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Comment:

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

Brussels, 1 August 1969
BR/GT I/9/69

Secretariat

Working document

for a Draft Convention for a European System for the Grant of Patents
put forward by the Chairman of Working Party I

Articles 54 to 113

compared synoptically with

the 1962 and 1965 versions 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

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).

Proposals for Articles 1 to 41 were set out in a first working document, dated 2 June 1969 (BR/GT I/2/69).

At the working party's first meeting on 8 July 1969 it was decided to postpone examination of Articles 42 to 53, which contain the financial provisions. These Articles are to be referred to a special working party.

The present working document contains proposals for Articles 54 to 113. 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 the Draft Patent Cooperation Treaty (PCT) 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 texts of the published Brussels 1962 Draft, the EFTA Draft, based on this 1962 Draft, and the 1965 Draft in parallel columns alongside.

The proposals set out below for Articles 54 to 113, which relate to the departments, to applications for European patents and to examinations and appeals, are based, in accordance with the Memorandum of 17 March 1969, on the following principles :

1. As explained in the Memorandum (II 2 b and 2 c dd), the system of examination has been worked out as a system of deferred examination and has been approximated to the system of prior examination by providing that examination may be begun as from the filing of an application (Article 88).

2. The designation of the Contracting States in which an applicant desires protection must be made on application (Memorandum II 2 c aa). The corresponding provision (Article 68a) has been worked out on the basis of the PCT Draft. In addition, provision has been made - with the Member States of the EEC in mind - for Contracting States wishing the European patent to have a unitary character for their territories to lay down that they may only be designated jointly.
3. In accordance with the Memorandum (II 2 c bb), the proposals are based on the assumption that a report on the state of the art is to be obtained from the International Patent Institute at The Hague for every application for a European patent (Article 78).
4. In accordance with the Memorandum (II 2 c cc), applications for European patents are to be made public 18 months after the priority date, together with the corresponding report on the state of the art (Article 86a), in view of the abandonment of the provisional European patent. As from the date of this publication, applicants will benefit from provisional protection for a published patent application. Article 20 bis of the first working document offers three proposals for the detailed elaboration of this provisional protection.

5. If, after examining an application, the European Patent Office intends to grant a European patent, it will publish the claims which it allows (Article 96). In accordance with the Memorandum (II 2 c ee), this will afford third parties the opportunity to give notice of opposition to such grant. In view of the protection given by a European patent application as from the publication of the claims, reference is made to the proposals for Article 20 ter. in the first working document.
6. The Memorandum (II 6 a) envisages the European Patent Office being organised on two levels, the first consisting of the Examining Sections and Divisions. The Memorandum does not specify for which stages of the examination proceedings the Examining Sections and the Examining Divisions are respectively to be responsible.

The 1962 Draft provided that the Examining Sections would be responsible up to the grant of the provisional European patent. As from the filing of a request for examination of a provisional European patent, responsibility would be transferred to the Examining Divisions, composed of three examiners. In the 1962 Draft, the Examining Sections were only to be responsible for examination for formal and obvious deficiencies,

whereas examination as to novelty itself would be carried out by the Examining Divisions. The 1965 Draft introduced a classic third party opposition procedure, falling within the competence of the Examining Divisions. The question now arises of whether this procedure is not too time- and labour-consuming. It is therefore suggested that the Examining Sections might be made responsible for proceedings up to the publication of the claims, the responsibility of the Examining Divisions with three examiners being restricted to opposition proceedings.

For the time being, the Chairman's proposal retains the previous division of responsibilities between the Examining Sections and the Examining Divisions.

7. The question was raised in the Memorandum (II 6 c), of whether it would be necessary to set up a Court of Justice, or whether the types of dispute to which the implementation of the Convention could lead might be settled by other legal means. Further, the Memorandum (II 6 a) states that the second level of the European Patent Office, consisting of the Boards of Appeal, would need to be organised on the lines of a tribunal.

Following on this, a solution was sought which would eliminate any need for a legal means of recourse over and above the European Patent Office. The setting up of an additional appeal body, the Enlarged Board of Appeal (Article 54, sub-paragraph (f), and Articles 58a and 112a) has been suggested, in addition to the judicial character of the Boards of Appeal (Article 58b). The Enlarged Board of Appeal would co-ordinate the decisions of the Boards of Appeal and could take over a part of the functions of which would previously have been assigned to the European Patent Court.

8. A review of the 1965 Draft has shown that some of the provisions contained therein could be incorporated in the Implementing Regulations envisaged in the Memorandum (II 7). For the time being, however, the provisions in question have been incorporated in the Chairman's proposal. It is simply pointed out in the notes that these provisions could be incorporated in the Implementing Regulations.



K E Y

1962 Draft

indicates the Draft Convention relating to a European Patent Law drawn up by the EEC "Patents" Working Party and published in 1962.

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 on the 1962 Draft.

1965 Draft

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

The headings at the top of the left-hand pages

have been taken from the 1965 Draft.

+ in the columns headed "EFTA Draft"
and "Chairman's proposal"

* before single paragraphs in the
1965 Draft

--- used to underline the wording
in the "1965 Draft" column

— used to underline the wording in
the "Chairman's proposal" column

indicates that the wording of the column immediately to the left has in each case been adopted without amendment; i.e. that of the 1962 Draft in the EFTA Draft and, similarly, that of the 1965 Draft in the Chairman's proposal.

indicates that the German text of the 1965 Draft does not differ from the 1962 Draft. This sign has also been used before paragraphs which are the same as the 1962 Draft in the French text only, the German wording having been amended for reasons of style.

indicates that the words thus underlined have been omitted from the Chairman's proposal.

indicates that the words thus underlined are new insertions as compared with the 1965 Draft. Complete new paragraphs, however, have not been underlined.

CHAPTER III
ORGANISATION OF THE DEPARTMENTS

Article 54
The Departments

1962 Draft	EFTA Draft	1965 Draft
<p>The European Patent Office shall comprise:</p> <p>(a) Examining Sections;</p> <p>(b) Examining Divisions;</p> <p>(c) Patent Administration Divisions;</p> <p>(d) Boards of Appeal;</p> <p>(e) Revocation Boards.</p>	<p style="text-align: center;">+</p> <p>(a) +</p> <p>(b) +</p> <p>(c) +</p> <p>(d) +</p> <p>(e) - deleted -</p>	<p>The European Patent Office shall comprise the following departments, which shall be responsible for implementing the procedures laid down in this Convention:</p> <p>(a) Examining Sections;</p> <p>(b) Examining Divisions;</p> <p>(c) Patent Administration Divisions;</p> <p>(d) Boards of Appeal;</p> <p>(e) Revocation Boards.</p>

CHAPTER III
ORGANISATION OF THE DEPARTMENTS

Article 54
The Departments

Chairman's proposal

+

Note:

Sub-paragraph (c) concerning the Patent Administration Divisions and the corresponding Article 57 have been deleted, since the Chairman's proposals are based on the assumption that, after their grant, European patents will be administered by the national Patent Offices of the Contracting States.

(a) +

(b) +

(c) - deleted -

(d) +

(e) - deleted -

(f) an Enlarged Board of Appeal

Sub-paragraph (e) concerning the Revocation Boards and the corresponding Article 59 have been deleted, as revocation of a European patent in the territory of any of the Contracting States would be left to the competent national authorities.

Any group of Contracting States mentioned in Article 8a would, in accordance with Article 31a, be able to set up a Patent Administration Division and Revocation Boards for its unitary European patent within the European Patent Office.

Sub-paragraph (f) concerning the Enlarged Board of Appeal is a fresh insertion. See Introductory Note No. 7 and Articles 58a and 112a.

Article 55
Examining Sections

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The Examining Sections shall be responsible for the examination of applications for European patents and for the grant of provisional European patents.</p> <p>(2) The Examining Sections shall be staffed by technical examiners.</p> <p>(3) The decisions of an Examining Section shall be taken on behalf of that section by one examiner.</p> <p>(4) The examiners of the Examining Sections may not be members of the Boards of Appeal nor of the Revocation Boards.</p>	<p>(1) The Examining Sections shall be responsible for the examination of applications for European patents and for the grant of European patents.</p> <p>(2) +</p> <p>(3) +</p> <p>(4) The examiners of the Examining Sections may not be members of the Boards of Appeal.</p>	<p>(1) Without prejudice to any further special responsibilities entrusted to them pursuant to the provisions of this Convention, the Examining Sections shall be responsible for the examination of applications for European patents and for the grant of <u>provisional</u> European patents.</p> <p>(2) * The Examining Sections shall be staffed by technical examiners.</p> <p>(3) * The decisions of an Examining Section shall be taken on behalf of that section by one examiner.</p> <p>(4) * The examiners of the Examining Sections may not be members of the Boards of Appeal <u>or of the Revocation Boards</u>.</p>

Examining Sections

Chairman's proposal

(1) Without prejudice to any further special responsibilities entrusted to them pursuant to the provisions of this Convention, the Examining Sections shall be responsible for the examination of applications for European Patents and for the grant of European patents, in so far as the Examining Divisions are not responsible.

(2) +

(3) +

(4) The examiners of the Examining Sections may not be members of the Boards of Appeal.

Note:

As regards the division of responsibilities between the Examining Sections and the Examining Divisions, see Introductory Note No. 6 and the note to Article 56.

Article 56
Examining Divisions

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The Examining Divisions shall be responsible for the examination of provisional European patents and for their confirmation as final European patents</p> <p>(2) In order to give a valid decision an Examining Division must consist of three technical examiners, including an examiner of the Examining Section which decided to grant the provisional European patent. If the nature of the decision necessitates, the Division shall be enlarged by the addition of a legally qualified examiner; in the event of a parity of votes, the vote of the Chairman of the Division shall be decisive.</p>	<p>(1) The Examining Divisions shall be responsible for the examination and confirmation of European patents and for the grant of the final patents.</p> <p>(2) In order to give a valid decision an Examining Division must consist of three technical examiners, including an examiner of the Examining Section which decided to issue the European patent. If the nature of the decision necessitates, the Division shall be enlarged by the addition of a legally qualified examiner; in the event of a parity of votes, the vote of the Chairman of the Division shall be decisive.</p>	<p>(1) * The Examining Divisions shall be responsible for the examination of <u>provisional European patents</u> and for their <u>confirmation as final European patents</u>.</p> <p>(2) For the purpose of taking decisions which are open to appeal, the Examining Divisions shall consist of three technical examiners, including an examiner of the Examining Section which decided to <u>grant the provisional European patent</u>. If the nature of the decision so necessitates, the Division shall be enlarged by the addition of a legally qualified examiner ; in the event of parity of votes, the vote of the Chairman of the Division shall be decisive.</p>

Examining Divisions

Chairman's proposal

(1) The Examining Divisions shall be responsible for the examination of European patent applications and for deciding on the grant of European patents, once a request for examination has been filed pursuant to Article 88, but not before the receipt of the report on the state of the art by the European Patent Office.

(2) For the purpose of taking decisions which are open to appeal, the Examining Divisions shall consist of three technical examiners, including an examiner of the Examining Section which decided on the publication of the patent claims. If the nature of the decision so necessitates, the Division shall be enlarged by the addition of a legally qualified examiner; in the event of parity of votes, the vote of the Chairman of the Division shall be decisive.

Note:

Attention has already been drawn in Introductory Note No. 6 to the question of whether, for reasons of efficiency, the Examining Sections should not carry out the examination procedure up to the publication of the claims pursuant to Article 96. Should the Working Party favour this view, the criterion to be chosen in Article 56, paragraph 1, for the transfer of proceedings to the Examining Divisions would be the giving of notice of opposition pursuant to Article 96a. Since the Chairman's proposal remains for the time being within the framework of the previous division of responsibilities, the criterion chosen to determine the transfer of proceedings to the Examining Divisions is the filing of a request for examination, with the provision, however, that proceedings shall not be transferred prior to receipt of the report on the state of the art. See also Article 89 and the note thereto.

1962 Draft	EFTA Draft	1965 Draft
<p>(3) The examiners of the Examining Divisions may not be members of the Boards of Appeal or of the Revocation Boards.</p>	<p>(3) The examiners of the Examining Divisions may not be members of the Boards of Appeal.</p>	<p>(3) * The examiners of the Examining Divisions may not be members of the Boards of Appeal <u>or of the Revocation Boards</u></p>

Chairman's proposal

(3) The examiners of the Examining Divisions may not be members of the Boards of Appeal

Article 57

Patent Administration Divisions

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The Patent Administration Divisions shall be responsible for all decisions of the European Patent Office relating to a published European patent, in so far as these decisions are not the responsibility of other departments or services of that Office.</p> <p>(2) The Patent Administration Divisions shall be staffed by legally qualified members.</p> <p>(3) The decisions of a Patent Administration Division shall be taken on behalf of the Division by one of its members.</p> <p>(4) The members of the Patent Administration Divisions may not be members of the Boards of Appeal or of the Revocation Boards.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p> <p>(4) The members of the Patent Administration Divisions may not be members of the Boards of Appeal.</p>	<p>(1) * The Patent Administration Divisions shall be responsible for all decisions of the European Patent Office relating to a published European patent, in so far as these decisions are not the responsibility of other departments or services of that Office.</p> <p>(2) * The Patent Administration Divisions shall be staffed by legally qualified members.</p> <p>(3) * The decisions of a Patent Administration Division shall be taken on behalf of the Division by one of its members.</p> <p>(4) * The members of the Patent Administration Divisions may not be members of the Boards of Appeal or of the Revocation Boards.</p>

Article 57

Patent Administration Divisions

Chairman's proposal

- deleted; cf. Article 54, sub-paragraph
(c) and the note thereto -

Article 58
Boards of Appeal

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The Boards of Appeal shall be responsible for decisions on appeal from the decisions of the Examining Sections, Examining Divisions and Patent Administration Divisions.</p> <p>(2) In order to give a valid decision a Board of Appeal must consist of <u>three-four-five</u> members. They shall comprise legally and technically qualified members.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) * The Boards of Appeal shall be responsible for decisions on appeal from the decisions of the Examining Sections, Examining Divisions and <u>Patent Administration Divisions</u>.</p> <p>(2) <u>1st variant</u></p> <p>In order to give a valid decision, a Board of Appeal shall consist of three, four or five members. For appeals against decisions concerning the refusal of an application for a European patent or <u>decisions concerning the division, confirmation or cancellation of a provisional European patent</u>, the Board of Appeal shall consist of three technically qualified members and one legally qualified member or, should it deem it necessary, in view of a difficult or important point of law, of three technically qualified members and two legally qualified members. In other cases the Board of Appeal shall consist of three legally qualified members. If a Board of Appeal consists of four members, and there is parity of votes, the</p>

Chairman's proposal

(1) The Boards of Appeal shall be responsible for decisions on appeal from the decisions of the Examining Sections and Examining Divisions.

