, zwischen „Kann“ und „Gegenstand“ einzusetzen „zur Gänze oder teilweise“. Es wird darauf hingewiesen, daß diese Art einer Lizenzvergabe bei den gegenwärtigen nationalen Patentsystemen nicht unüblich ist, insbesondere dann, wenn eine Erfindung über einen verhältnismäßig großen Benützungsbereich anwendbar ist.

37 Es wird vorgeschlagen, zwischen „ou“ und „son“ einzusetzten „le lieu de“.

38 In der englischen Fassung des Art. 162(1)(b) wird vorgeschlagen, „authorised“ zu ändern in „entitled“. It has been found that in spite of the assurances that have repeatedly been given by the authorities there still exists a doubt in some quarters as to whether Art. 162(6) could possibly be construed to refer to limitations in respect of the bodies of the European Patent Office before which a representative is entitled to act, and could possibly overrule Art. 134(3).

39 In order to remove any such doubts, it is proposed to add at the end of Art. 162(6):

“This provision shall not affect the applicability of Art. 134(3).”

Adoption of Detailed Rules

33 The FICPI respectfully expresses the wish that the profession may be heard before decisions are taken on the many rules which will have to be adopted by the Administrative Council and the President of the European Patent Office in order to materialise the provisions of the Convention.

34 In the German version of Art. 68(3) it is proposed to replace “enger ist als der Schutzbereich in der Verfahrenssprache“ by “nicht über den Schutzbereich in der Verfahrenssprache hinausgeht”. This would appear to agree more accurately with the expressions in the English and French versions.

PART II
NOTES
on other Articles, Rules and Documents

Translation into National Languages

34 In the German version of Art. 68(3) it is proposed to replace “enger ist als der Schutzbereich in der Verfahrenssprache“ by “nicht über den Schutzbereich in der Verfahrenssprache hinausgeht”. This would appear to agree more accurately with the expressions in the English and French versions.

Contractual Licensing

36 In Art. 71, line 1 it is proposed to add “in its entirety or in part” between “licensed” and “for”.

37 It is observed that this form of licensing is not unusual under present national patent systems, particularly in cases where an invention has applications over a relatively wide range of uses.
soll das Europäische Patentamt eine Eintragung des Vertreters in die Liste gemäß Art. 134(1) versagen oder soll ihn aus der Liste streichen oder suspendieren oder seine Berechtigung gemäß der jeweiligen Sachlage einschränken. Wenn später die Gründe für eine Streichung, Suspension oder Einschränkung der Berechtigung nicht mehr vorliegen, soll eine Wiederintragung der Person in die Liste oder ein Aufheben der Suspension oder der Beschränkung der Berechtigung die Ablegung der europäischen Patentanwaltsprüfung gemäß Art. 134(2)(c) nicht zwingenderweise mit sich bringen."

22 Die vorgeschlagene Regel soll auch andere Fälle decken, wie offensichtlich aus dem Text abgeleitet werden kann, z.B. den Fall, daß ein Vertreter seinen Geschäftssitz oder Arbeitsplatz für eine bestimmte Zeit oder für immer in ein Land verlegt, das kein Vertragsland ist.

23 Die Beschränkung der Berechtigung zu vertreten, soll den Fall umfassen, daß ein Vertreter die Bedingung unter (b) nicht erfüllt. Die Beschränkung kann dann darin liegen, daß er nicht berechtigt ist, als Vertreter einzusprechen, sondern seine Tätigkeit nur unter der finanziellen Verantwortlichkeit eines Arbeitgebers ausführen darf.

24 Eine wie oben vorgeschlagene Regel kann auch beim Verfahren um die Aufnahme in die Liste nützlich sein, und zwar im Hinblick darauf, daß kraft der Regel das Europäische Patentamt offensichtlich berechtigt wäre, vom Anmelder für eine Aufnahme eine Erklärung zu verlangen, daß er keine Umstände kennt, die das Europäische Patentamt zwingen würden, die Eintragung in die Liste gemäß Regel 108 zurückzuweisen.

25 Die vorgeschlagene Regel soll nur gewisse grundsätzliche Fälle decken, wo disziplinäre Maßnahmen von Anfang an als notwendig erachtet werden.

Vorschläge für Verbesserungen redaktioneller Art

26 In Art. 134(2)(b), französische Fassung, wird vorgeschlagen, zwischen „ou“ und „son“ einzusetzen „le lieu de“.

27 Am Beginn des Art. 134(3) wird vorgeschlagen, in der englischen Fassung „Subject to Art. 144“ anzufügen. (Entsprechende Verbesserungen sind auch in der deutschen und französischen Fassung durchzuführen.)

28 In der englischen Fassung des Art. 134(6) wird vorgeschlagen, die Worte „able within the said State to act as a professional representative in patent matters“ zu ändern in „entitled to act as a professional representative before the central industrial property office in that State“. Der Grund für diesen Vorschlag liegt darin, daß der Ausdruck „legal practitioner“ ziemlich unbestimmt erscheint.

29 In der französischen Fassung des Art. 162(1)(a)

representative on the List provided for in Art. 134, paragraph 1, or shall delete or suspend him from the List, or restrict his entitlement, as the case may be. If at a later time the grounds for deletion, suspension or restriction of entitlement no longer apply, re-entry of the person on the List or lifting of the suspension or restriction of entitlement shall not be conditional upon the passing of the European Qualifying Examination provided for in Art. 134(2)(c)."

22 The proposed Rule is intended also to cover other situations, as will probably be seen from the text, e.g. the situation where a representative moves his place of business or employment for a limited period or forever to a state not among the Contracting States.

23 Restriction of the entitlement to represent is particularly intended to cover the situation where a representative does not fulfil the condition sub (b). The restriction might then be that he is entitled to act as a representative only under the financial responsibility of an employer.

