

BR/GT I/2 e/69

Travaux Préparatoires EPC 1973

Comment:

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness.

The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.

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

Secretariat

Brussels, 9 June 1969

BR/GT I/2/69

W o r k i n g D r a f t

for a Convention relating to a European patent law

put forward by the Chairman of Working Party I

Articles 1 to 41

compared schematically with

the 1965 version of the Draft Convention as established by the EEC "Patents"
Working Party and

the Draft of an open European Patent Convention drawn up by the Member States
of the European Free Trade Association

Note

At its meeting of 21 May 1969 the Inter-governmental Conference for the setting up of a European system for the grant of patents set up a first working party to study questions relating to patent law. At its inaugural meeting held the same day the working party invited its chairman to prepare proposals for the projected Convention, in preparation for the working party's future meetings (Minutes BR/GT I/1/69 of 23 May 1969, p. 2).

The proposals assume that the provisions of the Draft Convention relating to a European Patent Law drawn up by the Member States of the European Economic Community in 1960/1965 will be accepted as far as possible. Amendments have only been proposed where the new objectives of the projected Convention or further developments in patent law appear to make modification necessary. The Draft of an open European Patent Convention drawn up by the Member States of the European Free Trade Association in 1965/1967 has been taken into consideration.

In order to assist understanding of the proposed amendments and to facilitate the discussion, the proposals are presented with the

Brussels Draft of 1965 and the EFTA Draft in parallel columns alongside.

Where the proposals correspond to the text of the Convention on the unification of certain points of substantive law on Patents for Invention, signed at Strasbourg on 27 November 1963, this has been indicated.

K E Y

1965 Draft

indicates the 1962 Draft Convention relating to a European Patent Law, taking into account the amendments contained in the EEC "Patents" Working Party's working document 2335/IV/65 of 22 January 1965.

EFTA Draft

indicates the European Free Trade Association Draft of an open European Patent Convention, forming the first Convention in the two-part scheme - Annex III to working document EFTA 4/67 of 19 January 1967. This Draft was based solely on the 1962 Draft Convention relating to a European Patent Law, as the above-mentioned working document of 22 January 1965 has not been made public.

Strasbg. Conv.

indicates the Convention on the unification of certain points of substantive law on Patents for Invention, signed at Strasbourg on 27 November 1963.

- * before single paragraphs in the 1965 Draft indicates that the 1965 Draft does not differ from the 1962 Draft. This reference should facilitate comparison of the 1965 Draft with the EFTA Draft.
- ... in the column containing the Chairman's proposal indicates that the text of the 1965 Draft has been proposed without amendment. The square brackets round the phrase "Board of Administration" should, however, be omitted in the working draft.
- + in the "EFTA Draft" column indicates that the text of the 1962 Draft Convention relating to a European Patent Law has been included in the EFTA Draft without amendment.

P R E A M B L E

Note

The preamble should indicate that this Convention constitutes between the Contracting States a special arrangement within the meaning of Article 15 of the Paris Convention of 20 March 1883 for the Protection of Industrial Property, last revised at Lisbon on 31 October 1958, and an international treaty on the grant of patents effective in more than one State within the meaning of Article 44, paragraph 2, of the Treaty of ... for International Co-operation in the Field of Patents.

PART 1

GENERAL PROVISIONS

Article 1

European patent law

1965 Draft	Chairman's proposal	EFTA Draft
<p>This Convention hereby establishes a system of law concerning patents for invention, common to the Contracting States and applicable throughout the territory of these States, and known as the "European patent law"</p>	<p>This Convention hereby establishes a common system of law concerning the grant of patents for invention, known as the "European patent law".</p> <p>←→ Auth - with the</p>	<p>This Convention hereby establishes a system common to the Contracting States, for the granting of patents.</p>

Article 2
European patent

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1)* Patents conferring exclusive rights on their proprietors shall be granted under the name of "European patent" in accordance with the provisions of this Convention.</p> <p>(2) European patents shall have a unitary and autonomous character. The unitary aspect arises from the fact that they are to have effect throughout the territory of the Contracting States and may only be assigned or permitted to lapse in respect of the whole of this territory. Their autonomous character is ensured by virtue of the fact that they are to be subject only to the provisions of this Convention.</p>	<p>(1) A patent for an invention granted pursuant to the provisions of this Convention shall be called a "European patent".</p> <p>(2) - omitted; see Art. 24 a -</p> <p>(2a) The European patent shall have the effect of a national patent in the Contracting States for which it is granted.</p>	<p><u>Art. 2</u> (1) +</p> <p>(2) European patents shall have a unitary character which arises from the fact that they have effect on the territory of all those Contracting States covered thereby and may only be assigned or otherwise change ownership in respect of all those States.</p> <p><u>Art. 2A</u></p> <p>(1) Final patents granted in accordance with Article 2 (3) shall each constitute an independent national patent in the State concerned, having the same effect as if they were granted by the national authorities.</p>

Article 3
European Patent Office

1965 Draft	Chairman's proposal	EFTA Draft
* European patents shall be granted by a patent office common to the Contracting States, which shall be called the "European Patent Office".	...	European and final patents shall be granted by a patent office common to the Contracting States, which shall be called the "European Patent office".

European Patent Court

1965 Draft	Chairman's proposal	EFTA Draft
<p>* A court common to the Contracting States, hereinafter called the "European Patent Court" shall be competent to deal, in the final instance, with actions relating to European patents, to the extent to which jurisdiction is conferred on it by this Convention.</p>	<p>- omitted -</p>	<p>+</p>

Article 5

Persons entitled to apply for a European patent

1965 Draft	Chairman's proposal	EFTA Draft
<p><u>1st variant</u></p> <p>Any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it, who desires to obtain protection for an invention with effect throughout the territory of the Contracting States may apply for a European patent.</p> <p><u>2nd variant</u></p> <p>Any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it, possessing the nationality of one of the Contracting States, who desires to obtain protection for an invention with effect throughout the territory of the Contracting States may apply for a European patent.</p>	<p><u>1st variant</u></p> <p>Any natural or legal person or any body equivalent to a legal person by virtue of the law governing it may apply for a European patent.</p> <p><u>2nd variant</u></p> <p>Any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it, possessing the nationality of one of the Contracting States or having his or its residence or registered place of business in one of the Contracting States may apply for a European patent. An application for a European patent may also be made by natural or legal persons, or any bodies equivalent to legal persons by virtue of the law governing them, possessing the nationality of a State, or</p>	<p>(1) Any person desiring to obtain protection for his invention in some or all of the Contracting States, may apply for a European patent.</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>(2) * The application for a European patent must be based on one or more applications for a national patent filed in one of the Contracting States and constituting first filings within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property, of 20 March 1883, last revised at Lisbon on 31 October 1958.</p>	<p>having his or its residence or registered place of business in a State, in which nationals of the Contracting States enjoy the same benefits with respect to the protection of industrial property as those which the laws of such State confer upon its own nationals. The provisions of the laws of such States relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property, shall not be taken into consideration in this respect.</p> <p>(2) - omitted -</p> <p><u>Note</u> The designation of States covered in paragraphs 2 and 3 of the EFTA Draft will be dealt with in connection with the provisions relating to the application for a patent.</p>	<p>(2) Subject to paragraph 3 below an applicant may, within 12 months of the priority date of the application, add one or more States to those covered by the application ; and he may, at any time up to grant of the patent, withdraw one or more States from those covered.</p>

1965 Draft	Chairman's proposal	EFTA Draft
		(3) A group of States as referred to in Article 2A(3) may require that any application covering one State of the group shall cover all those States.