(2) 1st variant

In order to give a valid decision, a Board of Appeal shall consist of three, four or five members. For appeals against decisions concerning the refusal or the division of an application for a European patent or the grant of a European patent, the Board of Appeal shall consist of three technically qualified members and one legally qualified member or, should it deem it necessary, in view of a difficult or important point of law, of three technically qualified members and two legally qualified members. In other cases the Board of Appeal shall consist of three legally qualified members. If a Board of Appeal consists of four members, and there is parity of votes, the Chairman shall have the casting vote.

1962 Draft	EFTA Draft	1965 Draft
		<p>Chairman shall have the casting vote.</p> <p><u>2nd variant</u></p> <p>In order to give a valid decision, a Board of Appeal shall consist of three or five members. For appeals against decisions concerning the refusal of an application for a European patent or <u>decisions concerning the division, confirmation or cancellation of a provisional European patent</u>, the Board of Appeal shall consist of two technically qualified members and one legally qualified member, assisted by a technically qualified member who shall act as rapporteur but shall not take part in the decision, or, should it deem it necessary, in view of a difficult or important point of law, of three technically qualified members, including the rapporteur, and two legally qualified members. In other cases the Board of Appeal shall consist of three legally qualified members.</p>

Chairman's proposal

Second variant:

In order to give a valid decision, a Board of Appeal shall consist of three or five members. For appeals against decisions concerning the refusal or the division of an application for a European patent or the grant of a European patent, the Board of Appeal shall consist of two technically qualified members and one legally qualified member, assisted by a technically qualified member who shall act as rapporteur but shall not take part in the decision, or, should it deem it necessary, in view of a difficult or important point of law, of three technically qualified members, including the rapporteur, and two legally qualified members. In other cases the Board of Appeal shall consist of three legally qualified members.

Article 58 (contd.)

- 3 -

1962 Draft	EFTA Draft	1965 Draft
<p>(3) The members of the Boards of Appeal may not be members of the Examining Sections, Examining Divisions or Patent Administration Divisions.</p> <p>(4) In their decisions the members of the Boards of Appeal shall not be bound by any instructions. They shall comply only with the provisions of this Convention and with those adopted in implementation thereof.</p>	<p>(3) +</p> <p>(4) +</p>	<p>(3) * The members of the Boards of Appeal may not be members of the Examining Sections, Examining Divisions or Patent Administration Divisions.</p> <p>(4) * In their decisions the members of the Boards of Appeal shall not be bound by any instructions. They shall comply only with the provisions of this Convention and with those adopted in implementation thereof.</p>

Chairman's proposal

(3) - incorporated in the new Article 58 b,
paragraph 2 -

(4) - incorporated in the new Article 58 b,
paragraph 3 -

Note:

Paragraphs 3 and 4 have been incorporated in paragraphs 2 and 3 of the new Article 58b, since they concern the question of the independence of the members of the Boards of Appeal, and this would now also apply to the members of the Enlarged Board of Appeal.

Article 58a (new)

Enlarged Board of Appeal

Chairman's proposal

(1) The Enlarged Board of Appeal shall be responsible for decisions on points of law referred to it by the Boards of Appeal.

(2) In order to give a valid decision, the Enlarged Board of Appeal shall consist of seven members, of whom five shall be legally qualified members and two technically qualified members.

Note:

As regards the Enlarged Board of Appeal, see the explanations given in Introductory Note No. 7 and the note to Article 112a.

Independence of the members of the Boards

Chairman's proposal

(1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term.

(2) The members of the Boards may not be members of the Examining Sections or Examining Divisions.

(3) In their decisions the members of the Boards shall not be bound by any instructions. They shall comply only with the provisions of this Convention and with those adopted in implementation thereof.

Note:

In accordance with the Memorandum (II 6 a), paragraph 1 provides for the irremovability of the members of the Boards for a certain period. This serves to emphasize the judicial character of the second level of the European Patent Office.

Provisions contained elsewhere in the 1962 and 1965 Drafts (Article 58, paragraphs 3 and 4) have been introduced in paragraphs 2 and 3, since they also relate to the independence of the members of the Boards.

Revocation Boards

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The Revocation Boards shall be responsible for deciding upon applications for revocation of final European patents. They shall also decide in the matter of applications for compulsory licences in respect of European patents, as well as in the matter of applications made pursuant to Articles 181 and 182.</p> <p>(2) In order to give a valid decision a Revocation Board must consist of five members. They shall comprise two legally qualified and three technically qualified members.</p> <p>(3) The members of the Revocation Boards may not be members of the Examining Sections, Examining Divisions or Patent Administration Divisions.</p> <p>(4) In their decisions the members of the Revocation Boards shall not be bound by any instructions. They shall only comply with the provisions of this Convention and with those adopted in implementation thereof.</p>	<p>- deleted -</p>	<p>(1) The Revocation Boards shall be responsible for deciding upon applications for revocation of final European patents. They shall also decide in the matter of applications for compulsory licences in respect of European patents, as well as in the matter of applications made pursuant to Article 181.</p> <p>(2) In order to give a valid decision a Revocation Board shall consist of two legally qualified members, one of whom shall act as Chairman, and three technically qualified members.</p> <p>(3) * The members of the Revocation Boards may not be members of the Examining Sections, Examining Divisions or Patent Administration Divisions.</p> <p>(4) * In their decisions the members of the Revocation Boards shall not be bound by any instructions. They shall comply only with the provisions of this Convention and with those adopted in implementation thereof.</p>

Article 59
Revocation Boards

Chairman's proposal

- deleted; cf. Article 54, sub-paragraph (e)
and the note thereto -

CHAPTER IV
REGISTER - PUBLICATIONS - CLASSIFICATION

Article 60

Register of European Patents

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The European Patent Office shall keep a register to be known as the "Register of European Patents" which shall contain those particulars the registration of which is provided for by this Convention or by its Implementing Regulations.</p>	<p>(1) +</p>	<p>(1) The European Patent Office shall keep a register, to be known as the "Register of European Patents", which shall contain those particulars the registration of which is provided for by this Convention.</p>
<p>(2) The Register of European Patents shall be open to public inspection. Extracts from its entries shall be delivered on request on payment of the fee prescribed by the Rules relating to fees adopted pursuant to this Convention.</p>	<p>(2) +</p>	<p>(2) * The Register of European Patents shall be open to public inspection. Extracts from its entries shall be delivered on request on payment of the fee prescribed by the Rules relating to fees adopted pursuant to this Convention.</p>

CHAPTER IV

REGISTER - PUBLICATIONS - CLASSIFICATION

Article 60

Register of European Patents

Chairman's proposal

(1) +

(2) +

Publications of the European Patent Office

1962 Draft	EFTA Draft	1965 Draft
<p>In addition to the publications referred to in Articles 85 and 103, the European Patent Office shall periodically publish :</p> <p>(a) a European Patent Bulletin containing entries made in the Register of European Patents, as well as any other particulars relating to European patents the publication whereof is prescribed by this Convention or by its Implementing Regulations;</p> <p>(b) an Official Journal of European Patents containing notices and information of a general character issued by the President of the European Patent Office, as well as any other particulars concerning the European Patent Law.</p>	<p>+</p> <p>(a) +</p> <p>(b) +</p>	<p>* In addition to the publications referred to in Articles 85 and 103, the European Patent Office shall periodically publish :</p> <p>(a) A European Patent Bulletin containing entries made in the Register of European Patents, as well as all other particulars relating to European patents, the publication of which is prescribed by this Convention. Entries relating to European patent applications shall not be published prior to publication of the grant of the provisional European patent concerned or, as the case may be, until the files have been opened for inspection pursuant to Article 86 a;</p> <p>(b) An Official Journal of the European Patent Office, containing notices and information of a general character issued by the President of the European Patent Office, as well as any other particulars concerning the European patent law.</p>

Chairman's proposal

In addition to the publications referred to in Articles 86a and 103, the European Patent Office shall periodically publish:

- (a) a European Patent Bulletin containing entries made in the Register of European Patents, as well as all other particulars relating to European patents, the publication of which is prescribed by this Convention. Entries relating to European patent applications shall not be published prior to the publication pursuant to Article 86a;

(b) +

Patent Classification in use by the European Patent Office

1962 Draft	EFTA Draft	1965 Draft
<p>The Patent classification in use by the European Patent Office shall be the "international classification" referred to in Article 1 of the European Convention on the International Classification of Patents for Invention of 19th December, 1954.</p>	+	<p>* The Patent classification in use by the European Patent Office shall be the "international classification" referred to in Article 1 of the European Convention on the International Classification of Patents for Invention of 19 December 1954.</p>

Article 62

Patent Classification in use by the European Patent Office

Chairman's proposal

CHAPTER V
RELATIONS WITH NATIONAL AUTHORITIES

Article 63

Exchange of publications

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The European Patent Office shall despatch free of charge to the central industrial property offices of Contracting States, at their request and for their own use, one or more copies of the publications mentioned in Article 61.</p>	(1) +	<p>(1) The European Patent Office shall despatch free of charge to the central industrial property offices of the Contracting States, at their request and for their own use, one or more copies of the publications referred to in Articles 61, <u>85</u> and 103.</p>
<p>(2) The central industrial property offices of Contracting States shall despatch free of charge to the European Patent Office, at the latter's request and for its own use, one or more copies of the published applications for and printed specifications of national patents, as well as of publications analogous to those of the European Patent Office mentioned in Article 61 (a) and (b).</p>	(2) +	<p>(2) * The central industrial property offices of the Contracting States shall despatch free of charge to the European Patent Office, at the latter's request and for its own use, one or more copies of the published applications for and printed specifications of national patents, as well as of publications analogous to those of the European Patent Office referred to in Article 61 (a) and (b).</p>
<p>(3) The European Patent Office may conclude agreements relating to the exchange of publications with the central industrial property offices or other administrations of any State.</p>	(3) +	<p>(3) The European Patent Office may conclude agreements relating to the exchange of publications with the central industrial property offices or other administrations of any State, and with international bodies.</p>

CHAPTER V

RELATIONS WITH NATIONAL AUTHORITIES

Article 63

Exchange of publications

Chairman's proposal

(1) The European Patent Office shall despatch free of charge to the central industrial property offices of the Contracting States, at their request and for their own use, one or more copies of the publications referred to in Articles 61, 86a and 103.

(2) +

(3) +

Article 64

Requests for information

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Unless otherwise provided in this Convention or its Implementing Regulations or in national laws, the European Patent Office and the Courts or administrations of Contracting States shall give mutual assistance to each other by communicating information or documents on request.</p> <p>(2) The European Patent Office shall communicate the files concerning applications for European patents and those concerning European patents to the Courts or Departments of Contracting States, notwithstanding the restrictions laid down in Article 162.</p> <p>(3) The European Patent Office and the central industrial property offices of Contracting States shall, on request, mutually inform each other about the progress of examination proceedings concerning applications</p>	<p>(1) +</p> <p>(2) The European Patent Office shall communicate the files concerning applications for European patents and those concerning European Patents to the courts or departments of States covered by the applications or patents, notwithstanding the restrictions laid down in Article 162.</p> <p>(3) +</p>	<p>(1) Unless otherwise provided in this Convention or in national laws, the European Patent Office and the Courts or administrations of Contracting States shall give mutual assistance to each other by communicating information or opening files for inspection on request. For inspection of the files of the European Patent Office, the fee referred to in Article 162, paragraph 3, shall not be payable.</p> <p>(2) * The European Patent Office shall communicate the files concerning applications for European patents and those concerning European patents to the Courts or Public Prosecutor's Office of Contracting States, notwithstanding the restrictions laid down in Article 162.</p> <p>(3) * The European Patent Office and the central industrial property offices of Contracting States shall, on request, mutually inform each other about the progress of examination proceedings concerning applications</p>

Requests for information

Chairman's proposal

(1) +

(2) +

(3) +

1962 Draft	EFTA Draft	1965 Draft
<p>for patents filed, as a whole or in part, in respect of the same invention, with the European Patent Office and with the said offices. Such information shall relate, in particular, to the results of novelty searches, and to examiners' reports and decisions. These provisions shall also apply to action taken under Article 114.</p>		<p>for patents filed, as a whole or in part, in respect of the same invention, with the European Patent Office and with the said offices. Such information shall relate, in particular, to the results of novelty searches, and to examiners' reports and decisions. These provisions shall also apply to action taken under Article 114.</p> <p>(4) The European Patent Office may communicate the information referred to in paragraph 3 to the industrial property offices of States not signatory to this Convention, where such mutual information is provided for by working agreements.</p>

Article 64 (contd.)

Chairman's proposal

(4) +

Article 65
Letters Rogatory

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Upon receipt of letters rogatory from the European Patent Office, the Courts of Contracting States shall undertake, on behalf of that Office, any necessary enquiries or other legal measures within the limits of their jurisdiction.</p> <p>(2) Each Contracting State shall designate the national authority to which the European Patent Office is to address its letters rogatory and shall lay down the procedure to be applied in the carrying out of such requests.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) Upon receipt of letters rogatory from the <u>departments referred to in Article 54</u>, the Courts of Contracting States shall undertake, on behalf of <u>those departments</u>, any necessary enquiries or other legal measures within the limits of their jurisdiction.</p> <p>(2) - deleted -</p> <p><u>Note</u> Paragraph 2 has been included in the Implementing Regulations.</p>

Letters rogatory

Chairman's proposal

Upon receipt of letters rogatory from the European Patent Office, the Courts of Contracting States shall undertake, on behalf of that Office, any necessary enquiries or other legal measures within the limits of their jurisdiction.

Note :

In so far as a group of Contracting States as referred to in Article 8a were to make use of the possibility afforded by Article 31a to set up a Patent Administration Division and Revocation Boards for the unitary European patent within the European Patent Office, letters rogatory from these special organs would no longer be covered by the words "the departments referred to in Article 54". For this reason these words have been replaced, in the Chairman's proposal, by "the European Patent Office".