24 A Rule as proposed might also be useful for the procedure of admission to the List, seeing that on the strength of the Rule the European Patent Office would probably be entitled to demand a declaration from an applicant for admission to the effect that he is aware of no circumstances that would compel the European Patent Office to refuse to enter him on the List under Rule 108.

25 The proposed Rule is intended only to cover some basic situations where disciplinary measures are believed to be necessary right from the beginning.

Proposals for Amendments of an Editorial Nature

26 In Art. 134(2)(b), French version, it is proposed to insert “le lieu de” between “ou” and “son”.

27 At the beginning of Art. 134(3) it is proposed in the English version to add “Subject to Art. 144”. (Corresponding amendments to be made in the German and French versions.)

28 In the English version of Art. 134(6) it is proposed to change “able within the said State to act as a professional representative in patent matters” to “entitled to act as a professional representative before the central industrial property office in that State”. The reason for this proposal is that the term “legal practitioner” seems to be rather vague.

29 In the French version of Art. 162(1)(a) it is
Sitzverlegungen von Vertretern, denen sie Bescheinigungen ausstellten, zu überwachen.

17 Es wird angenommen, daß durch die Regel 107 tatsächlich beabsichtigt war, Fälle zu erfassen, wonach ein Vertreter seine Vertretungsrechte vor dem nationalen Patentamt aus Gründen wie grob ungehörige Verhaltensweise, strafrechtliche Verurteilung oder Konkurs verliert. In diesem Lichte gesehen, scheint die Regel 107 annehmbar zu sein.

18 Die Möglichkeit, derartige disziplinäre Maßnahmen von der nationalen Ebene auf die europäische Ebene zu verlegen, besteht immerhin nicht mehr für Vertreter, die gemäß den endgültigen Bestimmungen des Art. 134 eingetragen wurden; weder die Artikel noch die Regeln des Vertrages sagen darüber irgend etwas aus. Tatsächlich hat es sogar den Anschein, daß eine Person das Recht haben würde, in die Liste eingetragen zu werden, wenn sie den Bedingungen des Art. 134(2) entspricht, auch dann, wenn sie sich in Konkurs befindet oder eines Verbrechens oder einer ungehörigen Verhaltensweise schuldig befunden wurde, minderjährig ist oder wahnsinnig erklärt wurde (Umsätze, die nicht notwendigerweise ein Hindernis für das Bestehen der europäischen Patentanwaltsprüfung bilden müßten).

19 Dies ist offensichtlich nicht der beabsichtigte Sinn und es wurde innerhalb der FICPI diskutiert, ob es angezeigt wäre, einige weitere Bedingungen in Art. 134(2) anzufügen (der ursprünglich von der FICPI selbst formuliert worden war).

20 Nach weiteren Überlegungen kam die FICPI zu dem Schluß, dem Art. 134(2) keine weiteren Bedingungen anzufügen, da es für einen Bewerber um Aufnahme schwierig sein könnte, Beweise über die obengenannten weiteren Bedingungen vorzulegen, und auch deshalb, weil es einfacher ist, solche Bedingungen anpaßbar zu machen, wenn sie in Form von durch Art. 134(7) gegebenen disziplinären Maßnahmen in den Regeln enthalten sind.

21 Es wird daher vorgeschlagen, eine neue Regel 108 folgen zu lassen, die etwa wie folgt lauten könnte:

,,Regel 108

Wenn ein Vertreter
a) die Bedingungen des Art. 134(2)(a) und (b) vorbehaltlich Art. 134(5) oder Art. 162(1)(a) und (b) vorbehaltlich Art. 162(4a) nicht erfüllt oder
b) nicht berechtigt ist, über sein Eigentum zu verfügen, oder
c) in letzter Instanz eines Vergehens schuldig befunden wurde, das ihn für eine bestimmte Zeit oder für immer ungeeignet erscheinen läßt, ein Vertrauen zu genießen, wie dies einem Vertreter in Patentangelegenheiten zukommen sollte,

17 It is presumed that Rule 107 is in fact intended to cover situations where a representative loses his right of representation before a national patent office for reasons such as grossly improper conduct, conviction of criminal offences, or bankruptcy. As seen in this light Rule 107 seems to be reasonable.

18 However, the possibility of projecting such disciplinary measures from the national level to the European level no longer exists for representatives who have been entered under the final provisions of Art. 134, and neither the Articles nor the Rules of the Convention put anything in their stead. In fact it even seems as if a person would have a right to be entered on the List if he fulfils the conditions of Art. 134(1), even if he is under bankruptcy or has been found guilty of a crime or of improper conduct, or is a minor, or even has been declared insane (which would not necessarily be an obstacle to the passing of the European Qualifying Examination).

19 This is probably not the intended meaning, and it has been discussed within the FICPI whether it would be appropriate to add some further conditions to Art. 134(1) (which has in fact originally been formulated by the FICPI itself).

20 On further consideration the FICPI has arrived at the conclusion that it would be preferable not to add further conditions to Art. 134(1), because it might be difficult for an applicant for admission to furnish proof of the further conditions mentioned above, and also because it will be easier to modify such further conditions if they are included in the Rules in the form of disciplinary measures warranted by Art. 134(7).