Article 6

Coexistence of European and national patent laws

1965 Draft	Chairman's proposal	EEA Draft
* This Convention shall be without prejudice to the right of Contracting States to maintain their national laws concerning patents concurrently with the European patent law.	...	- omitted -

Simultaneous protection

1965 Draft	Chairman's proposal	EEA Draft
<p>* The protection given to an invention by a European patent and the protection given by one or more national patents granted in the Contracting States may not be enjoyed simultaneously, in so far as the invention originates from one and the same inventor.</p>	<p>It shall remain open to the Contracting States to decide whether, and on what terms, the protection given to an invention by a European patent and the protection given by a national patent may be enjoyed simultaneously, in so far as the invention originates from one and the same inventor.</p>	<p>+</p>

Article 8

Other international agreements

1965 Draft	Chairman's proposal	EFTA Draft
* This Convention shall be without prejudice to any commitments entered into by the Contracting States by virtue of other international agreements.	...	+

Article 8a

Special conventions

1965 Draft	Chairman's proposal	EFTA Draft
	<p>Any group of Contracting States may provide in a special convention that European patents shall have a unitary character as regards their territories and shall, subsequent to their grant, be subject to the provisions of the special convention.</p>	<p><u>Art. 2A(3)</u> Any group of Contracting States may authorize the granting, in lieu of separate final patents, of a single common final patent effective in the whole of their territories.</p>

PART II

PATENT LAW

CHAPTER I

PATENTABILITY

Article 9

Patentable inventions

1965 Draft	Chairman's proposal	EFTA Draft
(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.	(1) ...	+
(2) Inventions within the meaning of paragraph 1 shall in particular exclude:	(2) ...	
(a) scientific deductions and theories as such;	(a) ...	
(b) the mere discovery of materials occurring in nature;	(b) ...	
(c) purely aesthetic creations;	(c) ...	
(d) methods of financing and book-keeping, the rules of games and other systems, in so far as they are of a purely intellectual nature;	(d) ...	
(e) medical treatments, including methods of diagnosis.	(e) ...	
	<u>Note</u>	
	(1) corresponds to Article 1 of the Strasbourg Convention.	

Article 10

Exceptions to patentability

1965 Draft	Chairman's proposal	EFTA Draft
<p>European patents shall not be granted in respect of</p> <p>(a) inventions the publication or exploitation of which would be contrary to "ordre public" or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;</p> <p>(b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof.</p>	<p>...</p> <p><u>Note</u> Article 10 corresponds to Article 2 of the Strasbourg Convention.</p>	<p>+</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) * An invention shall be considered to be new if it does not form part of the state of the art.</p> <p>(2) * The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing the application for a European patent.</p> <p>(3) Additionally, the contents of European patent specifications published on or after the date referred to in paragraph 2 shall be considered as comprised in the state of the art, provided that such patents have an earlier priority date. This provision shall apply to the contents of the documents relating to applications for European patents, or to European patents, which have been made available to the public in accordance with Article 86 a. The order in which the applications were filed shall also determine how this paragraph is to be applied in the event of applications being filed on the same day.</p>	<p>(1) ...</p> <p>(2) ...</p> <p>(3) Additionally, the contents of earlier applications for European patents published on or after the date referred to in paragraph 2 shall be considered as comprised in the state of the art.</p> <p><u>Note :</u> (1) and (2) correspond to Article 4 (1) and (2) of the Strasbourg Convention. The effect of priority is to be settled in connection with the provisions relating to Convention priority. (3) corresponds to Article 4 (3) of the Strasbourg Convention.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) Additionally, the contents of European patent specifications published on or after the date referred to in paragraph 2, shall be considered as comprised in the state of the art, provided that such patents have an earlier priority date and cover one or more of the countries covered by the application referred to in paragraph 2. If several applications for European patents have been filed on the same day, the</p>

Article 11 cont.

1965 Draft	Chairman's proposal	EFTA Draft
	<p>(4) Paragraph 3 shall be applied only when a Contracting State designated in respect of the later patent application is also designated in respect of the earlier patent application.</p>	<p>order in which they were filed shall determine how this paragraph is to be applied.</p> <p>see (3)</p> <p><i>as published under art. 5</i></p>

Article 12

Non-prejudicial disclosures

1965 Draft	Chairman's proposal	EFTA Draft
<p>A disclosure of the invention within the meaning of Article 11 shall not be taken into consideration if it occurred within six months preceding the filing of the application for a European patent and if it was due to, or in consequence of:</p> <p>(a) an evident abuse in relation to the applicant or his predecessor in title, or</p> <p>(b) the fact that the applicant or his predecessor in title has displayed the invention at official, or officially recognised, exhibitions falling within the terms of the Convention relating to international exhibitions signed at Paris on 22 November 1928 and revised on 10 May 1948.</p>	<p>...</p> <p><u>Note</u> Article 12 corresponds to Article 4 (4) of the Strasbourg Convention.</p>	<p>+</p>

Article 13
Inventive step

1965 Draft	Chairman's proposal	EFTA Draft
<p>An invention shall be considered as involving an inventive step if it is not obvious having regard to the state of the art. [If the state of the art also includes documents within the meaning of Article 11, paragraph 3, each of these documents is to be considered, together with the state of the art relating to it, but excluding other parts of the state of the art, in deciding whether there has been an inventive step.]</p> <p><u>Note</u> The working party has not yet decided whether to include the sentence in brackets in Article 13. The need for it is to be examined further.</p>	<p>...</p> <p><u>Note</u> The first sentence of Article 13 corresponds to the first sentence of Article 5 of the Strasbourg Convention.</p> <p><i>replaced by and in the light only of the state of the art at the date referred to in art. 11 p 2.</i></p>	<p>+</p> <p><i>the light only of the state of the art at the date referred to in art. 11 p 2.</i></p>

Article 14

Industrial application

1965 Draft	Chairman's proposal	EFTA Draft
<p>An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.</p>	<p>...</p> <p><u>Note</u> Article 14 corresponds to Article 3 of the Strasbourg Convention.</p>	<p>+</p>