APPLICATION FOR EUROPEAN PATENTS

CHAPTER I

FILING AND REQUIREMENTS OF THE APPLICATION

Article 66

Filing of the application

1962 Draft	EFTA Draft	1965 Draft
<p>(1) An application for a European patent may be filed :</p> <p>(a) either at the European Patent Office ;</p> <p>(b) or, if the law of a Contracting State so permits, at the central industrial property office or other competent authority of that State. An application filed in this way shall have the same effect as if it had been simultaneously filed at the European Patent Office.</p> <p>(2) Any Contracting State may prescribe that a person having his registered place of business or his ordinary residence on its territory may not file an application for a European patent otherwise than as provided for in paragraph 1 (b).</p>	<p>(1) +</p> <p>(a) +</p> <p>(b) +</p> <p>(2) +</p>	<p>(1) * An application for a European patent may be filed :</p> <p>(a) * either at the European Patent Office ;</p> <p>(b) * or, if the law of a Contracting State so permits, at the central industrial property office or other competent authority of that State. An application filed in this way shall have the same effect as if it had been filed at the same time at the European Patent Office.</p> <p>(2) Any Contracting State may prescribe that a person having his registered place of business or his ordinary residence on its territory, with the exception of international bodies and organisations, the list of which shall be established by unanimous decision of the /Administrative Council/ taking into account the general principles</p>

APPLICATION FOR EUROPEAN PATENTS

CHAPTER I

FILING AND REQUIREMENTS OF THE APPLICATION

Article 66

Filing of the application

Chairman's proposal

(1) +

(a) +

(b) +

(2) +

1962 Draft	EFTA Draft	1965 Draft
<p>(3) In case of failure to observe any provisions made pursuant to paragraph 2 above, the European Patent Office shall transmit the application for a European patent to the central industrial property office of the Contracting State concerned. The effect of the application for a European patent shall not be affected thereby. The provisions of Article 67 shall apply.</p>	<p>(3) +</p>	<p>applicable in respect of such institutions and organisations, may not file an application for a European patent otherwise than as provided for in paragraph 1 (b).</p> <p>(3) * In case of failure to observe any provisions made pursuant to paragraph 2 above, the European Patent Office shall transmit the application for a European patent to the central industrial property office of the Contracting State concerned. The effect of the application for a European patent shall not be affected thereby. The provisions of Article 67 shall apply.</p>

Chairman's proposal

(3) +

Forwarding of applications for European patents

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The national central industrial property office shall be obliged to forward to the European Patent Office, in the shortest time compatible with the application of national law concerning the secrecy of inventions in the interests of the State, any applications for European patents which have been filed with that office or with other competent authorities in that State.</p> <p>(2) The Contracting States shall take all reasonable steps to ensure that applications for European patents, the subject of which is obviously not liable to secrecy by virtue of the law referred to in paragraph 1, shall be forwarded to the European Patent Office within a period not exceeding six weeks from the date of filing. Other applications for European patents must, as a rule, be forwarded to the European Patent Office within four months of the date of filing.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) * The national central industrial property office shall be obliged to forward to the European Patent Office, in the shortest time compatible with the application of national law concerning the secrecy of inventions in the interests of the State, any applications for European patents which have been filed with that office or with other competent authorities in that State.</p> <p>(2) The Contracting States shall take all reasonable steps to ensure that applications for European patents, the subject of which is obviously not liable to secrecy by virtue of the law referred to in paragraph 1, shall be forwarded to the European Patent Office within a period not exceeding six weeks from the date of filing. <u>Other applications for European patents must, as a rule, be forwarded to the European Patent Office within four months of the date of filing.</u></p>

Article 67

Forwarding of applications for European patents

Chairman's proposal

(1) +

Note :

(2) The Contracting States shall take all reasonable steps to ensure that applications for European patents, the subject of which is obviously not liable to secrecy by virtue of the law referred to in paragraph 1, shall be forwarded to the European Patent Office within a period not exceeding six weeks from the date of filing. Applications for European patents which require further examination as to their liability to secrecy shall be forwarded in such manner as to reach the European Patent Office within the period specified in paragraph 2a.

Paragraph 2 has been aligned with Article 12, paragraph 3a, and Rule 22.3, of the PCT Draft. The main purpose of this alignment is to achieve a concordance of the time-limits prescribed for the forwarding of European and international applications from the receiving Office to the European Patent Office or to the international authorities.

1962 Draft	EFTA Draft	1965 Draft
<p>(3) An application for a European patent the subject of which has been made secret, shall not be forwarded to the European Patent Office and shall be deemed to have been withdrawn. It may be converted into an application for a national patent in conformity with Article 118 in the Contracting State in which it has been filed. The application fee paid under Article 68 shall be refunded.</p>	<p>(3) +</p>	<p>(3) * An application for a European patent, the subject of which has been made secret, shall not be forwarded to the European Patent Office <u>and shall be deemed to have been withdrawn. It may be converted into an application for a national patent in conformity with Article 118 in the Contracting State in which it has been filed. The application fee paid under Article 68 shall be refunded.</u></p>

Chairman's proposal

(2a) The period referred to in the second sentence of paragraph 2 shall be :

- a) four months as from the date of filing, for an application for a European patent for which priority has not been claimed, and
- b) fourteen months as from the date of priority, for an application for a European patent for which priority has been claimed.

(3) An application for a European patent, the subject of which has been made secret, shall not be forwarded to the European Patent Office.

(4) Applications for European patents which do not reach the European Patent Office before the end of the fourteenth month as from the filing of the application or, if a priority has been claimed, as from the date of priority, shall be deemed to have been withdrawn. The application fee paid under Article 68 shall be refunded.

Paragraph 2a could be incorporated in the Implementing Regulations. For this reason paragraph 2a has been separated from the second sentence of paragraph 2 in the proposal.

The second sentence of paragraph 3 has been deleted, as this provision is to be incorporated in Articles 114 to 118, for which proposals will be presented at a later stage. The possibility afforded applicants to convert non-forwarded European patent applications into applications for national patents should be retained in full and further elaborated.

The provision laid down in paragraph 4 corresponds to Article 12, paragraph 3a, of the PCT Draft. By means of this provision, applicants under the Convention relating to a European patent law would not suffer any irreparable damage. Articles 114 to 118, which are to be put forward later, would allow applicants to convert applications for European patents which have been deemed to have been withdrawn, into

Chairman's proposal

applications for national patents within a fixed period. Subject to any provisions concerning secrecy, applicants would thus be able to convert applications for European patents into applications for national patents in all the Contracting States originally designated in the European patent applications in accordance with Article 68a.

Requirements of the application

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The application for a European patent shall contain :</p> <p>(a) a request for the grant of a European patent,</p> <p>(b) a description of the invention together with any drawings referred to therein.</p> <p>The application shall be written in one of the languages referred to in Article 34, paragraphs 1 and 2.</p> <p>(2) The application for a European patent shall be subject to the payment of the filing fee prescribed in the Rules relating to fees made under this Convention.</p> <p>(3) The application for a European patent shall be deemed to be filed on the date on which</p>	<p>(1) +</p> <p>(a) a request for the grant of a European patent stating the countries for which the grant is desired,</p> <p>(b) +</p> <p>+</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) An application for a European patent shall contain</p> <p>(a) * a request for the grant of a European patent,</p> <p>(b) a description of the invention,</p> <p>(c) one or more claims defining the protection applied for,</p> <p>(d) any drawings referred to in the description and the claims.</p> <p>The application shall be written in one of the languages referred to in Article 34, paragraphs 1 and 2.</p> <p>(2) * An application for a European patent shall be subject to the payment of the filing fee prescribed in the Rules relating to fees adopted pursuant to this Convention.</p> <p>(3) An application for a European patent shall be deemed to be filed on the date on which the</p>

Article 68

Requirements of the application

Chairman's proposal

(1) +

Note :

(a) +

It remains to be considered whether, in addition to the requirements listed in (a) to (d) of paragraph 1, an abstract should be required of applicants, as in the PTC Draft. Should the Working Party be in favour of this, the question of the publication of the abstract, and of the languages in which it would be published, would require further examination (cf. Article 34).

(b) +

The requirement laid down in paragraph 1 (a) of the EFTA Draft, relating to the designation of the Contracting States in which protection is required for an invention, has been taken into consideration in the Chairman's proposal for the new Article 68a.

(c) +

(d) +

+

(2) +

(3) - incorporated in Article 68b -

Paragraphs 3 and 4 have been incorporated in Article 68b since they do not lay down requirements of the application - as indicated by the title of Article 68 - but the date of filing the application.

Article 68 (contd.)

1962 Draft	EFTA Draft	1965 Draft
<p>the conditions required under paragraph 1 of this Article have been met, provided that the filing fee be paid within one month following that date.</p> <p>(4) If payment of the filing fee is made after the expiry of the period provided for in paragraph 3, the application shall be deemed to be filed on the date of payment, provided that the date in question is not later than two months after a demand for payment has been made by the European Patent Office.</p>	<p>(4) +</p>	<p>conditions required under paragraph 1 have been met, provided that the filing fee be paid within one month following that date.</p> <p>(4) * If payment of the filing fee is made after the expiry of the period provided for in paragraph 3, the application shall be deemed to be filed on the date of payment, provided that the date in question is not later than two months after a demand for payment has been made by the European Patent Office.</p>

Chairman's proposal

(4) - incorporated in Article 68b -

Article 68a (new)

Designation of Contracting States

Chairman's proposal

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed in the Rules relating to fees adopted pursuant to this Convention. Payment may be made within a period of twelve months as from the filing of the application for a European patent or, if a priority has been claimed, as from the date of priority.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 8a, it may provide that these States may only be designated jointly.

Note :

Article 68a has been aligned with the PCT Draft (see PCT Draft, Article 4, paragraph 1 ii and paragraph 4, together with Rule 15.4 b). Each Contracting State for which protection is desired must thus be designated as early as the filing of the application, even though the designation fee can still be paid up to the end of a year from the date of priority. By such a ruling, the PCT Draft wished to ensure that no doubt could arise in any of the designated Contracting States as to whether an international application existed there as a national application from the date of its filing. It would be desirable to adopt this ruling in the Draft Convention relating to a European patent law, in order to bring the two systems into line with each other. Applicants should not be expected to take two different systems of designation into consideration.

1962 Draft	EFTA Draft	1965 Draft
<p>(3) The application for a European patent shall be deemed to be filed on the date on which the conditions required under paragraph 1 of this Article have been met, provided that the filing fee be paid within one month following that date.</p> <p>(4) If payment of the filing fee is made after the expiry of the period provided for in paragraph 3, the application shall be deemed to be filed on the date of payment, provided that the date in question is not later than two months after a demand for payment has been made by the European Patent Office.</p>	<p>(3) +</p> <p>(4) +</p>	<p>(3) An application for a European patent shall be deemed to be filed on the date on which the conditions required under <u>paragraph 1</u> have been met, provided that the filing fee be paid within one month following that date.</p> <p>(4) * If payment of the filing fee is made after the expiry of the period provided for in <u>paragraph 3</u>, the application shall be deemed to be filed on the date of payment, provided that the date in question is not later than two months after a demand for payment has been made by the European Patent Office.</p>

Article 68b

Date of the application

Chairman's proposal

(1) An application for a European patent shall be deemed to be filed on the date on which the conditions required under Article 68, paragraph 1, have been met and at least one Contracting State has been designated in accordance with Article 68a, paragraph 1, provided that the filing fee be paid within one month following that date.

(2) If payment of the filing fee is made after the expiry of the period provided for in paragraph 1, the application shall be deemed to be filed on the date of payment, provided that the date in question is not later than two months after a demand for payment has been made by the European Patent Office.

Note :

The obvious sequel to the introduction of the designation of States in accordance with Article 68a as an essential requirement of the patent application, was to separate paragraphs 3 and 4 of the previous Article 68 from that Article and to insert them as Article 68b, after the provision relating to the designation of States in Article 68a.

Paragraph 1 provides that an application for a European patent will only be deemed to have been filed when at least one Contracting State has been designated. This corresponds to Article 11, paragraph 1 (iii) (b), of the PCT Draft.

Unity of invention

1962 Draft	EFTA Draft	1965 Draft
<p>An application for a European patent may relate to only one invention.</p>	<p>+</p>	<p>An application for a European patent shall relate to one invention only or to <u>several</u> inventions so linked <u>that</u> <u>the subject-matter of the application is consistent</u>.</p> <p><u>Note</u></p> <p>This article will be supplemented by a provision in the Implementing Regulations containing the subject of paragraph 2 (9th session). The provision reads as follows:</p> <p>"The subject-matter of an application for a European patent shall be deemed to be consistent if the application contains</p> <ul style="list-style-type: none"> (a) in addition to a product, one or more methods for producing the product or one or more methods of using the product, (b) in addition to a method, a device for applying this method."

Article 69

Unity of invention

Chairman's proposal

The application for a European patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Note :

This proposal corresponds exactly to Rule 13.1 of the PCT Draft. Rules 13.2 to 13.5 thereof should be incorporated in the Implementing Regulations. By doing this, account would be taken of the accompanying note from the 1965 Draft.

Disclosure of the invention

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The specification must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.</p> <p>(2) The specification shall conclude with one or more claims defining the protection applied for.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) An application for a European patent must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.</p> <p>(2) - deleted -</p>

Article 70

Disclosure of the invention

Chairman's proposal

+

Article 71

Requirements of the Implementing Regulations

1962 Draft	EFTA Draft	1965 Draft
An application for a European patent must satisfy the conditions laid down in the Implementing Regulations to this Convention.	+	* An application for a European patent must satisfy the conditions laid down in the Implementing Regulations to this Convention.

Article 71
Requirements of the Implementing Regulations

Chairman's proposal

+

PRIORITY

Article 72

Priority right

1962 Draft	EFTA Draft	1965 Draft
<p>(1) A person who has duly filed an application for a patent, or for the registration of a utility model, or his successors in title, shall enjoy, for the purpose of filing an application for a European patent in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.</p> <p>(2) The day of filing shall not be included in the period. If at the office of the competent authority within the meaning of Article 66, paragraph 1, at which the application for a European patent has been filed, the last day of the period is an official holiday, or a day when the offices of that authority are not open for the filing of applications, the period shall be extended until the first following working day.</p> <p>(3) Every filing that is equivalent to a regular national filing under the law of the State where it was made or under bilateral or multilateral treaties shall be recognized as giving rise to a right of priority.</p> <p>(4) By a regular national filing is meant any filing that is adequate to</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p> <p>(4) +</p>	<p>(1) A person who has duly filed an application for a patent, or for the registration of a utility model, or his successors in title, shall enjoy, for the purpose of filing an application for a European patent in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.</p> <p>(2) - deleted -</p> <p>(3) * Every filing that is equivalent to a regular national filing under the law of the State where it was made or under bilateral or multilateral treaties shall be recognized as giving rise to a right of priority.</p> <p>(4) * By a regular national filing is meant any filing that is adequate to</p>

PRIORITY

Article 72
Priority Right

Chairman's Proposal

(1) A person who has duly filed an application for a patent or for the registration of a utility model or for an inventor's certificate, or his successors in title, shall enjoy, for the purpose of filing an application for a European patent in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.