21 It is therefore proposed to add a new Rule 108 reading approximately as follows:

"Rule 108

If a representative
(a) does not fulfil the conditions of Art. 134(2)(a) and (b) subject to Art. 134(5), or Art. 162(1)(a) and (b), subject to Art. 162(4a), or
(b) is not entitled to dispose of his property, or
(c) has been found guilty, without further recourse, of an offence making him unfit, for a limited period or forever, for the confidence which a representative in patent matters should enjoy,

the European Patent Office shall refuse to enter the
Vertretung vor nationalen Patentämtern, die europäische Patentanmeldungen für das Europäische Patentamt prüfen

10 Es wird vorgeschlagen, entweder dem Art. 134 oder dem Protokoll M/5 einen neuen Absatz etwa wie folgt anzufügen:

„Alle Bestimmungen des Art. 133 und des Art. 134 betreffend die Vertretung oder das Einschreiten vor dem Europäischen Patentamt sollen auch auf die Vertretung oder das Einschreiten vor jedem nationalen Amt, das für das Europäische Patentamt die Prüfung von europäischen Patentanmeldungen durchführt, Anwendung finden, soweit es sich um derartige europäische Patentanmeldungen handelt. Absatz 4 des Art. 134 soll auch auf Vertragsstaaten Anwendung finden, in denen solche nationale Ämter bestehen.“

11 Im Hinblick darauf, daß gemäß Dokument M/5 ein großer Teil der Prüfungsarbeit im Zusammenhang mit europäischen Patentanmeldungen für eine verhältnismäßig lange Zeit durch nationale Patentämter, die bestimmten Bedingungen entsprechen, durchzuführen sein könnten, erscheint eine derartige Bestimmung notwendig.

Streitung von Vertretern aus der Liste

12 Gemäß Regel 107 wird ein Vertreter, der in die Liste kraft einer durch das nationale Patentamt nach Art. 162 ausgestellten Bescheinigung eingetragen wurde, aus der Liste gestrichen, wenn der Vertreter die Voraussetzungen für das Ausstellen der Bescheinigung nicht oder nicht mehr erfüllt.


14 Soweit solche Länder in Betracht kommen, werden die für die Ausstellung einer Bescheinigung erforderlichen Bedingungen nicht mehr erfüllt, wenn der Vertreter seinen Geschäftssitz oder Arbeitsplatz in einem anderen Vertragsstaat verlegt. Der Regel 107 liegt nun kaum die Absicht zugrunde, daß ein Vertreter unter diesen Umständen aus der Liste gestrichen werden sollte.

15 Um dies zu klären, wird vorgeschlagen, in die Regel 107, Zeile 4, zwischen „oder“ und „nicht“ einzufügen „aus anderen Gründen als dem Wechsel des Geschäftssitzes oder Arbeitsplatzes“.

16 Es wird auch darauf hingewiesen, daß man nationalen Patentämtern kaum zumuten kann, mögliche

Representation before National Patent Offices conducting Examination of European Patent Applications on behalf of the European Patent Office

10 It is proposed to add a new paragraph worded roughly as follows either to Art. 134 or to Protocol M/5:

“All provisions of Art. 133 and Art. 134 regarding representation or action before the European Patent Office shall also apply to representation or action before any national office conducting examination of European patent applications on behalf of the European Patent Office, as far as such European patent applications are concerned. Paragraph 4 of Art. 134 shall also apply to Contracting States in which such national offices are located.”

11 Such a provision seems to be necessary in view of the fact that under Document M/5 a large proportion of the examination work in connection with European patent applications may for a relatively long period be conducted by national patent offices fulfilling certain conditions.

Deletion of Representatives from the List

12 Under Rule 107 a representative who has been entered on the List on the strength of a certificate furnished by a national patent office under the provisions of Art. 162 shall be deleted from the List if the representative does not fulfil or has ceased to fulfil the conditions required for the grant of the certificate.

13 The main condition required for the grant of the certificate by a national patent office is that of Art. 162(1)(b), viz. that the representative must be entitled to represent natural or legal persons in patent matters before the patent office in question. In many countries the entitlement to represent before the national patent office is conditional upon domicile in the country in question (in fact that is frequently the only condition).

14 As far as such countries are concerned, the conditions required for the grant of the certificate will no longer be fulfilled if the representative moves his place of business or employment to another Contracting State. It is hardly the intended meaning of Rule 107 that a representative should be deleted from the List in these circumstances.

15 To clarify this point it is proposed to add in Rule 107, line 3 between “or” and “has” “for reasons other than change of place of business or employment”.

16 It is also observed that national patent offices can hardly be expected to watch possible migrations of
5 Die Berechtigung des Grundsatzes, erworbene Rechte zu schützen, wird nicht bezweifelt. Es wird allerdings die Frage aufgeworfen, ob die Übergangsbestimmungen, die eine vollständige Ausnahme vom Erfordernis der Nationalität während der Übergangszeit gewähren, nicht weitergehen als dies notwendig ist, um erworbene Rechte von Vertretern, die keine Nationalität eines Vertragsstaates besitzen, zu schützen. Da die Übergangszeit auch mehr als fünf (5) Jahre von der Verlautbarung der Europäischen Patentkonvention an betragen kann, ist es denkbar, daß solche Vertreter erst nach einer Verlautbarung mit der Erwerbung derartiger Rechte beginnen könnten oder, mit anderen Worten, es könnten sich Vertreter außerhalb der Vertragsstaaten, die nicht die Nationalität eines Vertragsstaates besitzen, z.B. Mitglieder oder Angestellte großer Vereinigungen solcher Vertretungen, auf nationaler Basis als Vertreter in irgendeinem Vertragsstaat niederlassen, wo dies möglich ist, mit der gezeigten Absicht, Rechte zu erwerben, um ihnen (den Vertretern) eine Eintragung in die Liste nach Art. 162(3) zu ermöglichen.

6 Da im Hinblick auf das Dokument M/8 die Absicht besteht, die Errichtung des europäischen Patenterteilungsverfahrens der Diplomatischen Konferenz in München unmittelbar folgend beginnen zu lassen, ohne auf Ratifikationen zu warten, dürfte es angezeigt erscheinen, das Datum der Unterzeichnung der Konvention als das Datum ihrer Verlautbarung in Betracht zu ziehen.