CHAPTER 11

RIGHT TO THE PATENT

Article 15

Right to obtain a European patent

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) Subject to any provisions to the contrary in the national law relating to inventions by persons employed by a business enterprise, an institution or a public authority, the right to a European patent shall belong to the inventor or his assignee. If several persons have made an invention independently of each other, the right to the European patent shall belong to the first person to file a patent application with the European Patent Office.</p>	<p>(1) ...</p>	<p>(1) +</p>
<p>(2) * For the purposes of proceedings before the European Patent Office, the person making the patent application shall be deemed to be entitled to exercise the right referred to in paragraph .</p>	<p>(2) ...</p>	<p>(2) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) If the essential elements of an application for a European patent or of a European patent have been unlawfully obtained from the invention of another, the person injured by such obtaining may request that the application or the patent be assigned to him or that his right to the patent be confirmed. This provision shall apply in every case in which the application for a European patent has been made by a person not entitled to do so under Article 15, paragraph 1.</p>	<p>(1) If the essential elements of an application for a European patent have been unlawfully obtained from the invention of another, the person injured by such obtaining may request that the application be assigned to him or that his right to the patent be confirmed. This provision shall apply in every case in which the application for a European patent has been made by a person not entitled to do so under Article 15, paragraph 1.</p>	<p>(1) +</p>
<p>(2) If no action has been brought under paragraph 1 within a period of five years from the date of publication of the grant of the provisional European patent, the right referred to in paragraph 1 shall lapse unless the proprietor of the patent acquired the patent in bad faith.</p>	<p>(2) The right referred to in paragraph 1 shall lapse unless it is exercised by an action brought prior to the grant of the European patent. More extensive rights based on the national law of the Contracting States shall not be prejudiced thereby.</p>	<p>(2) The right referred to in paragraph 1 may not be exercised after confirmation of the European patent.</p>
<p>(3) If a final decision is given in favour of a person who has brought an action under paragraph 1, that person may, provided</p>	<p>(3) If a final decision is given in favour of a person who has brought an action under paragraph 1, that person may, pro-</p>	<p>(3) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>that the provisional European patent has not yet been confirmed, file a new application in respect of the same invention within a period of three months following the final decision. In so far as the subject matter of the new application does not go beyond the description given in the original application, the new patent application shall be deemed to have been filed on the date of the earlier application and shall enjoy the right of priority where applicable. The original application for a European patent shall be deemed to have been withdrawn and any provisional European patent shall be deemed to have lapsed once the injured party has filed a new application.</p> <p><u>Note</u> Paragraphs 3, 4 and 6 have been included in the Implementing Regulations.</p>	<p>vided that the European patent has not yet been granted, file a new application in respect of the same invention within a period of three months following the final decision. In so far as the subject matter of the new application does not go beyond the description given in the original application, the new patent application shall be deemed to have been filed on the date of the earlier application and shall enjoy the right of priority where applicable. The original application for a European patent shall be deemed to have been withdrawn once the injured party has filed a new application.</p>	<p>(4) + (5) + (6) +</p>

Article 17

Right of the inventor to be mentioned as such

1965 Draft	Chairman's proposal	LFTA Draft
<p>The inventor shall have the right, vis-à-vis the applicant for or the proprietor of a European patent, to be mentioned as such before the European Patent Office.</p> <p><u>Note</u> The second sentence has been included in the Implementing Regulations.</p>	<p>The inventor shall have the right, vis-à-vis the applicant for a European patent, to be mentioned as such before the European Patent Office.</p>	<p>4</p>

CHAPTER III
EFFECTS OF THE PATENT

Article 18

Territorial scope of a European patent

1965 Draft	Chairman's proposal	EFTA Draft
European patents shall have effect throughout the territories of the Contracting States to which this Convention applies by virtue of Article 209.	- omitted ; see article 2, paragraph 2a -	A European patent shall, on grant, have effect in such of the Contracting States as were covered by the application for a patent. Subject to Article 24(3C) it may subsequently be surrendered in respect of one or more of those States in accordance with Article 124.

Article 19

Prior national rights

1965 Draft	Chairman's proposal	EEA Draft
<p>(1) In the event of a national patent having been made available to the public in a Contracting State on or after the date referred to in article 11, paragraph 2, in respect of the whole or part of an invention which forms the subject of a European patent, but having a priority date earlier than that of the European patent, the effect of the European patent shall not extend to the territory of the State in question, in so far as the European patent covers the same subject matter as the national patent. The same shall apply in the event of an application for a national patent having been made available to the public under the same conditions, where such application provisionally confers the same protection as a national patent.</p> <p>(2) If an application for a national patent which has been made available to the public under the conditions set out in paragraph 1 does not confer the</p>	<p>- omitted -</p> <p><u>Note</u> The existence of a prior national right is to be a ground, in the Contracting State in question, for the revocation of a European patent.</p>	<p>(1) In the event of a national patent having been granted in a Contracting State in respect of the whole or part of an invention which forms the subject of a European patent effective in that country, such national patent having been published on or after the date referred to in Article 11, paragraph 2, but having a priority date earlier than that of the European patent, the effect of the European patent shall not extend to the territory of the State in question, in so far as the European patent covers the same subject matter as the national patent.</p> <p>(2) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>same protection as a national patent, a court hearing an action for infringement of a European patent shall stay proceedings, on petition being made, in so far as the European patent covers the same subject matter as the application for a national patent and the infringement was committed in the territory of the State in question.</p> <p>(3) * If an application for a European patent and an application for a national patent, covering the same subject matter, have the same priority date without the priority of the one having been claimed in support of the other and without the priority of one and the same application having been claimed in support of both, the application for the European patent shall be deemed to have been filed after that for the national patent.</p> <p><u>Note</u></p> <p>Paragraph 3 was paragraph 2 in the 1962 Draft.</p>		

1965 Draft	Chairman's proposal	EFTA Draft
<p><u>2nd variant</u></p> <p>(1) * A European patent shall confer on its proprietor in each of the Contracting States the same rights as would be conferred by a national patent granted in that State. Any infringement of the rights of the proprietor of a European patent shall be dealt with under the laws of that State.</p> <p>(2) The provisions of Article 5 ter of the Paris Convention for the Protection of Industrial Property and of Article 27 of the Convention on International Civil Aviation of 7 December 1944 shall not apply to the vessels or aircraft or land vehicles of the Contracting States for the purposes of exercising the rights conferred by a European patent.</p> <p>(3) Paragraph 1 shall not apply to provisional European patents except as provided for in Article 21, paragraph 2, and Articles 175a and 176.</p>	<p>(1) A European patent shall confer on its proprietor, from the date of publication of its grant, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State. Any infringement of the rights of the proprietor of a European patent shall be dealt with under the laws of that State.</p> <p>(2) - omitted -</p> <p>(3) - omitted; see Art. 20 bis and 20 ter concerning protection resulting from a European patent application -</p>	<p><u>2nd variant</u></p> <p>(1) A European patent confers on its proprietor in each of the Contracting States the same rights as would be conferred by a national patent granted in that States. Subject to Article 176, any infringement of the rights of the proprietor of a European patent is to be dealt with under the laws of that State.</p> <p>(2) - omitted -</p> <p>(3) - omitted -</p>

Rights conferred by a European patent application after publication

1965 Draft	Chairman's proposal	EFTA Draft
	<p><u>1st variant</u></p> <p>(1) A European patent application shall, from the date of its publication, provisionally confer upon the applicant such protection as is conferred by the law of the Contracting State on the earliest domestic publication provided for by law of an unexamined application for a national patent. Article 21, paragraph 2, shall apply.</p> <p><u>2nd variant</u></p> <p>(2) Each Contracting State shall ensure, in respect of its own territory, that a European patent application shall confer upon the applicant such protection as is conferred by the law of that State on the earliest domestic publication, provided for by law, of an unexamined application for a national patent. It shall ensure at least that, from the date of publication of a European patent application, the applicant can claim appropriate compensation from any person using the subject matter of the application in the said State although he knew or should have known that the invention used by him constituted the subject matter of a European patent application. Article 21, paragraph 2, shall apply.</p> <p><u>3rd variant</u></p> <p>(1) A European patent application shall, from the date of its publication, provisionally confer upon the applicant such protection as is conferred by Article 20.</p>	

Article 20 bis (cont.)