(2) - deleted, as in the 1965 Draft -

(3) +

(4) +

1962 Draft	EFTA Draft	1965 Draft
<p>establish the date on which the application was filed in the country concerned, whatever may be the outcome of the application.</p> <p>(5) A subsequent application for the same subject as a previous first application within the meaning of paragraph⁴ above and filed in the same country of the Union for the Protection of Industrial Property shall be considered as the first application for the purposes of determining priority, provided that, at the time of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.</p>	<p>(5) +</p>	<p>establish the date on which the application was filed in the country concerned, whatever may be the outcome of the application.</p> <p>(5) A subsequent application for the same subject as a previous first application within the meaning of paragraph⁴ above and filed in the same State shall be considered as the first application for the purposes of determining priority, provided that, at the time of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.</p>

Chairman's proposal

(5) +

1962 Draft	EFTA Draft	1965 Draft
<p>(6) If the first filing has been made in a State other than one of the Contracting States, the above-mentioned provisions shall apply only in so far as that State grants a right of priority based on a first filing made at the European Patent Office. The <u>Administrative Council</u> shall publish a list of such States.</p>	<p>(6) +</p>	<p>(6) If the first filing has been made in a State other than one of the Contracting States, the above-mentioned provisions shall apply only in so far as that State, according to a notification published by the <u>Administrative Council</u>, grants a right of priority, based on a first filing made at the European Patent Office, which is equivalent to the right of priority provided for in this Convention.</p>

Chairman's proposal

(6) +

Article 73

Effect of priority right

1962 Draft	EFTA Draft	1965 Draft
<p>For the purpose of a right of priority, the date of the first filing shall be considered to be :</p> <p>(a) the date of filing the application for a European patent within the meaning of Article 11, paragraphs 2 and 3 and of Article 19 ;</p> <p>(b) the date for the acquisition of a right based on prior use or personal possession within the meaning of Article 22, provided that there are no contrary provisions of national law applied in accordance with the said Article.</p>	<p>+</p> <p>(a) +</p> <p>(b) +</p>	<p>* The right of priority shall have the effect that the date of the first filing shall count as :</p> <p>(a) * the date of filing the application for a European patent within the meaning of Article 11, paragraphs 2 and 3 <u>and of Article 19</u> ;</p> <p>(b) * the date for the acquisition of a right based on prior use or personal possession within the meaning of Article 22, provided that there are no contrary provisions of national law applied in accordance with the said Article.</p>

Article 73
Effect of priority right

Chairman's proposal

+

(a) the date of filing the application for
a European patent within the meaning of
Article 11, paragraphs 2 and 3.

(b) - deleted -

Note:

In view of the new objectives of the Convention,
prior national rights (Article 19) and right
based on prior use (Article 22) are no longer
to be referred to therein; these matters fall
exclusively under the national law of the
Contracting States.

Article 74
Claiming priority

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Any person desiring to take advantage of the priority of a previous filing shall be required, within a period of four months from the date of applying for a European patent, to lodge a declaration with the European Patent Office indicating the date of the previous filing and the country in which it was made and mentioning the file number. These particulars may be amended within the above-mentioned period. Failure to produce them in due time shall lead to the loss of the right to claim priority of filing.</p> <p>(2) The European Patent Office may require any person making a declaration of priority to produce a copy of the first application, including the specification and drawings, within a period to be laid down by the Office which shall expire not earlier than four months after the date of applying for a European patent.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) Any person desiring to take advantage of the priority of a previous filing shall be required, <u>within a period of four months from the date of applying for a European patent</u>, to lodge a declaration with the European Patent Office indicating the date of the previous filing and the country in which it was made and mentioning the file number. <u>These particulars may be amended within the above-mentioned period. Failure to produce them in due time shall lead to the loss of the right to claim priority of filing.</u></p> <p>(2) The European Patent Office may require any person making a declaration of priority to produce a copy of the first application, including the description, claims and drawings, within a period to be laid down by the Office which shall expire not earlier than four months after the date of applying for a European patent.</p>

Article 74
Claiming priority

Chairman's proposal

(1) Any person desiring to take advantage of the priority of a previous application shall be required, on filing the application for a European patent, to lodge a declaration with the European Patent Office indicating the date of the previous filing and the country in which it was made and mentioning the file number. Failure, on filing the application for a European patent, to indicate the date of the previous filing and the country in which it was made, or failure to give separate notice of the file number of the previous application before the end of the sixteenth month after the priority date, shall lead to the loss of the right to claim priority of filing.

(2) +

Note:

Paragraph 1 has been brought into line with the PCT Draft (Article 8 together with Rule 4.10).

1962 Draft	EFTA Draft	1965 Draft
<p>The copy must be certified as correct by the authority which received the first application. A certificate issued by that authority stating the date of filing shall be attached to the copy. Failure to produce the copy and the certificate in due time shall lead to the loss of the right to claim priority of filing.</p> <p>(3) Multiple priorities may be claimed in a single application for a European patent, notwithstanding the fact that they originate in different countries.</p> <p>(4) If one or more priorities are claimed in respect of one part only of the application for a European patent, the right of priority may cover only those elements of the application for a European patent which are included in the application or applications for a patent whose priority is claimed.</p>	<p>(3) +</p> <p>(4) +</p>	<p>The copy must be certified as correct by the authority which received the first application. A certificate issued by that authority stating the date of filing shall be attached to the copy. Failure to produce the copy and the certificate in due time shall lead to the loss of the right to claim priority of filing.</p> <p>(3) * Multiple priorities may be claimed in a single application for a European patent, notwithstanding the fact that they originate in different countries.</p> <p>(4) * If one or more priorities are claimed in respect of one part only of the application for a European patent, the right of priority may cover only those elements of the application for a European patent which are included in the application or applications for a patent whose priority is claimed.</p>

Chairman's proposal

(3) +

(4) +

Article 74 (contd.)

- 3 -

1962 Draft	EFTA Draft	1965 Draft
<p>(5) The particulars mentioned in paragraph 1 shall be entered in the Register of European Patents, appear in the printed specification of the European Patent and be published in the European Patent Bulletin.</p> <p>(6) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the first application, priority may nonetheless be granted, provided that the application documents of the first filing as a whole specifically disclose such elements.</p>	<p>(5) +</p> <p>(6) +</p>	<p>(5) The particulars mentioned in paragraph 1 shall be entered in the Register of European Patents, be published in the European Patent Bulletin and appear in the printed specification of the European patent.</p> <p>(6) * If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the first application, priority may nonetheless be granted, provided that the application documents of the first filing as a whole specifically disclose such elements.</p>

Chairman's proposal

(5) The particulars mentioned in paragraph 1 shall be entered in the Register of European Patents, be published in the European Patent Bulletin, and appear in the publication under Article 86a and also in the printed specification of the European patent.

(6) +

Note:

Paragraph 5 could be incorporated in the Implementing Regulations.

Equivalence of national filing with European filing

1962-Draft	EFTA Draft	1965 Draft
<p data-bbox="157 344 798 480">(1) An application for a European patent shall, in Contracting States, be equivalent to a regular national filing.</p> <p data-bbox="157 591 776 757">(2) The procedure for the grant of a national patent may not be initiated by virtue of paragraph 1, except under the conditions laid down in Articles 114 to 116.</p>	<p data-bbox="864 344 1307 548">(1) An application for a European patent shall be equivalent to a regular national filing in States covered by the application.</p> <p data-bbox="920 591 1008 616">(2) +</p>	<p data-bbox="1367 344 2026 480">(1) * An application for a European patent shall, in the Contracting States, be equivalent to a regular national filing.</p> <p data-bbox="1367 591 2048 787">(2) The procedure for the grant of a national patent may not be initiated on the basis of an application for a European patent, except under the conditions laid down in Articles 114 to 116.</p>

Equivalence of national filing with European filing

Chairman's proposal

(1) An application for a European patent shall, in the Contracting States designated pursuant to Article 68a, be equivalent to a regular national filing.

Note:

The reference to the designated Contracting States follows from the fact that an application for a European patent can only have effect in the Contracting States designated by the applicant.

(2) +

PART V
GRANT AND CONFIRMATION OF EUROPEAN PATENTS

CHAPTER I

GRANT OF A PROVISIONAL EUROPEAN PATENT

Article 76

Examination of the European patent application

1962 Draft	EFTA Draft	1965 Draft
(1) If the Examining Section finds that the application for the European patent has not been validly made within the meaning of Article 68, it shall notify the applicant accordingly.	(1) +	(1) If an application for a European patent has not been validly made within the meaning of Article 68, the Examining Section shall note this fact in a decision.
(2) When the application for a European patent has been validly made, the Section shall examine:	(2) +	(2) * When an application for a European patent has been validly made, the Section shall examine:
(a) whether, by its nature, the subject matter of the application is obviously not an invention;	(a) +	(a) whether, by its nature, and particularly within the meaning of Article 9, the subject matter of the application is obviously not an invention;
(b) whether the invention is not patentable by virtue of Article 10;	(b) +	(b) * whether the invention is not patentable by virtue of Article 10;
(c) whether the invention is obviously not susceptible of industrial application within the meaning of Article 14;	(c) +	(c) * whether the invention is obviously not susceptible of industrial application within the meaning of Article 14;

GRANT OF A EUROPEAN PATENT

CHAPTER I
PROCEDURE UP TO NOVELTY SEARCH

Article 76

Examination of the European patent application for formal and obvious deficiencies

Chairman's proposal

(1) If an application for a European patent has not been validly made within the meaning of Articles 68, 68a and 68b, the Examining Section shall note this fact in a decision.

(2) +

(a) +

(b) +

(c) +

Note:

The headings of Part V, of Chapter I and of this Article have been amended because the provisional European patent has been abandoned and patent applications are now subject to two different examinations, i.e. an examination for formal and obvious deficiencies (Article 76) followed by the actual examination for novelty (Article 88).

The insertion of "Articles 68a and 68b" into paragraph 1 was necessary in view of the introduction of a new Article 68a on the designation of Contracting States and of the division of the contents of the previous Article 68 between Article 68 and a new Article 68b.

In connexion with paragraph 2 (b), consideration could be given to whether the examination of a patent application could not, with reference to Article 10, be limited to the existence of obvious deficiencies.

1962 Draft	EFTA Draft	1965 Draft
(d) whether the application is obviously contrary to the provisions of Articles 69 and 70;	(d) +	(d) * whether the application is obviously contrary to Articles 69 and 70;
(e) whether the conditions referred to in Article 71 have been satisfied;	(e) +	(e) whether the application satisfies the requirements regarding form laid down in the Implementing Regulations to this Convention and whether the contents of the description, claims and drawings are not obviously contrary to the relevant provisions of the Implementing Regulations;
(f) whether, in the case of an application for a patent of addition, the subject of that application is obviously not an improvement within the meaning of Article 24, paragraph 1.	(f) +	(f) whether, in the case of an application for a patent of addition, the subject of that application is obviously not an improvement, development or supplementing within the meaning of Article 24, paragraph 1.

Chairman's proposal

(d) +

(e) +

(f) +

Notification and refusal of the application

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If the examination reveals that the invention or the application for a European patent does not meet the requirements specified in Article 76, paragraph 2, the Examining Section will notify the applicant accordingly and invite him to make observations or to remedy the disclosed deficiencies within a period to be fixed by the Section.</p>	<p>(1) +</p>	<p>(1) If the examination provided for in Article 76, paragraph 2, reveals that the invention or the application for a European patent does not meet the requirements to be taken into consideration in this examination, the Examining Section shall inform the applicant accordingly and invite him to make observations or to remedy the disclosed deficiencies within a period to be fixed by the Section. Deficiencies relating to the description, claims or drawings may only be remedied in accordance with the directions of the Examining Section.</p>
<p>(2) If the Examining Section finds that the invention is obviously not new, it may inform the applicant accordingly.</p>	<p>(2) +</p>	<p>(2) * If the Examining Section finds that the invention is obviously not new, it may inform the applicant accordingly.</p>
<p>(3) If, on expiry of the period referred to in paragraph 1, it appears that the invention or the application for a European patent fails to meet the requirements specified in Article 76, paragraph 2, the Examining Section shall refuse the application.</p>	<p>(3) +</p>	<p>(3) If, on expiry of the period referred to in paragraph 1, it appears that the invention or the application for a European patent fails to meet the requirements referred to in that paragraph, the Examining Section shall refuse the application.</p>
<p>(4) The application may not be refused on grounds which have not previously been notified to the applicant in accordance with paragraph 1.</p>	<p>(4) +</p>	<p>(4) * The application may not be refused on grounds which have not previously been notified to the applicant in accordance with paragraph 1.</p>

Article 77
Notification and refusal of the application

Chairman's proposal

(1) +

Note :

Part of this Article could be incorporated in
the Implementing Regulations.

(2) +

(3) +

(4) +

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If the examination reveals that the invention and the application for a European patent satisfy the requirements specified in Article 76, paragraph 2, the Examining Section shall request the applicant to pay, within a period of one month, the fee for obtaining a novelty report as prescribed by the Rules relating to fees adopted pursuant to this Convention, unless the said fee has already been paid.</p> <p>(2) On the date of payment of the fee or, if the latter has already been paid on concluding the examination, the Examining Section shall request /the International Patents Institute of The Hague/ to supply a report on the novelty of the invention concerned and shall transmit to it the documents of the application for the European patent.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) If the examination reveals that the invention and the application for a European patent meet the requirements to be taken into consideration in the examination, the Examining Section shall request the applicant to pay, within a period of one month, the fee for obtaining a report on the state of the art as prescribed by the Rules relating to fees adopted pursuant to this Convention.</p> <p>(2) On the date of payment of the fee or, if the latter has already been paid, on concluding the examination, the Examining Section shall request /the International Patent Institute at The Hague/ to supply a report on the state of the art and shall transmit to it the documents of the application for the European patent.</p>

Chairman's proposal

(1) +

Note :

(2) +

(2a) The report on the state of the art shall be drawn up on the basis of the claims, with due regard to the description and the drawings, if any.

Paragraph 2a has been newly introduced in order to bring about alignment with the PCT Draft, and corresponds to PCT Article 15, paragraph 3. A provision corresponding to PCT Rule 33.3. could be incorporated in the agreements to be concluded between the European Patent Office and the International Patent Institute.

1962 Draft	EFTA Draft	1965 Draft
<p>(3) If an additional novelty report becomes necessary, particularly in the case of complexity of the application, the Examining Section may request the applicant to pay, within a period of one month, the additional fee prescribed by the Rules relating to fees.</p> <p>(4) If the fees are not paid in due time, the Section shall refuse the application for a European patent.</p>	<p>(3) +</p> <p>(4) +</p>	<p>/(3) If an additional report on the state of the art becomes necessary, particularly in the case of complexity of the application, the Examining Section may request the applicant to pay, within a period of one month, the additional fee prescribed by the Rules relating to fees adopted pursuant to the Convention.⁷</p> <p>(4) * If the fees are not paid in due time, the <u>Section shall refuse</u> the application for a European patent.</p> <p><u>Note:</u></p> <p>It will have to be seen whether the refusal of an application for a European patent could not be replaced by a fictitious arrangement whereby the application would be deemed to have been withdrawn. See also Article 79, paragraph 2, and Article 100, paragraph 1 (b).</p>

Chairman's proposal

(3) +

(4) If the fees are not paid in due time, the application for a European patent shall be deemed to have been withdrawn.

In accordance with the Note to the 1965 Draft, a fictitious arrangement has been introduced in paragraph 4, whereby a European patent application is to be deemed to have been withdrawn if the fees are not paid in due time. This also corresponds to the system of the PCT Draft (cf. Article 14, paragraph 4). See also Article 101, paragraph 1a of this proposal.

1962 Draft	EFTA Draft	1965 Draft
<p>(1) On receipt of the novelty report, the Examining Section shall communicate it to the applicant and request him to pay, within a period of three months, the fees relating to the grant and printing prescribed by the Rules relating to fees made under this Convention.</p> <p>(2) If the fees relating to the grant and printing are not paid in due time, the Examining Section shall refuse the application for a European patent.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) On receipt of the report on the state of the art the <u>Examining Section</u> shall communicate it to the applicant and <u>shall notify him at the same time that the European patent will be granted</u> <u>/ after a period of three months / / after a period to be determined by the Section /</u>, provided that the fees relating to the grant and printing prescribed by the Rules relating to fees adopted pursuant to this Convention have been paid within this <u>period</u>.</p> <p>(2)* If the fees relating to the grant and printing are not paid in due time, the Examining Section shall refuse the application for a European patent.</p> <p><u>Note :</u></p> <p>See Note to Article 78.</p>

Chairman's proposal

(1) On receipt of the report on the state of the art, the European Patent Office shall transmit it to the applicant.