7 Auf Grund der obenstehenden Überlegungen werden die folgenden Vorschläge unterbreitet:

8 In Art. 162(1) wird vorgeschlagen, eine erste Bedingung wie folgt dazuzugeben:

"(a) er muß Staatsangehöriger eines der Vertragsstaaten sein"

und die gegenwärtigen Bedingungen (a) und (b) in (b) und (c) umzubenennen.

9 Im Art. 162 wird vorgeschlagen, zwischen den bestehenden Absätzen 4 und 5 einen Absatz einzusetzen wie folgt:

"4a Der Präsident des Europäischen Patentamts kann bei besonderen Umständen Ausnahmen vom Erfordernis nach Absatz 1(a) gewähren. Eine Ausnahme soll stets Personen gewährt werden, die auf Grund dieses Artikels um Eintragung an- suchen und die ihren Geschäftssitz oder Arbeitsplatz am 6. Oktober 1973 im Gebiet eines der Vertragsstaaten hatten und berechtigt waren, natürliche und juristische Personen in Patentsachen vor der Zentralbehörde für den gewerblichen Rechtsschutz dieses Vertragsstaates zu vertreten und deren Hauptbeschäftigung zu dieser Zeit darin bestand, als Vertreter vor der genannten Zentralbehörde für den gewerblichen Rechtsschutz einzuschreiten."

5 The propriety of the principle of acquired rights is not questioned. The question is raised, however, whether the transitional provisions, in granting absolute exemption from the nationality requirement during the transitional period, do not go further than necessary in order to preserve acquired rights of representatives not having the nationality of a Contracting State. Since the transitional period may turn out to be more than five (5) years from the time when the European Patent Convention is proclaimed, it is imaginable that such representatives could start acquiring rights only after the proclamation, or in other words representatives outside the Contracting States and not having the nationality of a Contracting State, e.g. members or employees of large units of such representatives, could establish themselves as representatives on the national level in any of the Contracting States where this is possible, for the exact purpose of acquiring rights to enable them to be entered on the List under Art. 162(3).

6 Seeing that under Document M/8 it is the intention that the building up of the European patent system should be initiated immediately following the Munich Diplomatic Conference without awaiting ratifications, it would appear to be appropriate to regard the date of signing of the Convention as the date of its proclamation.

7 On the above premises the following proposals are presented for consideration:

8 In Art. 162(1) it is proposed to add a first condition as follows:

"(a) he must be a national of one of the Contracting States"

and to re-index present conditions (a) and (b) as (b) and (c) respectively.

9 In Art. 162 it is proposed to insert a new paragraph between existing paragraphs 4 and 5 reading as follows:

"4a The President of the European Patent Office may in special circumstances grant exemption from the requirement of paragraph 1(a). Exemption shall always be granted for persons who apply for entry under the provisions of this Article and who on October 6, 1973, had their places of business or employment within the territory of one of the Contracting States, and were entitled to represent natural or legal persons in patent matters before the central industrial property office of that Contracting State, and whose main occupation at the time in question was that of acting as representatives before the said central industrial property office."
che Fragen anzuschneiden. Allerdings werden zu einigen wenigen Punkten Bemerkungen gemacht, die von untergeordneter Bedeutung sein können, worüber aber weitere Diskussionen doch nützlich sein könnten.

Sitz in einem Vertragsstaat gemäß Art. 133

2 Während sich Art. 133(2) auf „natürliche und juristische Personen bezieht, die weder (einen) Wohnsitz noch Sitz in einem Vertragsstaat haben“, betrifft Art. 133(3) im ersten und zweiten Satz natürliche und juristische Personen mit (ihrem) Wohnsitz oder Sitz (Geschäftssitz) in einem Vertragsstaat ... Keiner dieser Ausdrücke scheint sehr genau zu sein, aber insbesondere der vorerwähnte könnte dahingehend gedeutet werden, daß eine Gesellschaft, die nicht in einem Vertragsstaat ansässig ist, irgendeine Zweigniederlassung oder Tochtergesellschaft in einem Vertragsstaat gründet, wobei dann die Muttergesellschaft direkt mit dem Europäischen Patentamt verkehren könnte.

3 Es wird daher vorgeschlagen, wenigstens das Wort „ihrem“ („their“, „leur“) durchwegs an allen drei Stellen des Ausdruckes „Sitz“ (Geschäftssitz) anzuzeigen oder vorzugsweise eine präzisere Formulierung zu wählen, wie z.B.

Art. 133(2)

„(2) Natürliche Personen, die keinen Wohnsitz im Gebiet eines Vertragsstaates haben, und juristische Personen, die gemäß den Gesetzen eines der Vertragsstaaten nicht protokolliert sind, müssen ... ."

Art. 133(3)

„(3) Natürliche Personen, die einen Wohnsitz im Gebiet eines Vertragsstaates haben, und juristische Personen, die gemäß den Gesetzen eines der Vertragsstaaten protokolliert sind .........................

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

die gemäß den Gesetzen eines der Vertragsstaaten protokolliert sind und die wirtschaftliche Verbindungen mit ihr haben, handeln können.“

Erfordernis der Nationalität eines Vertragsstaates


However, some observations will be made on a few points which may be of secondary importance, but on which further discussion may still be useful.

Registered Place of Business under Art. 133

2 While Art. 133(2) refers to “natural and legal persons not having either a residence or registered place of business within the territory of one of the Contracting States”, Art. 133(3) refers, in both first and second sentence, to natural and legal persons having their residence or registered place of business ... Neither of these expressions seems to be very precise, but particularly the former could be interpreted to mean that if a Company not domiciled in a Contracting State establishes any form of branch office or subsidiary in a Contracting State, the parent Company could deal directly with the European Patent Office.

3 It is therefore suggested, as a minimum, to adopt the word “their” (“ihr“, “leur”) consistently at all three occurrences of “registered place of business”, but preferably to adopt a still more precise wording such as

Art. 133(2)

“(2) Natural persons not having a residence within the territory of one of the Contracting States, and legal persons not incorporated under the laws of one of the Contracting States must be ... .”