1965 Draft	Chairman's proposal	EFTA Draft
	<p data-bbox="814 287 1632 739">(1a) Any Contracting State may stipulate, in respect of its own territory, that a European patent application shall not confer such protection as is conferred by Article 20. In this event, such State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim appropriate compensation from any person using the subject matter of the application in the said State although he knew or should have known that the invention used by him constituted the subject matter of a European patent application.</p> <p data-bbox="814 753 1610 842">(1b) Article 21, paragraph 2, shall apply. <u>1st to 3rd variants</u></p> <p data-bbox="814 857 1643 1065">(2) Any Contracting State which does not have as an official language any of the languages specified in Article 34, paragraph 1, may stipulate that provisional protection in accordance with paragraphs 1 and 1a above shall not be effective until such time as</p> <ul data-bbox="814 1080 1643 1354" style="list-style-type: none">a) a translation of the patent claims has been made available to the public in one of its official languages, orb) a translation of the patent claims into one of its official languages has been communicated to any person using the subject matter of the application in the said State.	

Article 20^{bis} (cont.)

1965 Draft	Chairman's proposal	EFTA Draft
	(3) Once the refusal of a European patent application or of a European patent has become final, or once a European patent application has been withdrawn, the European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 1a above. Where the designation of a Contracting State is withdrawn, the same shall apply in respect of the effects of the European patent application in that State.	

Note:

The proposal offers for discussion three solutions concerning the provisional protection conferred by a European patent application once it has been published.

The first solution corresponds to Article 29 of the PCT. The second solution leaves it to domestic law to ensure provisional protection but requires that the applicant should at least be able to claim payment of appropriate compensation for the use of his invention.

The third solution, following Article 20d (or, in the second variant, Article 20, paragraph 3), of the 1965 draft, provides that from the date of its publication a European patent application will provisionally enjoy the protection conferred by the European patent under Article 20, as was the case with the former provisional European patent.

Article 21, paragraph 2, applies in all variants; this means that the extent of the protection conferred by a published European patent application is determined retroactively by the extent of the protection conferred by the patent when granted. Any provisional protection is also subject, in its enforcement in the courts, to the restrictions deriving from domestic procedural law.

Rights conferred by a European patent application after publication
of the claims

1965 Draft	Chairman's proposal	EFTA Draft
	<p data-bbox="763 259 957 289"><u>1st variant</u></p> <p data-bbox="763 308 1559 549">(1) Each Contracting State shall ensure, in respect of its own territory, that, from the date of publication of the patent claims, a European patent application shall provisionally confer such rights as are conferred by Article 20. Article 21, paragraph 2, shall apply.</p> <p data-bbox="763 586 957 615"><u>2nd variant</u></p> <p data-bbox="763 635 1543 771">(1) A European patent application shall, from the date of publication of the patent claims, provisionally confer such protection as is conferred by Article 20.</p> <p data-bbox="763 808 1117 838"><u>1st and 2nd variants</u></p> <p data-bbox="763 857 1543 1098">(2) Any Contracting State which does not have as an official language any of the languages specified in Article 34, paragraph 2, may stipulate that provisional protection in accordance with paragraph 1 above shall not be effective until such time as</p> <p data-bbox="763 1120 1526 1224">a) a translation of the patent claims has been made available to the public in one of its official languages, or</p> <p data-bbox="763 1246 1526 1417">b) a translation of the patent claims into one of its official languages has been communicated to any person using the subject matter of the application in the said State.</p>	

Article 20^{ter} (cont.)

1965 Draft	Chairman's proposal	EFTA Draft
	<p>(3) Once the refusal of a European patent application or of a European patent has become final, or once a European patent application has been withdrawn, the European patent application shall be deemed never to have had the effects set out in paragraph 1 above. Where the designation of a Contracting State is withdrawn, the same shall apply in respect of the effects of the European patent application in that State.</p> <p><u>Note</u></p> <p>The proposal puts forward only two variants for discussion on this point, since it concerns the protection conferred by a patent application that has already been examined. No variant corresponding to the PCT is suggested, because the international application is always an unexamined application.</p>	

Extent of the protection conferred by a European patent

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) The extent of the protection conferred by a European patent shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.</p> <p>(2) * The confirmation of a provisional European patent as a final European patent shall determine retroactively the extent of the protection conferred by the European patent.</p>	<p>(1) ...</p> <p>(2) The grant of a European patent shall determine retroactively the extent of the protection conferred by the European patent application.</p>	<p>(1) +</p> <p>(2) A final patent granted following confirmation of a European patent shall determine retroactively the extent of the protection conferred in that State by the European patent.</p>

Note

Paragraph 1 corresponds to Article 8(3) of the Strasbourg Convention. In the second sentence of the German text, however, the word "Auslegung" has been replaced by "Verdeutlichung der Tragweite". In the French version the phrase "interpréter les revendications" has been replaced by "préciser la portée des revendications". This difference has not yet been expressed in the EFTA Draft, where the phrase "interpret the claims" is employed, as in the Strasbourg Convention.

Article 22

Right of personal possession and right based on prior use

1965 Draft	Chairman's proposal	EFTA Draft
<p>* Any person who, if a national patent had been granted in respect of an invention in one of the Contracting States, would have had a right based on prior use of that invention or on personal possession of that invention, shall enjoy, in that State, the same rights in respect of a European patent for the same invention.</p>	<p>- omitted -</p>	<p>+</p>

CHAPTER IV

PATENTS OF ADDITION

Article 23

Term of European patent

1965 Draft	Chairman's proposal	EFTA Draft
<p>* A European patent shall cease to be valid on a date not later than twenty years from the date of filing the application.</p>	<p>- omitted -</p>	<p>- omitted -</p>