Note :

In paragraph 1 "Examining Section" has had to be replaced by "European Patent Office", in view of the fact that proceedings will be conducted either by an Examining Section or by an Examining Division, depending on whether or not a request for examination has been filed at the time of the receipt of the report on the state of the art. See Introductory Note No. 6 with Article 56, paragraph 1, and Article 89 and the accompanying Notes. This paragraph could be incorporated in the Implementing Regulations.

(2) - deleted -

Paragraph 2 has been deleted since, the provisional European patent having been abandoned, the fees for its grant and printing no longer apply. The publication of the European patent application (Article 86a) now takes the place of the printed specification of the provisional European patent (former Article 85). The costs of preparing for this publication would be borne by the applicant although, to speed up the proceedings, there should be no separate demand for these costs. They should rather be covered in the application fee, which would be calculated accordingly. In view of this, provision has been made for a part of the application fee to be refunded in the event of the European patent application not reaching publication (Article 86a, paragraph 1 (c), second sentence).

Division of the application

1962 Draft	EFTA Draft	1965 Draft
<p>(1) An applicant may divide his application for a European patent by limiting the claims thereof and by filing divisional applications in respect of the inventions thus excluded from the claims.</p> <p>(2) The limitation of claims must be effected :</p> <p>(a) before the examination referred to in Article 76 has been completed ;</p> <p>(b) within the period prescribed in Article 79, paragraph 1.</p> <p>(3) The provisions of Article 82, paragraph 2, shall apply to claims restricted under the terms of paragraph 1.</p> <p>(4) Divisional applications shall be deemed to be filed on the date of the original application and shall have the benefit of any right to priority in so far as their subject matter does not extend beyond what was</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p> <p>(4) +</p>	<p>(1) An applicant may divide his application for a European patent by limiting it and by filing divisional applications in respect of the inventions thus excluded from the application.</p> <p>(2) The limitation must be effected by an amendment to the claims pursuant to Article 81, paragraph 1, or by a notice of surrender of a part of the description or drawings. <u>It must be effected before the end of the period provided for in Article 79, paragraph 1.</u></p> <p>(3) The amended application instead of the original application shall determine the protection sought in so far as its subject matter does not extend beyond what was described in the original application.</p> <p>(4) Divisional applications shall be deemed to be filed on the date of the original application and shall have the benefit of any right to priority in so far as their subject matter does not extend beyond what was</p>

Division of the application

Chairman's proposal

(1) An applicant may, at any time after he has received the report on the state of the art and up to the filing of a request for examination, divide his application for a European patent by limiting it and by filing divisional applications in respect of the inventions thus excluded from the application.

(2) The limitation must be effected by an amendment to the claims pursuant to Article 81, paragraph 1, or by a notice of abandonment of a part of the description or drawings.

(3) +

(4) +

Note :

This Article governs the division of the European patent application only up to the filing of a request for examination ; any subsequent division of the application falls under Article 98.

Paragraphs 2 to 5 could be incorporated in the Implementing Regulations.

1962 Draft	EFTA Draft	1965 Draft
<p>described in the original application, provided that the divisional applications have been filed within a period of two months after the limitation referred to in paragraph 1.</p> <p>(5) The filing fee referred to in Article 68, paragraph 2, must be paid in respect of each individual application within a period of one month after the filing thereof.</p>	<p>(5) +</p>	<p>described in the original application, provided that the divisional applications have been filed within a period of two months after the limitation referred to in paragraph 1.</p> <p>(5) The filing fee referred to in Article 68, paragraph 2, must be paid in respect of each divisional application within a period of one month after the filing thereof.</p>

Chairman's proposal

Amendment of claims

1962 Draft	EFTA Draft	1965 Draft
<p><u>Article 82</u></p> <p>(1) Within the period laid down in Article 79, the applicant may inform the Examining Section that he abandons one or more of the original claims of his application or he may submit to the Section a new version of all or some of these claims.</p> <p>(2) If the applicant avails himself of the right referred to in paragraph 1, the amended claims instead of the original claims shall determine the protection sought in so far as they do not exceed the scope of what is disclosed in the application.</p>	<p><u>Article 82</u></p> <p>(1) +</p> <p>(2) +</p>	<p>(1)*<u>Within the period laid down in Article 79, paragraph 1</u> the applicant may inform the <u>Examining Section</u> that he abandons one or more of the original claims of his application or he may submit to the <u>Section</u> a new version of all or some of these claims.</p> <p>(2)*If the applicant avails himself of the right referred to in paragraph 1, the amended claims instead of the original claims shall determine the protection sought in so far as their subject matter does not extend beyond what was described in the application.</p> <p>(3) If the amended claims are obviously no longer covered by the report on the state of the art, the European Patent Office may request an additional report [from the International Patent Institute at The Hague].</p> <p><u>Note :</u></p> <p>Old Article 82</p>

Chairman's proposal

(1) The applicant may inform the European Patent Office, after he has received the report on the state of the art, that he abandons one or more of the original claims of his application, or he may submit to the European Patent Office a new version of all or some of these claims.

(2) +

(3) +

Note :

In the 1965 Draft, amendment of the claims of the application was possible only during the period between the communication of the report on the state of the art and the payment of the fees for the publication of the provisional European patent (Article 81, paragraph 1, together with Article 79, paragraph 1). Amendment of the claims of the provisional European patent was only possible after the filing of a request for examination in the examination proceedings.

In view of the abandonment of the provisional European patent and of the fact that the European patent application is to be published after 18 months, even if the report on the state of the art is not available, the possibility afforded applicants to amend their patent claims after receiving the report on the state of the art would no longer be subject to a time limit.

If the claims are amended prior to the publication of the European patent application, both the original and the amended claims are to be published with the European patent application (Article 86a, paragraph 1 (b)). If the applicant amends the claims after the publication of the European patent application, the

Chairman's proposal

amended claims would simply be incorporated in the files open to public inspection. The amended version of the claims would first be made public by the publication of the claims pursuant to Article 96 during the examination proceedings, in so far as the European Patent Office considered them to be acceptable in this form. After publication of the claims pursuant to Article 96, amendment of the claims would only be possible in so far as such amendment did not extend the protection conferred (cf. new Article 97b).

In paragraph 1 "Examining Section" has been replaced by "European Patent Office", since proceedings may already have been transferred to an Examining Division (see Introductory Note No. 6 and the Note to Article 56).

Amendment of documents

1962 Draft	EFTA Draft	1965 Draft
<p data-bbox="150 311 327 344"><u>Article 81</u></p> <p data-bbox="90 382 754 659">Apart from the amendment of claims provided for under Articles 80 and 82, the specification of the invention and the drawings of an application for a European patent may not be amended except for the purpose of correcting linguistic or clerical errors or obvious mistakes.</p>	<p data-bbox="842 306 1013 340"><u>Article 81</u></p> <p data-bbox="842 382 858 405">+</p>	<p data-bbox="1329 374 2019 616">Without prejudice to Article 77, paragraph 1, and Articles 80 and 81, the description, claims or drawings of an application for a European patent may not be amended except for the purpose of correcting linguistic or clerical errors or obvious mistakes.</p> <p data-bbox="1329 760 1417 793"><u>Note:</u></p> <p data-bbox="1329 828 1572 861">Old Article 81</p>

Amendment of documents

Chairman's proposal

+

Hearings before the Examining Section

1962 Draft	EFTA Draft	1965 Draft
<p>The Examining Section shall either on its own initiative or, if considered expedient on request give a hearing to the applicant or any other party to the proceedings.</p>	<p>+</p>	<p>The Examining Section shall give a hearing to the applicant either on its own initiative or at his request, where it considers this to be expedient.</p>

Hearings before the Examining Section

Chairman's proposal

Article 84

Grant of the provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p data-bbox="72 296 718 432">(1) On payment of the grant and printing fees, the Examining Section shall grant the provisional European patent.</p> <p data-bbox="72 677 718 840">(2) The grant of a provisional European patent shall be recorded in the Register of European Patents and published in the European Patent Bulletin.</p>	<p data-bbox="802 296 1227 636">(1) On submission by the applicant of any translations required under Article 34 (5), and on the payment of the granting fee and any necessary printing fees, the Examining Section shall grant the European patent.</p> <p data-bbox="858 677 946 704">(2) +</p>	<p data-bbox="1294 296 1939 530">(1) After the expiry of the period provided for in Article 79, paragraph 1, the Examining Section shall grant the provisional European patent provided that the fees relating to the grant and printing have been paid.</p> <p data-bbox="1294 677 1939 840">(2) * The grant of a provisional European patent shall be entered in the Register of European Patents and published in the European Patent Bulletin.</p>

Article 84

Grant of the provisional European patent

Chairman's proposal

- deleted -

Note :

This Article has been deleted as, in accordance with the Memorandum (II 2c cc), the grant of a provisional European patent is to be abandoned.

Article 85

Publication of a provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>(1) At the same time as it publishes the grant of the provisional European patent, the European Patent Office shall publish a printed specification containing the description of the invention together with the drawings, if any, the amended or substituted claims, referred to in Article 82, paragraph 1, and, in an appendix, the novelty report relating to the invention.</p> <p>(2) The printed patent specification shall state that the provisional European patent has been granted only after an examination limited in conformity with Article 76, giving no guarantee as to the novelty of the invention, and that it confers no more than a provisional protection.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) The printed patent specification shall also state the countries covered by the patent at the time of grant.</p>	<p>(1) At the same time as it publishes the grant of the provisional European patent, the European Patent Office shall publish a printed specification containing the description, the claims and any drawings and, in an annex, the report on the state of the art. In the event of Articles 80 or 81 being applied, the specification shall contain, under the conditions laid down in the Implementing Regulations, the earlier version of of the claims, description and drawings.</p> <p>(2) * The printed patent specification shall state that the provisional European patent has been granted only after a limited examination in accordance with Article 76 which, in particular, does not cover the novelty of the invention, and that it confers no more than a provisional protection.</p>

Article 85

Publication of a provisional European patent

Chairman's proposal

- deleted; see Article 86a -

Note :

This Article has been deleted as, in accordance with the Memorandum (II 2 c cc), the grant of a provisional European patent is to be abandoned. Publication of the European patent application now takes the place of the publication of the provisional European patent (Article 86a).

Official certificate for a provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>(1) As soon as the printed patent specification has been published, the European Patent Office shall issue to the proprietor of the patent a certificate for a provisional European patent to which shall be annexed the printed specification.</p> <p>(2) The certificate shall certify that the provisional European patent has been granted to the person mentioned in the certificate in respect of the invention described in the printed patent specification.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) As soon as the printed patent specification has been published, the European Patent Office shall issue to the proprietor of the patent an official certificate for a provisional European patent, to which shall be annexed the printed specification.</p> <p>(2) The official certificate shall certify that the provisional European patent has been granted in respect of the invention described in the printed patent specification to the person named in the official certificate.</p>

Article 86

Official certificate for a provisional European patent

Chairman's proposal

- deleted -

Note :

See Note to Article 85.

Article 86a

Opening to public inspection prior to publication of
the grant of a provisional European patent

1962 Draft	EFTA Draft	1965 Draft
		<p>(1) European patent applications or <u>European patents shall be made available to the public</u> on the expiry of a period of 18 months as from the filing of the patent application or, if a priority has been claimed, as from the priority date. <u>If there has been no publication of the grant of a provisional European patent by the end of this period, the opening to public inspection shall take the form of an inspection of files under the conditions set out in Article 162, paragraphs 2 and 3.</u></p>

Article 86a

Publication of a European patent application

Chairman's proposal

(1) European patent applications shall be published on the expiry of a period of 18 months from the filing of the patent application or, if a priority has been claimed, from the priority date. The publication shall contain the description, the claims and any drawings and, in an annex, the report on the state of the art, in so far as the latter is available at the time of publication.

(1a) The Contracting States designated in accordance with Article 68a shall be specified in the publication.

(1b) If before such publication, the European patent application has been divided pursuant to Article 80, or the claims amended pursuant to Article 81, the original patent claims shall be included in the publication in addition to the amended claims.

Note :

In accordance with the Memorandum (II 2 c cc), European patent applications will be published at the end of 18 months from the priority date. The 1965 Draft was based on the assumption that the public would normally be informed of an invention in respect of which an application had been filed, by the publication of the specification of the provisional European patent (old Article 85, paragraph 1). Only in the event of the publication of the patent specification being delayed would opening of the patent application to public inspection in accordance with Article 86a, paragraph 1, constitute the means of initial information of the public about an invention in respect of which an application had been filed. A publication containing the European patent application is now to replace the printed specification of the provisional European patent. The second sentence of paragraph 1 has accordingly been based on the first sentence of Article 85, paragraph 1.

Paragraph 1 (b) corresponds to the second sentence of the old Article 85, paragraph 1.

As regards the partial refund of the application fee provided for in the second sentence of paragraph 1 (c), see Note to Article 79.

As from the second sentence of paragraph 1, the provisions of this Article could be incorporated in the Implementing Regulations.

1962 Draft	EFTA Draft	1965 Draft
		<p>(2) A notification of the <u>opening to public inspection provided for in paragraph 1</u> shall be entered in the Register of European Patents and published in the European Patent Bulletin.</p>

Chairman's proposal

(1c) Publication shall not take place if the European patent application has been finally refused or withdrawn or deemed to have been withdrawn before the termination of the technical preparations for publication. In this event [a third of] the application fee shall be refunded.

(2) Notification of the publication shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Article 86b (new)

Publication of the lapse of a European patent application

Chairman's proposal

If a European patent application published in accordance with Article 86a is refused or withdrawn or deemed to have been withdrawn, notification thereof shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Note :

Article 125, paragraph 1, of the 1962 and 1965 Drafts provided for various cases of lapse of the provisional European patent. Paragraph 3 of that Article provided that the lapse of a provisional European patent was to be entered in the Register of European Patents and published in the European Patent Bulletin. The proposed new Article 86b lays down a corresponding provision for the analogous cases of the European patent application being refused or withdrawn or deemed to have been withdrawn. This provision could, however, be incorporated in the Implementing Regulations.

Article 87

Commencement of protection

1962 Draft	EFTA Draft	1965 Draft
<p>The protection afforded by the provisional European patent shall commence on the day of publication of the grant.</p>	<p>+</p>	<p>The protection afforded by the provisional European patent shall commence on the day of publication of the grant. In the case provided for in Article 86a this protection shall, however, have effect as from the day on which inspection of the files relating to the patent application or the patent, as provided for therein, became possible.</p>

Article 87

Commencement of protection

Chairman's proposal

- deleted -

Note :

This Article has been deleted as, in accordance with the Memorandum (II 2 c cc), the grant of a provisional European patent is to be abandoned. As regards the provisional protection conferred by the European patent application, see the proposal for Article 20 bis in the first working document.