Art. 133(3)

“(3) Natural persons having a residence within the territory of one of the Contracting States, and legal persons incorporated under the laws of one of the Contracting States

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

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

which are incorporated under the laws of one of the Contracting States and which have economic links with the first legal person.”

Requirement of Nationality of a Contracting State

4 Under the final provisions of Art. 134 nationality of a Contracting State is a condition for the entry of a representative on the List provided for in Art. 134(1) (with the possibility of exemption in special circumstances). Under the transitional provisions of Art. 162 there is no such requirement. The reason for this distinction no doubt is that a general exemption from the nationality requirement during the transitional period has been found necessary in order to preserve acquired rights.
STELLUNGNAHME DER
FICPI
Fédération Internationale des Conseils en Propriété Industrielle

COMMENTS BY
FICPI
Fédération Internationale des Conseils en Propriété Industrielle

PRISE DE POSITION DE LA
FICPI
Fédération Internationale des Conseils en Propriété Industrielle

(1) Deutsche Übersetzung vorgelegt von FICPI
(2) La traduction française a été fournie par la FICPI
rechtigte Person, die aufgrund Absatz 1 in die Liste der zugelassten Vertreter eingetragen ist, nach dem Ende der Übergangszeit die Befugnis zur unbeschränkten Vertretung vor dieser Behörde erhalten hat, so ist diese Person in gleicher Weise unbeschränkt zur Vertretung vor dem Europäischen Patentamt berechtigt."

II. BESTIMMUNGEN DER AUSFÜHRUNGSORDNUNG

Regel 24

8 Nach Absatz 2 ist zwar sichergestellt, daß dem Anmelder die Nummer der Anmeldung sowie der Tag des Eingangs der Unterlagen beim Europäischen Patentamt mitgeteilt wird; er kann jedoch nicht überprüfen, ob die Unterlagen vollständig beim Europäischen Patentamt eingegangen sind und ob nicht einzelne Unterlagen fehlen. Hieran besteht aber ein Interesse des Anmelders, da es ihm in diesem Zeitpunkt in der Regel noch möglich ist, fehlende Unterlagen ohne nachteilige Folgen nachzureichen.

Es wird daher vorgeschlagen, Absatz 2 Satz 2 dahin zu erweitern, daß auch die Art und Zahl der Unterlagen dem Anmelder unverzüglich mitgeteilt werden.

Regel 28


graph 2(c), even though they may not be nationals of one of the Contracting States. If a certificate furnished by the central industrial property office proves that a person whose name is entered, pursuant to paragraph 1, on the list of professional representatives and who was only entitled, pursuant to paragraph 6, to act as a professional representative subject to limitations, is authorised, after the expiry of the transitional period, to act without limitations as a professional representative before that body, such person shall similarly be authorised to act without limitations as a representative before the European Patent Office."

II. PROVISIONS OF THE IMPLEMENTING REGULATIONS

Rule 24

8 Whilst paragraph 2 ensures that the applicant is informed of the application number and the date of receipt by the European Patent Office, it does not enable him to verify whether all the documents have been received by the European Patent Office or whether certain documents are missing. This is a point of importance to the applicant since, as a general rule, he will still be able at this time, to forward any missing documents without detrimental consequences.

It is therefore proposed that the 2nd sentence of paragraph 2 should be supplemented by providing that the applicant shall also be informed without delay of the kind and number of the documents.

Rule 28

9 The provision in paragraph 1(h) appears to be unsatisfactory for the following reasons: the inventor, in making a micro-organism available to the public, is in fact as good as surrendering it. If a specimen is taken, it will be very difficult to follow the subsequent course of the micro-organism, particularly if it is taken into another country in which the use of micro-organisms is not protected. Precautions should therefore be taken to ensure that the inventor does not suffer any loss by making the micro-organism available to the public. The nature of such precautions should be discussed in greater detail at the Diplomatic Conference. Examples of possible measures could be a requirement for the person taking a specimen to state his name and the purpose for which he intends to use the specimen and for him to undertake neither to pass the substance on to anyone else nor to use it himself in third countries not according patent protection to the use of micro-organisms.
Artikel 48


Artikel 134

6 Es kann nicht ausgeschlossen werden, daß in Einzelfällen Personen, die in die Liste der beim Europäischen Patentamt zugelassenen Vertreter eingetragen sind und in der Bundesrepublik Deutschland oder in den Niederlanden einen Geschäftssitz begründet haben (Abs. 4 und Abs. 6 in Verbindung mit Abs. 4), wiederholt und in schwerwiegender Weise gegen die Gesetze des Gastlandes verstoßen. Hierfür sollte die Zuständigkeit der Behörden des Gastlandes begründet werden, da die Behörden des Heimatlandes dieser Personen nicht in ausreichendem Maße in der Lage sein werden, Untersuchungen über Vorkommnisse im Gastland durchzuführen. Es muß die Möglichkeit geschaffen werden, daß diesen Personen die nach Absatz 4 eingeräumten Befugnisse, einen Geschäftssitz zu begründen, entzogen wird.