European patents of addition

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) European patents of addition shall be granted for the improvement, development or supplementing of an invention protected by a European patent upon application being made subsequent to the application for such patent - hereinafter referred to as the parent patent - and prior to the date of publication of the parent patent pursuant to Article 85 or, in the case provided for by Article 86a, prior to the date from which the files may be made available for inspection.</p> <p>(2) * A European patent of addition may be granted only to the proprietor of the parent patent.</p> <p>(3) The invention which forms the subject of the patent of addition shall not be subject to the requirement of an inventive step within the meaning of Article 13, in relation to the contents of the specification relating to the parent patent.</p>	<p>(1) European patents of addition shall be granted for the improvement, development or supplementing of an invention protected by a European patent upon application being made subsequent to the application for such patent - hereinafter referred to as the parent patent - and prior to the date of publication of the application for the parent patent.</p> <p><i>That the word "parent" should be deleted</i></p> <p>(2) ... <i>could be deleted</i></p> <p>(2a) No Contracting States may be designated in respect of the application for a patent of addition other than those designated in respect of the application for the parent patent.</p> <p>(3) ...</p>	<p>(1) +</p> <p><i>That the word "parent" should be deleted</i></p> <p>(2) + <i>could be deleted</i></p> <p><i>must apply without giving rise to the</i></p> <p><i>to the</i></p> <p><i>to the word of Council</i></p> <p><i>of</i></p> <p>(3) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>(4) A European patent of addition shall expire at the same time as the parent patent. Nevertheless, if the parent patent expires as a result of cancellation, revocation or surrender, the patent of addition shall become an independent patent and paragraph 3 shall no longer apply. It shall expire on a date not later than 20 years from the date of filing the application for the parent patent. In the event of a number of patents of addition, only the first patent of addition to be granted shall become independent; the remainder shall be deemed to be patents of addition thereto.</p> <p>(5) The applicant for, or the proprietor of, a provisional European patent of addition may, until such time as the communication referred to in Article 101, paragraph 1, is made, convert the application for a patent of addition or</p>	<p>(3a) In those Contracting States for which it has been granted and whose law permits the granting of patents of addition, the European patent of addition shall have the effect of a national patent of addition. In the other Contracting States for which it has been granted it shall have the effect of an independent patent.</p> <p>(4) - omitted -</p> <p>(5) The applicant for a European patent of addition may, until such time as the communication referred to in Article 101, paragraph 1, is made, convert the application for a patent of addition into an independent application.</p>	<p>(3C) A European patent of addition, or an application therefore, shall at any time cover only those Contracting States which are covered at that time by the parent European patent. Nevertheless, if the present European patent expires as the result of cancellation or surrender, the patent of addition shall become an independent patent. In the event of a number of patents of addition, only the first patent of addition to be granted shall become independent; the remainder shall be deemed to be patents of addition thereto.</p> <p>(3A) The applicant for, or the proprietor of, a European patent of addition may, until such time as it is decided to confirm such patent, convert the application for a patent of addition or the patent of addition into an independent application or into an independent</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>the patent of addition into an independent application or into an independent patent. If the conversion concerns a provisional European patent of addition, the independent patent shall expire on a date not later than 20 years from the date of filing the application for the parent patent.</p> <p><u>Note</u></p> <p>The last sentence of paragraph 5 of the 1962 draft has been included in the Implementing Regulations.</p>		<p>patent. If the conversion concerns a European patent of addition, the conversion shall be recorded in the Register of European Patents and published in the European Patents Journal. For purposes of determining the term of any final patent granted thereon, the application date of the independent patent shall be deemed to be that of the patent of addition which it has replaced.</p> <p>(3B)</p> <p>(a) A patent of addition cannot be granted after confirmation of the parent patent.</p>

1965 Draft	Chairman's proposal	EFTA Draft
		<p>(b) When the parent patent is confirmed, a patent of addition must also be confirmed or converted into an independent patent.</p> <p>(c) A patent of addition cannot be confirmed prior to confirmation of the parent patent.</p>

CHAPTER V

THE PATENT APPLICATION AS AN OBJECT OF PROPERTY

Article 24a

Unitary character of the European patent application

1965 Draft	Chairman's proposal	EFTA Draft
	<p>A European patent application may not be assigned, and may not be the object of special rights, separately for individual Contracting States.</p>	<p>See Art. 25(1)</p>

Assignment of a European patent application

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) A European patent may not be assigned except in its entirety and for the whole of the territories in which it is effective. This provision shall not exclude an assignment in the form of co-ownership.</p>	<p>(1) - omitted; see Art. 24a -</p>	<p>(1) +</p>
<p>(2) * The assignment of a European patent shall be made in writing and shall require the signature of the parties to the contract.</p>	<p>(2) The assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.</p>	<p>(2) +</p>
<p>(3) The assignment shall be recorded in the Register of European Patents at the request of the interested party or of one of the interested parties on production either of the original or of a certified copy of the assignment deed, or of official documents verifying the assignment, or of such extracts from such deed or documents as suffice to establish the assignment. The request shall not be considered as made until such time as the fee prescribed for this purpose by the Regulations concerning fees made pursuant to this Convention has been paid.</p>	<p>(3) ...</p>	<p>(3) +</p>

Article 25 (cont.)

1965 Draft	Chairman's proposal	EFTA Draft
<p>(4) The European Patent Office shall retain one copy of the documents referred to in paragraph 3 and shall allow access to these documents on request, after the fee referred to in Article 162, paragraph 3, has been paid.</p>	<p>(4) ...</p>	<p>(4) +</p>
<p>(5) The assignment shall not have effect vis-à-vis the European Patent Office, and may not be cited against third parties, until after it has been recorded in the Register of European Patents. It shall only become effective, and may only be cited, to the extent to which it is verified by the documents referred to in paragraph 3. Nevertheless, an assignment, although not so recorded, may be cited against third parties who have subsequently acquired the European patent or rights in such patent and who acted otherwise than in good faith when introducing the request to have these rights recorded in the Register of European Patents.</p>	<p>(5) The assignment shall not have effect vis-à-vis the European Patent Office until after it has been recorded in the Register of European Patents. It shall only become effective to the extent to which it is verified by the documents referred to in paragraph 3.</p>	<p>(5) +</p>
<p>(6) - omitted -</p>	<p>(6) - omitted -</p>	<p>(6) +</p>

Mortgaging of a European patent application

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) * A European patent may not be mortgaged save in its entirety and for the whole of the territories in which it is effective.</p> <p>(2) A European patent shall be mortgaged in accordance with the law applying to the mortgaging of national patents in the Contracting State in which the proprietor of the patent is ordinarily resident or has his registered place of business. When the proprietor is neither ordinarily resident nor has his registered place of business in one of the Contracting States, the law to be applied shall be that of the Contracting State in which the agent appointed or the address for service chosen in accordance with the terms of Article 172 has his place of business or is situated. If, by virtue of the preceding provisions, the right of mortgaging can be construed according to the law of several Contracting States, the parties shall stipulate which of these laws is to apply.</p> <p>(3) As long as the mortgage of a European patent remains in the Register of European Patents, other mortgages may not be created save in accordance with the law of the Contracting State which applies to</p>	<p>(1) - omitted; see Art. 24a -</p> <p>(2) A European patent application shall be mortgaged in accordance with the law applying to the mortgaging of national patents in the Contracting State in which the applicant is ordinarily resident or has his registered place of business. When the applicant is neither ordinarily resident nor has his registered place of business in one of the Contracting States, the law to be applied shall be that of the Contracting State in which the agent appointed in accordance with the terms of Article 172 has his place of business. If, by virtue of the preceding provisions, the right of mortgaging can be construed according to the law of several Contracting States, the parties shall stipulate which of these laws is to be applied.</p> <p>(3) As long as the mortgage of a European patent application remains in the Register of European Patents, other mortgages may not be created save in accordance with the law of the Contracting State which applies</p>	<p>- omitted -</p>

Article 26 (cont.)