Observations concerning the validity of a provisional European
patent

1962 Draft	EFTA Draft	1965 Draft
<p><u>Article 92</u></p> <p>(1) Following the publication of the grant of a provisional European patent, anyone may present his observations concerning the validity of that patent. Such observations must be made in writing and must include a statement of the grounds on which they are based.</p> <p>(2) The observations referred to in paragraph 1 shall be communicated to the proprietor.</p>	<p><u>Article 92</u></p> <p>(1) +</p> <p>(2) +</p>	<p>(1) * Following the <u>publication of the grant of a provisional European patent</u>, anyone may present his observations concerning the <u>validity of that patent</u>. Such observations must be made in writing and must include a statement of the grounds on which they are based.</p> <p>(2) * The observations referred to in paragraph 1 shall be communicated to the <u>proprietor</u>.</p> <p><u>Note:</u></p> <p>Old Article 92</p>

Observations concerning the patentability of the invention
in respect of which an application has been filed

Chairman's proposal

(1) Following the publication of the European patent application, any person may present his observations concerning the patentability of the invention in respect of which the application has been filed. Such observations must be made in writing and must include a statement of the grounds on which they are based.

(2) The observations referred to in paragraph 1 shall be communicated to the applicant.

Note :

This provision, contained in the 1962 Draft as Article 92 and in the 1965 Draft as Article 87a, laid down that anyone might present his written observations concerning the validity of a provisional European patent. In view of the abandonment of the provisional European patent, the words "validity of that patent" have been replaced by "patentability of the invention in respect of which the application has been filed".

CHAPTER II

CONFIRMATION OF THE PROVISIONAL
EUROPEAN PATENT AS A FINAL EUROPEAN PATENT

Article 88
Request for examination

1962 Draft	EFTA Draft	1965 Draft
<p>(1) On request, the European Patent Office shall examine whether the provisional patent, the invention which forms the subject thereof, and the published specification, satisfy all of the requirements of this Convention.</p>	(1) +	<p>(1) The European Patent Office shall examine provisional European patents on request.</p>
<p>(2) Such a request may be made by the proprietor of the provisional European patent or by any other person during the five years which follow the day of publication of the grant. The request will not be considered as made until after the examination fee prescribed by the Rules relating to fees adopted pursuant to this Convention, has been paid.</p>	(2) +	<p>(2) * Such a request may be made by the <u>proprietor of the provisional European patent</u> or by any other person <u>during the five</u> years which follow the day of <u>publication of the grant</u>. The request will not be considered as made until after the examination fee prescribed by the Rules relating to fees adopted pursuant to this Convention has been paid.</p>
<p>(3) The request may not be withdrawn.</p>	(3) +	<p>(3) If the request is made by the <u>proprietor of the provisional European patent</u> he shall, when making his request, comment on the report on the state of the art and any observations communicated to him and, where necessary, amend the description, claims and drawings.</p>

Article 88

Request for examination

Chairman's proposal

(1) The European Patent Office shall examine, on request, whether a European patent application and the invention which forms the subject thereof meet the requirements of this Convention.

(2) Such a request may be made by the applicant or by any other person up to the end of / x / years from the filing of the European patent application. The request shall not be considered to be made until after the examination fee prescribed by the Rules relating to fees adopted pursuant to this Convention has been paid.

(3) If the request is made by the applicant he shall, when making his request, comment on the report on the state of the art and any observations communicated to him and shall where necessary amend the description, claims and drawings.

Note :

The former Article 94, paragraph 2, has been incorporated in paragraph 1, which corresponds to the provision 1962 Draft. As the European patent application is subject to two different examinations - a formal examination in accordance with Article 76, without request, and an examination for novelty, on request, in accordance with Article 88 - it seemed appropriate to state the scope of the examination provided for by Article 88 at the beginning of that Article.

As the Memorandum (II 2 b) starts out from the principle of deferred examination, but does not specify any fixed period for this, the length of the period has been left open in paragraph 2. This question should first be discussed with the interested circles. The beginning of the period should be fixed as the moment of filing an application for a European patent.

Paragraph 3 covers the case of an applicant making a request for examination when he is in possession of the report on the state of the art. This paragraph could be incorporated in the Implementing Regulations. The other cases, i.e. that the applicant makes the request for examination at an earlier stage or that the request for examination is made by another person, are dealt with in Article 90 a.

1962 Draft	EFTA Draft	1965 Draft
<p>(4) When a request for examination has been made in conformity with paragraph 2, any subsequent requests for examination shall be regarded as void and the fees shall be repaid, subject to the provisions of Article 91, paragraph 2.</p>	<p>(4) +</p>	<p>(4) * The request may not be withdrawn.</p> <p>(5) When a request for examination has been made in conformity with paragraph 2, any subsequent requests for examination shall be regarded as void. Any fees paid shall be refunded.</p>

Chairman's proposal

(3a) If the request is made in respect of an application for a European patent of addition, the Examining Section shall invite the applicant to make a request in accordance with paragraph 1 in respect of the application for the parent patent before the end of two months after such invitation has been made. If no such request is made, the application for a European patent of addition shall be deemed to be an application for an independent European patent.

(4) +

(5) +

(6) If no request for examination has been made by the end of the period referred to in paragraph 2, the European patent application shall be deemed to have been withdrawn.

Paragraph 3a proposes a solution which would prevent an application for a patent of addition having to be examined apart from the parent application. Such a ruling appears appropriate, in view of the fact that the assessment of the patentability of an invention contained in an application for a patent of addition is dependent on the assessment of the patentability of the invention contained in the parent application.

Paragraph 6 covers the case envisaged in the Memorandum (II 2 c dd), that no request for examination is made within the period prescribed. In such a case, the European patent application would be deemed to have been

Chairman's proposal

withdrawn. This corresponds to the previous solution adopted in respect of the provisional European patent, whereby such patent would lapse in accordance with Article 125, paragraph 1a.

Article 89

Transfer of proceedings to the Examining Division

1962 Draft	EFTA Draft	1965 Draft
<p>As soon as a request for examination of a provisional European patent has been made, it shall be referred to an Examining Division.</p>	<p>+</p>	<p>* As soon as a request for examination of a <u>provisional European patent</u> has been made, it shall be referred to an Examining Division.</p>

Chairman's proposal

As soon as a request for examination of a European patent application has been made, the proceedings shall be transferred to an Examining Division, but not before the receipt of the report on the state of the art.

Note :

The contents of this Article correspond to those of Article 56, paragraph 1. Once the Working Party has settled the question of the division of responsibilities between the Examining Sections and the Examining Divisions (see Introductory Note No. 6 and the note to Article 56), it will be easier to adapt the division of responsibilities under Article 56, paragraph 1, and the transfer of proceedings under Article 89, to each other. Responsibility under Article 56 could perhaps be made to depend on the transfer of proceedings pursuant to Article 89.

Publication of a request for examination

1962 Draft	EFTA Draft	1965 Draft
<p>(1) A request for examination of a provisional European patent shall be published in the European Patent Bulletin.</p> <p>(2) The proprietor of the patent shall be notified of the request if it has not been made by him.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) A notification of the request for the examination of a <u>provisional European patent</u> shall be entered in the Register of European Patents and published in the European Patent Bulletin.</p> <p>(2) - deleted -</p>

Publication of a request for examination

Chairman's proposal

(1) Notification of the request for the examination of a European patent application shall be entered in the Register of European Patents and published in the European Patent bulletin.

(2) The request shall be communicated to the applicant if it has not been made by him.

Note :

This Article could be incorporated in the Implementing Regulations.

Reply of the proprietor of the provisional European patent

1962 Draft	EFTA Draft	1965 Draft
		<p>If the request for examination has not been made by the <u>proprietor of the provisional European patent</u> himself, <u>he shall be notified of the request</u> and at the same time shall be invited to comment, within <u>a period of three months</u>, on the report on the state of the art and any observations communicated to him, and where necessary to amend the description, claims and drawings.</p>

Reply of the applicant for a European patent

Chairman's proposal

If the applicant has made the request for examination before the report on the state of the art has been communicated to him, or if the request for examination has not been made by the applicant himself, the European Patent Office shall invite him to comment, within a period to be determined, on the report on the state of the art and any observations communicated to him, and where necessary to amend the description, claims and drawings.

Note :

This Article supplements Article 88, paragraph 3. It covers two cases in which the applicant would be invited to comment on the report on the state of the art and on any observations communicated to him.

This provision should be incorporated in the Implementing Regulations.

Notice of intervention

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Within a period of three months following the publication of the request for examination, any other person may, on filing a notice of intervention, be associated in the examination proceedings. The notice of intervention shall not be deemed to have been made until after payment of the fee for such a notice prescribed in the Rules relating to fees adopted pursuant to this Convention.</p>	<p>(1) +</p>	<p>- deleted -</p>
<p>(2) A third party who has made a request for examination after the initial request will be notified by the European Patent Office of the existence of that initial request. He may, within a period of three months following such notification, convert his request for examination into a notice of intervention. The excess amount of the fee paid shall be refunded.</p>	<p>(2) +</p>	
<p>(3) The proprietor of the patent shall be informed of the notice of intervention.</p>	<p>(3) +</p>	

Notice of intervention

Chairman's proposal

- deleted -

Observations concerning the validity of a
provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Following the publication of the grant of a provisional European patent, anyone may present his observations concerning the validity of that patent. Such observations must be made in writing and must include a statement of the grounds on which they are based.</p> <p>(2) The observations referred to in paragraph 1 shall be communicated to the proprietor.</p>	<p>(1) +</p> <p>(2) +</p>	<p>- deleted; incorporated in Article 87a -</p>

Observations concerning the validity of a provisional
European patent

Chairman's proposal

- incorporated in Article 87a -

Reply of the proprietor of a
provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>Following the expiry of the period mentioned in Article 91, paragraph 1, the Examining Division shall invite the proprietor of the provisional European patent to comment, within a period of three months, on the novelty report and any observations communicated to him and, if necessary, to amend his specification.</p>	+	- deleted -

Reply of the proprietor of a provisional
European patent

Chairman's proposal

- deleted -

Article 93a

Limitation of amendment of claims

1962 Draft	EFTA Draft	1965 Draft
		<p>The claims of a provisional European patent may not be amended, during the examination proceedings, in such a way as to extend the protection conferred by the patent.</p>

Limitation of amendment of claims

Chairman's proposal

- incorporated in Article 97b -

Examination of a provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The Examining Division shall commence the examination of the provisional European patent on receipt of the proprietor's reply or, in the absence of such a reply, not later than on the expiry of the period prescribed in Article 93.</p> <p>(2) The Examining Division shall ascertain whether the provisional European patent and the invention which forms the subject thereof and the published specification meet all the requirements of this Convention.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) The Examining Division shall commence the examination of the <u>provisional European patent</u> on receipt of the request for examination or, <u>if the request has not been made by the proprietor of the patent</u>, on the expiry of the period referred to in Article 90a. Only the <u>proprietor of the patent</u> shall take part in the proceedings before the Examining Division.</p> <p>(2) The Examining Division shall ascertain whether the invention which forms the subject of the provisional European patent, and the description, the claims and any published drawings, meet the requirements of this Convention.</p> <p>(3) The Examining Division may obtain an additional report on the state of the art from <u>the International Patent Institute at The Hague</u>.</p>

Article 9
Examination of a European patent application

Chairman's proposal

(1) The Examining Division shall commence the examination of the European patent application on receipt of the request for examination, if the applicant has commented on the report on the state of the art and the observations communicated to him, or if the period referred to in Article 90a has expired. Only the applicant shall take part in the proceedings before the Examining Division.

(2) - incorporated in Article 88, paragraph 1 -

(3) The Examining Division may obtain an additional report on the state of the art from the International Patent Institute at The Hague. Article 78, paragraph 3, shall apply mutatis mutandis.

Note :

Paragraph 1 takes into account the possibility of the report on the state of the art being submitted after the request for examination has been made.

Paragraph 3 needs to be supplemented, taking into account Article 78, paragraph 3, in order to provide a possibility here, too, of levying the additional fee provided for in that Article. This paragraph could be incorporated in the Implementing Regulations.

Notification of the result of the examination

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If the examination of a provisional European patent reveals that the patent, the invention which forms the subject thereof or the published specification fail to meet the requirements of this Convention entirely or partly, the Examining Division shall notify the proprietor of the patent accordingly and invite him to present his observations or rectify the irregularities discovered within a period to be fixed by the Division, by submitting, if necessary, an amended specification.</p> <p>(2) The notification of the results of the examination must be a reasoned statement indicating all the reasons against the confirmation of the provisional European patent as a final European patent.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) If the examination of a <u>provisional European patent</u> reveals that the requirements referred to in Article <u>94</u>, <u>paragraph 2</u>, have not been met, the Examining Division shall notify the <u>proprietor of the patent</u> accordingly and shall invite him to present his observations or rectify the irregularities discovered and if necessary to submit the description, claims and drawings in an amended form, within a period to be fixed by the Division.</p> <p>(2) * The notification of the results of the examination must be a reasoned statement indicating all the reasons against the <u>confirmation of the provisional European patent as a final European patent</u>.</p>

Notification of the result of the examination

Chairman's proposal

(1) If the examination of a European patent application reveals that the requirements referred to in Article 88, paragraph 1, have not been met, the Examining Division shall notify the applicant accordingly and shall invite him to present his observations or rectify the irregularities discovered and if necessary to submit the description, claims and drawings in an amended form, within a period to be fixed by the Division.

(2) The notification of the results of the examination must be a reasoned statement indicating all the reasons against the grant of the European patent.

Note :

Part of this Article could be incorporated in the Implementing Regulations.

1962 Draft	EFTA Draft	1965 Draft
<p>(3) On the expiry of the period provided for in paragraph 1, the Examining Division shall communicate the observations referred to in that paragraph to the proprietor of the patent and invite him to comment thereon within a period to be fixed by the Division.</p>	<p>(3) +</p>	

Chairman's proposal

(3) If the European patent application has not yet been published in accordance with Article 86a, a publication containing the description, claims and any drawings shall be made at the same time as the publication pursuant to paragraph 2.

Paragraph 3 covers the case of the publication of the claims before the publication pursuant to Article 86a, as the result of rapid examination proceedings. Since the application would still not be known to the public, a corresponding document would have to be published at the same time.