Es wird daher vorgeschlagen, folgenden Absatz 8 aufzunehmen: „Hat eine in die Liste der zugelassenen Vertreter eingetragene Person wiederholt oder in grober Weise gegen die Gesetze der Bundesrepublik Deutschland oder der Niederlande verstoßen, so sind die zuständigen Stellen dieser Staaten nach Anhörung des Präsidiums des Europäischen Patentamts berechtigt, dieser Person die Befugnisse, einen Geschäftssitz aufgrund von Absatz 4 zu begründen, zu entziehen.“

Artikel 162

7 Nach Auffassung der Bundesregierung kommt in Absatz 7 nicht hinreichend deutlich zum Ausdruck, daß Personen, die nach Absatz 6 nur beschränkt vertretungsbefugt sind, nach dem Ende der Übergangszeit ohne Ablösung der europäischen Eignungsprüfung unbeschränkt zur Vertretung vor dem Europäischen Patentamt berechtigt sein sollen, wenn die bisher bestehende Beschränkung erst nach dem Ende der Übergangszeit wegfällt. Es wird daher vorgeschlagen, Absatz 7 wie folgt neu zu fassen:

„Die aufgrund Absatz 1 in die Liste der zugelassenen Vertreter eingetragenen Personen sind auch nach dem Ende der Übergangszeit in dem bisher bestehenden Umfang zur Vertretung vor dem Europäischen Patentamt berechtigt, ohne daß sie die europäische Eignungsprüfung nach Artikel 134 Absatz 2 Buchstabe c abgelegt haben, selbst wenn sie nicht Angehörige eines Vertragsstaats sind. Wird durch eine Bescheinigung der Zentralbehörde für den gewerblichen Rechtsschutz nachgewiesen, daß eine nach Absatz 6 nur beschränkt vertretungsbe-
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


(4) Der Präsident des Europäischen Patentamts kann vom Erfordernis der fünfjährigen regelmäßigen Vertretung auf dem Gebiet des Patentwesens vor der Zentralbehörde für den gewerblichen Rechtsschutz eines Vertragsstaats nach Absatz 3 Satz 1 Befreiung erteilen, wenn der Antragsteller nachweist, daß er die erforderliche Befähigung auf andere Weise erworben hat.

(5) Personen, die ihren Geschäftssitz oder ihren Arbeitsplatz in einem Staat haben, der diesem Übereinkommen weniger als ein Jahr vor Ablauf der Übergangszeit nach Absatz 1 oder nach Ablauf der Übergangszeit beiträgt, können während einer Zeit von einem Jahr, gerechnet vom Zeitpunkt des Wirksamwerdens des Beitritts des genannten Staats an, unter den Voraussetzungen der Absätze 1 bis 4 in die Liste der zugelassenen Vertreter eingetragen werden.


(7) Personen, die in die Liste der zugelassenen Vertreter aufgrund Absatz 1 eingetragen sind, bleiben auch nach Ende der Übergangszeit zur Vertretung vor dem Europäischen Patentamt berechtigt, ohne daß sie die europäische Eignungsprüfung nach Artikel 134 Absatz 2 Buchstabe c abgelegt haben, selbst wenn sie nicht Angehörige eines Vertragsstaats sind.

Vgl. Regeln 102 (Vollmacht), 103 (Lösung des zugelassenen Vertreters) und 107 (Rücknahme der Bescheinigung für die Eintragung des Vertreters in die Liste)

(2) Entry shall be effected upon request, accompanied by certificates which must indicate that the above-mentioned conditions are fulfilled. The certificate furnished by the central industrial property office must also specify the extent of the entitlement to act as a professional representative before this authority.

(3) When, in any Contracting State, entitlement to act as a professional representative in patent matters is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act as professional representatives in patent matters before the central industrial property office of the said State must have habitually acted as such for at least five years. However, persons whose professional qualification to represent natural and legal persons in patent matters before the central industrial property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.

(4) The President of the European Patent Office may grant exemption from the requirement of having habitually acted as a professional representative for five years in patent matters before the central industrial property office of a Contracting State in accordance with paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(5) Persons having their places of business or employment in a State which acceded to this Convention less than one year before the expiry of the transitional period referred to in paragraph 1 or after the expiry of the transitional period, may, under the conditions laid down in paragraphs 1 to 4, during a period of one year calculated from the date of entry into force of the accession of that State, be entered on the list of professional representatives.

(6) Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives may only act before the European Patent Office to the extent that they are entitled, within the terms of the certificate furnished by the central industrial property office to act as professional representatives in patent matters in the Contracting States in which they exercise their profession.

(7) Persons whose names are entered, pursuant to paragraph 1, on the list of professional representatives shall continue to be entitled to act as professional representatives before the European Patent Office after the expiry of the transitional period without having to take the European qualifying examination under Article 134, paragraph 2(c), even though they may not be nationals of one of the Contracting States.

Cf. Rules 102 (Authorisations), 103 (Deletion of the professional representative from the list) and 107 (Withdrawal of the certificate enabling a representative to be entered on the list)
(2) Der Haushaltsplan für das erste Haushaltsjahr ist baldmöglichst nach Inkrafttreten dieses Übereinkommens auzufstellen. Bis zum Eingang der in Artikel 38 vorgesehenen Beiträge der Vertragsstaaten im Rahmen des ersten Haushaltsplans zahlen die Vertragsstaaten auf Verlangen des Verwaltungsrats in der von ihm festgesetzten Höhe Vorschüsse, die auf ihre Beiträge für diesen Haushaltsplan angerechnet werden. Die Vorschüsse werden nach dem in Artikel 38 vorgeschriebenen Aufbringungsschlüssel festgesetzt. Artikel 37 Absätze 3 und 4 ist auf die Vorschüsse entsprechend anzuwenden.

Artikel 161
Stufweise Ausdehnung des Tätigkeitsbereichs des Europäischen Patentamts


(2) Der Verwaltungsrat kann auf Vorschlag des Präsidenten des Europäischen Patentamts die Behandlung europäischer Patentanmeldungen, deren Behandlung nach Absatz 1 bereits beschränkt ist, weiter beschränken. Jedoch ist die europäische Patentanmeldung in jedem Fall daraufhin zu prüfen, ob sie einen Anmeldetag hat.