1965 Draft	Chairman's proposal	EFTA Draft
<p>the registered mortgage. Any unregistered mortgage created prior to the registration of a particular mortgage shall be deemed to have been created in accordance with the law applicable to the registered mortgage.</p> <p>(4) Paragraphs 2 to 4 of Article 25 shall apply mutatis mutandis.</p> <p>(5) The mortgaging of a European patent shall not have effect until it has been recorded in the Register of European Patents.</p> <p>(6) * The mortgaging of a European patent shall be governed by the law of the Contracting State in accordance with which the mortgage has been created or is deemed to have been created, except as otherwise provided in this Convention. Jurisdiction in respect of the mortgage shall be with the courts or other competent authorities of the said Contracting State.</p> <p>(7) - omitted -</p>	<p>to the registered mortgage. Any unregistered mortgage created prior to the registration of a particular mortgage shall be deemed to have been created in accordance with the law applicable to the registered mortgage.</p> <p>(4) ...</p> <p>(5) The mortgaging of a European patent application shall not have effect until it has been recorded in the Register of European Patents.</p> <p>(6) The mortgaging of a European patent application shall be governed by the law of the Contracting State in accordance with which the mortgage has been created or is deemed to have been created, except as otherwise provided in this Convention. Jurisdiction in respect of the mortgage shall be with the <u>courts or other competent</u> authorities of the said Contracting State.</p> <p>(7) - omitted -</p>	

Article 27

Other rights in rem with respect to a European patent application

1965 Draft	Chairman's proposal	EFTA Draft
<p>Article 25 and paragraphs 2, 3 and 6 of Article 26 shall apply to rights <u>in rem</u> established by contract, in respect of European patents other than mortgage rights, and, as far as possible, to rights <u>in rem</u> established by law in respect of European patents.</p>	<p>Article 25 and paragraphs 2, 3 and 6 of Article 26 shall apply to rights <u>in rem</u> established by contract in respect of European patent applications, other than mortgage rights, and, as far as possible, to rights <u>in rem</u> established by law in respect of European patent applications.</p>	<p>- omitted -</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) * A European patent may not be subject to distraint or to other measures of execution, save in its entirety and for the whole of the territories in which it is effective.</p> <p>(2) Proceedings in distraint in respect of a European patent shall be originated by the competent authorities of, and pursuant to the law of, the Contracting State in whose territory the proprietor is ordinarily resident or has his registered place of business. If the proprietor is neither resident nor has his registered place of business in the territory of one of the Contracting States, the relevant law and competent authorities shall be those of the Contracting State on whose territory an agent has been appointed or an address for service chosen according to the terms of Article 172. If no agent has been appointed and no such address chosen, the relevant law and the competent authorities shall be those of the Contracting State in which the European Patent Office is located.</p>	<p>(1) - omitted; see Art.24a -</p> <p>(2) Proceedings in distraint in respect of a European patent application shall be originated by the competent authorities of, and pursuant to the law of, the Contracting State in whose territory the applicant is ordinarily resident or has his registered place of business. If the applicant is neither resident nor has his registered place of business in the territory of a designated Contracting State, the relevant law and competent authorities shall be those of the Contracting State on whose territory an agent has been appointed according to the terms of Article 172. If no agent has been appointed, the relevant law and the competent authorities shall be those of the Contracting State in which the European Patent Office is located.</p>	<p>- omitted -</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>(3) If, pursuant to paragraph 2, the authorities of several Contracting States are competent, the authorities of the Contracting State on whose territory the first distraint was effected shall have exclusive jurisdiction. Distraints effected in other Contracting States must be renewed on request by the authorities with exclusive jurisdiction and shall be deemed to be effected on the date of the initial distraint. The competent authorities of Contracting States shall transmit a copy of the documents relating to the distraint to the European Patent Office.</p> <p>(4) The distraint of a European patent shall have no effect vis-à-vis the European Patent Office or third parties until such time as it is entered in the Register of European Patents. Nevertheless, a distraint which is not so entered shall have effect vis-à-vis third parties who have subsequently acquired the European patent or rights in such patent and who acted otherwise than in good faith when introducing the request to have these rights entered.</p>	<p>(3) ...</p> <p>(4) The distraint of a European patent application shall have no effect vis-à-vis the European Patent Office or third parties until such time as it is entered in the Register of European Patents. Nevertheless, a distraint which is not so entered shall have effect vis-à-vis third parties who have subsequently acquired the European patent application <u>or</u> the European patent granted on this application <u>or</u> rights in such patent application <u>or</u> in such patent <u>and</u> who acted otherwise than in good faith when introducing the request to have these rights entered.</p>	

1965 Draft	Chairman's proposal	EFTA Draft
<p>(5) Distributions shall be registered, free of charge, upon notification by the competent national authorities.</p> <p>(6) After the distraint has been registered, the transfer of the European patent concerned or the grant of other rights pertaining to that European patent shall not be entered in the Register of European Patents, unless the request for the entry is accompanied by a declaration on the part of the creditor in whose favour the distraint has been registered, indicating that he consents to such entry.</p> <p>(7) The preceding paragraphs shall apply mutatis mutandis in respect of distraints on the ground of contested proprietorship, or in respect of other protective measures under civil law, relating to a European patent.</p> <p>(8) Paragraphs 1, 2, 3, 5 and 6 shall apply mutatis mutandis when bankruptcy proceedings have been filed in respect of the estate of the proprietor of a European patent. Nevertheless, for the purposes of this provision, the registered place of business referred to in paragraph 2 shall, in respect of a bank-</p>	<p>(5) ...</p> <p>(6) After the distraint has been registered, the transfer of the European patent application concerned or the grant of other rights pertaining to that European patent application shall not be entered in the Register of European Patents, unless the request for the entry is accompanied by a declaration on the part of the creditor in whose favour the distraint has been registered, indicating that he consents to such entry.</p> <p>(7) The preceding paragraphs shall apply mutatis mutandis in respect of distraints on the ground of contested proprietorship, or in respect of other protective measures under civil law, relating to a European patent application.</p> <p>(8) Paragraphs 2, 3, 5 and 6 shall apply mutatis mutandis when bankruptcy proceedings have been filed in respect of the estate of an applicant for a European patent application. Nevertheless, for the purposes of this provision, the registered place of business referred to in paragraph 2 shall,</p>	

1965 Draft	Chairman's proposal	EFTA Draft
<p>rupt, who is the proprietor of a European patent, be the centre of his business activity. The provisions of this paragraph shall apply to any other legal proceedings with a view to jointly paying off the creditors from the estate of a debtor who is the proprietor of a European patent.</p>	<p>in respect of a bankrupt, who is an applicant for a European patent, be the centre of his business activity. The provisions of this paragraph shall apply to any other legal proceedings with a view to jointly paying off the creditors from the estate of a debtor who is an applicant for a European patent.</p>	

Article 28a

Continuing effect of rights in respect of a patent application

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) Articles 25 to 28 shall apply mutatis mutandis to applications for a European patent.</p> <p>(2) The rights which third parties have acquired in respect of an application for a European patent shall continue to apply to the European patent granted on such application.</p>	<p>(1) - omitted -</p> <p>(2) ...</p>	