Opposition

1962 Draft	EFTA Draft	1965 Draft
		<p>(1) Within a period of three months from the date of the publication referred to in Article 96, paragraph 2, any person may give notice to the European Patent Office of opposition to the <u>confirmation</u> of a <u>provisional</u> European patent. Notice of opposition shall be given in a reasoned statement in writing. It shall not be deemed to have been given until the fee prescribed in the Rules relating to fees adopted pursuant to this Convention has been paid. No fee shall be payable for opposition if the notice of opposition is given by the third party who made the request for examination.</p> <p>(2) Third parties who have given notice of opposition as provided for in paragraph 1 shall take part in the examination proceedings with the <u>proprietor of the patent</u>.</p> <p>(3) The Examining Division shall notify the <u>proprietor of the patent</u> of any opposition raised and shall invite him to present his observations within a period to be fixed by the Division. The observations of the <u>proprietor of the patent</u> shall be communicated to the other parties concerned.</p>

Opposition

Chairman's proposal

(1) Within a period of three months from the date of the publication referred to in Article 96, paragraph 2, any person may give notice to the European Patent Office of opposition to the grant of a European patent. Notice of opposition shall be given in a reasoned statement in writing. It shall not be deemed to have been given until the fee prescribed in the Rules relating to fees adopted pursuant to this Convention has been paid. No fee shall be payable for opposition if the notice of opposition is given by the third party who made the request for examination.

Note :

(2) Third parties who have given notice of opposition as provided for in paragraph 1 shall take part in the examination proceedings with the applicant.

(3) The Examining Division shall notify the applicant of any opposition raised and shall invite him to present his observations within a period to be fixed by the Division. The observations of the applicant shall be communicated to the other parties concerned.

Paragraph 3 could be incorporated in the Implementing Regulations.

Notification of examination in opposition proceedings

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If, after having examined the observations and comments provided for in Article 96, the Examining Division considers that the provisional European patent cannot be confirmed as a final European patent to the extent envisaged in the notification referred to in Article 96, paragraph 1, subsequent procedure will take its course in accordance with Article 95.</p> <p>(2) In the case referred to in paragraph 1, the third party intervention procedure provided for in Article 96 shall apply if the Examining Division considers it expedient.</p>	<p>(1) +</p> <p>(2) +</p>	<p>If, after having examined the oppositions, the Examining Division considers that the <u>provisional</u> European patent cannot be <u>confirmed as a final European patent</u> in the form communicated in accordance with the provisions of Article 96, paragraph 1, Article 95 shall apply <i>mutatis mutandis</i>. The notification of examination and the observations of the <u>proprietor of the patent</u> shall be communicated to the other parties concerned.</p>

Chairman's proposal

If, after having examined the oppositions, the Examining Division considers that the European patent cannot be granted in the form communicated in accordance with the provisions of Article 96, paragraph 1, Article 95 shall apply mutatis mutandis. The notification of examination and the observations of the applicant shall be communicated to the other parties concerned.

Note :

The second sentence could be incorporated in the Implementing Regulations.

Article 97a

Reply of the parties concerned

1962 Draft	EFTA Draft	1965 Draft
		<p>The Examining Division shall invite the other parties concerned to comment, within a period to be fixed by the Division, on the observations of the <u>proprietor of the patent</u> in so far as these contain new elements of substance or in so far as the Examining Division considers this expedient for other reasons.</p>

Chairman's proposal

The Examining Division shall invite the other parties concerned to comment, within a period to be fixed by the Division, on the observations of the applicant in so far as these contain substantial new elements or in so far as the Examining Division considers this expedient for other reasons.

Note :

This Article could be incorporated in the Implementing Regulations.

Limitation of amendment of claims

1962 Draft	EFTA Draft	1965 Draft
		<p>The claims of a <u>provisional European patent</u> may not be amended, <u>during the examination proceedings</u>, in such a way as to extend the protection conferred by the <u>patent</u>.</p>

Limitation of amendment of claims

Chairman's proposal

The claims of the European patent application may not be amended after publication of the patent claims in such a way as to extend the protection conferred.

Note :

The former Article 93a laid down that an applicant might no longer extend the scope of the protection conferred by the claims, once he had established this desire for protection in the eyes of the public by a patent, even if it were only a provisional patent.

Now that the provisional European patent has been abandoned and, to begin with, the applicant only places a patent application before the public, the question of the stage after which any extension to the claims is to be excluded must be examined afresh. Possible stages to be considered are either the publication of the European patent application or the publication of the patent claims. The first choice would be supported by the interests of competitors, who would want to know the extent of the protection conferred by their competitors' patents as early as possible. The second choice would be supported by the interest of inventor and applicant in effectively maintaining the protection due to their invention, since the applicant usually only becomes certain as to which part of the subject-matter of the invention can properly be protected as an invention as a result of the examination proceedings.

The Chairman's proposal is based on the second choice. This means that the patent claims may be extended, although, of course, only within the scope of the original published description (Article 81), up to the moment of the publication of the claims in the examination proceedings.

Division of a provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The Examining Division shall decide to divide a provisional European patent:</p> <p>(a) at the request of the proprietor, if the Examining Division considers the request to be justified;</p> <p>(b) if the provisional European patent comprises more than one invention.</p> <p>(2) In the cases provided for under paragraph 1, the Examining Division shall notify the proprietor of the extent to which it proposes to divide the provisional European patent. This notification shall be made in accordance with the provisions of Article 95.</p> <p>(3) It shall be the duty of the proprietor to submit to the Examining Division the specifications and any drawings, pertaining to divisional European patents.</p> <p>(4) Each of the additional provisional patents issued by the Division shall be liable to the</p>	<p>(1) +</p> <p>(a) +</p> <p>(b) +</p> <p>(2) +</p> <p>(3) +</p> <p>(4) Each of the additional European patents granted by the</p>	<p>(1) <u>Any provisional European patent</u> covering more than one invention shall be divided into a number of <u>patents</u>, each of which must cover at least one invention:</p> <p>(a) at the request of the <u>proprietor</u>, if the Examining Division considers the division of the <u>patent</u> to be justified;</p> <p>(b) on the invitation of the Examining Division, if the <u>provisional European patent</u> does not meet the requirements of Article 69.</p> <p>(2) - deleted -</p> <p>(3) - deleted -</p> <p>(4) <u>Each of the additional provisional patents resulting from the division shall be liable to the payment</u></p>

Chairman's proposal

(1) After a request for examination has been made, any European patent application covering more than one invention shall be divided into a number of patent applications, each of which must cover at least one invention:

- (a) at the request of the applicant, if the Examining Division considers the division of the patent application to be justified;
- (b) on the invitation of the Examining Division, if the European patent application does not meet the requirements of Article 69.

(2) - deleted -

(3) - deleted -

(4) Article 80, paragraphs 3 to 5 shall apply. If the division of the European patent application takes place after the

Note:

It should be made clear in paragraph 1 that division of a European patent application during the examination proceedings may only be made in accordance with this Article.

Article 98, paragraph 4, of the 1965 Draft (divisional fee) corresponds to Article 80, paragraph 5, of the Chairman's proposal, which

1962 Draft	EFTA Draft	1965 Draft
<p>payment of the divisional fee prescribed by the Rules relating to fees adopted pursuant to this Convention. This fee shall be additional to those provided for in Article 101.</p>	<p>Division shall be liable to the payment of the divisional fee prescribed by the Rules relating to fees adopted pursuant to this Convention. This fee shall be additional to those provided for in Article 101.</p>	<p><u>of the divisional fee prescribed by the Rules relating to fees adopted pursuant to this Convention.</u></p>

Chairman's proposal

publication of the patent claims, Article 97b
shall apply in place of Article 80, paragraph 3.

is referred to in the present Article 98,
paragraph 4.

The other references contained in Article 98,
paragraph 4, of the proposal (to Article 80,
paragraphs 3 and 4, and Article 97b, in respect
of requests for protection and the timing of
divisional applications) seem necessary since,
now that the provisional European patent has
been abandoned, it is the division of the
European patent application which is to take
place during the examination proceedings instead
of the division of the provisional European
patent. The reference to Article 97b is to make
it clear that in a division made after the
publication of the claims, the claims of the
divisional applications may not be amended in
such a way as to extend beyond the original
description.

Termination of proceedings on lapse of a provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>If a provisional European patent lapses during examination proceedings, the Examining Division shall terminate the proceedings and inform the proprietor and third parties interested under the terms of Article 96, paragraph 2. If a provisional European patent lapses prior to the date specified for the beginning of the examination under Article 94, paragraph 1, one half of the examination fee and of fees paid on notice of intervention shall be repaid to the applicants.</p>	<p>If a European patent, during examination proceedings, lapses in respect of all countries covered thereby, the Examining Division shall terminate the proceedings and inform the proprietor and third parties interested under the terms of Article 96, paragraph 2. If it similarly lapses prior to the date specified for the beginning of the examination under Article 94, paragraph 1, one-half of the examination fee and of fees paid on notice of intervention shall be repaid to the applicants.</p>	<p>If a provisional European patent lapses during examination proceedings for reasons other than the cessation of validity provided for in Article 23, the Examining Division shall terminate the proceedings and inform the parties concerned.</p>

Article 99

Termination of proceedings on lapse of a provisional European patent

Chairman's proposal

- deleted -

Cancellation of a provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The Examining Division shall cancel a provisional European patent :</p> <p>(a) if, following the application, if necessary, of the provisions of Articles 95 to 97, it is of the opinion that the provisional European patent together with the invention which forms the subject thereof and the published specification, do not meet the requirements of this Convention as a whole or in part ;</p> <p>(b) if the fees relating to confirmation and printing prescribed in Article 101 have not been paid in due time ;</p> <p>(c) if the provisional European patent has for its subject an invention in respect of which a valid national patent has been granted in one of the Contracting States to the same inventor or to his successor in title.</p>	<p>(1) The Examining Division shall cancel a European patent :</p> <p>(a) +</p> <p>(b) +</p> <p>(c) if the European patent has for its subject an invention in respect of which a valid national patent has been granted in one of the Contracting States covered by the patent to the same inventor or to his successor in title.</p>	<p>(1) The Examining Division shall <u>cancel a provisional European patent</u>:</p> <p>(a) if it is of the opinion that the requirements referred to in Article <u>94</u>, <u>paragraph 2</u>, have not been met,</p> <p>(b) * if the fees relating to confirmation and printing prescribed in Article 101 have not been paid in due time.</p> <p>(c) - deleted -</p>

Article 100

Refusal of a European patent application

Chairman's proposal

(1) The Examining Division shall refuse a
European patent application:

Note:

(a) if it is of the opinion that the require-
ments referred to in Article 88,
paragraph 1, have not been met.

(b) - deleted; see Article 101, paragraph 1a -

(c) - deleted -

1962 Draft	EFTA Draft	1965 Draft
<p>(2) Cancellation of a provisional European patent may not be made on grounds which have not previously been communicated to the proprietor of the patent.</p>	<p>(2) +</p>	<p>(2) * <u>A provisional European patent</u> may not be <u>cancelled</u> on grounds which have not previously been communicated to the <u>proprietor of the patent</u>.</p>
<p>(3) The decision (to cancel the provisional European patent) must state the reasons on which it is based. It shall be communicated to the proprietor of the patent and to third parties interested under the terms of Article 96, paragraph 2.</p>	<p>(3) +</p>	<p>(3) The decision shall be communicated to the parties concerned.</p>
<p>(4) When the decision referred to in paragraph 1 is final, the cancellation of a provisional European patent shall be published in the European Patent Bulletin and entered in the Register of European Patents.</p>	<p>(4) +</p>	<p>(4) When the <u>cancellation of a provisional European patent</u> has become final, it shall be entered in the Register of European Patents and published in the European Patent Bulletin.</p>
<p>(5) When the decision to cancel has become final, a provisional European patent will be deemed to have been, from the beginning, without the rights provided for under Article 20.</p>	<p>(5) +</p>	<p>(5) When the cancellation has become final, a provisional European patent shall be deemed to have been, from the beginning, without the rights provided for under Article 20.</p>

Note :

See Note to Article 78.

Chairman's proposal

(2) A European patent application may not be refused on grounds which have not previously been communicated to the applicant.

(3) +

(4) When the refusal of a European patent application has become final, it shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Paragraph 4 could be incorporated in the Implementing Regulations.

(5) - incorporated in Article 20 bis, paragraph 3 -

Confirmation of a provisional European patent

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If, after having applied any relevant provisions of Articles 95 to 97, the Examining Division is of the opinion that a provisional European patent together with the invention which forms the subject thereof and the printed specification, taking into consideration the proprietor's amendments thereto, meet the requirements of this Convention, the Division shall inform the proprietor of the patent that it intends to confirm the provisional European patent as a whole or in part and request him to pay, within a period of one month, the fees prescribed for confirmation and printing by the Rules relating to fees adopted pursuant to this Convention.</p> <p>(2) When the fees for confirmation and printing have been paid, the Examining Division shall decide to confirm the provisional European patent as a final European patent.</p>	<p>(1) If, after having applied any relevant provisions of Articles 95 to 97, the Examining Division is of the opinion that a European patent together with the invention which forms the subject thereof and the printed specification, taking into consideration the proprietor's amendments thereto, meet the requirements of this Convention, the Division shall inform the proprietor of the patent that it intends to grant final patents in respect of the countries covered by the European patent as amended, and request him to pay, within a period of one month, the fees prescribed for granting and printing by the Rules relating to fees adopted pursuant to this Convention.</p> <p>(2) When the fees for granting and printing have been paid, the examining Division shall decide to grant final patents for the countries concerned.</p>	<p>(1) If the Examining Division is of the opinion that, taking into consideration the amendments made by the <u>proprietor of the patent</u>, the requirements referred to in Article 94, <u>paragraph 2</u>, have been met, the Division shall inform the <u>proprietor of the patent</u> that it intends to <u>confirm the provisional European patent as a whole or in part</u> and shall request him to pay, within a period of one month, the fees prescribed for <u>confirmation</u> and printing by the Rules relating to fees adopted pursuant to this Convention.</p> <p>(2) When the fees for <u>confirmation</u> and printing have been paid, the Examining Division shall <u>confirm the provisional European patent as a final European patent</u>. The decision shall</p>

Grant of a European patent

Chairman's proposal

(1) If the Examining Division is of the opinion that, taking into consideration the amendments made by the applicant, the requirements referred to in Article 88, paragraph 1, have been met, the Division shall inform the applicant that it intends to grant the European patent, and to what extent it intends so to do, and shall request him to pay, within a period of one month, the fees prescribed for grant and printing by the Rules relating to fees adopted pursuant to this Convention.

(1a) If the fees for grant and printing are not paid in due time, the European patent application shall be deemed to have been withdrawn.

(2) When the fees for grant and printing have been paid, the Examining Division shall grant the European patent for the Contracting States designated in accordance with Article 68a.

Note:

In accordance with the Note to Article 100 of the 1965 Draft, paragraph 1a introduces the fictitious arrangement whereby a European patent application is deemed to have been withdrawn if the fees have not been paid in due time. This also corresponds to the system of the PCT Draft (cf. Article 14, paragraph 4). See also Article 78, paragraph 4, of the present proposal.