(3) Kann eine europäische Patentanmeldung infolge der Beschränkung des Verfahrens nach Absatz 1 Satz 2 oder Absatz 2 nicht weiterbehandelt werden, so teilt das Europäische Patentamt dies dem Anmelder mit und weist ihn darauf hin, daß er einen Umwandlungsantrag stellen kann. Mit dieser Mitteilung gilt die europäische Patentanmeldung als zurückgenommen.

Vgl. Regel 70 (Feststellung eines Rechtsverlusts), 71 (Form der Bescheide und Mitteilungen) und 106 (Beschränkungen der Prüfung)

Artikel 162
Zugelassene Vertreter während einer Übergangszeit

(1) Während einer Übergangszeit, deren Ende der Verwaltungsrat bestimmt, kann in Abweichung von Artikel 134 Absatz 2 in die Liste der zugelassenen Vertreter jede natürliche Person eingetragen werden, die die folgenden Voraussetzungen erfüllt:

a) Die Person muß ihren Geschäfts- oder Arbeitsplatz im Gebiet eines Vertragsstaats haben;

b) die Person muß befugt sein, natürliche oder juristische Personen auf dem Gebiet des Patentwesens vor der Zentralbehörde für den gewerblichen Rechtsschutz des Vertragsstaats zu vertreten, in dem sie ihren Geschäfts- oder Arbeitsplatz hat.

(2) The budget for the first accounting period shall be drawn up as soon as possible after the entry into force of this Convention. Until contributions provided for in Article 38 due in accordance with the first budget are received by the Organisation, the Contracting States shall, upon the request of and within the limit of the amount fixed by the Administrative Council, make advances which shall be deducted from their contributions in respect of that budget. The advances shall be determined in accordance with the scale referred to in Article 38. Article 37, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.

Article 161
Progressive expansion of the field of activity of the European Patent Office

(1) European patent applications may be filed with the European Patent Office from the date fixed by the Administrative Council on the recommendation of the President of the European Patent Office. To begin with, the examination of European patent applications pursuant to Article 93 may be restricted to certain areas of technology and subsequently be progressively extended to the remaining areas of technology.

(2) The Administrative Council may, on the recommendation of the President of the European Patent Office, further restrict the processing of a European patent application affected by the restriction provided for in paragraph 1; however, examination shall in any event be made as to whether the European patent application can be accorded a date of filing.

(3) Where, as a result of the procedure being restricted, a European patent application cannot be further processed, the European Patent Office shall communicate this to the applicant and shall point out that he may make a request for conversion. The European patent application shall be deemed to be withdrawn on receipt of such communication.

Cf. Rules 70 (Noting of loss of rights), 71 (Form of communications from the European Patent Office) and 106 (Restriction affecting examination)

Artikel 162
Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:

a) he must have his place of business or employment within the territory of one of the Contracting States;

b) he must be authorised to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.
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
hypothesis of the representation of two or more persons by one representative; this was done so that in the event of a person without a residence or registered place of business in a Contracting State being a co-applicant, his professional representative need not necessarily be the common representative, since an exception could be made where a co-applicant with a residence or registered place of business in one of the Contracting States were named first in the application and had commissioned his own professional representative.

This provision was also extended in the third sentence to apply to joint proprietors.

Paragraph 2 of the former Rule 104, which could only apply in the transitional period, was placed with the other transitional provisions as the new Rule 108.
55. The Committee agreed that not only representatives whose names appeared on the list maintained by the European Patent Office (Article 133, paragraph 4) but also legal practitioners (paragraph 6) should have the opportunity to set up a place of business in the State in which the European Patent Office was located. This possibility should however only be opened up for the purpose of representation in proceedings before the European Patent Office, and should not be used for other ends.

56. It was made clear in Article 133, paragraph 7, that the Administrative Council could adopt provisions governing not only the qualifications and training required of persons entitled to act as representatives and who had to pass the European qualifying examination, the conduct of the examination and the establishment or recognition of an institute constituted by the persons entitled to act as professional representatives, but also those governing any disciplinary power over such persons. Contrary to the wishes of one delegation, the question of whether disciplinary power should be exercised by the institute or by the Administrative Council was expressly left open.

The Administrative Council would have to adopt these provisions by a three-quarters majority (Article 33, paragraph 2).

57. A special provision was created in Article 142a to cover representation before any special departments of the European Patent Office which might be set up under separate conventions in accordance with Articles 141 and 142.

58. Rule 102, paragraph 1, second sentence of the Implementing Regulations was amended to take account of the
national law someone is both an officer of a legal person and an employee of that legal person, he would not require an authorisation but would only have to provide proof of his capacity as an officer.

Other matters

52. In connection with the problems relating to representation the Committee took general note of the fact that the laws of the individual States on representation (e.g. regarding the representation of minors) should also be applicable, but that this need not be laid down in the Convention.

53. Regarding the condition that only nationals of Contracting States were entitled to act as representatives (Article 133, paragraph 2(a)), one delegation pointed out that this could lead to cases of hardship. The reply was given that under Article 133, paragraph 5, the President of the European Patent Office could grant exemptions in special cases. The Committee noted that in general the Administrative Council would be able to give the President of the European Patent Office guidance on exemptions from the nationality requirement.

54. The condition that persons entitled to act as representatives had to have their place of business in one of the Contracting States was regarded as too restricting in certain cases; for this reason the words "or employment" were added in Article 133, paragraph 2(b), in order to include employees.
51. In connection with the provisions governing acting through employees the question of collective representation, i.e. whether and to what extent employees of one legal person could act for another legal person having economic links with the first, was discussed.

The French delegation proposed that the principle of acting for legal persons with economic links should be accepted and that the details should be settled at a later stage. The majority of the Committee came out against both this proposal, and a proposal from the Netherlands delegation that the question of group representation should not be dealt with at all in the Convention. The Committee finally adopted by a majority the Chairman's proposal that it could be laid down in the Implementing Regulations whether and under what conditions employees of one legal person could act for another legal person having economic links with the first, and that this would only be permitted where the second legal person had its registered place of business in one of the Contracting States. It was agreed that these measures would be adopted subsequently by the Administrative Council but would not for the time being be included in the Implementing Regulations (see Article 132, paragraph 3, second sentence).