Contractual licensing of a European patent application

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) * A European patent may be licensed for the whole or part of the territories in which it is effective.</p>	<p>(1) A European patent application may be licensed for the whole or part of the territories of the designated Contracting States.</p>	<p>(1) +</p>
<p>(2) The provision of paragraph 1 of Article 20a applies with regard to a patented article lawfully put on the market by the licensee. For the purpose of the application of this provision, the lawfulness of putting the article on the market shall be determined without taking account of any clauses of the licence which provide for territorial limitation.</p>	<p>(2) - omitted -</p>	<p>(2) - omitted -</p>
<p>(3) Paragraphs 3 to 5 of Article 25 shall apply mutatis mutandis to the grant or the assignment of a licence in respect of a European patent.</p>	<p>(3) Paragraphs 3 to 5 of Article 25 shall apply to the grant or the assignment of a licence in respect of a European patent application.</p>	<p>(3) +</p>

Supplementary application of national law in legal transactions

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) In so far as this Convention does not itself contain rules directly governing legal transactions concerning European patents, the law to be applied shall be the national law referred to by this Convention. Failing such reference, the law to be applied shall be that agreed upon by the parties or, in the case of a transaction involving only one party, the law designated by such initiating party. In the event of failure to agree upon or to designate the relevant law, or if such agreement or designation cannot be enforced by the court before which the matter has been brought, the relevant law shall be determined in accordance with the rules of private international law applicable in the State of the court in question.</p>	<p>(1) In so far as this Convention does not itself contain rules directly governing legal transactions concerning European patent applications, the law to be applied shall be the national law referred to by this Convention. Failing such reference, the law to be applied shall be that agreed upon by the parties or, in the case of a transaction involving only one party, the law designated by such initiating party. In the event of failure to agree upon or to designate the relevant law, or if such agreement or designation cannot be enforced by the court before which the matter has been brought, the relevant law shall be determined in accordance with the rules of private international law applicable in the State of the court in question.</p>	<p>(1) +</p>
<p>(2) If private international law refers to the <i>lex rei sitae</i>, the relevant law shall be the law of the Contracting State on whose territory the proprietor of the European patent is ordinarily resident</p>	<p>(2) If private international law refers to the <i>lex rei sitae</i>, the relevant law shall be the law of the Contracting State on whose territory the applicant is ordinarily resident or has his registered</p>	<p>(2) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>or has his registered place of business. If the proprietor is neither resident nor has his registered place of business on the territory of one of the Contracting States, the relevant law shall be the law of the Contracting State in which an agent has been appointed or an address for service chosen in accordance with the terms of Article 172. If no agent has been appointed and no such address chosen, the relevant law shall be the law of the Contracting State in which the European Patent Office is located.</p>	<p>place of business. If the applicant is neither resident nor has his registered place of business on the territory of one of the Contracting States, the relevant law shall be the law of the Contracting State in which an agent has been appointed in accordance with the terms of Article 172. If no agent has been appointed, the relevant law shall be the law of the Contracting State in which the European Patent Office is located.</p>	

THE EUROPEAN PATENT OFFICE
CHAPTER I
STATUS AND GENERAL ORGANISATION

Article 31
Legal status

1965 Draft	Chairman's proposal	EFTA Draft
(1) * The European Patent Office is an organisation common to the Contracting States and endowed with administrative and financial autonomy.	(1) ...	(1) +
(2) * The activities of the European Patent Office shall be controlled by the <u>Administrative Council</u> .	(2) ...	(2) +

Assignment of tasks by means of a special convention

1965 Draft	Chairman's proposal	EFTA Draft
	<p>The European Patent Office may be given additional tasks by a special convention within the meaning of Article 8a. Special organs may be set up within the European Patent Office in order to carry out such additional tasks; such organs shall constitute common institutions of the States entering into this special convention and shall be subject to the supervision of the select committee of the Administrative Council.</p>	<p>See point 10 of the explanatory note to the EFTA Draft. (Annex II to EFTA 4/67 dated 19 January 1967).</p>

Legal character

1965 Draft	Chairman's proposal	EFTA Draft
(1) * The European Patent Office shall be a legal entity.	(1) ...	(1) +
(2) * In each of the Contracting States, the European Patent Office shall have the maximum legal capacity given to legal entities by the national law; in particular, it may acquire or transfer immovables and movables and institute proceedings in its own name.	(2) ...	(2) +
(3) * The President of the European Patent Office shall exercise the legal capacity of that Office.	(3) ...	(3) +

1965 Draft	Chairman's proposal	EFTA Draft
(1) *	(1)	(1)
<u>1st variant</u>	<u>1st variant</u>	<u>1st variant</u>
The European Patent Office shall be located at	+
<u>2nd variant</u>	<u>2nd variant</u>	<u>2nd variant</u>
The location of the European Patent Office shall be determined by unanimous decision of the <u>[Administrative Council]</u> .	- omitted -	+
<u>3rd variant</u>	<u>3rd variant</u>	<u>3rd variant</u>
The location of the European Patent Office shall be determined by common agreement on the part of the Contracting States.	- omitted -	+
(2) * By unanimous decision, the <u>[Administrative Council]</u> may, if need be, create Branches of the European Patent Office for the purpose of information and liaison, in conjunction with the central industrial property services of the Contracting States or in conjunction with the <u>[International Patents Institute at The Hague]</u> .	(2) ...	(2) +
(3) * The creation of these Branches may be decided upon in order to meet the needs of the European Patent Office or those of Contracting States or the <u>[International Patents Institute at The Hague]</u> .	(3) ...	(3) +

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) * Subject to the following provisions, the languages in use at the European Patent Office shall be English, French and German.</p> <p>(2) Persons having their registered place of business or ordinary residence within the territory of one of the Contracting States in which an official language other than the languages specified in paragraph 1 is used, and nationals of that State who are resident abroad, may file applications for European patents in that language. Nevertheless, a translation in one of the languages referred to in paragraph 1 must be produced within a period of three months from the date of filing.</p> <p>(3) Subject to the exceptions provided for in the Implementing Regulations, the language of an application for a European patent or, in the case referred to in paragraph 2, that of the translation, must be used in all dealings with the European Patent Office. If a document has to be produced before the expiration of a time limit, paragraph 2 shall apply mutatis mutandis, provided that the translation is produced in the language of the proceedings and within a</p>	<p>(1) ...</p> <p>(2) ...</p> <p>(3) ...</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>period of one month from the production of the document.</p> <p>(4) Entries in the Register of European Patents shall be made in the three languages referred to in paragraph 1. In cases of doubt, the entry in the language of the application or, in the case referred to in paragraph 2, in that of the translation, shall be authentic.</p> <p>(5) The printed specifications of European patents shall be published in the language of the application or, in the case referred to in paragraph 2, in that of the translation; they shall include a translation of the claims into each of the other two languages referred to in paragraph 1.</p>	<p>(4) ...</p> <p>(4a) European patent applications shall be published in the language of the application or, in the case referred to in paragraph 2, that of the translation; a translation of the claims into each of the other two languages referred to in paragraph 1 shall be attached.</p> <p>(5) ...</p> <p><u>Note</u> The later translation referred to in paragraph 5 of the EFTA Draft is to be dealt with in connection with the provisions concerning the European patent after it has been granted.</p>	<p>(4) +</p> <p>(5) The printed specifications of European patents shall be published in the language of the application or, in the case referred to in paragraph 2, in that of the translation; they shall include a translation of the claims into each of the other two languages referred to in paragraph 1. Any Contracting State may</p>