1962 Draft	EFTA Draft	1965 Draft
<p>In the case of intervention by third parties, the decision shall state the grounds on which it is based. The decision shall be communicated to the proprietor of the patent and to third parties interested under the terms of Article 96, paragraph 2.</p> <p>(3) The confirmation of a provisional European patent as a final European patent shall be entered in the Register of European Patents and published in the European Patent Bulletin once the decision referred to in paragraph 2, has been made final.</p> <p>(4) The effect of the publication referred to in paragraph 3 is to convert the provisional European patent into a final European patent.</p>	<p>In the case of intervention by third parties, the decision shall state the grounds on which it is based. The decision shall be communicated to the proprietor of the patent and to third parties interested under the terms of Article 96, paragraph 2.</p> <p>(3) The grant of final patents shall be entered in the Register of European Patents and published in the European Patent Bulletin once the decision referred to in paragraph 2 has been made final.</p> <p>(4) The effect of the publication referred to in paragraph 3 is to convert the European patents into final patents for the countries concerned.</p>	<p>be communicated to the parties concerned.</p> <p>(3) When the <u>confirmation of a provisional European patent as a final European patent</u> has become final, it shall be entered in the Register of European Patents and published in the European Patent Bulletin.</p> <p>(4) * The effect of the publication referred to in paragraph 3 shall be to convert the provisional European patent into a final European patent.</p>

Chairman's proposal

The decision shall be communicated to the parties concerned.

(3) When the grant of a European patent has become final, it shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Paragraph 3 could be incorporated in the Implementing Regulations.

(4) - deleted -

Hearing before the Examining Division

1962 Draft	EFTA Draft	1965 Draft
<p>Whenever the Examining Division deems it necessary, it shall, on its own initiative or on request, hear the proprietor or any other party to the proceedings.</p>	<p>+</p>	<p>The Examining Division shall give a hearing to the parties concerned, either on its own initiative or at their request, where it considers this to be expedient.</p>

Article 102

Hearing before the Examining Division

Chairman's proposal

Article 105
Publication of a final European patent

1962 Draft	EFTA Draft	1965 Draft
<p>At the same time as it publishes the confirmation of the provisional European patent as a final European patent, the European Patent Office shall publish a printed specification of the final European patent containing the description of the invention, together with the drawings.</p>	<p>At the same time as it publishes the grant of the final patents, the European Patent Office shall publish the printed specification of the final patents containing the description of the invention, together with the drawings. This specification shall indicate the countries covered by the patents.</p>	<p>At the same time as it publishes the <u>confirmation</u> of the <u>provisional</u> European patent <u>as a final European patent</u>, the European Patent Office shall publish a <u>printed</u> specification of the <u>final</u> European patent containing the description, the claims and any drawings.</p>

Publication of a European
Patent

Chairman's proposal

At the same time as it publishes the grant of the European patent, the European Patent Office shall publish a specification of the European patent containing the description, the claims and any drawings. The Contracting States for which the European patent has been granted shall be designated in the specification.

Note:

The word "printed" has been dropped from the first sentence, in order to avoid limiting the choice of methods of reproduction.

The second sentence has been introduced on the model of the EFTA Draft.

Certificate of a final European patent

1962 Draft	EFTA Draft	1965 Draft
<p>(1) As soon as the printed patent specification has been published, the European Patent Office shall issue to the proprietor a certificate for the final European patent to which shall be annexed the printed specification.</p> <p>(2) The certificate shall state that the provisional European patent has been confirmed as a final European patent in the name of the person mentioned in the certificate in respect of the invention described in the printed patent specification.</p>	<p>(1) As soon as the printed patent specification has been published, the European Patent Office shall issue to the proprietor a certificate for the final patents to which shall be annexed the printed specification.</p> <p>(2) The certificate shall state that the patents have been granted in the name of the persons mentioned in the certificate in respect of the invention described in the printed patent specification.</p>	<p>(1) * As soon as the printed patent specification has been published, the European Patent Office shall issue to the proprietor of the patent a certificate for the <u>final</u> European patent, to which shall be annexed the printed specification.</p> <p>(2) * The certificate shall certify that the <u>provisional</u> European patent has been <u>confirmed as a final European patent</u>, in respect of the invention described in the printed patent specification, to the person named in the certificate.</p>

Certificate for a European patent

Chairman's proposal

(1) As soon as the patent specification has been published, the European Patent Office shall issue to the proprietor of the patent a certificate for a European patent, to which the specification shall be annexed.

(2) The certificate shall certify that the European patent has been granted, in respect of the invention described in the patent specification, to the person named in the certificate, for the Contracting States designated in the specification.

APPEALS

Article 105

Decisions subject to appeal

1962 Draft	EFTA Draft	1965 Draft
<p>(1) An appeal shall lie from decisions of the Examining Sections, the Examining Divisions and the Patent Administration Divisions.</p> <p>(2) A decision which does not terminate proceedings as regards one of the parties cannot, of itself, be the subject of an appeal.</p> <p>(3) A decision in respect of the allocation of costs of proceedings cannot, of itself, be the subject of an appeal. No appeal shall lie against a decision dealing solely with such allocation.</p> <p>(4) A decision fixing the amount of costs of proceedings cannot be the subject of an appeal unless the amount is in excess of</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p> <p>(4) +</p>	<p>(1) * An appeal shall lie from decisions of the Examining Sections, the Examining Divisions and the <u>Patent Administration Divisions</u>.</p> <p>(2) A decision which does not terminate proceedings as regards one of the parties can only be the subject of an appeal together with the final decision.</p> <p>(3) The allocation of costs of proceedings cannot be the sole subject of an appeal.</p> <p>(4) * A decision fixing the amount of costs of proceedings cannot be the subject of an appeal unless the amount is in excess of</p>

APPEALS

Article 105

Decisions subject to appeal

Chairman's proposal

(1) An appeal shall lie from decisions
of the Examining Sections and Examining
Divisions

(2) +

(3) +

(4) +

Persons entitled to appeal and to take part
in appeal proceedings

1962 Draft	EFTA Draft	1965 Draft
<p>Any party to proceedings who was adversely affected by a decision may appeal. The other participants in the proceedings shall be parties to the appeal proceedings, as of right.</p>	<p>+</p>	<p>Any party to proceedings who was adversely affected by a decision may appeal. The other participants in the proceedings shall be parties to the appeal proceedings as of right, with the exception of those who have abandoned that right.</p>

Persons entitled to appeal and to take part in appeal proceedings

Chairman's proposal

+

Article 108

Time-limit and form of appeal

1962 Draft	EFTA Draft	1965 Draft
<p>An appeal must be lodged, in writing, at the European Patent Office within a period of two months from the date of the decision appealed from ; it must set out the grounds on which it is based. An appeal shall not be deemed to be lodged until after the payment of the fee for appeal prescribed by the Rules relating to fees adopted pursuant to this Convention.</p>	+	<p>An appeal must be lodged, in writing, at the European Patent Office within a period of two months from the date of the decision appealed from ; it must set out the grounds on which it is based. An appeal shall not be deemed to be lodged until after the payment of the fee for appeal prescribed by the Rules relating to fees adopted pursuant to this Convention. An additional written statement setting out the grounds of appeal in greater detail may be submitted within a period of one month after the lodging of the appeal.</p>

Time-limit and form of appeal

Chairman's proposal

+

Article 109
Interlocutory revision

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If the authority whose decision is contested considers the appeal to be admissible and well-founded, it shall rectify its decision. It may order the fee for appeal to be refunded.</p> <p>(2) If the appeal is not allowed within the two weeks following its receipt, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.</p> <p>(3) The provisions of paragraph 1 shall not apply when third parties participate in the proceedings.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) If the authority whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision.</p> <p>(2) If the appeal is not allowed within a period of two weeks following its receipt, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.</p> <p>(3) The provisions of paragraph 1 shall not apply when third parties participate in the proceedings. In this case the appeal shall be remitted to the Board of Appeal as soon as it is lodged.</p>

Interlocutory revision

Chairman's proposal

(1) +

(2) +

(3) +

Examination of appeals

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If the appeal is admissible, the Board of Appeal shall examine the facts ; this examination shall not be restricted to the arguments and evidence of the parties concerned nor to the contentions on which the appeal is based, provided that these contentions do not involve amendment of the application for a European patent, or of the provisional European patent, by the applicant or the proprietor respectively.</p> <p>(2) The Board of Appeal may disregard fresh facts or evidence which were not included in the statement of grounds of appeal or in the reply to the appeal.</p> <p>(3) The Board of Appeal may require a supplementary report from the Examining Section on the novelty of the invention.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) If the appeal is admissible, the Board of Appeal shall examine the facts ; this examination shall not be restricted to the arguments or contentions of the parties concerned.</p> <p>(2) The Board of Appeal may disregard fresh facts or evidence submitted by the parties concerned which were not included in the statement of grounds of appeal or in the reply to the appeal.</p> <p>(3) The Board of Appeal may obtain a supplementary report on the state of the art <u>from</u> the International Patent Institute at The Hague <u>or</u> from the Examining Section.</p>

Examination of appeals

Chairman's proposal

(1) +

(2) +

(3) +

Article 111
Oral proceedings

1962 Draft	EFTA Draft	1965 Draft
<p>The Board of Appeal, when it considers such procedure suitable, may, either at its own instance or at the request of a party, deliver a decision following oral proceedings.</p>	<p>+</p>	<p>Oral proceedings may take place either at the instance of the Board of Appeal or at the request of a party, if the Board of Appeal considers this to be expedient.</p>

Oral proceedings

Chairman's proposal

+

Article 112

Decision in respect of appeals

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If the appeal does not comply with the requirements of Articles 105, 107 and 108, or with those of the Implementing Regulations of the present Convention, the Board of Appeal will reject it as inadmissible.</p> <p>(2) If the Board of Appeal, following the examination specified in Article 110, paragraph 1, considers that the appeal cannot be allowed, it will dismiss it as unfounded.</p> <p>(3) If the appeal is allowable in whole or in part, the Board of Appeal will annul the decision attacked, in whole or in part. The Board may either decide upon the matter itself or if, having regard to the state of the proceedings, it should consider such action necessary, it may remit the matter to the authority responsible for the decision in question, for the necessary action to be taken.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) * If the appeal does not comply with Articles 105, 107 and 108 or with the provisions of the Implementing Regulations to this Convention, the Board of Appeal shall reject it as inadmissible.</p> <p>(2) * If, following the examination specified in Article 110, paragraph 1, the Board of Appeal considers that the appeal cannot be allowed, it shall dismiss it as unfounded.</p> <p>(3) If the appeal is allowable in whole or in part, the Board of Appeal shall annul the decision attacked, in whole or in part. The Board may either <u>decide on the grant of the provisional European patent itself, or continue the proceedings up to and including the communication provided for in Article 96, paragraph 1, or decide on the confirmation of the provisional European patent, or if, having regard to the state of the proceedings, it should consider such action necessary, it may remit the matter for further</u></p>

Decision in respect of appeals

Chairman's proposal

(1) +

(2) +

(3) If the appeal is allowable in whole or in part, the Board of Appeal shall annul the decision attacked, in whole or in part. The Board may either continue the proceedings up to and including the communication provided for in Article 96, paragraph 1, or decide on the grant of the European patent, or if, having regard to the state of the proceedings, it should consider such action ~~necessary~~, it may remit the matter for further decision to the authority responsible for the decision in question.

1962 Draft	EFTA Draft	1965 Draft
<p>(4) If the Board of Appeal remits the matter for action by the authority which issued the decision in question, such authority must ensure that its final decision in the matter conforms with that of the Board of Appeal. If the decision in question emanated from the Examining Section, the Examining Division will also be bound by the decision of the Board of Appeal.</p> <p>(5) The decision of the Board of Appeal must state the reasons on which it is based and may only be based upon facts or evidence on which the parties involved have had an opportunity to present their comments.</p>	<p>(4) +</p> <p>(5) +</p>	<p>decision to the authority responsible for the decision in question.</p> <p>(4) * If the Board of Appeal remits the matter for action by the authority which issued the decision in question, such authority shall ensure that its final decision in the matter conforms with that of the Board of Appeal. If the decision in question emanated from the Examining Section, the Examining Division shall also be bound by the decision of the Board of Appeal.</p> <p>(5) The decision of the Board of Appeal may only be based upon facts or evidence on which the parties concerned have had an opportunity to present their comments.</p>

Chairman's proposal

(4) +

(5) +

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

Chairman's proposal

(1) The Board of Appeal shall refer a question to the Enlarged Board of Appeal when this is necessary to ensure uniform application of law, or when an important point of law is at issue.

(2) The decision of the Enlarged Board of Appeal on a point of law shall be binding as regards the decision of the Board of Appeal in respect of the appeal in question.

Note:

The 1962 and 1965 Drafts provided that one of the reasons for referring an appeal to the European Patent Court should be "when a decision of the European Patent Court is necessary to ensure uniform application of law, or when an important point of law is at issue" (Article 113, paragraph 2 (b)). The newly proposed additional appeal body of the European Patent Office, the Enlarged Board of Appeal, could, as already pointed out in Introductory Note No. 7, assume this part of the functions of a European Patent Court. Also see Articles 54, paragraph (f) and 58a.

The Enlarged Board of Appeal would not constitute a new stage of appeal within the European Patent Office. It would, rather, only take its decisions in connection with a dependent appeal, and at the request of a Board of Appeal, which would be bound in its decision concerning such dependent appeal by the decision of the Enlarged Board of Appeal.

Further appeal to the European Patent Court

1962 Draft	EFTA Draft	1965 Draft
<p>(1) A decision of the Board of Appeal pronouncing upon an appeal as specified in Article 105, may be the subject of further appeal to the European Patent Court. The lodging of such appeal will have suspensive effect.</p> <p>(2) Appeal may be lodged :</p> <p>(a) for substantial violation of rules of procedure or form ;</p> <p>(b) for violation of the provisions of the present Convention or of any rules made in implementation thereof (in so far as matters concerning procedure and form of national provisions are not involved), when a decision of the European Patent Court is necessary to assure uniform application of law, or when a question of important and fundamental rights is at issue.</p>	<p>(1) +</p> <p>(2) +</p> <p>(a) +</p> <p>(b) +</p>	<p>(1) * A decision of the Board of Appeal pronouncing upon an appeal as specified in Article 105 may be the subject of further appeal to the European Patent Court. The lodging of such appeal shall have suspensive effect.</p> <p>(2) * Appeal may be lodged :</p> <p>(a) * for substantial violation of rules of procedure or form ;</p> <p>(b) * for violation of the provisions of the present Convention or of any rules made in implementation thereof (in so far as matters concerning procedure and form of national provisions are not involved), when a decision of the European Patent Court is necessary to assure uniform application of law, or when an important point of law is at issue.</p>

Article 113

Further appeal to the European Patent Court

Chairman's proposal

- deleted -

Article 113 (contd.)

1962 Draft	EFTA Draft	1965 Draft
<p>(3) Such appeal may be lodged by any party to the proceedings who was adversely affected by the decisions of the Board of Appeal.</p> <p>(4) Further provisions concerning the conditions and effect, as well as the procedure for such further appeals, shall be contained in the Convention establishing a European Patent Court.</p>	<p>(3) +</p> <p>(4) +</p>	<p>(3) * Such appeal may be lodged by any party to the proceedings who was adversely affected by the decisions of the Board of Appeal.</p> <p>(4) * Further provisions concerning the conditions and effect, as well as the procedure for such further appeals, shall be contained in the Convention establishing a European Patent Court.</p>