It was specified that the term "employee" was to be construed in a wide sense and could also include directors and officers. It was also agreed that if according to his
patent matters before the central industrial property office of the Contracting State in which they were based would suffice (Article 159a, paragraph 1). Anyone whose name was entered on the list of professional representatives during the transitional period would not lose his entitlement on the grounds that he was not a national of a Contracting State at the beginning of the final phase or that he had not passed the European qualifying test (Article 159a, paragraph 7).

A further measure was laid down for the transitional period to the effect that persons having their place of business or employment in a State which did not require special professional qualifications for representatives must have habitually acted as professional representatives before their central industrial property offices for at least five years (Article 159a, paragraph 5). The Committee discussed whether the President of the European Patent Office could, if necessary, grant exemption from this requirement, and agreed by a majority that he should be able to do so (Article 159a, paragraph 5).

50. Regarding the matter of natural and legal persons acting through their employees, the Committee decided not to adopt the Chairman's proposal that the restrictions hitherto imposed under the laws of the individual States should be retained during the transitional period. It was decided instead that as soon as the Convention came into force natural and legal persons should be able to act through their employees without any of the restrictions previously imposed (Article 132, paragraph 3, first sentence).
It was replied that in practice firms in particular would tend to be represented by qualified rather than unqualified employees. It was also permissible for the natural persons of a Contracting State to act on their own behalf before the European Patent Office. The solution expressed in the principles set out above was an attempt to reach a compromise between the two opposing points of view held by patent agents on one hand and industry on the other.

47. The Committee agreed to provide both a transitional ruling and a final ruling on professional representation.

48. In the final phase only legal practitioners and persons fulfilling the three following conditions would be entitled to act as representatives: they would have to be nationals of one of the Contracting States, have their place of business or employment within the territory of one of the Contracting States, and have passed the European qualifying examination (Article 133, paragraphs 1, 2 and 6).

49. A less stringent ruling was provided for a transitional period, the expiry of which was to be determined by the Administrative Council, than for the final phase: in the first place it would not be necessary to be a national of a Contracting State in order to qualify to act as a representative. Secondly it would not be necessary to have passed the European qualifying examination; authorisation to represent natural or legal persons in
(b) **Representation (Articles 132, 133 and 159a)**

(ER/GT I/164/72)

46. The Committee discussed the question of representation before the European Patent Office on the basis of the proposals put forward by the Chairman in ER/GT I/164/72. It agreed on the following principles:

(i) Natural or legal persons having their residence or registered place of business in a Contracting State, may act on their own behalf before the European Patent Office;

(ii) Natural or legal persons not having either a residence or registered place of business in a Contracting State must in principle be represented before the European Patent Office by a professional representative.

A third principle whereby legal or natural persons having their residence or registered place of business in a Contracting State may also act through an employee was also adopted by the Committee.

These principles were set out in Article 132, paragraphs 1 to 3.

The Netherlands delegation objected to the principle last stated on the grounds that it was inconsistent on the one hand to open up the possibility of acting through employees who would not be required to take a qualifying examination, and on the other hand to require that professional representatives should fulfil special conditions.
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 ic0/EM/prk
Article 159a (continued)

(4) The President of the European Patent Office may grant exemption from the requirement of having habitually acted as a professional representative for five years in patent matters before the central industrial property office of a Contracting State in accordance with paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(5) Persons having their places of business or employment in a State which acceded to this Convention less than one year before the expiry of the transitional period referred to in paragraph 1 or after the expiry of the transitional period, may, under the conditions laid down in paragraphs 1 to 4, during a period of one year calculated from the date of entry into force of the accession of the State in which they have their places of business or employment, be entered on the list of professional representatives.

(6) Persons whose names are entered on the list of professional representatives may only act before the European Patent Office to the extent that they are entitled, within the terms of the certificate furnished by the central industrial property office to act as professional representatives in patent matters in the Contracting State in which they exercise their profession.

(7) Persons whose names are entered on the list of professional representatives shall continue to be entitled to act as professional representatives before the European Patent Office after the expiry of the transitional period without having to take the European qualifying examination under Article 133, paragraph 2(c), even though they may not be nationals of one of the Contracting States.
Article 159a (153, paras. 2, 3 and 4)

Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 133, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must have his place of business or employment within the territory of one of the Contracting States;

(b) he must be authorised to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment.

(2) Entry shall be effected upon request, accompanied by certificates which must indicate that the above mentioned conditions are fulfilled. The certificate furnished by the central industrial property office must also specify the extent of the entitlement to act as a professional representative before this authority.

(3) When, in any Contracting State, entitlement to act as a professional representative is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act as professional representatives in patent matters before the central industrial property office of the said State must have habitually acted as such for at least five years. Provided that persons whose professional qualification to represent natural and legal persons in patent matters before the central industrial property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
that Article 156, paragraph 3, was to be interpreted as an authorisation for the Administrative Council to provide for the levy of a search fee for each and every international patent application, irrespective of whether additional searches within the meaning of this provision should be carried out in the individual cases.

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

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

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

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

The provisions of the Convention and the Implementing Regulations concerning representation before the European Patent Office were already discussed with the organisations concerned during the earlier stages of the negotiations and were, as far as possible adapted to their proposals and wishes. Fortunately this situation meant that the principles established by the Inter-Governmental Conference were no longer questioned as to their substance. In particular, the principle that during a transitional period the representatives’ status would basically be controlled by the national law of Contracting States and afterwards by European law, remained 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 were dealt with sensibly. A