Article 35

Privileges and immunities

1965 Draft	Chairman's proposal	EFTA Draft
<p>* The European Patent Office and its officials and other employees shall enjoy in the territory of Contracting States those privileges and immunities which are necessary to the carrying out of their tasks in accordance with the terms of the provisions laid down in a special protocol.</p>	...	+

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) * The President of the European Patent Office shall ensure that the Office is administered in accordance with the provisions of this Convention and its Implementing Regulations; he shall be responsible for the activities of the European Patent Office to the <u>Administrative Council</u>.</p>	<p>(1) The President of the European Patent Office shall ensure that the Office is administered in accordance with the provisions of this Convention and its Implementing Regulations as also, in so far as the European Patent Office is given additional tasks on the basis of a special convention within the meaning of Article 8a, in accordance with the provisions of such special convention and its implementing regulations. He shall be responsible for the activities of the European Patent Office to the Administrative Council.</p>	<p>(1) +</p>
<p>(2) * To this end, the President shall have the following powers:</p>	<p>(2) ...</p>	<p>(2) +</p>
<p>(a) * he shall take all necessary steps to ensure the functioning of the organisation;</p>	<p>(a) ...</p>	<p>(a) +</p>
<p>(b) * he may place before the <u>Administrative Council</u> any proposal for amending this Convention and any proposal for general regulations or decisions concerning the European Patent Office which come within the competency of the <u>Administrative Council</u>;</p>	<p>(b) ...</p>	<p>(b) +</p>
<p>(c) * he shall prepare and implement the budget in conformity with the financial provisions;</p>	<p>(c) ...</p>	<p>(c) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
(d) * he shall submit each year the accounts, the balance sheet and a management report to the <u>Administrative Council</u> ;	(d) ...	(d) +
(e) * he shall exercise supervisory authority over the personnel;	(e) ...	(e) +
(f) * he shall appoint the officials and employees other than those referred to in Article 37, and shall decide on their promotion;	(f) ...	(f) +
(g) * he shall exercise disciplinary authority over the officials and employees other than those referred to in Article 37, and may propose disciplinary action to the <u>Administrative Council</u> with regard to officials referred to in Article 37, paragraph 3;	(g) ...	(g) +
(h) * he may delegate his functions to one or more officials or employees of the European Patent Office;	(h) ...	(h) +
(i) * he shall take part in the discussions of the <u>Administrative Council</u> relating to questions which concern the European Patent Office.	(i) ...	(i) +
(3) * The President shall be assisted by a number of Vice-Presidents. In his absence, he shall be represented by one of the Vice-Presidents.	(3) ...	(3) +

Article 37

Appointment of senior officials

1965 Draft	Chairman's proposal	EFTA Draft
(1) * The President of the European Patent Office shall be appointed by decision of the <u>Administrative Council</u> .	(1) ...	(1) +
(2) * The Vice-Presidents shall be appointed by decision of the <u>Administrative Council</u> after the President has been consulted.	(2) ...	(2) +
(3) * The members of the Boards of Appeal and of the Revocation Boards shall be appointed by the decision of the <u>Administrative Council</u> , taken on the recommendation of the President.	(3) The Members of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by the decision of the Administrative Council, taken on the recommendation of the President.	(3) +

Article 38

Duties of Office

1965 Draft	Chairman's proposal	EFTA Draft
(1) * The officials and other employees of the European Patent Office are bound, even after the termination of their employment, not to disclose information which by its nature is a professional secret.	(1) ...	(1) +
(2) * The officials or other employees of the European Patent Office may not, in the course of their employment, file applications for patents either directly or through an intermediary.	(2) ...	(2) +
(3) * The <u>Administrative Council</u> shall fix the regulations for officials and the conditions of service for other employees of the European Patent Office.	(3) ...	(3) +

Article 39

Disputes between the European Patent Office and its staff

1965 Draft	Chairman's proposal	EFTA Draft
<p>* <u>[An international court]</u> shall have jurisdiction in any litigation between the European Patent Office and its officers within the limits and subject to the conditions laid down in the regulations for officials or arising from the conditions of service for other employees.</p>	<p>An Appeals Committee shall be established for the purpose of resolving disputes between the European Patent Office and its staff. The competence of the Appeals Committee, its composition, and the appeals procedure, shall be laid down in a special statute.</p>	<p>+</p>

Liability

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) * The contractual liability of the European Patent Office shall be governed by the law applicable to the relevant contract.</p> <p>(2) * In the matter of non-contractual liability, the European Patent Office shall be bound, in conformity with the general principles common to the laws of Contracting States, to make good any damage caused by its employees in the performance of their duties</p> <p>(3) * The personal liability of its employees towards the European Patent Office shall be laid down in their conditions of service or other rules applicable to them.</p> <p>(4) * <u>An international court</u> shall have jurisdiction to hear disputes concerning the liability for damages referred to in paragraph 2.</p>	<p>(1) ...</p> <p>(2) ...</p> <p>(3) ...</p> <p>(4) <u>1st variant</u> A Board of Arbitration shall be established for the purpose of resolving disputes concerning the recovery of damages provided for in paragraphs 1 en 2. The composition of the Board of Arbitration and the arbitration procedure shall be laid down in a special statute.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p> <p>(4) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
	<p data-bbox="1136 276 1333 305"><u>2nd variant</u></p> <p data-bbox="1136 323 1731 560">Disputes concerning the recovery of damages provided for in paragraphs 1 and 2 shall be decided by the courts with jurisdiction to decide such disputes in the place at which the European Patent Office is located.</p>	

Control of the legality of decisions of the Administrative Council
and of the President of the European Patent Office

1965 Draft	Chairman's proposal	EFTA Draft
<p>(1) * For the purpose of controlling the legality of the decisions of the <u>Administrative Council</u> and of the President of the European Patent Office, the <u>European Patent Court</u> shall be empowered to hear appeals from decisions alleged to be <u>ultra vires</u>, violation of a basic procedural rule, violations of the provisions of this Convention or of its Implementing Regulations, or abuse of authority, which may be lodged by a natural or legal person, provided that the decision which is challenged concerns such person directly.</p> <p>(2) * Appeals referred to in the preceding paragraph must be lodged within a period of two months counting from the date, as the case may be, of the publication of the decision, of its notification to the interested party or, failing these, from the date on which the party learned of the decision.</p> <p>(3) * If the appeal is well grounded, <u>the European Patent Court</u> shall quash the challenged decision.</p>	<p>- omitted -</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>

1965 Draft	Chairman's proposal	EFTA Draft
<p>(4) * <u>[</u>The Administrative Council] or the President of the European Patent Office shall be bound to take steps to implement the decision. Such obligation shall be without prejudice to any obligation which may arise from the application of Article 40, paragraph 2.</p>		<p>(4) *</p>